No. ___

Supreme Court of the United States

STEVEN R. DONZIGER,

Petitioner,

v.

ATTORNEY GRIEVANCE COMMITTEE FOR THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT,

Respondent.

ON APPEAL FROM A DECISION OF THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

PETITION FOR A WRIT OF CERTIORARI

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Dated: February 4, 2022

BATEMAN & SLADE, INC. STONEHAM, MASSACHUSETTS

QUESTION PRESENTED

Did New York deny Mr. Donziger due process of law by disbarring him on the basis of Judge Kaplan's bribery finding without allowing him opportunity to challenge it?

LIST OF PARTIES

Steven Robert Donziger, Petitioner.

Attorney Grievance Committee for the Supreme Court of the State of New York Appellate Division: First Judicial Department, Respondent.

LIST OF PROCEEDINGS

Matter of Donziger, 163 A.D.3d 123, 80 N.Y.S.3d 269, 2018 N.Y. Slip Op. 05128 (July 10, 2018)

Supreme Court of the State of New York Appellate Division: First Judicial Department Report and Recommendation (Feb. 24, 2020)

Matter of Donziger, 186 A.D.3d 27, 128 N.Y.S.3d 212, 2020 N.Y. Slip Op. 04523 (Aug. 13, 2020)

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PETITION

Steven Donziger respectfully petitions for a writ of certiorari to review the judgment of the Appellate Division of the New York Supreme Court, First Judicial Department disbarring him from the practice of law without allowing him an opportunity to contest the bribery allegation against him.

OPINIONS BELOW

The opinion and order of the Appellate Division of the New York Supreme Court, First Judicial Department ("First Department") dated August 13, 2020 may be found at Appendix 72. The New York Court of Appeals' denial of Mr. Donziger's motion for leave to appeal dated May 6, 2021 may be found at Appendix 79, and the New York Court of Appeals' denial of Mr. Donziger's motion for reargument of motion for leave to appeal dated September 9, 2021 may be found at Appendix 80.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a):

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under

the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

I. Introduction

This disbarment case is part of decades-long litigation pitting Chevron Corporation against Petitioner Steven Donziger, defending himself frequently pro se, sometimes with pro bono or marginally financed assistance, and always without the means to marshal a full-fledged defense, let alone one comparable to his adversary's offense. The genesis of the litigation which gave rise to Mr. Donziger's disbarment is an Ecuadorian judgment he won against Chevron on behalf of indigenous Ecuadorians for the company's environmental degradation of the Amazon. Rather than pay the judgment, Chevron counter-sued Mr. Donziger in the United States District Court for the Southern District of New York (S.D.N.Y.) using the Civil provision of the RICO Act (18 U.S.C. § 1964). Judge Lewis Kaplan presided at the RICO trial[1] without a jury and ruled

[1] At his bench trial on criminal contempt charges, Mr. Donziger showed, through documentary evidence and testimony on cross-examination, how Chevron was able to use the rotating assignment schedule of S.D.N.Y.'s Part 1 to ensure its RICO action could be presided over by Judge Kaplan instead of Judge Jed Rakoff. Judge Rakoff had presided over the S.D.N.Y. suit Mr. Donziger brought in 1993 on behalf of indigenous Ecuadorians, which, after it was dismissed *on forum non conveniens* grounds, was filed in Ecuador and led to the judgment issued against

