NO. 21-_____

In the Supreme Court of the United States

WALEED KHALID ABU AL-WALEED AL HOOD AL-QARQANI; AHMED KHALID ABU AL-WALEED AL HOOD AL-QARQANI; SHAHA KHALID ABU AL-WALEED AL HOOD AL-QARQANI; NAOUM AL-DOHA KHALID ABU AL-WALEED AL HOOD AL-QARQANI; AND NISREEN MUSTAFA JAWAD ZIKRI,

Petitioners,

v.

CHEVRON CORPORATION (*INCLUDING ALL PREDECESSORS AND RELATED ENTITIES*), A DELAWARE CORPORATION WITH ITS HEADQUARTERS IN SAN RAMON, CALIFORNIA AND CHEVRON U.S.A., A PENNSYLVANIA CORPORATION WITH ITS HEADQUARTERS IN SAN RAMON, CALIFORNIA,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

EDWARD C. CHUNG
COUNSEL OF RECORD
CHUNG, MALHAS & MANTEL, PLLC
1037 NE 65TH STREET, SUITE 80171
SEATTLE, WA 98115
(206) 264-8999
ECHUNG@CMMLAWFIRM.COM

FEBRUARY 14, 2022 *COUNSEL FOR PETITIONERS*

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. Whether Article III of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") requires U.S. district courts conferred with secondary jurisdiction to implement the procedural limitations for challenging the recognition and enforcement of domestic arbitral awards contained in Chapter 1 of the Federal Arbitration Act ("FAA")?

2. Whether the separability doctrine permits a U.S. district court from denying recognition and enforcement of a foreign arbitral award under Chapter 2 of the Federal Arbitration Act (the "FAA") by applying domestic common law contractual defenses contained under Chapter 1 of the FAA?

3. Whether remand of an appellate decision is proper when a federal circuit judge that was assigned to the appellate panel and that denied a motion for recusal under the Judiciary and Judicial Procedure Act, thereafter engaged in conduct indicating judicial misconduct and a lack of impartiality in violation of Canon 2 of the Code of Conduct for United States Judges?

PARTIES TO THE PROCEEDINGS

Khalid Abu Al-Waleed Al Hood Al-Qarqani; Ahmed Khalid Abu Al-Waleed Al Hood Al-Qarqani; Shaha Khalid Abu Al-Waleed Al Hood Al-Qarqani; Naoum Al-Doha Khalid Abu Al-Waleed Al Hood Al-Qarqani; and Nisreen Mustafa Jawad Zikri, are current day titleholders and concessionaires designated in a June 5, 2015 arbitral award issued by a panel of arbitrators from the International Arbitration Center in Cairo, Egypt.

Chevron Corporation is a publicly traded company on the New York Stock Exchange (CVX). Chevron Corporation has no parent corporation, and no publicly held company owns more than 10% of Chevron Corporation's stock. Chevron U.S.A. Inc. ("Chevron U.S.A.") is a wholly owned subsidiary of Chevron U.S.A. Holdings Inc., which is a wholly owned subsidiary of Texaco Inc., which is a wholly owned subsidiary of Chevron Investments Inc., which is a wholly owned subsidiary of Chevron Corporation. No other publicly traded corporation owns 10% or more of Chevron U.S.A.'s stock.

LIST OF PROCEEDINGS

United States Court of Appeals for the Ninth Circuit

No. 19-17074

Waleed Khalid Abu Al-Waleed Al Hood Al-Qarqani; Ahmed Khalid Abu Al-Waleed Al Hood Al-Qarqani; Shaha Khalid Abu Al-Waleed Al Hood Al-Qarqani; Naoum Al-Doha Khalid Abu Al-Waleed Al Hood Al-Qarqani; Nisreen Mustafa Jawad Zikri, *Petitioners-Appellants, v.* Chevron Corporation; Chevron Usa Inc., *Respondents-Appellees.*

Decision Date: August 12, 2021

Rehearing Date: November 16, 2021

United States District Court, ND California

No. C 18-03297

Waleed Al-Qarqani, Et Al., *Plaintiffs, v.* Chevron Corporation, Et Al., *Defendants.*

Decision Date: September 24, 2019

International Arbitration Center, Cairo, Egypt

Waleed Al-Qarqani, Et Al., *Plaintiffs, v.* Chevron Corporation, Et Al., *Defendants.*

Decision Date: June 3rd 2015

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDER

TABLE OF CONTENTS – Continued

Page

OTHER DOCUMENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

STATUTES

TABLE OF AUTHORITIES – Continued

INTRODUCTION

International treaties between member nations are not just self-operating documents relying on the concept of trust from one member state to another, they are, or at least should be, manifestations of measurable expectations that assure mutual compliance in preserving the integrity of their terms for the benefit of member nations and their citizens.

