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June 15, 2022 ***Via U.S Supreme Court Electronic Filing***

Mr. Scott S. Harris, Esq.
Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

MOTION FOR RESETTING JUNE 16, 2022 CONFERENCE AND COMPELLING NINTH CIRCUIT ZOOM AUDIO AND VIDEO RECORDINGS

Re: *Waleed Khalid Abu Al-Waleed Al Hood Al-Qarqani, et al. v. Chevron Corporation, et al.,* U.S. Supreme Court Case No.: 21-1153

Dear Mr. Harris:

I am counsel of record for the Petitioners in the matter, *Waleed Khalid Abu Al-Waleed Al Hood Al-Qarqani, et al. v. Chevron Corporation, et al.* docketed under U.S. Supreme Court cause number 21-1153. On February 14, 2022, Petitioners filed a Petition for Writ of Certiorari with the Supreme Court asserting three of the following issues for consideration in granting certiorari in accord with U.S. Supreme Court Rule 10:

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?

On March 1, 2022, Respondents, Chevron Corporation and Chevron USA, Inc., by and through their counsel of record, Thomas G. Hungar with the law firm of Gibson, Dunn & Crutcher, LLP filed a waiver of right to respond in accord with U.S. Supreme Court Rule 15-5.

This *Al-Qarqani* case was initially distributed for conference for March 25, 2022. On March 16, 2022 the Supreme Court ordered Respondents to file a Response Brief by April 15, 2022. Pursuant to U.S. Supreme Court Rule 30.4 Respondents requested and were granted a 30-day extension of time to file their Response Brief and they did so on May 16, 2022. Petitioners filed their Reply Brief on May 31, 2022. At present, the *Al-Qarqani* matter is currently set for conference before the Supreme Court on **Thursday, June 16, 2022**.

Pursuant to U.S. Supreme Court Rule 21.1 Petitioners respectfully request that this Court reset the pending conference date set for **Thursday, June 16, 2022** and issue an order directing the Ninth Circuit Court Clerk to propound the March 11, 2022 post-mandate Zoom audio and video recording in its **entirety** to this Supreme Court, as well as to both Petitioners and Respondents.

The foregoing request is being made in relation to the issue related to Petitioners' 28 U.S.C. §455 motion for disqualification of Ninth Circuit Court Judge Eric D. Miller. Approximately 10 months prior to the judicial panel's August 21, 2021 published decision in *Al-Qarqani v. Chevron Corp*., 8 F.4th 1018 (9th Cir.2021) that held neither the New York Convention nor the FAA contain any implementing rule for treating foreign arbitral awards the same as domestic arbitral awards (COA-ECF# 73), Judge Miller refused to recuse himself (COA-ECF# 56) from presiding over a case where: **(1)** Chevron's appellate counsel, Thomas Hungar, was his admitted friend[1] and former supervisor at the U.S. Solicitor General's Office; **(2)** Chevon, USA, Inc. was Judge Miller's former client shortly before being appointed to the Ninth Circuit Judge in 2019; **(3)** In 2018 Judge Miller's co-counseled with Chevron's counsel Gibson Dunn while these pending proceedings were taking place; and most recently discovered and not disclosed that **(4)** During the course of the underlying appeal, Judge Miller's law clerk, Matthew C. Reagan, was offered a **paid** associate position with Chevron's counsel, Gibson Dunn's San Francisco office; the office working on this appeal. *See*, Page 7 of 21, COA-ECF# 95-1.

On September 14, 2020 Respondents' counsel, Thomas G. Hungar, filed Chevron Corporation and Chevron, USA, Inc.'s Motion to Take Judicial Notice of a Certified Translation from Arabic to English of an Egyptian Judgment from the El Nozha Court (COA-ECF# 45). On September 24, 2020 Petitioners filed a Motion to Strike (COA ECF# 46) Respondents Motion to Take Judicial Notice on the grounds, *inter alia*, that Respondents had previously filed purported "certified translations" from Arabic to English that a Court translator and three Arabic linguists maintained could not be translated. As briefed by Petitioners, these documents were nothing more than jibber-jabber translations of a concocted criminal prosecution. In supporting this position, Petitioners attached fifteen (15) exhibits to their motion to strike that clearly and unequivocally exposed that

[1] It should be noted that both Judge Eric D. Miller and Chevron's counsel Thomas G. Hungar clerked for the U.S. Supreme Court. Judge Miller clerked for Justice Clarence Thomas and Mr. Hungar clerked for Justice Antoine Kennedy. Judge Miller also wrote a February 17, 2017 letter to Senator Feinstein and Grassly in support of Justice Gorsuch's nomination to the U.S. Supreme Court.

Judge Miller's admitted friend, Thomas Hungar and former client, Chevron, USA, Inc. were aware of possible witness tampering, offering of falsified evidence and of threatening of Petitioner's clients to withdraw from the enforcement proceedings.

