No. 20-1940

In the United States Court of Appeals for the Second Circuit

IN RE: STEVEN ROBERT DONZIGER,

Petitioner.

On Petition for Mandamus from the United States District Court for the Southern District of New York Case Nos. 11-cv-00691 and 19-cr-00561 The Honorable Lewis A. Kaplan and the Honorable Loretta A. Preska

BRIEF OF *AMICI CURIAE* MEMBERS OF THE "PROTECT THE PROTEST" TASK FORCE IN SUPPORT OF PETITIONER STEVEN ROBERT DONZIGER

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CORPORATE DISCLOSURE STATEMENT

Amici include nonprofit corporations; none has a parent corporation nor stock held by any publicly held corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

OTHER AUTHORITIES

STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are nonprofit, nongovernmental human rights, environmental, civil rights, and free speech organizations that have joined together through the "Protect the Protest" Task Force to protect the First Amendment rights of advocates against the threat of Strategic Lawsuits Against Public Participation ("SLAPP suits"). The identity of each organization is set forth in the Appendix. *Amici* submit this brief in support of Petitioner Steven Robert Donziger's Petition for a Writ of Mandamus.[1]

Amici believe that the entanglement of Chevron Corporation in Petitioner's criminal contempt prosecution contributes to the appearance and the likelihood that this prosecution is, in fact, a SLAPP suit: an attempt to ruin a defendant who has engaged in constitutionally-protected activity – here, the right to petition the courts. SLAPP typically comprise civil litigation such as defamation suits, but the fact that a law firm connected to Chevron is now pursuing a criminal prosecution, on charges rejected by the U.S. Attorney, marks a dangerous new frontier in these already worrisome tactics. *Amici* show that because the prosecutor here is not independent of Chevron, coupled with Chevron's pattern of abuse of the legal system, this suit can be seen as a SLAPP suit, and thus fundamentally at odds with the bedrock requirement that a prosecution be neutral and serve the ends of justice, and not private interests.

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission. Mr. Donziger and the United States have consented to this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

More than a decade ago, Chevron Corporation set out to "demonize [Steven] Donziger,"[2] the lawyer trying to hold Chevron accountable for pollution in the Ecuadorian Amazon. What started as a media campaign quickly turned into a massive discovery expedition against anyone connected to the litigation, "unique in the annals of American judicial history." *In re Chevron Corp.*, 650 F.3d 276, 282 n.7 (3d Cir. 2011). Chevron then filed its RICO case against Donziger in 2011, culminating in a 2014 bench-trial judgment. *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014). The latest chapter is the contempt prosecution at issue here.

Throughout this saga, evidence has been building of Chevron's corruption of the judicial process. In Ecuador, Chevron tampered with evidence of pollution, lied to the court, paid millions of dollars to avoid damaging testimony, and sought to manufacture a fake bribery scandal, creating the appearance of corruption in order to prevent enforcement if it lost. In the RICO litigation, Chevron paid its key testifying witness millions; he later admitted that he had lied on the stand, and to Chevron, in order to improve his negotiating position.

Given this history, it was incumbent on the district court below to ensure that any *criminal* proceedings – involving the unique sovereign power of the United States – remain unimpeachable, with no possible connection to influence by Chevron.

[2] Defendant's Trial Exhibit 24, *Chevron Corp. v. Donziger*, No. 11-cv-00691 (S.D.N.Y.).

Instead, the court appointed Chevron's former law firm to prosecute Chevron's nemesis. Retaining that firm, as opposed to any of the multitude of other firms without links to a party, creates at least the appearance of partiality. The prosecutor's failure to disclose that relationship, its invocation of attorney-client privilege to conceal the nature of the relationship, and the district court's refusal to allow any further inquiry only compound this concern.

Even absent Chevron's history of abusing the legal system to pursue Donziger, the prosecutor's entanglement with an interested party is highly improper. As the Supreme Court recognized in *Young v. United States ex rel. Vuitton Et Fils S. A.,* 481 U.S. 787, 804 (1987), a private contempt prosecutor must be as "disinterested" as a public prosecutor. This impartiality is paramount to public confidence in the criminal justice system, ensuring that the prosecution was carried out fairly, and that the decision to prosecute at all was unbiased. Prosecutorial discretion is an essential safeguard.

