APPENDICES

APPENDIX A

Nos. 23-1647, 23-1648, 23-1649, 23-1650, 23-1651, 23-1652, 23-1781

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

OI EUROPEAN GROUP B.V.

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

PETROLEOS DE VENEZUELA, S.A., Appellant in No. 23-1647

NORTHROP GRUMMAN SHIP SYSTEMS, INC, F/K/A INGALLS SHIPBUILDING, INC.

v.

THE MINISTRY OF DEFENSE OF THE REPUBLIC OF VENEZUELA

PETROLEOS DE VENEZUELA, S.A., Appellant No. 23-1648

ACL1 INVESTMENTS LTD.; ACL2 INVESTMENTS LTD.; LDO (CAYMAN) XVIII LTD.

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

PETROLEOS DE VENEZUELA, S.A., Appellant No. 23-1649

RUSORO MINING LIMITED

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

PETROLEOS DE VENEZUELA, S.A., Appellant No. 23-1650

KOCH MINERALS SARL; KOCH NITROGEN INTERNATIONAL SARL

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

PETROLEOS DE VENEZUELA, S.A.,
Appellant No. 23-1651

GOLD RESERVE INC.

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

PETROLEOS DE VENEZUELA, S.A.,
Appellant No. 23-1652

OI EUROPEAN GROUP B.V.

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,
Appellant No. 23-1781

FILED: July 7, 2023

Before: BIBAS, MATEY, and FREEMAN, Circuit Judges.

OPINION OF THE COURT

MATEY, Circuit Judge.

Sovereignty shoulders "[t]hat power ... whose actions are not subject to the controul of any other power, so as to be annulled at the pleasure of any other human will." Hugo Grotius, The Rights of War and Peace 62 (A.C. Campbell trans., M. Walter Dunne 1901) (1625).[1] It is a recognition of authority long

[1] Sovereignty was widely understood as a necessary extension of the natural law. *See, e.g., Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. (9 Cranch) 191, 198, 3 L.Ed. 701 (1815) ("The law of nations" is learned through "resort to the great principles of reason

thought essential for the mutual flourishing of states and "the advantage of their affairs." Emer de Vattel, The Law of Nations 17 (Béla Kapossy & Richard Whatmore eds., 2008) (1758). Congress codified its understanding of foreign sovereignty in the Foreign Sovereign Immunities Act of 1976 ("FSIA").

In this consolidated appeal, six judgment creditors of the Bolivarian Republic of Venezuela hope to attach property held by Petróleos de Venezuela, S.A. ("PDVSA"), Venezuela's national oil company. It all arises from a long-running dispute. Four years ago, this Court wrote the most recent chapter, holding PDVSA operated as Venezuela's alter ego and allowing a judgment creditor (Crystallex International Corporation) to attach PDVSA's shares in a U.S. subsidiary. Our six creditors[2] followed in those footsteps and registered their arbitration awards against Venezuela in the District of Delaware, seeking a writ of attachment against PDVSA's holdings. PDVSA resisted, arguing that changes in Venezuela's government destroyed the factual foundations supporting our prior alter-ego decision. But even accounting for those differences, the District Court correctly concluded that PDVSA remains the alter ego of Venezuela. And because reviewing PDVSA's other arguments

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and justice."). In the twentieth century, sovereignty slid more to matters of political and commercial concerns. *See, e.g.*, George K. Foster, *When Commercial Meets Sovereign: A New Paradigm for Applying the Foreign Sovereign Immunities Act in Crossover Cases*, 52 Hous. L. Rev. 361, 369–72 (2014).

[2] OI European Group B.V. ("OIEG"); ACL1 Investments Ltd., ACL2 Investments Ltd., and LDO (Cayman) XVIII Ltd.; Gold Reserve Inc.; Koch Minerals Sàrl and Koch Nitrogen International Sàrl; Northrop Grumman Ship Systems, Incorporated, formerly known as Ingalls Shipbuilding, Incorporated; and Rusoro Mining Limited. Together, we refer to them as "Creditors."

would stretch the limited grant of our appellate jurisdiction well beyond the words written by Congress, we decline the invitation and will affirm the District Court's judgment.

I.

Venezuela boasts the "largest proven oil reserves in the world," a stockpile long under the "significant control" of the state. App. 30 (citations omitted). Venezuela formed PDVSA in 1975 to exploit those resources, but this case has little to do with oil. It centers on Venezuela's expropriation of glass containers and mining interests, missed payments for warship repairs, and bond defaults. And it continues a story we recently summarized in the parallel suit brought by Crystallex International Corporation against Venezuela over the expropriation of gold deposits. We begin with an even shorter summary.

A.

In 2011, Venezuela nationalized several gold mines and seize the surrounding factories without compensation. That, Crystallex alleged, breached its agreement with Venezuela for development rights. *See Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 333 F. Supp. 3d 380, 386 (D. Del. 2018) ("*Crystallex I*"). Crystallex won relief in an international arbitral tribunal, which awarded $1.2 billion plus interest. *Id.* The District Court for the District of Columbia confirmed the award, yielding a federal judgment. *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 244 F. Supp. 3d 100, 122 (D.D.C. 2017). When Venezuela did not pay, Crystallex registered its judgment with the Delaware District Court

under 28 U.S.C. § 1963[3] hoping to access the assets of PDVSA. *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 932 F.3d 126, 136 (3d Cir. 2019) ("*Crystallex II*"). Crystallex argued that, as a judgment creditor of Venezuela, it could look to PDVSA for satisfaction because PDVSA "is so extensively controlled by" Venezuela that it may be held liable for the government's shortcomings. *Id.* at 140 (citations omitted). So Crystallex sued Venezuela[4] to attach PDVSA's shares in Petróleos de Venezuela Holding, Inc. ("PDVH"), PDVSA's wholly owned United States subsidiary, under Federal Rule of Civil Procedure 69(a). *Id.* at 132–34. Doing so, Crystallex thought, would ultimately allow it to reach funds in CITGO Petroleum Corporation, a Delaware corporation indirectly owned by PDVH.[5] *See Crystallex I*, 333 F. Supp. 3d at 418 n.36.

PDVSA intervened in the attachment proceeding and moved to dismiss based on its claim to sovereign immunity. *Crystallex II*, 932 F.3d at 134. The District Court denied the motion, finding PDVSA was Venezuela's "alter ego" under the principles outlined in

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[3] Stating that a registered judgment "shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner."

[4] Federal courts have jurisdiction "to confirm an award made pursuant to ... an agreement to arbitrate, if [ ] the arbitration takes place or is intended to take place in the United States." 28 U.S.C. § 1605(a)(6). Crystallex's arbitration proceedings against Venezuela occurred before the International Centre for Settlement of Investment Disputes in Washington, D.C. *Crystallex I*, 333 F. Supp. 3d at 386.

[5] PDVSA wholly owns the Delaware corporation PDVH, which wholly owns CITGO Holding, Inc., which wholly owns CITGO Petroleum Corporation. *Crystallex I*, 333 F. Supp. 3d at 418 n.36.

First National City Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983) ("*Bancec*"). *See Crystallex I*, 333 F. Supp. 3d at 404–14. That finding made PDVSA's property subject to execution to satisfy Venezuela's debt. *Id.* at 416–17.

We affirmed that decision. *See Crystallex II*, 932 F.3d at 150–51. We pointed to Venezuela's economic control over and profit-sharing with PDVSA, its heavy hand in managing PDVSA's affairs, the value extracted from PDVSA, and the ability to avoid obligations in U.S. courts by retaining a separate identity. *Id.* at 146–49. All enough, we concluded, to show that PDVSA was Venezuela's alter ego. *Id.* at 152 ("Indeed, if the relationship between Venezuela and PDVSA cannot satisfy the Supreme Court's extensive-control requirement, we know nothing that can."). And we likewise affirmed the order permitting attachment of PDVSA's shares under the FSIA. *Id.*

B.

Hoping to seize on Crystallex's success, Creditors also obtained arbitration awards against Venezuela and Venezuela's Ministry of Defense over debts incurred under broken contracts. Creditors then confirmed their arbitration awards in U.S. courts, registered those judgments with the Delaware District Court pursuant to 28 U.S.C. § 1963, and moved for writs of attachment on PDVSA's shares of PDVH.[6] PDVSA intervened, stressing changes in the relationship between Venezuela and PDVSA since 2019.

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[6] As in the *Crystallex* proceedings, the District Court had jurisdiction under the FSIA. *See Crystallex Int'l Corp.*, 244 F. Supp. 3d at 109 (applying 28 U.S.C. § 1605(a)(6)).

In 2018, Venezuelan President Nicolás Maduro disqualified opposition candidates for the presidency and declared himself the victor. Dissatisfied, the National Assembly named opposition leader Juan Guaidó Interim President of Venezuela. In 2019, the U.S. Government recognized Guaidó as Interim President and explicitly withdrew recognition of the Maduro Government, although it acknowledged Maduro's continued power in Venezuela. *See Jiménez v. Palacios*, 250 A.3d 814, 822 (Del. Ch. 2019). In 2019, Guaidó took control of the shares of PDVH, appointing an ad hoc board of directors of PDVSA to manage the U.S. subsidiaries. Guaidó remained Interim President for the rest of the time period relevant to this appeal.

Despite those changes, the Delaware District Court granted Creditors' motion, concluding they had rebutted the presumption that Venezuela and PDVSA are separate and established PDVSA as the alter ego of Venezuela subject to the jurisdiction of the federal courts. Organizing its factual findings around the *Bancec* factors discussed below, the Delaware District Court comprehensively described PDVSA's relationship to Venezuela—considering both the Guaidó Government's control over PDVSA's U.S. assets through its ad hoc administrative board ("Ad Hoc Board") and the Maduro Regime's ongoing control of PDVSA in Venezuela and abroad—and concluded PDVSA remains an alter ego of Venezuela. The Delaware District Court also "incorporate[d] by reference its analysis of the legal standards governing the issuance of writs of attachment (including its discussion of Federal Rule of Civil Procedure 69(a)(1) and 10 Del. C. § 5031) with respect to property of an agency or instrumentality of a foreign sovereign as

set out in *Crystallex I*." App. 62 (citing *Crystallex I*, 333 F. Supp. 3d at 388–89, 394–95, 399–401, 404–05).

PDVSA appealed (and Venezuela intervened), [7] challenging the alter-ego finding and asking us to consider the attachment issue under a theory of "pendent appellate jurisdiction." PDVSA also asked for an emergency stay on both divestiture grounds and the traditional discretionary stay factors. After granting an administrative stay, we ordered merits briefing on an expedited schedule. Agreeing with the District Court's well-reasoned opinion and declining to reach the attachment issue, we will affirm.[8]

II.

We review a narrow question: Did the District Court properly deny PDVSA immunity? The FSIA permitted the District Court to exercise jurisdiction over Venezuela to enforce a judgment based on confirmed arbitration awards against the country.[9] And

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[7] In one of the OIEG matters, Venezuela appealed and PDVSA intervened.

[8] The District Court had subject matter jurisdiction under 28 U.S.C. § 1963, and we discuss our jurisdiction under the collateral order doctrine in Section IV. "We review questions of law *de novo* and findings of fact for clear error, and we review *de novo* the ultimate determination whether to treat PDVSA as Venezuela's alter ego." *Crystallex II*, 932 F.3d at 136.

[9] The FSIA's arbitration exception provides that "[a] foreign state shall not be immune ... in any case ... in which the action is brought ... to confirm an award made pursuant to ... an agreement to arbitrate, if ... the arbitration takes place or is intended to take place in the United States." 28 U.S.C. § 1605(a)(6).

Creditors confirmed their arbitration awards in United States courts. They then registered their judgments in Delaware District Court. And "when a party establishes that an exception to sovereign immunity applies in a merits action that results in a federal judgment—here, the exception for confirming arbitration

"so long as PDVSA is Venezuela's alter ego under *Bancec*, the District Court had the power to issue a writ of attachment on that entity's non-immune assets to satisfy the judgment against the country." *Crystallex II*, 932 F.3d at 139. Although PDVSA points to some changes in the structure of Venezuela's government, the nature of the nation's continued involvement in PDVSA's affairs again establishes that PDVSA is Venezuela's alter ego, as will be discussed in Section III. But first, we explain the nature of our examination.

A.

Enacted in 1976, the FSIA specifies when United States courts will recognize claims of sovereign immunity. Our interpretation of the text must give effect to the legislature's charge, *Brown v. Barry*, 3 U.S. (3 Dall.) 365, 367, 1 L.Ed. 638 (1797), stated through the "ordinary meaning ... at the time Congress enacted the statute," *Perrin v. United States*, 444 U.S. 37, 42, 100 S.Ct. 311, 62 L.Ed.2d 199 (1979). Because interpretation "is a holistic endeavor," *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), some context is key to understanding Congress's aim, *see* Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 538–39 (1947) (Legislation "seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government."); *see al-*

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awards, 28 U.S.C. § 1605(a)(6)—that party does not need to establish yet another exception when it registers the judgment in another district court under 28 U.S.C. § 1963 and seeks enforcement in that court. Rather, the exception in the merits action sustains the court's jurisdiction through proceedings to aid collection of a money judgment rendered in the case." *Crystallex II*, 932 F.3d at 137 (cleaned up).

so 1 William Blackstone, Commentaries *61, *87 (George Sharswood ed., 1893) (1765).

