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

REPLY BRIEF FOR PETITIONER

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

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REPLY BRIEF FOR PETITIONER

The Second Circuit committed legal error in holding that the DJA does not authorize Chevron to seek a declaration that it has a valid defense to enforcement of a foreign judgment under New York's Recognition Act. Respondents appear to recognize the infirmity of the Second Circuit's decision, as they do not even attempt to defend that court's central argument about the merely "procedural" character of the DJA. Instead, they try to salvage the decision by adopting the mistaken view that because the Recognition Act does not establish what they call a "substantive right" to declaratory relief, such relief is not available under the DJA. That misstatement of the law confirms that the Second Circuit's holding is irreconcilable with this Court's longstanding and consistent construction of the DJA. *See*, *e.g.*, *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 244 (1937). And, as one *amicus* explains, the facts of this case are "all but indistinguishable" as a logical matter from a garden-variety "insurer suit seeking a declaration of nonliability," and thus "the Second Circuit's reasoning . . . could be used to justify barring virtually any DJA action in diversity." Br. of *Amicus Curiae* Halliburton Co. 17. Summary reversal is therefore warranted.

I. RESPONDENTS ECHO THE SECOND CIRCUIT'S MISINTERPRETATION OF THE DJA.

Far from identifying any "mischaracteriz[ation]" of the opinion below by Chevron, Br. in Opp. 19, respondents double down on the Second Circuit's flawed analysis and thus confirm the necessity of this Court's review.

Respondents first argue that the Recognition Act does not itself authorize a preemptive declaration that a judgment is unenforceable—a proposition that is not disputed in this Court.[1] Br. in Opp. 21–24. From that premise, they jump to the same incorrect conclusion as the Second Circuit: that a judgment debtor cannot use the federal DJA to obtain such a declaration. *See id.* at 24–26. To reach that conclusion, respondents reclassify the ability to obtain a "declaration of non-recognition"—which would ordinarily be considered a remedy—as a "substantive right." *Id.* at 23–26. They then reason that because the DJA does not create "substantive rights," it cannot be invoked to obtain a declaration of unenforceability. *Id.* at 26.

As Chevron's petition explained, that is not how this Court or other circuits have ever understood the DJA; declaratory relief is a *remedy*, not a *right*, and it is available under the DJA regardless of its availability under state law. Pet. 15–19. After all, the entire "point of a declaratory action is to assert a defense anticipatorily," *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1322 (9th Cir. 1998), even though most statutory defenses are not accompanied by what respondents and the Second Circuit would deem a "substantive right" to declaratory relief. It is the DJA that supplies that *remedy*. Were it otherwise, the DJA would be a useless redundancy with relief already available under state law.

That respondents find themselves compelled to so radically distort the settled understanding of the

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[1] While this Court generally defers to a lower court's interpretation of state law, *see* Br. in Opp. 21, that principle has no relevance because Chevron here challenges only the Second Circuit's construction of the DJA.

DJA—and, in particular, the difference between a substantive right and the declaratory remedy—highlights the magnitude of the Second Circuit's legal error. Indeed, the very cases respondents cite for the proposition that the DJA does not create substantive rights, *see* Br. in Opp. 24–25, hold that it *does* enable litigants to obtain declaratory relief even if that relief is not available under, or is affirmatively barred by, state law. *See*, *e.g.*, *Farmers Alliance Mut. Ins. Co. v. Jones*, 570 F.2d 1384, 1386 (10th Cir. 1978) ("The prohibition against declaratory judgments contained in the Oklahoma statute does not affect Farmers' suit in federal court."); *see also Aralac, Inc. v. Hat Corp. of Am.*, 166 F.2d 286, 291 (3d Cir. 1948) ("[T]hough the right to such relief has been in some cases inherent the statute extended greatly the situations under which such relief may be claimed."); Br. of *Amicus Curiae* Halliburton Co. 14–16.[2]

Respondents likewise fail to meaningfully distinguish the numerous decisions of this Court holding that the DJA enables a party to preemptively establish a defense even where the underlying substantive statute does not. *See* Br. in Opp. 26–28. Although

