

16-3655  
*Bouvier v. Adelson*

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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August Term, 2016

(Argued: May 17, 2017

Decided: August 28, 2017)

Docket No. 16-3655

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IN RE ACCENT DELIGHT INTERNATIONAL LTD., XITRANS FINANCE LTD.

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YVES BOUVIER, MEI INVEST LTD.,

*Intervenors-Appellants,*

V.

WARREN ADELSON, ALEXANDER PARISH, ROBERT SIMON,

*Respondents-Appellees,*

ACCENT DELIGHT INTERNATIONAL LTD., XITRANS FINANCE LTD.,

*Petitioners-Appellees,*

SOTHEBY'S,

*Respondent.*

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Before:

RAGGI and CARNEY, *Circuit Judges*, and KAPLAN, *District Judge*.\*

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Appeal from an order of the United States District Court for the Southern District of New York (Furman, J.) granting Petitioners' application for discovery for use in certain foreign

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Judge Lewis A. Kaplan, United States District Judge for the Southern District of New York, sitting by designation.

proceedings under 28 United States Code Section 1782.

Affirmed.

DANIEL W. LEVY (James H. Smith, *on the brief*), McKool Smith, P.C., New York, NY, for Intervenors-Appellants.

DANIEL J. KORNSTEIN (O. Andrew F. Wilson and Douglas E. Lieb, *on the brief*), Emery Celli Brinckerhoff & Abady LLP, New York, NY, for Petitioners-Appellees.

LEWIS A. KAPLAN, *District Judge.*

1 Intervenors-Appellants Yves Bouvier and MEI Invest Ltd. (collectively, “Bouvier”)  
2 appeal from an order of the United States District Court for the Southern District of New York  
3 (Furman, *J.*) granting the application of Petitioners-Appellees Accent Delight International Ltd. and  
4 Xitrans Finance Ltd. (collectively, “Petitioners”) for discovery in aid of foreign litigation under 28  
5 United States Code Section 1782. Section 1782 provides that, upon an “application of any interested  
6 person,” the “district court of the district in which a person resides or is found may order him . . . to  
7 produce a document . . . for use in a proceeding in a foreign or international tribunal.”

1 I. Background<sup>1</sup>

2 A. *The Parties and the Foreign Proceedings*

3 Petitioners are British Virgin Island companies owned by family trusts of Dmitry  
4 Rybolovlev, a Russian national residing in Monaco. Intervenor Yves Bouvier is a Swiss  
5 businessman who invests and deals in art through his co-intervenor MEI Invest Ltd., a Hong Kong  
6 company that he controls. This Section 1782 proceeding arises out of a dispute between Bouvier and  
7 Petitioners over the sales to Petitioners of thirty-eight artworks, including paintings by Picasso and  
8 van Gogh, for a total of approximately \$2 billion.

9 Petitioners, acting on Rybolovlev's behalf, acquired the thirty-eight artworks over the  
10 eleven-year period from 2003 to 2014. Bouvier brokered the transactions and generally structured  
11 them as follows. Bouvier contacted the owner of an artwork that Petitioners sought to acquire,  
12 purchased the work through MEI Invest or another of his associated companies, and later invoiced  
13 Petitioners for the purported purchase price plus a two-percent commission. Petitioners  
14 consequently had little or no contact with the sellers or their agents. This arrangement provided a  
15 degree of privacy often sought in high-profile art sales, in which it is common for buyers and sellers  
16 to act anonymously through intermediaries. But Petitioners' remoteness from the deals came with  
17 some risk, as it left Bouvier in a privileged position over key details. Petitioners therefore relied  
18 heavily on Bouvier's honesty and good faith.

19 The relationship between Petitioners and Bouvier soured in 2014 when *The New York*  
20 *Times* reported that Sotheby's had brokered a private sale of Leonardo da Vinci's *Christ as Salvator*  
21 *Mundi* in May 2013 for between \$75 million and \$80 million. The news allegedly came as a surprise  
22 to Petitioners because they had purchased that same work through Bouvier, also in May 2013, for  
23 \$127.5 million. According to Petitioners, Bouvier had led them to believe that the sale was the  
24 culmination of fraught negotiations with a private seller. Petitioners now allege that Bouvier's

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The facts are drawn from (1) decisions in the foreign proceedings, (2) assertions by Petitioners in their Section 1782 application, (3) transcripts of argument before the district court, (4) the district court opinion, and (5) other documents of record.

1 account of the sale was entirely false, that he failed to disclose Sotheby's role, and that he inflated  
2 the purchase price in order to pocket the \$52 million difference. What is more, Petitioners maintain  
3 that Bouvier lied about the prices of the other thirty-seven artworks and, all told, defrauded  
4 Petitioners of \$1 billion in secret margins over the eleven-year relationship.

5 Alerted to this potential fraud, Petitioners initiated or joined foreign proceedings  
6 against Bouvier in Monaco, France, and Singapore.

7 In Monaco, Petitioners initiated a criminal proceeding against Bouvier. Petitioners  
8 later joined the case as civil parties after the investigating magistrate brought charges for fraud and  
9 complicity in money laundering against Bouvier. The proceeding is pending.

10 The proceeding in France, also criminal in nature, was initiated by Pablo Picasso's  
11 stepdaughter, Catherine Hulin-Blay. Hulin-Blay alleges that two of the thirty-eight works that  
12 Petitioners acquired through Bouvier – Picasso's *Tête de femme* and *Espagnole à l'éventail* – were  
13 stolen from her. In France, as in Monaco, Petitioners are civil parties to an ongoing criminal  
14 investigation.

