No. 11-1428

In The

Supreme Court of the United States

CHEVRON CORPORATION,

Petitioner,

v.

HUGO GERARDO CAMACHO NARANJO, JAVIER PIAGUAJE PAYAGUAJE, STEVEN R. DONZIGER, AND THE LAW OFFICES OF STEVEN R. DONZIGER,

Respondents.

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STEVEN A. HIRSCH
JOHN W. KEKER
KEKER & VAN NEST, LLP
710 Battery Street
San Francisco, CA 94111
shirsch@kvn.com
(415) 391-5400

Counsel for Respondents Steven R. Donziger and The Law Offices of Steven R. Donziger

JAMES E. TYRRELL, JR.
Counsel of Record
JASON W. ROCKWELL
EDWARD M. YENNOCK
PATTON BOGGS LLP
One Riverfront Plaza
Newark, NJ 07102
jtyrrell@pattonboggs.com
(973) 848-5600

Counsel for Respondents Hugo Gerardo Camacho Naranjo and Javier Piaguaje Payaguaje

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

The district court preliminarily enjoined the respondents from taking any steps to enforce an Ecuadorian judgment anywhere in the world. The district court asserted that the substantive right to that injunction arose from certain statutory exceptions to New York's Uniform Foreign Money Judgments Recognition Act, N.Y. C.P.L.R. §§ 5301-5309 ("Recognition Act"). The U.S. Court of Appeals for the Second Circuit reversed, holding that (1) the Recognition Act confers no substantive right to a global anti-enforcement injunction or declaration, remedies that are directly contrary to the statute's purpose of promoting international comity by streamlining the enforcement of foreign judgments in New York; (2) the federal Declaratory Judgment Act ("DJA") did not authorize the district court to effectively rewrite the Recognition Act to confer that substantive right; and (3) the district court abused its discretion in "undertaking to issue a declaratory judgment" preemptively invoking the Recognition Act's exceptions. Two questions are therefore presented:

1. Were the Second Circuit's holdings "clearly in error," presenting one of those "rare and exceptional" occasions in which summary reversal is warranted?[1]

2. Did the Second Circuit's holdings give rise to a conflict of authority or to an important federal question justifying plenary review?

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[1] *Mireles v. Waco*, 502 U.S. 9, 15 (1991) (Scalia, J. dissenting) (citation omitted).

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Chevron Corporation was the plaintiff in the district court and the appellee in the court of appeals.

Respondents Hugo Gerardo Camacho Naranjo, Javier Piaguaje Payaguaje, Steven R. Donziger, and The Law Offices of Steven R. Donziger were defendants in the district court and appellants in the court of appeals.

Respondent The Law Offices of Steven R. Donziger has no parent company and is not publicly traded.

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Respondents Hugo Gerardo Camacho Naranjo, Javier Piaguaje Payaguaje, Steven R. Donziger, and The Law Offices of Steven R. Donziger respectfully ask this Court to deny the petition for writ of certiorari seeking review of the Second Circuit's opinion in this case.

STATUTORY PROVISIONS INVOLVED

N.Y. C.P.L.R. § 5302 provides, in relevant part:

"This article applies to any foreign country judgment which is final, conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal."

N.Y. C.P.L.R. § 5303 provides, in relevant part:

"Except as provided in section 5304, a foreign country judgment meeting the requirements of section 5302 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. Such a foreign judgment is enforceable by an action on the judgment, a motion for summary judgment in lieu of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense."

N.Y. C.P.L.R. § 5304(a) and (b) provide, in relevant part:

"(a) No recognition. A foreign country judgment is not conclusive if: (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law; (2) the foreign court did not have personal jurisdiction over the defendant.

(b) Other grounds for non-recognition. A foreign country judgment need not be recognized if:

1. the foreign court did not have jurisdiction over the subject matter;

2. the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

3. the judgment was obtained by fraud;

4. the cause of action on which the judgment is based is repugnant to the public policy of this state;

5. the judgment conflicts with another final and conclusive judgment;

6. the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

7. in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action; or

8. the cause of action resulted in a defamation judgment obtained in a jurisdiction outside the

United States, unless the court before which the matter is brought sitting in this state first determines that the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by both the United States and New York constitutions."

STATEMENT OF THE CASE

From 1964 until 1990, Chevron's predecessor-in-interest, Texaco, Inc. ("Texaco"), was the sole operator of a 1,500 square-mile concession in the Oriente (eastern) region of Ecuador (the "Concession") with roughly 350 oil well sites.[2] Pet. App. 6a, 39a-40a. As operator, Texaco implemented practices that polluted a wide swath of the Amazon rainforest in Ecuador. *See, e.g.*, CA2 App. 7355-59, 7371-75, 7406, 7452-68.

A. Factual Background

1. The *Aguinda* litigation: 1993-2002

In 1993, residents of the indigenous and farming communities within the Concession area—commonly referred to as "los Afectados," meaning, the "Affected Ones"—filed a putative class action against Texaco in the United States District Court for the Southern District of New York ("SDNY") seeking "redress [for]

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[2] Texaco owned an interest in the Concession from 1964 until 1992. The Concession was owned by a consortium that included Texaco and Ecuador's state-owned oil company, Petroecuador. Pet. App. 39a-40a.

contamination of the water supplies and environment." *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 473 (2d Cir. 2002) ("*Aguinda*").

For roughly the next nine years, Texaco fought to have *Aguinda* dismissed on *forum non conveniens* grounds. *See* Pet. App. 6a-7a. Although Texaco's headquarters were in New York, Texaco argued that Ecuador was the appropriate forum to hear the Afectados' claims. *Id.* at 41a-42a. Texaco heaped praise on Ecuador's courts submitting briefing and numerous affidavits from its "experts" and from Ecuadorian lawyers touting the fairness and capabilities of the Ecuadorian courts. *See*, *e.g.*, CA2 App. 4489-4502, 7582-7607, 7768-70.

