No. 21-1153

IN THE
Supreme Court of the United States

WALEED KHALID ABU AL-WALEED AL HOOD AL-QARQANI, ET AL.,

Petitioners,

v.

CHEVRON CORPORATION, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Petitioners forfeited their argument based on Article III of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention" or the "Convention") by failing to raise it below, and in the alternative whether the court of appeals correctly held that nothing in the New York Convention or its implementing legislation requires parties resisting recognition and enforcement of a foreign arbitral award in a secondary jurisdiction to first seek vacatur in the primary jurisdiction as a precondition to asserting the defenses expressly set forth in the Convention.

2. Whether Petitioners forfeited their separability-doctrine and third-party-beneficiary arguments by failing to raise them below, and in the alternative whether both courts below correctly found as a factual matter that Petitioners had no rights under the arbitration agreement, and alternatively that Respondents were not bound by that agreement.

3. Whether Judge Miller correctly applied settled law in rejecting Petitioners' baseless and fact-bound assertions of facially inadequate alleged grounds for disqualification.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Chevron Corporation states that (i) Chevron Corporation is a publicly traded company (NYSE: CVX); (ii) Chevron Corporation has no parent corporation; and (iii) no publicly held company owns more than 10% of Chevron Corporation's stock.

Respondent Chevron U.S.A. Inc. states that it 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. Inc.'s stock.

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals is reported at 8 F.4th 1018. The order of the district court is not published in the Federal Supplement but is available at 2019 WL 4729467.

JURISDICTION

The judgment of the court of appeals was entered on August 12, 2021. A petition for rehearing en banc was denied on November 16, 2021. The petition for a writ of certiorari was filed on February 14, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

INTRODUCTION

Further review is not warranted in this case. Petitioners forfeited the first and second questions asserted in their petition by failing to raise them below. In any event, Petitioners' first question concerning Article III of the New York Convention—like their attempt to manufacture a variety of related circuit conflicts—rests on a clear misreading of the Federal Arbitration Act ("FAA") and the cited case law. Petitioners' second question concerning the "separability doctrine" similarly rests on a misreading of the law, and would not warrant review in any event because the judgment below rests on multiple alternative fact-bound grounds that are independent of Petitioners' forfeited and meritless arguments. Finally, there is no basis for review of the fact-bound question whether Judge Miller correctly applied settled law in rejecting Petitioners' frivolous recusal motion. Indeed, Petitioners do not even attempt to identify any conflict in authority regarding the second and third questions

presented that could theoretically merit plenary review. Certiorari should be denied.

STATEMENT

Petitioners' entire case is a fraud. Claiming to own substantial portions of Saudi Arabia's oil reserves based on a 1949 deed, Petitioners first attempted to pursue their baseless claims in Saudi Arabia. That attempt failed because Saudi Aramco (the national oil company of Saudi Arabia), and not Petitioners, holds title to the lands in question. C.A.ECF-28 at SER215. Not to be deterred, Petitioners then instituted a sham arbitration proceeding against Chevron Corporation (but not Chevron U.S.A. Inc.) in Egypt before a corrupt arbitral tribunal, several of whose personnel were subsequently convicted of criminal misconduct for their roles in this sham. *See* C.A.ECF-29-2, 45-2; Dist.Ct.ECF-141, 158. The arbitral panel committed multiple egregious procedural irregularities in blatant violation of the arbitration agreement that Petitioners claimed to invoke. Ultimately, the arbitral panel entered a decision dismissing Petitioners' claims, but then purported to reconstitute itself with improperly changed membership and awarded $18 billion to Petitioners (and tens of millions of dollars for the arbitral tribunal itself, CA-ECF-28 at SER182–83). Pet. App. 4a. The lower federal courts correctly and unanimously rejected Petitioners' attempts to enforce this sham "award" on multiple grounds. Further review is not warranted.

The petition's recitation of the alleged factual and procedural history is inaccurate, misleading, and incomplete, and contains numerous false, irrelevant, and unsubstantiated allegations, as confirmed by the absence of citations to the findings below. Respond-

ents will not attempt to refute all of Petitioners' falsehoods, but set forth below an accurate recitation of the relevant legal background and facts as shown by the record and findings.

A. LEGAL FRAMEWORK

Chapter 1 of the FAA, 9 U.S.C. §§ 1-16, sets forth the general rules for judicial review and enforcement of arbitration awards rendered in the United States. Chapter 2 of the FAA, 9 U.S.C. §§ 201-208, adopts and implements into U.S. federal law the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517, T.I.A.S. No. 6997 (1970), better known as the New York Convention (the "Convention"). The Convention "appl[ies] to the recognition and enforcement of arbitral awards made in the territory of a State [i.e., a nation] other than the State where the recognition and enforcement of such awards are sought," and also "to arbitral awards [that are] not considered as domestic awards in the State where their recognition and enforcement are sought." Convention art. I(1). In cases subject to the Convention, the nation in which or under whose law the arbitral judgment was rendered is referred to as the "primary jurisdiction," and the nation in which recognition is sought (if other than the primary jurisdiction) is referred to as the "secondary jurisdiction." *See*, *e.g.*, *Gulf Petro Trading Co. v. Nigerian Nat'l Petroleum Corp.*, 512 F.3d 742, 746 (5th Cir. 2008).

The FAA/Convention framework thus contemplates three different types of arbitral awards: (1) a "domestic award," which is an arbitral award rendered in the United States "that has no reasonable relation with one or more foreign States"; (2) a "foreign award," which is "an international arbitral award

made in an arbitration seated outside the United States"; and (3) a "Convention award made in the United States," also known as a "non-domestic award," which is an "international arbitral award rendered in the United States that arises out of a legal relationship involving property located abroad, envisaging performance or enforcement abroad, or having some other reasonable relation with one or more foreign States." Restatement (Third) U.S. Law of Int'l Comm. Arb. § 1.1 PFD (2019); *see also Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 18–19 (2d Cir. 1997) (defining "nondomestic awards" as awards rendered in the United States but nonetheless subject to the New York Convention because they are "not considered as domestic").