Against the backdrop of Chevron's pattern of misconduct, the retention of Chevron-connected attorneys to criminally prosecute Donziger creates the strong impression that this is simply the latest effort in Chevron's long-running campaign against him. Allowing this prosecution to continue without further investigation risks substantial damage to public trust in the criminal justice system. The writ of mandamus must issue.

FACTUAL BACKGROUND

I. Chevron engaged in a pattern of corrupt behavior first to try to win, and then to corrupt, the Ecuadorian proceedings.

A. Chevron engaged in political pressure and fraud to try to win in Ecuador.

After prevailing on *forum non conveniens* in the original U.S. pollution suit, *see Aguinda v. Texaco, Inc.*, 303 F.3d 470 (2d Cir. 2002), Chevron tried to steer the re-filed Ecuadorian litigation its way. Chevron met with Ecuador's Attorney General, *see* CA2 App. A-422-423,[3] lobbied Ecuadorian presidents "to halt litigation," *id.* A-2202; and even lobbied the U.S. government to pressure Ecuador over the case.[4] In court, Chevron repeatedly used delay, disruption, and intimidation, *id.* A-3212-3218. It engaged in an extensive campaign to skew the scientific sampling, including front companies that looked like independent labs, *id.* A-1585-1586, A-1588-1590, secret pre-inspection tests to determine how to hide contamination, *e.g., id.* A-3209-3210, and presenting what the court found to be "false information" regarding a non-existent security threat which "misled" the court "to suspend a judicial proceeding," *id.* A-1091-1093.

Chevron's "Sample Manager," Diego Borja, *id.* A-3154, was recorded saying

[3] "CA2 Dkt." refers to *Chevron Corp. v. Donziger,* No. 14-0826 (2d. Cir.); "CA2 App." is the Appendix at Docket Nos. 84-97.
[4] Kenneth P. Vogel, *Chevron's lobby campaign backfires,* Politico, (Nov. 16, 2009), http://www.politico.com/story/2009/11/chevrons-lobby-campaign-backfires-029560.

he had evidence of Chevron's illegal conduct, "conclusive evidence, photos," "things that can make the [Ecuadorians] win," *id.* A-1572-1573. He said he set up companies for Chevron, *id.* A-1588, had "proof" that the laboratories "belonged to [Chevron]," *id.* A-1585-1586, and that the judge would "close them down" if he discovered how Chevron "cooked things," *id.* A-1590.

Chevron's lawyers were repeatedly sanctioned for obstructive behavior. *Id.* A-3217-3218. Ecuador's appellate court – whose independence and impartiality was never questioned – described Chevron's "manifest, notorious and evident bad faith" and "overtly aggressive and hostile attitude," concluding that its "conduct … rarely seen in the annals of history of the administration of justice in Ecuador, was abusive to the point that, should this Division overlook such attitude," it would set "a disastrous precedent." *Id.* A-467.

B. Chevron planned for a future challenge to a judgment by attempting to corrupt the Ecuadorian proceedings and vilifying the plaintiffs and their lawyers.

Before Chevron discovered any alleged evidence of misconduct, it sought to manufacture a storyline of corruption. In October 2008, Chevron's public relations consultant proposed "message themes" including "Government by Extortion in Ecuador," "Collusion between the government and the plaintiffs," and "justice as thin as the air in the Andes."[5] This included promoting the false claim that "the case

[5] Memo from Sam Singer to Chevron spokesperson Kent Robertson (Oct. 14, 2008), at 2, http://chevrontoxico.com/assets/docs/2008-10-14-singer-memo.pdf.

was thrown out in America for fakery and deceit," and focusing on the "American attorney … pulling the strings of an emerging banana republic in Ecuador": Donziger.[6]

Chevron implemented this strategy in 2009 by sending Borja, posing as a businessman, to create a bribery scandal. Borja illegally recorded meetings with then-presiding judge Juan Nuñez, but Nuñez refused to discuss whether he would rule against Chevron. *See, e.g.,* CA2 App. A-3265-3268. Borja delivered the recordings to Chevron's U.S. counsel, but then met in Ecuador with a businessman – without Nuñez present. *Id.* A-3154-3155, A-3266-3267. At *that* meeting, Borja discussed a bribe, but no evidence suggests Nuñez contemplated bribes, and Borja later admitted "there was never a bribe." *Id.* A-3266-3268. But as Borja explained, "you don't only win with evidence, but with media." *Id.* A-1582. Chevron publicly claimed that the recordings revealed "a $3 million bribery scheme implicating" Judge Nuñez.[7] Chevron then claimed that it "would be denied the right to impartial justice and due process" unless Nuñez's rulings were annulled,[8] which Borja admitted was the scheme's purpose. CA2 App. A-1581. Chevron lied to the Ecuadorian court,

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[6] *Id.*

[7] Chevron Corp., *Press Release: Videos Reveal Serious Judicial Misconduct and Political Influence in Ecuador Lawsuit* (Aug. 31, 2009), https://www.chevron.com/stories/videos-reveal-serious-judicial-misconductand-political-influencein-ecuador-lawsuit.

