

Exhibit 1 to Complaint –

*The Center for Investigative Reporting and Matthew  
Smith v. U.S. Department of State*

**KESTENBAUM, DANNENBERG & KLEIN, LLP**

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January 4, 2018

***VIA FEDERAL EXPRESS***

The Honorable Marie L. Yovanovitch  
United States Ambassador  
Embassy of the United States of America  
Sikorskoho St, 4  
Kyiv, Ukraine, 02000

Re: *Request for Assistance by Opalcore Ltd.  
and Trans Commodities New York, Inc.*

Dear Ambassador Yovanovitch:

My law firm represents Opalcore Ltd. (“Opalcore”), a Cyprus corporation, and its sole beneficial shareholder, Trans Commodities New York, Inc. (“TCNY”), a New York (U.S.) corporation. On behalf of my clients, I am requesting your office’s assistance in the recovery of funds that appear to have been misappropriated in 2017 based on the actions of certain Ukrainian government officials.

*Relevant Background Facts*

On about June 4, 2013, the Ministry of Finance of Ukraine issued 173,710 shares of government domestic loan bonds (securities), having a nominal value of \$173,710,000.00 (USD). This issuance was apparently intended to raise capital to be used for infrastructure projects, with investors not only having the opportunity to help finance programs for the betterment of the Ukrainian people and the country’s economy, but also having the ability to profit from a government-backed guaranty of repayment of principal, plus interest.

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The Honorable Marie L. Yovanovitch

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Opalcore, which has a registered office located at Gladstonos, 116 M. Kyprianou House (3rd & 4th Floors), 3032, Limassol, Cyprus, purchased some of those bonds in two tranches: (i) 6,986 shares on July 23, 2013, having a face value of \$6,998,158.00 (USD) and a redemption date in June 2015; and (ii) 12,252 shares on November 15, 2013, having a face value of \$13,038,930.00 (USD) and a redemption date in November 2015. Because these bonds were issued through the State Savings Bank of Ukraine, JSC Oschadbank (“Oschadbank”), an investment account was opened at that bank in the name of Opalcore, into which the proceeds of the redeemed bonds were to be deposited.

Although Opalcore had a right to redeem its government bonds in 2015, its then beneficial owner, Exbridge Properties L.P. (“Exbridge”), a British company having a registered office at Olympia Industrial Estate (Unit 5), Coburg Road, London, N22 6TZ, England, United Kingdom, was initially sympathetic to explanations given by Oschadbank officials for delays in normal banking operations due to the period of political upheaval in Ukraine that began in February 2014. However, by 2016, the delays in recovering its investment in the bonds became unmanageable for Exbridge, as a result of which it sought to liquidate its ownership interest in Opalcore. TCNY learned of that investment opportunity, and by Transfer of Beneficial Interest Agreement, dated November 1, 2016, TCNY acquired Exbridge’s entire interest in Opalcore.

On April 28, 2017, Opalcore (and, by extension, TCNY) discovered that the proceeds of the Opalcore bonds were not present in its investment account at Oschadbank. Instead, those proceeds, in the amount of \$20,980,028.49 (USD) – which was comprised of the face amount of the bonds, \$20,037,088.00 (USD), and post-maturity interest in the sum of \$942,940.79 (USD) – had been transferred by Oschadbank to an account in the name of the State Treasury Service of Ukraine. The only explanation given for that transfer was: “Transfer of the funds pursuant to Judgment of the Kramatorsk City Court of Donetsk Region as of March 28, 2017 in case No. 234/4135/17.”

What followed was a series of attempts by Opalcore’s representatives to learn how that City Court Judgment, in a case where Opalcore was not a party, had been used to take funds without Opalcore’s consent. Those investigation efforts resulted in the discovery that one or more public officials appear to have illegally absconded with Opalcore’s funds by circumventing normal legal and banking procedures.