Importantly, these three different types of arbitral awards are subject to different legal regimes for purposes of judicial review and enforcement in the United States. In particular, the Convention "mandates very different regimes for the review of arbitral awards (1) in the countries in which, or under the law of which, the award was made, and (2) in other countries where recognition and enforcement are sought." *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 364 (5th Cir. 2003) (quoting *Yusuf*, 126 F.3d at 23) (cleaned up). "Chapter 1 [of the FAA] governs domestic disputes" and the domestic awards that result from arbitration of such controversies. *Bartlit Beck LLP v. Okada*, 25 F.4th 519, 523 (7th Cir. 2022). By contrast, the Convention and chapter 2 of the FAA are the primary source of authority governing "foreign" and "nondomestic" awards; chapter 1 of the FAA applies in cases pertaining to such awards only "to the extent [it] is not in conflict with [chapter 2] or the Convention." 9 U.S.C. § 208.

A U.S. district court exercises primary jurisdiction when a party "seeks confirmation of a domestic or nondomestic arbitral award," but exercises secondary jurisdiction when a party "seeks … enforcement of a foreign arbitral award." *CBF Industria de Gusa S/A v. AMCI Holdings, Inc.*, 850 F.3d 58, 75 (2d Cir. 2017). "[T]he Convention permits a primary jurisdiction court to apply its full range of domestic law to set aside or modify an arbitral award." *Gulf Petro Trading Co.*, 512 F.3d at 747. Accordingly, the party against whom a domestic award is rendered must employ the mechanisms set forth in FAA chapter 1 to set aside such an award. *See, e.g.*, *Taylor v. Nelson*, 788 F.2d 220, 225 (4th Cir. 1986).

It is generally understood that a party against whom a *nondomestic* award (i.e., an award rendered in the United States but subject to the Convention because of its international character) has been rendered is similarly subject to FAA chapter 1 in seeking vacatur of such an award, because the United States is the primary jurisdiction with respect to such awards. *See, e.g.*, *Zeiler v. Deitsch*, 500 F.3d 157, 165 n.6 (2d Cir. 2007) (describing district court's dual role in nondomestic award case as "a confirmation-and-enforcement tribunal of non-domestic arbitration awards under the Convention, and as a 'competent authority of the country in which ... that award was made,' Convention, art. V(1)(e), authorized under [c]hapter 1 of the FAA to vacate arbitration awards entered in the United States" (omission in original)). Pursuant to 9 U.S.C. § 12, motions to vacate or modify arbitral awards rendered in the United States must be brought within three months of service of the award. In contrast, when U.S. district courts exercising *secondary* jurisdiction are faced with a petition to

confirm a *foreign* arbitral award, they have no jurisdiction to vacate the award, because "a motion to vacate may be heard only in the courts of the country where the arbitration occurred or in the courts of any country whose procedural law was specifically invoked in the contract calling for arbitration of contractual disputes." *M & C Corp. v. Erwin Behr GmbH & Co., KG*, 87 F.3d 844, 849 (6th Cir. 1996) (emphasis omitted). A U.S. court exercising secondary jurisdiction must simply "confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." 9 U.S.C. § 207; *see also* Convention art. III (providing for recognition and enforcement of foreign awards "under the conditions laid down in" the Convention itself, including the prerequisites and defenses to recognition set forth in Articles IV and V of the Convention).

The grounds for refusing to recognize or enforce a foreign award under the Convention include, *inter alia*, that the party seeking recognition has failed to supply duly certified copies of the original award and/or of the parties' written agreement to arbitrate, Convention art. IV, that the agreement to arbitrate "is not valid" under applicable law, *id.*, art. V(1)(a), that the award "contains decisions on matters beyond the scope of the submission to arbitration," *id*., art. V(1)(c), that the "composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties," *id*., art. V(1)(d), or that the award "has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made," *id*., art. V(1)(e).

Nothing in the Convention requires parties resisting recognition and enforcement in a secondary jurisdiction to first seek vacatur of the award in the primary jurisdiction. Under the Convention, the pendency of such a motion in the primary jurisdiction permits a court exercising secondary jurisdiction to stay recognition proceedings if it so chooses, Convention art. VI, and the grant of vacatur by a court in the primary jurisdiction is one of the defenses to recognition in secondary jurisdictions, *id*. art. V(1)(e), but the Convention's other prerequisites and defenses to recognition are not dependent on the filing of a motion to vacate. *See Aggarao v. MOL Ship Mgmt. Co.*, 2014 WL 3894079, at *1 & n.4 (D. Md. Aug. 7, 2014) (denying confirmation while noting that the movant "did not appeal the arbiter's decision").

B. FACTUAL BACKGROUND

1. The 1933 Concession Agreement and the 1949 Land Deed.

In 1933, Chevron's predecessor, Standard Oil Company of California ("SOCAL"), signed an oil exploration and production concession agreement with the Saudi government. Shortly thereafter, SOCAL assigned all of its rights and obligations under that agreement to its then-wholly-owned subsidiary California Arabian Standard Oil Company ("CASOC"). By 1944, CASOC had changed its name to Arabian American Oil Company, commonly known as Aramco, and as of "1948, SOCAL was a minority shareholder owning only 30 percent of Aramco." Pet. App. 2a–3a.

In a 1949 deed, the Saudi government transferred ownership of certain oil-bearing lands in Saudi Arabia to Petitioners' alleged ancestor and others. Petitioners claim that the 1949 deed memorializes a lease

agreement whereby their alleged ancestor agreed to lease the land to Aramco for purposes of the oil concession. Pet. App. 3a.

During the 1970s and 1980s, Saudi Arabia gradually nationalized Aramco. In 1990, Aramco was dissolved, and all of its remaining assets were transferred to the Saudi government's state-owned oil company, Saudi Aramco. Pet. App. 3a–4a; C.A.-ECF 28 at SER33–34.

Petitioners attempted to obtain redress from the Saudi government for what they claimed was the Government's use of the land between 2005 and 2015, beyond the term of the alleged lease. Saudi Arabia rejected Petitioners' claims, concluding that the land at issue had been transferred to the Saudi government for the benefit of Saudi Aramco and that full compensation had been received for that transfer. C.A.ECF-28 at SER205–06.

