ANTI-ENFORCEMENT INJUNCTIONS

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The anti-enforcement injunction—a court order enjoining a party from taking steps to enforce a foreign judgment or an arbitral award—is an extraordinary form of equitable relief. It undermines the strong and essentially universal policy in favor of res judicata; in addition, it interferes significantly with foreign legal systems, particularly when it seeks to block enforcement efforts worldwide, as in the notorious Chevron Ecuador litigation. Nonetheless, while rare, it is recognized both in the United States and in other legal systems, and in some cases can serve important goals. In this essay, we situate anti-enforcement injunctions within the framework of procedural law, considering their interaction with the rules on recognition and enforcement of foreign judgments and the rules governing the broader category of anti-suit injunctions. We then examine the criteria that inform their availability, concluding that such injunctions, while they must remain an exceptional remedy, are an important tool for courts to use in addressing various enforcement-stage conflicts that can arise in transnational litigation.

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I. Introduction

In 2011, the protracted and messy litigation between Chevron and a group of Ecuadorian plaintiffs over oil spills in the Amazon jungle[1] took an interesting procedural turn. Earlier that year, a provincial court in Ecuador had rendered a multi-billion dollar judgment against Chevron that the company alleged had been procured by fraud. Rather than waiting for the plaintiffs to seek enforcement of that judgment against its assets, Chevron went on the offensive. It sought an injunction in the Southern District of New York ordering the Ecuadorian plaintiffs not to take any steps to enforce the judgment—neither in the United States nor anywhere else in the world. The district court entered the desired preliminary worldwide anti-enforcement injunction, holding that Chevron had established the likelihood of imminent and irreparable harm.[2] On appeal, however, the Second Circuit vacated that injunction.[3] It characterized Chevron's tactic as an effort to preempt the normal operation of New York's law on the recognition and enforcement of foreign judgments. It held that Chevron would have to wait until the plaintiffs actually sought enforcement of the Ecuadorian judgment in a U.S. court, at which point Chevron could raise its defenses to that process.[4] Preemptive anti-enforcement injunctions, it seemed to imply, are categorically unavailable.

The Second Circuit's holding suggests that the issuance of a judgment is a decisive moment in transnational litigation. Prior to judgment, it is not uncommon for courts to interfere indirectly with foreign litigation by issuing anti-suit injunctions,

1. *See* Damira Khatam, *Chevron and Ecuador Proceedings: A Primer on Transnational Litigation Strategies*, 53 Stan. J. Int'l. L. 249 (2017) (providing an overview of the litigation).

2. Chevron Corp. v. Donziger, 768 F. Supp. 2d 581 (S.D.N.Y. 2011). The court was convinced by Chevron's argument that the plaintiffs intended to launch a campaign of enforcement actions and asset seizures around the world in an effort to coerce Chevron to settle. *Id.* at 626-27.

3. Chevron Corp. v. Naranjo, 667 F.3d 232 (2d Cir. 2012).

4. *Id.* at 240.

ordering a party subject to their jurisdiction not to initiate or pursue litigation in another forum. Once a final judgment has been reached in a transnational dispute, however, new considerations arise, as the strong and near-universal policy in favor of *res judicata* comes into play. Courts may still refuse to recognize and enforce a foreign judgment in their own jurisdiction under certain circumstances.[5] But an injunction against potential enforcement efforts in other countries might appear to overstep a boundary.

That boundary is not impassable in the United States, as we will discuss below. Moreover, anti-enforcement injunctions exist in other legal systems. In the United Kingdom, such injunctions have been granted, albeit infrequently, at least since 1928.[6] Occasional use of anti-enforcement injunctions is seen in other common law jurisdictions as well, including Singapore,[7] India,[8] Israel,[9] and New Zealand[10] (although not, apparently, Australia).[11] The Delhi High Court has suggested that there is no reason to treat anti-enforcement injunctions as exceptional compared to anti-suit injunctions.[12]

Anti-enforcement injunctions seem compatible even with certain civil law systems, despite their usual aversion to anti-suit injunctions. In one complex case involving parallel proceedings

5. *See, e.g.*, the U.S. Uniform Foreign-Country Money Judgments Recognition Act Sections 4(b) and (c) (outlining mandatory and discretionary grounds to refuse recognition).

6. Ellerman Lines, Ltd v. Read [1928] 2 KB 144 (AC). *See generally* Adrian Briggs, Civil Jurisdiction and Judgments 632–36 (7th ed. 2021) (discussing anti-enforcement injunctions in England); Thomas Raphael, The Anti-Suit Injunction 5.65–5.72 (2d ed. 2019) (same).