*Opalcore’s Attempts to Retrieve its Funds*

TCNY engaged two attorneys in Kiev, Dmitry Shcherbina and Maksym Kovalenko, to act on Opalcore’s behalf in Ukraine, in coordination with me as the U.S. attorney for Opalcore and TCNY. Through our investigation, it has been learned that the release of

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Opalcore's bond proceeds was part of a much larger release of funds held by Oschadbank, comprised of other bondholders' proceeds as well. The official reason given for that release was an asset forfeiture that purported to be based on a Judgment that had been entered in the Kramatorsk City Court of Donetsk Region in criminal proceeding, Case No. 234/4135/17, brought against an individual named Arkadii Pavlovych Kashkin.<sup>1</sup> From press reports regarding public statements made by government officials, we have learned that this proceeding involved an alleged scheme in which Mr. Kashkin had been paid \$500.00 (USD) to allow his name falsely to be used in the registration of a local business enterprise. Through an agreement made with the head of the local prosecution office, Konstantyn Kulik, Mr. Kashkin was permitted to evade punishment for his wrongdoing, provided that he admit his guilt *and* that he provide a written statement to the effect that Ukrainian bond proceeds, having nothing to do with that criminal case, were somehow tied to the administration of former President Victor Yanukovych. We believe that the local prosecution office, and in particular Mr. Kulik (who at one time had apparently studied and worked with Mr. Kashkin) improperly arranged for Mr. Kashkin to falsify a contention that could be used, however disingenuously, to link the bond proceeds to the Yanukovych administration.

Furthermore, it appears that this improper scheme by the local prosecution office was not done without the knowledge and participation of Ukrainian Prosecutor General's Office, which is headed by Yuriy Vitaliyovych Lutsenko. Why Mr. Lutsenko (who, as public record indicates, was a political enemy of the Yanukovych administration) would have involved his office in such a scheme is unclear, but he has since publicized the confiscation of bond proceeds as though it were some kind of law enforcement victory.

The case against Mr. Kashkin, and the circumstances surrounding the agreement that he made with the local prosecution office, was suspicious for other reasons as well. For example, the criminal proceeding brought against him was filed on March 15, 2017, and the Judgment was made only two weeks later, March 28, 2017. On the same date on which that Judgment became effective, April 28, 2017, Mr. Lutsenko, along with Oleksandr Valentynovych Turchynov, the Secretary of National Security and Defense Council, personally visited Oschadbank's corporate headquarters and met with the bank's Board Chairman, Andrii Pyshnyi.<sup>2</sup> Mr. Lutsenko has purportedly contended that he was acting at the time on behalf of President Poroshenko.<sup>3</sup> In any event, that extra-judicial meeting coincided with Oschadbank's transfer of the bond proceeds away from Opalcore's custody and control.

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<sup>1</sup> See <https://strana.ua/articles/analysis/68348-1-5.html>.

<sup>2</sup> See <https://www.youtube.com/watch?v=RZvkqN7G0WY>.

<sup>3</sup> See [https://www.youtube.com/watch?v=bv\\_6Dp1Gqz0](https://www.youtube.com/watch?v=bv_6Dp1Gqz0).

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January 4, 2018  
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These actions on the part of Oschadbank were plainly illegal. Under Ukrainian Criminal Procedure Law, a judgment may not be enforced, and no confiscation of funds should be permitted, by a bank or other financial institution without an independent court order. In particular, for a bank to be authorized to transfer funds based on a post-judgment seizure or forfeiture, an Enforcement Order must be issued to initiate a formal enforcement proceeding, and a public or private executor must be appointed to act on the state's behalf. Only upon receipt of an Implementation Order by such an executor may a bank be permitted to release funds without the consent of the account owner. In the case of Opalcore's account, however, no Enforcement Order was ever issued, as a result of which no enforcement proceeding was initiated, and no Implementation Order was ever made. Although numerous attempts on the part of Opalcore and TCNY have been made to contact Oschadbank's Board Chairman, Mr. Pyshnyi, in order to obtain an explanation for why the bond proceeds were released without Opalcore's consent, those efforts have been ignored, and neither Mr. Pyshnyi nor any other Oschadbank representative has offered to communicate with Opalcore or TCNY regarding this matter.