2. The Sham "Arbitration" in Egypt.

In 2014, Petitioners and others purported to commence an arbitration against Chevron Corporation (but not Chevron U.S.A. Inc.) and Saudi Aramco before the so-called "International Arbitration Center" ("IAC") in Cairo, Egypt. Pet. App. 4a. Petitioners claimed they were due unpaid rent on the land referenced in the 1949 deed due to Saudi Aramco's alleged unlawful occupation of the land starting in 2005. They further asserted that they were entitled to arbitrate their dispute pursuant to Article 31 of the 1933 concession agreement, even though neither Petitioners nor Chevron Corporation are parties to that concession agreement. Pet. App. 3a.

Chevron objected to the purported arbitral proceedings on the grounds that, *inter alia*, there is no

enforceable agreement to arbitrate between the parties, the IAC tribunal lacked jurisdiction to administer the alleged dispute even if the purported arbitration clause could bind the parties, and Egypt was an improper situs under that clause. Chevron also objected to egregious improprieties in the composition of the tribunal, and ultimately refused to participate. Pet. App. 4a.

The proceedings continued notwithstanding Chevron's objections, as did the procedural irregularities. Ultimately, "after the initial arbitral panel dismissed the dispute, the panel was reformulated and the dismissal withdrawn. A new arbitral panel then issued an award ordering Chevron to pay the heirs $18 billion." Pet. App. 4a.

Chevron reported the sham arbitration to Egyptian criminal authorities, who investigated and brought criminal charges. All three of the IAC "arbitrators" who issued the sham "award," along with the IAC's executive director/vice president and secretary, were criminally prosecuted and convicted in Egypt for their frauds. Dist.Ct.ECF-141 at 2 (initial Egyptian criminal conviction of the five defendants); Dist.Ct.ECF-158 at 2 (intermediate Egyptian appellate affirmance of convictions for two defendants who appealed); C.A.ECF-29-2 at 2–3 (Egyptian equivalent of the U.S. Supreme Court affirming criminal conviction of the only defendant who appealed to that court); C.A.ECF-45 at 2–4 (second Egyptian criminal conviction of IAC's executive director/vice president stemming from second investigation pertaining to forged signatures used throughout the fraudulent IAC arbitration); *see also* C.A.ECF-29-1, 39, 45-1, 53 (briefing and supporting declarations in support of Respond-

ents' requests for judicial notice of the Egyptian criminal convictions explaining the history of the proceedings).[1]

C. PROCEEDINGS BELOW

Petitioners sought confirmation of the sham "award" before the United States District Court for the Northern District of California under the New York Convention. The district court dismissed the petition for lack of subject-matter jurisdiction. Pet. App. 20a–36a.

The district court found that no enforceable arbitration agreement exists between Petitioners and Respondents. Pet. App. 27a–30a. It also found that SOCAL (Chevron Corporation's predecessor) had "assigned away its rights and obligations under the [Concession] Agreement" to the entity that ultimately became Aramco, which the Saudi government nationalized. Pet. App. 27a n.2. And the court found that "numerous procedural infirmities would independently preclude confirmation of the arbitral award"—including that Petitioners had "failed to produce a duly certified copy of the arbitration award" and that "the constitution of the arbitral panel was highly irregular and appears to have been engineered to produce a result" in Petitioners' favor. Pet. App. 30a–33a.

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[1] Petitioners mischaracterize what occurred in Egypt in baselessly claiming, without record citation, that these prosecutions were "dismissed for lack of probable cause." Pet. 12–13. In reality, Egypt's General Prosecutor, the highest ranking law enforcement officer in Egypt (C.A.ECF-28 at SER221 ¶ 2), authorized the prosecutions that led to the convictions, *see id.* at SER230, SER238–40, and the Egyptian courts entered those judgments under Egyptian law as cited above.

The court of appeals affirmed. Pet. App. 1a–14a. As an initial matter, the court agreed with Respondents' argument that unnamed "heirs" were not proper appellants because they had not been identified in the notice of appeal. The court concluded that "only the five named individuals have appealed the district court's order" and ordered the clerk to "revise the docket to reflect that they are the only appellants." Pet. App. 6a.

The court of appeals affirmed the district court's conclusion that subject-matter jurisdiction was lacking as to Chevron U.S.A. The court reasoned that because the "award" did not even mention Chevron U.S.A., Petitioners had no non-frivolous claim that the sham "award" was enforceable against it. Pet. App. 10a–11a.

As to Chevron Corporation, the court "agree[d] with the district court that there was no binding agreement to arbitrate between the parties." Pet. App. 11a. It addressed and rejected Petitioners' two proffered grounds for claiming entitlement to invoke the 1933 concession agreement's arbitration clause. First, the court upheld the district court's factual findings that Petitioners could not enforce the clause directly against Chevron "because the agreement was signed by Saudi Arabia, not the heirs, and the heirs have not demonstrated that they may assert Saudi Arabia's interest in it." *Id.* As an independent alternative ground for rejection of Petitioners' arguments in this regard, the court also upheld the district court's factual finding that Chevron's predecessor SOCAL had validly assigned away its rights and obligations under the 1933 concession agreement before Petitioners' ancestor had purportedly acquired any rights pursuant to the 1949 deed. Pet. App. 12a.

Second, the court of appeals rejected Petitioners' contention that they were entitled to enforce the 1933 concession agreement's arbitration clause indirectly through alleged incorporation by reference in the 1949 deed. The court upheld the district court's factual finding that the 1949 deed did not incorporate the arbitration clause by reference, regardless of whether federal common law or Saudi law governed that question. Pet. App. 13a.

The court of appeals also rejected Petitioners' contention that Chevron Corporation had to move to vacate the foreign arbitral "award" in Egypt as a precondition to resisting enforcement in the United States, explaining that the "heirs rely on rules applicable to certain domestic arbitrations" under the FAA, but that "neither the New York Convention nor its implementing statute contains such a rule." Pet. App. 13a–14a. The panel also recognized "the serious irregularities in the arbitral proceedings," but found it unnecessary to rely on those additional grounds for denying enforcement. Pet. App. 11a.