15 Petitioners filed also a civil suit in Singapore, where they sought damages from  
16 Bouvier for his alleged fraud. Some discussion of that case's procedural history is necessary to an  
17 understanding of the current state of play in the foreign proceedings.

18 Bouvier sought a stay of the litigation in the Singaporean trial court on principally two  
19 grounds: first, that Petitioners' damage claims there were duplicative of those in the Monégasque  
20 proceeding and, second, that Singapore was not an appropriate forum. The trial court denied  
21 Bouvier's stay motion, but in doing so imposed a condition that Petitioners discontinue their civil  
22 proceedings in Monaco in order to continue litigating in Singapore. Petitioners acceded to that  
23 instruction by disclaiming their right to damages in the Monégasque proceeding, an action that the  
24 Singaporean trial court later found had satisfied its condition. Bouvier then appealed the stay motion  
25 denial to the Court of Appeal of the Republic of Singapore, the country's court of last resort, where  
26 the case remained pending until shortly before we heard oral argument in this appeal. The  
27 Singaporean high court, ruling for Bouvier on appeal, granted a stay of the underlying litigation on

1 *forum non conveniens* grounds, effectively terminating the case.

2 Two points of significance emerge from this winding procedural path. First, the  
3 criminal cases in France and Monaco are the only foreign proceedings remaining as potential bases  
4 for Section 1782 discovery. Second, as a result of the Singaporean trial court's rulings, Petitioners  
5 do not seek damages in either case.

6 *B. District Court Proceedings*

7 Petitioners filed this Section 1782 application for discovery in aid of the Monégasque,  
8 French, and Singaporean proceedings.<sup>2</sup> They named as respondents Sotheby's and the three  
9 individuals who had sold da Vinci's *Christ as Salvator Mundi* in May 2013. In their application,  
10 Petitioners claimed that Sotheby's was involved in other relevant acquisitions by Bouvier.  
11 Petitioners therefore requested discovery of documents relevant to all thirty-eight artworks because,  
12 due to Bouvier's alleged deception, they "did not know with certainty how many of the [artworks]  
13 were acquired by Bouvier with Sotheby's involvement, or whether Bouvier paid any undisclosed  
14 commission to Sotheby's or to any employee of Sotheby's out of his hidden margins."

15 Sotheby's and Petitioners then negotiated a settlement in which they agreed that  
16 Sotheby's would produce certain limited discovery, primarily concerning the sale of *Christ as*  
17 *Salvator Mundi*, which Petitioners would accept in total satisfaction of their Section 1782  
18 application.<sup>3</sup> Bouvier properly intervened and objected to the agreed-upon production.

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Before Petitioners initiated this case, Bouvier filed his own § 1782 application against separate, third-party respondents in the Southern District of New York. He there sought certain documents and deposition testimony for use in the French and Monégasque proceedings. His initial production request extended to all documents relevant to the thirty-eight artworks that he had acquired for Petitioners. The district court (Cote, J.) denied the application except as it applied to documents relevant to the sale of one of the thirty-eight artworks – a painting by Amedeo Modigliani – as to which the court granted discovery. Neither party appealed.

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Under the terms of the settlement, however, Sotheby's reserved the right to assert any potential grounds for opposing the requested discovery, including in response to any

1                   At an initial conference, the district court granted the application with respect to the  
 2 two Picasso paintings at issue in the French proceeding. It reserved judgment, however, on the  
 3 remainder of the application. Bouvier had argued that one or both of two developments was likely  
 4 to occur. First, he maintained that he would succeed on his appeal in Singapore and that the suit  
 5 there would be dismissed. Second, he argued that, even if the Singaporean litigation continued, the  
 6 Singaporean court nonetheless would require Petitioners to withdraw entirely from the Monégasque  
 7 proceeding, as opposed to withdrawing only their damages claim. Either way, according to Bouvier,  
 8 one or both of the proceedings would have come to an end.<sup>4</sup> In light of those possibilities, the  
 9 district court postponed ruling “pending further developments in either or both Singapore or  
 10 Monaco” and requested that the parties update the court when circumstances had changed  
 11 sufficiently for it to rule on the balance of the application. Appellants’ App. 292-93. In particular,  
 12 the court stated that it would be helpful if Petitioners included in their update any determination by  
 13 the magistrate presiding in the Monégasque proceeding that Petitioners’ status there gave them  
 14 “some rights to use evidence in those proceedings.” *Id.* 292.

15                   Over the following months, Petitioners obtained and submitted to the court a letter  
 16 from the Monégasque magistrate. The magistrate confirmed that Petitioners were “civil parties” to  
 17 the investigation, a status that made it “perfectly permissible” for them “to take part in the discovery  
 18 of the truth in the investigative proceeding.”<sup>5</sup> *Id.* 304. The magistrate elaborated that, as civil

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subsequent applications.

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Bouvier has maintained that position in his appellate briefs, which were submitted prior to the Singapore Court of Appeal’s ruling. *See* Appellants’ Br. 40 (“Thus, if Bouvier and MEI prevail on their appeal in Singapore . . . [Petitioners’] participation in the Monaco [p]roceeding will cease entirely and, indeed, the Singapore [p]roceeding will also terminate.”). Bouvier’s prognostication, however, proved only partially correct; although he prevailed in Singapore, Petitioners remain civil parties to the pending investigation in Monaco.