But Texaco relied on more than its purported confidence in Ecuador's courts[3] to obtain dismissal. Texaco also represented to the SDNY that if its motion was granted, the company would (1) submit to the jurisdiction of Ecuador's courts, (2) waive statute of limitations defenses, and (3) abide by any judgment that might be rendered against it, subject only to the limited defenses enumerated in New York's Recognition Act.[4] *Id.* at. 4614. Relying on the

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[3] While Texaco was trying to convince U.S. courts that *Aguinda* belonged in Ecuador, the company already was using its considerable influence in Ecuador to effect a politically motivated dismissal if the case was re-filed there. Texaco apparently suggested to Ecuadorian politicians that allowing Texaco to be held accountable would discourage future American investment in Ecuador. *See* CA2 App. 7760-67.

[4] This unilateral reservation does not act, as Chevron suggests, as a forum selection clause requiring that the bona fides of any Ecuadorian judgment be reviewed in New York. Indeed, Chev-

company's promises, the SDNY granted Texaco's *forum non conveniens* motion, observing that *Aguinda* had "everything to do with Ecuador and nothing to do with the United States." Pet. App. 6a-7a (citing *Aguinda v. Texaco, Inc.*, 142 F. Supp. 2d 534, 537 (S.D.N.Y. 2001)).

While the Afectados' appeal of the dismissal was pending, Texaco merged with Chevron and the resulting entity began referring to itself as "ChevronTexaco." *See* CA2 App. 4383. ChevronTexaco replaced Texaco in the Second Circuit and then "bound itself to [the] concessions" that its predecessor made in the district court to secure the *forum non conveniens* dismissal. *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 389 n.3 (2d Cir. 2011). The Second Circuit affirmed the dismissal on the condition that ChevronTexaco adhere to its concessions.[5]

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ron successfully argued, in a related appeal, that the reservation *only* restricts the circumstances under which it may challenge any Ecuadorian judgment—not the *venue* for that challenge. *See Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 396-97 (2d. Cir. 2011).

[5] In 2005, "ChevronTexaco" changed its name back to "Chevron." *See id.* at 389 n.3. This change did not affect ChevronTexaco's legal obligations; Chevron remains bound by Texaco's and ChevronTexaco's promises. *Id.* Accordingly, for the sake of consistency, "Texaco," "ChevronTexaco," and "Chevron" all are referred to herein as "Chevron," unless clarity necessitates specificity.

2. The Lago Agrio litigation: 2003-2011

In May 2003, the Afectados re-filed their claims against Chevron in the Provincial Court of Sucumbíos (the "Sucumbíos Trial Court") in Lago Agrio, Ecuador, which once served as a hub of Texaco's Ecuadorian operations. CA2 App. 1934-49; *see also Republic of Ecuador*, 638 F.3d at 390 n.5. In the Lago Agrio litigation, it quickly became apparent that Chevron had no intention of honoring its promises, litigating in good faith, or respecting Ecuadorian courts. Chevron argued almost immediately that the Ecuadorian courts lacked jurisdiction over the company and also sought dismissal based on a statute of limitations. CA2 App. 6765, 6767-68.

Meanwhile, Chevron continued to work behind the scenes for a politically motivated dismissal. Chevron representatives repeatedly sought assurances from Ecuador's Attorney General that the Lago Agrio litigation would be handled in a manner favorable to Chevron.[6] *Id.* at 7758.

But the trial proceeded anyway. At its core was a series of approximately 45 "judicial site inspections," a civil law practice in which experts nominated by both parties collected soil and water samples under the supervision of the court at former Texaco well sites and operating stations, resulting in more than a hundred expert reports. *See generally*

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[6] Chevron ignores its own machinations when arguing that the Afectados' lawyers' meetings with GOE officials to obtain statements of public support somehow render the Ecuadorian judgment illegitimate.

CA2 App. 8297-8312. The thousands of samples taken during these judicial site inspections exhibited various combinations of at least fifteen potentially toxic chemicals, compounds, and metals at levels exceeding acceptable limits. *See id.*

The evidence further revealed that Texaco intentionally had discharged billions of gallons of untreated production water[7] directly into the waterways of the Amazon basin and had carved roughly 900 unlined pits into the jungle floor as permanent repositories for toxic "drilling muds"[8] and oil-production waste, even though a Texaco engineer warned against these practices in a 1962 industry text. CA2 App. 6668-71, 6738. Texaco—and more broadly, the petroleum industry—knew the dangers that these practices posed to the environment and knew that safer alternatives were available.[9] *Id.* at 6731-36. But, as demonstrated by internal Texaco memoranda, the company rejected safer practices in favor of substandard ones that maximized profit. *Id.* at 6680-81.

Two separate environmental audits (commissioned at least partially by Texaco in the 1990s)

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[7] "Production water" is a toxic byproduct of oil extraction.

[8] "Drilling muds"—liquid solutions circulated through wells during drilling—generate waste that includes barium, heavy metals, chloride, petroleum compounds, and acid.

[9] For example, in 1972 Texaco applied for a patent on a production water "re-injection" technology designed to "prevent the possibility of contact with the surface or fresh water formations," which Texaco stated "may cause considerable contamination problems." CA2 App. 6670.

documented Texaco's reckless operations. One auditor concluded that "no groundwater monitoring pro-gram was in place prior to 1990 at any of the stations"; that "[wastewater is] discharge[d] into nearby streams"; and that "no testing is conducted on wastewater prior to disposal." *Id*. at 6700. The audi-tor further observed that "protection of the surface water quality was reportedly not considered during exploration drilling." CA2 App. 6700. Another auditor observed that, "in general, spills of hydrocarbons and chemicals were not cleaned up. Instead, they were covered with sand." *Id*. at 6702. Texaco internal memoranda also revealed that the company concealed the full extent of its spills and contamination in Ecuador by adopting a policy requiring its employees (i) not to report environmental incidents unless the public would become aware of the incidents independently, and (ii) to destroy records of earlier incidents. *Id*. at 7714-15.

