No. 11-1428

IN THE

Supreme Court of the United States

CHEVRON CORPORATION,

Petitioner,

v.

HUGO GERARDO CAMACHO NARANJO, JAVIER PIAGUAJE PAYAGUAJE, STEVEN R. DONZIGER, AND THE LAW OFFICES OF STEVEN R. DONZIGER,

Respondents.

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

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONERS

JOSEPH R. GUERRA*
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
jguerra@sidley.com

Counsel for Amicus Curiae

June 28, 2012

* Counsel of Record

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* THE NATIONAL ASSOCIATION OF MANUFACTURERS

Amicus curiae the National Association of Manufacturers (NAM) respectfully moves for leave of this Court to file the following brief in the above-captioned matter. In support of its motion, the NAM states as follows:

1. The NAM timely requested consent from counsel for petitioner and respondents to file an *amicus curiae* brief in this case. Counsel for petitioner consented, as reflected in the letter of blanket consent filed with the Court on June 7, 2012. Counsel for respondents Hugo Gerardo Camacho Naranjo and Javier Piaguaje Payaguaje declined to

consent. Counsel for respondents Steven R. Donziger and the Law Offices of Steven R. Donziger did not respond to the request for consent.

2. The NAM is the nation's largest industrial trade association, representing small and large employers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to economic growth and to increase understanding among policymakers, media, and the general public about the vital role of manufacturing to America's economic future and living standards.

3. The United States is the world's largest manufacturing economy, producing 21 percent of global manufactured products. The importance of global trade to the U.S. economy (and to the NAM's members) will continue to grow in the future. The NAM's members thus have strong interests in, and informed perspectives on, the legal rules that govern transnational business activities. This case—involving the threatened enforcement of an Ecuadorian judgment allegedly procured through fraud by U.S. lawyers—raises fundamentally important issues about those rules.

4. As the NAM explains in the attached brief, the Second Circuit mistakenly concluded that principles of international comity supported its decision to order the dismissal of a suit that sought declaratory and injunctive relief to prevent effectuation of an alleged fraud. If the Second Circuit's decision is allowed to stand, it risks inflicting significant present and future injury on the NAM's members and other U.S. companies that transact business, directly or through subsidiaries, partnerships, or joint ventures, in foreign states or across national boundaries. In

addition, the employees of companies engaged in foreign commerce, as well as potentially millions of United States consumers, may be harmed as a collateral consequence of foreign judgments allegedly procured through fraud by U.S. nationals.

5. The attached brief brings to the attention of the Court relevant matter not already presented by the parties. In particular, the brief addresses the relevant principles of international comity that apply where, as here, the United States and another nation both have prescriptive jurisdiction over the same matter—*i.e.*, the power to prescribe substantive legal norms governing conduct or parties. Properly understood, those principles of international comity support the district court's injunction, which preserved the ability of U.S. courts to ensure that the international legal system is not tainted and burdened by alleged fraud originating in the United States. The NAM thus believes the attached brief will aid in the Court's consideration of the petition for writ of certiorari.

Respectfully submitted,

JOSEPH R. GUERRA*
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
jguerra@sidley.com

Counsel for Amicus Curiae

June 28, 2012

* Counsel of Record

CORPORATE DISCLOSURE STATEMENT

The NAM is a non-profit 501(c)(6) corporation organized under the laws of New York. It has no parent company, nor has it issued any stock.

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INTEREST OF *AMICUS CURIAE*

The interest of *amicus* the National Association of Manufacturers (NAM) is set forth in the accompanying motion for leave to file this brief.[1]

INTRODUCTION AND SUMMARY OF ARGUMENT

The United States produces 21 percent of global manufactured products, and the importance of global trade to the U.S. economy (and to the NAM's members) will continue to grow in the future. The NAM's members thus have strong interests in—and informed perspectives on—the legal rules that govern transnational business activities and ensure the efficient operation of the international legal system. This case raises fundamentally important issues concerning those rules. In particular, it implicates the ability of U.S. courts to ensure that allegedly fraudulent conduct by U.S. lawyers does not taint the international legal system and require courts across the globe to address the consequences of fraud originating here.