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The magistrate’s letter is written in French; this opinion quotes from an English translation that Petitioners submitted to the district court, the validity of which Bouvier does not challenge.

1 parties, Petitioners “may submit any documents that [they] deem[ed] useful” for the investigation,  
 2 including “any information about the works of art [from] SOTHEBY’s New York, the painting by  
 3 Leonardo da Vinci entitled ‘Christ as Salvador Mundi’ and, more particularly, the various  
 4 transactions conducted involving that painting over the last five years.” *Id.*

5 Petitioners requested that the court approve their application in light of the  
 6 magistrate’s letter, which they claimed made clear that they had met their burden for Section 1782  
 7 discovery with respect to the Monégasque proceeding. Bouvier argued nevertheless that the court  
 8 should delay its ruling further. According to Bouvier, nothing had changed since the initial  
 9 conference that would warrant the court revisiting the matter. Moreover, Bouvier persisted in his  
 10 argument that Petitioners could not satisfy Section 1782’s requirement that the requested discovery  
 11 be “for use” in a foreign proceeding, and he insisted that the magistrate’s letter added nothing new  
 12 to that analysis.

13 The district court issued a memorandum opinion and order granting Petitioners’  
 14 application on October 5, 2016. Insofar as is relevant here, the court rejected Bouvier’s argument  
 15 that Petitioners’ status in Monaco was insufficient for them to “use” the documents in that forum  
 16 within the meaning of the statute. Rather, it concluded that Petitioners had satisfied the “for use”  
 17 requirement and other statutory prerequisites for Section 1782 discovery. After consulting the  
 18 factors set forth in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), which guide  
 19 district courts in exercising their discretion under Section 1782, the court concluded that they favored  
 20 granting the request for discovery in this instance. Finally, the court rejected Bouvier’s contention  
 21 that “the use and disclosure of any subpoenaed documents . . . be limited to the foreign proceeding  
 22 for which it has been authorized,” namely the Monégasque case. Appellants’ App. 329.

23 Two weeks later, the parties appeared before the court to discuss a protective order  
 24 that would govern use of the discovery. While the district court previously had denied Bouvier’s  
 25 request to limit use of the discovery produced to the Monégasque proceeding only, the court  
 26 ultimately expressed the view that the production “should be limited at least in the first instance to  
 27 the foreign proceedings referenced in the petition – namely, Monaco, France, and Singapore.” *Id.*

1       334. The parties thereafter executed a protective order incorporating that limitation, which the court  
 2 so-ordered.<sup>6</sup> Under the terms of that order, Petitioners must seek leave of the court to submit the  
 3 discovery in any additional proceeding.

4                   Bouvier timely appealed the district court’s order granting the application and its  
 5 associated rulings and moved this Court for a stay pending appeal. A judge of this Court granted a  
 6 temporary stay of the district court’s order to the extent that it allowed use of the discovery in the  
 7 Singaporean and French proceedings. A three-judge motions panel later granted Bouvier’s motion  
 8 for a stay in its entirety and thus prohibited also the use of the documents in Monaco, but not before  
 9 Petitioners had submitted the documents produced pursuant to the district court’s order in the  
 10 Monégasque proceeding.

11                   II. Discussion

12                   Bouvier makes two principal arguments on appeal.<sup>7</sup> First, he contends that the district  
 13 court erred in holding that Petitioners had satisfied Section 1782’s “for use” requirement with respect  
 14 to the Monégasque proceeding. This is so, Bouvier urges, principally because Petitioners have  
 15 waived their claim for damages in that forum and thus cannot employ the discovery to their  
 16 advantage in the manner that Bouvier contends that the statute and this Court’s precedents require.  
 17 Second, Bouvier maintains that, even if the district court properly granted the application as to the  
 18 Monégasque proceeding, it erred in entering a protective order permitting use of the discovery in  
 19 France and Singapore without holding that Petitioners had satisfied the requirements of Section 1782

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After the submission of the proposed protective order, Bouvier wrote to the court to request that the order be modified so that “under no circumstances” would Petitioners “be permitted to use any discovery obtained as a result of the subpoenas in the [French] proceeding.” Appellants’ App. 396. The court rejected that argument in a memorandum endorsement accompanying its protective order. The court there characterized Bouvier’s request as an attempt “to accomplish through the protective order what [he] failed to accomplish in briefing on the merits.” *Id.* 398.

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We address the remaining arguments in a summary order filed simultaneously with this opinion.

1 with respect to those proceedings. Bouvier therefore asks us to vacate the order below. We reject  
2 both contentions.