Article III of the New York Convention Treaty provides a calculable assurance that international courts conferred with secondary jurisdiction shall treat foreign arbitral awards in the same manner as they treat domestic arbitral awards. The Ninth Circuit Court of Appeals' published opinion in *Al-Qarqani v. Chevron Corp.*, 8 F.4th 1018 (9th Cir. 2021), holds that neither the New York Convention nor the FAA contain any implementing rule for treating foreign arbitral awards the same as domestic arbitral awards.

This precedent for denying recognition of a foreign arbitral award is not only wrong but it is also so far departed from the accepted and usual course of judicial proceedings under the Convention that it unnecessarily ignites new conflict amongst circuit courts nationwide and internationally demonstrates a manifest disregard of a member state's judicial obligations under the Convention. Under U.S. Supreme Court Rule 10(a), there is compelling reason to accept cert as this opens a pandora's box of judicial error that is already been cited as competent legal authority.

While the Ninth Circuit panel's decision that there are *no* procedural limitations contained in the

Convention and the FAA for treating domestic arbitration awards the same as foreign arbitral awards amounts to an obvious dereliction of its duties as a court having only secondary jurisdiction, it conflates this error in law by reasoning that non-signatories to a valid agreement[1] to arbitrate have no standing to invoke arbitration concerning rental arrearages of oil concessioned land that is the subject matter of the arbitral dispute. To date, the concessionary deed that is attached hereto at App.139a evidences that these lands situated in Ras Tanura, Saudi Arabia, one of the largest oil field in the world, is owned by virtue of Sharia courts and royal decree to the arbitral-creditors that were named in the June 3, 2015 arbitral award and, contrary to what was misrepresented by Chevron in oral argument to the judicial panel and adopted by the Ninth Circuit in its August 21, 2021 opinion was never nationalized.

In consideration of Justice Antonin Scalia's May 4, 2009 opinion in *Arthur Andersen LLP v. Carlisle,* 556 U.S. 624 (2009), Justice Clarence Thomas' June 1, 2020 decision in *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA LLC,* 590 US ___ (2020) and this Court's June 8, 2020 order vacating the Ninth Circuit Court's decision in *Setty v. Shrinivas Sugandhalaya LLP*, 2021 WL, 2817005 [an order vacating the Ninth Circuit ruling that non-signatories could not equitably estop arbitration], the

---

[1] The agreement to arbitrate that is the subject matter of this arbitral dispute is contained in Article 31 of the historically renowned 1933 Concession Agreement between the Kingdom of Saudi Arabia and Standard Oil Company of California, present day Chevron. There is no dispute that the agreement to arbitrate is valid and that Article 32 of the agreement

Ninth Circuit's August 21, 2021 decision denying confirmation of Petitioners' June 3, 2015 $18 billion dollar[2] arbitral award disregards the doctrine of *stare decisis* and publishes precedent that is in direct contravention of the New York Convention and U.S. Supreme Court's repeated precedent that U.S. circuit and district court rulings that agreements to arbitrate are invalid based on the premise that non-signatories lack standing to invoke arbitration is as outdated as it is misapplied.

While the Ninth's Circuit's legal error is transparent from its decision, less visible from the underlying record is Ninth Circuit Court Judge Eric D. Miller's lack of impartiality following Petitioners' motion for his recusal from the judicial panel under Title 28 of Judiciary and Judicial Procedure Act. The grounds for requesting recusal were: (1) Chevron, USA, Inc., a party to the proceedings, was a client of Judge Miller's former law firm shortly prior to his judicial appointment in 2019; (2) Thomas Hungar, Chevron's appellate counsel was his admitted friend, Supervisor and co-counsel; and (3) Judge Miller pre-

---

[2] The Ninth's Circuit opinion referencing $18 billion dollar is rounded up from the actual amount awarded. The June 3, 2015 arbitral award that appraised rental arrearages for oil rich lands that extended thirty-nine million eight hundred eighty-five thousand square meters (Sq.M. 39,885,000) within the Kingdom of Saudi Arabia was sixty-seven billion, two hundred and ninety-two million, four hundred and seventy-five thousand (SAR 67,292,475,000.00) Saudi Riyals (SAR); an equivalent of seventeen billion, nine hundred and forty-three million, eight hundred and seventy-four Thousand, Nine Hundred and Twenty-One United States Dollars and Ten Cents ($17,943,874,921.10 (USD)).

viously co-counseled with the law firm Gibson, Dunn & Crutcher, LLP; the law firm representing Chevron.

Statutorily, the totality of these factors raised genuine concerns whether his "impartiality might reasonably be questioned". *See*, 28 U.S. Code § 455 (a). In an October 10, 2020 court order denying recusal, Judge Miller provides a thorough and detailed explanation as to why the totality of these factors obviated him from recusing himself from presiding over this appeal despite Petitioners' genuine concerns of his capacity to be impartial. A copy of this court order is attached to the petition at App.15a.

