No. 22-1209

IN THE

Supreme Court of the United States

PDVSA U.S. Litigation Trust, et al.,

Petitioners,

v.

LUKOIL PAN AMERICAS LLC, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Respondent Trafigura Trading, LLC's ultimate parent company is Farringford N.V. No publicly held company owns 10% or more of its stock.

Respondents Glencore Ltd. and Glencore Energy UK Ltd. are indirect, wholly owned subsidiaries of Glencore plc, which is a publicly held corporation.

Respondent Colonial Group, Inc. is the parent of Respondent Colonial Oil Industries, Inc. No publicly held company owns 10% or more of the stock of Respondents Colonial Group, Inc. or Colonial Oil Industries, Inc.

Respondent Vitol Inc. is a wholly owned subsidiary of Vitol US Holding Company and a wholly owned, indirect subsidiary of Vitol Holding II S.A. Respondent Vitol Energy (Bermuda) Ltd. is a wholly owned subsidiary of Vitol Holding Sàrl and a wholly owned, indirect subsidiary of Vitol Holding II S.A. No publicly held company owns 10% or more of the stock of Respondents Vitol Inc. or Vitol Energy (Bermuda) Ltd.

No publicly held company owns 10% or more of the stock of Respondents Helsinge, Inc., Helsinge Ltd., or Helsinge Holdings, LLC.

Respondent Lukoil Pan Americas, LLC is a wholly owned subsidiary of LITASCO, S.A., which is an indirect subsidiary of PJSC Lukoil. No publicly held company owns 10% or more of the stock of Respondent Lukoil Pan Americas, LLC.

Respondent BAC Florida Bank has no corporate parent and no publicly held company owns 10% or more of its stock.

ADDITIONAL RELATED PROCEEDINGS

U.S. Supreme Court: *PDVSA U.S. Litigation Trust v. Lukoil Pan Americas, LLC, et al.,* No. 21-510 (Nov. 18, 2021) (prior denial of certiorari)

U.S. Court of Appeals, 11th Circuit: *PDVSA U.S. Litigation Trust v. Lukoil Pan Americas, LLC, et al.*, No. 19-10950 (May 17, 2021) (prior decision on appeal)

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INTRODUCTION

In this long-running litigation, petitioners purport to represent Venezuela's state-owned oil company, Petróleos de Venezeula, S.A. (PDVSA). But they are not members of—and were not appointed by—the Venezuelan government recognized by the United States. They instead claim their authority from the regime of former President Nicolás Maduro, whom the United States has "ceased to recognize" as Venezuela's leader and whose government the United States officially regards as "illegitimate." Pet. App. 5a.

More than five years ago, petitioners attempted to bring claims on behalf of PDVSA through a putative litigation trust. After extensive proceedings, the district court dismissed that suit, the Eleventh Circuit affirmed, and this Court denied review. *See PDVSA US Litig. Tr. v. Lukoil Pan Americas, LLC*, 991 F.3d 1187 (11th Cir.), cert. denied, 142 S. Ct. 466 (2021). Petitioners then sought to reopen the case under Rule 60(b) so that they could assert claims on behalf of PDVSA directly. The district court rightly rejected that maneuver, and the court of appeals unanimously affirmed, explaining that allowing petitioners to proceed would require resolving in their favor "a nonjusticiable political question: who has the authority to litigate in the name of [PDVSA]." Pet. App. 2a.

That straightforward application of the political question doctrine was correct. This Court has long treated the recognition of foreign governments as a paradigmatic political question. *See, e.g.*, *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302 (1918). Petitioners do not contest the court of appeals' holding that courts are "powerless" to override the recognition

decisions of the Executive Branch. Pet. App. 9a. Nor do petitioners dispute that they represent the Maduro regime; that the Executive Branch does not recognize the Maduro regime as legitimate; and that the Executive Branch did not recognize the Maduro regime as legitimate at the time of any dispositive decision in this case. That is reason enough to deny certiorari.

Petitioners instead ask this Court to address two highly theoretical questions that the Eleventh Circuit did not squarely decide and were irrelevant to its judgment: (1) whether the presence of a political question deprives a court of subject-matter jurisdiction, and (2) whether the absence of subject-matter jurisdiction can be subsequently cured, including by a change in the Executive Branch's recognition position.