Finally, while the court of appeals noted that, "with respect to Chevron Corporation," the district court "incorrectly attached a jurisdictional label to what should have been a decision on the merits," it affirmed the judgment because there was "no reason to remand to the district court simply to direct it to affix a new label to its order." Pet. App. 14a.[2]

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[2] In affirming the district court, the court of appeals noted a circuit conflict over the question whether the existence of an enforceable agreement to arbitrate goes to subject-matter jurisdiction or instead to the merits. Pet. App. 8a. This issue does not merit review, for three reasons. First, Petitioners did not raise it in their petition. *See* Sup. Ct. R. 14.1(a). Second, the court of

The court of appeals denied Petitioners' petition for rehearing en banc without dissent. Pet. App. 37a–38a.

D. PETITIONERS' ATTEMPTED FRAUD ON THE COURT

After oral argument but before the court of appeals issued its decision, Petitioners filed a motion in the court of appeals requesting to docket what they described as "a *Saudi Sun* article that explains and provides an informative summary" of relevant "factual and procedural events." C.A.ECF-66-1 at 1 & Exh. 1. Petitioners claimed that this purported "article" would "assist [the court of appeals] in understanding" Petitioners' unsubstantiated factual assertions. *Id*. at 2.[3]

Respondents opposed that motion, explaining that "[t]here is no indication . . . that the *Saudi Sun* even exists as a news organization or publication, and the version presented by Petitioners, notably undated, does not bear any indication of its origin or of the mailing address or even an email address or website for this purported newspaper." C.A.ECF-69 at 1. Moreo-

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appeals adopted Petitioners' position on that question. Finally, that question is irrelevant to the outcome of this (or any other) case, because the "practical effect . . . is the same" under either view. Pet. App. 2a.

[3] The *Saudi Sun* "article" includes a number of mischaracterizations of the record that Petitioners repeated in their certiorari petition. For example, Petitioners claim that Respondents submitted "a falsified Egyptian Prosecutor's Report" to the Ninth Circuit, Pet. 5, when in reality Respondents submitted a sworn declaration from their Egyptian counsel authenticating a copy of the Egyptian General Prosecutor's case file. C.A.ECF-28 at SER221, SER228.

ver, Respondents noted that much of the so-called "article" regurgitated (often word-for-word) claims and arguments advanced by Petitioners in prior filings. *Id.* Respondents further observed that Petitioners' submission to the court of a purported news "article" that had actually been drafted by Petitioners or their counsel without disclosure of their authorship would constitute "a breach of counsel's duty of candor and an attempted fraud on the Court." C.A.ECF-69 at 2 (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), *overruled in part on other grounds, Standard Oil Co. of Cal. v. United States*, 429 U.S. 17 (1976)).

The court of appeals subsequently ordered counsel for Petitioners to show cause why sanctions should not be imposed for the filing of the *Saudi Sun* "article." C.A.ECF-74 at 1. The court explained that it had been "unable to locate" the supposed publication and that the "article appears to have been fabricated for purposes of this litigation." *Id*. The court referenced its "inherent authority to fashion sanctions for fraud upon the court," as well as its authority to "sanction 'counsel or a party for conduct that violates the Federal Rules of Appellate Procedure, the Circuit Rules, orders or other instructions of the Court, the rules of professional conduct or responsibility . . . or as authorized by statute.'" *Id.* at 2–3 (citations omitted).

The court ultimately appointed Judge A. Wallace Tashima as Special Master to oversee further proceedings in connection with the order to show cause. C.A.ECF-80 at 1. Those proceedings remain pending.

REASONS FOR DENYING THE PETITION

A. PETITIONERS' ARGUMENTS CONCERNING ARTICLE III OF THE NEW YORK CONVENTION ARE UNWORTHY OF FURTHER REVIEW, FORFEITED, AND MERITLESS

Petitioners' first question presented asserts that the decision below conflicts with Article III of the New York Convention and the decisions of other circuits. That question does not merit review, for four reasons.

First, Petitioners forfeited their arguments based on Article III of the Convention by failing to raise them below. Indeed, their briefs in the lower courts did not cite Article III at all.[4] Further review is therefore inappropriate because "[o]rdinarily, this Court does not decide questions not raised or resolved in the lower court[s]." *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992) (alterations in original; citation omitted).

Second, Petitioners have failed to identify any authority—much less a circuit conflict—to support their contention that Article III requires U.S. courts exercising secondary jurisdiction to apply the "procedural limitations" of FAA chapter 1 to recognition and enforcement actions governed by the Convention.

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[4] The petition attempts to conceal this forfeiture by asserting that the district court "did not rule on Appellants' argument that the award was final and denial proof under Article III of the New York Convention." Pet. 13. The district court did not address Article III because Petitioners never raised it.

Pet. i.[5] Indeed, Petitioners do not identify any case in which this question has ever been addressed.

Third, as discussed in Points A.1 and A.2 below, Petitioners' attempts to conjure a variety of circuit conflicts regarding the applicability of FAA chapter 1 to Convention cases reflect a fundamental misunderstanding of the difference between the role of primary and secondary jurisdictions in Convention cases, and have no relevance here.

Finally, as discussed in Point A.3 below, the court of appeals was clearly correct in holding that Respondents were fully entitled to assert the Convention's defenses in this proceeding.

1. There Is No Circuit Conflict Over the Applicability of FAA Chapter 1 to Foreign Awards.

Petitioners contend that the decision below conflicts with decisions of other circuits holding that "a party that . . . fails to timely bring a motion to vacate is . . . barred from [both] seeking vacatur and raising a defense to a confirmation." Pet. 19; *see generally* Pet. 19–20, 23–24. Each of the allegedly conflicting cases is readily distinguishable, however, because none of them involved a foreign award.

Most of the allegedly conflicting cases relied upon by Petitioners involved purely domestic arbitrations that were not subject to the Convention at all, and thus have nothing whatsoever to do with this case.