[8] Chevron Corp., *Press Release: Chevron Seeks Annulment of Rulings by Ecuadorian Judge* (Sept. 11, 2009), https://www.chevron.com/stories/chevron-seeks-annulmentof-rulingsby-ecuadorian-judge.

asserting Borja no longer worked for Chevron, *id.* A-3154, and publicly claimed that the recordings were made "without Chevron's knowledge."[9]

Chevron then secured Borja's loyalty by paying him *more than $2 million* in cash and benefits. *See* CA2 App. A-3155; A-1591-1593; Dkt. 1874 at 466.[10] On Chevron's payroll, Borja signed a declaration disavowing his earlier statements regarding evidence damaging to Chevron. *See* Decl. of Diego Borja, Dkt. 21-3, *In Republic of Ecuador*, No. C-10-80225 MISC (filed Oct. 6, 2010).

While Chevron failed to annul Judge Nuñez's rulings, the fake scandal led him to recuse himself. CA2 App. A-3218. Judge Nicolas Zambrano took over. Chevron then used the incident in an arbitration claim against Ecuador, alleging the proceedings violated the Ecuador-United States Bilateral Investment Treaty (BIT).[11]

According to Chevron's Ecuadorian counsel, in late 2009, ex-Judge Alberto Guerra – who had previously presided over the case – approached Chevron, suggesting he could be an intermediary with Judge Zambrano to "fix" the case for Chevron. CA2 App. A-1864-1865; Dkt. 1874 at 229. The case was reassigned to another judge in 2010, but Chevron orchestrated his recusal so that Judge Zambrano returned. *See* Dkt. 1874 at 22-23; CA2 Dkt. 353-2 at 96-97. Instead of

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[9] Chevron Corp. Press Release, *supra* note 7.
[10] "Dkt." cites are to No. 1:11-cv-691 (S.D.N.Y.).
[11] *Chevron Corp. v. Republic of Ecuador*, Claimant's Notice of Arbitration, at 12 (Sept. 23, 2009), *available at* https://www.chevron.com/documents/pdf/ecuador/NoticeOfArbitration.pdf.

reporting an alleged bribery offer, Chevron made sure that the judge allegedly involved decided its case.

II. Chevron's witness payments fundamentally corrupted the underlying civil proceedings.

Guerra proved unable to fix the case for Chevron, and Zambrano issued a landmark judgment against the company in 2011. But Chevron had already sued Donziger, and Guerra became its star witness in the RICO suit. The judge who had offered to "fix" the case then fixed his testimony for Chevron, lying on the stand while accepting millions from Chevron.

A. Chevron illegally paid its star witness.

Guerra was aware of Borja's compensation, CA2 Dkt. 461-2 at 34, and approached Chevron after the judgment, looking "to negotiate a large payment," Dkt. 1874 at 247. In July 2012, Chevron sent a lawyer to Ecuador with $18,000 cash in a suitcase. CA2 App. A-2804; A-3008-3009. Recordings show Chevron's lawyer and Guerra negotiating payment. *Id.* A-2768-2769 (Guerra asks to "add a few zeroes" to Chevron's "starting figure"). Guerra was, however, unable to produce a draft of the judgment as he had promised. *Id.* A-2814, A-2817-2819.

Offering payment to a witness for testimony is a federal crime. 18 U.S.C. § 201(c)(2). But Chevron used Guerra to try to reach a deal with Zambrano, both offering Guerra more money for such a deal, CA2 App. A-2786, and offering Zambrano "a minimum of $1 million or whatever he wanted" to cooperate – yet

Zambrano refused. Dkt. 1874 at 256 n.1072.