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[2] Although respondents deny that the Second Circuit held that a state policy can override the availability of the relief under the DJA, they briefly cite this Court's statement that "[i]t is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states." *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943); *see* Br. in Opp. 28 n.18, 33 n.22. That statement referred to a declaratory judgment that would interfere with state tax-collection efforts; it had nothing to do with whether the DJA remedy is available despite a purportedly contrary state policy.

they correctly state that in each of the cases the "declaratory judgment plaintiff sought a declaration of an existing *right*," they overlook that in each case the *remedy*—a declaratory judgment—was provided only by the DJA, not by the underlying substantive statute or contract. Br. in Opp. 26 (emphasis added). For example, respondents cite 35 U.S.C. § 282 for the proposition that the Patent Act "clearly establishes the right to render a patent unenforceable by showing that it is invalid." *Id.* at 27. But that provision sets forth only "*defenses* in any action involving the validity or infringement of a patent," one of which is invalidity of the patent. 35 U.S.C. § 282 (emphasis added). It is the DJA, not the Patent Act, that enables a party to seek a preemptive adjudication of the "defense[]" of patent invalidity, as one of the cases cited by respondents explains. *See Aralac*, 166 F.2d at 291–92; *see also Walker Process Equip., Inc. v. Food Mach. & Chem. Corp.*, 382 U.S. 172, 176 (1965).

The DJA works precisely the same way with respect to the Recognition Act (or any other statute): As respondents concede, the Recognition Act establishes a right against enforcement of judgments that rest on corruption or fraud, but (in their view) permits that right to be asserted only as a defense to an enforcement action. *See* Br. in Opp. 22–23. The DJA, however, enables a party to anticipatorily litigate that defense in a ripe controversy, just as it does for the defense of invalidity in the patent context. Respondents' circular arguments, which merely mislabel the remedy of declaratory relief a "substantive right," thus lack merit.

Respondents do not themselves endorse the central plank of the Second Circuit's reasoning: that because this Court has held that the DJA is "'procedur-

al only,'" a party may not invoke it "to declare the unenforceability of a foreign judgment"—that is, to establish a defense to enforcement—"before the putative judgment-creditor could seek [enforcement]." Pet. App. 27a (quoting *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950)). As Chevron's petition explained, the cases on which the Second Circuit relied held only that the DJA cannot independently support "arising under" jurisdiction, *see* 28 U.S.C. § 1331, and in fact made clear that the statute did "enlarge[] the range of remedies available in the federal courts." *Skelly Oil*, 339 U.S. at 671; *see* Pet. 19–23. Even respondents evidently concede that those cases cannot be read to restrict the availability of declaratory relief in a jurisdictionally proper case. *See* Br. in Opp. 28 n.18.

Given the starkness of the Second Circuit's error, summary reversal is the appropriate disposition of this case. This Court has summarily reversed lower courts three more times since the filing of the petition for certiorari, for a total of ten such reversals last Term alone. *See Am. Tradition P'ship v. Bullock*, 132 S. Ct. 2490 (2012) (per curiam); *Parker v. Matthews*, 132 S. Ct. 2148 (2012) (per curiam); *Coleman v. Johnson*, 132 S. Ct. 2060 (2012) (per curiam). Although summary reversal is usually inadvisable where the decision under review turned on the resolution of factual questions, *see* Br. in Opp. 19, the Second Circuit here committed a purely legal error. In the alternative, this Court should grant plenary review.