As the evidence made Chevron's liability more apparent and Chevron's behind-the-scenes political maneuvering failed to secure a dismissal, the company resorted to more overt pressure tactics. For example, the company commenced a millions-of-dollars-a-year lobbying effort that continues to this day to destabilize this country's trade relationship with Ecuador—an effort described publicly as "little more than extortion" by one Member of Congress.[10]

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[10] The Congresswoman further noted that "[a]pparently, if it can't get the outcome it wants from the Ecuadorian court system, Chevron will use the US government to deny trade benefits until Ecuador cries uncle." *Members of Congress Urge*

Chevron also instituted two separate international arbitrations against the Government of Ecuador ("GOE") relating to the Lago Agrio litigation in a similar effort to strong-arm the GOE. Before the first arbitration was stayed permanently, Chevron offered to dismiss it if the GOE "intervened" to quash the Lago Agrio litigation. *See generally Republic of Ecuador v. ChevronTexaco Corp.*, 499 F. Supp. 2d 452 (S.D.N.Y. 2007). The second arbitration remains pending. *See*, *e.g.*, CA2 App. 4669-89.

Chevron also targeted the Ecuadorian courts that it once championed. In 2008, a Chevron soil sampling contractor in Ecuador posed as an environmental-remediation consultant and attempted to offer the Ecuadorian trial judge a bribe—while recording the scheme with a hidden pen camera. *Id.* at 6868-69, 7675-77, 9791, 10131. Chevron publicly released the recordings and cast itself as the victim of a corrupt judiciary—but, as media outlets including the Los Angeles Times and the Financial Times concluded, the tapes did not show judicial misconduct. *Id.* at 7675-76. Days after the recordings were completed, Chevron relocated the contractor from Ecuador to the U.S., housed him near its headquarters in San Ramon, California, and provided him with various other perks, including payment of virtually all of his living expenses for the

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USTR to Ignore Chevron Petition on Ecuador Legal Case, *available at* http://lindasanchez.house.gov/index.php?option=com_conten%20t&task=view&id=490&Itemid=32 (last visited July 11, 2012).

past four years.[11] *See id.* at 9668-10143. The contractor admitted in recorded conversations that he had knowledge of Chevron's misconduct in the Lago Agrio litigation that would "make the Amazons win [the case] just like that," including how Chevron "cooked" evidence, but indicated that he would keep quiet if Chevron continued to take care of him. CA2 App. 7697-7709.

Chevron brought the dispute back to the United States in December 2009 when the company launched the first of scores of collateral discovery proceedings throughout the United States targeting the Afectados' lawyers and consultants. Chevron's applications focused largely on the relationship between the Afectados' legal team and a court-appointed expert who submitted one of the more than one hundred expert reports in the Lago Agrio litigation. Together with massive filings and false claims of urgency, Chevron used U.S. courts' unfamiliarity with Ecuadorian practice[12] to obtain not

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[11] This was not the only attempt at espionage. In 2010, Chevron offered a young American journalist $20,000 to use her media credentials to infiltrate the Afectados' legal team, and report back any information to Chevron. She refused. CA2. App. 7941-46. More disturbingly, the Inter-American Commission on Human Rights ordered the GOE to implement "precautionary measures" to safeguard the Afectados' representatives in Ecuador after several members of the Afectados' legal team reported death threats, home invasions, and similar acts of intimidation. *Id.* at 7771-77.

[12] For example, Chevron suggested that it was improper for parties to "meet with" court-appointed experts in Ecuador and "plan" their reports. *See, e.g., id.* at 5062. But Chevron did not disclose that its own technical team also had ex parte

only substantial amounts of discovery, but, in some cases, statements critical of the Afectados' counsel and the Lago Agrio litigation.[13] Chevron submitted all of this purported evidence to the Sucumbíos Trial Court.

3. After eight years of litigation in Ecuador, that nation's courts enter judgment.

On February 14, 2011, the Sucumbíos Trial Court concluded "in a 188-page opinion containing extensive findings of fact and detailed conclusions of law, that Chevron was liable for widespread environ-

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"technical planning meetings" with court-appointed experts. *Id*. at 8081; *see also id*. at 8057-79.

[13] Chevron holds out these few discovery rulings as conclusive proof of its fraud claims. Pet. 4. But the vast majority of courts refused Chevron's invitation to opine on the company's fraud allegations. Indeed, many courts counseled caution and respect for international comity. *See*, *e.g.*, *In re Application of Chevron Corp.*, 650 F.3d 276, 294 (3d Cir. 2011) ("Though it is obvious that the Ecuadorian judicial system is different from that in the United States, those differences provide no basis for disregarding or disparaging that system."); *Chevron Corp. v. Stratus Consulting, Inc.*, No. 10-cv-00047, 2010 WL 3923092, at *5 (D. Colo. Oct. 1, 2010) (declining to "intrud[e] into the merits that are committed to the jurisdiction of the Ecuadorian trial court."); *Chevron Corp. v. Mark Quarles*, No. 3:10-cv-00686, Dkt. 108 at 2, 2010 WL 39230923 (M.D. Tenn. Sept. 21, 2010) ("Chevron had an opportunity to litigate this matter in the United States and strongly opposed jurisdiction in favor of litigating in the Ecuadorian courts. While fraud on any court is a serious accusation that must be investigated, it is not within the power of this court to do so, any more than a court in Ecuador should be used to investigate fraud on *this* court.") (emphasis in original).

mental degradation" in the Afectados' native rainforest region. Pet. App. 11a. The court examined and rejected Chevron's numerous allegations of fraud and attorney misconduct, but nevertheless granted Chevron's request to set aside the opinions and conclusions of certain expert reports that Chevron claimed were tainted. CA2 App. 7341-45.