Chevron was thus forced to rely on Guerra's testimony, paying him handsomely for it. Chevron knew Guerra was corrupt; he admitted to taking bribes as a judge and paying bribes as a lawyer, and had solicited bribes from Chevron to fix the Ecuadorian case. *Id.* at 250-52. Nonetheless, in January 2013, Chevron and Guerra signed a two-year contract with a renewal option, in which Chevron would pay Guerra to "make himself available to testify" in the RICO case and "to testify … at the request of Chevron in any … proceedings related to or concerning the [Ecuador] Litigation." CA2 App. A-1302-1303. Guerra was promised $10,000 more prior to deposition, *id.* A-3065-66, and paid just before his trial testimony, *id.* A-771-772. Chevron paid him *at least* $168,000 in cash alone before he testified, with another $180,000 promised. Chevron then renewed his contract just before Guerra's arbitration testimony. CA2 Dkt. 461-2 at 70.

Since July 2012, Chevron had given Guerra *at a minimum*:

- $432,000 in monthly cash payments;
- $48,000 in cash in exchange for evidence;
- $12,000 for household items;
- Payment of all U.S. taxes;
- A new computer;
- Moving expenses for Guerra and his family;

- Health insurance for Guerra and his family;
- A car and car insurance; and
- A personal attorney, immigration attorney, Ecuadorian attorney, tax attorney, and accountant.

See CA2 App. A-1302-1303, A-1370, A-770, A-778; CA2 Dkt. 461-2 at 60, 69.

B. After the District Court relied on Guerra's testimony, he recanted significant parts.

Despite the obviously criminal arrangement, the RICO judgment relied heavily on Guerra's testimony. Indeed, this testimony was the *only* "evidence" that anyone bribed Judge Zambrano to rule against Chevron. *See* Dkt. 1874 at 279-81. The district court found that Guerra was telling the truth, *id.* at 265, and thus found that the Ecuadorians' lawyers organized a scheme to pay $500,000 to Judge Zambrano and "ghostwrote" the judgment, although the district court did not find that Zambrano was ever paid (and there was no evidence that he was). Guerra was the only one who was *actually* paid, of course – more than what Zambrano was allegedly promised – and the district court also found that Zambrano refused to cooperate with Chevron despite being offered twice this amount.

While there were plenty of reasons to believe Guerra was lying, there is now proof. In the arbitration proceedings, Guerra recanted aspects of his testimony, including that Zambrano had promised Guerra 20% of a bribe from the plaintiffs – his "sworn statement in New York … wasn't true." CA2 Dkt. 461-2 at 37. He

repeatedly said that he "lied" or "exaggerated" or "wasn't truthful" both in his testimony, CA2 Dkt. 461-1 at 6-8; CA2 Dkt. 461-2 at 12, 41, 58; and to Chevron, "to improve" his negotiating position, CA2 Dkt. 461-2 at 12. This is exactly why paying a witness for testimony is a crime: even if not directed to lie, the incentive to do so is strong.

Guerra's later testimony also undermined some of the supposed evidence of the alleged ghostwriting. Guerra alleged, and the district court found, that when Chevron declined his offer to "fix" the case, Guerra agreed with the Ecuadorians' counsel to "move the case along in their favor," but not to fix the outcome. Dkt. 1874 at 229-30. Shipping records showing that Guerra exchanged packages with Zambrano allegedly corroborated this story. *Id.* at 227. But Guerra later confirmed that *none* of the shipments related to the Chevron case. CA2 Dkt. 461-2 at 17.

In addition to Guerra's admitted lies, the arbitration turned up additional evidence contradicting Guerra's story. Guerra's RICO testimony was that he obtained a draft judgment from the Ecuadorians' lawyer "[a]bout two weeks before the Judgment was issued," and made only "minor" edits. Dkt. 1874 at 245-46. Nonetheless, despite extensive additional forensic analysis in the arbitration proceedings, no draft judgment was ever found on Guerra's computer or in hard copy, nor any other evidence Guerra edited the judgment. Dkt. 461-2 at 11. There were no emails nor phone records of any communications between Guerra and Zambrano, nor the Ecuadorians' lawyers, regarding the judgment, *id.* at 11, 64; no

written communications or recordings showing an agreement with Zambrano nor evidence of any payment to Zambrano, *id.* at 11.