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[5] Petitioners' lone citation, *Leaseco Group & Others v. Electranta S.P.*, 487 F.3d 928, 931 (D.C. Cir. 2007) (Pet. 20), is completely inapposite: it affirmed dismissal of a petition to confirm an arbitral award rendered in Colombia where Colombia's highest court had set aside the award.

See Bhd. of Teamsters v. Celotex Corp., 708 F.2d 488 (9th Cir. 1983) (domestic award rendered in California pursuant to collective bargaining agreement between corporation and its employees; no reference to the Convention);[6] *Florasynth, Inc. v. Pickholz*, 750 F.2d 171 (2d Cir. 1984) (domestic award in employer's contract dispute with employee analyzed exclusively under chapter 1 with no indication of any foreign connection and no reference to the Convention); *Taylor v. Nelson*, 788 F.2d 220, 225 (4th Cir. 1986) (domestic award rendered in New York between American musician Willie Nelson and a music promoter; no reference to the Convention). While these cases hold that a party who fails to move to vacate a *domestic arbitration award governed by FAA chapter 1* forfeits the right to oppose an effort by the other party to later enforce the award—as expressly provided by 9 U.S.C. § 12 ("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.")—they say nothing about purporting to impose such a requirement for foreign awards governed by the Convention. Accordingly, Petitioners' claim of a conflict is illusory.

The only other allegedly conflicting case cited by Petitioners is *Lander Co. v. MMP Investments, Inc.*, 107 F.3d 476 (7th Cir. 1997), but that decision is also in complete harmony with the decision here. *Lander* concerned an arbitral award rendered in New York between two American companies pertaining to an agreement in Poland. The party against whom the

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[6] A purported conflict with Ninth Circuit precedent would not merit review in any event. *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (per curiam).

award was issued moved to dismiss the petition to enforce the award, and in the alternative to vacate the award. It did so because it was "concerned" that "although [the other party] takes the position now that the Arbitral Award is covered by the New York Convention," and thus no motion to vacate was required, "other allegations in its Petition to Confirm suggest that if it is unsuccessful under the Convention, it will seek to enforce the Arbitral Award under the Federal Arbitration Act," under which a motion to vacate is required. *Id*. at 478.

The court held that both the FAA and the New York Convention applied to the award at issue, because it had a "reasonable relation with a foreign country" and thus fell within the Convention's coverage of "'arbitral awards not considered as domestic awards.'" *Lander*, 107 F.3d at 481–82 (quoting Convention art. I(1)). The court did not reach the question whether, in such cases, a motion to vacate is required. It did, however, specifically highlight the difference between FAA chapter 1 and the New York Convention with respect to the requirement (or lack thereof) of a motion to vacate as a prerequisite for opposing confirmation:

> Under the [FAA], if you fail to move to vacate an arbitration award you forfeit the right to oppose confirmation (enforcement) of the award if sought later by the other party. *In contrast, the New York Convention contains no provision for seeking to vacate an award*, although it contemplates the possibility of the award's being set aside in a proceeding under local law, Art. V(1)(c), 21 U.S.T. at 2520, and recognizes defenses to the enforcement of an award.

Id. at 478 (emphasis added; some citations omitted).

Thus, far from supporting Petitioners' contention that the filing of a motion to vacate is a prerequisite to assertion of defenses to recognition and enforcement under the Convention, *Lander* in fact stands for the opposite proposition. Nowhere did the *Lander* court purport to hold or even suggest that a motion to vacate is required before a party can resist recognition and enforcement of a foreign award under the Convention.

In any event, Petitioners' contention that the FAA's motion-to-vacate requirement somehow applies to foreign awards in Convention cases is also plainly wrong on the merits. By their express terms, the FAA's provisions governing vacatur or modification of awards rendered in the United States have no application to foreign arbitral awards like the one at issue here. Sections 10 and 11 of the FAA provide that such motions must be brought in "*the United States court in and for the district wherein the award was made*." 9 U.S.C. §§ 10(a), 11 (emphasis added). Since no such district exists with respect to awards rendered abroad, it is readily apparent that these provisions do not apply to foreign arbitral awards. It necessarily follows that the three-month deadline for filing such motions, 9 U.S.C. § 12, is equally inapplicable to foreign awards.

Moreover, it would be nonsensical to apply these provisions to foreign awards, because secondary jurisdictions have no authority to vacate arbitral awards entered in a foreign country. *See*, *e.g.*, *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 368 (5th Cir. 2003) ("even though courts of a *primary* jurisdiction may apply their own domestic law when evaluating an attempt to annul or set aside an arbitral award, courts in

countries of *secondary* jurisdiction may refuse enforcement only on the limited grounds specified in" the Convention). Accordingly, further review is not warranted.

2. The Alleged Circuit Conflict Over the Applicability of FAA Chapter 1 to Non-Domestic Arbitration Awards Has Nothing to Do With This Case.

Petitioners contend that the decision below exacerbated an existing circuit conflict over the question whether, "when arbitration is governed by the New York Convention, the Court can also look to domestic arbitration law." Pet. 29. But Petitioners' cited authorities either deal with the question whether a Convention award *rendered in the United States* can be modified or vacated pursuant to FAA chapter 1, or stand for the proposition that motions to vacate arbitral awards must be brought in the country that has primary jurisdiction, rather than in a country with secondary jurisdiction. In this case, the sham "award" at issue was not rendered in the United States, so the alleged circuit conflict cited by Petitioners is inapposite. And while it is true that only the primary jurisdiction has authority to hear motions to vacate an arbitral award, that principle is irrelevant here, because no such motion is at issue in this case. Further review is therefore unwarranted.

In any event, no conflict exists. The Second Circuit has held that "Article V(1)(c) of the Convention [allows] a court in the country under whose law the arbitration was conducted to apply domestic arbitral law, in this case the FAA, to a motion to set aside or vacate that arbitral award," and accordingly that an American company could move pursuant to chapter 1 of the FAA to vacate a Convention award rendered in

the United States. *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 21 (2d Cir. 1997).

By contrast, in *Industrial Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434 (11th Cir. 1998), the Eleventh Circuit declined to apply the FAA's grounds for vacatur to a Convention award rendered in the United States, reasoning that the "Convention's enumeration of defenses is exclusive." *Id*. at 1445–46.

