

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

VENEZUELA US SRL,

Petitioner,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Respondent.

Civil Action No. 1:22-cv-03822-JMC

**PETITIONER’S MOTION FOR ISSUANCE OF A LETTER
ROGATORY FOR SERVICE UNDER THE INTER-AMERICAN
CONVENTION ON LETTERS ROGATORY AND ADDITIONAL PROTOCOL**

Petitioner Venezuela US SRL (“VUS”) respectfully moves that this Court sign and seal the attached form, entitled “Request for Service Abroad of Judicial or Extrajudicial Documents Pursuant to the Additional Protocol to the Inter-American Convention on Letters Rogatory” (the “USM-272”) and its Spanish equivalent (the “USM-272A”), to enable Petitioner to attempt service on Respondent, the Bolivarian Republic of Venezuela (“Venezuela”), under the Inter-American Convention on Letters Rogatory and Additional Protocol.

STATEMENT OF FACTS

1. VUS filed this action on December 27, 2022 to recognize and enforce an arbitral award rendered in its favor and against Venezuela in the arbitration captioned *Venezuela US, S.R.L. v. The Bolivarian Republic of Venezuela*, PCA Case No. 2013-34. *See* Pet. to Recognize and Enforce a Foreign Arbitration Award, ECF No. 1. This Court issued the Summons to Venezuela on December 28, 2022. *See* Summons, ECF No. 5.

2. VUS first attempted to effect service of process on Venezuela under the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361 (the “Hague Service Convention”). After obtaining translations of the required documents, VUS sent the required documents and translations to Venezuela’s Central Authority by DHL on January 23, 2023. *See* Ex. A (DHL Tracking Results); Hague Service Convention, art. 3 (“The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention The document to be served or a copy thereof shall be annexed to the request.”). The package arrived in Venezuela on January 27, 2023. *See id.* at 2. DHL attempted to deliver the package on January 31, 2023, but Venezuela’s Central Authority refused to accept the package. *See id.* DHL attempted delivery for a second time on February 15, 2023, which Venezuela’s Central Authority also refused to accept. *See id.* at 1.

3. Given those refusals, VUS now seeks to effect service of process on Venezuela under the Inter-American Convention on Letters Rogatory, Jan. 30, 1975, O.A.S.T.S. No. B-36 (the “Convention”) and the Additional Protocol to the Inter-American Convention on Letters Rogatory, May 8, 1979, O.A.S.T.S. No. B-46 (the “Additional Protocol” and, together with the Convention, the “IACAP”).

STATEMENT OF POINTS AND AUTHORITIES

4. The Foreign Sovereign Immunities Act (“FSIA”) provides the exclusive means of serving process on a foreign state. *See* 28 U.S.C. § 1608(a); Fed. R. Civ. P. 4(j)(1). The FSIA instructs that where “no special arrangement exists” “between the plaintiff and the foreign state,” the plaintiff must attempt service “by delivery of a copy of the summons and complaint in

accordance with an applicable international convention on service of judicial documents.” 28 U.S.C. § 1608(a)(1)–(2). No special arrangement for service exists between VUS and Venezuela. VUS thus attempted service under the Hague Service Convention, an “applicable international convention on service of judicial documents.” That service has not occurred because Venezuela’s Central Authority twice refused to accept delivery of the service packets.¹

5. The United States and Venezuela are both also signatories to the IACAP. *See B-36: Inter-American Convention on Letters Rogatory*, Organization of American States, <https://www.oas.org/juridico/english/sigs/b-36.html> (last visited Mar. 21, 2023); *B-46: Additional Protocol to the Inter-American Convention on Letters Rogatory*, Organization of American States, <https://www.oas.org/juridico/english/sigs/b-46.html> (last visited Mar. 21, 2023). Under the IACAP, requests for service of process are transmitted from one signatory’s Central Authority to the state of destination’s Central Authority, which then effects service of process. *See Additional Protocol art. 4.*

