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**VIA ELECTRONIC DELIVERY**

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Dear Sirs/Madams:

I write on behalf of my clients, indigenous peoples and farmer communities in Ecuador's rainforest and their legal representatives, to direct your respective offices to facts suggesting a conspiracy by the Chevron Corporation and certain of its counsel and executives to engage in witness bribery, perjury, and obstruction of justice to defraud a United States federal court and the Department of Homeland Security.<sup>1</sup> These acts appear to violate multiple federal criminal statutes, as outlined herein. They also appear to have as their objective the avoidance by Chevron of payment of an environmental judgment in Ecuador owed to indigenous peoples and farmer communities stemming from the company's sub-standard operational practices in the country, as found by three layers of courts in the venue where Chevron accepted

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<sup>1</sup> The undersigned is a U.S.-based legal advisor to the Frente de Defensa de la Amazonia (FDA), the main community-based non-profit group in the area of Ecuador's rainforest region where Texaco (now Chevron) operated six oil fields between 1964 and 1992 that are the subject of the underlying judgment against the company. The FDA represents the interests of all the affected indigenous peoples and farmer communities in the collection of the judgment against Chevron. Other lawyers and leaders of the FDA and the named plaintiffs in Ecuador endorse the request in this letter. They include Carmen Tartuche, President of the organization; and the lawyers Patricio Salazar, Agustin Salazar, and Angel Cajó.

Each recipient of this letter has a meaningful connection to the matter. New York is where Chevron's 53-day coaching of the witness to present false testimony took place; Chicago is where the benefits package and other payments given to the witness by Chevron were negotiated; the Northern District of California is where Chevron is located, and where much of the scheme likely was planned and executed; and the DOJ has been enlisted by Chevron as an apparent "endorser" of its misconduct in this matter, as explained further herein. Many of Chevron's promises of payments, memorialized in an initial contract signed between Chevron and the witness obligating him to testify at Chevron's direction, were made at a meeting in Chicago in November 2011.

jurisdiction.<sup>2</sup> The facts suggesting possible criminal violations by Chevron and its agents are based on publicly available documents, or on information and belief. This issue is time-sensitive given that some of the predicate facts outlined occurred almost five years ago, potentially implicating the statute of limitations. The issue is also relevant because Chevron represented to a federal court that the DOJ “pre-cleared” its exorbitant witness payments, implying that they were legitimate.

*Background: Alberto Guerra*

Beginning in 2011 and continuing to this day, evidence indicates that Chevron has paid at least \$2 million and likely much more in cash and benefits to a former Ecuadorian judge, Alberto Guerra, in exchange for false testimony and for maintaining his ongoing silence involving possible criminal misconduct by Chevron and its outside counsel. Prior to Chevron’s agreement to pay Guerra, there was ample and public evidence that he had engaged in multiple official acts of corruption in his home country both as a lawyer and a sitting judge – acts for which he was removed from the bench by relevant authorities in Ecuador. Guerra later admitted under oath in an international arbitration proceeding to having lied repeatedly before a United States district court in a civil racketeering case directed against the undersigned and representatives of the Ecuadorian indigenous groups. In that proceeding, Guerra admitted that he testified falsely regarding key facts related to claims that the environmental judgment issued against Chevron was the product of “bribery” and “ghostwriting” orchestrated by the lawyers for the plaintiffs.<sup>3</sup>

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<sup>2</sup> For background on the underlying environmental case, see <http://chevrontoxico.com/about/>. For a summary of the environmental evidence adduced against Chevron, see <https://goo.gl/sjQRZ>. A report by the Louis Berger Group (independent of the Ecuadorian plaintiffs) confirming the validity of the environmental evidence is available at <https://goo.gl/W7cUa4>. A 15-minute video explaining Chevron’s pollution is available at <https://goo.gl/hAKvBn>. Detailed news reports on the case are available at <https://goo.gl/UmGTx5> (TeleSUR, 2016); <https://goo.gl/JMSr7f> (Channel 7 “Sunday Night” (Aus.), 2011); and <https://goo.gl/INAH2> (60 Minutes, 2009).