Chevron. S.D.N.Y.'s Part 1 was "established for hearing and determining certain emergency and miscellaneous matters in civil and criminal cases." S.D.N.Y. Local Rule 3, *available at* 2021-09-29 SDNY Rules for the Division of Business.pdf (uscourts.gov). Judges take turns presiding over Part 1, and a schedule of which judge will sit when is announced to the public ahead of time. *See generally* S.D.N.Y. Website, Part 1 Assignments, *available at* District Judges Part 1 Assignments | U.S District Court (uscourts.gov). At his trial, Mr. Donziger showed that prior to the filing of the RICO action, Chevron went to Part 1 while Judge Kaplan was presiding and requested the issuance of foreign discovery subpoenas (pursuant to 28 U.S.C. § 1782) to aid in the Ecuador litigation, which Judge Kaplan issued. Later, when filing the RICO action against Mr. Donziger, Chevron claimed the suit was related to the § 1782 subpoenas but omitted to mention the suit's direct connection to the 1993 action presided over by Judge Rakoff (after transfer from Judge Broderick). *United States v. Donziger*, 19-CR-561 (S.D.N.Y.), Trial Transcript at 745–57. As articulated in Mr. Donziger's petition to this Court following affirmance of the RICO action on appeal, Judge Rakoff had taken the position, in judicial decisions and legal scholarship, that non-preliminary equitable relief could not be granted to private RICO plaintiffs without their accusations of racketeering activity first having been proven to a jury. *See Donziger v. Chevron Corporation*, 2017 WL 1192140 (U.S.), 28 (Mr. Donziger's petition for a writ of certiorari) ("[E]ven assuming that a district court has inherent power to order equitable remedies ancillary to a RICO judgment, the court's authority to enter such relief must depend on the existence of a cause of action over which the court has jurisdiction - namely, RICO's private right of action for damages. . . . Judge Rakoff's injunction in *Uzan* depended on the existence of those damages claims. 202 F. Supp. 2d 239, 244 (holding that § 1964(c) provides 'a private right of action for damages'). Indeed, Judge Rakoff has elsewhere repudiated the view that RICO authorizes injunctive relief in the absence of a damages claim. As his RICO treatise explains: 'Civil RICO claims are only available where monetary relief is sought . . . . Thus, if the suit is in essence a claim . . . for injunctive relief, RICO will not be a suitable vehicle.'" (quoting Jed S. Rakoff, *RICO: Civil and Criminal Law and Strategy* § 7.02[2] (2014)).

that Mr. Donziger had won the Ecuadorian judgment by a pattern of racketeering fraud headlined by a finding that he had bribed Judge Zambrano to win the judgment. Judge Kaplan enjoined Mr. Donziger from profiting from the Ecuadorian judgment and subsequently ordered him to pay Chevron over $800,000 in trial costs.[2]

Chevron's original RICO complaint contained claims for money damages, indisputably entitling Mr. Donziger to a jury trial under the Seventh Amendment. On the eve of trial, Chevron waived its claim for damages and proceeded only for injunctive relief. The result was a bench trial in which Judge Kaplan himself, without a jury,[3] determined whether

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[2] *See Chevron Corp. v. Donziger*, 2018 WL 1137118, at *1 (S.D.N.Y. Feb. 28, 2018), *opinion corrected and superseded*, 2018 WL 1137119 (S.D.N.Y. Mar. 1, 2018), *aff'd*, 990 F.3d 191 (2d Cir. 2021).

[3] At the time of Mr. Donziger's trial, no federal appellate court had held that a private plaintiff could prosecute a defendant to a judge sitting without a jury for having committed a "pattern of racketeering activity" consisting of enumerated felonies. The Second Circuit had not ruled on the issue. The Ninth Circuit had held that private RICO plaintiffs had no right to injunctive relief. *See Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1088 (9th Cir. 1986). The Seventh Circuit had held equitable relief could be granted to private plaintiffs under RICO, but the case had come up to the circuit court following a jury's determination that the requisite RICO predicate offenses had been committed. *See Nat'l Org. For Women, Inc. v. Scheidler*, 267 F.3d 687, 695 (7th Cir. 2001), *rev'd,* 537 U.S. 393 (2003) (reviewing a decision in which, "[a]fter the jury returned its verdict, the district court . . . entered a permanent, nationwide injunction"). In this respect, Mr. Donziger's case before the Second Circuit made new, unprecedented law authorizing private litigants (here, a corporation with nearly unlimited resources) to accuse a litigation opponent of crimes

Chevron's allegations that Mr. Donziger had obtained the Ecuador judgment through a "pattern of racketeering activity" had been proven. On appeal before the Second Circuit, Mr. Donziger challenged the legal framework that permitted Judge Kaplan to promulgate false findings–namely, the unique nature of RICO Act predicates–and repeatedly challenged the truth of the bribery finding in his statement of facts. Due to the inability to individually appeal the RICO predicates–including the keystone bribery finding later deemed *not necessary*–Judge Kaplan's bribery finding has never been reviewed on its merits.

