NO. 21-1153

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 REHEARING

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

JULY 18, 2022 *COUNSEL FOR PETITIONERS*

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

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

STATUTES

TABLE OF AUTHORITIES – Continued

Page

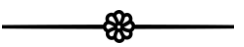
JUDICIAL RULES

CONGRESSIONAL DOCUMENTS

OTHER AUTHORITIES

PETITION FOR REHEARING

Pursuant to United States Supreme Court Rule 44.2, Petitioners petition for panel rehearing of this Court's June 21, 2022 Order denying their Petition for a Writ of Certiorari.



REASONS FOR GRANTING REHEARING

I. *Federalist Paper* 78 Instructs That the Judicial Department of Our U.S. Constitution Is to Declare All Acts Contrary to the Manifest Tenor of the Constitution Void. the Very Function of a Petition for Writ of Certiorari Is to Petition That Our U.S. Supreme Court Order a Lower Court to Send Up the Record of the Case for Review. However, When a Party Aggrieved by a Circuit Court Ruling Is Arbitrarily Denied Access to Public Court Records in Support of Granting Certiorari by a Circuit Court, What Manifests Are Acts Contrary to the Tenor of Our U.S. Constitution's Fifth Amendment Due Process Clause and a Legislative Violation of the Limitations Imposed Upon Article III courts by the U.S. Rules Enabling Act. Ergo, the Ninth Circuit's Court's Interference with Petitioners' Procedural Due Process Rights on Appeal Amounts to a *Per Se* Intervening Circumstance of a Substantial and Controlling Effect That Compels Rehearing in Accord with U.S. Supreme Court Rule 44.2.

When our Founding Fathers to the U.S. Constitution wrote the *Federalist Papers,* they provided a blueprint on the mechanics of a national constitution and the respective role of each branch of our new republic. Central to this judicial construction was that "judgment" as opposed to the "will" of judges govern jurisprudence. Quintessential to this social compact between those who govern and those who consent to be governed was that our U.S. constitution incorporate and our judicial branch recognize the English concept of due process of law under Clause 39 of the MAGNA CARTA, issued in 1215, wherein John of England proclaimed: "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land." While due process was relegated to landownership of the citizenry, the Magna Carta required the monarchy to obey the law and it prohibited it from arbitrarily changing the law absent a lawful judgment.

While adopting the English concept of due process of law, our Founding Father's implementation of constitutional due process expanded this right by incorporating into the Fifth and Fourteenth Amendments an individual's rights wherein "No person shall . . . be deprived of life, liberty, or property, without due process of law." This Supreme Court has held this to mean that fundamental to due process is that every person is entitled to a fair trial before a fair tribunal wherein "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." *See*, *In re Murchison*, 349

U.S. 133, 136 (1955). In *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980), this court explained that the due process clause entitled litigants to a fair and impartial tribunal "in both civil and criminal cases" *id.*, at 242].

In the above captioned case presented for rehearing, Petitioners timely filed a Petition for Writ of Certiorari with the U.S. Supreme Court on February 14, 2022 asserting that the Ninth Circuit Court of Appeals' published opinion in *Al-Qarqani v. Chevron Corp.*, 8 F.4th 1018 (9th Cir.2021) ruling that "neither the New York Convention, as implemented into the Federal Arbitration Act ("FAA"), 9 U.S.C. § 201, nor the FAA contain any implementing rule for treating foreign arbitral awards the same as domestic arbitral awards" was so far departed from the accepted and usual course of judicial proceedings under the convention that certiorari must be granted. Petitioners also addressed how certiorari was proper as it conflicted with 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 U.S. ___ (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 third ground that appellants asked that certiorari be granted was Ninth Circuit Court Judge, Eric D. Miller's 28 U.S.C. § 455 denial of Petitioners' motion for judicial disqualification. This was predicated on the fact that Respondents' counsel of record, Thomas Hungar, was his admitted friend and former supervisor, Respondent,

Chevron USA, Inc. was a prior client of Judge Miller shortly before his July 23, 2019 investiture into the Ninth Circuit and he previously co-counsel with Chevron's counsel of record Gibson Dunn & Crutcher, LLP.[1]

While Petitioners have no intention of recapitulating cert. arguments on a 44.2 Petition for Rehearing, the timeline of events, in conjunction with the Ninth Circuit's arbitrary deprivation of judicial records for Petitioners' to present to this U.S. Supreme Court to consider at its June 16, 2022 conference, does nothing less than shock the conscience and deprive Petitioners their procedural due process to propound public judicial record to advocate the factual and legal grounds as to why certiorari should have been granted concerning the *sua sponte* denial of Petitioners' Petition for Recognition and Enforcement of a $18 billion dollar foreign arbitral award[2].