<sup>3</sup> The legal team for the Ecuadorian villagers recently published a comprehensive 33-page rebuttal (link below) to the numerous false and distorted factual allegations that Chevron made in its non-jury civil RICO case, many of which ended up as findings by a district court judge (The Honorable Lewis A. Kaplan) who repeatedly showed signs of bias in favor of Chevron. Noted trial lawyer and former DOJ prosecutor John Kecker called the entire district court proceeding a “Dickensian farce” where the judge demonstrated “implacable hostility” to Mr. Donziger and the Ecuadorian defendants. On two occasions, the Second Circuit Court of Appeals granted argument based on extraordinary writs of mandamus seeking the removal of the district court judge because of his failure to manage the case neutrally. That Chevron might have committed fraud during the RICO proceeding with Judge Kaplan’s either active or passive consent, or willful ignorance, cannot be seriously disputed if the entire procedural record is examined objectively. So that there is no ambiguity, the undersigned and representatives of the affected communities reject all of the factual findings in the civil RICO case, none of which were reviewed on appeal and almost all of which were decided contrarily in Ecuador on a far more complete evidentiary record in the court of Chevron’s preferred jurisdiction. These issues (including Chevron’s false allegation of judicial bribery) also are likely to be reviewed again by Canadian courts on a far more complete evidentiary record than that allowed by the district court, should Chevron continue to defend against the judgment enforcement action in that country.

To illustrate just some of the many problems with the district court’s findings, Judge Kaplan (after denying the defendants a jury on the eve of trial after Chevron dropped all damages claims) found “fraud” was committed based on Guerra’s testimony about the ghostwriting of the trial court judgment – testimony which since has been proven to be abjectly false by a forensic examination, as explained herein. The district court’s findings of “money laundering” and “wire fraud” are entirely derivative of the erroneous finding of “fraud” based on the false Guerra testimony. Other of Judge Kaplan’s findings are based on a highly distorted and fallacious view of law and practice in Ecuador, as explained in the rebuttal cited below. For example, the district court found “extortion” was committed because Mr. Donziger arranged for a preliminary damages assessment by an expert for the plaintiffs

*Exorbitant Chevron Payments to Fact Witness*

Significant facts concerning the Chevron witness payments to Guerra are public and undisputed. Chevron's lawyers produced Guerra during prosecution of the company's civil RICO counter-attack in the SDNY against counsel for the indigenous groups as well as the named plaintiffs and various community leaders. Under oath in the case, Guerra claimed that lawyers for the Ecuadorian indigenous groups promised the Ecuador trial judge a bribe for the privilege of "ghostwriting" the final judgment against Chevron – claims later proven to be demonstrably false. Chevron's lawyers negotiated a contract with Guerra where he received an enormous benefits package at the same time they were working with him to craft a sworn affidavit outlining the fake bribe story. To prepare for live testimony, Chevron's lawyers at the Gibson Dunn firm coached Guerra for at least 53 days prior to the presentation of his bribe story in the RICO matter.

Among the benefits Chevron guaranteed to Guerra was a monthly salary roughly 24 times greater than his prior salary in Ecuador; the payment of legal representation to the former President of the American Immigration Lawyers Association (Ira Kurzbaum), to secure for him political asylum in the United States, apparently under false pretenses; the payment of a housing allowance, a car, and health insurance for Guerra and his extended family; and the payment of Guerra's income taxes. Chevron has confirmed many of these facts by producing the initial contract it signed with Guerra specifying the payments, which is attached hereto. We believe there is a subsequent contract or contracts the company signed with Guerra providing him and members of his extended family additional monetary and other benefits.

Proof of the falsity of the Guerra testimony is not required to sustain a violation of the criminal statutes cited above. Nonetheless, it bears emphasis that Guerra's testimony was, and has since been proven, to be abjectly false.

*Admitted Lies in Guerra's Paid Testimony*

In his sworn testimony in April 2015 in an international arbitration proceeding brought by Chevron against the Republic of Ecuador, Guerra admitted under cross-examination that he lied about key aspects of his testimony during the RICO trial that were relied on by the district court to conclude a bribe had occurred. Even more devastating for Chevron, the arbitral panel oversaw the production and digital analysis of the Ecuadorian trial judge's computer hard drives. This analysis, conducted by one of the world's leading computer forensics experts, demonstrated unequivocally that the Ecuador judgment against Chevron was drafted slowly over the course of many months on the judge's computers in chambers—a fact irreconcilable with Guerra's story that the plaintiffs delivered the judgment to the court on a flash drive just days ahead