The traditional understanding that foreign nations enjoyed "absolute independence" from federal jurisdiction, *see, e.g., Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 137, 3 L.Ed. 287 (1812), gave way to a restrictive theory of immunity as nations became more commercially interconnected, *see* George K. Foster, *When Commercial Meets Sovereign: A New Paradigm for Applying the Foreign Sovereign Immunities Act in Crossover Cases*, 52 Hous. L. Rev. 361, 369–72 (2014). Applying this restrictive theory, the Executive determined case-by-case whether a foreign nation would receive sovereign immunity from suits in U.S. courts. *See* Letter from Jack B. Tate, Legal Adviser, Dep't of State, to Philip B. Perlman, Acting Att'y Gen. (May 19, 1952), *reprinted in* 26 Dep't St. Bull. 984, 984–85 (1952) ("Tate Letter"). But doing so proved difficult diplomatically and politically problematic for two reasons. First, the Executive's determinations were standardless and unpredictable. *See Victory Transp., Inc. v. Comisaria General de Abastecimientos y Transportes*, 336 F.2d 354, 359 (2d Cir. 1964) ("[T]he 'Tate letter' offers no guide-lines or criteria for differentiating between a sovereign's private and public acts."). Second, "foreign expropriation of American investment was a major foreign policy issue" because "major properties were seized without compensation" in countries like Cuba that went through critical regime changes. *See* Mark B. Feldman, *A Drafter's Interpretation of the FSIA*, Am. Bar Ass'n Section of Int'l Law (Winter 2018), https://www.foster.com/assets/htmldocuments/pdfs/ABA-ACHL-Newsletter-Winter-2018.pdf. Victims of these expropriations generally "had to rely on the State Department to negotiate settlement with the

foreign government," but changing regimes and charged relations often left the State Department with no leverage and the victims no relief. *See* Expert Witness Report and Opinion of Mark B. Feldman in Supp. of Pl.'s Opp'n to Defs.' Mot. Dismiss, *In Re*: *Mezerhane v. Republica Bolivariana de Venezuela*, No. 1:11-cv-23983 (S.D. Fla. 2013) ("Feldman Report"), ECF No. 90-2.

So the Executive asked Congress to make the matter a judicial determination, reasoning "that courts are better equipped than the State Department to make immunity decisions based on law rather than politics." Adam S. Chilton & Christopher A. Whytock, *Foreign Sovereign Immunity and Comparative Institutional Competence*, 163 U. Pa. L. Rev. 411, 412 (2015). Congress agreed, adopting the FSIA to charge judges, not diplomats, with applying the restrictive theory of foreign immunity.[10] *See Samantar v. Yousuf*, 560 U.S. 305, 313, 130 S.Ct. 2278, 176 L.Ed.2d 1047 (2010). Now, if a state, or its agency or instrumentality, "expropriate[s] ... property in violation of international law," "the state can expect to be held accountable for the expropriation in U.S. courts." *See* Feldman Report, *supra.*

B.

The FSIA provides that foreign states are immune from the jurisdiction of American courts, subject only

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[10] *See* Foster, *supra*, at 371–72; *see also* Letter from Robert S. Ingersoll, Deputy Sec'y of State, and Harold R. Tyler, Jr., Deputy Att'y Gen., to Carl O. Albert, Speaker of the House (Oct. 31, 1975), *reprinted in* H.R. Rep. No. 94-1487, at 6634 (1976) (arguing for legislation governing foreign sovereign immunity "to facilitate and depoliticize litigation against foreign states" by "codify[ing] and refin[ing] the 'restrictive theory' of sovereign immunity").

to exceptions in previous international agreements and the FSIA itself. *See* 28 U.S.C. § 1604. "Foreign state" is defined to include a political subdivision "*or* an agency or instrumentality of a foreign state." *Id.* § 1603(a) (emphasis added).[11] PDVSA invokes this definition to claim sovereign immunity as an instrumentality of a foreign state. But if a foreign instrumentality's entitlement to sovereign immunity depends on its shared identity with the "foreign state" itself, a natural reading of the FSIA would suggest that a foreign instrumentality shares the immunity of its sovereign owner. *Cf.* Roger O'Keefe, *The Restatement of Foreign Sovereign Immunity: Tutto Il Mondo è Paese*, 32 Eur. J. Int'l L. 1483, 1488–90 (2021) (considering how instrumentalities "assimilate" to the legal personality of a foreign state under the FSIA). Meaning a determination that a foreign state is excepted from jurisdictional immunity under § 1605(a)(6) would also apply to its instrumentalities.

The Supreme Court rejected this reading in *Bancec*. *See* 462 U.S. at 621, 103 S.Ct. 2591. Although the Court acknowledged that § 1603(a) defines a "foreign state" to include instrumentalities, *id.* at 620

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[11] An "agency or instrumentality of a foreign state" is defined as "any entity":

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and

(e) of this title, nor created under the laws of any third country.

28 U.S.C. § 1603(b).

n.7, 103 S.Ct. 2591, it concluded "[t]he language and history of the FSIA clearly establish that the Act was not intended to affect the substantive law determining the liability of a foreign state or instrumentality, or the attribution of liability among instrumentalities of a foreign state," *id.* at 620, 103 S.Ct. 2591. So it directed courts to apply a "presumption" of independent legal status (and thus a separate sovereign immunity) to foreign instrumentalities. *Id.* at 628, 103 S.Ct. 2591.

That new presumption fused the law of corporations and nations.[12] The Court observed that foreign states had started adopting the corporate practice of creating instrumentalities to enjoy benefits associated with independent governance. *Id.* at 624, 103 S.Ct. 2591. Without a presumption that an instrumentality's assets and liabilities stand separate from those of the sovereign, third parties might worry that credit extended to an instrumentality will be freely diverted to satisfy its sovereign's debts. *Id.* at 625–26, 103 S.Ct. 2591. And without "[d]ue respect for the actions taken by foreign sovereigns and for principles of comity between nations," foreign sovereigns might leave opportunities to advance their unique interests, frustrating the very point of sovereign power. *Id.* at 626, 103 S.Ct. 2591.[13]

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[12] At least one recent scholar has criticized this fusion, emphasizing the differences between private and public corporations when evaluating separate legal status. *See generally* W. Mark C. Weidemaier, *Piercing the (Sovereign) Veil: The Role of Limited Liability in State-Owned Enterprises*, 46 B.Y.U. L. Rev. 795 (2021).

[13] As was common at the time, the Court also quoted a House Report stating that 28 U.S.C. § 1610(b) would not allow execution against the property of one agency or instrumentality to satisfy the judgment of another—unless a court finds that

But like any presumption, this one can be rebutted. The Court "suggested that liability [for instrumentalities] would be warranted, for example, 'where a corporate entity is so extensively controlled by [the state] that a relationship of principal and agent is created,' or where recognizing the state and its agency or instrumentality as distinct entities 'would work fraud or injustice.' " *Rubin v. Islamic Republic of Iran*, —— U.S. ——, 138 S. Ct. 816, 822, —— L.Ed.2d —— (2018) (quoting *Bancec*, 462 U.S. at 629–30, 103 S.Ct. 2591). And ever since, federal courts have coalesced around five factors (termed "the *Bancec* factors") to aid their analysis. *Id.* at 823.[14]

As we did in *Crystallex II*, 932 F.3d at 141, we consider the *Bancec* factors described in *Rubin* and 28 U.S.C. § 1610(g). But we also take seriously the Supreme Court's caution that *Bancec* wrote no "mechanical formula" for disregarding juridical separateness. *Rubin*, 138 S. Ct. at 822 (quoting *Bancec*, 462 U.S. at 633, 103 S.Ct. 2591). The test instead derives from a rough analogy to American corporate law veil piercing,[15] which is itself "enveloped in the mists of meta-

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"property held by one agency is really the property of another." *Bancec*, 462 U.S. at 628, 103 S.Ct. 2591 (quoting H.R. Rep. No. 94-1487, at 29–30).

[14] Congress also noticed these factors and listed them in an amendment to the FSIA to abrogate *Bancec* in disputes about the property of state sponsors of terrorism. *Rubin*, 138 S. Ct. at 823 (citing 28 U.S.C. § 1610(g)).

[15] American corporations received staunch protections through incorporation statutes passed throughout the nineteenth century. *See, e.g.*, An Act Relative to Incorporations for Manufacturing Purposes, ch. 67, § 3, 1811 N.Y. Laws 350, 351. Courts met abuses of the corporate form by disregarding these protections according to equitable considerations. *See, e.g., Booth v. Bunce*, 33 N.Y. 139, 157 (1865) (If "corporate bodies" are used "to cover up fraud," they "are declared nullities; they are a perfect dead

phor." *Bancec*, 462 U.S. at 623, 103 S.Ct. 2591 (quoting *Berkey v. Third Ave. Ry. Co.*, 244 N.Y. 84, 94, 155 N.E. 58 (1926)). "Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it." *Id.* (quoting *Berkey*, 244 N.Y. at 94, 155 N.E. 58).

C.

Having surveyed the "why" and "how" behind instrumentality sovereignty, we turn to the "what": the facts that should be considered. The District Court evaluated the actions of both the Guaidó and Maduro governments. Appellants' arguments against this approach mostly skip references to the state and instead stress the word "government," a term absent from the relevant FSIA provisions. Venezuela calls PDVSA's relationship to the Maduro Regime "[i]rrelevant," Venezuela Reply Br. 12, and insists we look only to the actions taken by the Guaidó Government and the Ad Hoc Board. We disagree. Text, tradition, and legislative aim all point to the sovereign nation of Venezuela as the operative comparator for our alter-ego analysis. So we must consider the actions of both governments.

1.

First, the text. The FSIA codifies foreign sovereign immunity for a "foreign state," 28 U.S.C. § 1604,

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letter; the law looks upon them as if they had never been executed."). When nations started acting like corporations in their commercial relations, governments began analyzing sovereign immunity claims through this corporate lens. *Cf.* Chilton & Whytock, *supra*, at 451 ("[T]he prevailing legal standard did indeed systematically influence the State Department's immunity decisions: immunity was less likely when the foreign state was a corporate entity (and thus presumably engaged in commercial activity)."). The Supreme Court followed that path in *Bancec*.

which "on its face indicates a body politic that governs a particular territory," *Samantar*, 560 U.S. at 314, 130 S.Ct. 2278.[16] One prominent legal dictionary defines "foreign state" as a "foreign country." *Foreign State*, Black's Law Dictionary (11th ed. 2019). And the definition has remained largely unchanged since before the FSIA's passage. *See Foreign State*, Black's Law Dictionary 1578 (4th ed. 1968) (defining a "foreign state" as a "foreign country or nation"). Both entries stress the body politic—the country or nation—rather than the regime presently in power. That aligns with the common understanding of statehood, where governance is just one of several criteria used to define a state. *See* James Crawford, The Creation of States in International Law 45–46 (2d ed. 2006) (describing the "classical criteria for statehood" as a defined territory, a permanent population, an effective government, the capacity to enter into relations with other States, and independence); Restatement (Third) of Foreign Relations Law § 201 (1987) ("[A] state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.").

It also follows *Bancec*, where, despite the facts flowing from the aftermath of the Cuban Revolution, the Supreme Court never mentioned the Castro Regime. Instead, it framed its analysis as determining whether the government instrumentality of Cuba "may be held liable for actions taken by the sovereign." *Bancec*, 462 U.S. at 621, 103 S.Ct. 2591. Strong

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[16] The FSIA does not expressly define "foreign state," except to say that it includes "an agency or instrumentality of a foreign state." 28 U.S.C. § 1603(a).

evidence that the relevant "government" in a *Bancec* analysis is the foreign country's sovereign, which transcends any administrator.

2.

Second, tradition, which accepted that the "sovereign power" does not change "whatever appearance the outward form and administration of the government may put on." 1 Blackstone, Commentaries *49. The Supreme Court has long embraced this differentiation between government representatives and a sovereign. Take *The Sapphire*, where French officials sued in a United States court for damages caused in a collision between a French and American ship. 78 U.S. (11 Wall.) 164, 167, 20 L.Ed. 127 (1870). Defendants sought dismissal, arguing the collision happened under the reign of Napoleon III, who had just been deposed. *Id.* at 166. That was the wrong focus, the Court explained, because the "[t]he foreign state is the true and real owner of its public vessels of war.... The ... party in power[ ] is but the agent and representative of the national sovereignty. A change in such representative works no change in the national sovereignty or its rights." *Id.* at 168.

Or consider *Guaranty Trust Co. of New York v. United States*, where the Soviet Union sued to recover a bank deposit made sixteen years earlier by the Provisional Government of Russia. 304 U.S. 126, 129, 58 S.Ct. 785, 82 L.Ed. 1224 (1938). All agreed that the Soviet Government had only recently been recognized by the United States, making this action one of the first for which its representatives could appear in U.S. courts on behalf of Russia. *Id.* at 138 n.4, 58 S.Ct. 785. Not enough to toll a six-year statute of limitations, said the Court, because, regardless of which representatives are recognized, the "the rights of a sovereign state are vested in the state rather than in

any particular government which may purport to represent it." *Id.* at 137, 58 S.Ct. 785.

More recently, in *Samantar*, the Supreme Court confirmed the continuing importance of the representative-sovereign distinction. There, the Court held an individual foreign official is not entitled to sovereign immunity as a "foreign state" under the FSIA. 560 U.S. at 308, 130 S.Ct. 2278. A "state" is "an entity that has a defined territory and population under the control of a government and that engages in foreign relations." *Id.* at 314, 130 S.Ct. 2278 (quoting Restatement (Second) of Foreign Relations Law of the United States § 4 (1964–1965)). While the government controls the state, the state is more than its government. *See id.* ("[T]he [FSIA] establishes that 'foreign state' has a broader meaning, by mandating the inclusion of the state's political subdivisions, agencies, and instrumentalities.").

Now, as before, "[r]ulers come and go; governments end and forms of government change; but sovereignty survives." *United States v. Curtiss–Wright Export Corp.*, 299 U.S. 304, 316, 57 S.Ct. 216, 81 L.Ed. 255 (1936).

3.

