

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**

**RESPONSE TO PETITIONERS'
SUPPLEMENTAL BRIEF**

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On October 20, 2023, petitioners filed a supplemental brief identifying developments that they contend support a grant of certiorari. Pursuant to Rule 15.8, respondents submit this short response explaining why this Court’s review remains unwarranted.

1. As petitioners note, political groups within Venezuela—including members of the Maduro regime—recently agreed on a potential roadmap to elections. In response, the United States provided limited relief from certain sanctions on Venezuela (in the form of particular licenses), while leaving other sanctions in place. *See* Supp. Br. App. 1a-2a; U.S. Dep’t of State, *Signing of Electoral Roadmap Between the Unitary Platform and Representatives of Maduro*, Oct. 18, 2023, <https://bit.ly/3S8LEio>.

Those developments may prove to be significant for Venezuela. But they have no bearing on this case. The Eleventh Circuit correctly held that petitioners’ suit presents a nonjusticiable political question because the United States does not recognize the Maduro regime—the purported source of petitioners’ authority to bring this case in PDVSA’s name. Pet. App. 2a-7a. Petitioners do not contend that the recent developments amount to recognition of the Maduro regime—and they do not. Indeed, petitioners seem to concede that “the official position taken [by] the Executive Branch” remains non-recognition of the Maduro regime. Supp. Br. 4. That official position of non-recognition is what matters for purposes of the political question doctrine. *See* Pet. App. 8a-11a; Br. in Opp. 6-10. The recent developments thus do not change the basis for the judgment below.

Petitioners assert that the recent developments make it “all the more reasonable that the Executive Branch would support the *de facto*, Maduro-controlled PDVSA board as the real party in interest to proceed in this litigation.” Supp. Br. 3. That wishful thinking has no support. There is a vast gap between granting limited relief from certain sanctions and officially recognizing the Maduro regime. Petitioners offer no reason to believe that the Executive Branch will leap from the former to the latter. Nor have U.S. officials provided any basis for such conjecture. *See, e.g.*, Supp. Br. App. 1a-2a (emphasizing that “[a]ll other restrictions imposed by the United States on Venezuela remain in place”).

In short, the dispositive fact remains unchanged and undisputed: the Executive Branch does not recognize, and at all points relevant to this petition has not recognized, the Maduro regime. Petitioners’ position depends entirely on speculation about potential future changes to U.S. policy. As the Eleventh Circuit correctly recognized, that is not a valid basis to maintain their suit. *See* Pet. App. 10a.

2. The recent developments identified by petitioners also do not make their questions presented any worthier of this Court’s review. Petitioners suggest that the developments are “[c]onsistent with [their] position that a change in the Executive Branch’s position can cure a lack of subject matter jurisdiction.” Supp. Br. 1. But the Executive Branch’s provision of limited relief from certain sanctions does not remotely address whether the presence of a political question affects a court’s subject-matter jurisdiction or whether such a defect in subject-matter jurisdiction can

subsequently be cured. As explained in respondents' brief in opposition, neither of those questions was squarely resolved by the court of appeals, and neither would meet this Court's criteria for certiorari even if they had been decided. *See* Br. in Opp. 11-19. In addition, petitioners' lack of timeliness—based on their own strategic choices—independently forecloses relief. *See id.* at 20-21. The recent developments identified by petitioners do not change that analysis in any respect. The Court should accordingly deny review and bring a needed conclusion to this long-running litigation.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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