The arbitral tribunal nonetheless also relied heavily on Guerra's testimony. Indeed, unlike the district court, the panel did not even discuss the enormous payments made by Chevron to Guerra, nor even mention Guerra's admitted lying under oath, nor his explanation that he did so out of a motivation to obtain more money from Chevron. *Chevron v. Ecuador*, PCA Case No. 2009-23, Second Partial Award on Track II (Aug. 30, 2018). By contrast, the tribunal found that Judge Zambrano – who did not even testify before it – "was a most unsatisfactory witness," *id.* ¶ 5.150, ignoring his prior testimony where it conflicted with Guerra's, *e.g. id.* ¶ 5.141.

III. Chevron harassed, intimidated and punished those who supported Donziger.

In addition to paying witnesses for favorable testimony, Chevron brought its wrath upon those who might support Donziger or testify against the company.

Chevron secured favorable testimony by threatening and coercing opponents. Chevron sued Stratus Consulting, which performed environmental analysis in the Ecuador litigation, and repeatedly sent letters to its clients falsely claiming "fraudulent" and "corrupt activity" by Stratus had been proven in court, and requesting that they "sever ties" with Stratus. Dkt. 768-2; Dkt. 768 at 99-109. Chevron used this leverage to secure a settlement which included a promise by

Stratus scientists to testify, Dkt. 1002 at 6, and to testify a certain way: they promised not to "assert the factual or scientific validity or accuracy" of a particular expert report, *id.* at 8. As with Borja, Stratus recanted its prior positions after Chevron provided it with something of "value," 18 U.S.C. § 201(c)(2) – agreeing to drop its lawsuit. *See generally* Dkt. 1422.

Chevron also engaged in a harassing discovery campaign against dozens of individuals and organizations that had worked with or supported the Ecuadorians at any point. For example, requests against a lawyer allegedly involved in financing the Ecuador litigation were "propounded to harass and intimidate," and "set up a future claim against" him. *Chevron Corp. v. Snaider*, 78 F. Supp. 3d 1327, 1350 (D. Colo. 2015). A subpoena for another lawyer was "meant to harass," and warranted sanctions. *Chevron Corp. v. Salazar*, No. 11-0691, 2011 U.S. Dist. LEXIS 153066, at *9 (D. Or. Nov. 30, 2011). *See also Chevron Corp. v. Donziger*, No. 13-mc-80038, 2013 U.S. Dist. LEXIS 49753, at *9, 11, 15-16 (N.D. Cal. Apr. 5, 2013) ("egregiously overbroad" subpoena for organization "critical of Chevron[ ]" would "discourage First Amendment activity").

ARGUMENT

I. Given this case's history and Chevron's extraordinary efforts, the prosecutor's entanglement with Chevron creates the appearance of partiality.

Petitioner has explained that the prosecutor's ties to its former client, Chevron, do not satisfy the Supreme Court's "rigorously disinterested" standard in *Vuitton*, 481

U.S. at 810 (plurality opinion). *Amici* agree, but submit this brief to emphasize that regardless of any *actual* conflicts of interest, it is impossible to erase the *appearance* of partiality when the prosecutor's failure to disclose these connections is considered in light of Chevron's abusive conduct over the years.

Vuitton emphasized the importance of the *perception* of privately-appointed prosecutors: misuse of this process would "impair public willingness to accept the legitimate use of [prosecutorial] powers." *Id.* at 811 (internal quotations omitted). "[T]he selection of a prosecutor must be informed by the importance of impartiality, public confidence in the judicial process, and the need to avoid even the appearance of impropriety." *FTC v. American Nat'l Cellular*, 868 F.2d 315, 318 (9th Cir. 1989) (discussing *Vuitton*). Thus, "a prosecutor seeking a contempt conviction must be both impartial in fact and appear to be so." *Id.* at 319.

Chevron has spared no expense and broken many rules in its efforts to escape accountability in Ecuador and to "demonize" Donziger: manufacturing a false bribery scandal, paying witnesses millions of dollars, attempting to intimidate Donziger's allies, and engaging in conduct that multiple courts have found to be abusive and harassing. To safeguard the credibility and unique interests of the United States, any criminal prosecution here must be free of any suggestion that Chevron might be pulling the strings. The prosecutor here does not remotely satisfy that test; indeed, the fact that it only belatedly and reluctantly disclosed its prior relationship with Chevron eight months into these proceedings, despite repeated inquiries, creates exactly the

sorts of doubts that cannot be countenanced.