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to be released publicly – said damages assessment suggesting a level of liability for Chevron actually far *lower* than that ultimately determined by the Ecuador court based on all of the evidence. For these reasons and others, none of the Kaplan findings related to the issues raised in this correspondence merit presumptive validity in any investigation. It is worth underscoring that all of the Kaplan findings contradict those of the trial court and eight appellate judges in Ecuador who affirmed Chevron's liability and rejected its "fraud" claims. Notably, Judge Kaplan also refused during the RICO proceeding to consider the voluminous evidence of Chevron's environmental contamination in Ecuador – including more than 64,000 chemical sampling results and 105 technical evidentiary reports documenting widespread pollution -- that formed the basis of the decision against the company in Ecuador, thereby preventing the defendants a full and fair opportunity to be heard. See "Chevron's RICO Fraud: Background, Context, and Responses to the False 'Factual Findings' in the *Chevron v. Donziger* Case" (hereinafter, "Responses Report"), at <https://goo.gl/VX9uCG>.

of its issuance.<sup>4</sup> Critically, neither the United States Court of Appeals for the Second Circuit nor the U.S. Supreme Court considered any of this new evidence during the appeal of the RICO decision. The district court did not have access to the new evidence, which emerged after the end of the trial. A motion to present the new evidence to the Second Circuit on the RICO appeal was not acted upon.

Guerra's sworn testimony in the arbitration proceeding was devastating for Chevron in other ways. He conceded there was no draft judgment against Chevron on his own computer or in hard copy, even though originally he told Chevron lawyers that he had edited the judgment. He conceded there were no emails between himself and the trial judge about the judgment. He conceded there were no emails between the plaintiff's lawyers and himself about the judgment, and that none of the plaintiff's lawyers are listed as contacts in his email account despite his allegation that they "exchanged emails." In fact, there are no written records from lawyers for the plaintiffs showing that they bribed the trial judge or ghostwrote the judgment. Nor are there phone records showing any communication between lawyers for the plaintiffs and Guerra despite Guerra's claim of regular communication. In summary, the state of the evidence regarding Guerra's testimony is:

- There is no evidence corroborating Guerra's allegation that lawyers for the Ecuadorian villagers bribed trial judge Zambrano and ghostwrote the judgment – the central findings of Judge Kaplan's RICO decision.
- Guerra repeatedly lied about the trial judgment being given to Ecuador trial judge Nicolas Zambrano on a flash drive just before it was issued. (A forensic report proved the judgment was actually opened as a Word document by the trial and saved hundreds of times on his office computer before being issued, contrary to Judge Kaplan's findings.)
- Guerra admitted that he met with Chevron's lawyers 53 times for four to six hours per session to prepare his false RICO testimony.
- Guerra conceded that he lied in the RICO case when he testified that Ecuador trial judge Zambrano had agreed to give him a percentage of any bribe payment.
- Guerra admitted that he lied when he told Judge Kaplan that he traveled twice in the Fall of 2010 to the Amazon town of Lago Agrio to help "ghostwrite" rulings in the Chevron case.
- Guerra admitted that he lied about being offered \$300,000 by the plaintiffs to "ghostwrite" the judgment against Chevron – again, a central finding of Judge Kaplan. Guerra testified: "I lied there. I wasn't truthful."
- Guerra admitted that he repeatedly lied about his level of involvement in the case to obtain more money from Chevron.
- Guerra also admitted that Chevron agent and lawyer Andres Rivero asked him to introduce company representatives to the Ecuador trial judge to earn an even larger fee. This suggests the existence of a second Chevron bribery plot using Guerra as the intermediary to arrange payments to the Ecuador trial judge so that he would recant his own judgment.<sup>5</sup>

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<sup>4</sup> See Report of J. Christopher Racich, available via a link in this this document: [http://www.csrwire.com/press\\_releases/37810-Chevron-Falsified-Evidence-Before-U-S-Federal-Court-About-Authorship-of-Ecuador-Judgment-Arbitration-Panel-Is-Told](http://www.csrwire.com/press_releases/37810-Chevron-Falsified-Evidence-Before-U-S-Federal-Court-About-Authorship-of-Ecuador-Judgment-Arbitration-Panel-Is-Told)

<sup>5</sup> The scheme involved an attempt to solicit Judge Nicolas Zambrano, who presided at the Ecuadorian court when it issued the environmental judgment against Chevron in 2011, to join Guerra in offering false testimony in return

At this point, there is no credible evidence to support Guerra's story about bribery and ghostwriting. In our view, Chevron paid huge sums both to Guerra and its outside counsel to package and present this story with the goal of ultimately securing a collateral judgment that would help it obstruct enforcement of the Ecuador judgment.<sup>6</sup> These facts compel an independent investigation by your offices. Although it is the opinion of the undersigned that Judge Kaplan was aware of what can only be described as various acts of corruption committed by Chevron and its counsel, and in fact allowed the submission of false evidence in the RICO proceeding, it is not necessary in our view to focus on Judge Kaplan to find evidence of the facts outlined in this correspondence.