Following affirmance of the RICO judgment by the Second Circuit, the S.D.N.Y. Grievance Committee, all colleagues of Judge Kaplan, requested that New York discipline Mr. Donziger–not on the basis of the civil RICO judgment against him–but on the predicate offenses underlying the judgment.[4] In

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and have a single judge determine "guilt" by a preponderance. The legality of a corporation using the RICO Act to accuse opposing counsel of being a felonious racketeer and then have those accusations tested by a single judge–without the protections of criminal due process–has not been decided by this Court. *See RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 354 (2016) ("This Court has never decided whether equitable relief is available to private RICO plaintiffs . . . and we express no opinion on the issue today."). Mr. Donziger's petition for a writ of certiorari following the Second Circuit's opinion affirming the use of juryless civil RICO against him had asked the Court to make such a determination. *Donziger v. Chevron Corporation*, 2017 WL 1192140 (U.S.) ("Does the Racketeer Influenced and Corrupt Organizations Act (RICO) authorize federal courts to issue injunctive relief to private parties?"). This Court denied certiorari, leaving intact a split among the Circuit Courts which persists today.

[4] *See* Appendix 1–2 (Letter from P. Kevin Castel, United States District Judge to Jorge Dopico, dated December 2, 2016).

its letter, the S.D.N.Y. Grievance Committee further requested that New York do so by collateral estoppel.[5] The Appellate Division of the New York Supreme Court, First Judicial Department ("First Department") acceded to both requests. It accepted Judge Kaplan's findings as conclusive, incontestable proof of professional misconduct and suspended Mr. Donziger, asserting there was "uncontroverted evidence of serious professional misconduct which immediately threatens the public interest."[6] The court then appointed John Horan, a former Assistant United States Attorney and distinguished member of the New York Bar, as Referee to recommend appropriate sanctions. When Referee Horan indicated in a pre-hearing procedural memo that he would allow Mr. Donziger to challenge the bribery finding, the First Department countermanded him, ordering "that the Referee may not reexamine this court's determination, based on collateral estoppel, that the respondent committed professional misconduct . . ."[7] In compliance, Referee Horan thus limited his sanctions hearing to evidence of character in mitigation:

> Respondent's conduct in this unique matter, all arising from one unusually lengthy and difficult environmental pollution case conducted in Ecuador against the most vigorous and oppressive defense money can buy, leads inexorably to a severe sanction but

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[5] *Id.* at 4.

[6] Appendix 8 (*Matter of Donziger*, 163 A.D.3d 123, 80 N.Y.S.3d 269, 2018 N.Y. Slip Op. 05128).

[7] *See* Appendix 75 (*Matter of Donziger*, 186 A.D.3d 27, 128 N.Y.S.3d 212, 2020 N.Y. Slip Op. 04523).

> should be judged in its entire context; the Kaplan decision is entitled to considerable weight but not necessarily, in these unique circumstances, decisive weight. . . . Assessment of character is not an exact science, but we can all agree that the essential components are honesty, integrity, and credibility. It is far from clear that Respondent is lacking in those qualities as the Committee argues.[8]

Referee Horan recommended to the First Department that Mr. Donziger be reinstated and not disbarred.[9] The court flatly rejected his recommendation. Instead, the First Department reasserted collateral estoppel as the sole evidentiary basis for its action and disbarred Mr. Donziger.[10] With one dissent, the New York Court of Appeals denied Mr. Donziger leave to appeal on May 6, 2021[11] and denied reargument on his motion for leave to appeal on September 9, 2021.[12]

This petition focuses on the New York courts' use of the most devastating of Judge Kaplan's predicate factual findings in the RICO action–that

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[8] Appendix 63 (Supreme Court of the State of New York Appellate Division: First Judicial Department Report and Recommendation).

[9] *Id.* at 63–64.

[10] Appendix 76–77 (*Matter of Donziger*, 186 A.D.3d 27, 128 N.Y.S.3d 212, 2020 N.Y. Slip Op. 04523).