The court awarded compensatory and "moral" damages. *See*, *e.g.*, *id*. at 7472-79. Compensatory damages were calculated based on projected costs of soil and groundwater remediation, with the remainder addressing the delivery of potable water, the need for enhanced healthcare, and the damage to the Amazon communities' way of life and cultural traditions caused by the decimation of their ancestral lands and water sources. *See id*. The court assessed "moral" damages equal in amount to compensatory damages due to Chevron's repeated efforts to delay and otherwise undermine the proceedings, including, *inter alia*: "reopen[ing]" at the eleventh hour "resolved issues" it had previously abandoned; attacking every report not submitted by a Chevron-affiliated expert to "prevent the normal progress of the discovery process, or prolong it indefinitely"; attacking the integrity of the court; submitting "repeated motions on issues already ruled upon"; and failing to pay court-appointed experts as required by law, thus preventing the experts from completing their work. *See id*. at 7329, 7477-79.

Both parties appealed and submitted several hundred pages of appellate briefing and additional evidence for *de novo* factual and legal review by a three-judge intermediate appellate panel. *See* CA2

Dkt. 626-2. The Sucumbíos Appellate Panel affirmed the trial court's judgment on January 3, 2012, and rejected Chevron's numerous claims of fraud. *Id*. The panel also described Chevron's tactics throughout the eight-year litigation as "abusive" and "rarely seen in the annals of administration of justice in Ecuador." *Id*. at 15.

B. Proceedings Below

Approximately two weeks before the Sucumbíos Trial Court issued its ruling, Chevron filed suit in the SDNY—the court from which it once fought to escape—against the Afectados and certain of their environmental consultants and lawyers. The suit sought (among other things) a preliminary and permanent injunction barring any attempt to enforce or seek recognition of any final judgment entered against it by the Ecuadorian courts, *anywhere in the world* outside of Ecuador. CA2 App. 216-17. The suit also sought a declaration that any such judgment is non-recognizable and unenforceable in any court in the world. *Id*.

Chevron applied by *ex parte* order to show cause for temporary restraints and a preliminary injunction barring respondents from taking any steps to enforce the judgment anywhere in the world outside of Ecuador (where Chevron has no assets). The district court granted Chevron's requested temporary restraints and ordered that any opposition to Chevron's motion for preliminary injunction—which included a 70-page brief and nearly 7,000 pages of affidavits and exhibits—be submitted just three days later. *See id*. at 228-672, 5239. The lower court un-

expectedly "closed the record" without holding an evidentiary hearing before ultimately granting the worldwide injunction requested by Chevron. *See id.* at 5232-33, 6114-15.

As authority for that injunction, the district court relied on New York's Recognition Act, a state statute that allows judgment-creditors to enforce foreign judgments in New York courts subject to certain exceptions. Pet. App. 118a. The district court held that Chevron was likely to prevail on certain of the Recognition Act's *exceptions* to recognition and enforcement of a judgment, even though there was no evidence that respondents would seek to enforce the Ecuadorian judgment in New York[14] and thus invoke the Recognition Act. *See id.* at 119a-27a.

The Second Circuit reversed the district court's injunction, which it called "radical." *Id.* at 26a. The Second Circuit framed the central issue as being "whether Chevron's theory of the Recognition Act supports the injunction it seeks." *Id.* at 14a. Finding that it did not, the Court reversed the preliminary injunction order and dismissed the underlying declaratory judgment claim in its entirety. Pet. App. 14a.

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[14] The confidential strategy memorandum prepared by the Afectados' counsel, on which Chevron relied to obtain the injunction, indicated that respondents were not likely to seek recognition in the United States. *See, e.g.,* CA2 App. 3736. Indeed, the district court acknowledged that New York was not the respondents' preferred forum, but Chevron's. Pet. App. 130a.

As indicated by the way it framed the issue, much of the Second Circuit's holding turned on its analysis of New York's Recognition Act. The Second Circuit explained that the "Recognition Act and the common law principles it encapsulates are motivated by an interest to *provide for* the enforcement of foreign judgments, not to prevent them." *Id*. at 19a (emphasis in original). In enacting the Recognition Act, the New York legislature sought "to promote the efficient enforcement of New York judgments abroad by assuring foreign jurisdictions that their judgments would receive streamlined enforcement in New York." *Id*. (internal citations and quotation marks omitted). Indeed, "New York undertook to act as a responsible participant in an international system of justice—not to set up its courts as a transnational arbiter to dictate to the entire world which judgments are entitled to respect and which countries' courts are to be treated as international pariahs," but to "provide a ready means for foreign judgment-creditors to secure routine enforcement of their rights in New York courts." *Id*. at 22a.

The Court of Appeals found that Chevron's claims "would turn [the Recognition Act's] framework on its head and render a law designed to facilitate 'generous' judgment enforcement into a regime by which such enforcement could be preemptively avoided[,]" entirely contrary to the will of the New York legislature. Pet. App. 20a. The Recognition Act's "exceptions to New York's general policy of enforcing foreign judgments" merely "permit New York courts, under specified circumstances, to decline efforts to take advantage of New York's policy of liberally enforcing such

judgments." *Id.* at 22a-23a. The Second Circuit saw "[n]othing in the language, history, or purposes of the Act suggest[ing] that . . . disappointed litigants in foreign cases can ask a New York court to restrain efforts to enforce those foreign judgments against them, or to preempt the courts of other countries from making their own decisions about the enforceability of such judgments." *Id.* at 23a.

The Court of Appeals also noted the "far graver" international-comity concerns that would flow from Chevron's and the district court's contrary interpretation of the Recognition Act. *Id.* at 25a. "[W]hen a court in one country attempts to preclude the courts of every other nation from ever considering the effect of that foreign judgment, . . . the court risks disrespecting the legal system not only of the country in which the judgment was issued, but also those of other countries, who are inherently assumed insufficiently trustworthy to recognize what is asserted to be the extreme incapacity of the legal system from which the judgment emanates." Pet. App. 25a.