Disqualification is not limited to formal conflicts: "A prosecutor may be tempted to bring a tenuously supported prosecution if such a course promises financial or legal rewards for the private client," which, "at a minimum," would "create[ ] *opportunities* for conflicts to arise, and … at least the *appearance* of impropriety." *Vuitton,* 481 U.S. at 805-06. Thus, *Vuitton* "was concerned not with actual prosecutorial impropriety, but with 'the *potential* for private interest to influence the discharge of public duty.'" *In re Sasson Jeans, Inc.,* 104 B.R. 600, 606 (S.D.N.Y. 1989) (quoting *Vuitton,* 481 U.S. at 787). The district court recognized that "gratitude for past business or an appetite for future business could potentially color the prosecutor's decision-making," No. 1:19-cr-00561, Dkt. 68 at 19-20, but failed to appreciate that potential here.

Chevron has not hesitated to handsomely reward those who assist its campaign against Petitioner, and to punish those who do not. This Court need not find that the prosecutor here would *actually* be influenced by these concerns in order to conclude that the *appearance* it could is problematic. If the public is left asking – did this firm make prosecutorial decisions to curry favor with Chevron, or to avoid its wrath? – this creates exactly the problem *Vuitton* cautioned against.

II. At a minimum, further inquiry is needed to determine any conflict.

The record here is inadequate to make a finding of impartiality. The limited information disclosed by the prosecutor does *not* support the conclusion that their

"prior work for Chevron … has absolutely nothing to do with this case," No. 1:19-cr-00561, Dkt. 68 at 18. The prosecutor made no such representation, only offering a brief, vague description of the work, Dkt. 2465 at 24, and Chevron asserted privilege over the details. And the prosecutor only disclosed work for Chevron dating to 2010, although the Ecuador litigation began in 1993.

Analysis of whether a prior relationship is disqualifying with respect to later representations is fact-intensive, as it turns on the nature of the prior relationship. *See, e.g.* ABA Model R. Prof. Conduct 1.7 cmt. *See also New Jersey v. Imperiale,* 773 F. Supp. 747, 756 (D.N.J. 1991) ("The only way to assure … a fair 'private prosecution' … is for the court to weigh the private prosecutor's personal interest and conflict of roles and to make a disqualification determination on that basis."). The record here is manifestly inadequate to conclude that the prosecutor has no conflicting interest.

If the prosecutor is barred from sharing details due to Chevron's assertion of privilege, that itself is a divided loyalty that should lead to disqualification. If it must elevate Chevron's privilege over the public interest, it should not serve as prosecutor. There are numerous law firms that need not serve multiple masters – let alone an interested party.

III. Permitting these prosecutors to continue would undermine confidence in the judiciary.

That the prosecutor of Chevron's nemesis is Chevron's former firm not only undermines confidence in the prosecutor's impartiality; it also undermines confidence

in the impartiality of the judiciary. The U.S. Attorney's Office has already declined to prosecute. The district court appointed a prosecutor anyway. And when that prosecutor belatedly revealed its ties to Chevron, the court did not disqualify it. Reasonable observers may conclude, fairly or not, that the court below picked a side by retaining a prosecutor unlikely to exercise the discretion not to prosecute that the government already has.

CONCLUSION

The prosecutor's entanglement with Chevron, against the backdrop of Chevron's extravagant pursuit of Donziger, creates the impression that this criminal prosecution – using the full power of the United States – is essentially the ultimate SLAPP suit. With such an appearance, any actual conflict is unnecessary. Public confidence in the mechanism of private prosecutors could scarcely survive if this sort of arrangement is permitted. The writ should issue.

Dated: June 29, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June 2020, a copy of the foregoing was filed electronically through the appellate CM/ECF system with the Clerk of the Court and served electronically to all parties by operation of the Court's electronic filing system.

/s/Marco Simons
Marco Simons

CERTIFICATE OF COMPLIANCE

1. This document complies with Local Rule 29.1(c) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f):

   This document contains 3,900 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because: this document has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in size 14 Garamond font.

/s/ Marco Simons
Marco Simons

Dated: June 29, 2020

APPENDIX
SPECIFIC IDENTITIES AND INTERESTS OF AMICI CURIAE

The following *amici curiae*, members of the "Protect the Protest" Task Force, join in this brief:

Amazon Watch is a nonprofit organization focused on protecting the rights of indigenous peoples in the Amazon Basin. Amazon Watch supports the cause of the more than 30,000 indigenous people living in and around the "Oriente" region of Ecuador, where the operations of Chevron's predecessor, Texaco, caused one of the worst environmental disasters in history. For over fifteen years, Amazon Watch has been involved in activism concerning the pollution in Ecuador, supporting the affected communities' efforts to obtain remediation, potable water, and funds for health care to address contamination-related illnesses.