Instead of addressing this obvious and verifiable intransigence and lack of candor towards a tribunal, Judge Miller ruled that Petitioners' motion to strike his friend and former clients use of falsified evidence was "moot" (COA-ECF# 73) but thereafter issued a separate *sua sponte* Order to Show Cause (COA-ECF# 74) why the court should not invoke sanctions against Petitioners' counsel for filing a Fed. R. App. P. 27-1 motion seeking **permission/leave** to file a supplemental exhibit that Petitioner's clearly and unequivocally stated was strictly for demonstrative purposes. Although Fed. R. App. P. 27-1 allows any attorney admitted into the Ninth Circuit to attach "***any paper***" to a Fed. R. App. P. 27-1 motion and Petitioners counsel never represented or asked Judge Miller to take FRE 201 Judicial Notice of an exhibit, Judge Miller asserted he conducted independent research and was "unable to locate" the article; a violation of ABA Formal Opinion 478.

Despite this judicial misconduct, Petitioner's counsel complied with Judge Miller' s *Sua Sponte* Order to Show Cause. Petitioners timely filed both a Response (COA-ECF# 79) and Motion to Vacate the *sua sponte* sanctions order (COA-ECF# 78). Petitioners' arguments*, inter alia*, were predicated on the grounds that pursuant to U.S Supreme Court authority, *Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384 (1990) and the Ninth Circuit Court opinion in *Louisiana-Pacific Corp. v. Asarco, Inc.*, 909 F. 2d 1260, (9th Cir. 1990) appellate sanctions, as a matter of law, were limited to Fed. R. App. P. 38 frivolous appeals. Ergo Judge Miller continuing to move forward with **monetary** sanctions to award his admitted friend and former client was effectively *void ab initio*. Moreover, because Judge Miller did not give notice to Petitioners of the **federal rule** or **requirement** that Petitioner's counsel purportedly violated by seeking Fed. R. App. P. 27-1 leave/permission to file a demonstrative exhibit, the attempt to impose monetary sanctions violated both the Rules Enabling Act, 28 U.S.C. § 2071, *et. seq.* and Fed. R. App. P. 47 (b). Although Petitioners noted the Motion to Vacate for **September 21, 2020**, to date Judge Miller has not ruled on the legality of the imposition of monetary sanctions.

On **November 29, 2022**, the Ninth Circuit issued a court ordered mandate that effectively deprived itself of jurisdiction (COA-ECF# 82). To date, no mandate has been recalled in accord with U.S. Supreme Court precedent, *Calderon v. Thompson*, 523 U.S. 538, 550 (1998); however, Petitioners' counsel was ordered (COA -ECF# 83) to appear *via* Zoom on **March 11, 2022** at a post-mandate Pre-Hearing Conference before Special Master A. Wallace Tashima. Complying with the court order but noting an objection to jurisdiction due to the Ninth Circuit's failure recall the mandate, Petitioners' counsel appeared.

Prior to the March 11, 2022 hearing the Ninth Court advised Petitioners' counsel that he would be required to consent to a Zoom video and audio recordings that would be made public. The hearing was to commence at 10:00 AM; but Petitioner's counsel was to appear and consent to Zoom audio and video recordings at 9:30 AM. Although the mandate had issued and neither Chevron nor their legal counsel are parties to the proceeding, Judge Tashima invited Chevron's counsels, Gibson, Dunn and Crutcher, LLP to represent the court in post-mandate monetary sanctions against

Petitioner's counsel. While Ninth Circuit Local Rule 39-1.6 effectively time bars Chevron from obtaining sanctions against Petitioners and no motion to recall the court mandate had been made either by the Court or Chevron, Judge Miller and Special Master Tashima proceeded forward with alleged "*sua sponte"* **monetary** sanctions on behalf of Judge Miller's friend and former client.

Minutes prior to the Zoom audio and video recorded hearing started, Special Master Tashima appeared on the video and audio recording **not knowing he was being video and audio recorded**. Before putting on his robe, he was heard stating what sort of sanctions does Chevron want or expect imposed upon Petitioners' counsel. Both I and another attorney in my office heard these statements while watching Special Master Tashima getting ready for the hearing by Zoom. This was profoundly concerning as these were post-mandate/*sua sponte* proceeding that did not involve Chevron.

While at the hearing Special Master Tashima indicated that because these were ***not*** disciplinary hearings, they would be public. The Court Clerk designated these as public hearings on the docket and created a link for public access. However, upon clicking the link, there is no record of these post-mandate proceedings ever took place on the list of cases for March 11, 2022 on Ninth Circuit audio and video recording portal. Petitioners' counsel requested multiple times from the clerk to make these links accessible and asked for assistance with accessing the audio; no answer was provided. Finally, after numerous requests, Petitioners' counsel was informed from the Ninth Circuit's head of operation that these Zoom audio and video recording were not public and archived by the Court. This did not make sense as there was no court order stating these hearing would not be public and how could something that just happened be archived?