More recently, however, the Eleventh Circuit has backed away from that position, and "assume[d], without deciding," that FAA chapter 1 does apply to a motion to vacate a Convention award rendered in the United States. *Bamberger Rosenheim, Ltd., (Israel) v. OA Dev., Inc., (United States)*, 862 F.3d 1284, 1287 n.2 (11th Cir. 2017). The court acknowledged its prior decision to the contrary in *Industrial Risk Insurers*, but pointed to intervening inconsistent Supreme Court authority which held that a Convention "award may be 'set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.'" *BG Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 37 (2014) (citation omitted). Thus, the Eleventh Circuit is no longer in conflict with the Second Circuit on this question.

Nor is there any conflict between the Second Circuit and the decision below. The sham "award" at issue here was rendered in Egypt, meaning that U.S. courts lack primary jurisdiction and thus cannot entertain a motion to vacate at all. *See Karaha Bodas Co.*, 335 F.3d at 368 (only "courts of a *primary* jurisdiction may apply their own domestic law when evaluating an attempt to annul or set aside an arbitral award") (emphasis in original). And of course, no

such motion was filed below. The courts below therefore had no occasion to consider whether, if this case had involved an award rendered in the United States, FAA chapter 1 would have governed a hypothetical motion to vacate. The alleged conflict is thus both nonexistent and irrelevant here.

Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 364 F.3d 274 (5th Cir. 2004) ("*Karaha II*"), and *Gulf Petro Trading Co. v. Nigerian National Petroleum Corp.*, 512 F.3d 742 (5th Cir. 2008), are even further afield. *Karaha II* held that an "Indonesian court's annulment ruling is not a defense to enforcement under the New York Convention" where "Switzerland had primary jurisdiction over the Award," because the award "was made in Switzerland and was made under Swiss procedural law." 364 F.3d at 309–10. *Gulf Petro* affirmed the dismissal of a complaint targeting purported misconduct in a Swiss arbitration because the complaint "amount[ed] to no more than a collateral attack on the Final Award itself," which was impermissible because "the proper method of obtaining this relief is by moving to set aside or modify the award in a court of primary jurisdiction." 512 F.3d at 750. These cases stand for the unremarkable proposition that motions to vacate awards, if brought at all, need to be brought in the country that has primary jurisdiction. Nothing in those decisions is inconsistent in any way with the decision below, which addresses the entirely separate question whether a party must first seek to vacate a foreign award in the country of primary jurisdiction before asserting the Convention's expressly enumerated defenses to recognition and enforcement in a secondary jurisdiction. There is no conflict, and further review is unwarranted.

3. The Court of Appeals Correctly Held That Respondents Were Entitled to Assert the New York Convention's Prerequisites and Defenses to Enforcement of the "Award."

Review is also unwarranted because the decision below is correct on the merits. The express terms of the New York Convention's implementing legislation make clear that there is no requirement that a party must move to vacate a foreign arbitral award as a prerequisite to resisting its confirmation in the United States. FAA chapter 2 specifies that a court may decline to confirm a foreign arbitral award whenever "it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in" the New York Convention, without conditioning that principle on the filing of a motion to vacate. 9 U.S.C. § 207. Any of the Convention's applicable prerequisites or defenses to recognition and enforcement may therefore be asserted in a recognition action, without regard to whether a motion to vacate has been filed. *See Aggarao*, 2014 WL 3894079, at *1 & n.4 (denying confirmation in Convention case while noting that the movant "did not appeal the arbiter's decision").

The Convention itself confirms this commonsense understanding. It expressly sets forth multiple independent grounds for denying recognition and enforcement of foreign awards, only one of which is that the award "has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made." Convention art. V(1)(c). The enumeration of numerous grounds for denial of recognition that are applicable even when the primary jurisdiction has not vacated the award neces-

sarily establishes that a request for vacatur is not required. Indeed, Petitioners' contrary view would render the remaining defenses set forth in Article V entirely superfluous, because they would be unavailable if the award had not been successfully challenged in the primary jurisdiction, and redundant if it had been. *See Nat'l Ass'n of Home Builders v. Defs. Of Wildlife*, 551 U.S. 644, 669 (2007) (cautioning against "reading a text in a way that makes part of it redundant"). Not surprisingly, no court has ever adopted Petitioners' interpretation.

Accordingly, the court of appeals correctly held that "neither the New York Convention nor its implementing statute" obligates parties to move to vacate a foreign arbitral award in the primary jurisdiction as a precondition to resisting enforcement in a secondary jurisdiction. Pet. App. 13a–14a. Petitioners have identified no basis for this Court's review.

B. PETITIONERS' "SEPARABILITY DOCTRINE" ARGUMENT IS FORFEITED, MERITLESS, AND UNWORTHY OF REVIEW

Petitioners' second question asserts that the "separability doctrine" precluded the lower courts from declining to recognize and enforce the sham "award" on the ground that no enforceable arbitration agreement exists between the parties. Petitioners are mistaken, and their second question is not worthy of further review, for three reasons.

First, Petitioners forfeited any reliance on the "separability doctrine" by not raising it below. Second, as discussed in Point B.1 below, the judgment below rests on multiple fact-specific grounds that are entirely independent of Petitioners' contentions, rendering them irrelevant. Third, as discussed in Points B.2

and B.3 below, Petitioners' arguments do not implicate any conflict in the authorities and are wrong on the merits.

1. The Judgment Below Rests on Multiple Independent and Fact-Specific Grounds for Concluding That No Enforceable Arbitration Agreement Exists.

The courts below found on three different factual bases that no enforceable arbitration agreement exists between Petitioners and Respondents. Further review is unwarranted because this Court does not sit to review factual determinations by the lower federal courts, and these findings render Petitioners' abstract and confusing legal arguments irrelevant to the proper outcome of this case.