7. Sun Travels & Tours Pvt Ltd v. Hilton International Manage (Maldives) Pvt Ltd (2022/HC-A/26).

8. Interdigital Technology Corporation v. Xiaomi Corporation & Ors, I.A. 8772/2020 in CS(COMM) 295/2020. *See also* Anujay Shrivastava, *Principles Governing "Anti-Enforcement Injunctions" in India*, IndiaCorpLaw.in (June 9, 2021), https://perma.cc/5SKJ-PVL6 and https://perma.cc/6FD8-ARYL (discussing Xiaomi and the principles it laid down regarding anti-enforcement injunctions in Indian courts).

9. *See* Talia Einhorn, *Anti-Suit Injunctions in Arbitral and Judicial Proceedings in Israel*, *in* Filip de Ly (ed.) Anti-Suit Injunctions in Arbitral and Judicial Proceedings at 2.3 (forthcoming), https://perma.cc/HBU2-WLBU (discussing anti-enforcement injunctions under Israeli law).

10. *Kea Investments Ltd v. Wikeley Family Trustee Limited* [2022] NZHC 2881.

11. Brooke Marshall, Optional Choice of Court Agreements in Private International Law 71 (2020).

12. *Xiaomi*, 8772/2020 at 51 (India).

in China and Germany, the Chinese Supreme Court of Justice rendered an injunction against the enforcement of a decision rendered by a Düsseldorf court; the Düsseldorf district court, in turn, rendered an anti-anti-suit injunction barring not only the pursuit of actions in China but also the enforcement of ensuing court decisions.[13] In a Luxembourg court, Spain sought an order enjoining the holder of an ICSID award from taking steps to enforce it (prompting the D.C. District Court to enjoin Spain from pursuing that injunction).[14] Commentators have also proposed adding a mechanism for anti-enforcement injunctions in support of arbitration to the EU's Brussels I Regulation.[15]

These recent developments, as well as the theoretical intricacies involved, make it worthwhile to analyze anti-enforcement injunctions in more depth. This essay examines both the place of these injunctions within the doctrinal framework and the criteria that inform their availability. A more comprehensive analysis must be the subject of a future article.

II. Definition and Characteristics

An anti-enforcement injunction is a court order enjoining a party from taking steps to enforce a judgment or arbitral award. Such injunctions are considered in various litigation contexts. They often arise in parallel litigation, where the court that enters the injunction is engaged in proceedings regarding

13. Landgericht Düsseldorf [LG Düsseldorf] [District Court of Düsseldorf], July 15, 2021, 4c O 75/20 (Ger.). The decision was reversed for lack of standing (*mangelndes Rechtsschutzbedürfnis*). Oberlandesgericht Düsseldorf [OLG Düsseldorf] [Higher Regional Court of Düsseldorf], February 7, 2022, 2 U 25/21, [2022] Gewerblicher Rechtsschutz und Urheberrecht 318 (Ger.). A comparable injunction was rendered by the Landgericht München I [District Court Munich I], June 24, 2021, 7 O 36/21 (Ger.).

14. 9REN Holding S.A.R.L. v. Kingdom of Spain, No. 19-cv-01871, 2023 WL 2016933 (D.D.C. Feb. 15, 2023).

15. Simon P Camilleri, *Recital 12 of the Recast Regulation: A New Hope?*, 62 Int'l & Comp. L. Q. 899, 906–8 (2013); Mukarrum Ahmed & Paul Beaumont, *Exclusive choice of court agreements: some issues on the Hague Convention on Choice of Court Agreements and its relationship with the Brussels I Recast especially anti-suit injunctions, concurrent proceedings and the Implications of BREXIT*, 13 J. Priv Int'l L 386 (2017); *cf.* Antonio Leandro, *Towards a New Interface Between Brussels I and Arbitration?*, 6 J. Int'l Disp. Settlement 188, n 19 (2015).

the same dispute as the court that rendered the judgment. That is not always the case, however. As long as jurisdictional requirements are met, there are other situations in which a judgment debtor may attempt to obtain an anti-enforcement injunction from a court not previously involved in the relevant dispute.

Anti-enforcement injunctions vary with respect to certain key characteristics. First, they vary in *duration*. In some cases, applicants seek permanently to block the enforcement of a foreign judgment they allege to be fatally defective in some way. In others, applicants seek merely temporary relief—for instance, an order enjoining the enforcement of a foreign judgment until an open issue in a related proceeding has been resolved, or pending arbitral review of a matter subject to arbitration. Second, they vary in *scope*. In some cases, they enjoin only local enforcement proceedings—in other words, they bar only actions to enforce the judgment against assets located in the jurisdiction of the enjoining court. In others, they enjoin enforcement efforts worldwide, including in the jurisdiction of the court that rendered the judgment as well as in third-country courts.

