

1 J. Noah Hagey, Esq. (SBN: 262331)  
hagey@braunhagey.com  
2 Matthew Borden, Esq. (SBN: 214323)  
borden@braunhagey.com  
3 Eva Schueller, Esq. (SBN: 237886)  
schueller@braunhagey.com  
4 BRAUNHAGEY & BORDEN LLP  
220 Sansome Street, Second Floor  
5 San Francisco, CA 94104  
Telephone: (415) 599-0210  
6 Facsimile: (415) 276-1808

7 COUNSEL FOR APPLICANTS SAM RAINSY  
and ICC FILING VICTIMS  
8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

DMR

11 CV 16 80258 MISC.  
12

13 *In re* Ex Parte Application of  
14 SAM RAINSY and FILING VICTIMS before  
the International Criminal Court,  
15 Applicants,  
16 For an Order Pursuant to 28 U.S.C. § 1782  
Granting Leave to Obtain Discovery from  
17 CHEVRON CORPORATION,  
18 For use in Foreign Proceedings.  
19

Case No.  
**EX PARTE APPLICATION FOR AN  
ORDER PURSUANT TO 28 U.S.C. § 1782  
GRANTING LEAVE TO OBTAIN  
DISCOVERY FOR USE IN FOREIGN  
PROCEEDINGS; SUPPORTING  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

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SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 This is an Application for an order pursuant to 28 U.S.C. § 1782 granting leave to serve  
2 Chevron Corporation (“Chevron”) with a subpoena seeking targeted discovery in support of foreign  
3 legal proceedings relating to the assassination of Dr. Kem Ley, a well-known Cambodian political  
4 commentator and government critic. *See* supporting Declaration of Eva K. Schueller, Esq.  
5 (“Schueller Decl.”), Exhibit A (subpoena).

6 Applicants are (1) Sam Rainsy, a defendant in a defamation suit in Cambodia, and (2)  
7 Cambodian citizens represented by Richard Rogers, Esq., who have filed a Communication under  
8 Article 15 of the Rome Statute of the International Criminal Court (“Filing Victims”), alleging  
9 crimes against humanity committed by Cambodian government officials. The foreign proceedings  
10 are respectively, a criminal complaint alleging defamation against applicant Sam Rainsy, and a  
11 proceeding before the International Criminal Court.

12 Applicants request the following categories of documents and things in the possession,  
13 custody or control of Chevron and/or its representatives, agents or affiliates:

14 1. All audio or video recordings taken during the period of July 1-14, 2016  
15 (collectively, the “Surveillance Videos”) in, around and/or at the Caltex gas station and onsite Start  
16 Mart café therein located at the intersection of Monivong and Mao Tse Toung boulevards in  
17 Phnom Penh, Cambodia (the “Caltex Station”).

18 2. All documents and communications related to the Surveillance Videos, including  
19 without limitation, their preservation, dissemination, editing and/or destruction.

20 3. Documents sufficient to identify the names of managers and employees of the  
21 Caltex Station during the period of July 1-14.

22 4. Documents sufficient to identify managers or employees of the Caltex Station who  
23 were terminated or resigned between July 10 and July 31.

24 5. All communications with any agent, employee or instrumentality of the Cambodian  
25 government regarding Dr. Kem Ley or his death.

26 6. All documents and communications related to the shooting of Dr. Kem Ley.

27 This Application is supported by the accompanying Memorandum of Points and  
28 Authorities, the Declaration of Eva K. Schueller, the Declaration of Sam Rainsy, and the

1 Declaration of Richard Rogers filed concurrently herewith. The subpoena and proposed order are  
2 attached to this Application as **Exhibits A and B**, respectively.

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Dated: December 13, 2016

BRAUNHAGEY & BORDEN LLP

/s/ Eva Schueller  
Eva Schueller, Esq.

Attorneys for Applicants

1 J. Noah Hagey, Esq. (SBN: 262331)  
2 [hagey@braunhagey.com](mailto:hagey@braunhagey.com)  
3 Matthew Borden, Esq. (SBN: 214323)  
4 [borden@braunhagey.com](mailto:borden@braunhagey.com)  
5 Eva Schueller, Esq. (SBN: 237886)  
6 [schueller@braunhagey.com](mailto:schueller@braunhagey.com)  
7 BRAUNHAGEY & BORDEN LLP  
8 220 Sansome Street, Second Floor  
9 San Francisco, CA 94104  
10 Telephone: (415) 599-0210  
11 Facsimile: (415) 276-1808

12 COUNSEL FOR APPLICANTS SAM RAINSY  
13 and ICC FILING VICTIMS

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 *In re* Ex Parte Application of SAM RAINSY and  
17 FILING VICTIMS BEFORE THE  
18 INTERNATIONAL CRIMINAL COURT,

19 Applicants,

20 For an Order Pursuant to 28 U.S.C. § 1782  
21 Granting Leave to Obtain Discovery for use in  
22 Foreign Proceedings from:

23 CHEVRON CORPORATION.

Case No.