The Center for Constitutional Rights (CCR) is a national non-profit legal, educational, and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international law. CCR has litigated the defense of a number of SLAPP suits, including a suit against the Olympia Food Cooperative over its adoption of a resolution regarding boycott of Israeli goods, resulting in a fees award (*Davis v. Cox*, No. 51770-1-II (Wash. Ct. App. 2020)), a series of suits against numerous individual defendants involving the protests against the Dakota Access Pipeline (*Energy Transfer Equity, LP v. Greenpeace Int'l, et al.*, 1:17-Cv-

00173-BRW (D.N.D.)), and several suits against Professor Stephen Salaita and numerous Palestinian activists by an organization dedicated to litigation harassment of individuals involved in the BDS movement. CCR also was plaintiffs' counsel in several cases against Chevron Corporation involving human rights abuses abroad. *Doe v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002); *Bowoto v. Chevron Corp.*, 621 F.3d 1116 (9th Cir. 2010).

Center for International Environmental Law (CIEL) is a not-for-profit organization that uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. For more than three decades, CIEL has worked to expose the linkages between human rights and environmental protection, and to support individuals and communities seeking access to remedy, redress and justice when their lives, livelihoods and rights are threatened or harmed by international investments and extractive industries. CIEL has extensive experience working with community partners throughout Central and South America, including in Ecuador, whose efforts to defend their communities have subjected them to criminalization, intimidation and abusive litigation both within and outside their countries.

EarthRights International is a nongovernmental, nonprofit organization that litigates cases on behalf of communities around the world affected by human rights and environmental abuses, and also defends the rights of human rights and environmental defenders. EarthRights therefore has an interest that those exercising

the right to petition the courts to defend human rights and the environment are free to perform this important work without punishment. EarthRights has submitted amicus briefs at various stages of the underlying dispute here, including in the original lawsuit filed against Texaco/Chevron in the United States, in the international arbitration brought by Chevron against the government of Ecuador, and in the subsequent RICO case filed in the U.S. by Chevron. EarthRights has also represented advocacy organizations and individual advocates targeted by Chevron.

Greenpeace, Inc., is a 501(c)(4) non-profit advocacy organization dedicated to combating the most serious threats to the planet's biodiversity and environment. Since 1971, Greenpeace has been at the forefront of environmental activism through non-violent protest, research, lobbying, and public education. In recent years, Greenpeace has been the target of multiple SLAPP suits seeking to silence the organization's advocacy work.

The International Corporate Accountability Roundtable (ICAR) is a nonprofit organization that fights to end corporate abuse of people and planet by advocating for legal safeguards that hold big businesses accountable. ICAR currently serves as the secretariat organization for the Protect the Protest task force.

Palestine Legal is a non-profit legal and advocacy organization dedicated to protecting the civil and constitutional rights of people in the U.S. who speak out for Palestinian freedom. Palestine Legal has advised hundreds of clients whose rights have been violated because of censorship campaigns targeting speech supporting

Palestinian rights. Palestine Legal is concerned with the growing attempts to misuse the legal process, including by filing meritless lawsuits, to chill criticism of Israel's policies.

The Partnership for Civil Justice Fund (PCJF) is a 501(c)(3) public interest legal organization dedicated to the defense of human and civil rights secured by law, the protection of free speech and dissent, and the elimination of prejudice and discrimination. For 25 years the PCJF has litigated impact cases, often grounded in First Amendment jurisprudence, vindicating fundamental constitutional rights and due process requirements in order to ensure the public's ability to seek change and demand accountability.

Portland Rising Tide combines long-term strategic campaigning with educational events and direct action to raise awareness and build capacity in our community to stop the plunge into climate chaos. Portland Rising Tide stands in solidarity against the targeting of environmental lawyers and litigants by corporations and institutions of power.

Rainforest Action Network (RAN) is a nonprofit organization that campaigns for the forests, their inhabitants and the natural systems that sustain life through education, grassroots organizing, and non-violent direct action. RAN's work includes informing and educating people about environmental and social justice issues, including legal cases such as the lawsuit in Ecuador against Chevron and Chevron's obligation to compensate its victims in Ecuador. RAN has campaigned

around the case to support the Ecuadorians who continue to suffer from the effects of ongoing pollution.