Anti-enforcement injunctions operate *in personam*. Therefore, one threshold requirement is that the issuing court must have personal jurisdiction over the party enjoined. That requirement will be met in a number of situations, including where the judgment creditor is a national or resident of the enjoining forum; where the dispute that resulted in the foreign judgment is the subject of parallel litigation in the enjoining court; and where the enjoining court originally had jurisdiction over the relevant dispute.[16] In other circumstances, however, the enjoining court will lack personal jurisdiction over the judgment creditor. This mitigates the concern that litigants disappointed by the outcome of foreign litigation could easily procure anti-enforcement injunctions against their judgment creditors.

In all variations, anti-enforcement injunctions are an extraordinary form of equitable relief, as they undermine the strong and essentially universal policy in favor of *res judicata*. The following sections situate them within the procedural law

16. *See also* Google LLC v. Equustek Solutions Inc., No. 5:17-cv-04207-EJD, 2017 WL 11573727 at 1 (concluding that Equustek, the enjoined party, was subject to personal jurisdiction because it "pursued litigation in Canada aimed at requiring Google to take action in the United States.").

framework, considering their intersection both with the law on recognition and enforcement of foreign judgments and the law governing anti-suit injunctions in general.

III. Procedural Framework

A. *The Recognition and Enforcement of Foreign Judgments*

The enforcement of foreign judgments (absent a binding treaty like the Hague Judgments Convention) requires approval under the domestic law of the recognizing jurisdiction. As a consequence of the policy favoring *res judicata*, legal systems generally observe a strong presumption in favor of recognition and enforceability. Judgment debtors may raise certain limited exceptions to that presumption, but usually only as a defense, and generally only once the judgment creditor has initiated enforcement proceedings. In some circumstances, a declaratory judgment of non-recognition may be available.[17] A successful defense by the judgment debtor precludes local enforcement, but a finding of non-enforceability under one state's law has no effect on recognition and enforcement proceedings in other countries.

In the *Chevron* litigation, the judgment debtor (Chevron) did not seek merely to defend against the judgment's enforcement in the United States—indeed, no enforcement proceeding had yet been initiated against it. Rather, alleging that the judgment creditors intended to use that judgment as the basis for a campaign of vexatious and oppressive enforcement proceedings, Chevron sought an order barring the judgment creditor from enforcing that judgment anywhere. The Second Circuit held that such injunctive relief was not available to supplement the defensive protection afforded by the law on recognition and enforcement of foreign judgments. It recognized that under the Uniform Foreign Money-Judgments Recognition Act as enacted in New York, a court would be permitted to refuse recognition and enforcement of a foreign judgment

17. *See, e.g.*, Yahoo!, Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 169 F. Supp. 2d 1181 (N.D. Cal. 2001) (issuing a declaratory judgment that an order of a French court would not be recognized on the basis that it would violate free speech rights under the U.S. Constitution).

on the factual bases alleged by Chevron.[18] However, it stated, the law did not create "an affirmative cause of action to . . . enjoin their enforcement."[19] It also rejected Chevron's argument that the federal Declaratory Judgment Act, which gives federal district courts broad discretion to "declare the legal rights" of interested parties, provided an alternative route to an anti-enforcement order.[20]

The opinion reflected the unusual nature of the case. First, Ecuador's courts would not have been involved in the litigation had not Chevron's predecessors previously pleaded *forum non conveniens* in New York in a successful bid to shift the litigation to Ecuador. It seemed somewhat inconsistent for Chevron now to demand that the judgment resulting from that litigation be blocked.[21] Second, the court was clearly troubled by the implications of issuing a worldwide injunction:

> [W]hen a court in one country attempts to preclude the courts of every other nation from ever considering the effect of that foreign judgment, the comity concerns become far graver. In such an instance, the court risks disrespecting the legal system not only of the country in which the judgment was issued, but also those of other countries, who are inherently assumed insufficiently trustworthy to recognize what is asserted to be the extreme incapacity of the legal system from which the judgment emanates. The court presuming to issue such an injunction sets itself up as the definitive transnational arbiter of the fairness and integrity of the world's legal systems.[22]

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18. Chevron Corp. v. Naranjo, 667 F.3d 232, 239 (2d Cir. 2012) (the judgment was fraudulently procured; the country in which the judgment was issued lacked impartial tribunals; and the judgment violated due process).

19. *Id.* at 240; *accord* Jill Stuart Asia LLC v. LG Fashion Corp., No. 18-CV-3786, 2019 WL 4450631 (S.D.N.Y. 2019). *See also* Ocean World Lines, Inc. v. Transocean Shipping Transportagentur GmbH, No. 19 Civ. 43 (AT), 2020 WL 3250734 (S.D.N.Y. 2020) (extending this reasoning to the New York Convention on the Recognition and Enforcement of Arbitral Awards).

20. *Naranjo*, 667 F.3d 232 at 245 (stating that the right to declare legal rights "does not extend to the declaration of rights that do not exist under the law").