3 *A. Appellate Jurisdiction*

4 Orders granting (or denying) applications for discovery under Section 1782 are  
5 considered final adjudications and are immediately appealable pursuant to 28 United States Code  
6 Section 1291. *See Vera v. Republic of Cuba*, 802 F.3d 242, 247 (2d Cir. 2015) (“Because the  
7 issuance of [a Section 1782] order concludes all proceedings before the issuing district court, we  
8 have recognized [Section] 1782 orders as final decisions subject to immediate appeal.” (citing  
9 *Chevron Corp. v. Berlinger*, 629 F.3d 297, 306 (2d Cir. 2011)). Before addressing the merits,  
10 however, we first must assure ourselves of our jurisdiction in light of changed circumstances. *Fox*  
11 *v. Bd. of Trs. of State Univ. of N.Y.*, 42 F.3d 135, 140 (2d Cir. 1994) (“[T]he condition of mootness  
12 is not a defense that c[an] be waived . . . but rather is a condition that deprives the court of subject  
13 matter jurisdiction.”). Notably, Petitioners’ submission of the discovery in the Monégasque  
14 proceeding arguably mooted the question whether the district court erred in granting discovery as  
15 to that proceeding. That development, together with the indefinite stay of the Singaporean litigation,  
16 leaves as a live controversy only that portion of the Section 1782 application as applied to the French  
17 proceeding. *See Euromepa, S.A. v. R. Esmerian, Inc.*, 154 F.3d 24, 29 (2d Cir. 1998) (holding that  
18 “the district court was correct in dismissing the [Section 1782 application] as moot because at that  
19 time there were no foreign proceedings, within the meaning of the statute, in which the discovery  
20 could be used”).

21 We conclude that the pending French proceeding saves this appeal from mootness.  
22 Petitioners have represented to the Court that they intend to submit the discovery in the French  
23 proceeding should we affirm the order below. Petitioners’ right to do so depends on our resolution  
24 in Petitioners’ favor of both of Bouvier’s primary arguments on appeal. That is, we must address  
25 whether the discovery was “for use” in Monaco because Petitioners derive their right to use the  
26 discovery in France from their having satisfied the conditions of Section 1782 for use in the

1       Monégasque proceeding. We then must decide whether the district court, having granted discovery  
2       as to Monaco, erred in permitting its use in France without finding that the proceeding there  
3       independently met the statutory requirements. In consequence, neither argument addressed in this  
4       opinion is moot.

5               Assured of our jurisdiction, we turn to Bouvier’s arguments on appeal. Because both  
6       challenge the district court’s interpretation of Section 1782, rather than its discretionary grant of  
7       discovery under the statute, our review is *de novo*. *Mees v. Buiter*, 793 F.3d 291, 297 (2d Cir. 2015).

8       B.        *The “For Use” Requirement*

9               Section 1782 applicants must meet certain “statutory requirements”: (1) the person  
10      from whom discovery is sought must reside or be found in the district in which the application was  
11      made, (2) the discovery must be “for use in a foreign proceeding before a foreign tribunal,” and (3)  
12      the applicant must be either a foreign tribunal or an “interested person.” *Certain Funds, Accounts*  
13      *and/or Inv. Vehicles v. KPMG, L.L.P.*, 798 F.3d 113, 117 (2d Cir. 2015) (internal quotation marks  
14      omitted). Bouvier focuses here on the second requirement.

15               The thrust of Bouvier’s argument is that Petitioners cannot “use” the discovery in  
16      Monaco within the meaning of the statute because Petitioners are no longer seeking “any form of  
17      relief” in that proceeding. Appellants’ Br. 37. Although it is difficult to pin-point his position  
18      precisely, Bouvier appears to argue that Section 1782 applicants must have a “chance[ ] of success”  
19      in the foreign proceeding, which strongly implies that they must be pressing a formal claim for relief  
20      there. *Id.* 38. In any event, he argues that Petitioners’ sole remaining interest in the Monégasque  
21      proceeding is to see justice done as crime victims, which on the “unique facts of this case” renders  
22      them unable to satisfy the “for use” requirement. *Id.* 37.

23               We reject this argument as contrary to the text of the statute as interpreted by this and  
24      the Supreme Court and to the undisputed facts in the record.

25               Bouvier’s argument falters at the starting line of any Section 1782 analysis – the  
26      Supreme Court’s seminal *Intel* decision. The Section 1782 applicant in *Intel* stood in a remarkably

1 similar position *vis-a-vis* the foreign tribunal in that case as do Petitioners in the Monégasque  
 2 proceeding. The *Intel* applicant sought discovery in aid of an antitrust proceeding that it had initiated  
 3 against a competitor by filing a complaint with the Directorate-General for Competition of the  
 4 Commission of the European Communities. *Intel*, 542 U.S. at 246. That entity had the power “to  
 5 conduct investigations” into alleged violations of European competition prescriptions, to issue a  
 6 “formal written decision whether to pursue the complaint,” and to elevate the matter to the European  
 7 Commission and eventually the courts. *Id.* at 254-55 (internal quotation marks omitted). Notably,  
 8 the *Intel* applicant lacked “formal ‘party’ or ‘litigant’ status” in the proceeding, but did possess  
 9 “significant procedural rights” like the power to submit “information in support of its allegations”  
 10 and to seek judicial review of the tribunal’s disposition of its complaint. *Id.* at 255.

11 *Intel* held that the application at issue met the requirements of Section 1782, including  
 12 the statute’s mandate that the discovery be “for use in a proceeding in a foreign or international  
 13 tribunal.” *See id.* at 257-58. While it is true that the Court’s opinion specifically addressed only the  
 14 second half of that clause – whether proceedings before the Directorate-General for Competition  
 15 constituted a “foreign or international tribunal” under Section 1782 – the Court nonetheless affirmed  
 16 the order of the Court of Appeals, which had held that the statutory requirements had been met. *See*  
 17 *id.* at 257-58, 267; *see also KPMG*, 798 F.3d at 118 (“The [*Intel*] Court appeared to regard the case  
 18 before it as an easy one, in effect finding that the facts before it were sufficient to satisfy the  
 19 requirements of the statute . . . .”). The Court did so despite the fact that the application on its face  
 20 lacked several of the features that Bouvier now claims are prerequisites under Section 1782. The  
 21 *Intel* applicant was not a party to the foreign proceeding, it there pressed no claim for relief on its  
 22 own behalf, and it stood no chance of obtaining a damages award. *Intel* thus supports the view that  
 23 Section 1782 does not impose such requirements.