On June 8, 2022 Petitioners filed Motion to Compel [COA-ECF 96] a March 12, 2022 Zoom video and audio recording of a hearing wherein a Ninth Circuit Court Judge inadvertently revealed to his clerk that these purported post mandate *sua sponte* proceedings are

---

[1] Petitioners have now discovered that Judge Eric D. Miller's Law Clerk, Matthew C. Reagan, received a *paid* position with Respondents' counsel of record during the pendency of the appellate proceedings. This was unknown by Petitioners at the time of filing a Petition for Writ of Certiorari and was neither disclosed by Judge Miller nor Chevron's counsel of record, Gibson, Dunn and Crutcher, LLP.

[2] Petitioners appealed the subject matter jurisdictional dismissal of a foreign arbitral award; however, on alternative legal grounds the Ninth Circuit converted the subject matter jurisdiction dismissal to a denial on the merits and did so without remand to the U.S. district court.

in fact proceedings made on behalf of Chevron. Petitioners Motion to Compel these public judicial records was denied by the Ninth Circuit Court of Appeal on Friday, July 15, 2022 [COA-ECF 106]. The legal grounds for denying these judicial records was that public access to these statements evidencing judicial misconduct was "*unnecessary*" despite Petitioners wanting to previously submit these statements as part of their May 31, 2021 Reply to the Chevron's Opposition to Petitioners' Writ of Certiorari and this pending Petition for Rehearing.

While Petitioners did address the foregoing in a June 15, 2022 "Motion" with this this Court, this was for some reason re-designated by the U.S. Supreme Court Clerk as a "Letter" and never ruled upon. That aside, the arbitrary denial of judicial records is profoundly serious within an appellate process as it suggests possible *ex parte* contact and collusion that compels that this Court preserve constitutional due process by protecting its judicial institutions by vacating the order denying certiorari, granting Petitioners' Petition for Rehearing, and holding certiorari pending final disposition. The grounds for a 44.2 grant for rehearing can never be clearer as due process, impartiality and public confidence in our Article III courts is the textbook definition of circumstances of a substantial or controlling effect. Moreover, in consideration that the Ninth Circuit has either intentionally or unintentionally interfered with the appellate process by depriving Petitioners from propounding judicial records not previously presented for consideration to this Court, therein lies a profound due process violation wherein substantial grounds not previously presented

requires rehearing. The basis for this contention is predicated on the following:

The formula for an impartial tribunal is not particularly difficult to appreciate nor apply. In its most simplistic form, if a judge does not follow the law and makes arbitrary rulings and decides cases according to that judge's own personal, political or religious views, then that judge is not fair and impartial. If a judge is not fair and impartial, then one or both parties are denied their fundamental constitutional right to due process of law.

In the case at bar, Petitioners have placed an unfortunate spotlight that exposes unorthodox and peculiar activity following Judge Eric D. Millers denial of Petitioners' 28 U.S.C. § 455 motion for judicial disqualification. One of which is despite the Ninth Circuit Court's issuance of a court order mandate terminating appellate jurisdiction, the Ninth Circuit Court of Appeals, in violation of U.S. Supreme Court authority, *Calderon v. Thompson*, 523 U.S. 538, 550 (1998), has engaged in *sua sponte* post-mandate proceedings without recalling the mandate. These impermissible judicial acts seeking *sua sponte* "monetary sanctions" for Judge Miller's *admitted* friend, Thomas G. Hungar and former client, Chevron, are time barred by Ninth Circuit Local Rule 39-1.6 and not permitted by any federal law, federal rule, or local circuit rule and arguably is grounds for this Court to issue an Extraordinary Writ or Rule Nisi in accord with 28 U.S.C. § 1651 to remedy a judicial subversion of constitutional due process that underlines why Petitioners' Writ of Certiorari should have been initially granted in accord with U.S Supreme Court Rule 10.