[11] Appendix 79 (*Matter of Donziger*, 36 N.Y.3d 913, 168 N.E.3d 1152, 145 N.Y.S.3d 14 (Table), 2021 WL 1805246 (N.Y.), 2021 N.Y. Slip Op. 65681).

[12] Appendix 80 (*Matter of Donziger*, 37 N.Y.3d 1001, 174 N.E.3d 696, 152 N.Y.S.3d 671 (Mem), 2021 N.Y. Slip Op. 71204).

Mr. Donziger bribed presiding Ecuadorian Judge Zambrano–a finding Judge Kaplan himself has refused to stand behind. In the shadow of this finding, Mr. Donziger has been afflicted with court costs, attorney fees and fines totaling millions of dollars, held in pretrial home confinement for over two years pending prosecution by Judge Kaplan's special prosecutor, and imprisoned at MCI Danbury for criminal contempt,[13] all without benefit of jury trial or many of the other constitutional protections owed to a criminal defendant. Most important, the bribery finding has aided Chevron in entirely dodging responsibility for its depredation of the Amazon.

ARGUMENT

I. New York denied Mr. Donziger due process of law by disbarring him on the basis of Judge Kaplan's bribery finding without allowing him opportunity to challenge it.

"Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer." *In re Ruffalo*, 390 U.S. 544, 550 (1968) (citing *Ex parte*

[13] In a related but distinct proceeding instigated by Chevron, Mr. Donziger was found to have committed six counts of criminal contempt. After the S.D.N.Y. U.S. Attorney turned down prosecution of the case, Mr. Donziger was prosecuted by a partner at a law firm which counted Chevron among its clients as recently as 2018. Mr. Donziger's private prosecutor was selected by Judge Kaplan. Because the presiding district court judge (who was also selected by Judge Kaplan, rather than by random assignment) was ultimately willing to forego the ability to sentence Mr. Donziger to more than 6 months in jail post-conviction, his criminal contempt charges were deemed "petty" and he was therefore tried without a jury by the judge whom Judge Kaplan selected. After spending 20 months in pretrial home confinement awaiting his criminal contempt trial, Mr. Donziger was sentenced to the maximum of 6 months in jail.

Garland, 71 U.S. 333, 380 (1866) and *Spevack v. Klein*, 385 U.S. 511, 515 (1967). Lawyers facing disbarment proceedings are "accordingly entitled to procedural due process[,]" *In re Ruffalo*, 390 U.S. at 550, as "[t]hese are adversary proceedings of a quasi-criminal nature." *Id.* at 551 (citations omitted). "[W]ithin the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971) (citations and quotation marks omitted). "[W]hen proceedings for disbarment are 'not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defen[s]e.'" *In re Ruffalo*, 390 U.S. at 550 (1968) (quoting *Randall v. Brigham*, 74 U.S. 523, 526 (1868)).

A. The First Department misapplied collateral estoppel, as properly articulated by its neutral Referee.

Application of the doctrine of collateral estoppel to deny Mr. Donziger all opportunity to contest Judge Kaplan's criminal bribery finding against him was a violation of due process. The burden of proof rests with the Attorney Grievance Committee in a disbarment proceeding, and the unconstitutional use of collateral estoppel in this case to avoid that burden violated due process.

The doctrine of collateral estoppel is a form of proof by hearsay exception. Evidence admitted through collateral estoppel is justified as an exception to the usual rules of proof on the assumption that the reliability of a judicial finding may be assumed.

Preclusive collateral estoppel, unlike ordinary hearsay exceptions, completely precludes challenge to the truth of the matter asserted. Such a radical form of preclusion is seen to promote judicial efficiency, but it is warranted only when there is an identity of issue, when the party against whom the estoppel operates had a full and fair opportunity to contest the facts in another court proceeding, and when there has been no subsequent impeachment of the finding to be imported. *Cf. Schwartz v. Public Administrator of the County of Bronx*, 24 N.Y.2d 65, 71 (1969) ("There must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and, second, there must have been a full and fair opportunity to contest the decision now said to be controlling.").

