No. 16-1178

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Second Circuit correctly held that the district court had jurisdiction to award equitable relief designed to prevent Petitioners from profiting from a judgment that was procured by fraud and bribery.

2. Whether the Racketeer Influenced and Corrupt Organizations Act permits federal courts to issue equitable relief to protect private plaintiffs from injury to their business or property caused by ongoing criminal activity.

RULE 29.6 STATEMENT

Respondent Chevron Corporation has no parent corporation and no publicly traded corporation owns 10% or more of its stock.

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BRIEF IN OPPOSITION

Respondent Chevron Corporation ("Chevron") submits this brief in opposition to the petition for a writ of certiorari filed by Steven Donziger, The Law Offices of Steven R. Donziger, Donziger & Associates, PLLC (collectively, "Donziger"), and Hugo Gerardo Camacho Naranjo ("Camacho," and together with Donziger, "Petitioners").

STATEMENT OF THE CASE

Following a seven-week trial, the district court found that Petitioner Steven Donziger injured Chevron through a pattern of racketeering and fraud in violation of civil RICO. The court also found that Chevron was entitled to equitable relief under New York common law preventing Donziger and two of his Ecuadorian clients from profiting from a fraudulently procured $9 billion Ecuadorian judgment. In a 485-page opinion, the court detailed how Donziger masterminded a multipronged plot, which Donziger's Ecuadorian clients repeatedly ratified, to extort and defraud Chevron out of billions of dollars. To prevent Petitioners from profiting from this scheme, the district court ordered equitable relief against Donziger and his two clients (one of whom is also a Petitioner here), precluding them from enforcing the Ecuadorian judgment in the United States. The court also established a constructive trust requiring Petitioners to turn over to Chevron any money they derived from the fraudulently procured judgment.

On appeal, Petitioners did not dispute the district court's factual findings that they bribed Ecuadorian officials to obtain the $9 billion judgment—which Donziger's team secretly ghostwrote for the issuing

judge—or that Donziger attempted to extend and conceal this scheme by lying to U.S. courts and tampering with witnesses in federal proceedings. Petitioners did not contest the district court's finding that Donziger attempted to extort a huge payoff from Chevron through an orchestrated pressure campaign premised on known falsehoods created and disseminated in the United States about the environmental conditions and litigation in Ecuador. Nor did Petitioners take issue with the district court's findings that Donziger violated numerous RICO predicate criminal statutes, or challenge the application of RICO as impermissibly extraterritorial. Instead, they argued that the district court lacked Article III jurisdiction because Chevron supposedly had not suffered any redressable injury, and Donziger also claimed that Chevron could not obtain equitable relief under the civil RICO statute. The Second Circuit rejected these and all other challenges, affirming the district court across the board.

Rather than grapple with the tremendous obstacles to securing a grant of certiorari, Petitioners try to change the subject. They lard their petition with unsupported, untrue, and irrelevant allegations that have no bearing on the issues decided below, much less the issues they ask this Court to address. Although Chevron vigorously refuted in the Ecuadorian action Petitioners' claims about environmental conditions there, Petitioners continue to cling to falsehoods about those conditions as ostensible cover for their wrongdoing. But the proven fact of their fraud itself debunks their environmental claims. An elaborate fraudulent scheme—culminating in the outright bribery of the Ecuadorian judge—would not have been necessary if those claims had merit.

Petitioners offer no good reason to review either of the questions presented. The decision below was not a collateral attack on a foreign judgment, and there is no division among the courts on any questions related to whether the district court had jurisdiction to issue equitable relief against Petitioners. The lower courts correctly held that Chevron had standing to bring its claims, and there is no reason for this Court to review that fact-bound determination.

Petitioners also ask this Court to resolve a dormant and shallow split over whether federal courts can issue equitable relief to private plaintiffs who have been injured by RICO violations. They fail to mention that the equitable relief ordered by the district court is independently supported under New York common law, and thus the question of RICO's remedial scope would not meaningfully affect the outcome of this appeal. That makes this case an inappropriate vehicle to address whether RICO permits federal courts to grant equitable relief to private plaintiffs. In any event, the conflict does not warrant resolution. It hinges on a three-decades-old Ninth Circuit decision that rejected the plain language of the RICO statute in favor of questionable legislative history. In the intervening thirty years, no other circuit has held the same and, moreover, this Court has since rejected the flawed approach to statutory interpretation that the Ninth Circuit employed.

I. FACTUAL BACKGROUND.

A. In 1964, Texaco Petroleum Company ("Tex-Pet"), a subsidiary of Texaco, Inc., participated in a consortium to explore for and produce oil in Ecuador.

App. 8a. After the consortium's efforts proved successful, the Republic of Ecuador's ("ROE") state-owned oil company, Petroecuador, made itself the Consortium's majority owner. *Id*.

When the agreement under which the Consortium operated expired in 1992, the ROE refused to renew it, making Petroecuador the sole owner and operator of the venture. App. 8a. As a result, TexPet began to wind down its operations. *Id.*; App. 169a. TexPet spent several years and millions of dollars on remediation work that the ROE supervised and approved. App. 8a–9a. In 1998, the ROE formally released TexPet from all potential claims, acknowledging that TexPet had fully performed its remediation obligations. App. 9a.

As they have done throughout this litigation, Petitioners make numerous claims regarding TexPet's operations in Ecuador that are untrue and lack support in the record. *See* Pet. 4–5. Chevron has long disputed Petitioners' claims of environmental harm relating to TexPet's operations. In any event, as the Second Circuit explained, "[t]he issues in the present case concerned the conduct of—not the environmental issues in—the Lago Agrio litigation." App. 13a.