The initial symptoms of a lack of impartiality that Petitioners were concerned about manifested itself inn Judge Miller's written opinion when he (1) *sua sponte* directed the Court Clerk, without notice or a hearing, to remove arbitral heirs specifically designated in the June 3, 2015 foreign arbitral award from the case caption; (2) when referencing the agreement to arbitrate (Article 31) and the oil concession agreement's express reference to private landowners' right to rents (Article 25) he omits contractual language that, if presented in its entirety, is unfavorable to the panel's opinion non-signatory grounds for denying confirmation; (3) he references SoCal, present day Chevron, as a "predecessor" despite it being clear that Chevron was the actual signatory to the agreement to arbitrate; and (4) Most concerning is he omits any analysis to Article 32 of the concession, the section that prohibited Chevron from assigning its liability to any successor company absent consent from the concessionaire. In other words, the precedent reconstructs a narrative that does not parallel the actual express terms between the parties.

Also contained in the last sentence of the opinion, Judge Miller rules, "all pending motions are denied as moot." This included Petitioners' motion to strike Chevron's counsel's submission of a falsified Egyptian Prosecutor's Report purportedly transcribed from Arabic to English. Petitioners' counsel had this document sent to three Arabic linguists only to learn that the document was not Arabic; it was fabricated. Instead of assessing whether Judge Miller's friend, prior supervisor, client and co-counsels proffered false document, he dismissed Petitioners' motion as moot and minutes after filing the decision issued a Show Cause Order for sanctions against Petitioners' counsel for submitting a demonstrative exhibit that summarized the illicit tactics that Chevron and their legal counsels Gibson, Dunn & Crutcher, LLP engaged in throughout these proceedings.

In sum, the Ninth's Circuit's August 21, 2021 published holding that non-signatories of foreign arbitral awards may not invoke arbitration and that neither the New York Convention nor the FAA contain any implementing rule for treating foreign arbitral awards the same as domestic arbitral awards is nothing less than a parade of legal errors that is in conflict with multiple circuit courts nationwide. U.S. Supreme Court Rule 10(a) recognizes the compelling need to grant cert when a circuit court decision is so far departed from the accepted and usual course of judicial proceedings that an exercise of this Court's supervisory power is necessary. This case, if any, is the textbook example of both fact and law wherein absent U.S. Supreme Court review, rule by law as opposed to rule of law will metastasize into our courtrooms wherein our legal precedent will become toxic.

OPINIONS BELOW

The United States District Court for the Northern District of California's opinion granting Chevon Corporation and Chevron, USA, Inc.'s motions to dismiss for lack of subject matter jurisdiction is unpublished but available at 2019 WL 4729467 (N.D. Cal.). (App.20a). The United States Ninth Circuit Court of Appeals' opinion (App.1a) denying Petitioners' Petition for Confirmation of a Foreign Arbitral Award is published at 8 F.4th 1018 (9th Cir. 2021). The Ninth Circuit's decision denying Petitioner's Combined Petition for Panel Rehearing En Banc (App.37a) is unpublished.

JURISDICTION

The Ninth Circuit denied Petitioners' Combined Petition for Panel Rehearing Enbanc on November 16, 2021. (App.37a) Petitioners' timely filed this petition within 90 days. The U.S. Supreme Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND OTHER PROVISIONS INVOLVED

Article II, of the New York Convention:

> 1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
>
> 2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
>
> 3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III, of the New York Convention:

> Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles.

> There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article V, § 1(a) of the New York Convention:

> Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
>
> (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;

9 U.S.C. § 201:

> The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

9 U.S.C. § 202 provides:

> An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this

> title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located

9 U.S.C. § 208:

> Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States.

9 U.S.C. § 12 of the Federal Arbitration Act:

> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

Article 54 of Egyptian Law No. 27/1994 Promulgating the Law Concerning Arbitration in Civil and Commercial Matters

1. The action for annulment of the arbitral award must be brought within ninety days of the date of the notification of the arbitral award to the party against whom it was made. The admissibility of the action for annulment shall not be prevented by the applicant's renouncement of its right to request the annulment of the award prior to the making of the arbitral award.

2. Jurisdiction with regard to an action for the annulment of awards made in international commercial arbitrations lies with the court referred to in Article 9 of this Law. In cases not related to international commercial arbitration, jurisdiction lies with the court of appeal having competence over the tribunal that would have initially had jurisdiction to adjudicate the dispute.

STATEMENT OF THE CASE

Petitioners are current day concessionaires of lands identified in a principal contract, a historic 1933 Concession Agreement ("Concession") between the Kingdom of Saudi Arabia ("KSA") and Standard Oil Company of California ("SOCAL"); SOCAL changed its name to Chevron Corporation in 1984. As the principal parties and signatories to the Concession, KSA and Chevron specifically identified private landowners/Petitioner in Article 25 of Concession and mutually agreed upon the right of these landowners to be paid rents and imposed the contractual obligation of Chevron, as well as its successor companies ("Chevron Entities") to be bound by the terms contained within the Concession.