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
§ 1782 APPLICATION**

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1 Applicants Sam Rainsy and Filing Victims Before the International Criminal Court  
2 represented by Richard Rogers (together, “Applicants”) respectfully submit this Memorandum of  
3 Points and Authorities in support of their application for an Order pursuant to 28 U.S.C. § 1782  
4 granting leave to serve a local corporation, Chevron Corporation (“Chevron”) with a subpoena  
5 seeking discovery, or, in the alternative, for an Order to Show Cause as to why such subpoena  
6 should not be granted.

### 7 INTRODUCTION

8 Applicants bring this proceeding to compel production of documents and things for use in  
9 foreign legal proceedings relating to the assassination of Dr. Kem Ley, a well-known Cambodian  
10 political commentator and government critic. Dr. Ley’s assassination occurred on the premises of a  
11 wholly Chevron-owned “Caltex” gas station in central Phnom Penh, Cambodia. In pending foreign  
12 legal proceedings, Applicants assert that Cambodian government officials were implicated in, aided  
13 and abetted or otherwise ordered the killing as part of an effort to suppress dissent and government  
14 criticism. Chevron and/or its local Caltex agents admit that on-site closed circuit cameras and/or  
15 other video equipment recorded events on the night of Dr. Ley’s murder. Chevron has refused to  
16 produce such video recordings and similar evidence relevant and necessary to Applicants’ legal  
17 cases related to the Cambodian government’s alleged involvement in Dr. Ley’s murder. At the  
18 same time, Chevron provided a copy of the recording to the Cambodian government.

19 The Assassination. Dr. Kem Ley was one of Cambodia’s most prominent and well-  
20 respected political analysts and a passionate advocate for human rights, democracy and social  
21 justice in Cambodia. On July 10, 2016, shortly before 9:00 am, he was shot and killed in a Caltex  
22 gas station cafe in central Phnom Penh where he routinely got his breakfast. According to Chevron  
23 Corporation’s website, Chevron owns and runs the Caltex branded gas stations and Star Mart cafés  
24 in Cambodia. Chevron Corporation is headquartered in San Ramon, California.

25 The gas station at issue is equipped with multiple video cameras, which capture the outdoor  
26 gas station as well as the inside of the Star Mart café. The cameras were recording on the day of  
27 the shooting, and captured the actual murder. Local human rights organizations, political activists,  
28

1 and reporters immediately requested copies of the footage from Caltex, as did Dr. Ley’s family’s  
2 lawyers. Chevron has refused or ignored those requests to date.

3         The shooting occurred just days after Dr. Ley spoke at length on a popular radio broadcast  
4 about a recent globally acclaimed report by Global Witness, describing the Cambodian ruling  
5 family’s vast wealth and secretive corporate holdings. At the time of his death, Dr. Ley was also  
6 part-way through his “100 Nights” campaign, spending 100 nights with rural Khmer families to  
7 investigate the roots of Cambodia’s most pressing social issues. Dr. Ley’s rising popularity and his  
8 high-profile, critical analysis of the government apparatus put him squarely in the ruling party’s  
9 cross hairs. Just before his death, he commented that he feared for his life.

10         The victim, Dr. Ley, leaves behind his wife and five young children, the youngest of whom  
11 was born October 3, 2016 and is named after his father. Dr. Ley’s widow, Bou Rachana, also fears  
12 for her life, and has fled Cambodia with their children since her husband’s death. Ms. Bou has  
13 pressed the government for an independent investigation to discover the truth about her husband’s  
14 killing, and has faced additional threats due to those public requests. Following her public  
15 demands for transparency, Ms. Bou was also summoned to the court for questioning.

16         Response to the Killing. Following Dr. Ley’s murder, Cambodian non-governmental  
17 organizations, human rights activists and opposition political party members condemned the  
18 killing. Several immediately blamed complicity or more by government officials – calling it an  
19 extrajudicial assassination intended to silence one of the ruling elite’s most popular critics. The  
20 shooting received broad attention in Cambodia and internationally. In the immediate aftermath of  
21 the killing, hundreds of supporters and human rights activists gathered at Chevron’s gas station to  
22 protest the killing and prevent officials from quickly removing the body and preventing adequate  
23 forensics. The next several months have seen multiple subsequent protests, and hundreds of  
24 thousands marched in protest and mourning for Dr. Ley for his funeral.<sup>1</sup>

25         The Sam Rainsy Litigation. It is widely believed that Cambodian government officials  
26 were involved in the assassination as part of an effort to quell dissent in the run-up to the