B. In 1993, while TexPet's remediation was still underway, a group of Ecuadorian residents sued Texaco in the Southern District of New York, alleging property damage and personal injuries. App. 9a. That action was ultimately dismissed on forum non conveniens grounds. App. 9a–10a; *Aguinda* v. *Texaco, Inc.*, 303 F.3d 470 (2d Cir. 2002). In connection with the dismissal, Texaco reserved the "right to challenge any judgment issued in Lago Agrio on the grounds . . . that the judgment itself was obtained by

fraud . . . [a]nd . . . did not restrict the kind of forum or type of proceeding in which Chevron can raise those defenses." App. 103a (internal quotation marks omitted).[1]

In May 2003, a partially overlapping group of Ecuadorian plaintiffs (the "Lago Agrio Plaintiffs" or "LAPs") sued Chevron (but not Texaco) in Lago Agrio, Ecuador, represented by New York lawyer Steven Donziger and a group of Ecuadorian attorneys.[2] App. 10a; App. 178a–179a. Chevron's claims are based on Donziger's efforts to fraudulently procure a multi-billion-dollar judgment in that Ecuadorian action, his attempts to leverage deliberate misrepresentations as part of an extortionate U.S.-based pressure campaign against Chevron, and obstruction of justice in the United States designed to cover up his corrupt actions.

The principal facts establishing Petitioners' wrongdoing "were not seriously disputed at trial." App. 286a; *see also* App. 444a–445a, 513a. The district court "made extensive factual findings as to the acts undertaken by Donziger" in aid of his scheme, App. 15a, including "numerous indictable acts that

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[1] Contrary to the suggestions of amici, *see* ROE Br. 15–16, the Second Circuit correctly concluded that "there is no inconsistency between the conditional representation by Texaco [in the *Aguinda* case] and the claims of Chevron in the present action." App. 103a; *see also* App. 645a–651a.

[2] Chevron has never operated in Ecuador and was not a defendant in the *Aguinda* action. Nevertheless, Chevron was named as a defendant in the Lago Agrio litigation because one of its subsidiaries merged with Texaco in 2001. App. 474a, 646a–647a.

fell within the RICO definition of racketeering activity," App. 109a. The district court also found that the LAPs "knowingly ratified the misconduct" of their agents, including Donziger. App. 523a n.1304; *see also* App. 145a–146a. And, as the Second Circuit observed, the record "reveals a parade of corrupt actions by the LAPs' legal team" in the Lago Agrio litigation, "including coercion, fraud, and bribery." App. 96a.[3]

In laying out Petitioners' misconduct, the district court highlighted three particularly egregious acts: clandestine control of a supposedly neutral and independent court-expert, obstruction of justice in U.S. courts, and the bribery of the Ecuadorian judge who allowed the LAPs' team to secretly draft the multi-billion-dollar judgment against Chevron.

Ghostwriting the Court-Expert's Report. Dissatisfied with how the case against Chevron was progressing in the Ecuadorian court, Donziger and the LAPs' team blackmailed the judge presiding over the litigation into appointing their own hand-picked expert, Richard Cabrera. App. 24a–31a. Cabrera would play the part of an ostensibly neutral and independent court-expert to perform a "global" assessment of alleged damages, but in reality would do Donziger's bidding. App. 26a–27a. Donziger not only promised this expert a "lifetime [of] work on the remediation," App. 29a (quoting App. 242a), but also funneled payments to him through a self-styled "secret account." App. 32a–33a; App. 250a.

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[3] The effort of amici Friends of the Earth et al. to equate Donziger's acts of corruption, bribery, and obstruction of justice with the acts of those lawyers who fought for justice during the civil rights movement is misplaced, to say the least. FOE Br. 14–15.

Donziger and the LAPs' team met in secret with Cabrera before the court even made his appointment public, in order to discuss the contents of the report that would bear his name. App. 29a–31a. This meeting was captured on video, and one of the LAPs' attorneys explained that "the work isn't going to be the expert[']s," instead "all of us, all together, have to contribute to the report." App. 30a (quoting App. 245a). Donziger boasted that they could "jack this thing up to $30 billion in one day." *Id.* (quoting App. 245a).

Cabrera's initial report, filed in April 2008, concluded that Chevron was liable for $16.3 billion in damages. App. 38a. But Cabrera did not actually write the report—it "was written almost entirely by [an American environmental consultant] and others working at the direction of [the consultant] and Donziger." App. 36a (quoting App. 278a). To maintain the "false image" of independence, App. 39a, Donziger and his team lied about their relationship with Cabrera and undertook complicated maneuvers, including preparing "objections" to the report Donziger and his team had written, to "support[] the false pretense" that Cabrera—whom they publicly likened to a U.S. "special master," App. 214a, 303a—had acted on his own. App. 40a (quoting App. 282a) Then, they wrote Cabrera's supplemental report in response to their own objections, which added another $11 billion to the damages assessment. App. 40a–41a.

Obstruction of Justice. Suspecting misconduct, Chevron sought discovery in the United States from Donziger and others. App. 42a–45a. Donziger and the LAPs' team were desperate to keep their misconduct hidden, and in internal correspondence "admitted that if documents exposing just part of what they had

done were to come to light, 'apart from destroying the proceeding, all of us, your attorneys, might go to jail.'" App. 14a (quoting App. 167a). The district court found that Donziger obstructed justice in federal discovery proceedings in an effort to conceal the truth. App. 110a–111a; App. 576a–579a. Among other acts, Donziger submitted a "deliberately misleading" declaration from one of the LAPs' lead attorneys in Ecuador, Pablo Fajardo, to federal courts across the United States. App. 110a–111a (quoting App. 576a). This declaration "gave an anodyne description" of Cabrera's appointment and his contacts with the LAPs' team, while omitting any mention of their wrongdoing. App. 44a, 111a; App. 317a–318a, 576a–577a.