Over a decade ago, a U.S. district court dismissed a lawsuit by Ecuadorian residents against Texaco, Inc. (now a subsidiary of petitioner's), after Texaco consented to suit in Ecuador. Texaco conditioned that consent on its right to contest any Ecuadorian judgment under New York's standards for the

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[1] Pursuant to Supreme Court Rule 37.6, the NAM states that no counsel for any party authored this brief in whole or in part and that no such counsel or any party made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties received timely notice of the NAM's intent to file this brief.

enforcement of foreign judgments. After years of litigation in Ecuador, petitioner returned to U.S. court and brought this action for declaratory and injunctive relief, alleging that U.S. lawyers had engaged in a scheme, conducted at least in part in the United States, to obtain a corrupt and fraudulent judgment against it in Ecuador. Petitioner further alleged that respondents were about to launch a campaign to enforce that judgment in other foreign courts with no connection to the underlying dispute or alleged fraud.

The district court concluded that it had *in personam* jurisdiction over the parties to the alleged fraud. And, under well-settled principles of international law, the United States has jurisdiction to prescribe substantive norms governing the conduct of its citizens, as well as activities that occur or are intended to have substantial effects within its borders. The Second Circuit, however, held that in a suit under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* (DJA), a district court cannot issue an injunction that preserves its ability to determine whether a foreign judgment was procured through alleged fraud by U.S. lawyers, whose conduct occurred, at least in part, in this country following the dismissal of an earlier U.S. lawsuit.

As petitioner has shown, the Second Circuit erred in concluding that the DJA does not permit a party to assert a defense to suit by seeking a declaratory judgment, where the underlying substantive statute does not itself authorize such declaratory relief. Rather than repeat that showing, the NAM submits this brief to explain how the Second Circuit erred in concluding that principles of international comity provided additional support for the dismissal of petitioner's suit. The injunctive relief petitioner

sought—and that the district court granted—is fully consistent with international comity principles.

In fact, that relief furthers comity principles. The injunction was carefully tailored to avoid interference with any ongoing litigation in Ecuador. At the same time, by barring enforcement efforts in countries with no connection to the underlying dispute, the injunction preserved the ability of U.S. courts to ensure that the international legal system is not tainted and unnecessarily burdened by efforts to enforce an allegedly invalid foreign judgment obtained through an alleged scheme of fraud that originated in the United States. The Second Circuit's misapprehension and misapplication of international comity principles provides additional grounds for granting the relief petitioner seeks from this Court.

Part I of this brief explains that, under international law as recognized by U.S. courts, the district court's factual findings establish that the United States has prescriptive jurisdiction over the alleged fraud and the parties to it—*i.e.*, the authority to prescribe substantive legal norms governing such conduct. This prescriptive authority flows from the nationality of some of the perpetrators of the alleged fraud; the fact that it was conducted and intended to have effects in the United States; and the fact that the alleged scheme will frustrate the terms on which an earlier suit in the United States was dismissed.

Part II explains that the district court's injunction was an appropriate exercise of the United States' prescriptive authority that fully accords with international comity principles. Under the governing legal framework developed by this Court and lower courts, U.S. courts can enforce U.S. substantive legal norms absent a direct and inescapable conflict between those norms and the laws of another nation

that also possesses prescriptive authority over the matter. *Hartford Fire Ins. Co.* v. *California*, 509 U.S. 764 (1993). In exercising that authority, however, U.S. courts should refrain from issuing injunctions that interfere with the ability of another nation with concurrent prescriptive jurisdiction to apply its substantive law to a controversy. *Laker Airways Ltd.* v. *Sabena*, 731 F.2d 909 (D.C. Cir. 1984).

Petitioner's declaratory judgment action implements these principles. The district court's injunction did not prevent the parties from pursuing legal actions in Ecuador, the other nation with prescriptive authority over the alleged fraud, and thus did not interfere with Ecuador's ability to exercise its concurrent prescriptive authority. At the same time, by barring respondents from initiating enforcement proceedings in nations other than Ecuador, the injunction protected the United States' prescriptive jurisdiction: it ensured that an alleged fraud subject to U.S. legal norms cannot be effectuated in a manner that evades review by U.S. courts applying those norms. To the extent this preservation of prescriptive authority may clash with Ecuador's interest in seeing its judicial judgments enforced outside of Ecuador, this Court's cases make clear that the exercise of such authority by U.S. courts is permissible. And, the injunction does not implicate the sovereign interests of third-party, "bystander" nations in which respondents might otherwise seek to enforce an Ecuadorian judgment. As those nations have no prescriptive jurisdiction over the alleged fraud, the injunction simply relieves their courts of a time-consuming duty to determine whether an alleged fraud originating in the this country precludes enforcement of a foreign judgment.