24 Our own precedents also suggest strongly that Section 1782’s “for use” clause will  
 25 not support the crabbed reading that Bouvier would have us assign to it. In *In re Application for an*  
 26 *Order Pursuant to 28 U.S.C. 1782 to Conduct Discovery for Use in Foreign Proceedings*  
 27 (*Berlamont*), for example, we affirmed an order of the district court granting Section 1782 discovery

1 in aid of a Swiss criminal prosecution. 773 F.3d 456, 462 (2d Cir. 2014). The Section 1782  
 2 applicant there, “a Swiss criminal complainant,” sought documents “to provide to a Swiss  
 3 investigating magistrate overseeing a criminal inquiry related to a Bernard Madoff ‘feeder fund’ in  
 4 Switzerland.”<sup>8</sup> *Id.* at 457. As the Supreme Court had done in *Intel*, we focused on whether the  
 5 proceeding in the non-judicial foreign tribunal at issue qualified under Section 1782, a question we  
 6 answered in the affirmative. *See id.* at 461 (“The Swiss criminal investigation in the instant case is  
 7 exactly the type of proceeding that . . . the statute . . . intended to reach.”). We therefore did not  
 8 address the meaning of “for use” in the way this appeal requires of us. Just as in *Intel*, however, the  
 9 facts underlying the successful Section 1782 application in *Berlamont* bore a striking similarity to  
 10 those in this case. The applicant in *Berlamont* did not have a claim for relief in the Swiss  
 11 proceeding, nor did he assert that he sought damages there. Rather, he appeared before the Section  
 12 1782 court as a fraud victim requesting discovery relevant to a foreign criminal investigation that  
 13 he had initiated via complaint. It is difficult to imagine a situation more analogous to Petitioners’.

14 *Intel* and *Berlamont* take much of the air out of Bouvier’s “for use” argument, even  
 15 though they do not squarely resolve this case. But it is Bouvier’s unpersuasive attempt to distinguish  
 16 those cases that best illuminates the untenable line he would draw separating those who properly can  
 17 “use” Section 1782 discovery from those who can not. Bouvier asserts that any comparison of this  
 18 case to *Berlamont* “is, in a word, preposterous.” Appellants’ Reply Br. 7. That is so, he explains,  
 19 because in that case “the complaining party who sought discovery under Section 1782 had a *financial*  
 20 interest in the outcome of the foreign proceeding.” Appellants’ Br. 38 (emphasis in original). In so  
 21 arguing, Bouvier suggests that the applicant in *Berlamont*, a criminal complainant claiming to be the  
 22 victim of a Ponzi scheme, had a more direct route to financial recovery than do Petitioners.<sup>9</sup>

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The applicant was president of a firm that had invested in a fund that, in turn, had invested  
 with Madoff. *See id.*

9

We note that nothing in our *Berlamont* opinion, or in that of the district court which it  
 affirmed, suggests that the applicant sought restitution or damages as part of the Swiss  
 criminal investigation that formed the basis of his § 1782 application. To the extent

1     Similarly, in addressing *Intel*, Bouvier argues that because the European Commission had the power  
2     to impose fines or penalties on the applicant’s competitor, the applicant “maintained an interest far  
3     greater” in that investigation than Petitioners do in Monaco. Appellants’ Reply Br. 6. According  
4     to Bouvier, then, Section 1782 prefers claims for damages or pleas for enforcement of antitrust laws  
5     over the interest of a fraud victim in assisting in the prosecution of a fraudster.

6                   Bouvier’s line-drawing exercise fails because it finds no support in the text of the  
7     statute or in our prior interpretations of the “for use” clause. There is nothing in the text of the  
8     statute that suggests that applicants like Petitioners lack the power to use discovery that those in *Intel*  
9     and *Berlamont* possessed. If anything, the text refutes Bouvier’s position. Section 1782 explicitly  
10   permits district courts to grant discovery in aid of “criminal investigations conducted before formal  
11   accusation,”<sup>10</sup> which are among the cases least likely to feature claims by private litigants for money  
12   damages notwithstanding the considerable variation in procedural rules across countries (including  
13   those involved in this appeal). Congress’ inclusion of these types of proceedings within the ambit  
14   of Section 1782 suggests that it contemplated a more expansive universe of foreign disputes and  
15   interested parties that qualify under the statute than Bouvier’s reading of “for use” would permit.  
16   See *Intel*, 542 U.S. at 256 (“The text of [Section] 1782(a), ‘upon the application of any interested  
17   person,’ plainly reaches beyond the universe of persons designated litigant.”); *id.* at 257-58 (noting  
18   that Congress previously had expanded the statute’s application from “any judicial proceeding” to

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Bouvier’s argument rests on the assumption that a conviction in the Swiss criminal case would have led ineluctably to the *Berlamont* applicant’s compensation, that possibility was no more or less speculative than Petitioners’ chance of recovering against Bouvier. It is true enough that Petitioners have waived damages in the Monégasque proceeding, but it does not follow that an adjudication of Bouvier’s guilt in that forum would not aid Petitioners in their quest for monetary relief elsewhere. It therefore is not accurate to assert that Petitioners lack any financial stake in the outcome of the Monaco proceeding.