6. Petitioner may proceed with service under the IACAP only if this Court issues a letter rogatory by signing and sealing the USM-272 form, the official form necessary to effectuate service under the IACAP. *Additional Protocol art. 3; see, e.g., Order, Titan Consortium I, LLC v. Argentine Republic*, No. 21-2250 (JMC) (D.D.C. Nov. 9, 2021), ECF No. 8 (granting motion for issuance of letters rogatory); *Issuance of letters rogatory, SACE S.p.A. v. Republic of Paraguay*,

¹ Notwithstanding Venezuela’s obstruction, VUS has satisfied its obligation under the FSIA to attempt to serve Venezuela “in accordance with an applicable international convention on service of judicial documents.” 28 U.S.C. § 1608(a)(2). VUS is thus entitled to move on to the next method of service provided for by the FSIA. However, because Venezuela is one of the few countries that is party to more than one international convention on service of judicial documents, and because VUS is not aware of any case law dealing with the present circumstances, VUS will attempt to serve Venezuela under the IACAP out of an abundance of caution before moving on to the next methods of service provided for by the FSIA.

No. 15-1042 (KBJ) (D.D.C. July 23, 2015), ECF No. 7 (letter rogatory (forms USM-272 and USM-272A) issued with court’s stamp and seal); *see also Soc. Enter. LLC v. Sociedad Agricola Cato S.A.*, No. 1:15-cv-4158 (RJD), 2015 WL 13743436, at *2 (E.D.N.Y. Oct. 6, 2015) (“[A] completed USM-272 Form, signed and sealed by ‘the judicial . . . authority that issued the letter rogatory,’ is necessary to effectuate service of process under the IACAP.” (alteration in original)). The Court’s signature and seal on this form serve to “authenticate[]” the letter rogatory and the pleadings that will be enclosed with it. Additional Protocol art. 3; *see* Convention art. 8(a).

7. VUS has prepared the USM-272 form and USM-272A (its Spanish translation) and attached them as Exhibits B and C, respectively. The document requires the “Signature and stamp of the judicial or other adjudicatory authority of the State of origin” on two pages, at the bottom of page 2 and page 5. *See* Ex. B (USM-272) at 2, 5; Ex. C (USM-272A) at 2, 5. To authenticate the form, VUS respectfully seeks the Court’s signature and seal in both of those locations.

8. A copy of the papers that will be served along with the forms and their Spanish translations are attached hereto as Exhibits D and E, respectively. A proposed order is attached hereto as Exhibit F. Should Venezuela’s Central Authority refuse to accept delivery, or otherwise fail to effect service in accordance with the IACAP, VUS will initiate service of process on Venezuela through diplomatic channels pursuant to 28 U.S.C. § 1608(a)(4).²

WHEREFORE, VUS respectfully moves that the Court sign and seal the attached “Request for Service Abroad of Judicial or Extrajudicial Documents Pursuant to the Additional Protocol to the Inter-American Convention on Letters Rogatory” on pages 2 and 5, in the locations designated

² Service on Venezuela by mail pursuant to 28 U.S.C. § 1608(a)(3) is not available because Venezuela objected to service by postal channels when it signed the Hague Service Convention. *See ConocoPhillips Petrozuata B.V. v. Bolivarian Republic of Venezuela*, Civil Action No. 1:19-cv-0683 (CJN), 2022 WL 3576193, at *5 (D.D.C. Aug. 19, 2022).

for the “Signature and stamp of the judicial or other adjudicatory authority of the State of origin” of Exhibit B and “Firma y sello del órgano jurisdiccional requirente” on pages 2 and 5 for Exhibit C so that VUS may proceed with service on Venezuela under the IACAP.

Dated: New York, New York
March 21, 2023

Respectfully submitted,

By: /s/ Elliot Friedman
Elliot Friedman, D.C. Bar No. NY0106
elliott.friedman@freshfields.com
Paige von Mehren, *pro hac vice*
paige.vonmehren@freshfields.com
FRESHFIELDS BRUCKHAUS DERINGER US LLP
601 Lexington Avenue, 31st Floor
New York, New York 10022
Telephone: (212) 277-4000
Facsimile: (212) 277-4001

Attorneys for Petitioner Venezuela US SRL