U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 2, 2017

BY ECF AND HAND DELIVERY

The Honorable William H. Pauley III
United States District Court
Southern District of New York
500 Pearl Street, Room 1920
New York, NY 10007

Re: *United States* v. *Prevezon Holdings, Ltd., et al.*, 13 Civ. 6326 (WHP)

Dear Judge Pauley,

The Government respectfully writes, pursuant to the Court's order of November 1, 2017, Docket Item ("D.I.") 737, to respond to the request of the defendants (collectively "Prevezon") that the Government be ordered to grant the extraordinary relief of discretionary immigration parole to Prevezon's owner Denis Katsyv and its Russian counsel Natalia Veselnitskaya. This request should be denied.

I. Immigration Parole Decisions Are Committed to the Discretion of the Executive Branch

The defendants ask the Court to take the extraordinary step of issuing an order directing the Executive Branch to grant discretionary immigration parole under Section 212(d)(5) of the Immigration & Nationality Act, 8 U.S.C. § 1182(d)(5), and provide only the flimsiest of bases for such relief. The statute provides that the Attorney General (whose powers are now exercised by the Secretary of Homeland Security) may with inapplicable exceptions "in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission into the United States." 8 U.S.C. § 1182(d)(5).

A court's review of the Executive Branch's discretionary immigration parole decisions is extremely circumscribed. Instead of performing even standard abuse of discretion review, the Court essentially reviews only for nonuse, irrational use, or bad-faith use of the broad discretion vested in the executive branch. *See, e.g.*, *Bertrand* v. *Sava*, 684 F.2d 204, 212 (2d Cir. 1982) ("[A]s long as the Attorney General exercises his broad discretion under 8 U.S.C. § 1182(d)(5) to determine whether unadmitted aliens may be paroled . . . , his decision *may not be challenged on the grounds that the discretion was not exercised fairly in the view of a reviewing court* or that it gave too much weight to certain factors . . . ." (emphasis added)). While "invidious[]" discrimination "against a particular race or group" or "depart[ure] without rational explanation

from established policies" is not permitted, *id.*, the "Attorney General's exercise of his broad discretionary power must be viewed at the outset as presumptively legitimate and bona fide in the absence of strong proof to the contrary," *id.* at 212-13. "The burden of proving that discretion was not exercised or was exercised irrationally or in bad faith is a heavy one and rests at all times on the unadmitted alien challenging denial of parole." *Id.* at 213.

II. Defendants Do Not Show Any Valid Basis for Their Requested Order

Prevezon does not meet or even approach the standard for second-guessing the Government's decision not to exercise its discretion by admitting Denis Katsyv and Natalia Veselnitskaya into the country on parole. As an initial matter, unlike at previous stages of the case, here Prevezon has not even asked the Government to admit Katsyv and Veselnitskaya on parole for these proceedings, instead apparently assuming—correctly—that the Government would not consent. Prevezon's awareness that its request would be rejected hardly shows bad faith by the Government.

On the merits, the Government's determination, upon receiving Prevezon's letter to the Court, not to admit Katsyv and Veselnitskaya on parole for these proceedings is reasoned and fully consistent with the Government's regulations and with its previous determinations in this case. The implementing regulations discuss circumstances in which immigration parole may be appropriate due to pending litigation, and focus the inquiry on whether the alien is likely to be a *witness* in the case. *See* 8 C.F.R. § 212.5(b) (noting possible eligibility for parole, on case-by-case basis, of "[a]liens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States.").

Consistent with this regulation, the Government has granted immigration parole in this case for periods when necessary to faciliate the provision of live testimony by witnesses. Accordingly, Katsyv and other witnesses were granted immigration parole for periods in 2015 and early 2016, and earlier this year, to allow them to give live testimony at deposition and, in Katsyv's case, at trial. Veselnitskaya was also granted immigration parole to assist the foreign witnesses in preparing to testify, in an exercise of discretion based on factors such as the complexity of the evidence and the degree to which it involved foreign conduct.

The Government, however, has previously refused to extend immigration parole to Katsyv and Veselnitskaya during time periods when they were not to be witnesses. In particular, in the spring of 2016, then-counsel for Prevezon asked the Government to consent to parole for Katsyv and Veselnitskaya to prepare for and attend oral arguments in the Second Circuit on Hermitage's motion to disqualify Prevezon's counsel. Because there was no testimony to be given at a Second Circuit oral argument, the Government refused to grant parole to Katsyv or Veselnitskaya for that period. *See* Ex. A (March 9, 2016 letter to John Moscow).[1]

[1] Subsequently, according to public news reports, Veselnitskaya obtained a visa from the State Department allowing her to enter the United States to attend the oral argument on June 9, 2016, a day on which she also reportedly engaged in a meeting with representatives of the Trump presidential campaign. *See* Brook Singman, *Mystery Solved? Timeline Shows How Russian*

The Government's position here—that immigration parole is unwarranted in the absence of a concrete and imminent need for testimony—is thus consistent with the regulations and its previous positions in this case. The Government does not anticipate that any of the proceedings regarding enforcement of the Settlement Agreement, and certainly not a pre-motion conference, will require a testimonial hearing. Indeed, such matters are appropriately dealt with summarily on motion. *See Meetings & Expositions, Inc.* v. *Tandy Corp.*, 490 F.2d 714, 717 (2d Cir. 1974) ("A district court has the power to enforce summarily, on motion, a settlement agreement reached in a case that was pending before it."). The lengthy drafting history of the Settlement Agreement will be implicated in any motion to enforce the settlement agreement, but this can be adjudicated based on review of the various drafts of language circulated between the parties during the settlement negotiations in 2015 and 2017. If a testimonial hearing is ultimately required, and if it features Veselnitskaya or Katsyv as witnesses, the Government can revisit its parole determination at that time.[2]

Moreover, Prevezon's asserted need for the presence of Katsyv and Veselnitskaya is insubstantial. The current dispute over the enforcement of the settlement agreement simply does not implicate any of the complexity or sensitivity that attended earlier phases of the case. Nothing about the enforcement of a $6 million settlement agreement in a $14 million case—or a pre-motion conference on such motions—requires an extraordinary deviation from the immigration policies of the Executive Branch, let alone judicial intervention into such matters.[3]

Lawyer Got into U.S. for Trump Jr. Meeting, Fox News (July 14, 2017), *available at* http://www.foxnews.com/politics/2017/07/14/mystery-solved-timeline-shows-how-russian-lawyer-got-into-us-for-trump-jr-meeting.html. This Office had no involvement in the granting of that visa and has no knowledge of whether Veselnitskaya has attempted to obtain another such visa to enter the country for these proceedings.

[2] The Government may not, however, again admit Veselnitskaya into the country to assist in witness preparation if she is not herself a witness. Although the Government did so previously, Veselnitskaya's reported meeting with presidential campaign officials in June of 2016 (of which this Office was not aware prior to its public reporting) or other factors may alter this assessment. In any event, it is premature to reach this issue where no testimonial hearing is currently scheduled, and none is likely ever to be scheduled.

[3] Finally, immigration parole requests can take several weeks to process even in straightforward circumstances and even if this Office had decided to seek such parole here, it would not likely have been approved by November 9, 2017.

Accordingly, there is no basis for second-guessing the Government's discretionary decision not to extend immigration parole to Denis Katsyv or Natalia Veselnitskaya.

Respectfully submitted,

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cc: Counsel of Record (via ECF)