On behalf of Opalcore, Mr. Shcherbina and Mr. Kovalenko initiated an appeal proceeding objecting to the use of the Judgment in Case No. 234/4135/17 to cause Oschadbank to transfer away Opalcore's bond proceeds. However, by Order of the Court of Appeal of Donetsk Region, that appeal was refused on the purported ground that an appeal proceeding may be initiated in the case of plea deal only by the prosecutor or the defendant. This ruling seems absurd on its face, inasmuch as the Judgment was used to confiscate Opalcore's (and other parties') bond proceeds, as a result of which Opalcore, as an aggrieved party, had an absolute right to appeal under by Ukrainian law, a position that has repeatedly been confirmed by the Supreme Court of Ukraine in other cases. We strongly suspect Prosecutor General's Office somehow pressured the Court of Appeal.

A subsequent effort by Mr. Shcherbina and Mr. Kovalenko to initiate a cassation appeal to the High Specialized Court of Ukraine was blocked when the descriptive portion of the Judgment from the Kramatorsk City Court proceeding could not be produced, inasmuch as it had somehow been deemed "classified" by decree of the State Expert on Secrets of the Prosecutor General's Office. That decree appears to have been unlawful based on the provisions of Part 2 of the Article 517 of the Ukrainian Criminal Procedure Law, which expressly require that procedural determinations, such as the Judgment against Mr. Kashkin, may not contain data constituting state secrets. The reason for that rule seems self-evident: if a wrongfully-decided court judgment contains state secrets deemed not subject to public disclosure, any person or company negatively affected by that judgment would be precluded from seeking judicial relief or assistance. Indeed, that is precisely the dilemma faced by Opalcore, which was effectively blocked from protesting the removal of funds from its Oschadbank account due to the claim that "state secrets" were contained in the Judgment against Mr. Kashkin.

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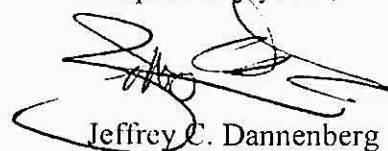
To make matters even worse, during an appearance on Ukrainian television in May 2017, Deputy Prosecutor General Yevhenii Yenin declared that those who appeal from the Judgment would, themselves, be prosecuted as members of a criminal organization.<sup>4</sup> In fact, Mr. Shcherbina and Mr. Kovalenko have been threatened with prosecution for pursuing Opalcore's rights with regard to the bond proceeds, although thankfully they have not allowed such threats to thwart their efforts to seek justice on the company's behalf. Nevertheless, the Prosecutor General's Office has apparently started investigation against them, under Case No. 4201700000001533. The idea of threatening legal counsel in this manner, simply for pursuing a client's rights, is an absolute affront to the rule of law and a stain on the reputation of Ukraine within the international community.

*Request for Assistance*

The efforts by Opalcore and TCNY to recover the bond proceeds through the Ukrainian judicial system have now effectively been blocked. Furthermore, although we have been informed that an investigation into the corrupt practices of certain Ukrainian officials associated with the Opalcore bond proceeds has been initiated by the National Anticorruption Bureau of Ukraine, that investigation is not a forum in which those proceeds may be recovered. Additional efforts are being explored to initiate litigation in the United States and Cyprus against Oschadbank and its Board Chairman, Mr. Pyshnyi. However, these efforts are likely to take considerable time and to involve considerable resources.

Accordingly, we respectfully request your office's assistance, inasmuch as TCNY is a United States business enterprise that has been victimized by Ukrainian government officials. Indeed, although we have been unable to obtain a list of Ukrainian bondholders other than Opalcore that have similarly been wrongfully deprived of their access to bond proceeds due to the intervention of those Ukrainian officials, we understand from information we have received anecdotally that there are, in fact, other U.S. victims of this wrongdoing. We would welcome your comments regarding this important matter.