27 \_\_\_\_\_  
28 <sup>1</sup> “Millions of Cambodians Join Kem Ley Funeral Procession,” RADIO FREE ASIA (July 24, 2016),  
available at <http://www.rfa.org/english/news/cambodia/cambodia-funeral-07242016145816.html>



1 Communal Elections set for June 2017, and the General Elections scheduled to take place July  
2 2018. One leader who so alleges is Applicant Sam Rainsy, a founder and leader of the Cambodian  
3 National Rescue Party (“CNRP”), which is currently the main political opposition party in  
4 Cambodia. Mr. Sam has been Cambodia’s most vocal political opposition figure for decades, and  
5 has faced dubious criminal and civil lawsuits and even a failed attempt on his life in 1997 as a  
6 result of his political activities.<sup>2</sup> On August 1, 2016, the Prime Minister of Cambodia initiated a  
7 criminal complaint against Mr. Sam for defamation based on a Facebook post that he posted  
8 accusing government officials of involvement in Dr. Ley’s murder. The requested discovery will  
9 help Applicant Sam defend against those allegations and establish the government’s involvement,  
10 if any, in the underlying crime.

11 ICC Complaint. Dr. Ley’s assassination is also now part of a pending 220-page  
12 Communication (complaint) submitted by attorney Richard Rogers on behalf of the Filing Victims  
13 to the International Criminal Court (“ICC”). The ICC proceeding highlights political persecution  
14 of dissidents in Cambodia, and a Supplement filed November 15, 2016 describes Dr. Ley’s highly  
15 suspicious death. The requested discovery will aid the Filing Victims’ pursuit of remedies within  
16 the ICC proceedings.

17 Requested Information and Evidence. Applicants Sam Rainsy and the Filing Victims each  
18 seek information from Chevron relating to video and other recordings from the Phnom Penh Caltex  
19 gas station in question from July 1-14, 2016. Applicants likewise seek production of all documents  
20 and communications between and among Chevron employees or executives, Caltex employees, and  
21 government, judicial, prosecutorial or police officials related in any way to Dr. Ley’s murder and  
22 the ensuing criminal investigation and/or cover-up.

23 This Application clearly satisfies Section 1782’s three statutory requirements. First, it is in  
24 “the district in which [the] person resides,” 28 U.S.C. § 1782(a), because Chevron’s headquarters  
25 are in San Ramon, California. Second, Applicants Sam Rainsy and the Filing Victims seek the  
26 discovery “for use in a proceeding in a foreign ... tribunal,” *i.e.*, Cambodia’s domestic courts and the

27 \_\_\_\_\_  
28 <sup>2</sup> See, e.g., “Profile: Sam Rainsy,” BBC NEWS (Feb. 3, 2005), *available at*  
<http://news.bbc.co.uk/2/hi/asia-pacific/138764.stm>.

1 International Criminal Court. Third, the applicants qualify as “interested persons” in those foreign  
2 proceedings.

3 Chevron is well familiar with the legal standard at issue and should be well-equipped to  
4 respond promptly given that it has brought over 23 actions pursuant to Section 1782 in the past few  
5 years. See Theodore J. Boutrous, Jr., *Ten Lessons from the Chevron Litigation: The Defense*  
6 *Perspective*, 1 Stan. J. Complex Litig. 219, 234 n.56 (2013). The company also frequently touts its  
7 commitments to social responsibility and human rights. See [https://www.chevron.com/corporate-](https://www.chevron.com/corporate-responsibility/people/human-rights)  
8 [responsibility/people/human-rights](https://www.chevron.com/corporate-responsibility/people/human-rights). Prompt release of the requested, limited discovery sought in  
9 this Application would demonstrate that it takes its corporate responsibility seriously and that those  
10 commitments are more than just empty public relations rhetoric.

11 For these and other reasons, Applicants respectfully seek prompt production of the  
12 requested discovery.

### 13 **FACTUAL BACKGROUND**

14 The evidence surrounding Dr. Ley’s murder will be critical to fact and truth finding in at  
15 least the two foreign proceedings described further below.