Article 32 of the Concession prohibited Chevron from assigning its liability to any successor company absent consent from the Concessionaire; however, it allowed the Chevron to "transfer" its concession rights to a successor company provided it acknowledged and accepted that any successor company would too be liable under the terms of the Concession to the same extent as Chevron. The Concession also included an Agreement to Arbitrate under Article 31 of the Concession that allowed "any matter related" to the "interpretation" or "execution" of the Concession or "consequences thereof" to be arbitrated.

In 2014, Appellants invoked arbitration in neighboring Cairo, Egypt under Article 31 of the Concession. Both Appellants and Chevron appointed arbitrators, had legal counsels make formal appearances and sub-

mitted legal briefing. Recognizing the Appellants meritorious claims to unpaid rental arrearages and deed of ownership of lands identified in Article 2 of the Concession, Chevron abandoned arbitration and instead used political influence to instruct foreign governmental agencies to threaten the Appellants, the arbitrators, and the staff of the arbitration center with criminal prosecution; it effectively abandoned civil judicial review of from the Cairo Court of Appeals under Egyptian Arbitration Law to intervene in the arbitral proceedings and instead threatened, interrogated and coerced both arbitrators and landowners to withdraw from the proceedings. Chevron and the government's prosecution were dismissed for lack of probable cause and Chevron was sanctioned by an Egyptian court to pay cost.

On June 3, 2015, the arbitration panel issued an award against Chevron and "Chevron Entities" based on the appraised rental value owed for the continued use and occupation of the oil rich lands expanding an area of 39,885,000 square meters for a period of 10 years (2005-2015). Contrary to Egyptian Arbitration Law Chevron did not timely seek to vacate, modify, or correct the award within 90 days of it being issued which under Egyptian Arbitration Law made the award res judicata and final.

On June 1, 2018 Appellants filed a Petition to Confirm the Award under the New York Convention Treaty in the on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention Treaty"), which is incorporated into the U.S. Federal Arbitration Act ("FAA"). On September 24, 2019 the U.S District Court's Court for the Northern District of California erroneously granted Chevron Corpora-

tion and Chevron, USA's (collectively "Chevron") Motion to Dismiss Appellants' petition to confirm arbitral on the basis it lacked subject matter jurisdiction; it did not rule on Appellants' argument that the award was final and denial proof under Article III of the New York Convention. On August 21, 2021, the Ninth Circuit affirmed the lower court's decision on alternative legal grounds and denied confirmation on merits.

The panel decision, written by Ninth Circuit Judge Eric D. Miller does not apply federal, state, or Saudi law to deny confirmation. Nor does the opinion address U.S. Supreme Court precedent concerning the Separability Doctrine or the application of Equitable Estoppel. Although Chevron neither informed Appellant's counsel nor the Ninth Circuit of its untimely attempt to set aside the award in the arbitral seat, on July 4, 2021 the Cairo Court of Appeals denied Chevron's request to aside the award reasoning the request was untimely; the award has now become final.

Prior to the Ninth Circuit decision, Petitioners had filed a motion to recuse Judge Miller to the panel presiding over this matter. The basis for requesting recusal was that under 28 U.S.C § 455(a) his "impartiality might reasonably be questioned" in consideration that Chevron's appellate counsel, Thomas Hungar, was his former supervisor and admitted friend, Chevron, USA, Inc. was a former client of his firm prior to his judicial appointment in 2019 and he previously co-counseled with Chevron's legal counsel Gibson, Dunn & Crutcher. When Appellants motioned to strike Chevron's use of falsified evidence against his friend and client, the motion was denied as

"moot" but still made reference to in his decision. Contrary to other circuit rulings, his decision holds the case against his former client, Chevron, USA, Inc. was frivolous.

As contained in the underlying district court and appellate court record, during the course of these arbitral and confirmation proceedings, Petitioners, the panel of arbitrators' minute orders and Petitioners' overseas and U.S. legal counsel have all documented continuous threats they have experienced in seeking to enforce Petitioners' contractual rights to lands that apparently Chevron never disclosed to its shareholders. Instead of the rule of law, the Petitioners and those representing their legal interest have been subject to rule by law with threats of sanctions, imprisonment, travel bans and seizure of assets wherein all arbitral creditors residing in Saudi Arabia have now withdrawn from these proceedings.

These guerilla legal tactics used by Chevron and their legal counsel was exposed when they proffered as substantive evidence a document purporting to be an Egyptian Prosecutor's Report transcribed from Arabic to English supporting its false narrative that the Petitioners, arbitrators, the arbitration staff were all engaged in a conspiracy to defraud Chevron from a concession agreement that it admittedly signed in 1933.

Petitioners' counsel had this document sent to three Arabic linguists only to learn that the document was not truly Arabic, but just jibber-jabber written on plain white paper and an ink stamp purporting to be from an Egyptian Prosecutor's Office. Chevron and their legal counsel remained silent when confronted with these findings.

On September 24, 2020, Petitioners filed with the Ninth Circuit Court of Appeals a Motion to Strike Chevron's Use of Falsified Evidence. This document that Judge Miller's friend, prior Supervisor, client and co-counsels proffered as substantive evidence but to date have no explanation for, remains on court record for any and all to see and assess whether it is in fact what it purports to be.