Third, legislative aim as informed by history. An essential tool of statutory construction that uncovers 1) "how the common law stood at the making of the act"; 2) "what the mischief was, for which the common law did not provide"; and 3) "what remedy the [legislature] provided to cure this mischief." 1 Blackstone, Commentaries *87. All "to suppress the mischief and advance the remedy." *Id.* As recounted, the FSIA was enacted against the common law of foreign sovereign immunity that included Executive determinations. But Congress understood the State De-

partment to have "sought and supported the elimination of its role with respect to claims against foreign states and their agencies or instrumentalities." *Samantar*, 560 U.S. at 323 n.19, 130 S.Ct. 2278. For this Court to hold that the decisions about sovereign immunity from suit are once again an Executive prerogative—whether by importing the act of state doctrine, the political question doctrine, or some other "doctrine"—would undermine the principal purpose of the FSIA: "to transfer primary responsibility for deciding 'claims of foreign states to immunity' from the State Department to the courts." *Id.* at 313, 130 S.Ct. 2278 (quoting 28 U.S.C. § 1602).

D.

Knowing what facts to consider—the actions of both the Guaidó and Maduro governments as the totality of the sovereign conduct of Venezuela—similarly answers the "when" issue. The parties present dueling interpretations of the relevant timeframe for considering Venezuela's actions. We did not resolve the issue in *Crystallex II*. *See* 932 F.3d at 144. On remand, the District Court thought it improper to consider any date after the service of the writ of attachment but acknowledged that consideration of historical events may be necessary for alter-ego analysis. *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 2021 WL 129803, at *6 & n.4 (D. Del. Jan. 14, 2021). PDVSA and Venezuela argue that the relevant inquiry begins the moment of the filing of the motion for a writ of attachment,[17] while

[17] Venezuela cites *Dole Food Co. v. Patrickson*, which held that, for federal removal jurisdiction, "instrumentality status is determined at the time of the filing of the complaint." 538 U.S. 468, 480, 123 S.Ct. 1655, 155 L.Ed.2d 643 (2003). But removal is a time-specific inquiry, so there is no reason to assume that holding extends to all other parts of the FSIA.

Creditors ask us to consider instead the time of the injury.[18]

We again decline to take either path. As with the commercial activity determination, "narrowing the temporal inquiry" for alter-ego analysis "unnecessarily leaves room for manipulation." *See Crystallex II*, 932 F.3d at 150. We would invite fraud and injustice—the very concerns carefully cautioned against in *Bancec*—by considering only how a state acts after learning that its actions surrounding an instrumentality are under scrutiny. *Cf. Transamerica Leasing, Inc. v. La Republica de Venezuela*, 200 F.3d 843, 850–51 (D.C. Cir. 2000) (considering, in alter-ego analysis, governmental action that occurred before plaintiffs

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[18] Creditors offer mostly out-of-circuit or unpublished decisions for the notion that we look to the time the injury occurred. None address the alter ego concept or thoroughly compare competing time periods. *See, e.g., Groden v. N&D Transp. Co.*, 866 F.3d 22, 30 (1st Cir. 2017) (discussing the "pertinent" time in an alter ego ERISA case as the time "when the withdrawal liability arose"); *Energy Marine Servs., Inc. v. DB Mobility Logistics AG*, No. 15-24-GMS, 2016 WL 284432, at *1, *3 (D. Del. Jan. 22, 2016) (stating the moment of injury is "the relevant time frame" with no justification); *Trs. of Nat'l Elevator Indus. Pension v. Lutyk*, 140 F. Supp. 2d 447, 457 (E.D. Pa. 2001) (mentioning that "the relevant time period is the time at which the corporation incurred liability" in a corporate veil case), *aff'd*, 332 F.3d 188 (3d Cir. 2003) (no discussion of time frame); *J.M. Thompson Co. v. Doral Mfg. Co.*, 72 N.C.App. 419, 324 S.E. 2d 909, 915 (1985) (stating in a corporate alter ego case, "it must be shown that control was exercised at the time the acts complained of transpired"); *Moran v. Johns-Manville Sales Corp.*, 691 F.2d 811, 817 (6th Cir. 1982) ("It is agency at the time of the tortious act, not at the time of litigation, that determines the corporation's liability."); *C M Corp. v. Oberer Dev. Co.*, 631 F.2d 536, 539 (7th Cir. 1980) (considering in a corporate veil context whether there was "evidence that [companies] were shells or sham corporations during the period when appellants and their assignors were dealing with them").

sought financial redress). Little imagination is required: a state could quickly scale back oversight, announce laudable (but long-away) reforms, pass promises of new corporate independence, and perhaps commission a blue-ribbon study panel or two. All while its practices dating back to the injury show an alter ego relationship. Nor is exclusive reliance on the time of injury a satisfying approach. *Cf. EM Ltd. v. Banco Central de la República Argentina*, 800 F.3d 78, 84–85, 92–94 (2d Cir. 2015) (considering, in alter-ego analysis, sovereign's billion-dollar borrowing from instrumentality after plaintiffs first sought attachment). The conduct of the Castro Regime in *Bancec*[19] shows how a state determined to avoid creditors might simply drop vulnerable assets into a new instrumentality and thus "creat[e] juridical entities whenever the need arises." 462 U.S. at 633, 103 S.Ct. 2591.

We heed the charge of the Supreme Court drawing on the "application of internationally recognized equitable principles to avoid the injustice that would result from permitting a foreign state to reap the benefits of our courts while avoiding the obligations of international law." *Id.* at 633–34, 103 S.Ct. 2591. And we conclude the alter-ego inquiry should consider all

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[19] *See Bancec*, 462 U.S. at 615–16, 103 S.Ct. 2591 ("Bancec was dissolved and its capital was split between Banco Nacional and 'the foreign trade enterprises or houses of the Ministry of Foreign Trade' .... All of Bancec's rights, claims, and assets 'peculiar to the banking business' were vested in Banco Nacional .... All of Bancec's 'trading functions' were to be assumed by 'the foreign trade enterprises or houses of the Ministry of Foreign Trade.' ... [T]he Ministry of Foreign Trade created Empresa.... Empresa was dissolved and Bancec's rights relating to foreign commerce in sugar were assigned to Empresa Cubana Exportadora de Azucar y sus Derivados (Cuba Zucar), a state trading company, which is apparently still in existence.") (citations omitted).

relevant facts up to the time of the service of the writ of attachment.

III.

Considering the totality of Venezuela's control over PDVSA, it is clear PDVSA is Venezuela's alter ego. As in *Crystallex II*, we draw from the "*Bancec* factors," namely:

> (1) the level of economic control by the government; (2) whether the entity's profits go to the government; (3) the degree to which government officials manage the entity or otherwise have a hand in its daily affairs; (4) whether the government is the real beneficiary of the entity's conduct; and (5) whether adherence to separate identities would entitle the foreign state to benefits in United States courts while avoiding its obligations.

Crystallex II, 932 F.3d at 141 (quoting *Rubin*, 138 S. Ct. at 823).

1. Economic Control

Venezuela exerts significant economic control over PDVSA. Start with the Venezuelan Constitution: Article 12 provides that hydrocarbon deposits within Venezuelan territory are government property, Article 302 reserves state control over petroleum activity, and Article 303 enshrines that the State must retain all shares in PDVSA. *Crystallex II*, 932 F.3d at 147. These statements of authority are not merely aspirational; Venezuelan authorities have dictated PDVSA's sales practices and prices, inside Venezuela and abroad. *Id.* From 2010 to 2016, PDVSA contributed around $77 billion to Venezuelan allies, and in 2017, topped off the tank with the announcement of a $1.2 billion payment on PDVSA bonds along with plans to restructure PDVSA's debt. *Id.* at 147–48.

Appellants argue drastic changes arrived in 2019, but as the District Court explained, new structures did not alter Venezuela's significant control. In March 2019, Maduro ordered the transfer of PDVSA's European Office from Lisbon to Moscow. Manuel Salvador Quevedo Fernández, a National Guard Major General who was Minister of Housing and Habitat before being appointed by Maduro as both oil minister and president of PDVSA, announced the completion of the European Office's move that September. A month later, he signed a commercial contract with an Indian corporation. In May 2020, PDVSA on its website advised that, heeding Maduro's directive, it would increase the price of gasoline in Venezuela. It also announced to owners of service stations that, under Maduro's Executive Order 4.090, it could rescind service station licenses—which it promptly did.

Much the same has followed in the United States, where the Guaidó Government holds direct access to PDVSA's U.S. bank accounts, manages (and offered to renegotiate) PDVSA's bond debt, sent PDVSA money earmarked for legal bills, and considers PDVSA's property "Venezuelan assets held abroad." App. 44–46.

True, the Guaidó Government has encouraged PDVSA's Ad Hoc Board to become more independent. But given the Maduro Government's continued extreme control of PDVSA in Venezuela and abroad, and the Guaidó Government's substantial control of PDVSA's American operations, the facts reveal Venezuela's significant economic control of PDVSA through both rival governments.

2. Profits

Not all the *Bancec* factors are complicated inquires, and here, just as we explained in *Crystallex II*,

"[a]s PDVSA's lone shareholder, all profit ultimately runs to the Venezuelan government." 932 F.3d at 148. Profits, we noted, that PDVSA paid back to Venezuela accompanied by taxes and royalties, sometimes at an artificially high rate. *Id.* And the Guaidó Government retains direct access to PDVSA's U.S. bank accounts, one of the assets PDVSA's Ad Hoc Board has regularly characterized as Venezuela's.

3. Management

Venezuelan officials are vital to management of PDVSA and maintain a strong presence in its daily affairs. We explained that "President Maduro appoint[ed] PDVSA's president, directors, vice-presidents, and members of its shareholder council." *Id.* Appointments that included roles for military leaders and high government officials, sharing office space with the Ministry of Petroleum and Mining. *Id.* Even lower-level employees faced threats of termination if they did not attend Maduro's political rallies and vote for his coalition in elections. *See id.* Nothing has changed since 2019, with Maduro calling on PDVSA workers to attack Guaidó, tasking the Minister of Petroleum to restructure PDVSA and attend an OPEC meeting on behalf of both Venezuela and PDVSA, and making political announcements from PDVSA's offices.

Similarly, as the Delaware District Court found, "Mr. Guaidó [is empowered] to appoint and remove an Ad Hoc Board of Directors to exercise rights as PDV Holding's shareholder, including appointing and removing board members to PDV Holding, CITGO, and other affiliates." App. 46–47 (citations omitted).[20]

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[20] Appellants argue the Guaidó Government has not pursued the same corrupt management as its predecessors, a point we need not refute. Because it is control, not corruption, that we evalu-

"PDVSA's Ad Hoc Board acknowledges that it operates at the 'directives' of the Guaidó Government." App. 47. The National Assembly requires PDVSA to obtain prior approval for "national interest" contracts, which PDVSA's Ad Hoc Board has suggested could cover all PDVSA's agreements. App. 49. A theory consistent with PDVSA's practice of sending every contract with foreign parties to the National Assembly for approval. All backed up by the Guaidó Government's domination of PDVSA's legal strategy, including sharing lawyers and directing when and how PDVSA pays its debts.

The parties disagree about the degree of that control, with PDVSA arguing it all falls short of complete day-to-day operational command. But neither this Court nor the Supreme Court has ever held absolute day-to-day control over operations to be necessary or even the touchstone of the alter-ego inquiry. We do not buck that trend, and instead look to all, not one, of the facts. Together, they reveal a high degree of governmental management of PDVSA's affairs.

4. Beneficiaries

PDVSA exists to benefit Venezuela. PDVSA paid Venezuela's administrative fees for Venezuela's arbitration with Crystallex, and Venezuela gave PDVSA a number of mining rights for no consideration. *Crystallex II*, 932 F.3d at 149. Venezuela committed PDVSA to sell oil to Caribbean and Latin American allies at steep discounts to further Venezuela's policies, often with deferred payments to Venezuela, not PDVSA. *See id.* at 147–49. Senior members of the Maduro Regime used PDVSA's aircraft for state pur-

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ate—the means and ways of management, not the ends those actors pursue.

poses, a practice that continued well after the 2019 election.

The Guaidó Government has not taken identical steps, but it still views PDVSA as key to advancing its political goals. The Delaware District Court found that PDVSA's Ad Hoc Board repeatedly described its mission as safeguarding its assets for the country of Venezuela, and that "Mr. Guaidó and his government regularly characterize PDVSA and its related assets, such as CITGO, as assets of the State." App. 50. As Venezuela points out, the Guaidó Government's declarations in the Democracy Transition Statute and Presidential Decree No. 3 have encouraged PDVSA to act economically rather than "on behalf of the government at its own expense." Venezuela Opening Br. 37. But an instrumentality need not harm itself to benefit the sovereign. Together with the actions of PDVSA in Venezuela, this factor is satisfied.

5. Equity

Consider, finally, how Venezuela arrives in this Court. The state owes on judgments but denies we have jurisdiction to allow remedies aimed at PDVSA. All while "PDVSA, and by extension Venezuela, derives significant benefits from the U.S. judicial system." *Crystallex II*, 932 F.3d at 149. PDVSA enjoys the benefits and protections of United States law, including 2020 bonds "backed by the common stock and underlying assets of U.S.-based corporations," with "the U.S. legal system [a]s the backstop that gives substantial assurance to investors who buy PDVSA's debt." *Id.* (internal citations omitted). Observations that still ring true.

Venezuela responds that this rationale would demand an alter-ego finding in every case. That concern is misplaced. Access to the courts of the United States

is more than an incidental benefit for PDVSA and its three Delaware-corporation subsidiaries. And we again note that our analysis checks the entire record, not detached boxes.

That all the *Bancec* factors weigh towards finding an alter-ego relationship does not control our inquiry, but it is more than mere coincidence. It reflects our long running practice of "declin[ing] to adhere blindly to the corporate form where doing so would cause such an injustice." *Bancec*, 462 U.S. at 632, 103 S.Ct. 2591. For those reasons, PDVSA remains the alter ego of Venezuela and lacks sovereign immunity.[21]

IV.