Further, the Second Circuit observed that Chevron's "attempt[s] to characterize its far-reaching claims as a simple declaratory judgment" under the DJA were misplaced. The Recognition Act does not "authorize a court to declare a foreign judgment null and void for all purposes in all countries," or to issue global anti-enforcement injunctions. *Id.* at 26a, 28a. Consistent with this Court's precedent, the Second Circuit explained that the DJA is "procedural only," as it allows a district court to "declare the legal rights and other legal relations of any interested party seeking such declaration" but cannot "extend

to the declaration of rights that do not exist under state law." *Id.* at 26a-27a (internal quotation marks omitted).

The Second Circuit also held that the district court had "abused its discretion in undertaking to issue a declaratory judgment." *Id.* at 28a. Even the "limited . . . claim that Chevron can petition a New York court to declare in advance" the non-enforceability of "the Ecuadorian judgment in *New York*, must fail." Pet. App. 28a (emphasis in original). The Court of Appeals held that "an advisory opinion" as to "the effect in New York of a foreign judgment that may never be presented in New York . . . would unquestionably provoke extensive friction between legal systems." *Id.* at 29a. It would also encourage parties to use New York "to seek a res judicata advantage . . . in connection with poten-tial enforcement efforts in other countries." *Id.* at 29a-30a. Chevron's claim also would not "'finalize' the larger dispute between the parties about the legitimacy of the Ecuadorian judgment or its enforceability in other countries." *Id.* at 28a.

Accordingly, the Second Circuit reversed and vacated the preliminary injunction and remanded to the district court with the instruction to dismiss Chevron's claim for declaratory relief under the Recognition Act. Pet. App. 31a.

REASONS FOR DENYING THE WRIT

The Recognition Act was designed to promote international judicial comity by streamlining the enforcement of foreign judgments in New York. The Recognition Act contains limited exceptions to its presumption of enforceability, but it grants New York courts no authority whatsoever to issue a global declaration of non-recognition or an injunction banning the enforcement of a foreign judgment anywhere in the world. Indeed, such a remedy would undermine the statute's purpose.

But Chevron persuaded the district judge to use the Recognition Act in conjunction with the federal DJA (28 U.S.C. § 2201(a)) to grant that very remedy. Chevron thus transformed a state statute designed to facilitate the enforcement of foreign judgments in New York courts into a means for preemptively "dictat[ing] to the entire world which judgments are entitled to respect and which countries' courts are to be treated as international pariahs." Pet. App. 22a. New York's legislature never granted its courts that power or burdened them with that duty.

The Second Circuit reversed and vacated the district court's unprecedented global anti-enforcement injunction, reasoning that the Declaratory Judgment Act does not grant a federal court the power to rewrite a state law to provide new substantive rights—especially where those rights are fundamentally hostile to the purpose of the state law in question.

I. Chevron tries to manufacture a basis for summary reversal by mischaracterizing the second circuit's holding.

"A summary reversal . . . is a rare and exceptional disposition, 'usually reserved by this Court for situations in which the law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error.'" *Mireles v. Waco*, 502 U.S. 9, 15 (1991) (Scalia, J. dissenting) (quoting *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting)). Summary reversal is therefore inappropriate where, as here, the facts are intensely disputed and the Court of Appeals' decision is entirely consistent with this Court's precedent.[15]

Chevron's "Question Presented" reveals that its bid for summary reversal hinges on the erroneous premise that, "[n]otwithstanding 75 years of precedent to the contrary," the Second Circuit held that "the DJA does not permit a party to assert a defense to suit anticipatorily where the underlying substantive statute does not itself authorize such declaratory relief." Pet. ii.

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[15] In the unlikely event that the Court is preliminarily inclined to grant summary reversal, respondents request that it implement the "better practice" of calling for merits briefs on a designated issue within a specified number of days. Eugene Gressman, et al., Supreme Court Practice 417-18 n.46 (9th ed. 2007) (noting "the unfairness to the parties, particularly the respondent, of this practice of summarily reversing a judgment below on the basis of the petition for certiorari and opposing brief, which are not supposed to address themselves to the merits of the case to any great degree.").

But the Second Circuit held no such thing. Rather, it held that:

(1) The Recognition Act was designed to promote international judicial comity by streamlining the enforcement of foreign judgments in New York courts;

(2) It would turn the Recognition Act on its head to read it as conferring a substantive right to obtain injunctions or declarations *against* enforcing foreign judgments anywhere in the world; and

(3) The DJA cannot supply "rights that do not exist under law" and therefore cannot be used to transform New York's Recognition Act into a global anti-recognition act—the very opposite of what it was intended to be.

Each of these holdings was not only correct, but entirely uncontroversial and consistent with this Court's precedent. The Second Circuit rejected Chevron's radical and unprecedented bid to take a New York statute that facilitates the enforcement of foreign judgments in that State and turn it into a vehicle for dictating to the entire planet that a foreign judgment is unenforceable anywhere—not only in New York's courts, but in the courts of any other nation. As the Second Circuit correctly concluded, the DJA cannot and does not work that kind of alchemy.

A. The Second Circuit correctly interpreted New York's Recognition Act as a mechanism for facilitating the enforcement of foreign judgments in New York courts.

This Court normally "defer[s] to the construction of a state statute given it by the lower federal courts." *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 499 (1985). It does so "not only to 'render unnecessary review of their decisions in this respect,'" but also because those courts "are better schooled in and more able to interpret the laws of their respective States." *Id.* at 500 (citations omitted); *see also Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 674 (1950) (observing that this Court "do[es] not reexamine the local law as applied by the lower courts").

This is an appropriate case in which to apply that principle, for the Second Circuit's decision turned largely on its careful interpretation of a New York statute. The Second Circuit held that the Recognition Act was intended to promote the enforcement of foreign judgments in New York, not to grant multi-national corporations a platform for blocking the enforcement of foreign judgments around the globe. That conclusion is unassailable.