Not one of these three conditions was met in Mr. Donziger's case. Referee Horan confronted the First Department with exactly such an objection: "To argue that respondent has already had his due process in the trial before Judge Kaplan and is entitled to nothing more in this proceeding to sanction him as a lawyer is to overlook the substantial differences in the proceedings."[14]

Referee Horan articulated the differences:

> In particular, in the U.S. District Court, respondent was faced with an equity case without a jury to invalidate a foreign judgment brought against him and others in which the

[14] Appendix 11 (Supreme Court of the State of New York Appellate Division: First Judicial Department Decision on Procedure for the Post-Suspension Hearing Under 22 NYCRR 1240.9(c)).

> District Judge, in so many words, but in the guise of Civil RICO charges, created a criminal indictment against respondent and found the facts to support it by a preponderance of the evidence in reaching his equity judgment in favor of Chevron. . . .[15]
>
> Other material differences can be noted, such as the lack of notice to respondent that his status as a lawyer was in jeopardy before Judge Kaplan, or for that matter, notice that he was, in substance, facing potential criminal charges regarding the judgment at issue. . . .[16]
>
> Finally, it is open to question, at least initially in this Post-Suspension hearing, whether respondent did receive a full and fair hearing before Judge Kaplan, notwithstanding the length of the proceeding and the volume of evidence.[17]

As a means of addressing these differences in process, Referee Horan intended to provide Mr. Donziger with an opportunity to be heard on the findings against him being imported over from the RICO judgment:

> The intention is to have an actual "hearing" pursuant to 22 NYCRR 1240.9(c), where respondent can address the Charges against him as he sees fit, even to the point of disagreeing with, or providing context to the

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[15] *Id.*

[16] *Id.* at 12.

[17] *Id.*

> facts in the first instance found by the District Court, and affirmed as found by the Second Circuit, on the ground that a strict application of the collateral estoppel doctrine, in the circumstances before me, may place respondent in an unfair position, and one he likely could not have foreseen as he set out in the Southern District Court to defend the judgment he obtained in Ecuador.[18]

Mr. Donziger did not get "to have an actual 'hearing'" because the First Department rejected its Referee's decision on procedure. In sum, the application of collateral estoppel to summarily disbar Mr. Donziger without affording him an opportunity to challenge the bribery allegation—a finding of asserted criminality made in a civil proceeding, between grossly asymmetric litigants, without benefit of a jury trial, by a preponderance of the evidence—was a complete and utter denial of due process.

B. Judge Kaplan's bribery finding should not have been given preclusive downstream effect because he specifically declared it to be not essential to his judgment.

Judge Kaplan's bribery finding, as he conceded in his cost order, was "critically"[19] based on the testimony of Alberto Guerra, whom Judge Kaplan

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[18] *Id.* at 13.

[19] *Chevron Corp. v. Donziger*, 2018 WL 1137118, at *5 (S.D.N.Y. Feb. 28, 2018), *opinion corrected and superseded*, 2018 WL 1137119 (S.D.N.Y. Mar. 1, 2018), *aff'd*, 990 F.3d 191 (2d Cir. 2021) ("[The court] did so without necessary regard to whether Donziger and the LAPs bribed former Judge Zambrano, the only point on which Guerra's testimony was critical.").

knew to be a witness of seriously doubtful credibility.[20] In his RICO judgment and opinion, Judge Kaplan specifically and repeatedly stated that this particular finding was independent of his other predicate findings and *not necessary* to his ultimate racketeering judgment. He devoted two sections of his mammoth RICO decision to making this point: sections XIII(B)(ii)(c)(1) and (2):[21]

> The LAPs' Ghostwriting of All or Part of the Judgment and Zambrano's Adoption of Their Product Was Fraud Warranting Equitable Relief *Even Absent Bribery.* (emphasis added).
>
> The Deception of the Lago Agrio Court By The Misrepresentations that Cabrera Was Independent and Impartial and By the Passing Off of the Ghostwritten Report as His Work Was Fraud Warranting Equitable Relief *Even Absent Bribery.* (emphasis added).