First, the courts below rejected Petitioners' contention that Petitioners could "enforce the 1933 concession agreement against Chevron directly." Pet. App. 11a. The court of appeals affirmed the district court's finding that "Petitioners are unquestionably not parties to that agreement and are not entitled to invoke arbitration of their dispute under it," Pet. App. 29a, confirming that "the agreement was signed by Saudi Arabia, not the heirs, and the heirs have not demonstrated that they may assert Saudi Arabia's interest in it," Pet. App. 11a.

Second, the district court found in the alternative that Chevron had no obligation to arbitrate because Chevron's predecessor "assigned away its rights and obligations under the [Concession] Agreement to an entity . . . which ultimately became Aramco." Pet. App. 27a n.2. The court of appeals affirmed this factual finding, concluding that "the district court did not

clearly err in finding that Chevron's rights and obligations under the 1933 concession agreement were extinguished long ago." Pet. App. 12a. As a result, Petitioners "cannot enforce the agreement's arbitration clause against Chevron," because "by the time [their ancestor] obtained any interest in the lands, [Chevron's predecessor] had assigned its rights and obligations to California Arabian Standard Oil Company (which later became Aramco) and relinquished control of Aramco." *Id*.

Third, the courts below rejected Petitioners' contention that the 1949 deed incorporated the 1933 concession agreement's arbitration clause by reference. The district court found that the "1949 Deed in which their [sic] Petitioners' ancestors unilaterally granted land rights to Aramco does not specifically incorporate the arbitration provision of the 1933 Concession Agreement." Pet. App. 27a. The court of appeals affirmed, holding that "the heirs' theory fails" under both federal common law and Saudi law because "Chevron is not bound by the 1949 deed because it was not a party to the deed," "it did not control Aramco when the deed was executed," and "the 1949 deed's only reference to the 1933 concession agreement is a notation that the transfer of rights under the 1949 Deed is based on the requirements of Article (25) of the . . . Concession Agreement," not the arbitration clause. Pet. App. 13a (cleaned up).

These independent and wholly fact-bound determinations render Petitioners' legal arguments entirely irrelevant. Review is not warranted.[7]

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[7] The record reveals numerous additional grounds for concluding that Petitioners' arguments are meritless and not worthy of

2. Petitioners' Contention That They Are Third-Party Beneficiaries Is Forfeited and Meritless.

Petitioners assert that they are "intended Third-Party Beneficiaries" of the 1933 concession agreement. Pet. 20. Petitioners failed to raise any claim to third-party-beneficiary status in their briefs in the district court or in their opening brief on appeal, and the courts below did not address the issue, so the argument is forfeited. In any event, Petitioners' assertions are meritless and do not warrant further review, for four additional reasons.

First, Petitioners fail to identify any rule of law articulated by the court of appeals that is even purportedly worthy of review. Petitioners falsely contend that the court of appeals' decision is in tension with *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1648 (2020), which held that "the New York Convention does not conflict with the enforcement of arbitration agreements by nonsignatories under domestic-law equitable estoppel doctrines." But nothing in the decision below is inconsistent with that principle. Far from adopting a categorical rule that "non-signatories to a valid agreement to arbitrate have no standing to

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review. The court of appeals noted, for example, "the serious irregularities in the arbitral proceedings" as one of the "alternative grounds identified by the district court for denying enforcement." Pet. App. 11a. As the district court found, the alleged arbitration clause "provides a process for appointment of arbitrators," but "[n]one of these procedures were followed as required," "thereby rendering any award invalid and unenforceable." Pet. App. 33a–34a. In addition, the "award" was "beyond the scope of the submission to arbitration and without authority," and "attempt[ed] to resolve claims that are outside the scope of the purported arbitration agreement." Pet. App. 35a.

invoke arbitration," as Petitioners would have it, Pet. 2 (footnote omitted), the court of appeals simply rejected as factually unsupported Petitioners' various asserted grounds for enforcing the arbitration agreement as non-signatories, Pet. App. 11a–13a. Petitioners identify no conflict between the decision below and *GE Energy* or any other case.

Second, Petitioners' contentions in this regard boil down to an entirely fact-bound claim of entitlement to third-party-beneficiary status that rests on a tendentious and utterly implausible reading of the factual record. The courts below had no occasion to address this claim, since it was not preserved, and it certainly does not merit this Court's review in the first instance.

Third, even if Petitioners had been third-party beneficiaries, that fact would have made no difference to the outcome. The courts below found that even if Petitioners "could establish a right to enforce the arbitration clause," Chevron's "obligations under the 1933 concession agreement were extinguished long ago," so Petitioners "cannot enforce the agreement's arbitration clause against Chevron." Pet. App. 12a.

Finally, Petitioners' argument is meritless. The 1933 concession agreement was not "made expressly for the benefit of" Petitioners, as would be required to confer third-party-beneficiary status under California law. Cal. Civ. Code § 1559.[8] Article 25, on which Pe-

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[8] Respondents cite California law given this Court's statement in *GE Energy* that third-party-beneficiary law is one of the "traditional principles of state law" that may permit non-signatories to enforce an arbitration agreement. 140 S. Ct. at 1643. Petitioners have offered no choice-of-law analysis, which of course would be required if this issue were actually presented.

titioners rely, was a limited grant of authority to Aramco to acquire "surface rights of the lands which the Company deems necessary for use," Pet. App. 27a, and it neither identified any particular third party nor expressly stated an intent to confer benefits on any such party. Accordingly, Article 25 did not confer third-party-beneficiary status on Petitioners. *See Matthau v. Super. Ct.*, 60 Cal. Rptr. 3d 93, 99–100 (Cal. Ct. App. 2007) (arbitration could not be compelled on a third-party-beneficiary theory because "[a] third party beneficiary is someone who may enforce a contract because the contract is made expressly for his benefit" and "[t]he mere fact that a contract results in benefits to a third party does not render that party a 'third party beneficiary'"); *Hayes Children Leasing Co. v. NCR Corp.*, 43 Cal. Rptr. 2d 650, 660 (Cal. Ct. App. 1995), *as modified on denial of reh'g* (Aug. 28, 1995) (contract that did not mention the alleged third-party beneficiary did not give that entity the right to compel arbitration).