#### 16 **A. The Investigation and Prosecution of Dr. Ley’s Killer**

17 On July 10, 2016, shortly before 9:00 am, Dr. Ley was shot to death at the Chevron station.  
18 Approximately 30 minutes after the shooting, Cambodian police arrested a man who identified  
19 himself as Chuop Samlap (which translates to “Meet Kill” in the Khmer language) for the crime.<sup>3</sup>  
20 The suspect turned out to be Oueth Ang, a former soldier living in a remote province. Oueth said he  
21 shot Kem Ley over a U.S. \$3,000 debt. As was immediately widely reported, the arrest and  
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23 <sup>3</sup> This background narrative is drawn from various media accounts cited throughout the  
24 Application, local witness and rights workers’ interviews, and NGO reports, including: Joint  
25 Statement, “Cambodian Civil Society Condemns Outrageous Murder of Political Analyst Kem  
26 Ley,” LICADHO (July 11, 2016), available at [http://www.licadho-](http://www.licadho-cambodia.org/pressrelease.php?perm=406)  
27 [cambodia.org/pressrelease.php?perm=406](http://www.licadho-cambodia.org/pressrelease.php?perm=406); “Kem Ley: Government critic shot dead in Cambodia,”  
28 AL JAZEERA (July 10, 2016), available at [http://www.aljazeera.com/news/2016/07/kem-ley-](http://www.aljazeera.com/news/2016/07/kem-ley-government-critic-shot-dead-cambodia-160710050756870.html)  
[government-critic-shot-dead-cambodia-160710050756870.html](http://www.aljazeera.com/news/2016/07/kem-ley-government-critic-shot-dead-cambodia-160710050756870.html); “Cambodians join funeral  
procession for murdered government critic,” THE GUARDIAN (July 24, 2016), available at  
[https://www.theguardian.com/world/2016/jul/24/cambodians-funeral-procession-kem-ley-](https://www.theguardian.com/world/2016/jul/24/cambodians-funeral-procession-kem-ley-murdered-government-critic)  
[murdered-government-critic](https://www.theguardian.com/world/2016/jul/24/cambodians-funeral-procession-kem-ley-murdered-government-critic)

1 identity of the purported culprit raise many questions.<sup>4</sup> Oueth’s relatives told several media  
2 sources that he was too poor to lend anyone money – an assertion which has been borne out by  
3 subsequent reports and by examination of his living situation. Not one witness could be found who  
4 had heard of Oueth ever having met Dr. Ley. Further, Oueth used an expensive Glock pistol to  
5 shoot Dr. Ley. Guns in general are rarely possessed by civilians in Cambodia<sup>5</sup>, and there has been  
6 no effort to explain how the indisputably impoverished Oueth came into the illegal possession of  
7 the expensive and rare weapon. Also of note, one Caltex employee has said that just before the  
8 shooting occurred, a police car had pulled into a parking spot next to Kem Ley’s vehicle, but then  
9 disappeared immediately after he had been shot.<sup>6</sup>

10 Since Dr. Ley’s death, many human rights organizations, observers, and Cambodian  
11 citizens have repeatedly questioned authorities’ investigation and condemned its secrecy. No  
12 significant new information about the investigation has been released in months, despite multiple  
13 public demands for transparency.<sup>7</sup>

#### 14 **B. The Politically Motivated Lawsuits Against Sam Rainsy**

15 Sam Rainsy has been living in exile since November 2015, and officially barred from  
16 entering Cambodia since September 26, 2016. (Declaration of Sam Rainsy (“Sam Decl.”), at ¶¶ 9,  
17 12.) He left Cambodia after authorities threatened to put him in jail for an unrelated defamation  
18 conviction dating to a 2011 conviction that had supposedly been pardoned. (*Id.* at ¶¶ 3-4.) That  
19 earlier threat to arrest Mr. Sam came amidst the start of a wave of politically motivated  
20 prosecutions against opposition figures. (*Id.* at ¶ 2.) In the past year, at least 20 individuals aligned

21 \_\_\_\_\_  
22 <sup>4</sup> See, e.g., “Man charged over shooting of Cambodia critic,” AFP (July 13, 2016), *available at*  
<http://www.dailymail.co.uk/wires/afp/article-3687791/Man-charged-shooting-Cambodia-critic.html>

23 <sup>5</sup> Cambodian Law on the Management of Weapons, Explosives and Ammunition, Art. 4 (2005)  
(banning civilian possession of firearms and ammunition).

24 <sup>6</sup> See RADIO FREE ASIA, “Witness Accounts of Arrest of Kem Ley’s Accused Murderer Raise  
25 Questions About Official Story,” (July 29, 2016), *available at*  
26 [http://www.rfa.org/english/news/cambodia/witness-accounts-of-arrest-of-kem-leys-accused-  
murderer-raise-questions-about-official-story-07292016173437.html](http://www.rfa.org/english/news/cambodia/witness-accounts-of-arrest-of-kem-leys-accused-murderer-raise-questions-about-official-story-07292016173437.html).