ARGUMENT

PETITIONER'S DECLARATORY JUDGMENT ACTION FULLY ACCORDS WITH PRINCIPLES OF INTERNATIONAL COMITY

I. THE UNITED STATES HAS CONCURRENT PRESCRIPTIVE JURISDICTION OVER THE ALLEGED FRAUD AND PARTIES TO IT.

Prescriptive jurisdiction is "the authority of a state to make its substantive laws applicable to particular persons and circumstances." Restatement (Third) of the Foreign Relations Law of the United States 230 (1987) ("Restatement"). There are two bases of prescriptive jurisdiction: territoriality and nationality. *Id.* § 402; see also *Laker Airways*, 731 F.2d at 921. Thus, each nation has prescriptive power to "control and regulate activities within its boundaries," as well as extraterritorial conduct "which has or is intended to have a substantial effect within the territory." *Laker Airways*, 731 F.2d at 921-22; see also Restatement § 402(1)(a)&(c). Similarly, "a state has jurisdiction to prescribe law governing the conduct of its nationals whether the conduct takes place inside or outside the territory of the state." *Laker Airways*, 731 F.2d at 922; see also Restatement § 402(1)(a)&(c).

The district court's factual findings establish that the United States has prescriptive jurisdiction over the alleged fraud in this case. First, the district court found that there was "ample evidence of fraud in the Ecuadorian proceedings," Pet. App. 125a; see also *id.* at 98a n.229 (citing other district court findings concerning the corruption of the Ecuadorian legal process through the preparation of fraudulent reports and fabricated evidence), and that the allegedly

fraudulent scheme that "produced the judgment [in Ecuador] was formed or, at least, significantly advanced in New York," *id.* at 144a. And the district court found that a principal architect of that alleged scheme "is a member of the New York Bar." *Id.*

Second, to the extent the allegedly fraudulent activities occurred outside the United States, they were intended to have substantial effects within it. Those alleged activities resulted in a multi-billion dollar judgment against a major U.S. corporation. Pet. App. 8a. The district court found that respondents' plans to enforce the allegedly fraudulent judgment "around the world, including by *ex parte* attachments, asset seizures, and other means," was designed to "exert pressure" on petitioner "to force a quick and richer settlement" of that massive judgment. *Id.* at 34a. Those plans created a significant risk that petitioner's supply chain and business operations would be disrupted, causing it to "miss critical deliveries to business partners" and "causing injury to Chevron's 'business reputation and business relationships.'" *Id.* at 105a.

In addition, the alleged scheme of fraud, in conjunction with respondents worldwide enforcement plan, would frustrate the terms on which an earlier U.S. lawsuit was dismissed. As noted, a lawsuit on behalf of Ecuadorian residents seeking redress for alleged environmental harms was initially brought against Texaco, Inc. (now a Chevron subsidiary) in the Southern District of New York by U.S. lawyers. The district court dismissed that suit only after Texaco consented to, *inter alia*, limited personal jurisdiction in Ecuador. See *Aguinda* v. *Texaco, Inc.*, 142 F. Supp. 2d 534, 539, 554 (S.D.N.Y 2001), *aff'd as modified*, 303 F.3d 470 (2d Cir. 2002). Texaco conditioned that consent on its right to contest any

subsequent Ecuadorian judgment under New York's Recognition of Country Judgments Act. Pet. App. 7a.

While these facts plainly establish that the United States has prescriptive jurisdiction over the matters at issue in this suit, that jurisdiction is not exclusive. Because people, goods and services frequently cross national boundaries, "two or more states may have legitimate interests in prescribing governing law over a particular controversy." *Laker Airways*, 731 F.2d at 922. Here, the other nation with a legitimate interest and recognized basis for exercising prescriptive jurisdiction over this dispute is Ecuador, where much of the alleged fraud also occurred. As we show next, the district court's injunction plainly recognized Ecuador's jurisdiction and afforded it due respect.

