

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

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IN RE: Request from the United Kingdom : M.B.D. No.:
Pursuant to the Treaty Between the Government of : 11-MC-91078 (JLT)
the United States of America and the Government : **ECF**
of the United Kingdom on Mutual Assistance in : **MOTION FOR**
Criminal Matters in the Matter of Dolours Price. : **LEAVE TO**
 : **INTERVENE**
 :
 : Fed.R.Civ.P. 24
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Ed Moloney and Anthony MacIntyre (collectively, the “Intervenors”), by and through undersigned counsel, Eamonn Dornan of Dornan & Associates PLLC, 10-40 Jackson Avenue, Long Island City, New York 11101, appearing *pro hac vice*, and James J. Cotter, III MA BBO 101620, Attorney at Law, Post Office Box 270, N. Quincy, MA 02171, hereby move the Honorable Court for leave to intervene in this matter pursuant to Rule 24(a) or, alternatively, (b) of the Federal Rules of Civil Procedure (Fed. R. Civ. P.), and in support of this motion state as follows:

The Intervenors seek leave to intervene in this action and, in addition to raising their own claims, seek to support of the Motion of Trustees of Boston College to Quash Subpoenas filed on June 7, 2011 (the “June 7, 2011 Motion to Quash”), and in further opposition to the Government’s Opposition to Motion to Quash and Motion for an Order to Compel of July 12, 2011, as well as the Motion of Trustees of Boston College to Quash New Subpoenas, filed on

August 17, 2011 (the “August 17, 2011 Motion to Quash”). The motions to quash were filed by the Trustees of Boston College, on their own behalf and on behalf of Professor Thomas E. Hachey and Dr. Robert K. O’Neill (collectively “Boston College”).

Pursuant to Fed. R. Civ. P. 24(c), the Intervenors seek leave to intervene by way of the attached Complaint in the Nature of Mandamus and/or for a Declaratory Judgment and/or Judicial Review under the Administrative Procedures Act (the “Complaint”). **Exhibit A.**

The Intervenors are the reporters and interviewers who have compiled recordings of oral histories for the Boston College sponsored Belfast Project, and, thereby, claim an interest relating to the transaction which is the subject of this action. The interviews were conducted, under the strictest conditions of confidentiality, with former paramilitaries and political organizations regarding their participation in the “Troubles” period of conflict in Northern Ireland beginning in 1969.

The Intervenors have submitted affidavits in support of the June 7, 2011 Motion to Quash, but upon review of the Government Opposition to Motion to Quash, and in light of the new subpoenas as well as the Government Opposition to Motion to Quash New Subpoenas, hereby seek leave to intervene pursuant to Fed. R. Civ. P., Rule 24 (a) or (b) for the reasons hereinafter set forth.

The Intervenors claim an interest relating to the transaction which is the subject matter of this action, namely, the tape recordings of oral histories and

related materials for the Belfast Project; the Intervenor's are so situated that the disposition of this action may, as a practical matter, impair or impede their ability to protect that interest, which is their duty of confidentiality to past and future contributors from paramilitary organizations to the Belfast Project; and, the Intervenor's' interest is not protected by existing parties because the interest of Boston College is in the protection of an oral history project and the Intervenor's' interest is in their duty of confidentiality to their sources, and in their personal safety and that of their sources. In the execution of this duty, the Intervenor's were, and are, entitled to rely on solemn assurances from the Government of the United Kingdom to the United States that politically-related offenses preceding the U.S.-brokered Belfast Agreement of April 10, 1998 (the "Good Friday Agreement") would not be reopened.

In particular, the Intervenor's were entitled to rely on the Section 4 Proviso to the Extradition Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland, and related exchange of letters, signed on March 31, 2003 (Treaty Doc. 108-23) [the "US-UK Extradition Treaty"]. See **Exhibit B**, Congressional Research Report for Congress on Extradition Between the United States and Great Britain: the 2003 Treaty.

That Proviso clearly sets forth the sense of Congress regarding the prosecution of offences addressed in the Good Friday Agreement:

“The Senate is aware that concerns have been expressed that the purpose of the Treaty is to seek the extradition of individuals involved in offenses relating to the conflict in Northern Ireland prior to the Belfast Agreement of April 10, 1998. The Senate understands that the purpose of the Treaty is to strengthen law enforcement cooperation between the United States and the United Kingdom by modernizing the extradition process for all serious offenses and that the Treaty is not intended to reopen issues addressed in the Belfast Agreement, or to impede any further efforts to resolve the conflict in Northern Ireland.”

Exhibit A, CRS-28.

