No. ___

In the Supreme Court of the United States

STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER, DONZIGER & ASSOCIATES, PLLC, and HUGO GERARDO CAMACHO NARANJO,
Petitioners,

v.

CHEVRON CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do federal courts have jurisdiction to entertain preemptive collateral attacks on money judgments issued by foreign courts?

2. Does the Racketeer Influenced and Corrupt Organizations Act (RICO) authorize federal courts to issue injunctive relief to private parties?

PARTIES TO THE PROCEEDING

Petitioners Steven Donziger, the Law Offices of Steven R. Donziger, Donziger & Associates, PLLC, and Hugo Gerardo Camacho Naranjo were defendants in the district court and appellants in the Second Circuit.

Chevron Corporation was a plaintiff in the district court and appellee in the Second Circuit.

Javier Piaguaje Payaguaje was also a defendant in the district court and appellant in the Second Circuit, but is not a petitioner here.

Stratus Consulting, Inc., Douglas Beltman, and Ann Maest were defendants-counter-claimants in the district court.

Other defendants in the district court proceedings were Pablo Fajardo Mendoza, Luis Yanza, Frente De Defensa De La Amazonia aka Amazon Defense Front, Selva Viva Selviva CIA, LTDA, Maria Aguinda Salazar, Carlos Grefa Huatatoca, Catalina Antonia Aguinda Salazar, Lidia Alexandra Aguinda Aguinda, Patricio Alberto Chimbo Yumbo, Clide Ramiro Aguinda Aguinda, Luis Armando Chimbo Yumbo, Beatriz Mercedes Grefa Tanguila, Lucio Enrique Grefa Tanguila, Patricio Wilson Aguinda Aguinda, Celia Irene Viveros Cusangua, Francisco Matias Alvarado Yumbo, Francisco Alvarado Yumbo, Olga Gloria Grefa Cerda, Lorenzo José Alvarado Yumbo, Narcisa Aida Tanguila Narváez, Bertha Antonia Yumbo Tanguila, Gloria Lucrecia Tanguila Grefa, Francisco Victor Tanguila Grefa, Rosa Teresa Chimbo Tanguila, José Gabriel Revelo Llore, María Clelia Reascos Revelo, María Magdalena Rodríguez Barcenes, José Miguel Ipiales Chicaiza, Heleodoro Pataron Guaraca, Luisa Delia Tanguila Narváez, Lourdes Beatriz Chimbo Tanguila, María Hortencia Viveros Cusangua, Segundo Angel Amanta Milán, Octavio Ismael Córdova Huanca, Elias Roberto Piyahuaje Payahuaje, Daniel Carlos Lusi-

tande Yaiguaje, Benancio Fredy Chimbo Grefa, Guillermo Vicente Payaguaje Lusitante, Delfín Leonidas Payaguaje Payaguaje, Alfredo Donaldo Payaguaje Payaguaje, Teodoro Gonzalo Piaguaje Payaguaje, Miguel Mario Payaguaje Payaguaje, Fermin Piaguaje Payaguaje, Reinaldo Lusitande Yaiguaje, Luis Agustín Payaguaje Piaguaje, Emilio Martín Lusitande Yaiguaje, Simon Lusitande Yaiguaje, Armando Wilfrido Piaguaje Payaguaje, and Angel Justino Piaguage Lucitante.

Andrew Woods, Laura J. Garr, and H5 were respondents in the district court.

CORPORATE DISCLOSURE STATEMENT

No publicly held corporation owns 10% or more of any petitioner's stock. Nor is any petitioner a subsidiary of any parent company.

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INTRODUCTION

When a court in a foreign country issues a judgment ordering one party to pay money to another party, that judgment is not self-executing. If the loser refuses to pay and has no assets in that country, the winner can collect only by going to a country where the loser has assets and filing an action to enforce the judgment. The loser can then defend against that enforcement action by arguing, for example, that the judgment was fraudulently obtained or rendered by a biased judiciary. And the court can either enforce the judgment or decline—no more.

This established international framework balances two competing considerations: protecting the losing party's due-process rights, on the one hand, and respecting the legal systems of other sovereigns, on the other. It does so by ensuring that any challenge to a foreign money judgment is raised only as a *defense*—when a court is being asked to resolve an actual case or controversy (whether to make the loser pay) and thus has no choice but to pass on an issue affecting foreign relations.

Were it otherwise—that is, if litigation losers could preemptively thwart enforcement by collaterally attacking the judgment in their chosen forum—the consequences would be intolerable. Such a regime would unnecessarily provoke friction between legal systems by encouraging preemptive challenges to the legitimacy of foreign judgments, without actually resolving the dispute between the parties. Nothing would be gained by permitting an advisory opinion of that sort. If even one jurisdiction were to do so, it would become a magnet for litigation losers from all over the globe. For this reason, no U.S. court has ever allowed a preemptive collateral attack on a foreign money judgment.

Until now. The Second Circuit's decision in this case marks the first time in history that any circuit has al-

lowed a party that lost a foreign money judgment to bring its own action collaterally attacking that judgment here—absent any enforcement attempt—even though the loser has not paid any of the judgment to date. The Second Circuit held that Chevron could use RICO to preemptively attack a $9.5 billion Ecuadorian environmental judgment that Chevron has refused to pay. That holding is as wrong as it is unprecedented, and warrants review for two primary reasons.

First, a federal court lacks jurisdiction to grant equitable relief in a preemptive collateral attack, because the plaintiff has not paid any of the judgment, and will not do so unless some court decides to enforce it in the future—a contingency that may never come to pass. The Second Circuit's contrary holding (Pet. App. 84a-98a) conflicts with the decisions of other circuits, which have uniformly refused to permit preemptive attacks on foreign money judgments. And it contravenes this Court's Article III standing jurisprudence. If not set right, disgruntled litigants from around the world will flock to Manhattan to air their grievances and seek an advisory opinion by a judge in New York—forcing U.S. courts to sit as arbiters of the world's judiciaries, at grave cost to international comity and traditional limits on federal courts' jurisdiction.

Second, the Second Circuit allowed this attack based on a broad reading of RICO (Pet. App. 118a-124a), deepening a longstanding circuit split over whether civil RICO authorizes equitable relief. *See Scheidler v. Nat'l Org. for Women, Inc.*, 537 U.S. 393 (2003) (granting certiorari on the issue but deciding on other grounds). This case presents an ideal vehicle to finally resolve this persistent split, in a setting in which it has sweeping implications. If left standing, the decision below will authorize a new form of injunctive-relief-only RICO actions in which plaintiffs may seek juryless culpability

findings under federal criminal statutes. And it will allow RICO to be deployed against judgments issued by foreign nations, contrary to this Court's recent command that courts read RICO to avoid even the "potential for international friction" absent "clear direction from Congress." *RJR Nabisco v. European Cmty.*, 136 S. Ct. 2090, 2106-07 (2016).