II. THE DISTRICT COURT'S INJUNCTION COMPLIED WITH, AND ADVANCED, INTERNATIONAL COMITY PRINCIPLES.

The district court's injunction was consistent with principles of international comity. Indeed, it furthers those principles by ensuring that the international legal system is not tainted and burdened by an alleged fraud originating from this country. The Second Circuit's contrary conclusion turns international comity principles upside down.

A. The Legal Framework Governing The Enforcement Of Domestic Substantive Norms In Cases Involving Concurrent Prescriptive Jurisdiction.

This Court has held that U.S. courts can exercise jurisdiction over claims to enforce U.S. prescriptive norms absent a direct and inescapable conflict with the substantive laws of other nations that possess

concurrent prescriptive jurisdiction.[2] In doing so, however, U.S. courts may not enjoin the parties from pursuing legal actions and remedies in other nations with such prescriptive jurisdiction.

1. In *Hartford Fire Ins. Co.* v. *California*, 509 U.S. 764 (1993), this Court rejected arguments that principles of international comity required a U.S. court to refrain from entertaining federal antitrust claims against British reinsurers for conduct permitted under British law. The British defendants did not dispute that the United States had prescriptive jurisdiction to prohibit foreign conduct that had substantial effects in this country. *Id.* at 796-97 & n.22. These defendants argued, however, that application of U.S. law to their conduct would "conflict significantly with British law," because their conduct was "perfectly consistent" with Britain's comprehensive regulation of the London reinsurance market. *Id.* at 798-99. The British government itself endorsed these arguments. *Id.* at 798.

This Court nevertheless held that, even where U.S. prescriptive prohibitions clash with "a strong policy to permit or encourage [the same] conduct," U.S. courts should exercise jurisdiction to enforce those prohibitions absent evidence that "compliance with the laws of both countries is otherwise impossible." *Id.* at 799 (citing Restatement § 415, cmt. j, and § 403, cmt. e). The Court has since adhered to that position. See *F. Hoffmann-LaRoche Ltd.* v. *Empagran S.A.*, 542 U.S. 155, 165 (2004) (although application of U.S. antitrust laws to foreign conduct

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[2] A court must also have personal jurisdiction over a foreign defendant to entertain such claims. Here, the district court found that this requirement was satisfied, and the Second Circuit did not disturb that finding. *See* Pet. App. 30a n.17.

causing domestic harm "can interfere with a foreign nation's ability independently to regulate its own commercial affairs," such application of U.S. law is "consistent with principles of prescriptive comity").[3]

Indeed, even where they enforce U.S. discovery standards rather than prescriptive norms, U.S. courts should not refrain from enforcing those standards out of mere concern that doing so might offend foreign courts. In *Société Nationale Industrielle Aérospatiale* v. *United States District Court for the Southern District of Iowa*, 482 U.S. 522 (1987), this Court rejected the argument that comity principles prevent a U.S. court from ordering discovery that a foreign court has expressly refused to order under the Hague Evidence Convention. The Court explained that U.S. discovery "is often significantly broader than is permitted in other jurisdictions," and "foreign tribunals will recognize that the final decision on the evidence to be used in litigation conducted in American courts must be made by those courts." *Id.* at 542.[4]

Thus, concern that enforcement of U.S. prescriptive norms might be perceived as disrespectful of the policy judgments of other nations is not a ground for

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[3] In *Empagran*, the Court relied on principles of prescriptive comity to construe an amendment to the federal antitrust laws to foreclose a claim based on foreign conduct that causes *only* independent foreign harm when that harm is the *sole* basis for a plaintiff's claim. 542 U.S. at 169-70.

[4] Following the Restatement, *Aérospatiale* called for a case-by-case balancing analysis for enforcement of discovery orders, *see* 482 U.S. at 543-44 n.28 (citing Restatement § 437 (Tent. Draft No. 7, 1986) (later codified as Restatement § 442)), rather than the "impossibility" conflict standard that applies to enforcement of prescriptive norms, *see* Restatement § 415, cmt. j, and § 403, cmt. e).

declining such enforcement. Absent an inescapable conflict, U.S. courts must enforce U.S. prescriptive norms even when they reflect a clear repudiation of another nation's substantive policies.[5]