Neither of those questions is remotely worthy of this Court's review. The Eleventh Circuit's holding that federal courts cannot countermand the Executive Branch's recognition determination would remain unchanged even if petitioners prevailed on both questions presented. Indeed, petitioners appear to acknowledge that a favorable answer to the questions presented would make a difference only if the United States reversed its current position and restored recognition of the Maduro regime. But that has not happened, and there is no evidence that it will happen. Petitioners accordingly ask this Court to review questions that are entirely hypothetical.

No other basis for this Court's intervention exists. Petitioners do not identify any court that would have ruled in their favor on these facts or any relevant conflict in circuit authority. And their effort to litigate as an imposter PDVSA fails for several reasons beyond

the questions presented, including their untimely filing of their substitution motion. That delay forecloses relief, obviates the need to resolve the questions presented, and underscores the thirteenth-hour nature of petitioners' attempt to revive their misguided suit. The petition should be denied.

STATEMENT

A. Initial Proceedings

This case was initially filed in federal court in 2018 by an entity called the PDVSA U.S. Litigation Trust (one of two petitioners here). Pet. App. 2a-4a. The trust was purportedly formed by officials in the Maduro regime, lawyers in the United States, and a litigation funder. *See id.*; *PDVSA US Litig. Tr.*, 991 F.3d at 1193. Its purpose was to bring fraud and competition claims against respondents—a group of international oil trading companies, their employees, and certain intermediaries—and others, allegedly for the benefit of PDVSA. Pet. App. 2a-3a.[1]

Although the makers of the trust claimed to derive authority to act on PDVSA's behalf from the Maduro regime, the United States does not "recognize the government of Nicolás Maduro." Pet. App. 4a. Since 2017, and as of the filing of this petition, the United States has instead "recognize[d] the National Assembly elected in 2015 as 'the last remaining democratic

[1] In fact, the trust agreement provided that "the Trust's counsel, investigator, and financier" would "collectively receive … 66%" of any recovery, with only the remaining 34% purportedly going to PDVSA. *PDVSA US Litig. Tr.*, 991 F.3d at 1193.

institution' in" Venezuela. *Id.*; *see* U.S. Dep't of State, *U.S. Relations with Venezuela*, June 27, 2023, bit.ly/3LfLdyH ("The United States recognizes the 2015 democratically elected Venezuelan National Assembly as the only legitimate branch of the Government of Venezuela."). And the National Assembly—the body recognized by the United States as speaking for Venezuela—has "denounced the trust as unconstitutional and stated that … Maduro's attorney general," one of the purported signers of the trust agreement, "lacked the authority to form the trust." Pet. App. 5a.

Respondents moved to dismiss the litigation trust's suit for lack of standing, contending that the trust agreement could not be authenticated and would violate applicable New York law barring champerty—"the assignment of claims 'with the intent and for the primary purpose of bringing a lawsuit.'" Pet. App. 4a (citation omitted). Respondents also contended that resolving the validity of the trust agreement would present "a nonjusticiable political question" given that "the signatories lacked authority to speak for" PDVSA after the United States' de-recognition of Maduro. *Id.*

After a two-day evidentiary hearing, the district court dismissed the suit for lack of Article III standing. It held "that the trust agreement was inadmissible due to a lack of authenticated signatures" and that, "even if the agreement were admissible, it violated the New York law against champerty." Pet. App. 6a. The Eleventh Circuit affirmed "the district court's dismissal … for lack of standing," reasoning that the trust agreement would violate New York's champerty ban even if it could be authenticated. *PDVSA US*

Litig. Tr, 991 F.3d at 1197; *see id.* at 1192-97. This Court denied certiorari. 142 S. Ct. 466 (2021).

B. Subsequent District Court Proceedings

Following the dismissal of the trust's suit, "an entity that purports to speak for" the Maduro-controlled PDVSA itself—the other petitioner here—moved to reopen the judgment and intervene or be substituted as the real party in interest under Federal Rules of Civil Procedure 17(a), 24, and 60(b). Pet. App. 6a.[2]

Respondents contended that the district court lacked subject-matter jurisdiction to adjudicate the motion given that the Eleventh Circuit had affirmed dismissal of the suit for lack of Article III standing. D. Ct. Doc. 735, at 2-4 (July 1, 2021). Respondents also argued that resolving petitioners' motion would require the district court to adjudicate a nonjusticiable political question. *Id.* at 4-9. And respondents argued that petitioners failed to meet the standards for reopening the judgment or for substitution or intervention. *Id.* at 10-17.