While Petitioners have argued in their Writ of Certiorari that when they motioned the Ninth Circuit panel to strike Chevron's offering of verifiably falsified translation within the judicial record, Judge Miller's impartiality was compromised as he thereafter ruled that Chevron's use of falsified evidence was "moot" but sought to seek sanctions against Petitioners' counsel for offering a demonstrative exhibit summarizing[3] the record in an article format. This illicit pattern of having district and circuit courts sanctioning or threatening U.S. attorneys such as Thomas V. Girardi, Walter J. Lack; Paul A. Traina, Steven Donzinger, Jorge Dominguez, and even the DC law firm of Patten Boggs has been invoked by Chevron's counsel, Gibson, Dunn & Crutcher, LLP in cases involving Chevron or other Gibson Dunn clients. Here, however, on March 11, 2022, there exists video and audio evidence that exposes these star chamber proceedings wherein attorneys are targeted by judges through rule by law as opposed to rule of law. That being said, when Petitioners' counsel and others witnessed the inadvertent disclosure that corroborates how the underlying circuit court proceedings were a sham, Petitioners were deprived of presenting this evidence to this U.S. Supreme Court.

Courts have applied a constitutional right of access to the judicial records associated with criminal

---

[3] The motion for leave to introduce a demonstrative exhibit summarizes a timeline of events derived from both governmental and public records that identifies fraud, threats and congressional investigations of Chevron and its subsidiary Aramco from the 1974 U.S. Congressional Hearings before the Subcommittee on Multinational Corporations of the Committee on Foreign Relations, United States Senate, Ninety-Third Congress Second Session on Multinational Petroleum Companies and Foreign Policy.

and civil proceedings. *See, e.g.*, *Associated Press v. United States Dist. Court. for Cent. Dist. of Cal.*, 705 F.2d 1143, 1145 (9th Cir. 1983); *In re Search Warrant*, 855 F.2d 569, 573 (8th Cir. 1988); *Newsday LLC v. Cnty. of Nassau*, 730 F.3d 156, 164 (2d Cir. 2013); *Publicker Indus. v. Cohen*, 733 F.2d 1059, 1074 (3rd Cir. 1984). In *Nixon v. Warner Commc'ns*, 435 U.S. 589, 597 (1978) this Court recognized a federal common law right to "inspect and copy public records and documents, including judicial records and documents". When the right of public access arises under the First Amendment, "it must be shown that the denial [of access] is necessitated by a compelling governmental interest and is narrowly tailored to serve that interest." *See*, *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 607 (1982).

Here, there has been no reason given as to why Petitioners are denied the *right* to access judicial records that are part of the record on appeal. The only reason given by the Ninth Circuit for why Petitioners' counsel has been denied access to judicial records involving him and the Petitioners is that it is "*unnecessary*". While the Ninth Circuit may arbitrarily determine judicial records unnecessary, it is highly probative to exposing how due process has been violated and an order recalling the mandate is both proper and necessary to put a stop to judicial star chamber proceedings that are not only *void ab initio* but that also pierces the armor of judicial immunity.

In *Al-Qarqani v. Chevron Corp*, post-mandate time barred proceedings are taking place with no judicial recall of the appellate mandate in accord U.S. Supreme Court mandate in *Calderon v. Thompson*, 523

U.S. 538, 550. While these post-mandate proceedings are being used as a sword against U.S. attorneys, the denial of judicial records for Petitioners to use on appeal before this U.S. Supreme Court is being used as a shield. The result is that the constitutional guarantee of appellate due process has been disregarded**.** *While this Court may easily distant itself from this case by denying rehearing, each justice has been apprised of this judicial misconduct that has been taking place in the Ninth Circuit. This triggers each justices' oath under 28 U.S.C. § 453 wherein it now becomes incumbent under the Constitution and laws of the United States that the this most honorable court protect Constitution and reinforce public confidence in our U.S. tribunals.*

As Chief Justice Roberts stated, "*our role is very clear. We are to interpret the Constitution and laws of the United States, and to ensure that the political branches act within them.*" Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. *While the Constitution is the Constitution, an independent judiciary is the crown jewel of our constitutional republic and access to public proceedings has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution. See*, Justice Black's decision *In re Oliver*, 333 U.S. 257 (1944). Ergo, to preserve our constitutional republic, it is incumbent upon this Court to grant rehearing.