Relying upon assurances evidenced by an exchange of letters between the governments of the United Kingdom and the United States, the Senate noted with approval:

“[T]he statement of the United Kingdom Secretary of State for Northern Ireland, made on September 29, 2000, that the United Kingdom does not intend to seek the extradition of individuals who appear to qualify for early release under the Belfast Agreement.”

Id., CRS-29.

Furthermore, the United Kingdom Home Secretary, in a letter to the Attorney General of the United States on March 31, 2006, reiterated this position:

“In September 2000 the Government decided that it was no longer proportionate or in the public interest to seek the extradition of individuals convicted of terrorist offences committed prior to 10th April 1998, the date of the Belfast Agreement.”

Id., CRS-30.

As alleged in the attached draft Complaint, contrary to these assurances, the subject matter of the U.K. government's request involves a politically-related offense committed prior to the Good Friday Agreement, and will require the U.K. government to initiate extradition proceedings of an Irish national from the Republic of Ireland for an offense allegedly committed in the jurisdiction of the Republic of Ireland.

Whereas the Attorney General has issued the subpoenas under the US-UK MLAT, he was obliged under Article 18 of that treaty to engage in a consultation with the United Kingdom where either the United States or the United Kingdom "has rights or obligations under another bilateral or multilateral agreement relating to the subject matter of this Treaty." The Attorney General was further obliged under Article 3 of that treaty to consider whether the request for assistance (a) would impair the essential interests of the United States (b) would be contrary to important public policy considerations of the United States; and, (c) is directed to an offense of a political character

Accordingly, before any legal assistance may be provided under the US-UK MLAT, the Attorney General was obliged to consult with his U.K. counterpart regarding the U.K.'s express obligations under the US-UK Extradition Treaty not to "reopen issues addressed in the Belfast Agreement, or to impede any further efforts to resolve the conflict in Northern Ireland." The Attorney General was further obliged to consider (a) the essential interests of the United States which are, *inter alia*, set forth in the US-UK MLAT, and

expressed in the Extradition Treaty and attached Resolutions of Advice and Consent to Ratification (as concurred by two thirds of the Senate) [see Exhibit A, CRS-28 to 33], as well as the GFA; (b) important public policy considerations of the United States, such as the aforementioned and the protection of an historic oral history project; and, (c) whether the request was directed to an offense of a political character.

The Attorney General failed in these nondiscretionary duties under the US-UK MLAT. Alternatively, if the Attorney General can demonstrate that he had engaged in such an Article 18 consultation or Article 3 consideration, his actions in issuing subpoenas in contravention of the clearly expressed sense of Congress was arbitrary, capricious or an abuse of discretion, or otherwise not in accordance with law.

Pursuant to the Administrative Procedures Act, the Intervenors have a claim or defense that shares with the main action a common question of law or fact, as well as original claims, as set out more fully in the attached Complaint.

The Intervenors seek leave to file the attached Complaint, and in so doing seek the Honorable Court's determination and declaration regarding the failure of the Government's nondiscretionary duties under the US-UK Mutual Legal Assistance Treaty ("MLAT") upon which the Government relies in its subpoenas issued on behalf of the United Kingdom.

In particular, the Intervenors seek to intervene in this civil action pursuant to Fed. R.Civ. P 24 to raise claims pursuant to 28 U.S.C. §1361, and 28 U.S.C.

§1331, praying for a writ in the nature of mandamus to compel the Attorney General, and those acting under him, to perform the nondiscretionary duties he owes to the United States, to the Intervenors and to Boston College under the US-UK MLAT, in conjunction with both 18 U.S.C. §3512 and F.R. Crim.P. 17(c)(2).

The Intervenors further, or in the alternative, seek judicial review in the form of a declaratory judgment that the subpoenas issued by the Commissioner under 18 U.S.C. §3512, on behalf of the Attorney General, are arbitrary, capricious or an abuse of discretion or otherwise not in accordance with law and contrary to F. R. Crim. P. 17(c)(2). Prior to granting legal assistance, the Attorney General, pursuant to Article 3 of the US-UK MLAT, is obligated to consider whether or not compliance with the request for legal assistance:

(a) would impair the essential interests of the United States which are, *inter alia*, set forth in the US-UK MLAT, and expressed in the Extradition Treaty and attached Resolutions of Advice and Consent to Ratification, as well as the GFA;

(b) would be contrary to important public policy considerations of the United States; and,

(c) is directed to an offense of a political character.

CONCLUSION

For the reasons set forth above, the Intervenors respectfully submit that they be granted leave to intervene in this action, pursuant to Fed. R. Civ. P. Rule 24 (a) or, alternatively, (b).

Dated: August 29, 2011
Long Island City, New York

Respectfully submitted,

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Certificate of Service

I, James J. Cotter III, hereby certify that this document filed through the CM/ECF system was sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on August 30, 2011.