II. THERE IS NO BARRIER TO THIS COURT'S REVIEW OF THE SECOND CIRCUIT'S LEGAL ERROR.

In urging this Court to abstain from review, respondents assert that the Second Circuit articulated a second, independent ground for reversing the district court's decision: that the district court had abused its discretion under the factors set forth in *Dow Jones & Co. v. Harrods Ltd.*, 346 F.3d 357, 359 (2d Cir. 2003) (per curiam). *See* Br. in Opp. 30–33. That is incorrect. As Chevron explained in its petition, *see* Pet. 12, 16 n.4, the Second Circuit's *Dow Jones* analysis hinged exclusively on its erroneous conclusion that the DJA does not enable a plaintiff to seek an anticipatory adjudication of a defense to enforcement of a judgment. *See* Pet. App. 28a–30a. It was not an independent basis to reverse the district court, and it therefore poses no obstacle to this Court's reversal of the Second Circuit's misinterpretation of the DJA.

Even a cursory review of the Second Circuit's brief *Dow Jones* analysis reveals that it was inextricably intertwined with the court's DJA holding. After setting forth its erroneous interpretation of the DJA, the Second Circuit turned to *Dow Jones*—not as an independent basis for reversal, but rather to address what it characterized as *Chevron's* "attempt[] to redeem the novelty of its argument by arguing that its action is permitted under the *Dow Jones* test." Pet. App. 28a. The court first determined that the *Dow Jones* test had "limited relevance in this case . . .[b]ecause the DJA cannot create legal rights that do not otherwise exist." *Id.* It then asserted that "once the issues under the Recognition Act are properly understood"—i.e., once it is

understood that the Act does not authorize a preemptive declaration of unenforceability—"it becomes clear that under the *Dow Jones* test the district court must be found to have abused its discretion in undertaking to issue a declaratory judgment." *Id.* Following a recital of the *Dow Jones* factors, the court reasoned that "[i]t is unclear what is to be gained" from permitting Chevron to raise defenses to enforcement preemptively rather than waiting to be sued. *Id.* at 29a. In the Second Circuit's view, a "far better remedy is available: Chevron can present its defense to the recognition and enforcement of the Ecuadorian judgment in New York if, as and when the LAPs seek to enforce their judgment in New York." *Id.* at 30a.

The court of appeals conducted its subsidiary *Dow Jones* analysis only to refute Chevron's reliance on that case, and the court's analysis depended upon its erroneous view that it is never proper to use the DJA to preemptively assert a defense to enforcement, not any independent abuse of discretion by the district court. The Second Circuit's statement that "the district court must be found to have abused its discretion in undertaking to issue a declaratory judgment" flowed from its conclusion that it is *always* an abuse of discretion to issue a declaration of a valid defense to enforceability instead of awaiting an enforcement action. It was thus merely a reformulation of its mistaken holding that the DJA does not authorize a preemptive declaration of unenforceability. *See Koon v. United States*, 518 U.S. 81, 100 (1996) ("A district court by definition abuses its discretion when it makes an error of law."). In any event, even if it were "unclear . . . to what degree the [Second Circuit's purported] alternative holding was influenced by the invalid, categorical rule" it adopt-

ed, this Court's practice in those circumstances has been to summarily reverse and permit the lower court to revisit that analysis untainted by the error of law. *Marmet Health Care Ctr., Inc. v. Brown*, 132 S. Ct. 1201, 1204 (2012) (per curiam).

Respondents—by splicing in quotations from a prior part of the opinion—suggest that the Second Circuit held that because the enforceability standards of the Recognition Act would be relevant only to an attempted enforcement action in New York, which might never occur, declaratory relief was inappropriate. *See* Br. in Opp. 31–33 (quoting Pet. App. 25a). But that is clearly not what the court held, because respondents are on record conceding that the standards of the Recognition Act would govern *any* enforcement action against Chevron, regardless of venue.[3] This is most obviously true of any attempted enforcement in the United States. And the Second Circuit acknowledged that the district court's ruling would likely be given preclusive effect in other nations. *See* Pet. App. 29a–30a. There is therefore no question that a declaratory judgment in this case would settle the enforcement question in many jurisdictions, not only in New York.