OPINIONS BELOW

The Second Circuit's opinion is reported at 833 F.3d 74 and reproduced at 1a. The district court's decision is reported at 974 F. Supp. 2d 362 and reproduced at 148a.

JURISDICTION

The court of appeals entered judgment on August 8, 2016. App. 678a. On October 27, 2016, the court of appeals denied a timely petition for rehearing en banc. App. 684a. On January 12, 2017, Justice Ginsburg granted an extension of the time to file a petition for certiorari until March 27, 2017. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2 of the U.S. Constitution provides: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States," and to certain "controversies."

The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964, provides:

> (a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of

any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee[.]

STATEMENT

I. For two decades, Ecuadorian rainforest communities seek—and ultimately win—a judgment holding Chevron responsible for dumping billions of gallons of toxic waste into the Amazon.

A. During the 1970s and 80s, Chevron (formerly Texaco) drilled for oil in a large swath of the Ecuadorian rainforest. It dug hundreds of unlined waste pits into the jungle floor and filled them with billions of gallons of toxic drill-hole waste. As the company's internal memoranda later revealed, Chevron knew at the time that dumping waste directly into the rainforest "cannot be considered 'good practice.'" CA2 App. A-1910. Yet it did so anyway—solely because of "cost" (less than $5 mil-

lion). *Id.* A-2072-73. Throughout the two-decade period, Chevron also directed its employees to "destroy[]" all records and not report any oil spills that had not already "attract[ed] the attention of [the] press and/or regulatory authorities." *Id.* A-2071.

As Chevron was winding down its Ecuadorian operations in the early 1990s, it commissioned a study that showed widespread environmental contamination (at 97% of the sites tested) and numerous violations of Ecuadorian law. *Id.* A-2306, A-3182-85. The firm that conducted the study recommended a thorough investigation. *Id.* A-3187. But Chevron refused. Instead, it fled the country, leaving behind hundreds of open pits full of toxic sludge. *Id.* A-2333. The harm Chevron inflicted on the surrounding Amazonian communities continues even to this day, and can "be measured in cancer deaths, miscarriages, birth defects, dead livestock, sick fish, and the near-extinction of several tribes." Keefe, *Reversal of Fortune*, The New Yorker, Jan. 9, 2012, http://bit.ly/1Aohupp.

B. In 1993, just after the company left Ecuador, the affected communities sued Chevron in New York. *See Aguinda v. Texaco*, 945 F. Supp. 626 (S.D.N.Y. 1996). For the next nine years, Chevron fought vigorously to have the case dismissed on *forum non conveniens* grounds, praising Ecuador's judiciary as impartial. It eventually succeeded, but only after the Second Circuit required that Chevron submit to jurisdiction in Ecuador. Chevron also agreed that "the sole reserved route" for any "challenge" to a "final judgment" was "New York's Recognition of Foreign Country Money Judgments Act"—a promise that became "enforceable against Chevron in … any future proceedings between the parties." *Republic of Ecuador v. Chevron*, 638 F.3d 384, 389 n.4, 399 (2d Cir. 2011).

After the plaintiffs refiled suit in Ecuador, Chevron immediately challenged jurisdiction and began a sustained campaign to delay or corrupt the proceedings. It did so by manipulating testing sites, falsifying military reports to forestall pit inspections, clogging the courts with reams of repetitive filings, and forcing the recusal of judges who were either unable to keep up with Chevron's document dumps or were falsely accused by Chevron of taking bribes. One false bribery story backfired so spectacularly that—after secret recordings surfaced implicating Chevron in misconduct—the company paid off the fake informant with millions of dollars, prompting him to remark: "crime does pay." CA2 App. A-1553.

As evidence of its willful pollution mounted, Chevron shifted gears, adopting a strategy to collaterally attack the litigation wherever (and however) possible. Its message: "We can't let little countries screw around with big companies like this." Keefe, *Reversal of Fortune*. "We're going to fight this until Hell freezes over," a spokesman declared. "And then we'll fight it out on the ice." *Id.*

Chevron's opening gambit was to file an arbitration against Ecuador and then offer to dismiss it in exchange for the government's "intervention" in the litigation. *Republic of Ecuador v. ChevronTexaco*, 499 F. Supp. 2d 452 (S.D.N.Y. 2007), *aff'd*, 269 F. App'x 124 (2d Cir. 2008). After that failed, Chevron then initiated another arbitration against Ecuador, this time under the U.S.-Ecuador Bilateral Investment Treaty (BIT), seeking a declaration that any prospective judgment is unenforceable, plus an award of fees, costs, and damages. *Republic of Ecuador*, 638 F.3d at 390. This BIT proceeding is ongoing, and Chevron is pressing the same allegations it has made in this case, while seeking broader relief.

Around this time, Chevron also began to train its focus on Steven Donziger—an American lawyer who had

emerged as a lead spokesman for the affected communities. In the mid-to-late 2000s, hoping to bring attention to their plight, he gave an acclaimed American filmmaker substantial behind-the-scenes access to make a documentary about the case. When Chevron saw the footage, it sensed an opportunity. It would now (in its words) "demonize Donziger." CA2 App. CA-9-10. Drawing on its bottomless war chest, Chevron redirected the focus from its own wrongdoing in the Amazon to false allegations of corruption against Donziger and other advocates, the Ecuadorian trial judge, and every branch of Ecuador's government.

C. With this new strategy in place, Chevron began using a little-known U.S. statute permitting discovery "for use" in foreign litigation, 28 U.S.C. § 1782, in a preemptive effort to show that "the judicial process in Ecuador is corrupt." *In re Chevron*, 633 F.3d 153, 158-59 (3d Cir. 2011). Chevron initiated "an extraordinary series of at least 25 requests to obtain discovery from at least 30 different parties" in over a dozen federal courts, *id.* at 159—"an effort the Third Circuit aptly characterized as 'unique in the annals of American judicial history,'" *Chevron v. Naranjo*, 667 F.3d 232, 236 (2d Cir. 2012). As Chevron CEO John Watson would later say: The litigation "will end when the plaintiffs' lawyers give up." Helman, *Chevron's Expensive Problems*, Forbes, Feb. 13, 2013, http://onforb.es/1fFj3nk. Two of these proceedings—against the filmmaker and Donziger—gave Chevron hundreds of hours of raw documentary footage, two decades' worth of litigation files, and Donziger's personal diary. Judge Kaplan presided over both.

