

IN THE SUPREME COURT OF THE UNITED STATES

No. 12-627

ED MOLONEY AND ANTHONY McINTYRE,

V.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

MOTION TO DEFER CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI

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Petitioners Ed Moloney and Anthony McIntyre respectfully move that the Court defer consideration of their petition for a writ of certiorari pending a ruling by the First Circuit Court of Appeals in the related case of *In re Request of United Kingdom Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom on Mutual Assistance in Criminal Matters in the Matter of Dolours Price*, First Circuit No. 12-1236 (“*United Kingdom II*”). The grounds for Petitioners’ request are as follows:

1. This petition arises out of a Court of Appeals decision enforcing subpoenas issued on behalf of the Police Service of Northern Ireland (“PSNI”) pursuant to the Mutual Legal Assistance Treaty between the United States and the United Kingdom (“US-UK MLAT”) and 18 U.S.C. § 3512. See *In re Request from United Kingdom Pursuant to Treaty Between Government of U.S. and Government of United Kingdom on Mutual Assistance in Criminal Matters in the Matter of Dolours Price*, 685 F.3d 1 (1st Cir. 2012) (*United Kingdom I*).

2. The subpoenas at issue in *United Kingdom I* sought confidential records of interviews conducted by Petitioners with Dolours Price, a former IRA member.

3. As the petition explained, a separate set of subpoenas later issued on behalf of the PSNI sought confidential records of interviews conducted by Petitioners of certain former IRA members other than Ms. Price. The second set of subpoenas are the subject of *United Kingdom II*, a separate appeal (cited above) argued before the First Circuit Court of Appeals on September 7, 2012, and which has not yet been decided by that court.

4. Petitioners recently advised the Court and the government of the death of Ms. Price. Under the terms of their confidentiality agreement, the Petitioners’ confidentiality obligations to Ms. Price expired upon her death. The case is not moot, however, because the Petitioners also were denied the right to intervene or be heard in opposition to the second set of subpoenas at issue in *United Kingdom II*, subpoenas which seek interview materials concerning individuals other than Ms. Price. See also Opposition at 3 n.1 (conceding that Petitioners’ challenges to the second set of subpoenas are not moot).

5. Although the Court of Appeals’ decision in *United Kingdom II* will not likely

address the Petitioners' right to be heard in opposition to either set of subpoenas, a ruling that the second set of subpoenas are not enforceable could moot the petition by granting substantially or all of the relief on the merits sought the Petitioners with respect to the enforceability of the subpoenas. *See, e.g., Zipes v. Trans World Airlines, Inc.*, 442 U.S. 916 (1979) (granting motion to defer petition); *see generally* E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, *Supreme Court Practice* 339 (9th ed.2007) (petitions sometimes deferred "until some event takes place that will aid or control the determination of the matter").

6. Under these circumstances, Petitioners submit that it is in the interests of justice and judicial economy to defer ruling on the petition until such time as the Court of Appeals decides whether the second set of subpoenas are enforceable. Petitioners also request leave to file their Reply to the government's opposition within 30 days of the Court of Appeals' decision in order to address the effect of that ruling.

CONCLUSION

WHEREFORE, Petitioners pray that the Court (1) defer the petition pending a ruling by the First Circuit Court of Appeals in *United Kingdom II*; and (2) grant Petitioners leave to file their reply to the government's opposition within 30 days of the First Circuit's decision.

Respectfully submitted,



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