27 <sup>7</sup> See Ouch Sony, THE CAMBODIA DAILY, “Kem Ley’s Brother Brands Official’s Comments  
28 ‘Insulting’,” *available at* [https://www.cambodiadaily.com/news/kem-leys-brother-brands-officials-  
comments-insulting-117879/](https://www.cambodiadaily.com/news/kem-leys-brother-brands-officials-comments-insulting-117879/)

1 with Mr. Sam’s opposition party CNRP, including CNRP members of Cambodia’s Parliament and  
2 their supporters, have been arrested. (*Id.* at ¶ 12.) Three of them are serving 20-year sentences.  
3 (*Id.*)

4 On August 19, 2016, Mr. Sam was summoned to Court over his Facebook comments about  
5 Dr. Ley’s death because the Prime Minister had filed yet another defamation case against Mr. Sam  
6 for his public comments about Dr. Ley’s murder. (*Id.* ¶¶ 7-8.) That prosecution is currently  
7 pending. (*Id.* at ¶ 8; Sam Decl. Exs. A-B.)

### 8 **C. Allegations of Political Persecution Pending Before the International** 9 **Criminal Court**

10 The ICC is a treaty-based permanent criminal court established to investigate and prosecute  
11 individuals accused of genocide, crimes against humanity, war crimes and the crime of aggression.  
12 Rome Statute of the International Criminal Court, Article 5, *available at* [https://www.icc-](https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf)  
13 [cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf). Over  
14 120 countries have ratified the Rome Statute, including Cambodia.<sup>8</sup> Those countries are referred to  
15 as State Parties, and they have agreed to submit themselves to the jurisdiction of the ICC with  
16 respect to the crimes enumerated in the Statute. *Id.* State Parties can request that the Office of the  
17 Prosecutor of the ICC carry out an investigation, which is the precursor to prosecution. *Id.*  
18 Individuals, intergovernmental or non-governmental organizations and other reliable sources may  
19 also submit “communications” to the Office of the Prosecutor. *Id.* If the Prosecutor decides to  
20 open an investigation based on such communications, the next step is to seek permission from the  
21 Pre-Trial Chamber judges.

22 The ICC Communication at issue here was originally filed in 2014 on behalf of 10  
23 Cambodian victims of government land confiscations. The case argues that land grabs in  
24 Cambodia have been carried out by the country’s “ruling elite” on such a massive scale that they  
25 count as crimes against humanity. (Declaration of Richard Rogers (“Rogers Decl.”), at Ex. A [7  
26 October 2014 Executive Summary, paras 4, 6-8, 13-14, 27].)

27 \_\_\_\_\_  
28 <sup>8</sup> Information about the ICC and its procedures is available at [https://www.icc-cpi.int/about/how-](https://www.icc-cpi.int/about/how-the-court-works)  
[the-court-works](https://www.icc-cpi.int/about/how-the-court-works).

1 The Communication also alleges and discusses political persecution in Cambodia at length.  
2 Dr. Kem Ley’s murder falls into that category. The Communication states:

3 Dissidents have been assassinated, murdered, beaten-up, subjected to  
4 trumped-up charges and illegal detention, and persecuted due to their  
5 opposition to the Ruling Elite. Initially resorting to tactics such as  
6 grenade attacks and drive-by shootings, it is estimated that the Ruling  
7 Elite has orchestrated over 300 politically motivated murders since  
8 the 1990s.

9 These attacks were not limited to Cambodians who challenged the  
10 land grabbing, but targeted more broadly those who were seen as a  
11 threat to the Ruling Elite’s power. Victims included civil society  
12 leaders, monks, journalists, lawyers, environmental activists, trade  
13 unionists, civilian protestors, and opposition politicians.

14 (Rogers Decl. at Ex. A [7 October 2014 Communication Executive Summary].)

15 On November 15, 2016, the Filing Victims submitted a Supplemental Communications to  
16 the ICC regarding the assassination. (Rogers Decl., Ex. B.) The Supplement describes that Dr.  
17 Ley’s murder appears to be the latest in the long line of such killings that have gone unpunished,  
18 and is part of a much broader, ongoing campaign of political killings and other forms of  
19 persecution aimed at silencing those who challenge Cambodia’s ruling elite.<sup>9</sup>

20 On September 15, 2016, the Prosecutor of the ICC announced that it was shifting priorities  
21 to crimes that are committed by means of or result in “the destruction of the environment, the  
22 illegal exploitation of natural resources, or the illegal dispossession of land.”<sup>10</sup> Media quickly