PDVSA and Venezuela ask us to consider an issue beyond the Delaware District Court's denial of sovereign immunity: the attachment of PDVSA's shares in PDVH. But Congress has only given the federal circuit courts jurisdiction over "appeals from all final decisions of the district courts." 28 U.S.C. § 1291. A "final decision" is "one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233, 65 S.Ct. 631, 89 L.Ed. 911 (1945). Often, that means dissatisfied parties must wait rather than appeal, even, as is common, when time is money. "[I]ndeed, 'the possibility that a ruling may be er-

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[21] Even if we were to disregard the lessons we have taken from the history of sovereign immunity and the FSIA and look only to the actions of the Guaidó Government, the result would not change. The District Court found the Guaidó Government's direction and control over PDVSA was analogous to the direction and control of the Maduro Government as identified by this Court in *Crystallex II*. That finding was not clearly erroneous based on the actions of the Guaidó Government we have detailed above.

roneous and may impose additional litigation expense is not sufficient to set aside the finality requirement imposed by Congress.' " *Weber v. McGrogan*, 939 F.3d 232, 236 (3d Cir. 2019) (quoting *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 436, 105 S.Ct. 2757, 86 L.Ed.2d 340 (1985)).

Despite the clarity of 28 U.S.C. § 1291, we have long allowed decisions denying sovereign immunity under the FSIA to be immediately appealed under the "collateral order doctrine." *See Fed. Ins. Co. v. Richard I. Rubin & Co.*, 12 F.3d 1270, 1282 (3d Cir. 1993) (walking through the *Cohen* factors and joining other circuits in "decid[ing] that we have appellate jurisdiction [over denials of sovereign immunity under the FSIA] pursuant to the collateral order doctrine").[22]

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[22] A conclusion reached by every other circuit to consider the question. *See Segni v. Com. Off. of Spain*, 816 F.2d 344, 347 (7th Cir. 1987); *Compania Mexicana De Aviacion, S.A. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 859 F.2d 1354, 1358 (9th Cir. 1988) (per curiam); *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 443 (D.C. Cir. 1990); *Stena Rederi AB v. Comision de Contratos*, 923 F.2d 380, 385 (5th Cir. 1991); *Eckert Int'l, Inc. v. Gov't of Sovereign Democratic Republic of Fiji*, 32 F.3d 77, 79 (4th Cir. 1994); *Honduras Aircraft Registry, Ltd. v. Gov't of Honduras*, 129 F.3d 543, 545 (11th Cir.1997); *Rein v. Socialist People's Libyan Arab Jamahiriya*, 162 F.3d 748, 755–56 (2d Cir. 1998); *Southway v. Cent. Bank of Nigeria*, 198 F.3d 1210, 1214 (10th Cir. 1999); *Ungar v. Palestine Liberation Org.*, 402 F.3d 274, 293 (1st Cir. 2005); *O'Bryan v. Holy See*, 556 F.3d 361, 372 (6th Cir. 2009). The Eighth Circuit does not appear to have directly addressed this point, although in passing seems to agree. *See BP Chems. Ltd. v. Jiangsu SOPO Corp. (Grp.)*, 420 F.3d 810, 818 (8th Cir. 2005).

Under *Cohen*'s test, concluding an appeal of a denial of sovereign immunity is immediately appealable makes sense. A non-final order is reviewable under the collateral order doctrine if it: 1) conclusively determines the disputed issue; 2) resolves an im-

Appellants ask us to take our jurisdiction even farther from the text of § 1291 and consider the propriety of attachment under the Federal Rules using "pendent appellate jurisdiction." But the collateral order doctrine is already an expansion of § 1291, and pendent appellate jurisdiction further "drift[s] away from the statutory instructions Congress has given to control the timing of appellate proceedings." *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 45, 115 S.Ct. 1203, 131 L.Ed.2d 60 (1995). As the Court explained, the "procedure Congress ordered" for adding to "the

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portant issue separate from the merits of the action; and 3) would be effectively unreviewable on appeal from the final judgment. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 105, 130 S.Ct. 599, 175 L.Ed.2d 458 (2009); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949). Denials of sovereign immunity fit the bill. They conclusively determine whether a party is subject to continuing litigation, but are distinct from the merits. And reviewing a denial after a final judgment is of no help to the sovereign. All similar to denials of qualified immunity and Eleventh Amendment immunity the Supreme Court has held are immediately appealable under the collateral order doctrine. *See, e.g., Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985); *Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 141, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993).

Still, concerns remain, and the Supreme Court has "described the conditions for collateral order appeal as stringent." *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868, 114 S.Ct. 1992, 128 L.Ed.2d 842 (1994). The doctrine as announced through *Cohen* is an example of "the displacement of apparently controlling, nonjudicial, primary texts." Mitchel de S.-O.-l'E. Lasser, *"Lit. Theory" Put to the Test: A Comparative Literary Analysis of American Judicial Tests and French Judicial Discourse*, 111 Harv. L. Rev. 689, 702 (1998). And the trend has only become trendier given the "textualization of precedent," the practice of treating judicial opinions like statutes. *See* Peter M. Tiersma, *The Textualization of Precedent*, 82 Notre Dame L. Rev. 1187, 1188 (2007).

list of orders appealable on an interlocutory basis" "is not expansion by court decision, but by rulemaking under § 2072" of the Rules Enabling Act. *Id.* at 48, 115 S.Ct. 1203. Indeed, the unanimous Court declined to "definitively or preemptively settle ... whether or when it may be proper for a court of appeals, with jurisdiction over one ruling, to review, conjunctively, related rulings that are not themselves independently appealable." *Id.* at 50–51, 115 S.Ct. 1203. Meaning the Court "reserved the very *existence* of" pendent appellate jurisdiction. Stephen I. Vladeck, *Pendent Appellate Bootstrapping*, 16 Green Bag 2d 199, 205 (2013).

Heeding that warning, in the years after *Swint*, this Court has exercised pendent appellate jurisdiction in only two narrow circumstances: 1) when an otherwise non-appealable order is "inextricably intertwined" with an appealable order, and 2) when "necessary to ensure meaningful review of the appealable order." *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber and Resin Intermediates, S.A.S.*, 269 F.3d 187, 203 (3d Cir. 2001). Orders are "inextricably intertwined" "only when the appealable issue cannot be resolved without reference to the otherwise unappealable issue." *Reinig v. RBS Citizens, N.A.*, 912 F.3d 115, 130 (3d Cir. 2018) (citations and quotation marks omitted). That "the two orders arise out of the same factual matrix" is insufficient, "even if considering the orders together may be encouraged under considerations of efficiency." *Id.* (citation and quotation marks omitted). The question is whether the appealable order can be "dispose[d] of ... without venturing into otherwise nonreviewable matters." *Id.* at 131 (citation omitted). If so, we "have no need—and therefore no power—to examine the [nonreviewable] order." *Id.* (citation omitted).

Venezuela argues not only that the immunity and attachment issues are "inextricably intertwined," but that they are "coextensive." Venezuela Opening Br. 44. Because the District Court applied the *Bancec* common law alter-ego test to the immunity inquiry, Venezuela says, "sufficient overlap in the facts relevant to both the appealable and nonappealable issues" warrants review of the attachment issue now. Venezuela Opening Br. 44–45 (citation omitted). We disagree. The immunity inquiry used the *Bancec* factors to determine whether a state exercises such extensive control over an instrumentality that it may be considered an "alter ego" of the state. The attachment inquiry invoked *Bancec* to evaluate whether PDVSA's property can be attached to pay out a judgment. Resolution of the immunity issue does not dictate the outcome of the attachment issue. So we will not wade into the attachment waters, mindful that "loosely allowing pendent appellate jurisdiction would encourage parties to parlay ... collateral orders into multi-issue interlocutory appeal tickets." *Swint*, 514 U.S. at 49–50, 115 S.Ct. 1203. Even if we could consider the attachment issue, we would decline to do so in our discretion. *See United States v. Spears*, 859 F.2d 284, 287 (3d Cir. 1988) ("[O]nce we have taken jurisdiction over one issue in a case, we may, in our discretion, consider otherwise nonappealable issues in the case as well, where there is sufficient overlap in the facts relevant to [the appealable and nonappealable] issues to warrant our exercising plenary authority over [the] appeal." (quoting *San Filippo v. United States Tr. Co.*, 737 F.2d 246, 255 (2d Cir. 1984))).

* * *

The District Court did not clearly err in its factual determinations and did not legally err in its application of the *Bancec* factors. For the second time in five

years, we conclude that PDVSA is the alter ego of Venezuela, and we will affirm the District Court's denial of sovereign immunity to PDVSA.

APPENDIX B

Misc. Nos. 19-290, 20-257, 21-46, 21-481

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.

OI EUROPEAN GROUP B.V., Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,
Defendant.

NORTHROP GRUMMAN SHIP SYSTEMS, INC.,
Plaintiff,

v.

THE MINISTRY OF DEFENSE OF THE REPUBLIC
OF VENEZUELA,
Defendant.

ACL1 INVESTMENTS LTD., ACL2 INVESTMENTS
LTD., AND LDO (CAYMAN) XVIII LTD.,
Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,
Defendant.

RUSORO MINING LIMITED,
Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,
Defendant.

FILED March 23, 2023

OPINION

STARK, United States Circuit Judge:

INTRODUCTION

The Court has before it multiple judgment creditors of the Bolivarian Republic of Venezuela ("Venezuela" or "Republic") who are seeking to collect on their judgments through property Venezuela holds in this District. Specifically, Venezuela is the 100% owner of Petróleos de Venezuela, S.A. ("PDVSA"), which in turn owns 100% of PDV Holding, Inc. ("PDVH"), which itself owns 100% of CITGO Holding, Inc., which in turn owns CITGO Petroleum Corp. ("CITGO").

In this Opinion, the Court addresses motions for a writ of attachment *fieri facias* filed by four judgment creditors of Venezuela. OI European Group B.V. ("OIEG") and Northrop Grumman Ship Systems, Inc. (now known as Huntington Ingalls Inc.) ("Huntington") filed motions that are fully briefed and opposed by one or more of Venezuela, PDVSA, PDVH, and/or CITGO (collectively, hereinafter the "Venezuela Parties").[1] The Court conducted an evidentiary hearing

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[1] *See, e.g.*, Misc. No. 19-290 D.I. 2-6, 11-12, 14-15, 18, 20, 21, 23, 25, 27-30, 33, 36, 39-40, 44, 46, 48-52, 57, 64-70, 73-74, 77-82, 86-87, 90, 93, 95-107, 111-13, 115, 117, 119, 121-26; Misc. No. 20-257 D.I. 3-6, 12, 14, 16, 19, 22, 25-29, 31-40, 42, 45-46, 48-49, 51-54, 56, 60-61, 63-65, 67, 69, 71-74.

The Republic of Venezuela has entered an appearance only in one of the four actions under consideration in this Opinion (the *OIEG* Action, *see* Misc. No. 19-290 D.I. 32). PDVSA has intervened in all four actions and has supplied the bulk of the briefing and evidence in opposition to the creditors' motions. For simplicity, the Court refers to all of the Republic, PDVSA, PDVH, and the CITGO entities collectively as the "Venezuela Parties," although it should be understood that: (i) in reality, almost always what the Court attributes to the "Venezuela Parties" is only explicitly advocated by PDVSA; and (ii) the Court's stylistic convention has no impact on its substantive decision (i.e., that PDVSA is the alter ego of Venezuela, a decision grounded in the evidence).

in connection with OIEG's and Huntington's motions, via remote videoconferencing technology, on April 30, 2021. (*See* Misc. No. 19-290 ("*OIEG* Action") D.I. 92; Misc. No. 20-257 ("*Huntington* Action") D.I. 47; *see also OIEG* Action D.I. 92 (April 30, 2021 hearing transcript))

The Court is also addressing similar motions filed by two additional judgment creditors: ACL1 Investments Ltd., ACL2 Investments Ltd., and LDO (Cayman) XVIII Ltd. (collectively, "ACL") and Rusoro Mining Ltd. ("Rusoro"). ACL's and Rusoro's motions are opposed by PDVSA and are fully briefed.[2]

To prevail on their motions, the creditors must prove that, at the pertinent time, PDVSA was and/or is the alter ego of Venezuela. The Court granted a similar motion in August 2018. *See Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, 333 F. Supp. 3d 380, 412 (D. Del. 2018) ("*Crystallex I*"), *aff'd*, 932 F.3d 126 (3d Cir. 2019) ("*Crystallex II*"). In a (still-pending) case filed by Crystallex International, Inc. ("Crystallex"), the Court found that as of August 2018 PDVSA was the alter ego of Venezuela, and issued and served a writ of attachment on PDVSA's shares of PDVH. After that date, developments in Venezuela and the United States complicated the situation. In particular, U.S. sanctions on transactions involving Venezuelan property were expanded and the U.S. government recognized Juan Guaidó, the leader of the Republic's National Assembly, as the legitimate head of the Venezuelan government, instead of Nicolás Maduro, who holds the title of President of the Republic.

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[2] *See, e.g.*, Misc. No. 21-46 ("*ACL* Action") D.I. 2-8, 15-18, 20-32, 35, 37-38, 41-42, 44, 46, 49-52; Misc. No. 21-481 ("*Rusoro* Action") D.I. 2-5, 8, 10, 14, 16-19, 21-22, 24-26, 28, 30, 32-39.

OIEG and Huntington come to this Court with overlapping but distinct theories as to how PDVSA remains Venezuela's alter ego. OIEG emphasizes the Guaidó government's ("Guaidó Government") direction and control over PDVSA's operations in the United States. As an alternative, OIEG argues that the Maduro regime's ("Maduro Regime") control on the ground in Venezuela, including its control over PDVSA's operations there, is an independent and adequate basis for deeming PDVSA the Republic's alter ego. For its part, Huntington also focuses on the Guaidó government, but also addresses the situation on the ground in Venezuela. Creditors ACL and Rusoro similarly rely on both the actions of the Maduro Regime and the Guaidó Government.