In the first proceeding (against the filmmaker), the court declined a request to wait until the Ecuadorian court ruled on an application asking whether it would be "receptive to 1782 discovery in the United States"—the purpose of the statute. CA2 App. A-7518. The court did

not hide why: "Believe me, if this were the High Court in London, you can be sure I'd wait." *Id.* A-7519. In the second proceeding, the court ordered Donziger to produce "each and every document responsive to the subpoenas" regardless of "any privilege" that might apply. *In re Application of Chevron*, 749 F. Supp. 2d 170, 184-85, 188 (S.D.N.Y. 2010). As Judge Kaplan put it: "The subpoenas called for the universe. And I said give them the universe." Dist. Ct. Dkt. 287-5. He also referred to Donziger's litigation strategy as "a giant game" in which "Mr. Donziger is trying to become the next big thing in fixing the balance of payments deficit." *Id.*

D. In February 2011—after eight years of litigation and a 215,000-page court record—the Ecuadorian trial court entered a provisional judgment against Chevron. The court declined to consider two reports from the plaintiffs' experts that Chevron claimed were improperly prepared, and instead relied on test results by Chevron's own experts—and Chevron's own admissions—to support its conclusions. The court calculated the actual damages at $8.646 billion and assessed the same amount in punitive damages—none of which Chevron has paid.

At this point, Chevron had two options in Ecuador: It could seek "*de novo* review" of "questions both of fact and of law" on appeal. *Naranjo*, 667 F.3d at 237. Or it could file a separate action under the Collusion Prosecution Act within five years, seeking to nullify the provisional judgment as tainted by fraud. Chevron deliberately chose to never avail itself of this second option—Ecuador's exclusive remedy for aggrieved parties alleging that a proceeding was collusive or fraudulent.

Chevron opted only to appeal. In January 2012, a three-judge appellate court issued a modified, substitute judgment based on its assessment of the record "as a whole." CA2 App. A-464. After "evaluating the evidence

collectively," the court found that it amply supported the judgment. *Id.* The court declined to "make a pronouncement on the interminable and reciprocal accusations" of misconduct because they "could not affect the final result of the lawsuit." *Id.* A-492.

Chevron then sought review from Ecuador's highest non-constitutional court, which affirmed the judgment but vacated the punitive-damages award in late 2013. *Id.* A-3449. It explained that Chevron's allegations of fraud in the trial court did not affect the appeal because the intermediate court had undertaken "a correct weighing of the evidence in accordance with legal standards," so the "decision sought to be annulled here is the one rendered by" *that* court—"not the one issued by a trial court." *Id.* A-3548, A-3065. The high court also explained that it could not consider Chevron's fraud claim because the exclusive remedy lay "under the Collusion Prosecution Act." *Id.* A-3543. The case is now before the Constitutional Tribunal of Ecuador, which is considering Chevron's due-process arguments.

II. Chevron brings this action as a collateral, preemptive attack on enforcement of the Ecuadorian judgment.

A. Rather than exhausting its remedies in Ecuador or awaiting the completion of the BIT arbitration, Chevron filed this case in early 2011 seeking to thwart enforcement of the not-yet-entered judgment. It asserted claims under RICO, New York common law, and the Declaratory Judgment Act (DJA). Dist. Ct. Dkt. 1, at 119-44. Judge Kaplan accepted the case as related and, without holding an evidentiary hearing, swiftly entered an injunction purporting to nullify the judgment (issued several weeks after the case was filed) and block any attempt to enforce it outside Ecuador. *Chevron v. Donziger*, 768 F. Supp. 2d 581 (S.D.N.Y. 2011). The court

determined that the judgment "'was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law'"—the opposite of what *Aguinda* held in the 1990s. *Id.* at 633, 636. The court based this conclusion almost entirely on a report submitted by an avowed political opponent of Ecuador's president, from which the court thought it "reasonable to infer" that the entire judiciary was corrupt. *Id.* at 634.

The district court was transparent about its intentions: "This Court's judgment should finally determine the controversy worldwide" because a "decision by this Court holding that the judgment is unenforceable and enjoining its enforcement would bind all of the parties that potentially could enforce the judgment and therefore should foreclose even the filing of foreign enforcement suits." *Id.* at 638, 647. And even if not, the court continued, the decision "likely would be recognized as sufficiently persuasive authority—if not binding on the parties—to dispose of the question of enforceability in the foreign fora." *Id.* at 647.

B. The Second Circuit reversed. It explained that New York's "Recognition Act and the common-law principles it encapsulates are motivated by an effort to *provide for* the enforcement of foreign judgments, not to prevent them." *Naranjo*, 667 F.3d at 241. They allow a party who lost a foreign money judgment to raise "affirmative defenses" (including fraud) to an enforcement action, but "they do not create an affirmative cause of action to declare foreign judgments void and enjoin their enforcement." *Id.* at 240. The court also emphasized the "grave[]" affront to international comity that would result from a contrary interpretation. *Id.* at 244. Allowing judgment-debtors to affirmatively obtain a preemptive "advisory opinion," the court explained, would "encourage efforts by parties to seek a res judicata ad-

vantage by litigating issues in New York in order to obtain advantage in connection with potential enforcement efforts in other countries," thus "provok[ing] extensive friction between legal systems." *Id.* at 246. The court vacated the "radical" injunction and ordered the district court to dismiss Chevron's DJA claim (the only claim over which it had jurisdiction because the district court had severed it) "in its entirety." *Id.* at 244, 247.

Chevron then filed a petition for certiorari, asking this Court to grant review because this is "an exceptionally high-profile case involving the largest judgment ever entered against a U.S. company by a foreign court." Pet. for Cert. at 2, *Chevron v. Naranjo*, No. 11-1428 (May 5, 2012). Chevron stressed "the importance of New York as a jurisdiction for commercial litigation," and took the position that allowing preemptive collateral attacks on foreign judgments was a "critical tool" for transnational companies "across the spectrum of industries," which "increasingly face lawsuits abroad in countries with corrupt or weak judicial systems." *Id.* at 2, 31, 33. After relisting the petition, this Court denied review.

III. After a bench trial, the district court issues a decision preemptively attacking the Ecuadorian judgment, and the Second Circuit affirms.