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[3] As the Second Circuit explained, Texaco, as a condition of the Southern District of New York's *forum non conveniens* dismissal, reserved "its right to contest [the] validity [of an Ecuadorian judgment] *only in the limited circumstances permitted by New York's Recognition of Foreign Country Judgments Act*." Pet. App. 7a (emphasis added; internal quotation marks omitted; alterations in original). Respondents themselves have repeatedly stressed this condition in litigation, *see* Pet. 8 & n.3, and they reiterate it in their brief in this Court, conceding that the Recognition Act standards should apply even in an enforcement action in another country. Br. in Opp. 4–5 & n.4.

In a related argument, respondents take issue with the breadth of the preliminary injunction, contending that it was error for the injunction to extend outside of New York despite their concession that the Recognition Act standards would govern any enforcement action. *See* Br. in Opp. 23–24. The Second Circuit, however, did not address whether, if declaratory relief is permissible, the district court's injunction should have been narrowed. *See* Pet. App. 15a–16a (vacating injunction due to "legal misapprehension" and declining to review injunction factors). Instead, it ordered the district court to dismiss the entire declaratory-judgment claim. The scope of the injunction therefore poses no impediment to review.

III. THE CONCERNS OF *AMICI CURIAE* UNDERSCORE THE MANIFEST IMPORTANCE OF THE QUESTION PRESENTED.

Respondents pepper their brief with unfounded attacks on Chevron that have nothing to do with the question presented and that do not bear upon the factors that this Court ordinarily considers in evaluating a petition for certiorari. *See* Br. in Opp. 3–17. Their baseless accusations of Chevron's "machinations," "pressure tactics," and even "espionage" have not been endorsed by any court or otherwise tested through the adversarial process. In contrast, numerous federal courts, including the district court below, have found substantial evidence that respondents perpetrated a wide-ranging fraud in a scheme that ultimately secured an $18 billion judgment from a corrupt foreign court, with much of that evidence captured on video. Pet. 4 & n.1. Respondents have already begun to exploit that tainted judgment, initiating enforcement actions in Canada and Brazil after Chevron filed its petition. This

Court's review is therefore urgently needed. *See* Br. of *Amicus Curiae* National Association of Manufacturers 12 ("[T]he 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 . . . .").

The decision below also warrants review because it broadly rejects a critical "means of protection from ill-gotten foreign judgments—the ability of a transnational business with assets in the United States . . . to obtain a declaration of rights without waiting for the foreign judgment creditor to file an enforcement action." Br. of *Amicus Curiae* Chamber of Commerce 4. As the U.S. Chamber of Commerce explains, the Second Circuit's "categorical rule denying the availability of this remedy . . . effectively closes the courthouse door of the nation's financial capital to businesses seeking prospective relief from ill-gotten foreign judgments." *Id.* at 6. Respondents assert that American companies have no need to avail themselves of this procedure because they have not done so with frequency in the past. *See* Br. in Opp. 29. But as documented in both the petition and the Chamber's brief, recent years have seen an increase in suits against American companies in foreign courts beset by corruption and fraud. *See* Pet. 30–33; Br. of *Amicus Curiae* Chamber of Commerce 15–17. "In the face of these actions, companies need effective tools," *id.* at 17, and the Second Circuit has discarded an important one based on a clear misreading of the law.

It is also clear from respondents' tortured attempts to reconcile the Second Circuit's holding with

this Court's precedents that the decision below will inject unnecessary confusion into the interpretation of a statute that is critical for a diverse array of businesses in myriad legal contexts. "In a variety of industries, such as technology, construction and insurance, businesses depend upon the Declaratory Judgment Act to obtain clear guidance about their legal rights and obligations, including instances where they have a potential defense to a claim in a coercive lawsuit." Br. of *Amicus Curiae* Chamber of Commerce 2. The holding of the court of appeals profoundly upsets the settled understanding of a bread-and-butter procedural device for business litigation. *See* Br. of *Amicus Curiae* Halliburton Co. 17.

In refusing even to acknowledge the Second Circuit's dramatic departure from the settled understanding of the DJA—indeed, by embracing it—respondents have failed to offer any compelling reason to allow the legal uncertainty fostered by the decision below to linger. This Court should grant review and summarily reverse.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 24, 2012