<sup>10</sup>

Congress amended the statute to include the quoted language in 1996. See National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, § 1342(b), 110 Stat. 486; see also *Intel*, 542 U.S. at 249, 259 (noting fact of amendment and stating that [n]othing suggests that this amendment was an endeavor to rein in, rather than to confirm, by way of example, the broad range of discovery authorized in 1964”).

1 “a proceeding in a foreign or international tribunal” in order to reach a broader set of foreign  
2 proceedings).

3 In any event, Bouvier’s evaluation of the strength of Petitioners’ “interests” is very  
4 much beside the point. Neither the *Intel* nor the *Berlamont* courts engaged in a similar analysis when  
5 holding that the discovery requested in those cases was “for use in a proceeding in a foreign or  
6 international tribunal.” Their silence on that question is unsurprising because that simply is not the  
7 work the words “for use” do in Section 1782.<sup>11</sup>

8 This Court has addressed the “for use” requirement on several occasions. *See, e.g.*,  
9 *KPMG*, 798 F.3d at 122-24; *Mees*, 793 F.3d at 298-301; *Brandi-Dohrn v. IKB Deutsche*  
10 *Industriebank AG*, 673 F.3d 76, 81-84 (2d Cir. 2012). Although we have approached the issue  
11 according to the particular facts of each case and the arguments presented, we have focused in each  
12 on the *practical ability* of an applicant to place a beneficial document – or the information it contains  
13 – before a foreign tribunal. We never have required, as Bouvier now urges us to do, that an applicant  
14 be pursuing a certain type of relief in that tribunal. The cases of ours on which Bouvier principally  
15 relies – *KPMG* and *Mees* – show this to be true.

16 The Section 1782 applicants in *KPMG*, which were investment funds, sought  
17 discovery relevant to certain pending and planned foreign proceedings involving two Saudi  
18 companies in which they held ownership interests. 798 F.3d at 116. We held that they could not  
19 satisfy the “for use” requirement primarily because they were not – nor were they sufficiently related  
20 to – parties to the relevant foreign proceedings and lacked the type of “participation rights” that the  
21 *Intel* Court had found significant. *See id.* at 120-21. The *KPMG* applicants therefore were not in  
22 a “position to have the [tribunals] consider that evidence” and had no “means of injecting the  
23 evidence into the proceeding.” *Id.* at 120-21 (emphasis added); *see also id.* at 121 (rejecting alleged

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Bouvier perhaps conflates § 1782’s “for use” requirement with the separate, but related, requirement that the applicant be an “interested person.” *See KPMG*, 798 F.3d at 118-19. We need not dwell on the issue because Bouvier did not challenge Petitioners’ interested party status before the district court, nor does he address that requirement on appeal.

1 participation rights “that upon examination reveal *no mechanism* by which [the applicants] could use  
 2 any information obtained through a [Section] 1782 order” in the foreign proceeding (emphasis  
 3 added)); *id.* at 122 (noting that, although discovery sought would have been “useful” to applicants,  
 4 “that does not imply that there is *any way for [them] to introduce* that information as evidence” in  
 5 foreign proceeding (emphasis added)). Most notably, we did not rely on the strength of the  
 6 applicants’ interest in the foreign proceedings in holding that the application failed the “for use” test.  
 7 To the contrary, we acknowledged their significant financial stakes in the outcome, but considered  
 8 those stakes irrelevant to whether they possessed the practical ability to use the discovery.<sup>12</sup> *See id.*  
 9 at 120-22.

10 *Mees* similarly is unhelpful for Bouvier. There, we vacated an order of a district court  
 11 that had held that a Section 1782 applicant who sought discovery in aid of an anticipated defamation  
 12 suit in a Dutch court “did not meet the ‘for use’ requirement on the ground that the discovery she  
 13 sought was not *necessary* to draft an adequate complaint.” 793 F.3d at 298 (emphasis added). In  
 14 rejecting this proposed necessity requirement, we relied on the plain meaning of “use” as indicating  
 15 “something that will be employed with some advantage or serve some use in the proceeding – not  
 16 necessarily something without which the applicant could not prevail.” *Id.* Bouvier latches onto this  
 17 language, arguing that Petitioners cannot employ the discovery to their advantage because they have  
 18 abandoned their damages claim in Monaco. But our analysis in *Mees* did not turn on the fact that  
 19 the Section 1782 applicant there had a viable cause of action in the Netherlands or a chance at a  
 20 damages award. We instead required, as we did in *KPMG*, that the applicant merely “show[ ] that  
 21 the materials she seeks are to be used at some stage of a foreign proceeding.” *Id.* at 301. On the  
 22 question whether Petitioners have made that showing, *Mees* had nothing to say.

23 From this discussion the following principles emerge. First, a Section 1782  
 24 applicant must establish that he or she has the practical ability to inject the requested information

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We expressed doubt as to whether the applicants’ “*financial* interest in the outcome of the foreign proceedings alone could be sufficient to confer ‘interested person’ status under the statute,” but ultimately did not decide that question. *Id.* at 119 (emphasis in original).

1 into a foreign proceeding. Second, as long as he or she makes that showing, it is not fatal to the  
 2 application that he or she lacks a claim for relief before the foreign tribunal, whether for damages  
 3 or otherwise. Rather, the term “for use” in Section 1782 has only its ordinary meaning – that the  
 4 requested discovery is “something that will be employed with some advantage or serve some use in  
 5 the proceeding.” *Id.* at 298.

