



United States Department of State

Washington, D.C. 20520

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

THE CHURCH OF THE HOLY LIGHT)
 OF THE QUEEN, a/k/a The Santo Daime)
 Church, *et al.*,)
)
 Plaintiffs,)
 v.)
)
 MICHAEL B. MUKASEY, *et al.*,)
)
 Defendants.)

Civ. No. 08-3095-PA

DECLARATION OF EDWARD A. BETANCOURT

I, Edward A. Betancourt, hereby depose and say as follows:

1. I am the Director of the Office of Policy Review and Inter-Agency Liaison in the Directorate of Overseas Citizens Services ("OCS") of the Bureau of Consular Affairs in the United States Department of State. I make this declaration based on information available to me in my official capacity.
2. OCS is responsible, inter alia, for receiving and transmitting requests for international judicial assistance under 28 USC 1781 (See 22 CFR Section 92.67), as well as for other legal assistance requests that foreign States may make via the diplomatic channel to the United States, including those for which assistance may be available under 28 USC 1782.

3. Judicial assistance between the United States and Brazil is governed by the Vienna Convention on Consular Relations (VCCR)(Article 5(f)), 21 UST 77, TIAS 6820, 596 U.N.T.S. 261; the Inter-American Convention on Letters Rogatory and Additional Protocol to which the United States and Brazil are parties (the provisions on service of process only), and the U.S.- Brazil Treaty on Mutual Legal Assistance in Criminal Matters Treaty Doc. 105-42 105th Cong. 2nd Sess., Exec. Rept 105-22, 105th Cong, 2nd Sess.
4. Brazil is not a party to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters. The United States is not a party to the evidence provisions of the Inter-American Convention on Letters Rogatory.
5. The Government of Brazil has explained to officials with the U.S. Embassy in Brasilia that any taking of testimony, including by telephone, in Brazil is considered an act of procedural law, i.e. an exercise in gathering evidence within Brazil, and as such may only be undertaken with the sanction of the Brazilian judicial system. The explanation by Brazilian officials indicates that the concern focuses on the nature of the act itself, and not the methodology employed. Our interpretation of our discussions with the Government of Brazil is that this prohibition would extend to technologies such as videoconferencing or internet based communications even though they were not widely available, or not yet developed, at the time those discussions took place. The Department of State has had no communication from or

discussions with the Government of Brazil that would indicate that its views on this matter have changed.

6. Consequently, it is the Department of State's understanding that Brazilian authorities do not permit persons, such as American attorneys, to take depositions for use in a court in the United States before a U.S. consular officer, with the assistance of a Brazilian attorney, or in any other manner. The Government of Brazil has asserted that, under Brazilian constitutional law, only Brazilian judicial authorities are competent to perform acts of a judicial nature in Brazil. Brazil has advised it would deem taking depositions in Brazil by foreign persons to be a violation of Brazil's judicial sovereignty. Such action potentially could result in the arrest, detention, expulsion, or deportation of the American attorney or other American participants. The United States recognizes the right of judicial sovereignty of foreign governments based on customary international law and practice; See , e.g., the Restatement (Third) of Foreign Relations Law (1987).
7. The U.S. Embassy or Consulates in Brazil could in no way participate in, or otherwise sanction proceedings in conflict with or violative of Brazilian law. The Department of State expects that other U.S. Government Agencies would not participate in such proceedings and would not facilitate any Agency that wished to do so.
8. At the request of the Department of Justice in connection with this litigation, the Department of State has instructed the U.S. Embassy in Brasilia to prepare a diplomatic note to transmit to the Government of Brazil inquiring

whether the Department's current understanding of Brazil's position with respect to the taking of testimony, whether live or by deposition, in person or electronically, remains correct. Given prior general discussions with Brazilian authorities regarding judicial assistance between the United States and Brazil and the absence of any indication of a change from the Government of Brazil, the Department does not expect that Brazil would alter its position in this matter, and cannot predict how long it might take the Ministry to respond to the inquiry. The Department does not expect a response to our diplomatic note to be forthcoming from Brazilian authorities prior to the trial scheduled in this matter for January 21-22, 2009.

I declare under penalty of perjury that the foregoing is true and correct (28 USC 1746).



Edward A. Betancourt

Executed in Washington, D.C.

January 15, 2009