Having considered the evidence and arguments, and for the reasons set out in this Opinion, the Court has decided to grant the motions. The moving parties have proven, by a preponderance of the evidence, that PDVSA has been and is the alter ego of Venezuela, at all pertinent times, including from August 2018 through at least October 13, 2022. The record before the Court establishes that the Guaidó Government exercises direction and control over PDVSA in the United States while the Maduro Regime exercises direction and control over PDVSA inside Venezuela. Accordingly, the Court will grant the motions and confer with the parties as to the next steps it should take.

This Opinion proceeds as follows. First, the Court makes findings of fact based on the extensive record created by the parties, principally at and in connection with the April 2021 hearing. These include findings about the relationship between the recognized Guaidó Government and PDVSA in the U.S. and the relationship between the non-recognized Maduro Re-

gime and PDVSA inside Venezuela. The bulk of these findings are entered only with respect to OIEG and Huntington, the creditors who participated in the April 2021 hearing and who expressly agreed that evidence admitted in either of these actions would be part of the record in both actions. After setting out the Court's findings, the Court applies alter-ego law and concludes that the moving parties have proven that PDVSA is the alter ego of Venezuela, both in the U.S. and in Venezuela, at all pertinent times. The Court also separately addresses the motions of ACL and Rusoro, based on the records made in these creditors' respective actions. Finally, the Court addresses various legal arguments the Venezuela Parties make in opposition to the Court's conclusions, determining that none has merit.

I. The Evidentiary Record

1. OIEG moved into evidence Exhibits 1-148 of the joint exhibit list submitted by OIEG (*OIEG* Action D.I. 87) and Huntington (*Huntington* Action D.I. 42). (*See, e.g.*, *Huntington* Action D.I. 47 ("April 2021 Tr.") at 152-53)

2. Without objection (*see id.* at 42-45), the Court admitted all of this evidence. (*See* April 2021 Tr. 42-45, at 152-53)

3. The Court recognizes that certain of the admitted evidence is hearsay and it has factored that characteristic into the probative weight it has given such evidence.

4. The record in the *Huntington* Action and the *OIEG* Action are identical.

5. The record in the *ACL* Action differs from the joint record created in the *OIEG* and *Huntington* Actions and differs from that created in the *Rusoro* Ac-

tion.

6. The record in the *Rusoro* Action differs from the joint record created in the *Huntington* and *OIEG* Actions and differs from that created in the *ACL* Action. Also, the Court did not address the *Rusoro* Action in its March 2, 2022 opinion (*see OIEG* Action D.I. 109) and that opinion was not docketed in the *Rusoro* Action. Because many of the issues disputed by Rusoro and the Venezuela Parties are materially identical (including the arguments made by both sides) to those addressed by the Court in its March 2, 2022 opinion – which considered the *OIEG, Huntington*, and *ACL* Actions – and because the Court's view on these common issues has not changed, the Court hereby adopts and incorporates by reference its March 2, 2022 Opinion (i.e., *OIEG* Action D.I. 109) and particularly its conclusions as to ripeness and the impact of U.S. sanctions on these ongoing proceedings (*see id.* at 9-18).

7. Unless otherwise noted, the Court's findings of fact pertain to all four creditors' actions.

8. The Court makes additional findings of fact in the *ACL* Action in Discussion Parts III & VI and makes additional findings of fact in the *Rusoro* Action in Discussion Parts IV & VII.

II. Background

A. Venezuela And Its State-Run Oil Company

9. Venezuela is home to the "largest proven oil reserves in the world." *Jiménez v. Palacios*, 250 A.3d 814, 822 (Del. Ch. 2019).[3]

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[3] In *Jiménez*, Chancellor McCormack of the Delaware Court of Chancery determined that the Ad Hoc Board of Directors of PDVSA ("Ad Hoc Board" or "Ad Hoc PDVSA") appointed by the

10. "[T]he Venezuelan constitution ... endows the [Republic] with significant control over PDVSA and the oil industry in the country." *Crystallex II*, 932 F.3d at 147.

11. PDVSA was formed as the state oil concern in 1975, pursuant to Venezuela's Nationalization Law. (*OIEG* Action D.I. 50 (February 19, 2021 Declaration of Christopher L. Carter) ("Second Carter Decl.") Exs. 4, 5, 11 ¶ 12; *ACL* Action D.I. 4-7 (November 22, 2021 Declaration of Keane A. Barger) ("Barger Decl.") Ex. 48 ¶¶ 8-14; *Rusoro* Action D.I. 3 (Feb. 9, 2022 Declaration of Charlene C. Sun) ("Sun Decl.") Exs. 8, 9, 10 ¶¶ 8-14)

12. PDVSA's incorporation in 1975 was as a sociedad anónima intended to have its own legal personality distinct from its sole shareholder, the Bolivarian Republic of Venezuela. (*OIEG* Action D.I. 66 (April 2, 2021 Declaration of Allan R. Brewer-Carías) ("Brewer-Carías Decl.") ¶¶ 20-22; Barger Decl. Ex. 55 ¶ 4; Sun Decl. Ex. 14 ¶ 4)

13. Until approximately 2003, PDVSA operated as an independent economically-driven company, without political interference from Venezuela. (Brewer-Carías Decl. ¶¶ 3, 23; *see also Crystallex I*, 333 F. Supp. 3d at 412 (discussing Declaration of Dr. Roberto Rigobon submitted by Crystallex))

14. "PDVSA's Articles of Incorporation require that it adhere to policies established by the National Executive." *Crystallex I*, 333 F. Supp. 3d at 408.

Guaidó government constituted the legitimate board, in the view of the United States, and, therefore, our nation's courts. *See Jiménez*, 250 A.3d at 820. In this Opinion, the Court is taking judicial notice of facts found by the Chancellor; all of the facts for which *Jimenez* is cited are undisputed in the instant actions.

15. Pursuant to its bylaws, "PDVSA plans, coordinates and controls the exploration, exploitation, transportation, manufacturing, refining, storage, commercialization, and other activities of its subsidiaries regarding crude oil and other hydrocarbons both in the territory of the Republic and abroad." (Second Carter Decl. Ex. 12 ¶ 5; Barger Decl. Ex. 55 ¶ 5; Sun Decl. Ex. 14 ¶ 5)

16. PDVSA is, thus, a state-owned and state-controlled commercial enterprise directed to "comply with and implement the policy on hydrocarbons enacted by the National Executive Branch." (Second Carter Decl. Exs. 6, 7, 11 ¶ 14; Barger Decl. Ex. 48 ¶ 12; Sun Decl. Exs. 11, 10 ¶ 12)

17. PDVSA owns 100% of the shares of PDV Holding, Inc., a Delaware corporation, which in turn owns 100% of the shares of CITGO Holding, Inc., also a Delaware corporation. *See Jiménez*, 250 A.3d at 822.

18. CITGO Holding, Inc. owns 100% of the shares of CITGO Petroleum Corporation ("CITGO Petroleum"), a Delaware corporation headquartered in Texas. *See Jiménez*, 250 A.3d at 822.

19. The PDVH shares, whether controlled by the board appointed by the Maduro Regime or the Ad Hoc Board appointed by the Guaidó Government, are used for a commercial purpose because, through them, PDVSA manages its ownership of PDVH. *See Crystallex I*, 333 F. Supp. 3d at 417-18.

B. OI European Group B.V.[4]

20. Judgment creditor OI European Group B.V. is a Netherlands-incorporated company and is an indi-

[4] The findings of fact in this subsection only apply in the *OIEG* Action.

rect, wholly-owned subsidiary of O-I Glass, Inc., a Delaware corporation headquartered in Perrysburg, Ohio. (*OIEG* Action D.I. 121 ¶ 1)

21. OIEG holds a judgment entered on an arbitral award against the Republic. The underlying dispute between OIEG and Venezuela arises out of the expropriation, by the regime of former President Hugo Chávez, of the assets of OIEG's Venezuelan subsidiaries, which manufactured glass containers for food companies in Venezuela. (*Id.* D.I. 67 (April 2, 2021 Declaration of Kevin A. Meehan) ("Meehan Decl.") Ex. 1 ¶¶ 86-88, 108) Those assets were transferred to Venezuela's Ministry of Science, Technology and Intermediate Industries ("Ministry of Science"). (Meehan Decl. ¶¶ 111-13) The expropriated assets were eventually transferred to Venezolana del Vidrio, C.A., a company owned by the Ministry of Science. (Meehan Decl. ¶ 90)

22. After OIEG's assets were confiscated in 2010, OIEG commenced arbitration proceedings against Venezuela with the International Centre for Settlement of Investment Disputes ("ICSID") on September 7, 2011. (Second Carter Decl. Ex. 3 at 1)

23. The ICSID tribunal issued an award (the "OIEG Award") on March 10, 2015, finding that Venezuela expropriated OIEG's interests and was required to pay OIEG $372,461,982 for the expropriation and $5,750,000 in costs and expenses, plus interest. (Second Carter Decl. Ex. 3 at 1)

24. Venezuela sought annulment of the OIEG Award. On December 6, 2018, the ICSID annulment panel reaffirmed the OIEG Award and awarded OIEG additional damages. (Second Carter Decl. Ex. 3 at 1)

25. On May 21, 2019, the United States District

Court for the District of Columbia (the "DC Court") granted OIEG's motion for summary judgment, confirming the OIEG Award. The DC Court entered judgment in favor of OIEG, consisting of:

a. $372,461,982 in principal amount, plus interest from October 26, 2010 through May 21, 2019, calculated at a LIBOR interest rate for one-year deposits in U.S. dollars, plus a margin of 4%, with annual compounding of accrued interest;

b. $5,750,000 in costs and expenses relating to the original arbitration proceeding, plus interest from March 10, 2015 through May 21, 2019, calculated at a LIBOR interest rate for one-year deposits in U.S. dollars, plus a margin of 4%, with annual compounding of accrued interest;

c. $3,864,811.05 in costs and expenses relating to the annulment proceeding, plus interest from December 6, 2018 through May 21, 2019, calculated at a LIBOR interest rate for one-year deposits in U.S. dollars, plus a margin of 4%, with annual compounding of accrued interest; and

d. Post-judgment interest on the total amount, calculated at the rate set forth in 28 U.S.C. § 1961, from May 21, 2019 until full payment. (Second Carter Decl. Exs. 1, 2)

26. On November 1, 2019, the DC Court granted OIEG's motion for relief pursuant to 28 U.S.C. §§ 1963 and 1610(c), authorizing OIEG to pursue formal enforcement remedies. (Second Carter Decl. Ex. 3)

27. On November 4, 2019, OIEG registered its judgment with this Court pursuant to 28 U.S.C. § 1963. (*OIEG* Action D.I. 1)

28. On that same date, OIEG moved for a writ of attachment fieri facias against the shares of PDVH

held by judgment debtor Venezuela's purported alter ego, PDVSA. (*Id.* D.I. 2)

29. The Court denied OIEG's motion, which was based on collateral estoppel, explaining:

> collateral estoppel does not apply, [and] any creditor seeking to place itself in a situation similar to Crystallex will have to prove that PDVSA is and/or was the Republic's alter ego on whatever pertinent and applicable date. In attempting to meet this burden, any creditor may be able to find support (perhaps strong support) in the record created in the Crystallex [Action] ... and the finding reached (and affirmed) there.

Crystallex Int'l Corp. v. PDV Holding Inc., 2019 WL 6785504, at *8 (D. Del. Dec. 12, 2019).

30. On January 15, 2021, the Court denied OIEG's motion for reconsideration. (*OIEG* Action D.I. 27, 43) On February 19, 2021, OIEG filed its renewed motion for a writ of attachment. (*Id.* D.I. 48)

31. As this Court has already held (*see OIEG* Action D.I. 109 at 22 n. 18), the DC Court determined that, under 28 U.S.C. § 1610(c), a reasonable period of time has elapsed following the entry of judgment in favor of OIEG. (*See also id.* D.I. 4 (Nov. 4, 2019 Declaration of Christopher L. Carter) ("First Carter Decl.") Ex. 4 at 3-8; *id.* D.I. 49 at 22; Second Carter Decl. Ex. 3)

C. Huntington[5]

32. Judgment creditor Huntington holds a judgment entered on an arbitration award against Venezuela's Ministry of Defense, part of the Venezuelan

[5] The findings of fact in this subsection only apply in the *Huntington* Action.

state. (*Huntington* Action D.I. 27 (Feb. 19, 2021 Declaration of Alexander A. Yanos) ("First Yanos Decl.") Ex. 3 at 1, 7; *see also Northrop Grumman Ship Sys., Inc. v. Ministry of Def. of the Bolivarian Republic of Venez.*, 2003 WL 27383249, at *1 (S.D. Miss. April 16, 2003) ("The Defendant Ministry of Defense of the Republic of Venezuela (herein, "The Ministry") is a foreign state as defined by the Foreign Sovereign Immunities Act."))

33. Specifically, on February 19, 2018, an arbitral tribunal issued an award against the Republic and in favor of Huntington in the net amount of $128,862,457.27, not including post-award interest. (First Yanos Decl. Ex. 3 at 7)

34. The underlying dispute leading to the arbitration award arose out of the Ministry of Defense's breach of a 1997 contract for Huntington to repair two warships. *See Northrop Grumman Ship Sys. v. Ministry of Def. of the Republic of Venez.*, 2020 WL 1584378, at *1 (S.D. Miss. Mar. 31, 2020).