II. The Fifth Amendment Due Process Clause Mandates Constitutional Consistency by Our Article III Courts. The Fifth's Circuit's *Sua Sponte* Denial of Petitioners' Petition to Enforce a Foreign Arbitral Award on Alternative Legal Grounds Which Was *Not* the Basis of Petitioner's Underlying Appeal Violated Procedural Due Process and the Rules Enabling Act.

Procedural due process means many different things in the numerous contexts in which it applies. *See, e.g. Goldberg v. Kelly*, 397 U.S. 254 (1970); *Bell v. Burson*, 402 U.S. 535 (1971). However, when it comes to Article III courts, legal issues that U.S. appellants bring before a U.S. circuit court are not, or at least should not be, moving targets. Following the filing of a Notice of Appeal wherein an appellant pays $505 filing fee, the legal issues that any U.S. appellant raises before a U.S. appellate court and that are briefed and raised at oral argument, as a matter of judicial fairness and constitutional due process cannot disregarded by a judicial panel. Why appeal something wherein the legal issues briefed and presented at oral argument will not be considered and a new set of legal issues and analysis applied?

This Ninth Circuit Court of appeals judicial practice was addressed by this U.S. Supreme Court in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), wherein it held that without proper jurisdiction, a court cannot proceed at all to the merits of case and can only note said jurisdictional defect and dismiss the suit. The Court reasoned that additional findings on the merits would be by very definition

"ultra vires". Justice Scalia, delivering the majority opinion wrote,

> . . . The Ninth Circuit has denominated this practice–which it characterizes as "assuming" jurisdiction for the purpose of deciding the merits—the "doctrine of hypothetical jurisdiction."

In Al-Qarqani v. Chevron Corp the underlying basis for the appeal was a subject matter jurisdiction dismissal. However, on appeal, the Ninth Circuit Court of appeals converted the appeal from a erroneous subject matter jurisdiction dismissal to a denial on the merits. Its decision was done without remanding it back to the district court and it apparently adopted hypothetical findings of fact and effectively denied/annulled recognition and enforcement of a foreign arbitral award *sua sponte.*

Understandably, there is a significant amount of case law and legal precedent governing procedural due process. However, let's take a moment apply the concept of judicial fairness and practicality to assess when an appellant pays a $505 filing fee and invests considerable amounts of monies in paying appellate attorneys' fees, there is a reasonable expectation that legal issues briefed on appeal and presented at oral argument will be the issues decided upon by the judicial panel and an appellate court will not *sua sponte* modify a "summary proceeding" to imposing an affirmative defense of sovereign immunity for purposes of evading clear judicial error by a U.S. district court.

An Article III court violates due process when it frustrates the fairness of proceedings, such as it has done here. While Petitioners are mindful that U.S.

circuit courts and judges are vested with certain inherent authority, as a matter of law, this authority cannot compromise procedural due process, nor exceed the statutory restrictions contained in the Rules Enabling Act, 28 U.S.C. § 2071, *et seq.* nor be inconsistent with the procedural limitations specified in Fed. R. App. P. 47. Respectfully, our judicial system has installed a due process engine in the machinery of our Article III courts.

CONCLUSION

Judicial restraint should not be substituted with judicial indifference. While the numeric percentage for granting panel rehearing is nominal, the repercussion of depriving judicial records as part of the appellate process and ignoring judicial misconduct is profound. Petitioners therefore request that the Court grant their petition for rehearing.

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

JULY 18, 2022

RULE 44.2 CERTIFICATE OF COUNSEL

As counsel for the Petitioners, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

EDWARD C. CHUNG