On August 12, 2021, as part of the panel opinion, Judge Miller issued a ruling that Chevron's evidence of judicial irregularities as well as Petitioners' Motion to Strike are "moot" wherein he denied all motions but nevertheless still made reference in his opinion to alleged arbitral irregularities argues in Chevron's motion. App.1a

Although the Ninth Circuit ruled that prior documents submitted to the Court were moot within its judicial opinion, minutes following the ECF filing of the decision, Judge Miller makes a separate filing asking Petitioner's counsel to Show Cause as to why the Ninth Circuit should not impose sanctions and disciplinary action (RPC 3.3) against him for submitting a document that both summarizes and exposes Judge Miller's admitted friend, prior Supervisor, client and co-counsels verifiable use of falsified evidence and its renown kill-step strategy that Chevron and their legal counsel Gibson Dunn & Crutcher have used in this and other recognition and enforcement proceedings.

While Petitioners unequivocally stated that the article was being offered solely for demonstrative purposes, the August 21, 2021 show cause order concerningly addresses how the judicial panel conducted independent research outside the record by stating,

"we are unable to locate" this article; a violation of ABA Formal Opinion 478 that prohibits ex parte research.

On September 9, 2021 Petitioners' counsel, in compliance with the Ninth Circuit's Show Cause Order, timely responds to the court's request and in conjunction files a Motion to Vacate the Order to Show Cause on the basis that U.S. Supreme Court precedent in, *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990), and Ninth Circuit precedent *Partington v. Gedan*, 923 F.2d 686, 688 (9th Cir. 1991) (en banc) provide appellate conduct is controlled only by FRAP 38; a rule limited to the filing of frivolous appeals which, in this case, did not apply as the Ninth Circuit agreed with the Petitioners position that a subject matter jurisdiction dismissal under the New York Convention was erroneous. As for alleged ethical violations under RPC 3.3 concerning the offering of material evidence known to be false, such concerns were counterintuitive to Judge Miller's motions ruling because how can evidence he ruled as being "moot" be material? Moreover, Chevron's own legal counsel, Thomas Hungar, stated it was a recitation of the record.

Petitioners' counsel under FRAP 27-1 asked that the Ninth Circuit rule on his Motion to Vacate the Show Cause Order on September 14, 2021 as the order, based on U.S. Supreme Court, Ninth Circuit precedent and RPC 3.3 was *void ab initio.* To date, the Ninth Circuit has made no ruling on the show cause order, instead it has appointed a Special Master to conduct hearings on whether the demonstrative exhibit offered as a summary article was "legitimate" for the purposes of assessing sanctions; arguably a

violation of the Rules Enabling Act, 28 U.S.C. § 2071-2077 as well as a violation of due process.

While it remains quintessential for our judiciary under FRAP 46(b)1B to safeguard the ethical practice of law there remains falsified evidence offered by Judge Miller's admitted friend, prior supervisor, client and co-counsels that anyone capable of readings Arabic will attest it is not what it purports to be.

Respectfully, the answer to injustice is not to silence the legal advocate that exposes corruption and fraud upon the court, but rather to end the injustice itself.

REASONS FOR GRANTING THE WRIT

I. The Ninth Circuit's Decision is Wrong.

The Ninth Circuit decision is concerningly wrong. It overlooks the applicability of Article III of the New York Convention to assuring that foreign arbitral awards are treated the same as domestic arbitral awards through implementation procedural safeguards and precedent under the FAA. Additionally, it re-ignites an already resolved issue as to whether non-signatories may invoke arbitration. That aside, it conflates this error by ignoring U.S. Supreme Court separability doctrine by denying confirmation of a $18 billion dollar arbitral award that contains an undisputed valid agreement to arbitrate; it does this by ruling that non-signatories to the agreement to arbitrate; a now archaic legal standpoint to deny confirmation in consideration of numerous U.S. Supreme Court decisions stating otherwise.

A. Question Presented # 1 – In Consideration of the Express Language Contained in Article III of the New York Convention, the Ninth Circuit's Ruling That There Is No Implementing Language Contained Either in the FAA or the Convention to Treat Foreign Arbitral Awards on Equal Footing to Domestic Arbitral Awards Is So Far Departed from the Accepted and Usual Course of Judicial Proceedings Under the Convention That an Exercise of This Court's Supervisory Power Is Necessary Under U.S. Supreme Court 10(a).

The express language of Article III of the New York Convention is quite clear on the treatment of foreign arbitral awards by a Court having secondary jurisdiction when it states:

> Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

In the case at bar, the Ninth Circuit ignored that that time period for Chevron to have vacated the award had passed within the arbitral seat. It also expressly stated that it rejected Petitioners' citation

to its decision in *Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 v. Celotex Corp.*, 708 F.2d 488, 490 (9th Cir. 1983) wherein it held that the failure of an arbitral debtor to timely vacate a domestic arbitral award under 9 U.S.C § 12 of the FAA vitiates the Article V defenses and makes the judgment ready. The Second Circuit, a year later, in *Florasynth, Inc.* v. *Alfred Pickholz* adopted this same position.