A. After *Naranjo*, Chevron pressed forward with its claims under RICO and the common law, while the district court excluded all evidence of environmental contamination. But this time, Chevron did not seek a global anti-enforcement injunction. Instead, it sought billions of dollars in money damages (even though it had not paid any of the judgment). In addition, Chevron asked for an injunction against potential future enforcement actions only in the U.S. (even though none has ever been brought), as well as an order barring the three defendants from collecting on any potential future enforcement

of the judgment (which would happen only if a foreign court found that the judgment was enforceable).

On the eve of trial—faced with the prospect of having a jury evaluate its evidence—Chevron dropped its request for billions in damages, leaving only its request for preemptive equitable relief. Chevron told the court that this relief was necessary so that it could make foreign courts aware of Judge Kaplan's findings, which Chevron hoped would persuade them to decline to enforce the judgment in the future. Chevron was explicit about this strategy: "Chevron intends to ask any foreign courts in which Defendants have initiated recognition or enforcement actions to consider this Court's injunction and the findings supporting it. On that basis Chevron believes it is likely that the foreign court would decline to award Defendants any relief, but any effect accorded to this Court's order would be the decision of the foreign court." Dist. Ct. Dkt. 1847, at 343.

Although Chevron contended that it had standing to seek such relief, it did not explain how this relief would remedy a current or certainly impending injury. To the contrary, Chevron confidently asserted that "[n]o tribunal with respect for the rule of law will ever enforce the Lago Agrio judgment." *Id.* at 340.

B. Chevron's star witness at trial was Alberto Guerra, a former Ecuadorian judge who contacted Chevron in 2012—after the Second Circuit's decision in *Naranjo*—with "a story to tell" about "the drafting of the [trial-court] judgment." CA2 App. A-2916. Guerra was then making $500 a month in Ecuador and had no savings. *Id.* A-2902-03, A-3003. Upon meeting Chevron's representatives, he said that he received $300,000 from the Ecuadorian plaintiffs' lawyers to help ghostwrite the trial judge's opinion. *Id.* CA-96, 115, 134, 170, 173. He said his story was "worth a million dollars." *Id.* CA-118.

When Chevron representatives next met with Guerra, they brought a bag filled with $20,000 in cash. *Id.* A-2769. Although this was 40 times his monthly income, he was unimpressed, calling it "very little" and asking: "Couldn't you add a few zeros?" *Id.*; A-2778. "[M]oney talks," he said, but "gold screams." *Id.* A-2778. A few minutes later, an investigator explained that Chevron wanted photocopies of Guerra's day planners and access to his email accounts, prompting this exchange:

> GUERRA: "[A]ctually, actually … I have some attachment to that, right? All the information I have there.
>
> ANDRÉS RIVERO: That can be fixed.
>
> INVESTIGATOR 5: You will become more attached to what you can buy with the money we pay you. [LAUGHS]
>
> RIVERO: Yes, sure, true, true.
>
> GUERRA: It helps, but, but it's so little.
>
> …
>
> INVESTIGATOR 5: "[W]e'll make a deal on the way to your house. This is what we have in cash. Between now and afternoon's end we'll have managed to have a little more. How much is it?
>
> RIVERO: How much? Not when. I said how much. [LAUGHS]
>
> GUERRA: Make it fifty thousand.

Id. A-2784.

Chevron ended up paying Guerra much more than fifty thousand. As it did with the previous "informant" who claimed to have a bribery story, Chevron has paid Guerra hundreds of thousands of dollars in cash and over a million in benefits. *Id.* A-770-82, A-801-04, A-1370.

Once Chevron started paying him, Guerra began changing his story. He admitted that he was not in fact promised $300,000 to write the judgment, calling this "an exaggeration [on his] part towards Chevron's people in order to secure a better position for [himself]." *Id.* A-816. By "exaggeration," he meant: "It was not true." *Id.*; A-3002, A-3007. He also changed his story of how he wrote the judgment after no corroborating evidence was found. He said that he had lied "for the purpose of bettering or improving my position." *Id.* A-813. Worried by these lies and inconsistencies, Chevron had its lawyers meet with him 53 times before trial to prepare his testimony.

C. After trial, the district court issued a 586-page decision ruling for Chevron across the board and crediting Guerra's bribery tale. The court determined that it had jurisdiction to entertain a collateral attack on a foreign money judgment, which was permissible under RICO. The court also authorized a common-law claim "for relief from a judgment" (a claim that the court added *sua sponte* after trial). The court issued an injunction barring any enforcement action in the U.S. and ordering the defendants to pay Chevron in the event that they are able to collect on the judgment.

Following the court's decision, Chevron moved for $32 million in attorneys' fees from Donziger, arguing that the fees are mandatory under RICO. Dist. Ct. Dkt. 1889 & 1890. The district court deferred consideration of fees pending appeal.

D. This time on appeal, the Second Circuit affirmed. Although (as one panel member remarked at argument) there has never been a "case where there's been a collateral attack on a foreign state's [money] judgment," CA2 Tr. 42–43, the panel let this case be the first.

It began by finding that the district court had jurisdiction to entertain a preemptive collateral attack on a

foreign money judgment. The panel treated this as a question of mootness rather than standing, and held that Chevron's requested relief redressed an actual injury because it "provide[d] some relief." Pet. App. 98a. The court did not elaborate. Elsewhere, it conceded that the relief "is directed at only three persons," and "no part of it purports to limit in any way the conduct of any of the [Lago Agrio Plaintiffs]—the actual judgment creditors—other than the two LAP Representatives. It does not invalidate the Lago Agrio Judgment; and it does not prohibit any of the judgment creditors—including the LAP Representatives—from taking action to enforce the Judgment outside of the United States." *Id.* at 131a-32a. The court did not attempt to reconcile this recognition with its unexplained statement that the relief redresses an actual injury to Chevron.

Turning to the propriety of granting equitable relief in a private RICO action, the court acknowledged that the circuits were split on this question. "The Seventh Circuit has found such relief authorized," but "the Ninth Circuit has found it unauthorized," while "[o]ther Circuits that have addressed the issue obiter have expressed divergent views." *Id.* at 118a. The panel sided with the Seventh Circuit, holding that "a federal court is authorized to grant equitable relief to a private [RICO] plaintiff." *Id.* The panel further held that it was authorized to do so even without a claim for money damages, and affirmed the district court's injunction under RICO and the common law.