The starting point for the Second Circuit's analysis was its observation that "'New York has traditionally been a generous forum in which to enforce judgments for money damages rendered by foreign courts, and, in accordance with that tradition, the State adopted the [Recognition Act].'" Pet. App. 16a

(quoting *Galliano, S.A. v. Stallion, Inc.*, 15 N.Y.3d 75, 79-80 (2010)). The Recognition Act therefore "supports the enforcement of foreign judgments that are 'final, conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.'" *Id.* (citation omitted).

Thus, "[t]he Recognition Act and the common-law principles it encapsulates are motivated by an interest to *provide for* the enforcement of foreign judgments, not to prevent them. The Act 'was designed to promote the efficient enforcement of New York judgments abroad by assuring foreign jurisdictions that their judgments would receive streamlined enforcement' in New York." *Id.* (emphasis in original) (citation omitted).

Even the Recognition Act's *exceptions*, which Chevron cited as the basis for the declaratory and injunctive relief it sought, are designed to further international comity and the enforcement of foreign judgments. The exceptions describe ten circumstances in which a New York court may "decline efforts to take advantage of New York's policy of liberally enforcing [foreign] judgments." *Id.* at 22a-23a. The exceptions "facilitate trust among nations" by requiring foreign judgments to "comport with certain basic requirements of fairness and legitimacy," which "instills trust in the overall enforcement-facilitation framework." Pet. App. 20a.

For the Recognition Act's exceptions to serve their "enforcement-facilitation" purpose, challenges raised under the exceptions "can occur only after a bona fide judgment-creditor seeks enforcement in an

'action on the judgment, a motion for summary judgment in lieu of complaint, or in a pending action by counter-claim, cross-claim, or affirmative defense,' and not before." *Id.* at 19a (quoting N.Y. C.P.L.R. § 5303).

Chevron is therefore wrong to portray the exceptions as substantive *rights* to non-enforcement that can be invoked before any attempt at enforcement has been made. Pet. 15. The Second Circuit rejected that contention and concluded that the exceptions "are exactly that: exceptions," not substantive rights to non-enforcement that can give rise to a preemptive global injunction or declaration under the DJA. Pet. App. 22a. New York's legislature passed the Recognition Act "to act as a responsible participant in an international system of justice—not to set up its courts as a transnational arbiter to dictate to the entire world which judgments are enti-tled to respect and which countries' courts are to be treated as international pariahs." *Id.*

Even if the Recognition Act's exceptions could be viewed as articulating affirmatively enforceable rights, they cannot possibly be read as authorizing Chevron's unprecedented claims and the global anti-enforcement injunction issued in this case.[16]

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[16] Chevron now appears to claim for the first time that the Second Circuit should have considered entering a narrower injunction and permitting a narrower version of Chevron's claim to survive. But the Second Circuit already concluded that insofar as Chevron only seeks to "petition a New York court to declare in advance" the non-enforceability of "the Ecuadorian judgment *in New York*," permitting such a claim to proceed would be an abuse of discretion. Pet. App. 28a-30a

Chevron did not merely seek an injunction against actual enforcement *in New York*; it sought and obtained an injunction against taking any preparatory steps to enforce, or actually enforcing, the Ecuadorian judgment *in any court in the world outside Ecuador*. But the Second Circuit correctly discerned that "[n]othing in the New York statute, or in any precedent interpreting it, authorizes a court to enjoin parties holding a judgment issued in one foreign country from attempting to enforce that judgment in yet another foreign country." *Id*. at 26a.

Based on its interpretation of the Recognition Act, the Second Circuit held that Chevron had no substantive legal right to the global anti-enforcement declaration and worldwide injunction it sought. As discussed below, the Second Circuit then rebuffed Chevron's attempt to use the DJA to rewrite the Recognition Act to provide a global anti-enforcement remedy that the Recognition Act does not confer.

B. The Second Circuit correctly held that the DJA cannot supply rights that do not exist under law, and thus cannot be used to transform New York's Recognition Act into a global anti-recognition act.

The DJA "created no new rights but introduced an additional remedy of inestimable value for the determination of an already existing right." *Aralac, Inc. v. Hat Corp. of Am.*, 166 F.2d 286, 291 (3d Cir.

(emphasis in original). Chevron does not seek review of that determination. *See*, *infra*, pp. 30-33.

1948); *see also Hanson v. Wyatt*, 552 F.3d 1148, 1157 (10th Cir. 2008); *Farmers Alliance Mut. Ins. Co. v. Jones*, 570 F.2d 1384, 1386 (10th Cir. 1978); *Powers v. United States*, 218 F.2d 828, 829 (7th Cir. 1954). Thus, the Second Circuit was entirely correct to hold that a declaratory judgment, like a preliminary injunction, "relies on a valid legal predicate." Pet. App. 27a. The DJA does not authorize "the declaration of rights that do not exist under law." *Id.* at 26a-27a.

Here, Chevron sought a declaration of its right to a global injunction against taking any steps whatsoever to enforce the Ecuadorian judgment anywhere in the world except Ecuador—a right that does not exist under law. The Recognition Act confers no "predicate" right to a global anti-enforcement injunction or a worldwide declaration of non-recognition—indeed, the very notion is offensive to the principles of international comity underlying the Recognition Act. Thus, there is "no legal basis for the injunction that Chevron seeks[.]" *Id.* at 22a.

Chevron attempts to sully the Second Circuit's holding by offering up an almost unrecognizable caricature of it. But the Second Circuit did *not* hold, as Chevron asserts, that "a court may not 'use the DJA to declare the unenforceability of a foreign judgment' because no legal right susceptible of being declared 'exists' where [the Recognition Act] permits unenforceability to be asserted 'only defensively . . . .'" Pet. 18.