Respectfully yours,



Jeffrey C. Dannenberg

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<sup>4</sup> See <https://www.youtube.com/watch?v=oC3UVx9Y1xI>.

Exhibit 2 to Complaint –

*The Center for Investigative Reporting and Matthew  
Smith v. U.S. Department of State*

**FOIA Request Letter**

1 message

State Department FOIA <noreply@mail.foia.state.gov>  
To: msmith@revealnews.org

Fri, Mar 8, 2019 at 9:47 PM

Thank you for filing your FOIA request online on 3/9/2019. Here is a review of your request.

The records I request can be described as follows:

Dear FOIA official, I sent the following FOIA request November 27, 2018 to [FOIA@state.gov](mailto:FOIA@state.gov) and I believe that thus far I have received no response. I am writing to request an update on the status of my November 27, 2018 FOIA request. If you have questions I can be reached at [msmith@revealnews.org](mailto:msmith@revealnews.org) and at 415-685-9704. This is a request under the Freedom of Information Act. I hereby request the following records: Communications and records of communications involving the office of Marie L. Yovanovitch, the United States Ambassador to Ukraine, and representatives of the companies Opalcore Ltd., and affiliated companies Exbridge Properties L.P. and Trans Commodities New York, Inc. I also seek to review communications and records of communications involving the office of the US Ambassador to Ukraine and representatives of Seymon "Sam" Kislin, (believed to be controlling shareholder of Opalcore, Exbridge, Trans Commodities.) Representatives include Jeffrey C. Dannenberg. I also seek to review Embassy/State Department communications and reports concerning requests for assistance by Opalcore, Trans Commodities, Exbridge, Kislin and/or Dannenberg. To help clarify my request, I attached to my original request a copy of a January 4, 2018 letter from Mr. Dannenberg to Ambassador Yovanovitch. My hope is to review the State Department communications, reports, memos, etc., related to this letter. I would also wish to obtain a copy of this letter from State in order to affirm its authenticity. If it would be helpful for me to refine or clarify my request, please let me know. I can be reached at [msmith@revealnews.org](mailto:msmith@revealnews.org) and at 415-685-9704. I also request that fees be waived as I am a professional journalist employed full time by a prominent news organization, Reveal/The Center for Investigative Reporting. State.gov documents are requested exclusively to provide information to the American public via radio news broadcasts and news articles. This request is not being made for commercial purposes. Please inform me of the total charges in advance of fulfilling my request. I would prefer the request fulfilled electronically. I look forward to receiving your response to this request within 20 business days, as the statute requires. Sincerely, Matt Smith

The time period of my request is from 01/01/2015 to 03/08/2019

I am a representative of the news media seeking information as part of a news gathering effort and not for commercial use. Additional documentation or comments will be required.

I represent The Center for Investigative Reporting

I am willing to pay \$100 for my request.

I request a waiver of all fees for this request.

Reason: I am a full time staff journalist at The Center for Investigative Reporting, ([revealnews.org](http://revealnews.org)) an organization that exists exclusively to provide news to the public. This request is not for commercial use, and the information gathered will be used purely to inform the public about a matter of broad public interest.

I have a compelling need for expeditious handling:

- An urgency to inform the public concerning actual or alleged Federal Government activity exists.

This option available for ONLY PERSONS PRIMARILY ENGAGED IN DISSEMINATING INFORMATION.

- I am a full time professional journalist, and the records will be used purely to inform the public. The public has an urgent and compelling need for information about the efforts by US and Ukrainian persons to counter efforts to repatriate funds allegedly obtained through corruption by the country's previous prime minister.