Bribing the Ecuadorian Judge and Ghostwriting His Judgment. Two weeks after Chevron filed this lawsuit, the Ecuadorian court issued a judgment that imposed $8.6 billion in damages against Chevron and an additional $8.6 billion punitive award unless Chevron publicly apologized. App. 47a–48a.

The district court found that the judgment was drafted not by the judge who signed it, Nicolás Zambrano, but by the LAPs' team, who bribed Judge Zambrano to issue it. App. 49a–72a; App. 359a–460a. That finding rested on the live testimony of Zambrano himself and extensive forensic evidence, which demonstrated that portions of the LAPs' internal and confidential work product "appear *in haec verba* or in substance in the Judgment," even though none of those documents could be found anywhere in the Ecuadorian court record. App. 56a–62a; App. 375a–390a; *see also In re Naranjo*, 768 F.3d 332, 341 n.12 (4th Cir. 2014) (noting magistrate judge statement

that the Ecuadorian judgment "was a blatant cut and paste exercise").[4]

Another Ecuadorian judge working with Zambrano, Alberto Guerra, explained how this happened. He testified at trial that he "facilitated a deal among Zambrano, Donziger, and Fajardo pursuant to which the LAPs promised to pay Zambrano $500,000 in exchange for Zambrano permitting the LAPs to write the decision," and the district court credited that testimony. App. 398a.

Petitioners ignore these factual findings, but as the district court observed, the key facts "were not seriously disputed at trial," App. 286a, 444a, and Petitioners' appeal was likewise marked by "the absence of challenges to the district court's factual findings," App. 4a. Petitioners and their amici nonetheless attempt to assail Guerra's testimony by relying on supposedly "new" evidence, but the Second Circuit properly refused to take judicial notice of that evidence, 2d Cir. 14-826, Dkt. 490, and Chevron has already refuted the false contentions about what that evidence shows, *id.*, Dkt. 464.[5] Petitioners also fail to acknowledge the district court's finding that Guerra's

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[4] Appendices to the district court's opinion detail the extensive overlap between the Ecuadorian judgment and the LAPs' unfiled internal work product. *See Chevron Corp.* v. *Donziger*, 974 F. Supp. 2d 362, 645–681 (S.D.N.Y. 2014).

[5] Of course, if Petitioners actually believed that new evidence undermined Guerra's credibility, they would have brought it to the attention of the district court in a motion under Federal Rule of Civil Procedure 60(b)(2) for relief from a judgment based on "newly discovered evidence." But Petitioners have made no effort to present this evidence to the district court.

testimony was "extensively corroborated by independent [documentary] evidence." App. 456a; *see also* App. 409a–414a.

C. Both Chevron and the LAPs appealed the Ecuadorian judgment. App. 72a. In January 2012, the intermediate Ecuadorian appellate court issued a 16-page order that affirmed the judgment in its entirety and stated that it had not considered Chevron's allegations of fraud, which it noted were the "same accusations [that] are pending resolution before authorities of the United States of America." App. 73a–74a (quoting App. 464a–465a); App. 464a–467a, 601a–604a. The LAPs asked the panel to clarify the extent to which the order addressed Chevron's claims of fraud. App. 74a. The court then issued a further order stating it had not found "fraud," but that it was "stay[ing] out of these [fraud] accusations, preserving the parties' rights . . . to continue the course of the actions that have been filed in the United States of America." App. 75a (quoting 468a); App. 467a–469a.

Chevron sought review by the Ecuadorian National Court of Justice, a "cassation" court that reviews only legal arguments. App. 75a. The National Court affirmed the Ecuadorian judgment in all but one respect, invalidating the punitive damages award as lacking any foundation in Ecuadorian law. *Id.* The National Court refused to consider Chevron's evidence of fraud, ruling that it was beyond the scope of cassation review. App. 76a–77a; App. 469a–471a.

II. PROCEEDINGS BELOW.

A. On February 1, 2011 (two weeks before the Ecuadorian judgment issued), Chevron sued the LAPs,

their lawyers, including Donziger, and the environmental consultants who ghostwrote Cabrera's "expert" report in the Southern District of New York. App. 478a–479a.[6] Chevron's complaint asserted nine causes of action, including substantive and conspiracy claims against Donziger under RICO, and claims seeking equitable relief against all defendants under New York common law. App. 479a, 486a. The Ecuadorian lawyers and all but two of the LAPs failed to appear, and the district court entered default against them. App. 479a. The two LAPs who appeared and defended the action were Petitioner Camacho and Javier Piaguaje Payaguaje. App. 478a–479a. Although Piaguaje took part in all of the proceedings below, he has not joined the petition for certiorari.

B. Shortly after filing its complaint, Chevron sought a preliminary injunction seeking to restrain enforcement of the Ecuadorian judgment (which by then had issued). In March 2011, the district court preliminarily enjoined the enforcement of the Ecuadorian judgment anywhere outside of Ecuador. App. 671a. It based its ruling solely on Chevron's claim that "sought a declaration that the Judgment was unenforceable and unrecognizable" under New York's Uniform Foreign Country Money-Judgments Recognition Act. App. 479a.

In September 2011, the Second Circuit vacated the preliminary injunction, holding that New York's

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[6] Petitioners portray Chevron's separate arbitral proceedings against the ROE as involving the same allegations and claims as this case. Pet. 6. But that arbitration is premised on different jurisdictional bases, sources of law, and legal claims; involves different parties; and seeks different relief. *See* 2d Cir. 14-826, Dkt. 431-1 at 4–7.