*Basis for Investigation and Claimed DOJ "Pre-clearance"*

These facts merit prompt investigation for multiple reasons. First, the benefits Chevron gave to Guerra were brazen and exorbitant—exceeding at least \$2 million in value if one counts the total amount of cash and gifts received as of 2014. The value of the benefits no doubt has risen dramatically since then.<sup>7</sup> No fair reading of the rules of ethics and the relevant criminal statutes could possibly lead to the conclusion that the outsized nature of the Chevron payments to a fact witness could pass legal muster.

Second, Chevron made the extraordinary claim before the district court in the civil RICO matter that the DOJ "pre-cleared" or blessed the legality of the payments to Guerra by "taking no position one way or the other" when contacted by Chevron representatives in 2012 – essentially implying the DOJ *endorsed the Chevron witness payments as legitimate*.<sup>8</sup> This assertion appears to be a bald attempt to leave the impression that the DOJ was on the side of Chevron in its scheme to present false evidence.

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for a jaw-dropping \$1 million cash payment. Chevron lawyer Andres Rivero personally flew to Zambrano's hometown, located in an isolated part of Ecuador, and approached him in person. Zambrano rejected the offer, but recorded part of it and kept Rivero's business card, later offering this evidence as corroboration regarding the illegal bribe attempt. See Braden Reddall, *Ecuador Judge Rejects Bribe Claims Against Him in Chevron Case*, Reuters, Apr. 5, 2013, at <https://goo.gl/EyNTuv>; Press Release: Chevron Tried to Bribe Ecuador Judge with \$1 Million Payment on Eve of RICO Trial, Sept. 13, 2013, at <https://goo.gl/4e4sWw>.

<sup>6</sup> In the Canada enforcement action, Chevron has been leveraged the Guerra testimony to support a motion to impose a \$1 million costs order on the Ecuadorian indigenous groups. This gambit recently was rejected by the Ontario Court of Appeal in a ruling issued on Oct. 31, 2017.

<sup>7</sup> The Chevron witness payments to Guerra have attracted significant attention – most recently in the context of the petition for certiorari to the U.S. Supreme Court for review of the Second Circuit's affirmance of the RICO judgment. Although the Court declined review, two leading U.S.-based environmental advocacy organizations (Rainforest Action Network and Amazon Watch) filed an amicus brief focusing specifically on the Guerra payments and earlier corrupt payments by Chevron. The brief argues that the payments "clearly violate federal law and the rules of ethics" and furthermore that "Chevron's own wrongdoing could itself give rise to a collateral attack on the [RICO] judgment below, leading to an unending cycle of litigation." See *infra* Annex N. Other commentators also have concluded that the Guerra payments were not only unethical, but illegal. See Aaron Marr Page, *Chevron's Payments to RICO Witness Are Not Just Ugly—They're Criminal*, The Huffington Post, June 2, 2017, at <https://goo.gl/jLZk7P>; Paul Paz y Miño, *Chevron Executives Misused Millions of Shareholder Dollars To Bribe a Witness in Violation of U.S. Federal Law*, The Huffington Post, May 30, 2017, at <https://goo.gl/rPikBP>; Michelle Harrison, *Chevron's Illegal Payments to Witnesses Should Prompt Supreme Court to Reconsider Case*, EarthRights, May 5, 2017, at <https://goo.gl/MrFMIw>.

<sup>8</sup> The information regarding Chevron's claimed "pre-clearance" from the DOJ of the witness payments comes from the third revised ethics opinion of Professor George M. Cohen, a Chevron-paid expert. Professor Cohen's opinions, all of which are included herein, were repeatedly revised in what appears to be an attempt by Chevron and its lawyers to sanitize Guerra's ever-evolving sworn statements. See *infra* and Annex L.

Third, Guerra resides in the United States. Chevron has admitted it moved him from Ecuador to the U.S. to provide safe harbor from criminal prosecution for his admitted crimes in his home country, including the paying and acceptance of bribes both as a lawyer and a sitting judge. Finally, the Chevron payments to Guerra warrant attention because of their egregious consequences: literally thousands of indigenous rainforest inhabitants continue to live in a contaminated environment with high rates of cancer—as proven by multiple peer-reviewed health evaluations—because enforcement of the Ecuadorian court judgment continues to be delayed by the false testimony fabricated by way of the Chevron payments described herein.