My additional comments are as follows:

The following is the text of a letter sent Jan. 4, 2018 to Marie L. Yovanovitch. I wish to obtain a copy of this letter, and correspondence related to this letter: KESTENBAUM, DANNENBERG & KLEIN, LLP ATTORNEYS AND COUNSELORS AT LAW Jeffrey C. Dannenberg, Esq. Member of NY and CT Bars Etn; J i l: [jdanncnberg@kdklaw.com](mailto:jdanncnberg@kdklaw.com) 260 MADISON AVENUE 17th FLOOR NEW YORK, NY10016 U.S.A. (212) 486.3370 F., (212) 486.3371 [www.kdklaw.com](http://www.kdklaw.com) Connecticut Office: 27 Jrnpai3! Avenue Westport, Connecticut 06880 (203) 319-9600 F., (203) 764- 21 90 January 4, 2018 VIA FEDERAL EXPRESS The Honorable Marie L. Yovanovitch United States Ambassador Embassy of the United States of America Sikorskoho St, 4 Kyiv, Ukraine, 02000 Re: Request for Assistance by Opalcore Ltd. and Trans Commodities New York, Inc. Dear Ambassador Yovanovitch: My law firm represents Opalcore Ltd. ("Opalcore"), a Cyprus corporation, and its sole beneficial shareholder, Trans Commodities New York, Inc. ("TCNY"), a New York (U.S.) corporation. On behalf of my clients, I am requesting your office's assistance in the recovery of funds that appear to have been misappropriated in 2017 based on the actions of certain Ukrainian government officials. Relevant Background Facts On about June 4, 2013, the Ministry of Finance of Ukraine issued 173,710 shares of government domestic loan bonds (securities), having a nominal value of \$173,710,000.00 (USD). This issuance was apparently intended to raise capital to be used for infrastructure projects, with investors not only having the opportunity to help finance programs for the betterment of the Ukrainian people and the country's economy, but also having the ability to profit from a government-backed guaranty of repayment of principal, plus interest. KESTENBAUM, DANNENBERG & KLEIN, LLP The Honorable Marie L. Yovanovitch January 4, 2018 - page 2 of 5- Opal core, which has a registered office located at Gladstonos, 116 M. Kyrprianou House (3rd & 4th Floors), 3032, Limassol, Cyprus, purchased some of those bonds in two tranches: (i) 6,986 shares on July 23, 2013, having a face value of \$6,998, 158.00 (USD) and a redemption date in June 2015; and (ii) 12,252 shares on November 15, 2013, having a face value of \$13,038,930.00 (USD) and a redemption date in November 2015. Because these bonds were issued through the State Savings Bank of Ukraine, JSC Oschadbank ("Oschadbank"), an investment account was opened at that bank in the name of Opal core, into which the proceeds of the redeemed bonds were to be deposited. Although Opalcore had a right to redeem its government bonds in 2015, its then beneficial owner, Exbridge Properties L.P. ("Ex bridge"), a British company having a registered office at Olympia Industrial Estate (Unit 5), Coburg Road, London, N22 6TZ, England, United Kingdom, was initially sympathetic to explanations given by Oschadbank officials for delays in nOlmal banking operations due to the period of political upheaval in Ukraine that began in February 2014. However, by 2016, the delays in recovering its investment in the bonds became unmanageable for Exbridge, as a result of which it sought to liquidate its ownership interest in Opalcore. TCNY learned of that investment opportunity, and by Transfer of Beneficial Interest Agreement, dated November 1, 2016, TCNY acquired Exbridge's entire interest in Opalcore. On April 28, 2017, Opal core (and, by extension, TCNY) discovered that the proceeds of the Opalcore bonds were not present in its investment account at Oschadbank. Instead, those proceeds, in the amount of \$20,980,028.49 (USD) - which was comprised of the face amount of the bonds, \$20,037,088.00 (USD), and post-maturity interest in the sum of \$942,940.79 (USD) - had been transferred by Oschadbank to an account in the name of the State Treasury Service of Ukraine. The only explanation given for that transfer was: "Transfer of the funds pursuant to Judgment of the Kramatorsk City Court of Donetsk Region as of March 28, 2017 in case No. 234/4135/ 17." What followed was a series of attempts by Opalcore's representatives to learn how that City Court Judgment, in a case where Opalcore was not a party, had been used to take funds without Opalcore's consent. Those investigation efforts resulted in the discovery that one or more public officials appear to have illegally absconded with Opalcore's funds by circumventing nOlmal legal and banking procedures. Opalcore's Attempts to Retrieve its Funds TCNY engaged two attorneys in Kiev, Dnriity Shcherbina and Maksym Kovalenko, to act on Opalcore's behalf in Ukraine, in coordination with me as