The district court denied the motion. Pet. App. 12a-17a. The court held that it lacked subject-matter jurisdiction to adjudicate the motion given that it had dismissed the case for lack of standing and that its judgment had been affirmed. *Id.* at 16a. The court separately concluded that, in light of petitioners' "years-long knowledge that standing was at issue in

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[2] Because the issues before this Court relate almost entirely to the resolution of that motion, the term "petitioners" in this brief refers to the entity that made the motion, unless otherwise indicated.

this case, its requested relief is untimely" under the Federal Rules of Civil Procedure. *Id.* at 17a (citation omitted). The court did "not address the parties' remaining arguments." *Id.*

C. Proceedings Below

Petitioners appealed to the Eleventh Circuit, which affirmed in a unanimous opinion by Chief Judge Pryor. Pet. App. 2a-11a.

Accepting an argument that respondents had pressed throughout the litigation, the court of appeals held that the "appeal involves a nonjusticiable political question: who has the authority to litigate in the name of [PDVSA]." Pet. App. 2a. The court explained that this "Court has repeatedly held that it is the role of the political branches, not the courts, to identify the legitimate political leadership of a foreign country." *Id.* at 8a. And the court of appeals noted that "the executive branch has taken the position that the Maduro government is illegitimate." *Id.* at 8a-9a. The court accordingly held that, "under the political-question doctrine, [the district court] was powerless to grant [petitioners'] motion to substitute … as the real party in interest in contravention of the position taken by the United States Department of State." *Id.* at 9a.

The court of appeals acknowledged petitioners' argument that the United States' position on recognition could conceivably change. *See* Pet. App. 11a. Relying on statements as recent as January 2023, however, the court noted that "the Department of State continues to recognize the National Assembly" as the only legitimate governing authority in Venezuela, and that "[t]he executive branch has given no indication

that it will change its longstanding position that the Maduro government is illegitimate." *Id.* at 5a. The court added that "Rule 17 was not promulgated to allow lawyers to file placeholder actions . . . to keep a limitations period open while they investigate their claims and track down the proper parties." *Id.* at 10a.

For related reasons, the court of appeals rejected petitioners' request for a remand "to allow the district court to conduct a further factual inquiry into 'who may properly represent the interests of [PDVSA] in light of the complex and ever-changing political situation within Venezuela' and into the 'position of the United States Government.'" Pet. App. 11a. The court of appeals explained that the "district court would not have jurisdiction to conduct the requested inquiry on remand." *Id.* The court of appeals added that, "even if the Department of State declared today that [petitioners are] authorized to bring suit in [PDVSA's] name," the court of appeals "would still affirm because, under Article III, a justiciable case or controversy must exist 'through all stages of the litigation,' including 'at the time the complaint is filed.'" *Id.* (quoting *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 169 (2016)).

REASONS FOR DENYING THE PETITION

Contrary to petitioners' arguments, the decision below turned on a straightforward application of the political question doctrine. Because petitioners purport to derive their authority from a Venezuelan government that the Executive Branch regards as illegitimate, the court of appeals correctly held that it could not adjudicate their claims. Petitioners do not challenge that holding, which alone suffices to deny

review. Petitioners instead ask this Court to conduct an abstract inquiry into whether political questions implicate subject-matter jurisdiction and when jurisdictional defects can be cured. But the court of appeals' decision did not turn on either of those issues, so resolving them in petitioners' favor would not alter the outcome below. The questions are also unworthy of review in their own right, as petitioners identify no relevant circuit conflict or other basis for this Court's intervention. And this case would be a poor vehicle for review in any event, given that petitioners' envisioned change in U.S. recognition policy is entirely speculative and their attempt to litigate on PDVSA's behalf was correctly denied on the alternative ground of untimeliness.

A. The Court Of Appeals' Uncontested Political Question Holding Is Correct And Warrants No Further Review

The court of appeals' basis for resolving this case is narrow and apparent from the first sentence in its opinion: by asserting that they could "litigate in the name of [PDVSA]," petitioners raised the question of whether they have "the authority to speak" for that government-controlled company. Pet. App. 2a. The answer depends on which Venezuelan government has power to select PDVSA's board of directors: the Maduro regime (which purportedly appointed petitioners) or the National Assembly (which appointed a different board not seeking to bring this case). *See id.* That dispute presents a paradigmatic "nonjusticiable political question." *Id.* And because "the executive branch has taken the position that the Maduro government is illegitimate," the district court "was

powerless to" reach the contrary conclusion that petitioners can litigate on behalf of PDVSA. *Id.* at 8a-9a.