Recognition Act did not allow "putative judgment-debtors . . . to challenge foreign judgments before enforcement of those judgments is sought." *Chevron Corp.* v. *Naranjo*, 667 F.3d 232, 234 (2d Cir. 2012). It expressly limited the holding to this narrow point, and declined to pass on the remaining causes of action. *Id.* at 238 n.8; App. 104a.

C. After extensive pre-trial litigation, the district court held a seven-week bench trial on Chevron's RICO and state-law claims.[7] App. 164a, 484a. On March 4, 2014, the district court issued a 485-page opinion, finding Donziger liable under RICO for injuring Chevron through a pattern of racketeering that included "multiple extortionate acts," "multiple acts of wire fraud in furtherance of fraudulent schemes," "money laundering to promote racketeering acts," and "violations of the Travel Act to facilitate violations of the anti-bribery provision of the [Foreign Corrupt Practices Act]." App. 542a–595a. The court also found that Chevron was entitled to equitable relief under New York common law to prevent Donziger and the two appearing LAPs from profiting from the fraudulently procured Ecuadorian judgment. App. 500a–523a.[8] The court thus granted equitable relief against all three defendants.

As noted above, the district court made extensive factual findings about Donziger and the LAPs' team's scheme (App. 167a–478a), concluding that:

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[7] Before trial, Chevron dropped its claim for money damages against Petitioners. App. 12a.

[8] The district court also rejected the allegations regarding Diego Borja that Amazon Watch and Rainforest Action Network now rehash in their amicus brief to this Court. App. 656a–659a.

> [Donziger] and the Ecuadorian lawyers he led corrupted the Lago Agrio case. They submitted fraudulent evidence. They coerced one judge, first to use a court-appointed, supposedly impartial, "global expert" to make an overall damage assessment and, then, to appoint to that important role a man whom Donziger hand-picked and paid to "totally play ball" with the LAPs. They then paid a Colorado consulting firm secretly to write all or most of the global expert's report, falsely presented the report as the work of the court-appointed and supposedly impartial expert, and told half-truths or worse to U.S. courts in attempts to prevent exposure of that and other wrongdoing. Ultimately, the LAP team wrote the Lago Agrio court's Judgment themselves and promised $500,000 to the Ecuadorian judge to rule in their favor and sign their judgment. If ever there were a case warranting equitable relief with respect to a judgment procured by fraud, this is it.

App. 164a–165a.

The district court rejected Donziger's contention that Chevron lacked Article III standing, deeming it "a proposition that defies common sense" and "ignore[s] hornbook law." App. 488a–489a. It also rejected Petitioners' contention that equitable relief was unavailable as a matter of international comity, noting that "[c]omity and respect for other nations are important[,] [b]ut comity does not command blind acquiescence in injustice, least of all acquiescence within the bounds of our own nation." App. 165a. Moreover, the district court noted that "the United States has

important interests here," as "[t]he misconduct at issue was planned, supervised, financed and executed in important (but not all) respects by Americans in the United States in order to extract money from a U.S. victim." *Id*.

To prevent Petitioners from profiting from their fraud and corruption, the district court imposed a constructive trust for the benefit of Chevron on all property that Donziger or the appearing LAPs have received, or may receive in the future, that is traceable to the Ecuadorian judgment. App. 679a–680a. The court also ordered Donziger to transfer to Chevron his shares in the organization formed to handle the receipt and distribution of any proceeds from the judgment (which Donziger still has not done to date). App. 680a. And the district court enjoined Donziger and the appearing LAPs from attempting to enforce the Ecuadorian judgment in the United States. *Id*.

D. Both Donziger and the appearing LAPs appealed the district court's judgment to the U.S. Court of Appeals for the Second Circuit. On August 8, 2016, the Second Circuit unanimously affirmed the district court's judgment in full in an opinion authored by the Honorable Amalya L. Kearse. App. 4a.

The Second Circuit's opinion summarizes in detail the extensive evidence of bribery, coercion, fraud, extortion, and racketeering through which Donziger and the LAPs' team attempted to secure a massive payout from Chevron. App. 8a–83a. It emphasizes that, on appeal, neither Donziger nor the appearing LAPs challenged any of the district court's factual findings, or contested the sufficiency of the findings that established violations of New York common law and RICO. App. 4a, 15a, 113a, 147a. The court soundly rejected

Petitioners' various legal challenges to the district court's judgment, App. 84a, two of which Petitioners now ask this Court to review.

With respect to the court's jurisdiction to issue equitable relief, the Second Circuit held that "Chevron clearly met the requirements for Article III standing." App. 87a. Chevron's complaint "adequately pleaded an imminent threat to its business and property by reason of the fraudulent and corrupt conduct of Donziger and other defendants." App. 88a. While Petitioners claimed that Chevron had not suffered a cognizable injury, the court found that contention "meritless" given that Chevron's "$8.646 billion debt for compensatory damages remains extant." App. 97a. The Second Circuit also held that this injury was redressable absent any award of monetary damages because "the equitable restrictions permissibly imposed by the district court provide some relief." App. 98a (internal citation omitted). In addition, the court noted evidence that Petitioners intended to seek to execute the Ecuadorian judgment in the United States. *See* App. 77a.

With respect to RICO, the Second Circuit held that the statute makes equitable relief available to private plaintiffs. App. 118a–124a. The court noted that RICO "expansively authoriz[es] federal courts to exercise their traditional equity powers" in private RICO suits and "neither states that any category of persons may not obtain relief that is within the pow-

ers granted to the federal courts nor specifies the persons in whose favor the courts are authorized to exercise the powers there granted." App. 119a–121a.[9]

E. Donziger and the appearing LAPs filed petitions for panel rehearing and rehearing en banc, both of which were denied. App. 686a–688a; 2d Cir. 14-826, Dkt. 506.