21. *See generally* Christopher A. Whytock & Cassandra Burke Robertson, *Forum Non Conveniens and the Enforcement of Foreign Judgments*, 111 Colum. L. Rev. 1444 (2011) (explaining the inconsistency in some defendants' efforts to block the enforcement of a foreign judgment after petitioning to move the litigation to the issuing court on forum non conveniens grounds).

22. *Naranjo*, 667 F.3d at 244.

As it noted, making worldwide anti-enforcement orders available in such a case might look like an invitation to "disappointed litigants in foreign cases" to seek the assistance of New York courts in preempting enforcement efforts elsewhere.[23]

B. *Anti-Suit Injunctions*

The law on recognition and enforcement does not normally allow for anti-enforcement injunctions because it is primarily defensive in nature. By contrast, the law on anti-suit injunctions is not defensive but interventionist: its purpose is to block the initiation or development of a foreign proceeding. Here, anti-enforcement injunctions are normally not contemplated because that purpose can no longer be served if a foreign judgment has already been rendered. They are sometimes entered to prevent a party to litigation in one court from initiating a parallel proceeding elsewhere in the hope of obtaining a faster and more favorable judgment. They can also be deployed to prevent a party from initiating foreign litigation in breach of a forum-selection agreement in favor of another court, or in breach of an agreement to arbitrate.[24]

In general, an applicant seeking injunctive relief must establish irreparable harm and the appropriateness of such relief in light of the balance of hardships between the applicant and the party enjoined. Anti-suit injunctions, however, involve special concerns. Although they are addressed only to litigants, their intended effect is to prevent foreign litigation. They therefore infringe to some degree upon the authority of other courts. As a result, the standards for their availability rest heavily on

23. *Id.* at 243. Interestingly, in a subsequent decision, the Southern District of New York granted Chevron anti-enforcement relief by other means. It held that the attorney representing the Ecuadorian plaintiffs had committed RICO violations, and (a) granted an injunction against enforcement of the Ecuadorian judgment in the United States and (b) imposed a constructive trust ensuring that any assets collected in enforcement actions in other countries would be held for Chevron's benefit. Chevron Corp. v. Donziger, 974 F.Supp. 2d 362 (S.D.N.Y. 2014), *aff'd*, Chevron Corp. v. Donziger, 833 F.3d 74 (2d Cir. 2016).

24. *See* Walter W. Heiser, *Using Anti-Suit Injunctions to Prevent Interdictory Actions and to Enforce Choice of Court Agreements*, 2011 UTAH L. REV. 855, 866–69 (discussing this use of anti-suit injunctions).

considerations of international comity in addition to the consequences of duplicative litigation for the parties.[25]

In a sense, an anti-enforcement injunction is just a special form of anti-suit injunction, since its purpose is to prevent the enjoined party from initiating or pursuing legal process. One leading U.K. case makes this point, explaining that "Injunctive relief may be sought (a) before any foreign proceedings have begun; (b) once they have begun; (c) within a relatively short time afterwards; (d) when the pleadings are complete; (e) thereafter but before the trial starts; (f) in the course of the trial; (g) after judgment."[26] However, the fact that an anti-enforcement injunction is sought after a foreign judgment has already been rendered raises additional concerns. First of all, at that point the policy in favor of *res judicata* has come into play. Second, as one court put it, "considerations of comity have greater force" once a judgment has been rendered in a foreign forum, since the result is to waste entirely the judicial resources invested by the rendering court.[27] Here, the question is under what circumstances injunctive relief remains available past the point of judgment.

IV. Factors Affecting the Availability of Anti-Enforcement Injunctions

Anti-enforcement injunctions raise serious concerns of comity and of timeliness. They interfere significantly with foreign legal systems, and they allow a party to utilize an aggressive

25. *See generally* S.I. Strong, *Anti-Suit Injunctions in Judicial and Arbitral Procedures in the United States*, 66 Am. J. Comp. L. 153 (2018) (discussing the role of international comity in U.S. cases); Raphael, *supra* note 6 (discussing the role of international comity in U,K, cases). One open question is whether the requirements to obtain anti-suit injunctions replace the general requirements to obtain an injunction, or whether an applicant must establish both. *Compare* Huawei Technologies, Co. v. Samsung Electronics Co., 2018 WL 1784065, at *16 (N.D. Cal. 2018) (concluding that the court need only consider the requirements for anti-suit injunctions), *with* 9REN Holding S.A.R.L. v. Kingdom of Spain, No. 19-cv-01871, 2023 WL 2016933, at *19–24 (D.D.C. Feb. 15, 2023) (applying the general requirements for injunctive relief).