Petitioners do not contest any aspect of that reasoning. They acknowledge that their assertion of authority to litigate on behalf of PDVSA stems from their purported appointment "by the Maduro government." Pet. 6; *see also* Pet. 2. They concede that United States no longer recognizes the Maduro government. Pet. 5, 17. And they accept that, under this Court's longstanding precedent, "the Executive's decision as to who is the recognized Venezuelan government" is a nonjusticiable "political question." Pet. 14; *see, e.g.*, *Oetjen*, 246 U.S. at 302 ("'Who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial, but is a political question.") (citation omitted); *cf. Guaranty Trust Co. v. United States*, 304 U.S. 126, 137 (1938) (holding that only the "government which has been recognized by the political department of our own government as the authorized government of the foreign state" may bring suit on behalf of that state in federal court).[3]

Petitioners stress the need to apply the "Executive Branch's most recent position as to recognition," Pet. 16, and point to certain developments that they suggest could indicate a future change in the United States' position on recognition of the legitimate government of Venezuela, Pet. 5-6. But petitioners necessarily stop short of stating that the United States has restored recognition of the Maduro government.

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[3] Petitioners likewise do not contest that the Venezuelan government's decisions are binding on United States courts under the act-of-state doctrine. *See* Pet. App. 9a.

And while petitioners claim that the "court of appeals avoided the necessity of inquiring into the Executive Branch's current position" on recognition, Pet. 15, and "dismissed the Executive's current position as irrelevant," Pet. 17, those assertions are simply wrong. The court relied on State Department positions expressed as recently as January 2023 to determine "that the executive branch has given no indication that it will change its longstanding position that the Maduro government is illegitimate." Pet. App. 5a.

In short, the court of appeals correctly applied this Court's longstanding precedent to conclude that petitioners' assertion of authority to litigate on behalf of PDVSA required resolution of a nonjusticiable political question in light of the Executive Branch's position that the Maduro regime is not the legitimate Venezuelan government. Petitioners do not seriously challenge that holding. That is reason enough for this Court to deny further review.

B. The Court Of Appeals Did Not Resolve The Questions Presented And Those Questions Do Not Warrant Review

Rather than contesting the court of appeals' dispositive reasoning, petitioners urge this Court to address different and abstract questions about the jurisdictional status of political questions and whether a jurisdictional defect can be cured. Pet. 8-21. But the court of appeals did not decide those questions; their resolution would not alter the result below; petitioners have identified no court of appeals that would have ruled in their favor; and this Court's review is not warranted for any other reason.

1. Whether the presence of a political question deprives a court of subject-matter jurisdiction

Relying principally on a law-review article, petitioners ask the Court to grant certiorari and hold that the presence of a political question does not deprive a court of subject-matter jurisdiction. Pet. 8-15. That question does not warrant the Court's review for numerous reasons.

a. As explained above, the court of appeals held that this case presented a "nonjusticiable political question" because granting petitioners' motion to intervene or be substituted as the real party in interest would have required countermanding the Executive Branch's position that the Maduro regime is not Venezuela's legitimate government. Pet. App. 2a, 7a. That holding does not turn in any way on whether the presence of a political question deprives a court of subject-matter jurisdiction or instead simply requires the court to refrain from deciding the nonjusticiable question. Indeed, petitioners concede that a political question is nonjusticiable in federal court. *See* Pet. 8-10. The result in this case would thus remain the same regardless of how petitioners' theoretical inquiry were resolved: a court would not be able to grant their motion. *See* Pet. App. 2a, 7a.

In asserting that the court of appeals "incorrectly characteriz[ed] the issue as one of subject matter jurisdiction," Pet. 15, petitioners appear to rely entirely on inferences drawn from the penultimate paragraph of the court's opinion. *See* Pet. 2-3. There, the court declined petitioners' request to "remand this action to allow the district court to conduct a further factual

inquiry into" who could properly litigate on PDVSA's behalf. Pet. App. 11a. The court of appeals explained that the "district court would not have jurisdiction to conduct the requested inquiry on remand." *Id.* The court of appeals added that "even if the Department of State declared today that [petitioners are] authorized to bring suit in [PDVSA's] name, [the court of appeals] would still affirm because, under Article III, a justiciable case or controversy must exist 'through all stages of the litigation,' including 'at the time the complaint is filed.'" *Id.* (citation omitted).