REASONS FOR DENYING THE PETITION

While Donziger and the LAPs' team's unlawful scheme may be unprecedented, and the record contains facts "that normally come only out of Hollywood," App. 163a, there is no legal issue warranting this Court's review.

Petitioners' first question presented is fact-bound and does not merit this Court's attention. Petitioners claim that the courts below somehow lacked "jurisdiction" to grant equitable relief that would deter them from continuing to pursue their fraudulent scheme, but they identify no conflict warranting review by this Court. The lower courts' analysis of Chevron's injury and their explanation of why equitable relief would redress that harm is straightforward and correct.

Donziger also asks this Court to resolve a dated and shallow split on the question of whether RICO permits private plaintiffs to obtain equitable relief. While the Ninth Circuit held more than thirty years ago that such relief is not permitted, that decision is

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[9] The Second Circuit also affirmed the district court's grant of equitable relief based on the New York common-law cause of action for relief from a judgment procured by fraud. App. 125a–131a. Petitioners have not challenged this ruling on the merits, other than to claim that the court lacked jurisdiction to issue equitable relief.

an outlier and has not been followed by any other circuit that has squarely examined the question since then. More importantly, Petitioners fail to note that the equitable relief issued by the district court was based not only on liability under RICO, but also under New York common law. That independent basis for upholding the judgment makes this case an exceedingly poor vehicle to address whether federal courts may grant equitable relief to private plaintiffs under RICO.

I. THERE IS NO UNSETTLED QUESTION OF "JURISDICTION" FOR THIS COURT TO RESOLVE.

Petitioners ask this Court to grant certiorari to resolve whether "federal courts have jurisdiction to entertain preemptive collateral attacks on money judgments issued by foreign courts." Pet. i. The premise of this question is erroneous: this action did not involve any "preemptive collateral attack" on a foreign judgment. What Petitioners are really complaining about is the lower courts' conclusion that Chevron had standing to bring this case—a quintessentially fact-bound challenge. Even if Petitioners' question were actually presented by this case—which it is not—the rulings below are fully consistent with the precedent of this Court, and Petitioners have identified no split among the federal courts that touches on the basis for jurisdiction over Petitioners.

A. Chevron's RICO claim against Donziger was neither preemptive nor a collateral attack on the Ecuadorian judgment. In fact, Chevron filed suit before any Ecuadorian judgment issued. As the district court found, Chevron pleaded and proved a pattern of racketeering and fraud that reached well beyond the

misconduct in the Ecuadorian proceedings, to include extensive activities in the United States and its courts and other federal agencies. App. 109a–114a.

Nor is Chevron's New York law cause of action a preemptive collateral attack on the Ecuadorian judgment. Chevron sought equitable relief against Petitioners under well-established New York common law, based on Petitioners' fraudulent procurement of the Ecuadorian judgment. At trial, Chevron proved that Petitioners had established a fraudulent scheme to procure and monetize the judgment, including through conduct that took place in New York. App. 125a–131a. The district court made clear that it had not "set aside the Ecuadorian Judgment," or "granted [a] worldwide injunction barring any efforts to enforce the Judgment in other countries." App. 675a. Rather, the equitable relief issued by the district court "prevents the three defendants who appeared at trial . . . from profiting from their fraud." App. 675a.

As the Second Circuit recognized, this relief "does not invalidate the Lago Agrio Judgment" or otherwise "disturb" it. App. 132a, 4a. The scope of the injunction against enforcement of the Ecuadorian judgment "is limited to the United States," and it does not "enjoin[], restrain[] or otherwise prohibit[] Donziger, the LAP Representatives, or any of them, from . . . filing or prosecuting any action for recognition or enforcement of the Judgment . . . in courts *outside the United States*." App. 131a–132a (court's emphasis, quoting App. 681a); *see also* App. 103a–107a. Petitioners themselves admit as much. *See* Pet. 19 (quoting App. 131a–132a).

Contrary to what Petitioners now claim, Pet. 16, there was nothing unprecedented about granting such

relief under New York common law. As the Second Circuit explained, "New York common law has long recognized that equitable relief may be granted to a person victimized by the procurement of a judgment through fraud that is extrinsic to the gravamen of the cause of action." App. 125a. In adjudicating such a claim, courts "do not pretend to direct or control the foreign court," but instead "consider the equities between the parties and decree in personam according to those equities and enforce obedience to [their] decrees by process in personam." *Davis* v. *Cornue*, 151 N.Y. 172, 180 (N.Y. 1896); *see also* App. 125a–131a. Petitioners do not challenge the existence of this New York common-law cause of action for relief from a judgment procured by fraud, nor would any such challenge warrant this Court's review.

As for Petitioners' warning that New York will somehow "become a magnet for litigation losers from all over the globe," Pet. 1, that hyperbole ignores the longstanding availability of this remedy under New York common law, App. 125a, as well as the unique nature of this case, both with respect to the district court's personal jurisdiction over Petitioners in New York and the extraordinary extent of the "corrupt actions" here. App. 96a. And if other U.S. citizens are subjected to the same sort of U.S.-directed scheme that Chevron proved at trial in this case, there would be nothing inappropriate or troubling about a U.S. court adjudicating claims for relief against those participants in the scheme over whom the court has personal jurisdiction.