E. Since the Second Circuit's decision, there have been important developments in two parallel proceedings. *First*, in the BIT arbitration brought by Chevron two years before this case, Guerra admitted that he lied on the witness stand in New York and in his sworn witness statement. CA2 Dkt. 461-1, at 6-10. And additional evidence came to light that further disproves his bribery

account, including contemporaneous exculpatory emails and computer forensics. *Id.* The forensic analysis showed that the judgment was created on the authoring judge's computer, and was edited and saved hundreds of times on that computer in the four months leading up to its issuance—contradicting Guerra's account below. *Id.* In his arbitral testimony, Guerra also conceded the lack of evidence corroborating his bribery allegation: there was no draft judgment; no emails about the judgment on his computer (none of the lawyers are even listed as contacts in his email account); no written communication corroborating the story; no evidence of any payment to the judge regarding the judgment; no evidence that Guerra edited the judgment; no records showing communication between the plaintiffs' lawyers and Guerra; and no payments made to Guerra that substantiate his allegation of bribery or ghostwriting. *Id.*

Second, in an enforcement action brought in Canada—which the Canadian Supreme Court has authorized to proceed—Chevron is now arguing that the enforcement court is "bound by [Judge Kaplan's] factual findings." It has made similar arguments in numerous other proceedings, including the BIT arbitration, ongoing § 1782 actions in the United States, enforcement courts in Brazil and Argentina, and related litigation in the Hague and Gibraltar.

REASONS FOR GRANTING THE PETITION

I. The Second Circuit's unprecedented authorization of a preemptive collateral attack on a foreign country's money judgment warrants this Court's intervention.

The Second Circuit's decision is unprecedented. By authorizing a preemptive collateral attack on a foreign country's money judgment—rather than dismissing the case for lack of jurisdiction—the decision sets federal

courts down a path that they have never gone. It breaks sharply with the decisions of other courts that have confronted (and uniformly rejected) such challenges. And it defies this Court's Article III standing jurisprudence, which requires a plaintiff to show that its requested relief would likely redress a current or "certainly impending" injury—not a speculative one. *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1150 (2013). The only way Chevron's requested relief would redress an actual injury is if a foreign court were to enforce the judgment in the future, and "[i]t is just not possible for a litigant to prove in advance that the judicial system will lead to any particular result in [a given] case." *Id.*

The consequences of leaving in place such an erroneous, outlier decision would be severe. The Second Circuit itself recognized this danger in a previous appeal in this ligation, remarking: "If such an advisory opinion were available, any losing party in litigation anywhere in the world with assets in New York could seek to litigate the validity of the foreign judgment" in federal court in Manhattan. *Naranjo*, 667 F.3d at 246. Absent this Court's intervention, that concern will become reality. This Court should grant certiorari and make clear that Article III does not permit this result.

A. Until this case, no U.S. court had ever authorized a preemptive collateral attack on a money judgment issued by a foreign court. The notion that such an attack would be permissible is in fact so novel—and so at war with the settled international judgment-enforcement framework—that only a few courts in American history have even been *asked* to grant such relief. And they universally rejected those requests.

Perhaps the earliest example is *Harrison v. Triplex Gold Mines*, 33 F.2d 667, 672 (1st Cir. 1929)—a case that is on all fours with this one. There, as here, the plaintiffs

lost a foreign money judgment and then sued the winner in the United States, "attempt[ing] to impeach collaterally [the] judgment[]" on the ground that it "had been secured by fraud." *Id.* at 670. The "main object" of the suit was the same as Chevron's: "to prevent the defendants herein from receiving the benefit of the litigation so long contested" abroad. *Id.* at 672. The plaintiffs asked the U.S. court to declare the judgment "void" (much like Chevron did in *Naranjo*) and to issue *in personam* relief against the judgment creditors in the form of an anti-enforcement injunction and damages (much like Chevron did here, in the form of a U.S. anti-enforcement injunction and constructive trust). *Id.* at 668, 670.

The First Circuit refused. It explained that the case was "distinguish[able]" from all other cases presenting the legitimacy of a foreign money judgment for one key reason: "the successful litigants in the [foreign] action are not seeking the aid of this court to *enforce* any rights or decrees obtained there." *Id.* at 672 (emphasis added). Instead, the *un*successful litigants were seeking to enlist the court in a preemptive effort to *thwart* the judgment's enforcement. The First Circuit observed that "[n]o cases have been cited and none have been found which would sustain the jurisdiction of this court to declare null and void the orders and decrees of a court of general jurisdiction in [a foreign country]" absent any enforcement attempt. *Id.* Then, turning to the *in personam* relief sought against the defendants, the court explained: "This is only another way of attempting to reach the same result as that already discussed"—preemptively thwarting the judgment's enforcement. *Id.* The court refused to allow the plaintiffs to inject the U.S. courts into the fray and dismissed the case for lack of "jurisdiction," holding: "We cannot lend ourselves to such a proceeding." *Id.*

More recently, the Seventh Circuit confronted a similar effort to preemptively attack a foreign judgment, and it reached the same result. *See Basic v. Fitzroy Eng'g, Ltd.*, 949 F. Supp. 1333 (N.D. Ill. 1996), *aff'd*, 132 F.3d 36 (7th Cir. 1997) (adopting district court's opinion). The court in *Basic* dismissed a preemptive attack on a New Zealand judgment for lack of jurisdiction, holding that "there is no immediate controversy between the parties since it is not certain that Basic will ever be compelled to pay any judgment sought by Fitzroy in New Zealand." *Id.* at 1338 (brackets removed). The court was clear on this score: "The Constitution does not allow [federal courts] to issue advisory opinions" based on "speculation" about future collection of judgments that have never been enforced. *Id.* The "only effect" of granting such speculative relief, the court emphasized, "would be on Fitzroy's ability to enforce the foreign judgment in the United States"—a contingency that might never materialize. *Id.* And if it did, "Basic will have the opportunity to argue the same issues raised in this Complaint to the federal district judge to which any enforcement proceeding is assigned"—the usual route for contesting a judgment. *Id.*

The Second Circuit's decision cannot be reconciled with these cases. The court held that it had jurisdiction to "award Chevron relief from the Lago Agrio Judgment" even though (a) Chevron has not paid *any* of the judgment to date; (b) there has been *no* enforcement action in the United States; and (c) the relief Chevron obtained "is directed at only three persons," "does not invalidate the Lago Agrio Judgment," and does not bar *anyone* "from taking action to enforce the Judgment outside of the United States." Pet. App. 80a, 131a-32a. That is exactly the kind of "advisory opinion" that other courts have held that they lack jurisdiction to issue. And although the Second Circuit found that this relief was

necessary to prevent Chevron from "incur[ring] sizeable legal fees" in defending itself in foreign enforcement actions, *id.* at 130a, other circuits have held the opposite. The D.C. Circuit, for example, in an opinion joined by then-Judge Roberts, held that when the plaintiff's requested relief "would not do anything to redress the injury [it] suffers as a result of having to defend itself" in foreign litigation—because the plaintiff, "perhaps wisely, is not seeking to enjoin its adversary from pursuing litigation abroad"—"the costs and burdens" of responding to foreign litigation will not create Article III standing. *Raytheon Co. v. Ashborn Agencies, Ltd.*, 372 F.3d 451, 454 (D.C. Cir. 2004).