Contrary to petitioners' contention, that passage does not demonstrate that "the Eleventh Circuit held that the courts lack subject-matter jurisdiction to consider PDVSA's" motion for intervention or substitution. Pet. 2. The passage says nothing about the Eleventh Circuit's own jurisdiction; the entire discussion is framed in terms of a hypothetical remand. And the Eleventh Circuit had no reason to focus on potential distinctions between subject-matter jurisdiction and nonjusticiability because petitioners did not raise that issue—or even mention the political question doctrine—in their briefing below, even though respondents squarely invoked it. Resp. C.A. Br. 56-61. The Eleventh Circuit's passing reference to jurisdiction thus sheds little light on the issue that petitioners now raise. *Cf., e.g.*, *Wilkins v. United States*, 598 U.S. 152, 160 (2023) ("If a decision simply states that the court is dismissing 'for lack of jurisdiction' when some threshold fact has not been established, it is understood as a drive-by jurisdictional ruling that receives 'no precedential effect.'" (internal quotation marks, citation, and alterations omitted)). At a minimum, the fact that petitioners' present position was not

squarely presented to or resolved by the lower courts is a basis for this Court to deny review.

b. In any event, this case is an exceedingly poor candidate for reviewing the theoretical matter of whether the presence of a political question implicates a court's subject-matter jurisdiction. Petitioners appear to acknowledge that the issue could make a difference in this case only if the United States reverses its current recognition of the Venezuelan National Assembly—which it has maintained for more than five years, across both the Trump and Biden Administrations, *see* Pet. App. 8a-9a—and reinstates its prior recognition of the Maduro regime, thereby giving petitioners a way to avoid the Eleventh Circuit's current uncontested political-question holding. But that series of events is speculative, at best. While petitioners identify certain developments that they construe as portending changes in the Executive Branch's Venezuela policy, *see* Pet. 5-6, they rightly do not suggest that those changes amount to actual formal recognition of the Maduro regime. Petitioners thus ask this Court to review a question that would have relevance only based on "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998). That uncertainty weighs overwhelmingly against granting review.

In addition, despite their assertion of "substantial confusion and conflicting decisions" among the courts of appeals, Pet. 1, 15, petitioners point to no court of appeals that would resolve the question presented in their favor. *Cf.* Pet. 13 (citing decisions that accord with the Eleventh Circuit's position as petitioners

characterize it). And even if a court were to agree with petitioners that, as a theoretical matter, the presence of a political question does not implicate subject-matter jurisdiction, that would hardly mean that the court would rule for petitioners on the facts of this case. Indeed, it seems to be undisputed that, based on the current position of the Executive Branch, the proper disposition of the suit on remand would be dismissal under the political question doctrine. For petitioners' suit to have any hope of survival, a court would have to leave the case open for an unknown duration to preserve the possibility that the United States' recognition policy might someday change in the way petitioners hope. Petitioners identify no court that would provide such relief.

c. Finally, review of petitioners' first question presented is unnecessary because this Court's precedents establish that the presence of a political question deprives a court of subject-matter jurisdiction. The Court has consistently treated the presence of a political question as the equivalent of the absence of Article III standing, which undisputedly deprives a court of subject-matter jurisdiction. In *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208 (1974), for example, the Court explained that "the jurisdictional limitations imposed upon federal courts by the 'case or controversy' requirement of Article III, embodies both the standing and political question doctrines." *Id.* at 215. Thus, "the absence of standing or the presence of a political question suffices to prevent the power of the federal judiciary from being invoked by the complaining party." *Id.*

The Court has repeatedly reiterated that understanding. *See, e.g.*, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) ("The doctrine[] of … political question … originate[s] in Article III's 'case' or 'controversy' language, no less than standing does."); *Sierra Club v. Morton*, 405 U.S. 727, 732 n.3 (1972) ("Congress may not confer jurisdiction on Article III federal courts . . . to resolve 'political questions,' because suits of this character are inconsistent with the judicial function under Article III." (citation omitted)). And the Court recently confirmed it again in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), explaining that the resolution of political questions falls "outside the courts' competence and therefore beyond the courts' jurisdiction" and accordingly remanding "with instructions to dismiss for lack of jurisdiction." *Id.* at 2494, 2508.