Petitioners counsel advised the Clerk of Operations that: **(1)** These were public hearings; **(2)** These Zoom video and audio recording that Petitioners counsel was required to consent to are part of the record on appeal pending before the U.S. Supreme Court; and **(3)** That Petitioners' counsel would be prejudiced as a party if not afforded these Zoom audio and video recordings in their entirety as Petitioner's counsel needed these recording in preparation for these ***post-mandate "sua sponte" star chamber hearings*** to address the legitimacy of the proceedings.

Because no Zoom audio and/or video recording was produced, Petitioners' counsel filed a Motion to Stay these post-mandate proceedings until the Zoom audio and video recording was produced. Without providing any reason and contrary to Ninth Circuit Local Rules governing scheduled hearing and Clerk delegation of authority, the Ninth Circuit Deputy Clerk "DENIED" the motion to stay without providing any reason (COA-ECF# 91). Thereafter the Ninth Circuit Deputy Clerk also struck (COA-ECF# 92), *sua sponte*, Petitioner's timely filed post merit brief regarding sanctions on the grounds that a post-merit brief, not on the merits, needed to be filed as an Opening Brief on the merits. This was a violation of Fed. R. App. P. 47 (b) because prior to striking the Ninth Circuit Court Clerk did not indicate the specific federal rule or requirement that mandated that a post-merits brief be refiled as an Opening Brief on the merits.

On May 31, 2022 Petitioner's counsel filed a Motion for Clarification and Motion to Strike to Strike the Clerk's order instructing Petitioner's counsel to file a post-merit brief as an "Opening Brief on the merits". On June __ 2022 Chevron, **not a party** to these **post-mandate** proceedings, filed a FRE 201 Motion to Take Judicial Notice (COA-ECF# 94) of the transcripts of the audio recordings[2] that somehow Chevron's counsel[3] was able to obtain, but not Petitioners. This was particularly odd because aside from the fact that Chevron was able to obtain court audio recordings that was not accessible on the court docket, the larger question was why must the Court take judicial notice of audio recordings if they were accessible and posted online? Why was Chevron, a non-party, representing the Court Clerk?

On June 8, 2022, Petitioners filed a Motion for the Special Master to compel the court clerk to make his audio video the Zoom audio and video recordings public (COA-ECF# 96). It was noted for June 10, 2022 disposition. To date, Petitioners have not been provided any Zoom video and audio recordings that Petitioners were a party to.

As Justice Kavanaugh has stated, "***an independent judiciary is the crown jewel of our constitutional republic***." While U.S. courts must of course police their own courtrooms, they too must do so by adhering to the rule of law so as to assure public confidence that tribunals are impartial. "The right of public access is a fundamental element of the rule of law, important to maintaining the integrity and legitimacy of an independent Judicial Branch." *Metlife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 663 (D.C. Cir. 2017). "[D]istrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of **Star Chamber**, and to the French monarchy's abuse of the *lettre de cachet*." *In re Oliver*, 333 U.S. 257, 268–69 (1948); *emphasis added*.

The importance of recusal preserves public confidence in our Article III courts. Many of the Justices on this Supreme Court recognize. For example, in the Supreme Court case *Colorado Department of State v. Michael Baca*, 591 US _ (2020); Justice Sotomyer recused herself from presiding over a matter she had a friend relationship with a party. Justice Breyer recuses himself in cases his brother, Judge Charles Breyer presides over. Justice Clarence Thomas recused himself in *United States v. Virginia*, as his son was attending the Virginia Military Institute. *Chief Justice Roberts* recused himself in *Life Technologies Corporation v. Promega Corporation, 580 US _ (2017) as he was a shareholder of.* Justice Kavanaugh recused himself from presiding over *Jam v. International Finance Corporation*, 586 U.S. ___ (2019) and *Lorenzo v. Securities and Exchange Commission,* 587 U.S. ___ (2019). Justice Kagan, on being appointed to the Supreme Court, recused herself from over 50 cases that were pending before the Court. Justice Samuel Alito recused himself

[2] There appears to be two audio recordings: (1) The Ninth Circuit Court audio recording; and (2) The Ninth Circuit Zoom audio and video recordings.

[3] It should be noted Eric D. Miller's law clerk, during these proceedings worked for the Ninth Circuit and now works for Gibson Dunn & Crutcher, LLP' San Francisco Office. Thomas G. Hungar also worked at the Ninth Circuit Court of Appeals.

Based on the foregoing, Petitioners respectfully request resetting the June 16, 2022 conference and compelling Ninth Circuit Court Clerk to propound the Zoom audio and video recordings in consideration as to whether certiorari should be granted to address this important Article III question, that today poses a significant importance in restoring the public confidence in an independent judiciary and the right to access public record.

Your prompt attention is of profound importance in such critical times.

Respectfully submitted,

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