Chevron's failure to set aside the award *is res judicata*, Article III of the New York Convention. The *Florasynth* rule is straightforward, a party that that fails to timely bring a motion to vacate is both barred from seeking vacatur and raising a defense to a confirmation.

By imposing stricter rules on recognition and enforcement of foreign arbitral awards, a Contracting State will breach its obligations under the Convention. This principle is reflected in Article III, which grants Contracting States the discretion to determine the applicable rules for recognition and enforcement so long as, in doing so, they do not impose "substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards [. . .] than are imposed on the recognition or enforcement of domestic arbitral awards." Simply put, Article III embodies the pro-enforcement policy of the New York Convention,and sets forth the general principle that "each Contracting State shall recognize arbitral awards as binding and enforce them". As a result of Article III, foreign arbitral awards are entitled to a prima facie right to recognition and enforcement in the Contracting States.

In accordance with the wording of Article III, courts of the Contracting States have applied the procedural rules of their national laws to the recognition and enforcement of arbitral awards, and not the laws of the country where the arbitration took place or any other law. *See*, *LeaseCo Group and others v. Electranta S.P.*487 F.3d 928 (D.C. Cir.2007).

B. Question Presented # 2 – The Ninth Circuit's Decision to Deny Confirmation of a Foreign Arbitral Award Containing an Undisputed Valid Agreement to Arbitrate on the Premise That Purported Non-Signatories Were Not Parties to the Agreement Is Wrong as a Matter of Law and Ignores the Doctrine of *Stare Decisis.*

Curiously the Ninth Circuit August 21, 2021 decision for denying confirmation of a post-arbitral award under the New York Convention disregards, *inter alia*, the U.S. Supreme Court's June 2020 decision in *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. ___, 2020 WL 2814297 (June 1, 2020).

This decision, which is not cited by Judge Miller, specifically addresses how the decision is facially erroneous as the principal parties and signatories of the 1933 Concession, the Kingdom of Saudi Arabia ("KSA") and Chevron, identify private landowners in Article 25 of the principal contract and mutually agree they will be paid rents for the lands needed to execute the Concession. Petitioners are, as a matter of law, intended Third-Party Beneficiaries.

In fact, KSA creating and Chevron accepting the contractual duty to pay rents to "private landowners"

as consideration for the Concession vitiates the need of this Court in engaging in any incorporation by reference analysis under Deed 124 as Petitioners are *de facto* parties to the principal contract. Moreover, because Article 25 states that, "The Government authorizes the company to obtain from the owner of the land the surface rights" for the purposes of the execution of the Concession, this would only further advance that the principal parties recognized private landowners' rights under the concession which would include their right to invoke arbitration. Moreover, Chevron accepting the KSA's signatory authority to sign on behalf of private landowners would, as a matter of law, result in KSA being a signatory agent on behalf of private landowners, not mention the heirs' ancestor was the one who signed the historic Concession.

The Petitioners rights to invoke arbitration becomes clear when the arbitral agreement is provided in whole; the decision omits material language from the agreement to arbitrate in its written opinion. The authority to engage in arbitration and the scope of arbitrability in beginning of Article 31 which reads:

> Should any doubt, difficulty or difference arise between the Government and the Company in interpreting this Agreement, the execution thereof or the interpretation or execution of any of it or with regard to any matter that is related to it or the rights of either of the two parties or the consequences thereof, and the two parties fail to agree on the settlement of the same in another way, then the issue shall be referred to two

> arbitrators with each party appointing one of the two arbitrators and with the two arbitrators appointing an umpire prior to proceeding to arbitration.

The foregoing language addresses any doubt, difficulty or difference arising from either the interpretation of the agreement or the execution of the agreement that concerns "any matter that is related to it" of the two parties "or the consequences thereof". Unless this Court engages in reconstructive surgery of Article 31's agreement to arbitrate, which addresses "any matter related" to the interpretation or execution of the agreement or "consequences thereof" the argument that rental payments are not part of the agreement to arbitrate rents is bordering on factual and legal fantasy. To be more specific, the obligation to make rental payments under the principal contract are identified in Articles 5, 12, 16, 17, 25, 31 and 37. Deed 124 liability upon successor companies is a "consequence thereof" of the principal agreement to arbitrate and Article 32 in the linchpin for holding Chevron liable to date. This is important because Chevron neither disputes the validity of the Concession or agreement to arbitrate. As such the Separability Doctrine prohibits a court conferred with only secondary jurisdiction from crossing the border into the principal contract for the purposes of engaging in a contractual analysis of its material terms.