2. International comity does, however, require that courts enforcing U.S. prescriptive norms refrain from interfering with the ability of a nation with concurrent prescriptive jurisdiction to apply its norms to the same dispute. As the D.C. Circuit recognized in its seminal decision in *Laker Airways*, because two nations can have concurrent prescriptive jurisdiction over the same conduct, "parallel proceedings on the same in personam claim should ordinarily be allowed to proceed." 731 F.2d at 926-27. "The mere filing of a suit in one forum does not cut off the preexisting right of an independent forum to regulate matters subject to its prescriptive jurisdiction." *Id.* at 927. The Court explained that it is "[f]or this reason"—*i.e.*, the fact that another nation has concurrent prescriptive jurisdiction—that "injunctions restraining litigants from proceeding in courts of independent countries are rarely issued." *Id.*

Several other factors support this comity-based rule of respect for concurrent prescriptive jurisdiction. First, if a U.S. court enjoins parties from maintaining proceedings in a nation with concurrent prescriptive jurisdiction, the foreign court may react with a similar injunction, and "no party may be able to obtain any remedy." *Id.* Moreover, because individ-

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[5] Moreover, even when U.S. prescriptive norms conflict with another nation's in a way that renders compliance with both impossible, this does not mean that U.S. courts should decline to enforce U.S. norms. Instead, when such a conflict arises, comity principles then require a balancing analysis to determine which nation's norm should govern. *See* Restatement § 403(3).

uals and corporations are expected to conduct their affairs in accordance with applicable legal rules, allowing actions to proceed in the courts of those nations that have prescribed the substantive law governing the affairs of the litigants promotes legal stability and predictability. See *id.* at 937. At the same time, because of protections arising from prescriptive authority, a nation with concurrent prescriptive jurisdiction "need not fear that [its] crucial policies [will] be trampled if a foreign judgment is reached first, since violation of domestic public policy may justify not enforcing the foreign judgment." *Id.* at 929. If a nation possessing prescriptive authority declines to enforce a foreign judgment for such reasons, it is then free to render its own judgment concerning the underlying conduct, and can thus vindicate its own laws, policies and expectations.

B. The Injunction The District Court Entered Was Fully Consistent With The Governing Legal Framework.

The injunctive relief that petitioner sought through its DJA claim—and that the district court granted—complied with the foregoing principles with respect to both Ecuador and the third-party, "bystander" nations where respondents might seek to enforce the Ecuadorian judgment. The injunction did not extend to Ecuador, and those bystander nations had no prescriptive jurisdiction over the underlying dispute.

1. The Injunction Was Consistent With the Comity Principles Pertaining To Ecuador's Concurrent Prescriptive Jurisdiction.

In accord with the principles identified above, the district court's injunction did not interfere with

Ecuador's concurrent prescriptive jurisdiction over alleged fraud that occurred within its borders. The court enjoined respondents from "directly or indirectly funding, commencing, prosecuting, advancing in any way, or receiving benefit from any action or proceeding, *outside the Republic of Ecuador*." Pet. App. 176a (emphasis added); see also *id.* at 129a n.323 ("no one is attempting here to interfere with Ecuador's adjudication of the underlying dispute or the enforceability of the Ecuadorian judgment in the forum in Ecuador"). Thus, the injunction does not impede in any way Ecuador's ability to exercise concurrent prescriptive jurisdiction and apply its own substantive norms to the conduct at issue.

At the same time, the injunction protects the United States' prescriptive jurisdiction over allegedly fraudulent conduct—committed by U.S. nationals in part in the United States following the dismissal of a U.S. lawsuit—that would cause significant harm to a major U.S. corporation and effectively flout the conditions on which an earlier U.S. lawsuit was dismissed. Respondents planned to commence proceedings around the world using *ex parte* asset seizure mechanisms that avoid "relitigation of the merits of the case," Pet. App. 97a-99a (internal quotation marks omitted), and that, according to their *amici*, "recognize neither fraud nor systemic inadequacy as grounds for refusing to enforce a foreign judgment." Br. of *Amicus Curiae* Environmental Defender Law Center in Support of Defendants-Appellants at 3, No. 11-1150-cv(L) (2d Cir. filed June 9, 2011). That plan was designed to force a quick settlement, Pet. App. 34a, which in turn would prevent petitioner from challenging in U.S. courts the alleged fraud that produced the Ecuadorian judgment. Thus, absent such a

jurisdiction-protecting injunction, respondents' worldwide enforcement plan *would* "trample[]," *Laker Airways*, 731 F.3d at 929—or at least completely evade—U.S. policies against fraud, by preventing U.S. courts from addressing an alleged fraud originating in the United States. And, absent such an injunction, that same plan would prevent U.S. courts from ensuring compliance with the conditions on which an earlier U.S. suit was dismissed.[6]