The Second Circuit's authorization of preemptive relief from a foreign money judgment is such a radical departure from settled law that it cannot even be reconciled with that court's earlier opinion in this very litigation. In *Naranjo*, a previous panel held that it was not authorized "to declare a foreign judgment unenforceable on the preemptive suit of a putative judgment-debtor." 667 F.3d at 240. It did so because the "overall enforcement-facilitation framework" exists "to *provide for* the enforcement of foreign judgments, not to prevent them." *Id.* at 241. Allowing a preemptive attack "would turn that framework on its head," and "would unquestionably provoke extensive friction between legal systems by encouraging challenges to the legitimacy of foreign courts in cases in which the enforceability of the foreign judgment might otherwise never be presented in New York." *Id.* at 241, 246. Nothing "is to be gained" by allowing "such an advisory opinion." *Id.* at 246. If a court were to do so, the panel explained, it would only invite forum shopping by disappointed litigants hoping "to obtain advantage in connection with potential enforcement efforts in other countries"—Chevron's own stated goal in bringing this case. *Id.* And it would do so while resolving

only the hypothetical "question of enforcement in New York—a question that in the ordinary course might never arise at all." *Id.* The panel "thus agree[d] with the court in *Basic*" that Chevron had "a far better remedy": presenting its defense in enforcement proceedings. *Id.*

By holding that it has jurisdiction to grant relief that does not even purport to prevent those proceedings, the Second Circuit has diverged from its prior approach and brought itself into conflict with the settled understanding of other courts. This Court should step in.

B. The Second Circuit's holding also contradicts this Court's precedents. Standing is an "essential and unchanging" requirement of every federal case. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). It demands that the plaintiff—"for each claim" and "form of relief sought"—establish an actual injury that is "fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342, 352 (2006). These three elements—injury, causation, and redressability—make up the "irreducible constitutional minimum of standing." *Lujan*, 504 U.S. at 560. And like "any other matter on which the plaintiff bears the burden of proof," the plaintiff must establish these elements "with the manner and degree of evidence required at the successive stages of the litigation." *Id.* at 561. If the plaintiff fails to prove them "at trial," *id.*, the "dispute is not a proper case or controversy" and the court has "no business deciding it," *DaimlerChrysler*, 547 U.S. at 341.

The Second Circuit held that Chevron's requested relief—an injunction barring future U.S. enforcement actions, and a constructive trust of any money that the defendants would receive should they ever collect on the judgment—was likely to redress an actual injury. Pet. App. 98a. But neither form of relief creates jurisdiction

here. As to the injunction: It does not redress a current or "certainly impending" injury because there has been *no* enforcement action in the United States. *Clapper*, 133 S. Ct. at 1150. And "[t]here is no indication that [the judgment-creditors] will select New York"—or anywhere else in this country—"as one of the jurisdictions in which they will undertake enforcement efforts." *Naranjo*, 667 F.3d at 246.

As to the constructive trust: The only way this relief will remedy an actual injury is if (1) the Constitutional Tribunal of Ecuador rejects Chevron's due-process arguments and (2) an enforcement court in a different country (like Canada) does the same and enforces the judgment. *See Naranjo*, 667 F.3d at 246 (explaining that the only way "any adverse consequence may befall Chevron" is if a court enforces the judgment). Such "guesswork as to how independent decisionmakers will exercise their judgment" does not rise to the level of a "certainly impending" injury. *Clapper*, 133 S. Ct. at 1147, 1150; *see id.* at 1150 n.5 (holding that plaintiffs may not base standing "on speculation about 'the unfettered choices made by independent actors not before the court'"). The district court itself recognized as much in holding that Chevron's "unjust enrichment claim is premature at best" because the "Defendants have not recovered on the Judgment to date." *Chevron v. Donziger*, 871 F. Supp. 2d 229, 259 (S.D.N.Y. 2012). That same recognition precludes a finding of jurisdiction here. Put simply: "it is just not possible for a litigant to prove in advance that the judicial system will lead to any particular result in [a given] case." *Clapper*, 133 S. Ct. at 1150. And while Chevron "can only speculate" as to what a foreign enforcement court will do in the future, *id.*, the speculation it offered below cuts *against* standing: "No tribunal with respect for the rule of law will ever enforce the Lago Agrio judgment." Dist. Ct. Dkt. 1847, at 340.

The Second Circuit compounded its error by holding that the jurisdictional question is one of mootness, not standing (although it determined that it had jurisdiction even if "viewed as [a question of] standing"). Pet. App. 84a, 91a. On the Second Circuit's view, Chevron *never* had to show that it had standing to pursue the relief it requested at trial because certain relief that it no longer requested—billions of dollars in damages and a global anti-enforcement injunction—*would have* given it standing. Instead, the defendants had to establish mootness, a "heavy" burden that requires showing that no effectual relief is possible. *Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). That is incorrect. It is the plaintiff's "burden to prove their standing by pointing to specific facts, not the [defendants'] burden to disprove standing." *Clapper*, 133 S. Ct. at 1149 n.4 (citation omitted). And "standing is not dispensed in gross." *DaimlerChrysler*, 547 U.S. at 353. So if a plaintiff "seeks new relief," it "must show (and the District Court should have ensured) that [it] has standing to pursue it." *Salazar v. Buono*, 559 U.S. 700, 731 (2010) (Scalia, J., concurring). Any other rule would allow a plaintiff to "sidestep Article III's requirements" by playing bait-and-switch with its requested relief. *Id.*

By loosening Article III's restraints, the Second Circuit's decision invites "any losing party in litigation anywhere in the world with assets in New York" to seek preemptive relief in federal court. *Naranjo*, 667 F.3d at 246; *see* Barrett, *Chevron's Pollution Victory Opens Door for Companies to Shirk Foreign Verdicts*, Bloomberg Businessweek, Aug. 9, 2016, http://bloom.bg/2bqsUXN. That would transform federal courts from Article III tribunals into worldwide fact-finding commissions—a source of amicus briefs, based on testimony from handsomely paid witnesses, for use on some distant shore. This Court should not permit that result.