B. Petitioners' vague and confusing arguments about "jurisdiction" make it difficult to understand what precise question Petitioners would have this

Court resolve, but they surely have not shown that the lower courts disregarded this Court's precedents. They claim that Chevron's withdrawal of its request for damages deprived the district court of Article III jurisdiction. Pet. 23. But because Chevron's decision to forgo damages occurred during the pendency of this litigation, that event is more properly viewed through the lens of the mootness doctrine, as the Second Circuit explained. *See* App. 91a–98a. A post-filing litigation decision cannot retroactively deprive a party of standing, which concerns whether "the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed." *Davis* v. *Fed. Elec. Comm'n*, 554 U.S. 724, 734 (2008); *see also* App. 91a, 488a. And even if this point were properly framed as one of "standing," the Second Circuit correctly held Chevron had standing because it established the existence of an injury that is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Monsanto Co.* v. *Geertson Seed Farms*, 561 U.S. 139, 149 (2010); App. 87a–91a.

Petitioners' ongoing scheme has already injured Chevron in several ways. As the Second Circuit held, relying on the district court's unchallenged factual findings, the existence of a multi-billion-dollar judgment itself is a concrete injury that is fairly traceable to the improper conduct of Donziger and other members of the LAPs' team. *See* App. 87a–91a, 97a–98a. Chevron pleaded and proved "numerous corrupt and fraudulent acts on the part of Donziger and other defendants that were expressly designed to extract money from Chevron." App. 91a. And "[t]he threat of

injury to Chevron, sufficiently imminent when this action was commenced, soon ripened into actual injury" when "then-Judge Zambrano entered the $17.292 billion Lago Agrio Judgment, imposing on Chevron a judgment debt of $8.646 billion in compensatory damages plus $8.646 billion in punitive damages," and "[t]he $8.646 billion debt for compensatory damages remains extant." App. 97a. It is undisputed that Petitioners continue to attempt to monetize that multi-billion-dollar debt through enforcement actions abroad. App. 77a.[10]

If more were needed, there is also, as the courts below found as an unchallenged factual matter, a "substantial risk" of enforcement actions in the United States, as Petitioners' "own written enforcement strategy la[id] out the plan to use prejudgment attachment wherever possible"—including in the United States. App. 497a; *see also Susan B. Anthony List* v. *Driehaus*, 134 S. Ct. 2334, 2341 (2014) (allegation of future injury sufficient where there is a "substantial risk" that it will occur) (citing *Clapper* v. *Amnesty Int'l USA*, 133 S. Ct. 1138, 1147, 1150 n.50 (2013)). That strategy memorandum called for the LAPs' team "to be engaged quickly, if not immediately, on multiple enforcement fronts—in the United

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[10] Petitioners note that the district court previously dismissed Chevron's unjust enrichment claim as "premature," since Petitioners had "yet to collect or receive benefits from the Judgment." Pet. 22. But whether Petitioners have been "enriched" by the Ecuadorian judgment is a separate question from whether Chevron has been *injured*; only the latter matters for Article III purposes. And an adverse judgment of nearly $9 billion is more than sufficient to show injury for standing purposes. App. 97a; *see also* App. 124a (injury "clear and definite" even though the entire amount of the judgment may not be collectible).

States and abroad" once "an enforceable judgment is entered in Ecuador." App. 89a (quoting App. 342a). Their strategy has not changed. Indeed, in December 2014, the LAPs' team emphasized that an appellate reversal of the judgment in this case "would open up the U.S. to enforcement actions." The Chevron Pit (Dec. 18, 2014), *available at* http://goo.gl/NnFdnf.

Chevron's injury was redressable by both the constructive trust in Chevron's favor that the district court imposed, which prohibits Petitioners "from profiting from the corrupt conduct that led to the entry of the judgment against Chevron," and by the injunction, which bars them from enforcing the judgment in the United States. App. 146a–147a. This equitable relief substantially reduces the risk that Chevron will suffer further injuries from Petitioners' ongoing attempts to monetize the Ecuadorian judgment; it is of no moment that this relief may not eliminate *every* risk of potential injury. App. 98a; *see Larson* v. *Valente*, 456 U.S. 228, 243 n.15 (1982) (holding that plaintiff "need not show that a favorable decision will relieve his every injury" to establish redressability).

In sum, as the district court put it, Petitioners' contention that there is no "'case or controversy' between them and Chevron" is "a proposition that defies common sense." App. 487a–488a.

C. Petitioners also claim that other circuits have "universally rejected" actions seeking to preemptively collaterally attack a foreign money judgment, Pet. 17, but they do not identify any conflict warranting review. Petitioners rely on only two cases. *See* Pet. 17–19. The first is *Harrison* v. *Triplex Gold Mines*, 33 F.2d 667 (1st Cir. 1929), a 90-year-old decision that the First Circuit has never cited again. The second is

a district court ruling affirmed by the Seventh Circuit in a non-precedential disposition, *Basic* v. *Fitzroy Engineering, Ltd.*, 949 F. Supp. 1333 (N.D. Ill. 1996), *aff'd*, 132 F.3d 36 (7th Cir. 1997). Neither is inconsistent with the decisions below, and even if they were, these two rulings would offer the sparest of grounds for review by this Court.

Harrison involved "a bill in equity" seeking an order "declaring null and void the decrees" of a Canadian court, as well as an injunction preventing the enforcement of any such judgments or decrees and the seizure of the plaintiffs' property anywhere in the world. *Harrison*, 33 F.2d at 668–70. The court's decision rested on the fact that the allegations of fraud had "been presented to" the Canadian courts, the judgment debtor there had "a full and fair opportunity" to "present every defense to the action," and those defenses were "contested and denied" by the Canadian courts. *Harrison*, 33 F.2d at 671–672. Here, by contrast, the Ecuadorian appellate court expressly stated that it was "stay[ing] out of these [fraud] accusations, preserving the parties' rights . . . to continue the course of the actions that have been filed in the United States of America." App. 133a.