The Second Circuit, however, concluded that the district court's effort to protect the United States' prescriptive jurisdiction was itself an affront to comity. According to the Second Circuit, the fact that the district court preserved its ability to pass judgment on the fraud allegedly underlying an Ecuadorian judgment reflected an impermissible lack of respect for that nation's legal system. Pet. App. 25a. This perspective turns the principle of comity on its head.

As this Court long ago recognized, comity is the "recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens." *Hilton* v. *Guyot*, 159 U.S. 113, 164 (1895). Accordingly, when asked to enforce foreign judgments against U.S. citizens, U.S. courts

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[6] The jurisdiction-protecting nature of the injunction also demonstrates that petitioner's DJA claim does not seek "an advisory opinion" on the "effect . . . of a foreign judgment that may never be presented in New York." Pet. App. 29a. Consistent with international law, the injunction ensures that the validity of a judgment procured through alleged conduct subject to U.S. prescriptive authority *is* determined under U.S. substantive norms, in accordance with petitioner's legitimate expectation based on the dismissal of the earlier suit.

can and in fact must determine whether the judgment is the product of a judicial system "likely to secure an impartial administration of justice," and whether it was procured by fraud. *Id.* at 202. Indeed, courts refrain from enjoining parties from conducting proceedings in nations with concurrent prescriptive jurisdiction precisely because, in the ordinary course, they can later determine whether enforcement of the resulting foreign judgment will violate domestic public policy. *Laker Airways*, 731 F.2d at 929. Thus, the very inquiries into the validity of foreign judgments that this Court and others have deemed essential to proper application of comity principles are, under the lower court's erroneous view, an affront to international comity.[7]

To be sure, it is a weighty matter to conclude that a foreign judgment is the product of intrinsic fraud. But the district court made extensive factual findings to support its conclusion that petitioner had demonstrated such a situation, or had at least raised serious questions going to the merits. Pet. App. 13a-14a (summarizing district court's conclusions). The Second Circuit did not disturb those findings. *Id.* at 15a-16a (reversing based on a question of law); see also *id.* at 17a ("[w]hatever the merits of Chevron's complaints about the Ecuadorian courts, . . . the procedural device it has chosen to present those claims is simply unavailable"). Issuing a jurisdiction-protecting injunction on the basis of such findings—

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[7] In fact, the Second Circuit itself acknowledged that such inquiries are "necessary . . . when a party seeks to invoke the authority of our courts to enforce a foreign judgment." Pet. App. 25a. They are no less necessary, however, where, as here, a district court issues an injunction to ensure that an alleged scheme of fraud originating here does not evade challenge under U.S. prescriptive norms.

made in accordance with the very inquiries this Court and others have mandated—does not violate the principles of international comity recognized in U.S. law.

2. The Injunction Was Consistent With The Comity Principles Pertaining To Nations Where Respondents Might Have Attempted To Enforce The Ecuadorian Judgment.

The Second Circuit also believed that the district court's jurisdiction-protecting injunction was an impermissible affront to those nations where respondents might have attempted to enforce the Ecuadorian judgment. Because it would effectively prevent the courts of other nations from considering the validity of the Ecuadorian courts' judgment, the Second Circuit believed the injunction reflected a lack of respect for "other countries, who are inherently assumed insufficiently trustworthy to recognize what is asserted to be the extreme incapacity of legal system from which the judgment emanates." Pet. App. 25a. In the Second Circuit's view, the district court's injunction rendered the courts of New York "the definitive international arbiter of the fairness and integrity of the world's legal systems." *Id.* The Second Circuit cited no authority for these propositions, each of which is mistaken.