Rather, the Second Circuit held that *no provision* of the Recognition Act—whether characterized as

"offensive" or "defensive"—"authorize[s] courts to declare a foreign judgment null and void for all purposes in all countries" or to enter the global anti-enforcement injunction that Chevron sought and obtained here. The Second Circuit saw "[n]othing in the language, history, or purposes of the Act suggest[ing] that it creates causes of action by which disappointed litigants in foreign cases can ask a New York court to restrain efforts to enforce those foreign judgments against them, or to preempt the courts of other countries from making their own decisions about the enforceability of such judgments." Pet. App. 23a.

None of the Supreme Court precedent cited by Chevron stands for the proposition that the DJA is a source of substantive rights. In each of them, the declaratory judgment plaintiff sought a declaration of an exist-ing right set forth in a contract or in a statute other than the DJA—unlike here, where Chevron sought and obtained a remedy that does not exist under any law, let alone under the Recognition Act. For exam-ple:

- The insurance company in *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227 (1937), sought a declaration that "all the [disability] policies had lapsed according to their terms by reason of the non-payment of premiums[.]" *Id.* at 238. There was no dispute that, under the governing insurance contracts, the policies lapsed and the insurer had no obligation to provide the claimed benefits if the insured had ceased paying premiums before becoming disabled. Thus, the insurer

sought a declaration of existing rights set forth in the insurance policies.

- The insurer in *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270 (1941), sought a declaration that, under the liability policy at issue, it had no duty to indemnify or to defend the insured in a personal-injury suit because the truck driven by the insured's employee was "not one 'hired by the insured'" within the meaning of the policy. *Id.* at 272. There was no dispute that, if the district court agreed with the insurer's policy interpretation, the insurer would have no duty to indemnify or defend. Thus, the insurer sought a declaration of existing rights set forth in the insurance policy.[17]

- In *Cardinal Chemical Co. v. Morton Int'l, Inc.*, 508 U.S. 83 (1993), a chemical manufacturer sought a declaration that a patent being asserted against it was invalid. The Patent Act of 1952 clearly establishes the right to render a patent unenforceable by showing that it is invalid. *See Microsoft Corp. v. i4i Ltd. P'ship*, 131 S. Ct. 2238, 2242 (2011); 35 U.S.C. § 282. Thus, the chemical manufacturer sought a declaration of existing rights set forth in the Patent Act of 1952.

- In *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007), a patent licensee sought a declara-

[17] Notably, this Court also held that declaratory relief did not extend to enjoining the injured third party's state court personal-injury suit. *Id.* at 274.

> tion that its product did not infringe the licensed patent, that the licensed patent was invalid, and that the licensee had no contractual duty to pay royalties on a non-infringed or invalid patent. The licensee thus sought a declaration of existing rights set forth in the Patent Act of 1952.

Here, by contrast, Chevron seeks a declaration of rights set forth nowhere, and certainly not in the Recognition Act—the *only* law that Chevron cited as the source of the substantive rights that it claimed to be enforcing. That is what the Second Circuit held, and the Second Circuit was right.[18] Accordingly, the Court should deny Chevron's request for summary reversal.

II. No basis exists for plenary review, because the Second Circuit's decision creates no conflict of authority or important federal question.

For obvious reasons, Chevron's petition grants little space or emphasis to its request for plenary review.

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[18] Of equally little merit are Chevron's arguments that the Second Circuit relied erroneously on cases concerning "arising under" jurisdiction (Pet. 19-25), or that the DJA overrides any "policy disfavoring declaratory relief" found in the Recognition Act. *Id*. at 23. Both arguments turn on the false premise that the Second Circuit held that the DJA cannot be used to preemptively litigate a defense. Respondents have shown that the Second Circuit held no such thing. Moreover, this Court has long held that it is inappropriate to use the DJA in a diversity action when declaratory relief would "needless[ly] obstruct[ ] . . . the domestic policy of the states." *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943).

First, as detailed above, the Second Circuit's holding hinged on its interpretation of a state statute, New York's Recognition Act, not federal law. *See*, *supra* Section I.A.

Second, while Chevron and its *amici* rail about "the importance of this case," that argument rests on Chevron's mischaracterization of the Second Circuit's decision. *See*, *supra* pp. 18-20.

Third, the Second Circuit's decision does not create a division of authority among the Circuits, but rather is consistent with the established principle that the DJA does not create substantive rights. *See*, *supra* Section II.B. Chevron's claim that "[u]ntil now, companies were at least assured that they could obtain review of the enforceability of the judgment . . . by invoking the DJA" (Pet. 15) is wholly unsup-ported by any Circuit precedent permitting a judgment-debtor to bring an "action to declare foreign judgments void and enjoin their enforcement."[19] Pet. App. 17a.

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[19] The Second Circuit could only locate one unpublished, out-of-circuit district court decision permitting a judgment-debtor to seek a preemptive declaration regarding a judgment's enforceability, and that case was factually distinguishable. Pet. App. 17a. Indeed, at argument Chevron's counsel conceded that he had no precedent for the allegedly oft-used declaratory and injunctive relief that Chevron sought:

> HON. LYNCH: . . . do you have any precedent of the New York court or the federal court applying New York law utilizing the New York judgment statute offensively as opposed to defensively to rule . . . that the New York law authorizes an action to prohibit the

If anything, an important federal question worthy of plenary review might have arisen had the Second Circuit *accepted* Chevron's proposition that disappointed foreign litigants should be permitted to invoke the DJA to obtain a declaration of global non-enforceability under the Recognition Act. Such a decision would have transformed the DJA into a device for rewriting state statues to create substantive rights that the state's legislature never contemplated. But the Second Circuit avoided any such controversy by rejecting Chevron's argument.