6           Turning to the case at hand, we hold that Petitioners have established that the  
 7 requested discovery is “for use” in the Monégasque proceeding. As the district court recognized,  
 8 Petitioners are parties to that proceeding who, while they have abandoned any claim there for  
 9 monetary relief, retain the procedural right to submit the requested documents to the magistrate  
 10 overseeing the investigation. What is more, and notwithstanding Bouvier’s assertion to the contrary,  
 11 Petitioners’ introduction of the discovery would be to their “advantage” and “serve some use” if it  
 12 tends to prove Bouvier’s alleged fraud against them.<sup>13</sup>

13           Finally, we respond to Bouvier’s contention that our holding today “would permit  
 14 virtually anyone to obtain discovery under Section 1782.” Appellants’ Reply Br. 5. We think his  
 15 professed fears are unwarranted for three reasons. First, it is unlikely that any member of the public  
 16 with no apparent connection to a dispute in the foreign tribunal would have procedural opportunities  
 17 to “use” discovery there as we have defined that term. Second, Section 1782’s distinct requirement  
 18 that applicants be “interested persons” serves as an adequate roadblock to applicants with  
 19 connections too attenuated to justify granting discovery in this country. Third, even if the statutory  
 20 requirements are met, a grant of discovery under Section 1782 remains within the discretion of the  
 21 district court and therefore its misuse can be avoided through the prudent exercise of that court’s

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Bouvier maintains that the requested discovery would neither be incriminatory nor relevant to the Monégasque proceeding. According to Petitioners, however, the documents will show the differential between what Bouvier paid Sotheby’s and what he later charged them. Bouvier rejoins that this information is not relevant because he “has already admitted in Monaco to making a substantial profit” on the works. Appellants’ Br. 43. But Bouvier’s argument goes more toward whether the information is cumulative of other evidence in the investigation, not whether it is relevant. We lack the necessary factual record to make that determination and would not do so in any event.

1 discretion. *See Intel*, 542 U.S. at 264. For these reasons and those stated above, we decline  
2 Bouvier’s invitation to import into the phrase “for use” additional requirements that the text of  
3 Section 1782 and our prior interpretations cannot support.

4 *C. Use of Discovery Outside of the Monaco Proceeding*

5 We turn to the second of Bouvier’s primary arguments on appeal. As explained  
6 above, while the district court conducted its analysis of the Section 1782 statutory requirements with  
7 respect only to the Monégasque proceeding, the protective order permits Petitioners to use the  
8 discovery also in France and Singapore. Bouvier contends that this was error. According to  
9 Bouvier, a Section 1782 applicant must satisfy the statutory requirements for each foreign proceeding  
10 for which he or she wishes to use the requested discovery. This presents an issue of first impression  
11 in this Court, which we address by looking “to the language of the statute, the intent of Congress as  
12 expressed in the legislative history, and cases involving the interpretation of this and similar  
13 statutes.” *United States v. Allen*, 788 F.3d 61, 66 (2d Cir. 2015) (citations omitted).

14 The statute’s text reveals no great insights. Bouvier maintains that a “straightforward  
15 reading” of Section 1782’s grant of discovery “for use in *a proceeding* in a foreign or international  
16 tribunal” reveals that “the relevant unit of measurement for granting relief under Section 1782 is the  
17 specific foreign proceeding for which the applicant seeks to use the discovery.” Appellants’ Br. 28  
18 (emphasis in original) (internal quotation marks omitted). But no one denies that a district court  
19 must find that a Section 1782 applicant has met the statutory requirements, including the “for use”  
20 requirement, with reference to at least one specific proceeding. The proper “unit of measurement”  
21 for that analysis has no bearing on the question at hand – *i.e.*, what, if any, limits Section 1782 places  
22 on an applicant’s ability to use the discovery obtained under the statute *after* it lawfully has been  
23 obtained for use in a particular forum.

24 Nor does the legislative history hold the key. The parties identify no legislative  
25 materials that speak directly to the issue. Some general observations can be made, however, that  
26 counsel against adopting Bouvier’s position.

15 Both the text and the legislative history thus demonstrate that Section 1782 entrusts  
16 to the district courts many decisions about the manner in which discovery under the statute is  
17 produced, handled, and used. We see no reason why the number or identity of the foreign  
18 proceedings in which a successful applicant may use discovery produced pursuant to the statute  
19 would fall outside that discretionary grant. Bouvier provides none. Moreover, we previously have  
20 declined to read into Section 1782 categorical restrictions that lack textual support when district  
21 courts in their discretionary review adequately can address the concerns raised. In *Malev*, for  
22 example, we held that Section 1782 does not require applicants first to seek discovery in the foreign  
23 tribunal before applying in this country, but noted that district courts “may impose conditions to  
24 minimize the compliance burdens” on a case-by-case basis. 964 F.2d at 100. In *Mees*, we rejected  
25 the argument that discovery requested under the statute be absolutely necessary to the foreign  
26 proceeding, but noted that “[o]f course, [our] holding does not mean that *Mees* is necessarily entitled  
27 to discovery under” Section 1782 because “a district court may grant or deny the application in its

1 discretion.” 793 F.3d at 301. There are other examples.