35. A federal district court in Mississippi confirmed the award and entered judgment for Huntington on June 4, 2020. (*Huntington* Action D.I. 1 Ex. 1; *see also* April 2021 Tr. at 13) Judgment was entered against the Ministry of Defense of the Republic of Venezuela for $137,977,646.43, which included pre-award interest and costs and fees. (*See Huntington* Action D.I. 1 Ex. 1 at 2) Post-award interest accrues pursuant to 28 U.S.C. § 1961 starting from the date of the Mississippi district court's opinion, which was March 31, 2020. (*Id.* D.I. 1 Ex. 1 at 2)

36. Huntington registered the Mississippi district court's judgment in this District on July 31, 2020. (*Id.* D.I. 1)

37. Huntington filed a motion for a writ of at-

tachment on September 15, 2020 and an amended motion for a writ of attachment on February 19, 2021. (*Id.* D.I. 3, 25)

38. The Court has already held that, under 28 U.S.C. § 1610(c), a reasonable period of time has elapsed following the entry of judgment in favor of Huntington. (*Id.* D.I. 59 at 2)

D. ACL[6]

39. ACL1 Investments Ltd., ACL2 Investments Ltd., and LDO (Cayman) XVIII Ltd. are and at all relevant times have been beneficial owners of bonds issued by the Bolivarian Republic of Venezuela. (Barger Decl. Ex. 37 at 12)

40. The underlying dispute arose out of the Republic's default on certain bonds issued by the Republic. (*ACL* Action D.I. 50 (PDVSA Proposed Findings of Fact) ¶ 9)

41. PDVSA is not an obligor on the bonds and had no involvement in the Republic's issuance and default on the bonds. (*Id.* D.I. 50 ¶ 9)

42. On December 7, 2020, the United States District Court for the Southern District of New York entered judgment in favor of ACL and against Venezuela in an amount totaling $118,186,251.24. (*ACL* Action D.I. 3 at 10)

43. ACL and the Republic stipulated that "interest on a federal judgment would run at the rate provided for in 28 U.S.C. § 1961." (*ACL1 Investments Ltd. v. Bolivarian Republic of Venez.*, No. 19-cv-09014 D.I. 51 (S.D.N.Y. Dec. 4, 2020) (Stipulation) at 2, D.I. 51 at 12 (final judgment stating that parties are "bound

[6] The findings of fact in this subsection only apply in the *ACL* Action.

by the terms of" D.I. 51))

44. On February 5, 2021, ACL registered its judgment in this District pursuant to 28 U.S.C. § 1963. (*ACL* Action D.I. 1)

45. ACL filed its attachment motion on November 22, 2021. (*Id.* D.I. 2)

46. The Court has already held that, under 28 U.S.C. § 1610(c), a reasonable period of time has elapsed following the entry of judgment in favor of ACL. (*Id.* D.I. 34 at 2)

E. Rusoro[7]

47. Judgment creditor Rusoro is a Canadian gold mining company listed on the Toronto Stock Exchange. *See Rusoro Mining Ltd. v. Bolivarian Republic of Venez.*, 300 F. Supp. 3d 137, 141-42 (D.D.C. 2018).

48. Rusoro holds a judgment on an arbitral award against the Republic. The underlying dispute arises out of the Chávez regime's expropriation of Rusoro's interests in mining concessions in Venezuela. (*Rusoro* Action D.I. 34 (PDVSA Proposed Findings of Fact) ¶ 7)

49. On July 17, 2012, Rusoro commenced arbitration proceedings against Venezuela pursuant to the Arbitration (Additional Facility) Rules of the ICSID and the July 1, 1996 Agreement between the Government of Canada and the Government of the Republic of Venezuela for the Promotion and Protection of Investments. (Sun Decl. ¶ 3)

50. On August 22, 2016, the arbitration tribunal

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[7] The findings of fact in this subsection only apply in the *Rusoro* Action.

issued a final award in favor of Rusoro, finding that Venezuela had unlawfully expropriated Rusoro's mining portfolio without compensation and ordering Venezuela to pay Rusoro $966.5 million in damages, plus interest. (Sun Decl. ¶ 4)

51. On March 2, 2018, the DC Court recognized the arbitration award and entered judgment against Venezuela in the amount of $967,777,002.00, plus (i) interest as provided by the arbitral tribunal; (ii) post-judgment interest, pursuant to 28 U.S.C. § 1961, accruing through the date of payment; and (iii) costs as provided by the arbitral tribunal, in the amount of $3,302,500.00. (Sun Decl. ¶ 5; *see also Rusoro Mining Ltd. v. Bolivarian Republic of Venez.*, 300 F.Supp.3d 137 (D.D.C. 2018) D.I. 22)

52. On November 4, 2021, Rusoro registered its judgment in this District pursuant to 28 U.S.C. § 1963. (*Rusoro* Action D.I. 1)

53. Rusoro filed its attachment motion on February 9, 2022. (*Id.* D.I. 2)

54. The Court has already held that, under 28 U.S.C. § 1610(c), a reasonable period of time has elapsed following the entry of judgment in favor of Rusoro. (*Id.* D.I. 20 ¶ 2)

III. Findings Made In *Crystallex I*

55. The Court previously found in *Crystallex I* that, as of August 9, 2018, PDVSA was the alter ego of Venezuela. *See* 333 F. Supp. 3d at 406. The Court further found that, as of that date, PDVSA's shares of PDVH were subject to attachment by Crystallex, a judgment creditor of Venezuela. *See id.* at 415.

56. At the April 2021 hearing, Huntington, OIEG, and PDVSA recognized that the Court's findings in *Crystallex I* are relevant to the analysis the Court is

now undertaking with respect to additional creditors. (*See* April 2021 Tr. at 12 (Huntington framing "main question" as "whether the U.S. government's recognition of Juan Guaidó ... means that PDVSA is no longer Venezuela's alter ego"), 27 (OIEG suggesting August 2018 findings are "the starting point"), 229-31 (PDVSA suggesting similarly))

57. ACL, too, has argued that the Court's *Crystallex I* factual findings are relevant to its case. (*See ACL* Action D.I. 3 at 3-5 (ACL "summariz[ing] the facts central to *Crystallex*" because of the general relevance of historical facts under *Crystallex*))

58. Rusoro has also focused on the Court's *Crystallex I* factual findings as they relate to its case. (*See Rusoro* Action D.I. 4 Ex. 1 at 9-12; *id.* D.I. 4 Ex. 1 at 12 ("All of the factors that informed the *Crystallex I* court's 2018 decision remain true today."))

59. The Court's conclusions in *Crystallex I* were based on, among others, the following specific findings of fact:

a. Venezuela used PDVSA's property as its own, *see Crystallex I*, 333 F. Supp. 3d at 406;

b. Venezuela ignored PDVSA's separate status, *see id.* at 406-07;

c. Venezuela deprived PDVSA of independence from close political control, *see id.* at 407-08;

d. Venezuela required PDVSA to obtain government approvals for ordinary business decisions, *see id.* at 408-09; and

e. Venezuela issued policies causing PDVSA to act directly on behalf of Venezuela, *see id.* at 409-10.

60. The United States Court of Appeals for the Third Circuit affirmed this Court's holding, approv-

ingly citing these same factual findings. *See Crystallex II*, 932 F.3d at 146-49. The Third Circuit added: "Indeed, if the relationship between Venezuela and PDVSA cannot satisfy the Supreme Court's extensive-control requirement, we know nothing that can." *Id.* at 152.

IV. Venezuela: One Country With Two Governments

61. In 2013, following the death of former President Hugo Chávez, Nicolás Maduro became Venezuela's president. *See Jiménez*, 250 A.3d at 821.

62. In May 2017, when political opponents of Maduro gained control of Venezuela's legislative body (the National Assembly), the Maduro Regime formed a new legislative body, the National Constituent Assembly, granting itself the power to legislate and to put opposition leaders on trial. *See id.*

63. In August 2018, when the Court ruled in *Crystallex I*, Maduro was both de jure and de facto President of Venezuela.

64. Venezuela held a presidential election in 2018, during which Maduro disqualified his opposition and claimed to win reelection. *See Jiménez*, 250 A.3d at 821.

65. On January 10, 2019, after the disputed election, Maduro was sworn in for a second term as President of Venezuela. *See id.*

66. On January 15, 2019, Venezuela's National Assembly rejected Madura's claim for a second presidential term. *See id.*

67. On January 23, 2019, the National Assembly named the opposition leader, Juan Guaidó, as "Interim President" of Venezuela. *See id.*

68. Also on January 23, 2019, U.S. President Donald J. Trump issued a statement that provided, in part, "Today, I am officially recognizing the President of the Venezuelan National Assembly, Juan Guaidó, as the Interim President of Venezuela." (Second Carter Decl. Ex. 9; Barger Decl. Ex. 1; Sun Decl. Ex. 1; *see also* Brewer-Carías Decl. ¶ 27 & n.19)

69. The U.S. government, acting through its Executive Branch, has expressly declared its non-recognition of the Maduro Regime, stating: "The United States does not recognize the Maduro regime as the government of Venezuela," adding: "the United States does not consider former president Nicolas Maduro to have the legal authority" to act on behalf of the Republic. (Meehan Decl. Ex. 3) The U.S. has also "refused to recognize Maduro as Venezuela's head of state." (Meehan Decl. Ex. 2 at 2)

70. Despite the official recognition of the Guaidó Government, and official non-recognition of the Maduro Regime, the United States has acknowledged that the Maduro Regime continues to exercise de facto power over Venezuela, stating for example: "We continue to hold the illegitimate Maduro regime directly responsible for any threats it may pose to the safety of the Venezuelan people." (Second Carter Decl. Ex. 9; Barger Decl. Ex. 1; Sun Decl. Ex. 1; *see also* April 2021 Tr. at 146)

71. The United Nations recognized Venezuelan ambassadors appointed by the Maduro Regime before August 2018 and has continued to do so. (Second Carter Decl. Ex. 10 at 6; Sun Decl. Ex. 2)

72. The European Union, the Lima Group, and Canada recognized Mr. Guaidó as Venezuela's official representative in 2019, but ceased to do so in January or February 2021. (*OIEG* Action D.I. 51 (Feb. 19,

2021 Declaration of Barbara Miranda) ("First Miranda Decl.") Ex. 1); Sun Decl. Ex. 4)

V. The Guaidó Government Controls PDVSA In The United States

73. In March 2021, in criminal proceedings against Jose Luis de Jongh Atencio, a former CITGO Petroleum Corporation ("CITGO") employee, the Executive Branch of the U.S. government told the U.S. District Court for the Southern District of Texas: "PDVSA's U.S. subsidiaries, including Citgo, are controlled by the ad hoc Administrative Board of PDVSA, appointed by President Guaidó." *United States v. Jose Luis De Jongh Atencio*, No. 20-cr-00305-S-1, D.I. 80 at 8 (U.S. Government Trial Brief) (S.D. Tex. Mar. 16, 2021).

74. The Maduro Regime does not control any property of PDVSA in the United States, including the PDVH shares. *See Jiménez*, 250 A.3d at 825-26; *OIEG* Action D.I. 68 (April 1, 2021 Declaration of Horacio Francisco Medina Herrera) ("Medina Decl.") ¶ 10; Medina Decl. Ex. A (June 17, 2020 Declaration of Luis A. Pacheco) ("Pacheco Decl.") ¶¶ 11-12.[8]

75. The Maduro Regime has not appointed a single member of PDVSA's Ad Hoc Board or any of the directors of PDVSA's U.S. subsidiaries. *See Jiménez*, 250 A.3d at 825-26.

76. Neither the Maduro Regime nor anyone affiliated with the Maduro Regime has access to any as-

[8] PDVSA also filed the Medina and Pacheco Declarations in the *ACL* Action (D.I. 23-38 Exs. 1-2) but not in the *Rusoro* Action. Hence, the Court will sustain Rusoro's objection to reliance on these Declarations in the *Rusoro* Action (*see* D.I. 36 at 1-2), although this ruling has no impact on any substantive issue in dispute.

sets, funds, or information held by PDVSA in the U.S. or its U.S. subsidiaries. (Medina Decl. ¶¶ 6, 10; Pacheco Decl. ¶ 11)[9]

VI. The Guaidó Government's Direction And Control Over PDVSA In The U.S. Is Analogous To The Direction And Control The Court Found Maduro Exercised In August 2018[10]

77. As detailed below, the nature of the relationship between the Republic and PDVSA has not materially changed in the time after the Court made its findings of fact in *Crystallex I* in August 2018, notwithstanding the U.S. recognition of the Guaidó Government in January 2019.[11]

A. Level of economic control by the Guaidó Government

78. The Guaidó Government maintains significant

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[9] This finding of fact does not apply in the *Rusoro* Action.

[10] The findings of fact in this Part apply only in the *OIEG* and *Huntington* Actions.

[11] The Court organizes its findings based on the factors identified by the Supreme Court in its recent decision in *Rubin v. Islamic Republic of Iran*, —— U.S. ——, 138 S.Ct. 816, 823, —— L.Ed.2d —— (2018), which is the same formulation of the alter ego factors the Third Circuit applied in *Crystallex II*, 932 F.3d at 141 n.8. This Court in *Crystallex I* had, instead, applied the slightly different formulation the Supreme Court had set out in *First National City Bank v. Banco Para El Comercio Exterior de Cuba* ("*Bancec*"), 462 U.S. 611, 624-27, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983). Were the Court instead to apply the *Bancec* articulation of relevant considerations in this Opinion, the analysis would not materially change. Moreover, as will become evident, the factors the Court is using are not mutually exclusive but have some overlap; thus, at least some of the findings of fact could reasonably be listed under any of multiple factors. The Court's specific placement of the facts has little, if any, impact on its overall conclusion.

control over PDVSA in the U.S., due in part to the Venezuelan constitution. *See Crystallex II*, 932 F.3d at 147 ("[T]he Venezuelan constitution ... endows the State with significant control over PDVSA and the oil industry in the country.").

79. "Article 12 [of the Venezuela constitution] provides hydrocarbon deposits within the territory of the state are the property of the Republic." *Crystallex II*, 932 F.3d at 147; *see also* Sun Decl. Ex. 6 (Venezuela constitution's Article 12 and its certified English translation).

80. "Article 302 reiterates 'the state reserves to itself, through the pertinent organic law, and for reasons of national convenience, petroleum activity.' " *Crystallex II*, 932 F.3d at 147 (quoting Venezuelan constitution); *see also* Sun Decl. Ex. 6 (Venezuelan constitution's article 302 and its certified English translation).