Fourth, plenary review is unwarranted because Chevron has failed to seek review of the alternative basis for the Second Circuit's decision—that "the district court must be found to have abused its discretion in undertaking to issue a declaratory judgment." Pet. App. 28a. Chevron's failure to challenge that holding disposes of its petition. This Court resolves disputes in the "context of meaningful litigation," not in the abstract, and therefore rarely reviews judgments that can be affirmed on grounds not challenged by the petitioner. *Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959); *see also Glover*

> enforcement of a judgment [. . .] ? Do you have any case that utilizes the statute that way?
> MR. MASTRO: Your Honor, we have not cited such a case.
> HON. LYNCH: You know one but you haven't cited it? You have had some summer associate research this and that person has not come up with such a case; right? Be-cause there is no such case; right? Am I right or wrong?
> MR. MASTRO: You're correct . . . .

CA2 Tr. Sept. 16, 2011 at 58:14-59:16.

v. United States, 531 U.S. 198, 205 (2001) ("As a general rule, furthermore, we do not decide issues outside the questions presented by the petition for certiorari."); Sup. Ct. R. 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."); Gressman, et al., at 248 (observing that certiorari generally is not granted where the judgment may be affirmed on an alternative ground without reaching the point upon which an alleged conflict among the Circuit courts exists).

Even if Chevron had not waived any challenge to the Second Circuit's alternative holding, that holding was unassailable. The DJA vests federal courts with discretion to determine whether and when to entertain a proposed action under the DJA, even when the suit satisfies subject-matter jurisdiction requirements. *See* 28 U.S.C. § 2201(a). Rather than grant qualified litigants an "absolute right" to declaratory relief, the DJA grants federal courts discretion to abstain from deciding declaratory judgment claims. *See*, *e.g.*, *MedImmune*, 549 U.S. at 136; *Wilton v. Seven Falls Co.*, 515 U.S. 277, 287-88 (1995). In the context of DJA claims, therefore, the "normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." *Wilton*, 515 U.S. at 288.

Here, the Second Circuit weighed the relevant discretionary considerations and concluded that the district court had clearly abused its discretion in ex-

ercising authority under the DJA.[20] Pet. App. 28a-30a. The Second Circuit concluded that the district court's declaratory judgment would have amounted to nothing more than "an advisory opinion" as to "the effect in New York of a foreign judgment that may never be presented in New York."[21] *Id.* at 29a. Allowing judgment-debtors to pursue such actions "would unquestionably provoke extensive friction between legal systems" and encourage "any losing party in litigation anywhere in the world" to use New York courts and New York law "to seek a res judicata advantage . . . in connection with potential enforcement efforts in other countries." *Id.* at 29a-30a.

In this case, moreover, declaratory relief would not settle or finalize the "larger dispute be-tween the

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[20] The multi-factor balancing test employed by the Second Circuit was first established in *Dow Jones & Co. v. Harrods, Ltd.*, and is drawn directly from this Court's jurisprudence regarding the scope of federal courts' discretionary authority under the DJA. 346 F.3d 357, 359 (2d Cir. 2003) (citing *Wilton*, 515 U.S. at 282-83; *Public Serv. Comm'n of Utah v. Wycoff*, 344 U.S. 237, 241 (1952)); *see also Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist.*, 673 F.3d 84, 104-05 (2d Cir. 2012) (citing *Wilton*, 515 U.S. at 282, 286-290; *Dow Jones*, 346 F.3d at 359)).

[21] At argument before the Second Circuit, after an exchange in which Chevron's counsel made clear that Chevron's intent was to prevent certain "Latin American countries" from evaluating the enforceability of the Ecuadorian judgment, one Circuit Judge observed: "So you're not concerned . . . about the enforcement of the judgment in New York at all, you're concerned about the enforcement of the judgment in any—pick one out of a hat—Venezuela?" CA2 Tr. Sept. 16, 2011 at 61:15-62:6, 67:7-17.

parties about the legitimacy of the Ecua-dorian judgment or its enforceability in other coun-tries." *Id*. at 30a. Those countries, the Court of Ap-peals stated, are entitled to decide for themselves whether the judgment should be recognized under their "widely varying legal systems." Pet. App. 25a. A contrary ruling would raise "grav[e]" comity concerns by "disrespecting the legal system not only of the country in which the judgment was issued, but also those of other countries, who are inherently assumed insufficiently trustworthy" to decide for themselves whether to enforce a foreign judgment. *Id*.[22] For all these reasons, the Court of Appeals held that the far better remedy is for Chevron to raise the Recognition Act's exceptions against enforcement of the Ecuadorian judgment in New York if and when the Afectados seek recognition of the Ecuadorian judgment in that State. *Id*. at 30a.

Chevron offers no substantive challenge to the Second Circuit's abuse-of-discretion holding. Instead, Chevron asserts—in a footnote—that the court's analysis was "infected" by its conclusion that the Recognition Act creates no substantive right to anti-enforcement declarations and injunctions. Pet. 16 n.4. Chevron again mischaracterizes the Second Circuit's decision. In fact, the court evaluated the factors bearing on whether the district court should have exercised its declaratory judgment jurisdiction and concluded that a declaratory judgment was in-

[22] Similar comity concerns previously led this Court to affirm the discretionary dismissal of a declaratory judgment claim on the grounds that it obstructed and interfered with state policy. *Great Lakes Dredge & Dock Co.*, 319 U.S. at 301.

appropriate. This is yet another reason why the Court should deny plenary review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

STEVEN A. HIRSCH
JOHN W. KEKER
KEKER & VAN NEST, LLP
633 Battery Street
San Francisco, CA 94111
shirsch@kvn.com
(415) 391-5400

Counsel for Respondents Steven R. Donziger and The Law Offices of Steven R. Donziger

JAMES E. TYRRELL, JR.
Counsel of Record
JASON W. ROCKWELL
EDWARD M. YENNOCK
PATTON BOGGS LLP
One Riverfront Plaza
Newark, NJ 07102
jtyrrell@pattonboggs.com
(973) 848-5600

Counsel for Respondents Hugo Gerardo Camacho Naranjo and Javier Piaguaje Payaguaje