the U.S. attorney for Opalcore and TCNY. Through our investigation, it has been learned that the release of KESTENBAUM, DANNENBERG & KLEIN, LLP The Honorable Marie L. Yovanovitch January 4, 2018 - page 3 of 5 - Opalcore's bond proceeds was part of a much larger release of funds held by Oschadbank, comprised of other bondholders' proceeds as well. The official reason given for that release was an asset forfeiture that purported to be based on a Judgment that had been entered in the Kramatorsk City Court of Donetsk Region in criminal proceeding, Case No. 234/4135/17, brought against an individual named Arkadii Pavlovych Kashkin. I From press reports regarding public statements made by government officials, we have learned that this proceeding involved an alleged scheme in which Mr. Kashkin had been paid \$500.00 (US D) to allow his name falsely to be used in the registration of a local business enterprise. Through an agreement made with the head of the local prosecution office, Konstantyn Kulik, Mr. Kashkin was permitted to evade punishment for his wrongdoing, provided that he admit his guilt and that he provide a written statement to the effect that Ukrainian bond proceeds, having nothing to do with that criminal case, were somehow tied to the administration of former President Victor Yanukovich. We believe that the local pro'ecution office, and in particular Mr. Kulik (who at one time had apparently studied and worked with Mr. Kashkin) improperly arranged for Mr. Kashkin to falsify a contention that could be used, however disingenuously, to link the bond proceeds to the Yanukovich administration. Furthermore, it appears that this improper scheme by the local prosecution office was not done without the knowledge and participation of Ukrainian Prosecutor General's Office, which is headed by Yuri Vitaliyovych Lutsenko. Why Mr. Lutsenko (who, as public record indicates, was a political enemy of the Yanukovich administration) would have involved his office in such a scheme is unclear, but he has since publicized the confiscation of bond proceeds as though it were some kind of law enforcement victory. The case against Mr. Kashkin, and the circumstances surrounding the agreement that he made with the local prosecution office, was suspicious for other reasons as well. For example, the criminal proceeding brought against him was filed on March 15, 2017, and the Judgment was made only two weeks later, March 28, 2017. On the same date on which that Judgment became effective, April 28, 2017, Mr. Lutsenko, along with Oleksandr Valentynovych Turchynov, the Secretary of National Security and Defense Council, personally visited Oschadbank's corporate headquarters and met with the bank's Board Chairman, Andrii Pyshnyi. 2 Mr. Lutsenko has purportedly contended that he was acting at the time on behalf of President Poroshenko 03 In any event, that extra-judicial meeting coincided with Oschadbank's transfer of the bond proceeds away from Opalcore's custody and control. 1 See <https://stralla.ua/articles/analysis/68348-1-5.html>. 2 See <https://www.youtube.com/watch?v=RZvkgN7GOWY>. . See <https://www.youtube.com/watch?v=bv6DIII3GzO>. KESTENBAUM, DANNENBERG & KLEIN, LLP The Honorable Marie L. Yovanovitch January 4, 2018 - page 4 of 5- These actions on the part of Os chad bank were plainly illegal. Under Ukrainian Criminal Procedure Law, a judgment may not be enforced, and no confiscation of funds should be permitted, by a bank or other financial institution without an independent court order. In particular, for a bank to be authorized to transfer funds based on a post-judgment seizure or forfeiture, an Enforcement Order must be issued to initiate a fonnal enforcement proceeding, and a public or private executor must be appointed to act on the state's behalf. Only upon receipt of an Implementation Order by such an executor maya bank be pennitted to release funds without the consent of the account owner. In the case of Opal core's account, however, no Enforcement Order was ever issued, as a result of which no enforcement proceeding was initiated, and no Implementation Order was ever made. Although numerous attempts on the part of Opalcore and TCNY have been made to contact Oschadbank's Board Chain nan, Mr. Pyshnyi, in order to obtain an explanation for why the bond proceeds were released without Opalcore's consent, those efforts have been ignored, and neither Mr. Pyshnyi nor any other Oschadbank representative has offered to communicate with Opalcore or TCNY regarding this matter. On behalf of Opalcore, Mr. Shcherbina and Mr. Kovalenko initiated an appeal proceeding objecting to the use of the Judgment in Case No. 234/4135/17 to cause