The nations where respondents may have enforced the Ecuadorian judgment have no prescriptive authority over the conduct at issue in this case. If, for example, respondents instituted an asset seizure action in Panama (*e.g.*, to seize a storage tank filled with fuel in which a Chevron subsidiary has an interest), that action would not involve any right of Panama "to make its *substantive* laws applicable to" this controversy, Restatement, at 230 (emphasis

added), or to "prescrib[e] governing law" "to control and regulate" the activities underlying this suit or "the conduct of its nationals," *Laker Airways*, 731 F.2d at 921-22. The injunction thus would not "cut off the preexisting right of [Panama] to regulate [a controversy] subject to its prescriptive jurisdiction," *Id.* at 927.

Instead, the injunction would relieve Panama and other "bystander" nations of the burdens of determining whether to enforce a foreign judgment allegedly procured by fraud. Recognition and enforcement of foreign judgments is not an exercise of regulatory power over primary conduct, but an act of reciprocity. This is why the Restatement treats the concepts of jurisdiction to prescribe and enforcement of foreign judgments as entirely distinct. See Restatement, at 235-303 (jurisdiction to prescribe); *id.* at 591-641 (foreign judgments and awards). The Second Circuit cited no evidence that any foreign nation has a policy of *encouraging* use of its courts to consummate alleged frauds. Nor did the lower court cite any evidence that nations with no prescriptive authority over an alleged fraud would be offended when parties are restrained from using their courts to consummate such a fraud.

But even if such evidence exists, U.S. courts would not be obligated to withhold their injunctive powers and permit the consummation of an alleged fraud over which they possess prescriptive authority. In *Hartford*, this Court made clear that, in the absence of an inescapable conflict, U.S. courts should exercise jurisdiction to enforce U.S. substantive norms even when another nation has concurrent prescriptive jurisdiction over the same conduct and even when that nation expressly objects to such U.S. enforcement. And in the case of discovery orders,

where a balancing standard rather than an inescapable conflict standard applies, *Aérospatiale* makes clear that U.S. courts should enforce U.S. discovery standards against a foreign citizen even when a court where that foreign citizen resides has expressly refused to order the same discovery.

These cases thus establish that U.S. courts are obligated to enforce U.S. substantive and other norms even when nations with concurrent prescriptive jurisdiction object. In this case, it follows *a fortiori* that U.S. courts cannot refrain from enforcing U.S. substantive norms based on concerns that doing so might offend nations with *no* prescriptive authority over the matter.

Contrary to the Second Circuit's view, moreover, the eminently sensible, jurisdiction-protecting injunction that the district court entered in this case creates no risk that U.S. courts will become "the definitive international arbiter of the fairness and integrity of the world's legal systems." Pet. App. 25a. Where the United States lacks prescriptive jurisdiction, its court would have no basis to enjoin worldwide enforcement of a judgment rendered by a country that possesses such jurisdiction. Thus, for example, if Australian and Indian nationals pursue parallel litigation in their respective countries over a contract dispute that has no substantial territorial connection to this nation, the United States would have no prescriptive jurisdiction over the controversy, and no basis for enjoining worldwide enforcement of any Indian or Australian judgment at the behest of either party. Nor would it offend U.S. sovereignty if an Indian court enjoined the parties from seeking to enforce an Australian judgment in the United States while the Indian court determined whether that judgment was the product of fraud.

The injunction's restriction on enforcement efforts is also fully consistent with the other international comity factors relevant to anti-foreign-suit injunctions. See *supra*, § II.A.2. The injunction does not engender a risk of retaliatory injunctions by other nations that would leave the parties without a remedy. Lacking the requisite territorial or citizenship nexus to the parties and underlying controversy, the courts of nations outside Ecuador have neither the incentive nor any legitimate authority to enjoin the parties from continuing the litigation in the United States and Ecuador. Similarly, the injunction is fully consistent with the interests of stability and predictability. It leaves the parties subject to the laws, rules and remedies of Ecuador and the United States, in accordance with their settled and legitimate expectations.

* * *

In short, principles of international comity demonstrate the validity of the injunctive relief petitioner obtained. The Second Circuit's fundamental misapprehension of international comity principles provides an additional and important basis for summary reversal or plenary review of its decision.

CONCLUSION

For the foregoing reasons and those set forth in the petition, this Court should summarily reverse the decision of the Second Circuit in this case, or grant plenary review of that decision.

Respectfully submitted,

JOSEPH R. GUERRA*
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
jguerra@sidley.com

Counsel for Amicus Curiae

June 28, 2012

* Counsel of Record