II. THE QUESTIONS PRESENTED ARE IMPORTANT.

This U.S. Court oftentimes grants certiorari to safeguard the consistent enforcement of arbitration agreements—including in the international context, such as the case here. *See, e.g., BG Grp., PLC v. Republic of Argentina*, 134 S. Ct. 1198, 1205 (2014)

(granting certiorari "[g]iven the importance of the matter for international commercial arbitration"); *New Prime Inc. v. Oliveira*, No. 17-340, 2019 WL 189342, at *9 (U.S. Jan. 15, 2019) ("grant[ing] certiorari only to resolve existing confusion about the application of the Arbitration Act"); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 528 (2019) (granting certiorari "[i]n light of disagreement in the Courts of Appeals over whether the 'wholly groundless' exception is consistent with the Federal Arbitration Act"). This Court should grant certiorari for the following reasons:

A. Question Presented # 1 – The Ninth Circuit Court of Appeals' Published Opinion That There Is No Implementing Language Contained Either in the FAA or the Convention to Treat Foreign Arbitral Awards the Same and Domestic Arbitral Awards Has Compelling National and International Implications and Is Facially Damaging Precedent That Results in a Breach of a Treaty by the United States That Must Be Corrected.

The United States, Saudi Arabia and Egypt are all Member states to the New York Convention. A decision that demonstrates that the U.S. Appellate Court is ambivalent to the express language that: (1) foreign arbitral awards are to be treated the same as domestic awards is unacceptable and has not only domestic implications, but also international.

If a party does not move to vacate an award within the three-month time frame, it cannot seek to do so later when faced with a motion to confirm the

award. *See*, *Lander Co. v. MMP Invs., Inc.*, 107 F.3d 476, 478 (7th Cir. 1997); *see also* Taylor v. Nelson, 788 F.2d 220, 225 (4th Cir. 1986); *Florasynth v. Pickholz*, 750 F.2d 171, 174-77 (2d Cir. 1984). Applying Article III of the Conventions, a party who intends to seek to vacate an international award must move quickly and may not wait until the prevailing party seeks confirmation of the award. This is a very important clarification that must be addressed by this Court to assure that foreign awards are treated the same as foreign awards.

B. Question Presented # 2 – Once a U.S. District or Circuit Court Having Secondary Jurisdiction Determines That There Is a Valid Agreement to Arbitrate Between Parties, It Must Invoke Judicial Restraint in Denying Recognition of the Award on the Basis of Arbitrability.

Judicial ignorance of the separability doctrine within the realm of international commercial arbitration mandates that this Court cure a precedent that marginalizes U.S. Supreme Court precedent.

In its decision the Ninth Circuit held that Chevron did not consent to arbitration and therefore denial of the arbitral award was proper. Relying on *Granite Rock Co. v. International Brotherhood of Teamsters*, 561 U.S. 287, 299 (2010), as legal authority for denying confirmation, it fails to see that Chevron does not challenge the validity of the principal contract nor the agreement to arbitrate. The decision also overlook that the U.S. district court's September 24, 2019 findings read, "there is no dispute that the

arbitration clause in the original agreement applies to the parties to that agreement".

If Chevron neither challenges the validity of the Concession nor the agreement to arbitrate in the principal contract, then Justice Thomas' decision in *Granite Rock* actually provides clear legal grounds why confirmation of the foreign arbitral award is mandatory in this case. Why? Because in *Granite Rock* Justice Thomas reiterates the Separability Doctrine created in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U. S. 395 (1967)) and how the Supreme Court continues to apply the Separability Doctrine in its 2006 decision in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U. S. 440 (2006) case. In *Granite Rock*, it restates that,

> "courts must treat the arbitration clause as severable from the contract in which it appears, and thus apply the clause to all disputes within its scope "'[u]nless the [validity] challenge is to the arbitration clause itself'" or the party "disputes the formation of [the] contract," (quoting, *Buckeye*, 546 U. S., at 445–446).

In declining to apply the rule of severability to the case at bar, the judicial panel in this case engages in an evidentiary assessment, post-arbitration, of Chevron's substantive defenses contrary to the judicial panel's factual and legal findings that under Article 32 of the principal contract Chevron remains liable despite it "transferring" its rights under the Concession to Aramco.

C. Question Presented # 3 – An Independent Judiciary is the Crown Jewel of Our Constitutional Republic. This Case is Compelling for Safeguarding the Integrity of our Judiciary in Consideration that Circuit Court Judge has Proceeded Forward in Presiding Over an Appeal that Evidences Judicial Misconduct Which Should Never Have Occurred had he Properly Granted Petitioner's Motion for Recusal.

There can be nothing more important to our judiciary than assuring that litigants have an impartial Article III judge presiding over a matter. An independent judiciary can only properly enforce the rule of law if it conducts itself within the parameters of the rules governing judicial conduct. This did not happen here.

Aside from Judge Miller knowing that there is falsified evidence contained on the record, he advocated for the interest of his former friend, supervisor, client and colleagues by ruling that Petitioners' Motion to Strike said falsified evidence was moot but thereafter ruled on the merits of a matter that was originally concerned a subject matter jurisdiction dismissal. How can a Judge issue a ruling on a case where the record verifiably shows the existence of falsified evidence?