The falsity of the Guerra testimony no doubt has produced profound legal and political challenges to the affected Ecuadorian indigenous peoples and farmer communities who have suffered the grievous health, economic, and psychological consequences from living in a severely contaminated environment. More concerning is that Chevron is currently leveraging the RICO judgment it obtained based largely on the Guerra testimony<sup>9</sup> to try to obstruct the enforcement of the environmental judgment in Canada and other countries. Chevron’s leveraging of the false Guerra testimony in service of its obstructionist strategy in enforcement jurisdictions has consumed five years since the actions were filed, following the 19 years of litigation on the underlying claims. These delays not only slow international judgment enforcement to a crawl and do violence to the rule of law, they have produced grievous harm and even death to untold numbers of Ecuadorian citizens.

#### *Federal Criminal Statutes Implicated*

Chevron’s payments and promises of future payments to Guerra appear to violate multiple federal criminal statutes. These payments appear to have been made “for or because of the [witness] testimony under oath” and “with intent to influence that] testimony” in violation of the federal Anti-Gratuity Statute. 18 U.S.C. § 201(c)(3), (b)(3).<sup>10</sup> *See also* 18 U.S.C. § 1503 (prohibiting conduct “corruptly” seeking “to influence, obstruct, or impede, the due administration of justice”); 18 U.S.C. § 1512 (prohibiting conduct of “corruptly persua[sion]” to “influence, delay, or prevent the testimony of any person in an official proceeding”); 18 U.S.C. § 1622 (“Whoever procures another to commit any perjury is guilty of subornation of perjury”). Chevron’s lawyers presented the false testimony procured as a result of the payments under oath in November 2013 in the civil RICO matter; again in 2015 in a related international arbitration proceeding between the oil company and the Republic of Ecuador; and in enforcement actions in Canada, Brazil, and Argentina.

#### *Guerra: “Money Talks, But Gold Screams”*

The details of Chevron’s distended witness payments to Guerra expose a degree of venality that can only be described as shocking for a public company. Guerra openly and crassly negotiated the price of his testimony at the same time Chevron representatives were working with him to prepare the details of his made-up story as reflected in his sworn affidavit. Among Guerra’s comments when negotiating with Chevron’s lawyers, according to taped conversations disclosed by the company: “[Let’s] talk about gold,

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<sup>9</sup> There is no evidence that the panel of the Second Circuit that affirmed the RICO judgment considered the supplemental evidence probative of the falsity of Guerra’s testimony. The Ecuadorian legal team’s response to the district court’s erroneous factual findings (adopted wholesale by the panel) are set forth in the Responses Report, *supra* note 3. Chevron will have to account for the false evidence it presented regarding Guerra in the enforcement actions. No U.S. court has addressed the issue of Guerra’s false testimony—nor is it likely that any U.S. court will do so, given that the appellate process has concluded.

<sup>10</sup> While there is no shortage of evidence of Chevron’s corrupt intent, as set forth below, it is worth noting that § 201(c)(3) does *not* require proof of such intent. It only requires proof of the “for or because of” nexus between the payment and the testimony.



*old man.*” “*Couldn’t you add a few zeroes [to that offer]?*” “*Money talks, but gold screams.*” At their first meeting with Guerra, Chevron officials—including outside counsels Andres Rivero and Yohi Ackerman—handed him a suitcase with almost \$18,000 in U.S. currency. Other similar cash payments followed. As noted, Chevron ultimately put Guerra on a \$12,000 monthly “stipend”—a salary twenty-four times higher than the \$500 monthly he said he had been receiving in Ecuador the day he started negotiating.<sup>11</sup>

*“Ethics” Opinions: Chevron’s Attempt to Sanitize Its Witness Payments*

In an apparent effort to try to protect itself from adverse consequences that might flow from the Guerra payments, Chevron hired a self-described ethics “expert” to provide an opinion as it negotiated a price with its star witness. Even though the opinion provided to Chevron by this expert, George M. Cohen, was revised twice in favor of the company as Chevron’s interactions with Guerra became more and more extensive and flagrant, the company’s lawyers still couldn’t play by the regime suggested. In fact, Chevron’s lawyers ended up negotiating terms with Guerra that clearly violated the guiding opinion from Cohen. When that happened, Chevron resorted to paying Cohen yet more money to **redraft his opinion to justify the ever-increasing benefits it turned over to Guerra** and his family.<sup>12</sup> When this situation came to light, Dean Erwin Chemerinsky offered the Ecuadorians a contrary opinion *pro bono* that concluded the witness payments violated the rules of ethics. All of these opinions are included in the Annex to this submission.