Oschadbank to transfer away Opalcore's bond proceeds. However, by Order of the Court of Appeal of Donetsk Region, that appeal was refused on the purported ground that an appeal proceeding may be initiated in the case of plea deal only by the prosecutor or the defendant. This ruling seems absurd on its face, inasmuch as the Judgment was used to confiscate Opalcore's (and other parties') bond proceeds, as a result of which Opalcore, as an aggrieved party, had an absolute right to appeal under by Ukrainian law, a position that has repeatedly been confirmed by the Supreme Court of Ukraine in other cases. We strongly suspect Prosecutor General's Office somehow pressured the Court to accept the request for appeal by Mr. Shcherbina and Mr. Kovalenko to initiate a cassation appeal to the High Specialized Court of Ukraine was blocked when the descriptive portion of the Judgment from the Kramatorsk City Court proceeding could not be produced, inasmuch as it had somehow been deemed "classified" by decree of the State Expert on Secrets of the Prosecutor General's Office. That decree appears to have been unlawful based on the provisions of Part 2 of the Article 517 of the Ukrainian Criminal Procedure Law, which expressly require that procedural determinations, such as the Judgment against Mr. Kashkin, may not contain data constituting state secrets. The reason for that rule seems self-evident: if a wrongfully-decided court judgment contains state secrets deemed not subject to public disclosure, any person or company negatively affected by that judgment would be precluded from seeking judicial relief or assistance. Indeed, that is precisely the dilemma faced by Opalcore, which was effectively blocked from protesting the removal of funds from its Oschadbank account due to the claim that "state secrets" were contained in the Judgment against Mr. Kashkin. KESTENBAUM, DANNENBERG & KLEIN, LLP The Honorable Marie 1. Yovanovitch January 4, 2018 - page 5 of 5 - To make matters even worse, during an appearance on Ukrainian television in May 2017, Deputy Prosecutor General Yevhenii Yenin declared that those who appeal from the Judgment would, themselves, be prosecuted as members of a criminal organization.<sup>4</sup> In fact, Mr. Shcherbina and Mr. Kovalenko have been threatened with prosecution for pursuing Opalcore's rights with regard to the bond proceeds, although thankfully they have not allowed such threats to thwart their efforts to seek justice on the company's behalf. Nevertheless, the Prosecutor General's Office has apparently started investigation against them, under Case No. 4201700000001533. The idea of threatening legal counsel in this manner, simply for pursuing a client's rights, is an absolute affront to the rule of law and a stain on the reputation of Ukraine within the international community. Request for Assistance The efforts by Opalcore and TCNY to recover the bond proceeds through the Ukrainian judicial system have now effectively been blocked. Furthermore, although we have been informed that an investigation into the corrupt practices of certain Ukrainian officials associated with the Opalcore bond proceeds has been initiated by the National Anticorruption Bureau of Ukraine, that investigation is not a forum in which those proceeds may be recovered. Additional efforts are being explored to initiate litigation in the United States and Cyprus against Oschadbank and its Board Chairman, Mr. Pyshnyi. However, these efforts are likely to take considerable time and to involve considerable resources. Accordingly, we respectfully request your office's assistance, inasmuch as TCNY is a United States business enterprise that has been victimized by Ukrainian government officials. Indeed, although we have been unable to obtain a list of Ukrainian bondholders other than Opalcore that have similarly been wrongfully deprived of their access to bond proceeds due to the intervention of those Ukrainian officials, we understand from information we have received anecdotally that there are, in fact, other U.S. victims of this wrongdoing. We would welcome your comments regarding this important matter. Respectfully, yours, • . Jeffrey C. Dannenberg