23 <sup>9</sup> See “Two Decades of Impunity in Hun Sen’s Cambodia,” HUMAN RIGHTS WATCH (November 13,  
24 2012), available at [https://www.hrw.org/report/2012/11/13/tell-them-i-want-kill-them/two-](https://www.hrw.org/report/2012/11/13/tell-them-i-want-kill-them/two-decades-impunity-hun-sens-cambodia)  
25 [decades-impunity-hun-sens-cambodia](https://www.hrw.org/report/2012/11/13/tell-them-i-want-kill-them/two-decades-impunity-hun-sens-cambodia) (last accessed 10/20/2016) (“More than 300 people have  
26 been killed in politically motivated attacks since the Paris Agreement ... not one senior government  
27 or military official has been held to account. ... It is no exaggeration to say that impunity has been a  
28 defining feature of the country since the signing of the Paris Agreements”); “Cambodia: Hun Sen  
Promoting, Rewarding Killers,” HUMAN RIGHTS WATCH (November 13, 2012), available at  
<https://www.hrw.org/news/2012/11/13/cambodia-hun-sen-promoting-rewarding-killers> (last  
accessed 10/20/2016). (“More than 300 people have been killed in politically motivated attacks  
since then [the Paris Agreements], yet not one case has resulted in a credible investigation and  
conviction.”)

<sup>10</sup> John Vidal and Owen Bowcott, “ICC widens remit to include environmental destruction cases,”  
THE GUARDIAN (Sept. 15, 2016), available at  
[https://www.theguardian.com/global/2016/sep/15/hague-court-widens-remit-to-include-](https://www.theguardian.com/global/2016/sep/15/hague-court-widens-remit-to-include-environmental-destruction-cases)  
[environmental-destruction-cases](https://www.theguardian.com/global/2016/sep/15/hague-court-widens-remit-to-include-environmental-destruction-cases)

1 noted that the Communication by the Cambodian Filing Victims alleges exactly the type of crimes  
2 that the ICC’s new directive is targeting. *Id.*

### 3 ARGUMENT

#### 4 **I. THIS APPLICATION EASILY MEETS THE STATUTORY 5 REQUIREMENTS FOR SEEKING DISCOVERY FROM CHEVRON**

6 Section 1782 is “the product of congressional efforts, over the span of nearly 150 years, to  
7 provide federal-court assistance in gathering evidence for use in foreign tribunals.” *Intel Corp. v.*  
8 *Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004). Over time, Congress has “substantially  
9 broadened the scope of assistance federal courts could provide for foreign proceedings.” *Id.* at 247-  
10 49. Section 1782 provides in part:

11 The district court of the district in which a person resides or is found  
12 may order him to give his testimony or statement or to produce a  
13 document or other thing for use in a proceeding in a foreign or  
14 international tribunal .... The order may be made ... upon the  
15 application of any interested person and may direct that the testimony  
16 or statement may be given, or the document or other thing be  
17 produced, before a person appointed by the court.

18 28 U.S.C. § 1782(a). The statute thus sets forth three requirements: (1) the “person” from whom  
19 discovery is sought must reside or be found in the district of the court to which the application is  
20 made, (2) the request must be made “by a foreign or international tribunal or upon the application  
21 of any interested person,” and (3) the document or thing sought must be “for use in a proceeding in  
22 a foreign or international tribunal.” This application satisfies all three elements easily.

#### 23 **A. Chevron resides in the Northern District of California**

24 Chevron Corporation is a Delaware company with its principal place of business in San  
25 Ramon, California. Caltex in Cambodia is a petroleum brand name and wholly owned subsidiary  
26 of Chevron Corporation used in more than 60 countries in the Asia-Pacific region, the Middle East,  
27 and Southern Africa. (*See* Declaration of Eva K. Schueller (“Schueller Decl.”), ¶¶ 4-5, Exs. C-D.)

28 On its website, Chevron Corporation states:

In Cambodia, Chevron offers fuel and automotive products to  
consumers through our subsidiary Chevron (Cambodia) Limited.

Chevron operates a network of Caltex® service stations. We also  
have convenience stores, lube centers and coffee shops.

1 (Schueller Decl., Ex. D.) Similarly, Caltex in Cambodia’s website gives contact information for  
2 Chevron (Cambodia) Limited, instructs users to direct all questions regarding data privacy to  
3 Chevron Corporation in San Ramon, and links to Chevron.com. (Schueller Decl., Ex. E.) And  
4 Chevron Corporation’s 2015 Supplement to its Annual Report to the Securities and Exchange  
5 Commission features a photo of a Caltex gas station in Asia, and notes that “[t]he company and its  
6 affiliates serve customers at approximately 5,100 Caltex-branded retail outlets...” (Schueller  
7 Decl., Ex. F at 40.) Chevron Corporation is thus “found” in the Northern District of California for  
8 purposes of section 1782. *In re Oxus Gold PLC*, 2006 WL 2927615, at \*5 (D.N.J. Oct. 11, 2006)  
9 (holding that a business is “found” in a district if it would be subject to personal jurisdiction in that  
10 district by virtue of its systematic and continuous activities there, even if the corporation’s place of  
11 incorporation or headquarters is outside the district).