*Chevron’s Apparent Awareness of False Testimony*

It seems implausible that Chevron and its agents involved in the Guerra payments—including sophisticated counsel at Gibson Dunn & Crutcher and investigators at Kroll and Stroz Friedberg—could credibly claim that they were caught unawares about Guerra’s lies. Guerra’s testimony is shot through with inconsistencies (as noted even by the manifestly pro-Chevron district court judge) and his lack of credibility is obvious to the point of being overwhelming. Even more critically, Chevron agents (including several of its lawyers at the Gibson Dunn firm and outside counsel Andres Rivero) were intimately involved in the

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<sup>11</sup> See, e.g., *Chevron Renews Contract with Dishonest Witness in Ecuador Case*, TeleSUR, Nov. 16, 2015, at <http://j.mp/1HWacxg>. As indicated, another set of concerns stems from the immigration portion of the benefits package provided by Chevron to Guerra. This suggests the Chevron/Guerra fraud might extend to the Department of Homeland Security, which we believe granted political asylum to Guerra. Guerra testified that even more valuable to him than all the money he received from Chevron was the chance for his entire extended family to become legal permanent residents of the United States and to live together in the same country for the first time in decades. Chevron was uniquely positioned to offer this benefit to Guerra. Not only could Chevron fund the hiring of a top-notch immigration attorney for Guerra’s extended clan, but it further laid the groundwork for Guerra’s asylum claims by seeking to establish, through its RICO case, that persons who cooperate with Chevron in Ecuador face serious threats of persecution. Chevron made this claim despite the **utter absence of any concrete evidence** that any one of the hundreds of persons who have worked for Chevron’s litigation team in Ecuador ever has been physically harmed or threatened. By bestowing this enormous benefit upon a down-and-out Ecuadorian national, Chevron may have been complicit in the filing of false federal claims and making false statements to federal tribunals and agencies. See 31 U.S.C. §§ 3729–3733 (prohibiting the presentation, or causing to be presented a false claim for payment or approval); 18 U.S.C. § 1001 (prohibiting, “in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States,” the “(1) falsif[ying], conceal[ing], or cover[ing] up by any trick, scheme, or device [of any] a material fact; (2) [the] mak[ing of] any materially false, fictitious, or fraudulent statement or representation; or (3) [the] mak[ing] or us[ing of] any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry”).

<sup>12</sup> See also Page, *Chevron’s Payments*, *supra* at note 7.

creation—and evolution—of Guerra’s false testimony. Indeed, as mentioned, Chevron lawyers coached Guerra for weeks in advance of his RICO testimony and its technical experts scoured every piece of digital media and every online account linked to him. What Chevron did not count on was that its prize witness would later admit to lying to the district court or that a forensic analysis would prove the utter falsity of his testimony. The Chevron lawyers from the Gibson Dunn firm who coached Guerra to testify and who were most involved in this process were Randy Mastro, Reed Brodsky, Avi Weitzman, and Andrea Neumann.

*Motive: The Chevron Litigation As A Profit Center*

Also relevant is motive. Partners at Gibson Dunn appeared to regard the firm’s work for Chevron on the RICO matter as a major profit center. The firm reportedly received more than \$1 billion in legal fees from Chevron over a period of approximately five years after an intensive marketing campaign where it fashioned itself as a “rescue squad” for corporations in legal trouble. It used the marketing campaign to shoehorn the Ecuador litigation away from a competing firm, Jones Day. The Chevron RICO case and its related litigations, according to various sources, reportedly have generated the largest fee in the history of Gibson Dunn (which was founded in 1890). Gibson Dunn and litigation partner Mastro -- who personally negotiated the Guerra payments -- were under enormous pressure to deliver Chevron “evidence” of fraud at virtually any cost given prior promises to its leading client that it would execute what the firm called the “kill step” against human rights litigation from foreign plaintiffs.<sup>13</sup>

At one point, Chevron was paying at least 114 lawyers from Gibson Dunn to litigate against the undersigned (Steven Donziger) as he was appearing *pro se* during the RICO proceeding. Chevron has admitted to using at least 2,000 lawyers and legal personnel on the matter since its inception in 1993. Touting its supposed “success” in the RICO case while the matter was still pending prior to trial, Gibson Dunn issued a press release announcing the formation of a new 27-lawyer practice group whose purpose was to solicit business to help corporate clients defeat enforcement of foreign judgments in U.S. courts. Around the same time, a high-level Gibson Dunn partner (William E. Thomson) who was deeply involved in both the Chevron RICO matter and in the new foreign judgments practice group co-authored a report for the U.S. Chamber of Commerce that warned of a coming wave of attempts to enforce “abusive” foreign judgments in U.S. courts, citing the Ecuador matter as an example.