3. Petitioners' "Separability Doctrine" Arguments Are Irrelevant and Meritless.

Petitioners mischaracterize both the decision below and the relevant law in contending that the so-called "separability doctrine" requires confirmation of their sham "award" because it allegedly precluded the lower courts from considering Respondents' "substantive defenses" to enforcement. Pet. 22, 24–25. In the first place, the authority on which Petitioners rely is inapposite here. *Granite Rock Co. v. International Brotherhood of Teamsters*, 561 U.S. 287, 298 (2010), and *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445 (2006), both concerned domestic arbitral awards governed by chapter 1 of the FAA, not the New York Convention.

In any event, *Granite Rock* held that the district court, rather than an arbitrator, should resolve a dispute over the ratification date of an agreement containing an arbitration clause. Petitioners point to the Court's description of the lower court's rationale as resting in part on the view that "at least in cases governed by the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.*," the "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 unless the validity challenge is to the arbitration clause itself or the party disputes the formation of the contract." 561 U.S. at 298–99 (cleaned up); *see* Pet. 25.

In *Buckeye*, the Court held that the arbitrator should decide a claim that a contract as a whole was illegal and therefore unenforceable. The court reasoned that "as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract" and "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance." 546 U.S. at 445–46.

It is unclear what solace Petitioners seek to draw from these references to the severability of arbitration clauses, but in any event this Court's description of that principle in *Granite Rock* and *Buckeye* makes clear that it does not assist Petitioners here. According to the very passage quoted by Petitioners (at 25), an arbitration clause has no application when a "party disputes the formation of the contract," which is precisely what Respondents did here. Indeed, both courts below found that no agreement to arbitrate was ever formed between the parties. Pet. App. 29a ("Petitioners have failed to meet their burden to demonstrate

that there is an operative agreement to arbitrate between themselves and Respondents."); Pet. App. 11a ("We agree with the district court that there was no binding agreement to arbitrate between the parties."). Petitioners' own authorities therefore preclude resort to the arbitration clause. Indeed, *Granite Rock* expressly holds that "whether parties have agreed to submit a particular dispute to arbitration" and "dispute[s]" that "concern[] contract formation" are "generally for courts to decide." 561 U.S. at 296 (cleaned up).

In addition, the only consequence of the principle stated in *Granite Rock* is that courts must "apply the clause to all disputes within its scope" in the absence of challenges to contract formation or the validity of the arbitration clause. Pet. 25. But the dispute at issue here is not within the scope of the purported arbitration clause. As the district court correctly found, "[t]he scope of the 1933 Concession Agreement was limited to the grant of rights in the extraction of hydrocarbons on public and private lands as granted by the Kingdom of Saudi Arabia" such that "[t]he arbitration provision in that original agreement does not purport to cover a dispute concerning money allegedly owed under a deed transferring private rights and the title of land to another party." Pet. App. 35a.

For all these reasons, Petitioners' second question does not merit review.

C. JUDGE MILLER'S DENIAL OF PETITIONERS' FRIVOLOUS RECUSAL MOTION DOES NOT MERIT FURTHER REVIEW

Circuit Judge Eric Miller's denial of Petitioners' recusal motion rests on a straightforward, fact-bound application of settled principles of law to the unique

facts of this case. Petitioners do not even attempt to identify any conflict between Judge Miller's determinations and other appellate authority, and none exists. Further review is unwarranted.

Judge Miller's refusal to disqualify himself on these facts was also clearly correct. Petitioners do not cite a single case to support their arguments to the contrary, and settled law confirms the validity of his decision.

Shortly before oral argument, Petitioners filed a letter contending that Judge Miller's impartiality was in question because (1) other attorneys at his former law firm had represented Chevron U.S.A. Inc. in unrelated matters; (2) while in private practice, he had acted as co-counsel with one of the law firms currently representing Respondents—"in a single case, unrelated to this one, on behalf of a client other than Chevron, with attorneys other than those who now represent Chevron," Pet. App. 16a; and (3) 12 years earlier, one of the attorneys representing Respondents had been one of Judge Miller's supervisors in the Office of the Solicitor General, Pet. App. 16a–17a. Citing applicable precedents, Judge Miller rejected all of Petitioners' arguments for recusal, holding that none of Petitioners' proffered grounds required recusal for the appearance of partiality under 28 U.S.C. § 455(a) or pursuant to 28 U.S.C. § 455(b)(2), which requires recusal only where "in private practice [a judge] served as lawyer in the matter in controversy, or a lawyer with whom [the judge] previously practiced law served during such association as a lawyer concerning the matter." Pet. App. 15a–17a. Nothing about these plainly correct rulings even arguably merits review.

Petitioners now contend that Judge Miller displayed evidence of bias by making errors in the court of appeals' unanimous merits decision, including by "omit[ting] contractual language [from the decision] that, if presented in its entirety, is unfavorable to the panel's opinion," "referenc[ing] SoCal, present day Chevron, as a 'predecessor,'" and by "omit[ting] any analysis to Article 32 of the concession [sic]." Pet. 4. Petitioners' factbound assertions are unfounded. The law is clear that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994).[9]

Petitioners also contend that Judge Miller displayed bias by instituting *sua sponte* sanctions proceedings based on Petitioners' filing of what appears to be a fabricated newspaper "article." *See* C.A.ECF-74. But that decision was actually made by the court of appeals panel as a whole, *id*., and in any event the issuance of an order to show cause why sanctions should not be imposed for Petitioners' misconduct is plainly not grounds for recusal, *see Liteky*, 510 U.S. at 555. The law is clear that a "court 'may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule.'" *In re Girardi*, 611 F.3d 1027, 1035 (9th Cir. 2010) (quoting Fed. R. App. P. 46(c)). Sanctions proceedings remain ongoing, and the fact that

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[9] Petitioners also falsely contend that Judge Miller "*sua sponte* directed the Court Clerk, without notice or a hearing, to remove arbitral heirs . . . from the case caption." Pet. 4. In reality, Respondents expressly argued in their brief below that the unnamed "heirs" were not properly before the court. C.A.ECF-27 at 1–2.

the court of appeals instituted them in light of apparent misconduct by Petitioners' counsel does not give rise to any inference of partiality.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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