26. Ecobank Transnational Inc. v. Tanoh [2015] EWCA (Civ) 1309 [133] (Eng.).

27. *Id.* at 133–34 ("A foreign court may justifiably take objection to an approach under which an injunction, which will (if obeyed) frustrate all that has gone before, may be granted however late an application is made. . . [T]o allow such an approach is not a sensible method of conducting curial business.").

tool very late in the game–arguably, when the game is already over. It is therefore necessary to address the relevant factors that determine whether and when such injunctions are, or should be, granted. The following sections set forth a number of factors relevant to the availability of anti-enforcement injunctions. Both empirically and normatively, the way these factors affect the comity analysis differs depending on the context in which litigants apply for anti-enforcement orders and the mix of interests their applications raise.

A. *Possible Grounds for Relief*

In the first instance, any defects in a judgment must be addressed in the rendering court and in the relevant appeals process. Such defects may also create a defense to the enforceability of that judgment in another country. Exceptionally, though, certain defects may also justify anti-enforcement injunctions.

1. *Fraud*

This is the case, first and foremost, where the foreign judgment was obtained by fraud. This is now understood to be the rationale of an early English case, Ellerman v. Read,[28] at least as interpreted by later case law.[29] Scrutton LJ made his case forcefully:

> If there is no authority for this it is time that we made one, for I cannot conceive that if an English Court finds a British subject taking proceedings in breach of his contract in a foreign Court, supporting those proceedings, and obtaining a judgment, by fraudulent lies, it is powerless to interfere to restrain him from seeking to enforce that judgment. I am quite clear that such an injunction can be and in this case ought to be granted in the terms asked for in the statement of claim.[30]

28. Ellerman Lines, Ltd v. Read [1928] 2 KB 144 (AC).

29. *See, e.g.*, Masri v Consolidated Contractors International (U.K.) Lt (No 3) [2009] 2 WLR 669 at [94] (AC) (interpreting the holding of Ellerman Lines, Ltd. v. Read [1928] 2 KB 144); Ecobank Transnational Inc. v. Tanoh [2016] 1 WLR 2231 (CA); *but cf.* Briggs, *supra* note 6, 632–3 n. 180 (suggesting the more fitting basis today would be breach of contract).

30. *Ellerman Lines*, 2 KB 144 (AC) at [152]–[153].

Early U.S. cases likewise recognized that "fraud in the procurement is sufficient ground for the issuance of an injunction against the enforcement of a foreign judgment, whether of another state or another country."[31]

2. *Breach of a Forum Selection Agreement*

The passage from *Ellerman* quoted above suggests a second reason to permit a late application for relief: the procurement of a judgment in violation of an exclusive forum selection agreement or an agreement to arbitrate. A party's violation of such an agreement is widely recognized as an acceptable basis to grant an anti-suit injunction, with the goal of enforcing the party's contractual obligation.[32] Post-judgment, it can likewise be the basis for an anti-enforcement injunction. Similarly, if a judgment creditor takes steps to enforce a judgment despite having entered into a post-judgment agreement not to do so, an anti-enforcement injunction may be justified.[33]

A proceeding initiated to enforce a judgment against particular assets may also violate a forum-selection agreement, creating a potential basis for an anti-enforcement injunction targeting that specific proceeding. In one recent case of this type, the Southern District of New York enjoined the enforcement of an Argentinian judgment against assets of the judgment debtor's affiliate in Argentina, pending determination of the effect of a previous agreement to arbitrate entered into by that affiliate.[34] It held that

> The proper procedural remedy here … is preliminary injunctive relief restraining [the judgment creditor] from taking action contrary to the parties' arbitration

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31. American Law Reports, *Injunction Against Enforcement of Judgment Rendered in Foreign Country or Other State*, 64 A.L.R. 1136 (1930).

32. *See* Heiser, *supra* note 24, at 866–69 (discussing this use of anti-suit injunctions under U.S. law); Tiong Min Yeo, *Foreign Judgments and Contracts: The Anti-enforcement Injunction, in* A Conflict of Laws Companion 251, 252 (Andrew Dickinson & Edwin Peel eds., 2021) (identifying breach of forum agreement as the "usual and clearest example" of a breach of legal duty justifying an anti-suit injunction).

33. *See, e.g.*, Bank St. Petersburg v. Arkhangelsky [2014] EWCA (Civ) 593 [29], [38] (Eng.) (enjoining enforcement of Russian judgments on this basis).

34. Branch of Citibank, N.A. v. De Nevares, No. 21 Civ. 6125, 2022 WL 445810, at *9–11 (S.D.N.Y. Feb. 13, 2022), *rev'd*, 74 F.4th 8 (2d Cir. 2023).