*Role of Chevron Management Team*

There also is evidence suggesting that top Chevron executives, including CEO John Watson, Vice President and General Counsel R. Hewitt Pate, and former Vice President Rhonda Zygocki were intimately involved with the RICO counter-attack strategy. Watson and Zygocki were deposed under oath during the RICO matter and admitted to being involved in various aspects of the litigation. Watson admitted to meeting with several high-level Obama Administration officials to press the company’s position regarding the Ecuador litigation and to try to persuade officials in the U.S. government to apply pressure to Ecuador’s executive branch to interfere with the litigation in favor of the company. Watson also played a leading public role with the media and on earnings calls where he tried to convince analysts and investors that the Ecuador judgment represented no financial risk to the company, based in large part on the false Guerra testimony. Chevron shareholders also have filed complaints with the Securities and Exchange Commission

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<sup>13</sup> Two U.S. federal judges have sanctioned Gibson Dunn lawyers in actions related to the Chevron RICO matter for engaging in unethical conduct designed to harass lawyers for the Ecuadorian villagers. Separately, a California state court fined the company under the state’s anti-SLAPP statute for trying to intimidate a lawyer for the villagers. The High Court of London also sanctioned a Gibson Dunn partner for falsifying evidence designed to frame a political opponent of a high-profile client. See *Chevron Law Firm Gibson Dunn Blasted for Falsifying Evidence* at <http://thechevronpit.blogspot.com/2015/03/chevron-law-firm-gibson-dunn-blasted-by.html>.



expressing concern that the company was submitting highly misleading public disclosures about the risk associated with the Ecuador liability, with the apparent goal of artificially propping up its stock price. Documents relevant to these issues can be provided upon request.

*Using Silence From Law Enforcement To “Bless” The Scheme*

The Chevron witness payments appear to demonstrate that a U.S. oil company tried to manipulate the U.S. justice system to evade the consequences of a judicial decision confirmed by three layers of courts in its preferred forum of Ecuador, based on overwhelming scientific evidence and further corroborated by the firsthand accounts of numerous witnesses and independent journalists. Not even Chevron was willing to dispute with evidence during the RICO matter that it caused extensive environmental damage in Ecuador. During the RICO proceeding, even without a jury, Chevron conceded the issue of environmental harm to avoid the production of internal files that no doubt corroborated its culpability for dumping toxic waste onto the ancestral lands of indigenous groups in Ecuador. Yet the U.S. law enforcement response to the Chevron witness payments to Guerra has been silence or (according to Chevron) outright complicity with the company. Silence in response to such obviously blameworthy conduct in an important case that has attracted wide attention not only is indefensible in its own right, but it undermines public trust in the rule of law. It also reinforces the cynicism that infects our discourse when powerful actors in our society are seen as enjoying impunity from wrongdoing.

*Chevron’s History of FCPA Violations and Corruption In Ecuador*

It also bears mention that this is not the first time Chevron and its law firm Gibson Dunn have committed criminal or civil wrongdoing related to various business operations. Facts suggesting any pattern of wrongdoing by these entities obviously are relevant to the requested inquiry. They also can be probative of what appear to be the problematic internal cultures in both entities.

In 2007, Chevron paid \$30 million in fines and costs after it was found to have violated the Foreign Corrupt Practices Act by selling oil to Saddam Hussein-ruled Iraq in violation of the U.N. sanctions. That Chevron apparently would engage in the kind of inappropriate and potentially illegal behavior in the Ecuador matter described herein *after DOJ and SEC determinations that it violated the FCPA* is probative of both motive and blameworthiness and should invite even more scrutiny of the facts outlined. Also unsettling is that in the same general time period, Chevron engaged in a patently corrupt act designed to derail the Ecuador trial. It did this by using one of its local Ecuadorian operatives, Diego Borja, to entrap the Ecuador trial judge in false allegations by secretly (and in violation of Ecuadorian law) videotaping a meeting from a camera embedded in a pen. When the stunt backfired, exposing Borja to potential criminal charges in Ecuador, Chevron moved him and his spouse out of Ecuador and ensconced them in a house just miles from company headquarters in California while spiriting Borja’s American partner (convicted drug felon Wayne Hansen) out of the country to evade a subpoena from a U.S. law firm representing Ecuador’s government.<sup>14</sup> Separately, in echoes of the Ecuador matter, a partner at the Gibson Dunn firm recently was found by the High Court of London to have fabricated evidence to frame a political opponent of one of the firm’s clients, the President of Djibouti.