81. "Article 303 addresses the state's control over PDVSA specifically: 'For reasons of economic and political sovereignty and national strategy, the State shall retain all shares in Petróleos de Venezuela, S.A.' " *Crystallex II*, 932 F.3d at 147 (quoting Venezuelan constitution); *see also* Sun Decl. Ex. 6 (Venezuelan constitution's article 303 and its certified English translation).

82. The Guaidó Government has continued to assert Venezuela's economic control over PDVSA and PDVSA's assets (and subsidiaries) in the U.S. For instance, Article 34 of the Transition Statute (more specifically identified below) provides: "[T]he business of PDV Holding, Inc. and its subsidiaries shall follow commercial efficiency principles, subject only to the control and accountability processes exercised by the National Assembly, and other applicable control

mechanisms." (Second Carter Decl. Ex. 23 ¶ 12; *see also Tidewater v. Bolivarian Republic of Venez.*, No. 19-mc-0079 (D. Del. June 1, 2020) D.I. 15 (Declaration of Jose Ignacio Hernandez))

83. To fund itself, the Guaidó Government has drawn directly from PDVSA commercial subsidiaries in the United States, bypassing PDVSA's corporate right to dividends. (First Miranda Decl. Exs. 37, 38 at 4 ("[T]he Trump administration gave the Venezuelan opposition access to U.S. bank accounts containing billions belonging to the state-owned oil company, PDVSA"); *Huntington* Action D.I. 48 (May 5, 2021 Declaration of Alexander A. Yanos) ("Fifth Yanos Decl.") Ex. 124 at 3; April 2021 Tr. at 22, 161)

84. In April 2020, the Guaidó Government tapped PDVSA and CITGO funds located in the United States to fund its legal fees and also to fund the National Assembly itself. (Fifth Yanos Decl. Ex. 3; *Huntington* Action D.I. 28 (February 19, 2021 Expert Report of Manuel A. Gómez) ("Gómez Report") ¶ 22 ("PDVSA funds have also been directed to be used in the legal defense of Venezuela in foreign and international proceedings."))[12]

85. The Guaidó Government has treated the liabilities of Venezuela and PDVSA as one, specifically indicating that it intends to treat PDVSA's bond debt interchangeably with Venezuela's bond debt in an

[12] PDVSA cites to the Gómez Report in all four actions before the Court, although it was never filed in the *ACL* Action. ACL does not appear to object to its consideration in connection with its motion. As the Court only relies on the Gómez Report as *support* for the creditors, the Court deems it appropriate to consider this document even in connection with the *ACL* Action. That said, were the Court not to consider the Gómez Report, no finding or conclusion would differ.

eventual restructuring, just as President Maduro had previously declared. *Compare Crystallex II*, 932 F.3d at 147-48 (noting that in 2017 President Maduro decreed that "Venezuela would restructure the external debt of both Venezuela and PDVSA"), *with* Second Carter Decl. Ex. 8 at 2 (Mr. Guaidó promising "no different treatment shall be accorded to eligible ... claims as a result of ... the identity of the public sector obligor (the Republic, PDVSA or another public sector entity")).

86. In late 2019, the National Assembly (which supports Mr. Guaidó) declared PDVSA bonds to be void and illegally issued. *See Petróleos de Venez. S.A. v. MUFG Union Bank, N.A.*, 495 F. Supp. 3d 257, 266-67 (S.D.N.Y. 2020).

87. On October 1, 2019, the National Assembly executed the "Agreement that Authorized the Use of Resources of Petróleos De Venezuela, S.A. (PDVSA) to Defend Its Assets Abroad" ("Agreement on PDVSA Resources"). (*Huntington* Action D.I. 45 (April 29, 2021 Declaration of Alexander A. Yanos) ("Fourth Yanos Decl.") Ex. 14; *see also* April 2021 Tr. at 89) The Agreement on PDVSA Resources does not separate PDVSA's legal decisions from the Republic's control.

88. The Agreement on PDVSA Resources requires PDVSA to obtain prior authorization for certain transactions from the Permanent Finance and Economic Development Commission of the National Assembly, which in turn required regular updates from the Venezuelan Special Attorney's Office. (Fourth Yanos Decl. Ex. 14 at 3-4; April 2021 Tr. at 89)

89. Reflecting its understanding that the Republic should exercise economic control over PDVSA's transactions, the Guaidó Government objected to the

Maduro Regime's sale of PDVSA's stake in a Swedish refinery, Nynas AB, by noting that the National Assembly's energy committee considered the deal null "as it was not approved by congress." (First Miranda Decl. Ex. 25 at 1; *see also* Fifth Yanos Decl. Ex. 1)

90. On November 19, 2019, the National Assembly executed an "Agreement that Authorized the Creation of the Special Litigation Fund" ("Litigation Fund Agreement"), which established a "Special Litigation Fund" consisting of resources found in bank accounts abroad in favor of, among others, the State (i.e., the Republic of Venezuela), the Central Bank of Venezuela, and PDVSA. (Fourth Yanos Decl. Ex. 16)

91. Pursuant to the express terms of the Litigation Fund Agreement, the Republic considers PDVSA and its assets as "Venezuelan assets held abroad" and effectively requires PDVSA to seek approval from the Republic to spend its own resources. (Fourth Yanos Decl. Ex. 16)

92. All of the funds established by the Litigation Fund Agreement are to be overseen by a "technical commission" appointed by the National Assembly. (*Id.*)

B. Whether PDVSA's profits go to the Guaidó Government

93. "As PDVSA's lone shareholder, all profit ultimately runs to the Venezuelan government." *Crystallex II*, 932 F.3d at 148.

94. PDVSA's Ad Hoc Board's Twitter feed refers to PDVSA's assets as assets of Venezuela. (First Miranda Decl. Exs. 29, 30, 31; *see also OIEG* Action D.I. 90 (April 29, 2021 Supplemental Declaration of Barbara Miranda) ("Fourth Miranda Decl.") Exs. 12, 13, 14 ("[CITGO's] value and potential is incalculable, we

must recover it and put it at the service of Venezuelans.”))

C. Degree to which the Guaidó Government manages PDVSA or has a hand in PDVSA’s daily affairs

95. On February 5, 2019, the National Assembly approved and adopted a Statute to Govern a Transition to Democracy to Reestablish the Validity of the Constitution of the Republic of Venezuela (the “Transition Statute”). *Jiménez*, 250 A.3d at 824. The Transition Statute “specifically empowered Guaidó to ‘appoint an ad hoc Managing Board’ of PDVSA ‘to exercise PDVSA’s rights as a shareholder of PDV Holding.’ “ *Id.* at 825.

96. Article 34 of the Transition Statute bypasses PDVSA’s ordinary corporate governance by empowering Mr. Guaidó to appoint and remove an Ad Hoc Board of Directors to exercise rights as PDV Holding’s shareholder, including appointing and removing board members to PDV Holding, CITGO, and other affiliates. (*See* April 2021 Tr. at 82 (Ad Hoc Board head, Medina, acknowledging that Mr. Guaidó may remove him from his position); *OIEG* Action D.I. 18 (Nov. 18, 2019 Declaration of Joseph E. Neuhaus) Ex. A; *see also* Gómez Report ¶¶ 18, 21)

97. Since February 2019, PDVSA’s Ad Hoc Board, appointed by the Guaidó Government, has exercised PDVSA’s shareholder rights to appoint PDVH’s directors; PDVH’s directors have, in turn, exercised PDVH’s shareholder rights to appoint CITGO Holding’s directors; and CITGO Holding’s directors have, in turn, exercised CITGO Holding’s shareholder rights to appoint CITGO Petroleum’s directors. (Medina Decl. ¶ 4(d); Brewer-Carías Decl. Ex. B ¶ 16; *Jiménez*, 250 A.3d at 825-26)

98. PDVSA's Ad Hoc Board acknowledges that it operates at the "directives" of the Guaidó Government. (Fourth Yanos Decl. Ex. 21 ("Protecting the CITGO assets is of paramount importance on the road to recovery of the Venezuela and its oil industry and is one of the primary directives given by interim President Juan Guaidó to the PDVSA ad hoc Board.")))

99. Under the Transition Statute, the National Assembly approves contracts, coordinates and approves the funding of PDVSA's legal strategies, and approves PDVSA's appointment of affiliate directors. (*Huntington* Action D.I. 38 (April 16, 2021 Declaration of Alexander A. Yanos) ("Second Yanos Decl.") Ex. 2 at 15; Fourth Yanos Decl. Ex. 12 at 3 (requiring National Assembly's "prior approval" of appointments for Ad Hoc Board and for "the directors of its affiliate"))

100. Venezuela's legal framework requires that every PDVSA contract with a foreign national must be approved by the legislature consistent with Article 36 of the Transition Statute. (Gómez Report ¶ 22)

101. Mr. Medina, then chairman of PDVSA's Ad Hoc Board, acknowledged that PDVSA always fulfills its obligation to permit the National Assembly to review and approve any contract signed by PDVSA with a foreign party. (*See* April 2021 Tr. at 85-86)

102. On April 9, 2019, the National Assembly enacted the "Accord to Expand the Powers Vested and the Number of Ad-Hoc Board Members of PDVSA" ("Accord") that further expanded Mr. Guaidó's control over PDVSA by authorizing him to act by special decree and by suspending all rights and authorities otherwise vested in the Ad Hoc Board, the shareholders' meeting, and the Presidency of PDVSA and its

affiliates. (Fourth Yanos Decl. Ex. 12; Gómez Report ¶ 20)

103. The Accord also suspended any functions given to the Minister of Hydrocarbons and any other government official, branch or agency related to PDVSA, which had existed by or was given any functions after January 10, 2019, replacing the previous legal framework for PDVSA's governance with "total control" of PDVSA by the Guaidó Government. (First Yanos Decl. Ex. 17)

104. The Accord also affirmed that PDVSA's legal strategy will be executed only in coordination with the Special Attorney appointed by Mr. Guaidó. (Fourth Yanos Decl. Ex. 12 at 4) ("[PDVSA], in coordination with the Special Attorney appointed by the President of the Republic, will carry out the legal representation of [Ad Hoc PDVSA] and its affiliate companies abroad.")

105. Ad Hoc PDVSA's management, as appointed by Mr. Guaidó, is subservient to the State. Louis Pacheco, then-Chairman of PDVSA's Ad Hoc Board, stated in a 2020 interview that the Ad Hoc Board works toward "the main objective" of establishing the Guaidó Government's effective control over Venezuela. (Second Yanos Decl. Ex. 4 at 7)

106. The corporate enterprise PDVSA – its actual revenue-generating assets, employees, facilities, and contracts – remains as firmly controlled by the State as it ever was. (Gómez Report ¶ 22)

107. Venezuela has admitted that the Guaidó Government has the right to review "national interest" contracts, that is, those contracts entered into by PDVSA that implicate the national public interest. (*Huntington* Action D.I. 74 ¶ 10) In litigation seeking to invalidate the 2020 CITGO bonds, the Ad Hoc

Board argued that "any" PDVSA contract is "a public interest contract" subject to National Assembly approval. (*See Petróleos De Venez. S.A. v. MUFG Union Bank, N.A.*, No. 1:19-cv-10023, 2020 WL 12904329 (S.D.N.Y. June 15, 2020) D.I. 117 (PDVSA Memorandum of Law in Support of Motion for Summary Judgment) at 30 n.84; April 2021 Tr. at 18, 101-103); *see also Petróleos de Venez. S.A. v. MUFG Union Bank, N.A.*, 495 F. Supp. 3d 257, 266-68 (S.D.N.Y. 2020) (Guaidó Government contending that every PDVSA contract with any foreign national, including presumably every oil sale to foreign national, must be approved by legislature))

108. PDVSA's litigation and negotiation strategy over the bonds, which is based on leveraging CITGO, were formulated at the direction of the Republic. (Second Yanos Decl. Ex. 4 at 6) (Pacheco stated in interview that Ad Hoc Board "follow[ed] the decisions that the National Assembly ... made")

109. Ad Hoc PDVSA's argument in the bond litigation, as crafted by the State, was that the bonds leveraging CITGO were invalid *ab initio* because they were never approved by the National Assembly in the first place. (First Yanos Decl. Ex. 16 at 29-30; April 2021 Tr. at 101-03)

110. Venezuela and Ad Hoc PDVSA have used the same lawyers. For example, Ad Hoc PDVSA's counsel in the *Huntington* Action represented Venezuela in two proceedings before the DC Court. *See, e.g.*, *Koch Minerals Sarl v. Bolivarian Republic of Venez.*, No. 1:17-cv-02559-ZMF (D.D.C. April 5, 2021) D.I. 53 at 4.

111. Ad Hoc PDVSA only paid its debts in May 2019 after the Guaidó Government authorized such payments. (Fourth Yanos Ex. 12 at 2 ("The ad hoc

administrative board of Petróleos de Venezuela, S.A. (PDVSA) announced today that National Assembly of the Bolivarian Republic of Venezuela has authorized the interest payment on the PDVSA 2020 bond, an estimated amount of US 71.6 millions."); April 2021 Tr. at 17-18)

112. In October 2019, Ad Hoc PDVSA stopped paying its debts, on instructions from the National Assembly. (Second Yanos Decl. Ex. 2 at 12, Second Yanos Decl. Ex. 4 at 3-4; April 2021 Tr. at 18)

D. Whether the Guaidó Government is the real beneficiary of PDVSA's conduct

113. The National Assembly website frequently provides updates on the status of Ad Hoc PDVSA and its subsidiary, CITGO, repeatedly referring to both as assets of the Venezuelan State. (First Yanos Decl. Exs. 12, 15, 17, 20, 21, 22)

114. The National Assembly has stated that the Guaidó Government "shall continue to devise strategies and legal and diplomatic measures to continue to protect CITGO and all the Republic's assets, which have a vital role to play in the reconstruction once the usurpation of power in Venezuela has been brought to an end." (Fourth Yanos Decl. Ex. 18 at 2)

115. Mr. Guaidó and his government regularly characterize PDVSA and its related assets, such as CITGO, as assets of the State. (*See, e.g.*, First Yanos Decl. Ex. 14 at 4) (Mr. Guaidó characterizing appointment of Ad Hoc Board as part of "taking progressive and orderly control of the assets of our Republic abroad" in order to "speed up the political transition.")