> agreement pending arbitral review of the dispute. "The Second Circuit has repeatedly held that courts retain the power, and the responsibility, to consider applications for preliminary injunctions while a dispute is being arbitrated."[35]

In cases where a foreign judgment has been procured in violation of a choice of court agreement, the application for an anti-enforcement injunction will be filed in the court that was contractually selected. In this situation, an anti-enforcement injunction serves two purposes: it preserves the enjoining court's own authority to decide the dispute, and also advances the general goal of promoting party autonomy in transnational dispute resolution. In cases involving a violation of an agreement to arbitrate, only the latter interest (along with general pro-arbitration policies) is invoked. This distinction suggests a possible limit on the availability of permanent, worldwide anti-enforcement injunctions involving foreign judgments obtained by breach of a forum selection agreement. Such orders seem justifiable only where that agreement was made in favor of the enjoining court. This is true usually for anti-suit injunctions;[36] it must apply, *a fortiori*, for anti-enforcement injunctions. After all, if a court lacks jurisdiction to adjudicate the original proceedings, it should not intervene after a judgment was rendered, even if by a similarly incompetent court. This provides an additional justification for the Second Circuit's decision in *Chevron*—there, the defendant's predecessors had previously pleaded *forum non conveniens* against the jurisdiction of the very same New York courts they then asked to enjoin enforcement of the foreign judgment. The matter is different for arbitration agreements.

3. *Vexatious or Oppressive Conduct*

An alternative ground for an injunction is vexatious or oppressive conduct by the party enjoined. This means, first,

35. *Id.* at *10–11 (quoting General Mills, Inc. v. Champion Petfoods, Inc., No. 20-CV-181, 2020 WL 915824, at *3 (S.D.N.Y. Feb. 26, 2020)).

36. *See, e.g.*, Airbus Industrie G.I.E. v. Patel [1999] 1 AC 119 (HL) 138–141 (appeal taken from Eng.) (holding that only the "courts of an interested jurisdiction" may act through anti-suit injunction to "curtail the excesses of a jurisdiction which does not adopt the principle…of forum non conveniens.").

that an injunction may be possible against a judgment resulting from litigation that was vexatious or oppressive. It may also mean that an injunction is possible where foreign enforcement proceedings themselves are vexatious or oppressive. This was one basis of Chevron's application for an anti-enforcement injunction: it argued that the judgment creditors intended to coerce a settlement by threatening to launch multiple simultaneous enforcement actions against Chevron.[37]

B. *Connections to the Enjoining Forum*

In light of the heightened comity concerns presented post-judgment, defects such as those described in the previous section are not necessarily sufficient to justify an anti-enforcement injunction. Additional interests—triggered by connections between the forum and the dispute—may be required to justify injunctive relief post-judgment.

1. *Nationality or Domicile of the Parties*

One important factor can be the nationality of the parties, though with perhaps unexpected application. On the one hand, in the *Ellerman* case, the court found an injunction justified because the plaintiff who had secured the foreign judgment was a (naturalized) British citizen. On the other hand, the fact that the judgment debtor is a citizen of the forum seems not to justify interference. In *Chevron*, the Southern District of New York apparently thought that it did; the Second Circuit's reversal must be seen as rejection of the idea that courts should protect their own against enforcement of foreign judgments abroad. Thus, in cases in which the only interests to be served by an anti-enforcement injunction are those of the applicant, courts rarely grant them. This seems sound. For a court to restrain its own citizen from making use of a wrongly obtained judgment is more easily justified than interfering with foreign court procedures and the rights of foreign parties in order to protect one's own citizen.

37. Chevron Corp. v. Donziger, 768 F. Supp. 2d 581, 626-27 (S.D.N.Y. 2011), *vacated sub nom.* Chevron Corp. v. Naranjo, No. 11-1150-CV L, 2011 WL 4375022 (2d Cir. Sept. 19, 2011), *rev'd sub nom.* Chevron Corp. v. Naranjo, 667 F.3d 232 (2d Cir. 2012).

2. *Forum Interests and Policies*

Courts may grant anti-enforcement injunctions to block the enforcement of a foreign judgment that is contrary to local policy. This dynamic has been observed in cases involving free speech rights in the United States; several courts have granted injunctions preventing a judgment creditor from enforcing foreign orders that would infringe those rights.[38] Even in the case of money judgments, a strong forum interest can justify an anti-enforcement injunction. In one case, an Oregon court considered a judgment debtor's motion to enjoin enforcement of a Canadian judgment that awarded 18% interest. The applicant was an active servicemember, and the court concluded that enforcing the judgment against him would violate U.S. statutory policy limiting interest charged to active servicemembers to 6% per year. On that basis, and concluding that he had demonstrated likely success in establishing a defense to recognition and enforcement under local recognition law, the court granted an injunction blocking local enforcement.[39]