Basic presented a claim under the Declaratory Judgment Act to "declare a future foreign judgment invalid and unenforceable" under Illinois law and to "render null and void a possible future New Zealand judgment." *Basic*, 949 F. Supp. at 1336–37, 1341. Such relief is quite different from what the district court did here. Rather than declaring the Ecuadorian judgment "null and void" or imposing a worldwide anti-enforcement injunction, the court enjoined Donziger and the appearing LAPs from enforcing the

Ecuadorian judgment in the United States, and imposed a constructive trust on property they may receive that is traceable to that judgment. App. 132a.[11]

D. Petitioners and a number of amici suggest that "international comity" somehow immunizes Petitioners' misconduct and leaves their U.S. victim without a remedy. But comity is not a jurisdictional limitation. Nor is it "a matter of absolute obligation." *Hilton* v. *Guyot*, 159 U.S. 113, 163–164 (1895). Rather, comity "is the recognition which one nation allows within its territory to the . . . judicial acts of another nation," giving "due regard" to the "rights of its own citizens" as well as "international duty and convenience." *Id.* at 164. "The principle of comity has never meant categorical deference to foreign proceedings," *In re Treco*, 240 F.3d 148, 157 (2d Cir. 2001), and "comity" does not prevent a U.S. court from "disregarding" a foreign judgment upon finding "fraud . . . in its procurement," *Hilton*, 159 U.S. at 228; *see also* App. 79a (describing fraud in the procurement of a judgment as an "ancient basis" for equitable relief).

Drawing upon this framework, the Second Circuit correctly concluded that "comity" did not present any "obstacle" to the district court's judgment or relief. App. 131a–134a. The court focused on the "limited, non-global equitable relief" granted, and the fact that the Ecuadorian courts had "essentially deferred to the courts of the United States" by stating that they were

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[11] Petitioners also suggest that the Second Circuit's decision conflicts with its prior ruling in *Chevron Corp.* v. *Naranjo*, 667 F.3d 232 (2d Cir. 2012). Pet. 16–18. An intra-circuit conflict is not a sufficient ground for review, and in any event, the two opinions are not in conflict, as the Second Circuit explained in the decision below. *See* App. 103a–107a.

"'stay[ing] out of these accusations [of fraud and corruption], preserving the parties' rights . . . to continue the course of the actions that have been filed in the United States of America.'" App. 132a–133a.[12]

As the Second Circuit recognized, "comity" does not require a radical carve-out from the civil RICO statute simply because Donziger's scheme involved the corruption of a foreign lawsuit. Nor does "comity" limit the remedies available under New York common law, which has "long recognized that equitable relief may be granted to a person victimized by" the fraudulent procurement of a foreign judgment. App. 125a.

II. THIS CASE IS A FLAWED VEHICLE FOR RESOLVING ANY CONFLICT OVER WHETHER RICO PERMITS FEDERAL COURTS TO ISSUE EQUITABLE RELIEF TO PRIVATE PLAINTIFFS.

Petitioners also ask this Court to grant certiorari to decide whether RICO permits equitable relief for private plaintiffs. The split they identify does not warrant this Court's attention, as explained below. But even if the Court wanted to resolve this long-dormant question, this case would present a poor vehicle to do so. Its resolution will have no impact on the outcome of this appeal, where the district court's

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[12] Amicus ROE contends the Second Circuit did not "fairly" read the Ecuadorian decisions, which, according to the ROE, did nothing more than "'preserv[e] the parties' rights to present formal complaint to the Ecuadorian criminal authorities'" or pursue an independent action under the "Collusion Prosecution Act." ROE Br. 9–10. But the ROE ignores the actual language of those Ecuadorian decisions, which, as quoted above, expressly referred to Chevron's U.S. lawsuit and preserved Chevron's right to pursue it. App. 131a–134a.

grant of equitable relief is also supported by a second, independent cause of action. As the Second Circuit noted, the district court "based the relief it granted against Donziger" on both the New York "common law theory as well as RICO." App. 125a. Thus, even if this Court were to grant certiorari and reverse the Second Circuit's holding regarding the availability of equitable relief under RICO, the relief ordered by the district court would remain in place.[13]

The conflict regarding the availability of equitable relief for private plaintiffs under RICO is stale and shallow, and it shows no signs of resurgence. While the Ninth Circuit held more than thirty years ago that RICO does not permit such relief, *see Religious Tech. Ctr.* v. *Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), the Second Circuit has now joined the Seventh Circuit in concluding that federal courts may grant equitable relief to private plaintiffs as well as the Government in civil RICO suits. *See* App. 118a–124a; *Nat'l Org. for Women, Inc.* v. *Scheidler*, 267 F.3d 687, 695–98 (7th Cir. 2001), *rev'd on other grounds*, 537 U.S. 393 (2003).[14]

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[13] Donziger claims that this question nevertheless warrants review because Chevron has sought to recover its attorneys' fees under RICO. Pet. 30. But Donziger has opposed Chevron's attorneys' fees motion, S.D.N.Y. 11-cv-00691, Dkt. 1895 at 2, and the district court has not yet awarded (and may never award) any attorneys' fees.

[14] While Donziger notes that other courts of appeals have "expressed doubt" concerning the availability of equitable relief in private civil RICO actions, Pet. 25, they do not dispute that those circuits have never conclusively resolved the issue. Moreover, all the decisions Donziger cites were decided before the Seventh Circuit offered its incisive criticisms of *Wollersheim* in *Scheidler*.