2 We have found no on-point cases with respect to Bouvier’s specific contention that  
3 materials produced for use in Monaco cannot be used in proceedings in Singapore, France, or  
4 elsewhere. A recent case in the Eleventh Circuit, *Glock v. Glock, Inc.*, 797 F.3d 1002 (11th Cir.  
5 2015), presents the closest analogue. The court there decided a slightly different question – whether  
6 discovery previously produced under Section 1782 can be used in a later United States litigation with  
7 leave of the court that granted it under an applicable protective order. *Id.* at 1006. We nonetheless  
8 find much of the court’s analysis relevant and persuasive.

9 Starting with the statute’s text, the *Glock* court found, as we did above, “nothing in  
10 the language of [Section] 1782 that purports to limit later uses of evidence that have been properly  
11 obtained under [Section] 1782.” *Id.* The legislative history also provided no obvious answer. *See*  
12 *id.* at 1007. The court therefore reasoned from the principles that, in domestic litigation, “parties  
13 may use any evidence they lawfully possess” and that, should a plaintiff “obtain[ ] documents in  
14 discovery from a defendant in one case, nothing precludes her from using that evidence in a wholly  
15 separate lawsuit against the same defendant or a different party.” *Id.* This led to the conclusion that  
16 Section 1782 “does not preclude, as a matter of law, the use of evidence procured pursuant to it in  
17 subsequent United States civil litigation” absent a protective order commanding otherwise *Id.* at  
18 1010.

19 The same principles apply here to defeat Bouvier’s argument. Section 1782 provides  
20 that a district court’s order “may prescribe the practice and procedure” for taking the discovery and  
21 that “[t]o the extent that the order does not prescribe otherwise, the testimony or statement shall be  
22 taken, and the document or other thing produced, in accordance with the Federal Rules of Civil  
23 Procedure.” 17 U.S.C. § 1782(a). And, as the *Glock* court recognized, the Federal Rules of Civil  
24 Procedure do not regulate what litigants may do with discovery after it lawfully has been obtained.  
25 Of course, in domestic civil litigation, courts may issue protective orders that restrain parties from  
26 using the discovery for other purposes, including as evidence in other litigations. *See* Fed. R. Civ.  
27 P. 26(c). So too may district courts in Section 1782 cases, as indeed they often do and as the district

1 court did in this case.<sup>14</sup> *See, e.g., In re Letter of Request from Crown Prosecution Serv. of U.K.*, 870  
2 F.2d 686, 693 n.11 (D.C. Cir. 1989) (Ruth Bader Ginsburg, J.) (“The district court did not abuse its  
3 discretion in rejecting [a] plea for a protective order to guard against improper use of the evidence  
4 in auxiliary or unrelated proceeding here or abroad.”). These common restrictions would be entirely  
5 superfluous if Section 1782 by its own terms prohibited successful applicants from using the  
6 documents elsewhere.

7 In sum, we hold that Section 1782 does not prevent an applicant who lawfully has  
8 obtained discovery under the statute with respect to one foreign proceeding from using the discovery  
9 elsewhere unless the district court orders otherwise.

10 Bouvier argues that this holding would “perversely incentivize[ ] parties to institute  
11 sham litigation as a cover to obtain Section 1782 discovery for use in other proceedings that could  
12 never have met the requirements of the statute.” Appellants’ Reply Br. 12. We recognize this  
13 legitimate if perhaps far fetched concern. We believe, however, that “[p]arties concerned in a  
14 particular case that a [Section] 1782 applicant is attempting to use foreign litigation as a ruse for  
15 obtaining discovery” for use in other foreign proceedings “can and should bring evidence of such  
16 chicanery to the [Section] 1782 court’s attention.” *Glock*, 797 F.3d at 1009. Should such evidence  
17 exist, it could provide good cause for entry of a protective order prohibiting use of the discovery in  
18 other proceedings, *see Fed. R. Civ. P. 26(c)(1)*, and might support denying the Section 1782  
19 application altogether, *see Intel*, 542 U.S. at 265 (including as a discretionary factor whether the  
20 “request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of  
21 a foreign country or the United States”).

22 Bouvier does not argue that Petitioners initiated or sought discovery for use in the  
23 Monégasque, Singaporean, or French proceedings in bad faith. We are confident that Bouvier would  
24 have presented any such evidence to the district court. We similarly are confident that in the mine-

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As Petitioners have not appealed from the protective order entered by the district court, the question whether its entry was a permissible exercise of discretion is not before us.

1 run of cases, the adversarial system and the district courts in their discretionary review will be able  
2 to weed out abusive Section 1782 applications.<sup>15</sup>

3 III. Conclusion

4 For the foregoing reasons, the October 5, 2016 order of the district court, insofar as  
5 it pertains to the arguments addressed herein, is AFFIRMED.

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Petitioners argue that we may affirm on the alternative basis that their application independently met the statutory requirements for discovery for use in the French proceeding. On this question, Bouvier contends that the requested discovery is not relevant to the French proceeding and thus cannot be “for use” there. Our holding on the statutory argument makes resolution of these issues unnecessary. We note, however, that any documents in Sotheby’s possession containing evidence of Bouvier’s alleged duplicity with regard to one of the thirty-eight artworks he acquired on behalf of Petitioners very well could be relevant to the investigation in France, which is centered on the two Picasso works. Moreover, Bouvier’s argument in this regard rings hollow in light of his own previous § 1782 application for discovery for use in the French proceeding that requested discovery relevant to all thirty-eight artworks he acquired for Petitioners.