In a passing footnote, petitioners attempt to brush off those many statements of this Court as "confusing dicta" that "[p]resumably" did not mean what they said. Pet. 13 n.2.[4] Petitioners instead rely heavily on selected passages in *Baker v. Carr*, 369 U.S. 186 (1962), that discuss political questions and other Article III jurisdictional defects separately. Pet. 8-11. But the Court's landmark holding in *Baker* was that the political question doctrine *did not* apply to the reapportionment claims at issue, *see* 369 U.S. at 198, so the Court had no need to resolve whether it would deprive the Court of subject matter-jurisdiction. The

[4] If petitioners are correct about that, it is hard to see how they can characterize the far more ambiguous language in the Eleventh Circuit's decision here as necessarily addressing subject-matter jurisdiction. *See* pp. 11-13, *supra*.

Court, moreover, stated that its "conclusion that this cause presents no nonjusticiable 'political question' settles the only possible doubt that it is a case or controversy." *Id.* If anything, that reasoning suggests that the presence of a political question would amount to a jurisdictional defect. *Cf., e.g.*, *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395-96 (1980) (noting that "federal-court jurisdiction" under Article III extends only to "Cases" and "Controversies" in part to "assure that federal courts will not intrude into areas committed to other branches of government" (citation omitted)); *accord Massachusetts v. EPA*, 549 U.S. 497, 516 (2007) (citing Article III and explaining that "[i]t is ... familiar learning that no justiciable 'controversy' exists when parties seek adjudication of a political question"). In any event, the ambiguous language in *Baker* is far too thin a reed for petitioners to rely on in attempting to overcome the Court's clearer statements on the political question doctrine in the decades that have followed.

2. Whether a court's lack of subject-matter jurisdiction can be cured, including by a change in the Executive's recognition position

Petitioners' second question presented is whether a lack of subject-matter jurisdiction at one stage of a case can subsequently be cured, including by a change in the Executive's recognition position. Pet. 16. That question suffers from the same central flaws as petitioners' first question presented: it was not squarely decided by the court of appeals, and it does not warrant this Court's review in any event.

a. To the extent petitioners ask the Court to address the consequences of a potential future change in the Executive Branch's recognition position, the question is premature on its own terms. As explained above, petitioners acknowledge that the Executive Branch has not restored recognition of the Maduro regime. Petitioners accordingly ask the Court to resolve a purely hypothetical question. That is not a sound basis for certiorari.

Petitioners relatedly contend that the Court should grant review to hold that, in applying the political question doctrine, the "Executive Branch's most recent position as to recognition should be determined and the case decided on that basis." Pet. 16. Petitioners allege neither any split of authority in the lower courts on that question, nor any conflict with this Court's decisions. *See* Pet. 16-17 (arguing by analogy to act-of-state doctrine cases addressing significance of formal U.S. recognition of foreign government). Regardless, looking to the Executive Branch's "most recent" views is precisely what the Eleventh Circuit did in this case, relying on a 2023 statement of the State Department's position that postdates the developments petitioners cite as evidence of a purported change. Pet. App. 5a. Even on petitioners' own theory of the question presented, there is no need for this Court's review.

As the court of appeals recognized, the relief petitioners actually seek is permission to serve as a "placeholder" to keep this action alive "in hopes" that the Executive Branch will "eventually" reverse its position on recognition. Pet. App. 10a. But petitioners do not contest the court's holding that Rule 17 does

not allow such manipulation. *See id.* And petitioners do not point to any circuit conflict on the issue.

b. Pivoting away from the facts of this case, petitioners attempt to establish a circuit conflict at a higher level of generality. *See* Pet. 17-21. They cite cases in which courts have concluded that a standing defect can in some circumstances be cured through a subsequent substitution motion. Pet. 17-18. But the court of appeals did not rely on an absence of standing to affirm the district court's denial of petitioners' substitution motion, so other courts' treatment of that issue is inapposite here; at minimum, the decision here presents no square conflict of authority with the standing cases cited in the petition.