II. The Second Circuit deepened an existing circuit split over whether private parties may bring RICO actions for equitable relief, and this case presents an ideal vehicle to resolve it.

A. The Second Circuit's decision to allow Chevron's preemptive collateral attack also breaks new ground on another question of exceptional importance. As the Second Circuit acknowledged, the circuits were already squarely divided over "whether RICO authorizes a court to award equitable relief to a private plaintiff." Pet. App. 119a; *compare Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1084 (9th Cir. 1986) (holding that equitable relief is "not available to a private party in a civil RICO action"), *with Nat'l Org. for Women, Inc. v. Scheidler*, 267 F.3d 687, 696, 700 (7th Cir. 2001) (expressly disagreeing with the Ninth Circuit, holding that "RICO authorized the private plaintiffs here to seek injunctive relief").

The Second Circuit unambiguously took sides on this split, and did so "largely for the reasons stated by the Seventh Circuit." Pet. App. 119a. Even before the Second Circuit weighed in, the question was certworthy. In *Scheidler v. National Organization for Women, Inc.*, 537 U.S. 393, 397 (2003), this Court "granted certiorari" to resolve the split and decide "whether respondents, as private litigants, may obtain injunctive relief in a civil action" under RICO. But because the Court held that the RICO claim failed for other reasons, it "reverse[d] without reaching the question of the availability of private injunctive relief under § 1964(c) of RICO." *Id.* The issue remains unresolved. *See RJR Nabisco*, 136 S. Ct. at 2111 n.13 ("This Court has never decided whether equitable relief is available to private RICO plaintiffs … and we express no opinion on the issue today.").

The Second Circuit's decision not only tees up the question left unresolved in *Scheidler*, but also unsettles the post-*Scheidler* consensus that equitable relief is unavailable to private RICO plaintiffs. *See* Rakoff, *RICO: Civil and Criminal Law and Strategy* § 7.02[2] (2014) ("Most courts have held that injunctive relief is unavailable to private litigants under RICO."). Until the decision below, the Seventh Circuit was the only circuit to permit such relief under RICO, and several circuits had expressed doubt that Congress authorized it.[1] Even the Second Circuit had twice strongly suggested that, were it to squarely decide the question, it would agree with the Ninth Circuit.[2]

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[1] *See, e.g., Wheeling-Pittsburgh Steel Corp. v. Mitsui & Co., Inc.*, 221 F.3d 924, 927 n.2 (6th Cir. 2000) ("[O]nly treble damages, attorneys' fees and costs are afforded to private parties under RICO."); *Johnson v. Collins Entm't Co., Inc.*, 199 F.3d 710, 726 (4th Cir. 1999) (expressing "substantial doubt whether RICO grants private parties … a cause of action for equitable relief," which is "especially acute in light of the fact that Congress has declined to authorize injunctive remedies for private parties"); *Lincoln House, Inc. v. Dupre*, 903 F.2d 845, 848 (1st Cir. 1990) ("[I]t is not clear whether injunctive or other equitable relief is available at all in private civil RICO actions."); *In re Fredeman*, 843 F.2d 821, 830 (5th Cir. 1988) ("Congress indeed had several opportunities to give express authorization to private injunctive actions but chose not to do so, apparently because it hesitated in the face of the ramifications of that remedy."); *Dan River, Inc. v. Icahn*, 701 F.2d 278, 290 (4th Cir. 1983) (noting "substantial doubt whether RICO grants private parties … a cause of action for equitable relief").

[2] *See Sedima, S.P.R.L. v. Imrex Co.*, 741 F.2d 482, 489 n.20 (2d Cir. 1984), *rev'd on other grounds*, 473 U.S. 479 (stating that RICO "was not intended to provide private parties injunctive relief"); *Trane Co. v. O'Connor Sec.*, 718 F.2d 26, 28-29 (2d Cir. 1983) (expressing "serious doubt" about the "propriety of private party injunctive relief" under RICO).

B. Certiorari is also warranted because the Second Circuit's decision is wrong. RICO's civil-remedies provision grants district courts "jurisdiction to prevent and restrain violations" by issuing the full range of "appropriate orders" available to courts of equity. 18 U.S.C. § 1964(a). But it limits *who* can seek such equitable relief. The question of who may invoke subsection (a) is spelled out in the next paragraph, which authorizes only "[t]he Attorney General" to "institute proceedings under [the] section." *Id.* § 1964(b).

As Solicitor General Olson explained to this Court in *Scheidler*, "the sole authority to seek final and interim injunctive relief against racketeering activities and enterprises is given to the Attorney General." U.S. Br. at 7, *Scheidler*, *supra* (No. 01-1119). By contrast, the private right of action in subsection (c) does not refer to proceedings under the section at all; instead, it creates a separate procedure, allowing private plaintiffs to "sue … in any appropriate United States district court" for "damages." 18 U.S.C. § 1964(c).

The structure of RICO's civil-remedies section, and the linked nature of subsections (a) and (b), makes sense in light of the statute's development. The Senate bill that eventually became RICO included what later became §§ 1964(a) and (b), but contained no private right of action. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 486 (1985) ("The civil remedies in the bill passed by the Senate, S. 30, were limited to injunctive actions by the United States."). Subsections (a) and (b) mimicked—and still do—Section 4 of the Sherman Act, 15 U.S.C. § 4, which this Court had construed to authorize injunctive actions only by the government, not by private parties. *See Minnesota v. N. Sec. Co.*, 194 U.S. 48, 70-71 (1904). If Congress had intended a private RICO plaintiff to be able to obtain injunctive relief, it surely would have

avoided language that had previously been held by this Court not to permit such relief.

The private right of action—subsection (c)—was added only later, without changing the remainder of Section 1964, and was "modeled … on the civil-action provision of the federal antitrust laws, [Section] 4 of the Clayton Act." *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 267 (1992). And its model in the Clayton Act was understood to allow private actions only for damages—as this Court had previously construed it. *See Paine Lumber Co. v. Neal*, 244 U.S. 459, 471 (1917) ("[A] private person cannot maintain a suit for an injunction under [Section] 4.").