12 Applicants understand that the videos, documents and things requested by this Application  
13 are stored digitally and thus housed on Chevron’s servers in the U.S., as is reflected by the website  
14 ownership information on the Caltex entity at issue’s own website. (Schueller Decl., Ex. E.)  
15 However, section 1782 requires only that the person be found here, not that the documents be  
16 found here. Chevron itself has successfully sought documents stored abroad from affiliated entities  
17 found in the U.S., on the theory that the entity in the U.S. had “possession, custody, or control” of  
18 the records. *See In re Chevron Corp.*, 2012 WL 3636925 (S.D. Fla. June 12, 2012) (Chevron  
19 obtained bank account records maintained in Ecuador with a 1782 request against the local branch  
20 of the Ecuadorian bank); *see also In re Gemeinschaftspraxis Dr. Med Schottdorf*, 2006 WL  
21 3844464 (S.D.N.Y. Dec. 29, 2006) (allowing German partnership’s 1782 application for discovery  
22 from consulting firm McKinsey Company in New York, for reports and documents located in  
23 Germany, noting that the statute requires only that the “person” be found in the jurisdiction of the  
24 court, not the documents).

25 **B. Applicants Are All “Interested Persons” under § 1782**

26 Sam Rainsy and the Filing Victims are “interested persons” under section 1782. *Intel*  
27 *Corp.*, 542 U.S. at 256 (2004) (“No doubt litigants are included among, and may be the most  
28 common example of, the ‘interested person [s]’ who may invoke § 1782...”). Sam Rainsy is a

1 defendant in a criminal proceeding to which original footage of the circumstances surrounding Dr.  
2 Ley’s murder is indisputably relevant – the footage and documents requested are likely to show  
3 whether government officials were on the scene prior to the violence or otherwise involved.  
4 Cambodia’s Constitution establishes a right to freedom of expression and expressly enshrines the  
5 Universal Declaration of Human Rights which does the same. Constitution of Cambodia, Articles  
6 31, 41, available at [http://www.crrt-cambodia.org/wp-content/uploads/2011/01/Constitution-of-](http://www.crrt-cambodia.org/wp-content/uploads/2011/01/Constitution-of-the-kingdom-of-Cambodia-EN.pdf)  
7 [the-kingdom-of-Cambodia-EN.pdf](http://www.crrt-cambodia.org/wp-content/uploads/2011/01/Constitution-of-the-kingdom-of-Cambodia-EN.pdf). Cambodia has also ratified the International Covenant on Civil  
8 and Political Rights (ICCPR), which is a multilateral treaty that imposes legal obligations on  
9 ratifying countries. The United Nations Human Rights Committee is charged with issuing  
10 interpretations of the treaty, and has held that under the ICCPR, truth must be a defense to  
11 defamation. U.N. Human Rights Committee, General Comment 34 at ¶ 47, CCPR/C/GC/34 (Sept.  
12 12, 2011), available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>. And although  
13 defamation remains a criminal offense in Cambodia, punishable by steep fines, Cambodian law  
14 also recognizes that truth is a defense and that a statement directed at a public official enjoys  
15 greater protections than those directed at private individuals. Cambodian Penal Code, Art. 305; “In  
16 re: CPP v Ranariddh,” THE PHNOM PENH POST (Dec. 3, 2003), available at  
17 <http://www.phnompenhpost.com/national/re-cpp-v-ranariddh> (“Should the court find that the CPP  
18 has established these three necessary elements of defamation, Prince Ranariddh is not left without  
19 defenses. Truth is a complete defense to a charge of defamation.”).

20         The Filing Victims satisfy the “interested person” test as well, because proof of government  
21 involvement in the assassination supports their claims before the ICC. See *Intel Corp. v. Advanced*  
22 *Micro Devices, Inc.*, 542 U.S. 241, 256 (2004) (“A complainant who triggers a European  
23 Commission investigation has a significant role in the process.). Chevron may argue that the ICC  
24 has not yet begun the investigative phase in response to the Filing Victims’ Communication, but  
25 “Section 1782(a) does not limit the provision of judicial assistance to ‘pending’ adjudicative  
26 proceedings.” *Intel Corp.*, 542 U.S. at 258. Here, the status of the ICC proceeding is  
27 indistinguishable from the status of the proceeding at issue in *Intel*. The Office of the Prosecutor’s  
28



1 September 15 policy announcement, as well as other indications from the ICC, have shown that the  
2 court is reviewing the Filing Victim’s communications and is more likely than not to proceed.