The conflict that petitioners purport to identify on that question, moreover, is largely illusory. In nearly every case that petitioners cite where courts permitted substitution to cure a standing defect, the original party lacked only statutory or prudential standing, not Article III standing. *See, e.g.*, *Advanced Magnetics, Inc. v. Bayfront Partners, Inc.*, 106 F.3d 11, 14, 18 (2d Cir. 1997); *Delta Coal Program v. Libman*, 743 F.2d 852, 854 (11th Cir. 1984). Those results are consistent with this Court's repeated—and correct—teaching that "the jurisdiction of the Court depends on the state of things at the time the action is brought." *Keene Corp. v. United States*, 508 U.S. 200, 207 (1993) (citation omitted); *see Kingdomware*, 579 U.S. at 169. Petitioners' position is not.[5]

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[5] The Second Circuit in *Fund Liquidation Holdings LLC v. Bank of America Corp.*, 991 F.3d 370 (2d Cir. 2020),

Petitioners cite a separate line of cases concerning the circumstances under which an absence of diversity jurisdiction can be cured. Pet. 18-21. But those cases are even further afield, as all agree that diversity jurisdiction is not implicated here. In any event, the cases petitioners cite shed little light on the possibility of curing defects in Article III jurisdiction, because the issue in most of those cases was whether the original parties satisfied the rule of complete diversity, which is a statutory requirement, not a constitutional one. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 n.13 (1978).

C. The Case Is A Poor Vehicle For Review For Additional Reasons

Even if this Court were inclined to address the questions presented, this case would be a poor vehicle to do so. As explained above, petitioners appear to acknowledge that resolution of the questions presented could make a difference in this case only if the United States abandons its current position and restores recognition of the Maduro regime. It is entirely speculative that any such change will occur. At a minimum, it would be far preferable for the Court to address the questions petitioners raise in the context of

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allowed substitution to overcome a defect in Article III standing. *Id.* at 386. But the court admitted that its position was "not a view adopted by many courts," and it limited its holding to a situation in which the real party in interest is "substituted into the action within a reasonable time." *Id.* Even assuming that holding is correct, it would not aid petitioners, who waited nearly three years before moving to intervene or be substituted into the case. Pet. App. 6a; *see* Resp. C.A. Br. 20-22.

an actual change in recognition policy. *See, e.g.*, *Rogers v. United States*, 522 U.S. 252, 259 (1998) (O'Connor, J., concurring) ("[W]e ought not decide [a] question if it has not been cleanly presented.").

In addition, resolving the questions presented in petitioners' favor would have limited practical effect because their motion to reopen the judgment and substitute or intervene was rightly denied by the district court on the alternative ground that it was untimely. Pet. App. 17a; *see* Fed. R. Civ. P. 17(a)(3) (permitting substitution only in "a reasonable time"); Fed. R. Civ. P. 24(a)-(b) (permitting intervention only on "timely motion); Fed. R. Civ. P. 60(c)(1) (permitting reopening only within "a reasonable time"). Although the court of appeals did not reach the timeliness issue, it noted the district court's holding on that issue and pointed out that, by the time petitioners filed their substitution motion, "three years had passed since the alleged conspirators first disputed the trust's standing and more than two had passed since the district court dismissed the action for lack of standing." Pet. App. 6a; *see id.* at 7a. That lack of timeliness would independently foreclose relief even if petitioners prevailed on the questions presented.

Petitioners' untimely attempt to substitute or intervene also underscores that they made a strategic choice to pursue their claims through a purported litigation trust rather than on behalf of PDVSA directly. That effort failed, and there is no good reason to give them another bite at the apple. *See Aldana* v. *Del Monte Fresh Produce N.A., Inc.*, 741 F.3d 1349, 1357 (11th Cir. 2014) (explaining the reopening a judgment is not intended to "reward a party that seeks to avoid

the consequences of its own 'free, calculated, deliberate choices'" (citation omitted)). "There must be an end to litigation someday." *Ackermann* v. *United States*, 340 U.S. 193, 198 (1950). That day has come for petitioners.[6]

CONCLUSION

The petition should be denied.

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[6] There is no need to delay resolution of this case for *Bolivarian Republic of Venezuela v. OI European Group B.V.*, No. 23-140 (petition for certiorari filed Aug. 14, 2023). Petitioner in that case makes a passing reference to the Eleventh Circuit's decision in this case, but the issues in the cases are entirely distinct. The principal question in that case is whether PDVSA is an alter ego of Venezuela for purposes of the Foreign Sovereign Immunities Act. This case does not present that issue, so there is no reason to consider the cases collectively.

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