Contact Information  
Mr. Matthew M Smith  
1400 65th, Suite 200  
Emeryville, California, California 94608  
P: (415)685-9704  
F: N/A  
[msmith@revealnews.org](mailto:msmith@revealnews.org)

Exhibit 3 to Complaint –

*The Center for Investigative Reporting and Matthew  
Smith v. U.S. Department of State*



United States Department of State

Washington, D.C. 20520

**MAY 23 2019**

F-2019-06295

Matt Smith  
Reveal News  
1400 65<sup>th</sup> Street, Suite 200  
Emeryville, CA 94608

Dear Mr. Smith:

This letter is to acknowledge receipt of your request dated March 9, 2019, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to the Department of State, in which you requested records of communications involving the office of Marie L. Yovanovitch and the following companies: Opalcore Ltd, Exbridge Properties L.P., Trans Commodities New York, and representatives of Seymon "Sam" Kislin, including Jeffrey C. Dannenberg. In addition you requested communications and reports concerning requests for assistance by the companies mentioned above.

The Office of Information Programs and Services (IPS) received your FOIA request on March 11, 2019. Your FOIA request was assigned the tracking number at the top of this letter. Please include the tracking number in all future communications concerning this FOIA request. We have classified you as a representative of the media.

You have requested that the Department waive the fees for processing your request. Our FOIA regulations state that the Department may waive fees if it determines, in its discretion, the "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Our FOIA regulations also provide four specific criteria that are used to determine whether this standard is met. *See* 22 CFR 171.16. Your request does meet this standard; therefore, your request for a fee waiver has been granted.

You also requested expedited processing of your FOIA request. The Department's FOIA regulations (22 CFR § 171.11(f)) state that requests shall receive expedited processing when a requester demonstrates a "compelling need" for the information because:

- (1) Failure to obtain requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

- (2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity. Requesters must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public in general, not just to a particular segment or group.
- (3) Failure to release the information would impair substantial due process rights or harm substantial humanitarian interests.

Based on the information you provided, your request does not demonstrate a compelling need under any of these standards. Therefore, your request for expedited processing has been denied.

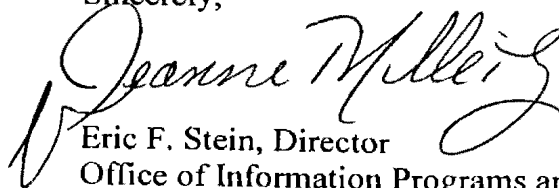
If you are not satisfied with the Department's determination in response to your expedited processing request, you may administratively appeal by writing to: Director, Office of Information Programs and Services (IPS), U.S. Department of State, State Annex 2 (SA-2), 515 22<sup>nd</sup> Street, NW, Washington, D.C. 20522-8100, or faxed to (202) 261-8571. Appeals must be postmarked within 90 calendar days of the date of this initial agency decision letter. Please include a copy of this letter with your written appeal and clearly state why you disagree with the determinations set forth in this response.

The records you seek require the need to search in offices that are separate from the office processing your request, and may need to conduct consultations with other offices and/or agencies. Accordingly, your request falls within "unusual circumstances" as defined in the FOIA. See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to *extend the time limit to respond to your request beyond the ten additional days provided by the statute.*

This Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Your request has been assigned to the complex track and will be handled as quickly as possible. We regret the necessity of this delay, but assure you that your request will be processed as soon as possible.

If you have any questions regarding the status of your request, you may contact our FOIA Requester Service Center or our FOIA Public Liaison via email at [FOIAstatus@state.gov](mailto:FOIAstatus@state.gov) or telephone at (202) 261-8484.

Sincerely,



Eric F. Stein, Director  
Office of Information Programs and Services