As this Court has itself observed, RICO's civil-remedies provision was "limited to injunctive actions by the United States," and a proposed "amendment that would have allowed private injunctive actions" was withdrawn because it was "greeted with some hostility." *Sedima*, 473 U.S. at 486-87.

Based on this language and history, most courts to address the question have correctly concluded that RICO's civil-damages provision means what it says: Plaintiffs are entitled to damages, not injunctions and other equitable relief. The Second Circuit, however, reasoned that equitable relief is proper because RICO does not expressly restrict it. Pet. App. 120a. It relied on a district court's inherent authority to enter appropriate relief in support of a judgment, *id.*—a theory adopted by Judge Rakoff in *Motorola Credit Corp. v. Uzan*, 202 F. Supp. 2d 239 (S.D.N.Y. 2002), *rev'd on other grounds*, 322 F.3d 130 (2d Cir. 2003). But a district court does not have unlimited authority to enter injunctions as it sees fit, unmoored from a valid cause of action. That would be an invitation for courts to enter orders in the absence of a concrete case or controversy—the definition of an advi-

sory opinion. Both the plain language of § 1964(c) and Article III's limitation on judicial power prohibit that result. "Federal courts cannot reach out to award remedies when the Constitution or laws of the United States do not support a cause of action." *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 74 (1992).

Thus, even assuming that a district court has inherent power to order equitable remedies ancillary to a RICO judgment, the court's authority to enter such relief must depend on the existence of a cause of action over which the court has jurisdiction—namely, RICO's private right of action for damages. That was the case in *Uzan*, which involved $2.7 billion in damages in addition to claimed equitable relief. 202 F. Supp. 2d at 242. Judge Rakoff's injunction in *Uzan* depended on the existence of those damages claims. *Id.* at 244 (holding that § 1964(c) provides "a private right of action for damages"). Indeed, Judge Rakoff has elsewhere repudiated the view that RICO authorizes injunctive relief in the absence of a damages claim. As his RICO treatise explains: "Civil RICO claims are only available where monetary relief is sought.… Thus, if the suit is in essence a claim … for injunctive relief, RICO will not be a suitable vehicle." Rakoff, *RICO* § 7.02[2].

C. Especially when taken together with its novel jurisdictional approach to preemptive attacks on foreign judgments, the Second Circuit's RICO holding cries out for this Court's review. The decision is troubling not only because it is irreconcilable with the statute's text and history, but also because it green-lights a new kind of attack on judgments issued by courts of sovereign foreign nations. *See* Barrett, *Chevron's Pollution Victory Opens Door for Companies to Shirk Foreign Verdicts* (observing that this decision creates a new pathway for collateral attacks and that "[t]he existence of a lower-court conflict over the RICO-injunction question would

argue for Supreme Court intervention"); *Second Circuit Upholds Equitable Relief from A Foreign Judgment Under RICO*, 130 Harv. L. Rev. 745, 746, 752 (2016) (observing that this decision not only "contributed to an existing split" but also "refashioned a statute designed to combat organized crime into a tool for preemptively challenging corrupt foreign judgments in federal court").

Just last year, this Court made clear that courts may not allow a "private civil remedy" under RICO in cases carrying the "potential for international friction" absent "clear direction from Congress." *RJR Nabisco*, 136 S. Ct. at 2106. The Second Circuit did just the opposite. Its authorization of preemptive attacks on foreign judgments under RICO does not merely create a *potential* for international friction—it will (as the Second Circuit itself previously acknowledged) "unquestionably provoke extensive friction." *Naranjo*, 667 F.3d at 246.

The Second Circuit's decision offers a "roadmap" to "enterprising judgment [] debtors" around the globe, and does so through a "surprising source"—"a racketeering statute designed for prosecuting organized crime at home." *Second Circuit Upholds Equitable Relief*, 130 Harv. L. Rev. at 750-51. Since its enactment in 1970, no other court has allowed RICO to be used to attack a foreign-country judgment (or any judgment, for that matter). *See, e.g., Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506, 511 (7th Cir. 1996) (affirming dismissal of case "'dressed up' as a claim for RICO damages" that "was, nevertheless, a collateral attack"); *Gulf Petro v. Nigerian Nat'l Petroleum*, 512 F.3d 742, 749 (5th Cir. 2008) (rejecting, as an impermissible collateral attack under RICO, a claim by an American oil company that bribery and corruption had tainted a foreign arbitral proceeding). Up to now, the circuits were in harmony: "[T]he remedies under RICO do not include setting aside a prior judgment" via "collateral attack." *Knight v.*

Mooring Capital Fund, 749 F.3d 1180, 1187 (10th Cir. 2014) (collecting cases).

It is no answer to point to personal-jurisdiction or extraterritoriality limitations. Given New York's role as the world center of law and finance, much hard-fought litigation, from Azerbaijan to Zimbabwe, will have some local nexus that can and will be exploited by litigation losers eager to take advantage of the Second Circuit's unique jurisprudence. *See* CA2 U.S. Chamber Br. 1-2 (given increased transnational litigation, "it would be a mistake to conclude" that similar litigation is "unlikely to recur").

This case thus presents an ideal vehicle to resolve the circuit split over equitable relief under RICO, in a context in which its practical importance is obvious. The propriety of Chevron's relief under RICO also has ongoing importance in this controversy because Chevron is seeking $32 million in attorneys' fees from Mr. Donziger—fees that it contends are mandatory given the RICO injunction. Dist. Ct. Dkt. 1889 & 1890. And because Chevron did not also seek damages under RICO, the question is starkly teed up. It cannot be sidestepped on the theory that the court has ancillary authority to award injunctive relief in what is already a proper suit for damages.

Indeed, even setting aside the implications for international relations, this feature of the decision is all the more reason to grant review now: It permits an entirely new form of injunctive-relief-only private RICO actions—allowing for juryless culpability determinations under a quasi-criminal statute—and in fact makes them easier to bring than a typical civil RICO case by eliminating the requirement that a plaintiff be able to point to a "clear and definite" economic injury that is actually "quantifiable." Pet. App. 124a (recognizing that any future harm to Chevron is "unsure").

Given RICO's sweeping breadth, it is imperative that this Court intervene now to prevent the danger Chief Justice Rehnquist warned about three decades ago—that RICO will inevitably be "used in ways that Congress never intended when it enacted the statute in 1970." Rehnquist, *Remarks of the Chief Justice*, 21 St. Mary's L.J. 5, 9 (1989). It would be hard to find a better illustration than this case.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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