Wollersheim "relied almost exclusively on the legislative history of RICO to reach its result, as opposed to the actual language of the statute"—an approach that "no longer conforms" to this Court's "present jurisprudence," as the Seventh Circuit noted in explaining why it read the statute differently. *Scheidler*, 267 F.3d at 695. The Ninth Circuit recognized that permitting private plaintiffs to obtain injunctive relief under RICO was supported by "a plausible reading of the statutory language," but nonetheless concluded that RICO's "legislative history mandate[d]" the court "to hold that injunctive relief is not available to a private party in a civil RICO action." *Wollersheim*, 796 F.2d at 1084. And the legislative history itself was of the weakest sort—two failed congressional proposals that would have "*expressly* . . . include[d] a provision permitting private plaintiffs to secure injunctive relief." *Id.* at 1086. Indeed, in the years after *Wollersheim*, this Court has made clear that "'[f]ailed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute'" because "[a] bill can be proposed for any number of reasons, and it can be rejected for just as many others." *Solid Waste Agency of N. Cook Cnty.* v. *U.S. Army Corps of Eng'rs*, 531 U.S. 159, 169–70 (2001) (quoting *Cent. Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994)).[15]

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[15] *Wollersheim* also predated this Court's clarification in *Franklin* v. *Gwinnett County Public Schools*, 503 U.S. 60 (1992), that "[t]he general rule [is] that absent clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute." *Id.* at 70–71. While Donziger asserts that the exercise of this power requires "a valid cause of

The interpretation of RICO adopted by the Second and Seventh Circuits is the correct one. The plain language of 18 U.S.C. § 1964(a) confers broad authority on the district court to "prevent and restrain violations" of RICO by issuing "appropriate orders," including injunctive relief, without limiting that authority to actions brought by the government. None of the remaining provisions of the statute contains any restriction on who can seek such "appropriate orders." As the Second Circuit concluded, "Congress did not intend to limit the court's subsection (a) authority by reference to the identity or nature of the plaintiff. . . . Subsection (a) itself neither states that any category of persons may not obtain relief that is within the powers granted to the federal courts nor specifies the persons in whose favor the courts are authorized to exercise the powers there granted," and "subsections (b) and (c)" likewise do not "exclud[e] relief that the federal courts are authorized to grant under subsection (a)." App. 120a–122a; *accord Scheidler*, 267 F.3d at 696–97. To hold otherwise would deny equitable relief to private parties injured by ongoing racketeering, and would contravene RICO's express instruction that the statute "be liberally construed to effectuate its remedial purposes." Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970).

While it has not yet overruled *Wollersheim*, the Ninth Circuit last applied its holding eighteen years ago, *see Or. Laborers-Emp'rs. Health & Welfare Tr. Fund* v. *Philip Morris Inc.*, 185 F.3d 957, 967–68 (9th Cir. 1999)—two years before the Seventh Circuit's decision in *Scheidler* and this Court's subsequent precedent undermining *Wollersheim*'s interpretive approach. In light of these developments, there is good

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action," Pet. 27, that is exactly what RICO provides for private plaintiffs in 18 U.S.C. § 1964(c).

reason to believe that this disagreement will resolve itself, and even if it did not, it is too shallow and outdated to warrant review by this Court.[16]

Finally, Petitioners assert that it is "imperative" for this Court to address the second question presented because "no other court has allowed RICO to be used to attack a foreign-country judgment." Pet. 29–31. As explained above, Chevron's RICO claim was not a collateral attack on the Ecuadorian judgment. *See supra* at 17–18. And none of the cases Petitioners cite even addresses collateral attacks on foreign judgments in any event. One involves limitations imposed by a treaty on obtaining relief from a foreign arbitration award. *See Gulf Petro Trading Co.* v. *Nigerian Nat'l Petroleum Corp.*, 512 F.3d 742 (5th Cir. 2008). Another is based on the *Rooker-Feldman* doctrine, which is applicable only to state-court judgments. *See Kamilewicz* v. *Bank of Boston Corp.*, 92 F.3d 506, 512 (7th Cir. 1996). The third reflects the straightforward application of collateral estoppel to a domestic judgment—a defense that Petitioners expressly disclaimed below. *See Knight* v. *Mooring Capital Fund*, 749 F.3d 1180 (10th Cir. 2014); 2d Cir. 14-826, Dkt. 150 at 95 n.21 ("To be clear, we are *not* asserting a collateral-estoppel defense.").

Similarly, Petitioners urge that this Court's review is needed to avoid the "potential for international friction," citing *RJR Nabisco* v. *European Community*,

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[16] This Court granted certiorari in *Scheidler* in part to decide whether private plaintiffs could seek injunctive relief under RICO, but resolved the case on other grounds. *See Scheidler* v. *Nat'l Org. for Women, Inc.*, 547 U.S. 9, 16 (2006); *Scheidler* v. *Nat'l Org. for Women, Inc.*, 537 U.S. 393, 397 (2003).

136 S. Ct. 2090, 2106–07 (2016). Pet. 3. But Petitioners' questions presented do not concern the extraterritorial scope of RICO. Nor did Petitioners raise any extraterritoriality challenge before the Second Circuit. And for good reason: As the district court found, there is no RICO extraterritoriality issue because this case involves a U.S. defendant, a U.S. victim, and a racketeering scheme planned, orchestrated, and carried out largely in the United States. App. 538a–539a.[17]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[17] Nor has Donziger asked this Court to address any First Amendment issue. Contrary to the assertions of amici Friends of the Earth et al., Donziger waived any challenge to the district court's rejection of his First Amendment arguments by failing to adequately address those arguments in his Second Circuit brief. *See* 2d Cir. 14-826, Dkt. 253 at 98–99; *see also* App. 547a–553a.

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