One might think that injunctions protecting local policy should be limited to local enforcement, but this is not always true. In one case, a court in Belize—pursuant to statutory authority—issued a worldwide anti-enforcement order attempting to prevent the enforcement of a foreign judgment against the Government of Belize that it had declared to be invalid as against public policy.[40]

38. *See, e.g.*, Google L.L.C. v. Equustek Solutions, Inc., No. 17-cv-04207, 2017 WL 5000834 (N.D. Cal. Nov. 2, 2017) (preliminary injunction); Google L.L.C. v. Equustek Solutions, Inc., No. 17-cv-04207, 2017 WL 11573727 (N.D. Cal. Dec. 14, 2017) (permanent injunction). Responding to similar concerns, the federal SPEECH Act enacted in 2010 blocks foreign defamation judgments that violate free speech rights under U.S. law more or less wholesale by creating a presumption against their enforceability. 28 U.S.C. §§ 4101–4105 (2010).

39. Linscott v. Vector Aerospace, No. CV05-682-HU, 2006 WL 1310511, at *7 (D. Or. May 12, 2006).

40. See discussion in BCB Holdings Ltd. v. Government of Belize, 232 F. Supp. 3d 28 (D.D.C. 2017), in which a U.S. court enforced the judgment despite the anti-enforcement order issued in Belize.

3. *Jurisdiction Over Local Assets Giving Rise to Interests of State Sovereignty*

Anti-enforcement injunctions may sometimes be deployed as a defense to foreign orders that threaten jurisdiction over local assets. Under principles of international jurisdictional law, courts may not take direct action to enforce their own judgments against assets or interests in other states. However, they frequently issue *in personam* orders directing persons subject to their jurisdiction to take action affecting foreign assets or interests in order to satisfy a judgment. In areas of law in which transnational disputes yield multiple local proceedings (for instance, international insolvency, or international intellectual property disputes), courts may wish to block a litigant from taking steps to enforce a foreign judgment against assets subject to its own authority.

One illustrative case is *SAS v. World Programming*, in which an English court considered whether to enjoin a litigant from taking steps to enforce a trademark judgment rendered in its favor in the United States.[41] The U.K. court had already denied local recognition and enforcement of the judgment in question. The U.S. litigant nevertheless indicated its intent to seek an order from the U.S. court directing the U.K. party to turn assets located within the U.K. over to it, in partial satisfaction of the U.S. judgment. The U.K. court stated that in such circumstances, for the U.S. party to seek such an order "would be an exorbitant interference with the jurisdiction of the English court, in the light of the internationally recognized principles for the territorial allocation of enforcement jurisdiction."[42] It concluded that if the U.S. judgment creditor in fact took steps to procure such an order, an injunction preventing it from doing so would be appropriate and necessary, observing that "comity will be of less weight where the order made or proposed to be made by the foreign court involves a breach of customary international law."[43]

Anti-enforcement injunctions in such cases will normally have only local scope, since their objective is to block the local effect of exorbitant foreign orders. In the *SAS* case, the U.K. followed this principle by rejecting the possibility of a worldwide

41. SAS Institute Inc. v. World Programming Ltd., [2020] EWCA (Civ) 599.

42. *Id.* at 124.

43. *Id.* at 103.

anti-enforcement order that would bar the U.S. litigant from seeking a turnover order related to assets located in third countries. "The position is different, however, as regards [foreign debts] … [An order requiring the assignment of such debts] might be regarded as exorbitant, but is not an order in which the English court would have a sufficient interest to intervene."[44]

4. *Jurisdiction Over Enforcement Proceedings: The Anti-Anti-Enforcement Injunction*

In some situations, a court may issue an anti-enforcement injunction in order to prevent another court from interfering with its own jurisdiction over an enforcement proceeding (in other words, an anti-anti enforcement order). In one such case, a U.S. court had entered an order recognizing and providing for the enforcement of an ICSID arbitral award against the Kingdom of Spain. Spain then sought an order in Luxembourg enjoining the award creditor from pursuing that enforcement proceeding. In response, the U.S. court issued an anti-anti enforcement award, thus protecting its own authority over the ongoing enforcement proceeding.[45]

Parallel litigation involving closely related matters can also give rise to anti-enforcement injunctions—as in the case of transnational patent disputes, where litigation between the same parties involving the same underlying agreements may unfold in multiple fora. In one representative case, Samsung sought an order from a California district court enjoining Huawei from enforcing two injunctions issued by a court in Shenzhen.[46] The court applied the ordinary test for anti-suit injunctions, found that its requirements had been met, and granted the injunction. It devoted no specific attention to the fact that it was asked to enjoin not foreign litigation but rather the enforcement of foreign orders.

Finally, courts will of course enter anti-enforcement injunctions in order to prevent interference with judgments of their

44. *Id.* at 129.

45. 9REN Holding S.A.R.L. v. Kingdom of Spain, No. 19-cv-01871, 2023 WL 2016933, at *1 (D.D.C. Feb. 15, 2023).