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<sup>14</sup> See, e.g., Clifford Krauss, “Revelation Undermines Chevron Case in Ecuador,” N.Y. Times, Oct. 29, 2009, at <https://goo.gl/TQW8Cz>; Press Release: Chevron ‘Cooked’ Evidence in Environmental Trial, According to Oil Giant’s Own Contractor, at <https://goo.gl/qcQ9NV>.

**Conclusion**

Based on facts outlined herein and elucidated further in the attached annexes, we request that the DOJ or its respective offices conduct a comprehensive investigation to determine the roles played by Chevron officials and company counsel with regard to what appear to be violations of the Anti-Gratuity Statute and other applicable federal laws and ethical provisions. Indeed, much of the relevant evidence is already in the public domain and undisputed. Because of the significance of this matter to the thousands of affected persons in Ecuador who continue to face grievous harm due to oil contamination, as well as to the undersigned who faces personal financial and reputational harm as a result of these apparent violations, we believe it imperative that a formal inquiry be opened and that subsequent action be taken should the conclusions of that investigation justify. Chevron's suggestion that the DOJ essentially endorsed the propriety of the witness payments make such an investigation all the more imperative.<sup>15</sup>

Further details and documentation are available in the annexes following this letter. Representatives of the legal team for the Ecuadorians, including the undersigned, will make themselves available should there be any questions or need for additional information or clarification.<sup>16</sup>

Sincerely,



Steven R. Donziger

cc:

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<sup>15</sup> The Chevron suggestion that the DOJ impliedly approved of the payments to Guerra appears suspect to say the least. To the extent the Department took “no position” it was likely based on a misleading or incomplete presentation by Chevron of the terms of the arrangement. In this context, it is important that the Department confirm that it did not knowingly provide any type of authorization for what appears to be a deeply corrupt and criminal course of conduct. If, alternatively, the DOJ is unable to unequivocally disavow Chevron's claim of “no action” clearance or other authorization, we will request that the Department disclose all factual material that Chevron provided regarding this matter, as well as any legal analysis supporting the DOJ's position regarding large cash payments to fact witnesses in exchange for their testimony in U.S. court proceedings.

<sup>16</sup> The representatives of the affected indigenous peoples and farmer communities in Ecuador requested that this letter and supporting documents be made public. Their hope is that the request will allow duly authorized officials in all relevant jurisdictions the opportunity to take any investigative or other action deemed appropriate based on the information herein. To be clear, the affected peoples and their representatives respect the Department's general policy of keeping confidential any information related to any investigation.

### Annexes

The following publicly-available documents provide detailed information about the Chevron payments to Guerra:

- A. [Motion to Strike](#). Filed by the defense in Chevron's RICO case, this motion describes the payments and the massive credibility problems showing that Chevron actually or constructively knew that the Guerra testimony was false.
- B. [Motion for Terminating Sanctions](#). This motion provides the context surrounding the *numerous other attempts* by Chevron to manufacture "evidence" of wrongdoing or "taint" in the Ecuador case by paying witnesses and using other illegal or questionable tactics.
- C. [Sections of RICO defense post-trial brief](#). This document focuses on the obvious inconsistencies and changing narratives in Guerra's testimony.
- D. [Sections of RICO defense brief on appeal](#).
- E. [Supplemental RICO defense brief on appeal](#). Describing Guerra's admission under oath in the arbitration proceeding that he "lied" on the stand in the RICO case.
- F. [Supplemental RICO defense brief on appeal](#). Discussing the digital forensic analysis of the Ecuadorian judge's hard drives showing that the environmental trial judgment was written by the judge in chambers, and not "ghostwritten" as Guerra had claimed.
- G. [Sections of Republic of Ecuador \(ROE\) international arbitration brief](#). Discusses the many credibility problems with Guerra's testimony.
- H. [Sections from ROE international arbitration brief](#). Discusses the digital forensic analysis of the Ecuadorian judge's hard drives. This analysis debunks Guerra's testimony about the judgment being "ghostwritten".
- I. Guerra's [arbitration testimony and cross-examination](#).
- J. [Ethics opinion](#) by Professor George M. Cohen dated July 10, 2012.
- K. [Revised ethics opinion](#) by Professor George M. Cohen, dated October 10, 2012.
- L. [Supplemental ethics opinion](#) by Professor George M. Cohen, dated January 14, 2013.
- M. [Responding ethics opinion](#) by Dean and Professor Erwin Chemerinsky, dated July 26, 2013.
- N. [Brief of Amazon Watch and Rainforest Action Network as Amici Curiae](#), *Donziger et al. v. Chevron Corp.*, No. 16-1178 (U.S. May 1, 2017).