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[20] "[Guerra's] professional history includes multiple instances in which he has accepted bribes, lied, and facilitated illegal relationships between parties and judges. . . . Guerra's willingness to accept and solicit bribes, and his lie to Chevron about the supposed offer by the LAPs of $300,000, and other considerations, put his credibility in serious doubt, particularly in light of the benefits he has obtained from Chevron. Indeed, Guerra admitted that he came forward because he believed he would be 'rewarded handsomely.' In addition, there are some inconsistencies in his story." *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 519 (S.D.N.Y. 2014), *aff'd*, 833 F.3d 74 (2d Cir. 2016).

[21] The text excerpts quoted here are the titles of the sections Judge Kaplan dedicated to explaining the independence of his RICO injunction from his bribery finding. *See Chevron Corp. v. Donziger,* 974 F. Supp. 2d at 561.

In sum, Judge Kaplan insulated his bribery finding from direct challenge on appeal by stating that his finding Mr. Donziger had bribed Judge Zambrano was not necessary to support the RICO injunction. The non-necessary nature of Judge Kaplan's bribery finding, in tandem with the unfairness of the asymmetric proceedings pitting a multinational corporation against a human rights lawyer, makes application of collateral estoppel to it inappropriate under traditional principles of collateral estoppel doctrine and under explicit New York law. *See Schwartz v. Public Administrator of the County of Bronx*, 24 N.Y.2d at 71 (1969) ("There must be an identity of issue which has *necessarily been decided* in the prior action and is decisive of the present action, and, second, there must have been a *full and fair opportunity to contest the decision now said to be controlling.*") (emphasis added).

C. When confronted with post-trial evidence of Alberto Guerra's perjury, Judge Kaplan was himself not willing to stand behind the bribery finding, which he conceded was "critically" based on Guerra's testimony.

Prior to having costs imposed on him after his RICO trial, Mr. Donziger discovered new post-trial evidence of Alberto Guerra's perjury and brought it to Judge Kaplan's attention. In his February 28, 2018 order imposing costs, Judge Kaplan expressly refused to consider the evidence, stating that Guerra's testimony was "critical" only to the bribery finding, and that the bribery finding was not necessary to the RICO judgment:

> [T]he Court held that this fraudulent behavior warranted equitable relief with respect to the Ecuadorian judgment. It did so without necessary regard to whether Donziger and the LAPs bribed former Judge Zambrano, the only point on which Guerra's testimony was critical. . . . As the Court's opinion makes clear, this Court would have reached precisely the same result in this case even without the testimony of Alberto Guerra.[22]

When Judge Kaplan himself refused to stand behind the allegation of bribery, all justification for applying collateral estoppel to his bribery finding evaporated. Nevertheless, the First Department continued to give it preclusive effect. While the First Department may have intended to efficiently import a reliable finding from another court, the effect of using collateral estoppel here was to predicate disbarment on a dubious and disavowed finding without providing an opportunity to challenge the finding's veracity. By giving the bribery finding undue downstream effect, the First Department denied Mr. Donziger due process of law.

REASONS FOR GRANTING THE WRIT

Mr. Donziger's disbarment, based on an un-reviewed and since-abandoned factual finding created in S.D.N.Y., has itself passed through New York's highest courts without meaningful review. If this Court also allows the First Department's decision to stand without review, the effects will reach beyond

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[22] *See Chevron Corp. v. Donziger*, 2018 WL 1137118, at *5 (S.D.N.Y. Feb. 28, 2018), *opinion corrected and superseded*, 2018 WL 1137119 (S.D.N.Y. Mar. 1, 2018), *aff'd*, 990 F.3d 191 (2d Cir. 2021).

the harm already done to Mr. Donziger and his clients. Law students and young lawyers are mindful of this case, in which a human rights lawyer has been prosecuted by a corporation and thereafter disbarred without first being given an opportunity to defend himself. Indeed, the First Department's decision has already created—and, unless reviewed by this Court, will continue to create—a chilling effect on those who would dare try to hold a corporation accountable in court. *Faced with the prospect of a racketeering suit prosecuted by a litigant with nearly unlimited resources followed by the consequent automatic loss of the right to practice law, who will risk their livelihood to represent those harmed?*

CONCLUSION

This Court should grant certiorari to ensure Mr. Donziger will receive an opportunity to be heard on the charges against him—an opportunity which the only jurist to actually consider the issue found due process required.

Respectfully submitted,

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Dated: February 4, 2022