46. Huawei Technologies, Co. v. Samsung Electronics Co., No. 16-cv-02787, 2018 WL 1784065, at *1 (N.D. Cal. Apr. 13, 2018). *See also* Microsoft Corp. v. Motorola, Inc., 696 F.3d 872 (9th Cir. 2012) (upholding an injunction against enforcement of a German court's order where the parties were engaged in parallel patent litigation in the United States and Germany).

own. In one U.S. case, for instance, the court issued a worldwide anti-enforcement injunction blocking a foreign judgment that had been procured in litigation initiated after it had itself rendered a (contrary) judgment.[47]

C. *Timeliness of Application for Relief*

The most important requirement and the one most likely to preclude post-judgment relief may be timeliness. The timeliness of an application for injunctive relief is a consideration even with ordinary anti-suit injunctions, which are less willingly granted the longer foreign proceedings have gone on and the more resources the foreign court has already invested. Parties who delay their applications past the point when a judgment has been granted are in a yet weaker position to seek equitable relief. In one recent case, a court in the U.K. articulated this reasoning, while also making clear that the rendering of a judgment is not an absolute boundary:

> It is well established, in the context of anti-suit injunctions, that parties must act reasonably promptly and before the foreign proceedings are too far advanced. In the present case, . . . the foreign proceedings have advanced to the stage where judgment has actually been given. That is in the context of a case where, in my view, there is no satisfactory evidence which explains why, or excuses the fact that, [the applicant] did not act whilst those proceedings were underway.[48]

Particularly in situations where anti-suit injunctions are readily available—as in cases where a party initiates litigation in

47. Younis Bros. & Co. v. Cigna Worldwide Ins. Co. the Abi Jaoudi & Azar Trading Corp., 167 F.Supp. 2d 743, 747 (E.D. Pa. 2001) ("[P]laintiffs chose to invoke the jurisdiction of this Court and litigated the matter before me … Only after plaintiffs were unsuccessful … did they chose [sic] to invoke the jurisdiction of the Liberian courts. The Liberian courts' refusal to recognize the legitimacy of this Court's final judgment therefore implicitly threatens this Court's jurisdiction"). Here, of course, the principle of res judicata cuts in favor of, not against, the anti-enforcement injunction.

48. E-Star Shipping and Trading Company v. Delta Corp Shipping Ltd. (MV Eships Progress) [2022] EWHC (Comm) 3165 No. 48 [51]; *See* accord Sun Travels & Tours Pvt Ltd. v. Hilton International Manage (Maldives) Ltd. [2019] 1 SLR 732 (CA) (refusing to order an injunction on the ground that the applicant's delay had permitted the foreign proceedings to proceed to judgment).

violation of a forum-selection agreement—the failure to seek one at an earlier point may defeat an applicant's bid for an anti-enforcement injunction once judgment has been reached. In a 2019 Singapore case, for example, the court concluded that the foreign judgment in question resulted from proceedings that were in breach of an arbitration agreement and also constituted vexatious and oppressive conduct by the judgment creditor. It nevertheless found an anti-enforcement injunction improper, citing the fact that the applicant's delay had permitted the foreign proceedings to proceed to judgment.[49]

As the quoted passage reflects, it is generally only when conduct by the other party prevents (or is egregious enough to excuse the lack of) timely action by the applicant that injunctive relief may be possible—for instance, if "the respondent has acted fraudulently, or if [the applicant] could not have sought relief before the judgment was given . . . because he had no means of knowing that the judgment was being sought until it was served on him."[50]

V. Conclusion

The analysis of cases and criteria yields a result: anti-enforcement injunctions must remain an exceptional remedy, but completely foreclosing the possibility of anti-enforcement injunctions would unnecessarily limit the ability of courts to address the wide range of enforcement-stage conflicts that can result in transnational litigation. That limitation would affect both timing (since relief would be unavailable until the judgment creditor took steps to enforce its judgment) and scope (since a decision not to enforce a foreign judgment would have no effect on enforcement activity in other jurisdictions). In exceptional cases, greater flexibility is appropriate. While anti-enforcement injunctions are an exceptional remedy, they permit courts to consider the wide range of interests at stake in cross-border enforcement conflicts.

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49. Sun Travels & Tours Pvt Ltd v. Hilton International Manage (Maldives) Pvt. Ltd., (2019) SGCA 10 (Sing.).

50. Ecobank Transnational Inc. v. Tanoh, [2015] EWCA (Civ.) 1309 [119] (Eng.); *see also* Interdigital Technology Corporation v. Xiaomi Corporation & Ors, I.A. 8772/2020 in CS(COMM) 295/2020 at 33 (India) (listing certain instances in which an anti-enforcement injunction would be justified).