3 **C. The Digital Recordings Are Sought for Use in Cambodian Domestic**  
4 **Courts and before the International Criminal Court**

5 As Chevron itself has repeatedly argued in its own 1782 applications, the burden on the  
6 applicant to show that the evidence sought is for use in a foreign proceeding is “de minimis.” *In re*  
7 *Veiga*, 746 F. Supp. 2d 8 (D.D.C. 2010) (granting Chevron’s 1782 application to obtain discovery  
8 from the plaintiffs’ Ecuadorian attorney Alberto Wray based on the court’s “independent review of  
9 the Applicants’ prima facie showing and its conclusion that the discovery sought in fact relates to  
10 claims and defenses they intend to assert in good faith.”); *In re Republic of Ecuador*, No. 1:10-MC-  
11 00040 GSA, 2010 WL 4027740 (E.D. Cal. Oct. 14, 2010) (granting a 1782 application brought by  
12 the Republic of Ecuador where it made a “prima facie showing that the information it seeks . . .  
13 has, generally speaking, some relevance” to an international arbitration deciding alleged violations  
14 of Chevron’s due process rights in a proceeding in Ecuador). And courts increasingly grant 1782  
15 applications in all types of informal and non-traditional proceedings including “investigating  
16 magistrates, administrative and arbitral tribunals, and quasi-judicial agencies.” *Intel*, 542 U.S. at  
17 258. Indeed, according to the Supreme Court, the foreign proceeding at issue must just be “within  
18 reasonable contemplation,” not “pending” or “imminent.” *Intel*, 542 U.S. at 247. Chevron itself  
19 has successfully obtained discovery in aid of arbitration before there was a determination by the  
20 arbitral tribunal regarding its jurisdiction to hear the dispute. *In re Veiga*, 746 F.Supp.2d 8, 23  
21 (D.D.C. 2010) (“The notion that it would somehow be premature for this Court to allow the  
22 requested discovery until the BIT Arbitration Panel has determined it has jurisdiction to hear the  
23 matter runs contrary to clear and unequivocal case law...”).

24 Here, there are two already pending proceedings: the defamation case against Mr. Sam  
25 Rainsy and the Communication before the ICC. Both satisfy the third element of section 1782.

26 **II. THE SUPREME COURT’S INTEL FACTORS STRONGLY FAVOR**  
27 **GRANTING THIS APPLICATION**

28 In addition to the three statutory factors, the Supreme Court has set forth five additional  
factors – known as the *Intel* factors – to guide courts’ determinations of 1782 applications. *Intel*,

1 542 U.S. at 264-66. Those factors are as follows: 1) the party from whom discovery is sought is  
2 not a party to any of the foreign proceedings, 2) the information sought is relevant to each of the  
3 proceedings, 3) there are no applicable foreign discovery restrictions, 4) the applicants' discovery  
4 requests are narrowly tailored, and 5) granting this discovery would promote efficient discovery.  
5 These factors all weigh in favor of granting this Application.

6 **A. Chevron Is Not a Party to the Foreign Proceedings**

7 Chevron is indisputably not a party to any of the foreign proceedings described above.

8 **B. Applicants Seek Highly Relevant Information That Will Assist the  
9 Foreign Courts**

10 The foreign courts and tribunal at issue in this application are assessing the truth of the  
11 accusations against the man who shot Dr. Ley. There is information that he may have been  
12 dropped off at the Caltex station by the police, and police were later caught on video recordings  
13 amicably chatting with him before he was arrested. The positioning of the cameras at the Caltex  
14 station indicates that his arrival is likely to have been caught on video recordings. (Schueller Decl.,  
15 Ex. G [photos].) As such, the recordings are highly relevant to assessing the circumstances  
16 surrounding the murder, and thus supporting both Mr. Sam's defense and the ICC Filing Victims'  
17 claims.

18 **C. No Foreign Discovery Restrictions Bar the Applicants' Requested  
19 Discovery**

20 A criminal defendant in Cambodia is entitled to seek discovery in aid of his defense. *See*  
21 Cambodian Code of Criminal Procedure, Art. 133.<sup>11</sup> Cambodia's Code of Civil Procedure also  
22 allows for discovery, including motions to compel production from third parties, akin to the  
23 discovery devices used in the United States. *See* Cambodian Code of Civil Procedure §§ 148-160.  
24 For example, section 150 establishes a "duty to disclose" documents, and section 152 provides:  
25 "Where the court determines that sufficient grounds for an order to produce documents exist, the  
26 court shall issue a ruling ordering the holder of the documents to produce such documents."

27 <sup>11</sup> Available at  
28 [https://www.unodc.org/res/cld/document/khm/2007/code\\_of\\_criminal\\_procedure\\_of\\_the\\_kingdom\\_of\\_cambodia\\_html/Cambodia\\_Code\\_of\\_Criminal\\_Procedure\\_Khmer-English\\_Translation.pdf](https://www.unodc.org/res/cld/document/khm/2007/code_of_criminal_procedure_of_the_kingdom_of_cambodia_html/Cambodia_Code_of_Criminal_Procedure_Khmer-English_Translation.pdf)