The answer to this question is that he can't and that impartiality his been compromised. How do we know? In this case Justice Miller makes it very clear from actions. It begins with the decision not recuse himself when the totality of close ties to other parties raises reasonable questions as his impartiality. It

then flows over to the decision when he directs the Clerk to remove parties from the appeal *sua sponte* without notice or a hearing. As for the decision itself he engages in reconstructive surgery of the facts and omits material language and sections from the ruling wherein on its surface it appears the panel has engaged in a fair and impartial analysis, but in reality it is nothing more that facade of legal citation that deviates from both fact and law and the reality of his friends and former client's misconduct.

Instead, he attacks Petitioners' legal counsel by seeking monetary and ethical sanctions for submitting a summary article attached to a motion to strike Chevron's use of falsified evidence that was clearly and unequivocally represented to the panel as strictly demonstrative exhibit to summarize the intransigence recorded within the arbitral and confirmation proceedings.

The mistake that occurs here by Judge Miller is that he represents, prior to issue his ruling, that the panel looked for the article; a violation of ABA Formal Opinion 478. That aside, Canon B of the Code of Conduct for United States Judges states,

> A judge should avoid lending the prestige of judicial office to advance the private interests of the judge or others. For example, a judge should not use the judge's judicial position or title to gain advantage in litigation involving a friend or a member of the judge's family.

In this case, there is a *de facto* advantage that has taken place wherein he has used his judicial position to advance the interest of his former super-

visor, friend and client. Such blatant and obvious misconduct cannot be ignored and requires that this Court remedy the denial of a foreign arbitral award on the merits.

III. THE NINTH CIRCUIT DECISION CONCERNING THE APPLICABILITY OF THE FAA TO THE NEW YORK CONVENTION DEEPENS A PREEXISTING SPLIT BETWEEN CIRCUITS.

The Ninth Circuit now shares the errored viewpoint on the limits of the applicability of the FAA with the Eleventh Circuit Court of Appeal. As such there is now a 2-2 split between the Ninth and Eleventh circuit and the Second and Fifth circuits concerning the relative applicability of the FAA to foreign arbitral awards. Although not directly related to procedural applicability

A. The Ninth Circuit Has Joined the Eleventh Circuit in Its Assessment on the Applicability of the FAA to the New York Convention.

Nearly twenty-five years ago, the Eleventh Circuit took the viewpoint that the New York Convention would govern non-domestic awards. This minority opinion, until now, appeared settled for the circuit in *Industrial Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1440 (11th Cir. 1998). However, in the U.S. Supreme Court decision in *BG Group PLC v. Republic of Argentina*, 572 U.S. 25, 44-45 (2014) that was called into question. In *BG Group*, the Court analyzed whether a specific FAA Section 10" grounds required vacatur of a non-domestic award. The Court did not address whether FAA Section 10 grounds should govern to begin with, but

by engaging in an analysis of whether a Section 10 ground applied to a particular award, the Court opened the door as to whether Section 10 supplies legal grounds to challenge non-domestic awards. The Eleventh Circuit accepted those arguments in a 2017 opinion, where, in a footnote, it postured that *BG Group* decision did rule that the FAA Section 10 grounds governed challenges to non-domestic awards. *See Bamberger Rosenheim, Ltd., (Israel) v. OA Dev., Inc.*, (United States), 862 F.3d 1284, 1287 n.2 (11th Cir. 2017).

B. The Second and Fifth Circuits Adopt the Applicability of the FAA to the New York Convention and Split With the Ninth and Elventh Circuit.

The United States Court of Appeals for the Second Circuit splits with the Eleventh and the Ninth Circuit on the applicability of FAA in *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.,* 126 F.3d 15, 18-19 (2d Cir. 1997). Essentially Second Circuit in *Yusuf* takes the position that when arbitration is governed by the New York Convention, the Court can also look to domestic arbitration law, specifically the FAA. The Fifth has endorsed the Second Circuit's holding in *In Karaha Bodas Co., L.L.C. v. Perusahaan Pertam-bangan Min-yak Dan Gas Bumi Negara ("Negara II")* 364 F.3d 274 (5th Cir. 2004). In *Gulf Petro Trading Co. Inc. v. Nigerian National Petroleum Corp.*, 512 F.3d 742 (5th Cir. 2008)) the Fifth Circuit Court addressed the interaction of the New York Convention and the FAA in greater detail and reaffirmed the applicability of the FAA to the Convention.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

EDWARD C. CHUNG
COUNSEL OF RECORD
CHUNG, MALHAS & MANTEL, PLLC
1037 NE 65TH STREET, SUITE 80171
SEATTLE, WA 98115
(206) 264-8999
ECHUNG@CMMLAWFIRM.COM

COUNSEL FOR PETITIONERS

FEBRUARY 14, 2022