116. PDVSA describes itself as having a "constitutionally prescribed role" in Venezuela to "manage the

oil industry," including CITGO – the " 'crown jewel' and most economically and strategically important foreign asset of national public interest." (First Yanos Decl. Ex. 16 at 30 n.84, 31 ("There is no dispute that PDVSA and PDVSA Petróleo, which are 'attached' to (and thus controlled by) Venezuela's Ministry of Petroleum and Mining, are part of the National Public Administration of the Venezuelan Republic."); First Yanos Decl. Ex. 21 (Venezuelan Ambassador Carlos Vecchio stating, "It is clear that we have done and will continue to do EVERYTHING to protect and preserve Citgo for Venezuelans."); First Yanos Decl. Ex. 22 (Mr. Guaidó referring to protection of CITGO as protection of "the country's assets"); April 2021 Tr. at 109 (Mr. Medina testifying: "That colloquial phrase of the crown jewels, what it tries to say is to emphasize the importance that that asset has to Venezuela, to the country and, of course, to PDVSA, who is going to administer everything that has to do with the reactivation of the industry."))

117. PDVSA's Ad Hoc Board's website states on its "Our Mission" page: "Take back PDVSA abroad assets to ... achieve social welfare and progress for all Venezuelans." https://pdvsa-adhoc.com/en/our-mission/ (last visited February 17, 2021).

118. The Ad Hoc Board's Twitter feed regularly tweets messages in support of the Guaidó Government and refers to PDVSA's assets as assets of Venezuela. (First Miranda Decl. Exs. 29, 30, 31; Fourth Miranda Decl. Ex. 12 ("The ad hoc PDVSA Board continues to work actively to recover Venezuela's assets abroad ...."), Ex. 13 ("The new CITGO Board of Directors cooperates with North American courts to safeguard the assets of Venezuela and determine responsibility."), Ex. 14 ("[CITGO's] value and potential is incalculable, we must recover it and put it at the ser-

vice of Venezuelans."))

119. PetroCaribe is "an agreement pursuant to which Venezuela committed PDVSA to supply oil to 17 Caribbean countries on favorable economic terms ...." *Crystallex I*, 333 F. Supp. 3d at 413; *see also Crystallex II*, 932 F.3d at 147.

E. Whether adherence to separate identities would entitle Venezuela to benefits in United States courts while avoiding its obligations

120. Adhering to the nominally separate identity between the Republic of Venezuela and PDVSA to allow PDVSA to have its assets in the District of Delaware be immune from attachment to satisfy the lawful judgments of the U.S. courts against its alter ego, Venezuela, would entitle Venezuela to benefits in U.S. courts while at the same time avoiding its obligations.

121. The Third Circuit's statements in *Crystallex II*, 932 F.3d at 149 (internal citations omitted), are equally applicable here:

Venezuela owes [the judgment creditors] from ... judgment[s] that ha[ve] been affirmed in our courts. Any outcome where [a creditor before the Court] is not paid means that Venezuela has avoided its obligations. It is likewise clear from the record that PDVSA, and by extension Venezuela, derives significant benefits from the U.S. judicial system. Its 2020 bonds are backed by the common stock and underlying assets of U.S.-based corporations, and hence disputes stemming from default will be subject to U.S. laws and presumably be resolved through the U.S. legal system. Indeed, it is probable the U.S. legal system is the backstop that gives substantial assurance to investors who buy PDVSA's debt.

VII. Maduro's Non-Recognized Government Continues To Control PDVSA In Venezuela

122. While there has been U.S. recognition of corporate reorganizations at PDVSA's U.S. subsidiaries (done at the direction of Mr. Guaidó), these actions have had no effect on PDVSA itself. The state, through its political actors, continues to dominate and control PDVSA. (*See* April 2021 Tr. at 118, 122-23)

123. Despite its non-recognition by the U.S. government, the Maduro Regime continues to exercise de facto control over Venezuela and its territory, including over PDVSA and its assets and operations in Venezuela. (*See* Second Carter Decl. Ex. 3 at 5; Brewer-Carías Decl. ¶ 44)

124. While recognizing Guaidó as Venezuela's representative, the United States includes the "Maduro regime" in its definition of the "Government of Venezuela." (Second Carter Decl. Ex. 22 (Executive Order 13884))

125. On January 18, 2021, OFAC stated that the "illegitimate Maduro regime has continued to use [PDVSA] as its primary conduit for corruption to exploit and profit from Venezuela's natural resources." (Second Carter Decl. Ex. 18 at 1)

126. In March 2021, the United States Executive Branch advised U.S. courts that "President Maduro remains in power in Venezuela, and in control of PDVSA." (*OIEG* Action D.I. 78 (April 16, 2021 Supplemental Declaration of Barbara Miranda) ("Second Miranda Decl.") Ex. 1 at 8)

127. The Ad Hoc Board of PDVSA, appointed by Guaidó and recognized by U.S. courts, is not identified on the PDVSA website, which instead publishes

the names of other individuals as its board members. (*See* First Miranda Decl. Ex. 2)

128. Members of the Ad Hoc Board of PDVSA are subject to a Venezuelan criminal prosecution launched in 2019 under the auspices of the Republic's Supreme Tribunal of Justice. (First Miranda Decl. Exs. 3, 4)

129. PDVSA's Ad Hoc Board acknowledges that the corporation's operations have not changed. (*See, e.g.*, Second Miranda Decl. Ex. 3; Fourth Miranda Decl. Ex. 20 (letter from PDVSA Ad Hoc Board stating that "PDVSA's Caracas office ... remains under the control of PDVSA's unlawful, usurping authorities of the illegitimate Maduro regime"))

130. CITGO Petroleum acknowledges that the Maduro Regime exercises "control of PDVSA in Venezuela." (First Miranda Decl. Ex. 5 (CITGO Petroleum news release regarding Maduro Regime's seizure of vessel containing CITGO Petroleum's crude oil, stating that "The Maduro regime, including through its control of PDVSA in Venezuela, has previously attempted to obtain the cargo from the vessel"))

131. In July 2019, it was reported that PDVSA, under the direction of the Maduro Regime, was selling oil to a Turkish company known as Grupo Iveex Insaat. (First Miranda Decl. Ex. 8)

132. In March 2019, PDVSA, acting entirely through Maduro Regime officers, announced the opening of an office in Moscow. (First Miranda Decl. Ex. 6)

133. In September 2019, a Maduro-appointed oil minister completed the move of PDVSA's Lisbon office to Moscow. (Second Carter Decl. Ex. 13)

134. Maduro-appointed officers then set up a fac-

toring arrangement between PDVSA and Rosneft (a Russian oil company headquartered in Moscow). (First Miranda Decl. Ex. 7)

135. In November 2019, PDVSA signed a commercial contract with an Indian concern – with Maduro Regime officers providing the signatures. (First Miranda Decl. Ex. 9)

136. In May 2020, PDVSA, acting through its European subsidiary PDVSA Europa, sold a significant and valuable stake in Nynas, a Swedish oil refinery. (First Miranda Decl. Ex. 25) After the fact, the Ad Hoc Board criticized the sale as "harm[ful] to the nation's wealth," adding that the Ad Hoc Board "was not informed of the company's sale of a 35% stake in Swedish refiner Nynas." (First Miranda Decl. Ex. 26; Fifth Yanos Decl. Ex. 1)

137. In March 2021, when a pipeline explosion damaged a PDVSA facility in Venezuela, the Ad Hoc Board blamed the incident on the Maduro Regime's incompetent "manage[ment] of assets and facilities that belong to the Republic and the Venezuelan people," revealing the Ad Hoc Board's understanding that PDVSA, owned by Venezuela, is dominated by the Maduro Regime that currently controls the state. (Second Miranda Decl. Ex. 3; Fourth Miranda Decl. Ex. 20)

VIII. The Maduro Regime's Direction And Control Over PDVSA In Venezuela Is Analogous To The Direction And Control The Court Found In August 2018

A. Level of economic control by the Maduro Regime

138. In May 2020, Maduro announced on national television that PDVSA would increase consumer pric-

es. (First Miranda Decl. Ex. 23; Fourth Miranda Decl. Ex. 10) A subsequent press release published on PDVSA's website advised that the price of gasoline would increase pursuant to the announcement. (First Miranda Decl. Ex. 10; Fourth Miranda Decl. Ex. 1)

139. In approximately May 2020, acting pursuant Mr. Maduro's Executive Order 4.090, PDVSA announced to owners of licensed service stations in Venezuela that PDVSA was authorized to rescind such licenses. (First Miranda Decl. Ex. 18; Fourth Miranda Decl. Ex. 5)

140. On June 27, 2020, as directed by Maduro Regime appointees as corporate officers, PDVSA rescinded agreements with various Venezuelans who licensed service stations, seizing them for the State. (First Miranda Decl. Ex. 18; Fourth Miranda Decl. Ex. 5)

B. Whether PDVSA's profits go to the Maduro Regime

141. The Maduro Regime profits from PDVSA's operations, as the Republic is the sole shareholder of PDVSA. *See Crystallex II*, 932 F.3d at 148.

C. Degree to which the Maduro Regime manages PDVSA or otherwise has a hand in PDVSA's daily affairs

142. As it had in and before 2018, PDVSA regularly tweets that "PDVSA is Venezuela." *Crystallex I*, 333 F. Supp. 3d at 407. More recently, the message continues with "In PDVSA we think as a Nation" or "as a Country." (First Miranda Decl. Exs. 44, 45)

143. In late 2018, Maduro named General Manuel Salvador Quevedo Fernández, a career military officer and then-Minister of Oil, as president of the board of PDVSA, and Tareck El Aissami, the then-

Minister of Industry and National Production, as External Director of PDVSA. *See Jiménez*, 250 A.3d at 822 n.7; First Yanos Decl. Ex. 6 (article showing Mr. Quevedo as both minister and president of PDVSA); First Yanos Decl. Ex. 7 ("Venezuela names El Aissami to PDVSA board of directors"))

144. Also in 2018, Mr. Quevedo imposed a military regime on PDVSA, arresting workers for operational mistakes and deploying active military personnel aboard tankers. (First Yanos Decl. Ex. 5 ("Oil output goes AWOL in Venezuela as soldiers run PDVSA"))

145. On February 19, 2020, it was reported that Maduro ordered PDVSA employees to attack Interim President Guaidó. (First Miranda Decl. Ex. 39; Fourth Miranda Decl. Ex. 18 ("Nicolás Maduro lashed out against Juan Guaidó, interim president of Venezuela, and called upon PDVSA workers to attack him and call him a traitor to the nation due to the recent United States sanctions on Rosneft Trading."))

146. On April 27, 2020, Maduro installed Asdrubal Chávez, a cousin of the deceased former President Chavez, as president of PDVSA. (First Miranda Decl. Exs. 12, 13; Fourth Miranda Decl. Ex. 3, 4) Maduro had previously appointed Asdrubal Chávez as president of CITGO. (Second Miranda Decl. Ex. 13; Fourth Miranda Decl. Ex. 4)

147. Also on April 27, 2020, Maduro appointed Tareck El Aissami, a long-time lieutenant and former close ally of Hugo Chavez, as Minister of Petroleum, and directed him to restructure PDVSA. (First Miranda Decl. Exs. 12, 14; Fourth Miranda Decl. Ex. 3)

148. Mr. Maduro makes announcements in PDVSA's offices, and PDVSA's own press releases issue the Maduro regime's policy. (*See* First Miranda Decl. Ex. 14)

149. In February 2020, CITGO Petroleum released a statement that the Maduro Regime utilized "its control of PDVSA in Venezuela" and Venezuela's military to take possession of CITGO's crude oil that was meant for delivery overseas. (First Miranda Decl. Ex. 5)

150. On May 27, 2020, El Aissami attended virtual OPEC meetings on behalf of Venezuela and PDVSA, and posted a photo of the event to his official Twitter account. (First Miranda Decl. Ex. 20; Fourth Miranda Decl. Ex. 7)

D. Whether the Maduro Regime is the real beneficiary of PDVSA's conduct

151. The version of PDVSA's website controlled by the Maduro Regime lists three "Strategic Objectives," one of which is to "[s]upport the geopolitical positioning of Venezuela internationally." Strategic Objectives, PDVSA, http://www.pdvsa.com/index.php?option=com_content&view=article&id=6551&ltemid=890&lang=en (last accessed Feb. 3, 2021).

152. In furtherance of this strategy, Venezuela causes PDVSA to use its property and revenues for the benefit of the State.

153. For example, in March 2019, Venezuela's Minister of Foreign Affairs, Jorge Arreaza, traveled abroad on board a PDVSA plane. (*See* First Miranda Decl. Ex. 27; Fourth Miranda Decl. Ex. 11)

154. In 2019, Mr. Maduro sent an aircraft registered to PDVSA to Guinea-Bissau. (First Miranda Decl. Ex. 32; Fourth Miranda Decl. Ex. 15)

155. In November 2019, Maduro pledged Venezuelan state funds to pay PDVSA's direct contract obligations for the completion of construction of PDVSA tankers. (Second Carter Decl. Ex. 16)

156. On January 21, 2020, OFAC stated that "[PDVSA] Falcon 200EX (YV3360) ... was used throughout 2019 to transport senior members of the former Maduro regime in a continuation of the former Maduro regime's misappropriation of PdVSA assets." (Second Carter Decl. Ex. 17 at 1)

157. In early 2020, in identifying numerous PDVSA aircraft as blocked property, OFAC stated that "[i]n late Summer 2019, Venezuelan Oil Minister Manuel Salvador Quevedo Fernandez ... attended an OPEC meeting in the United Arab Emirates and utilized the PdVSA aircraft Falcon 200EX (YV3360)." (Second Carter Decl. Ex. 17 at 1)

158. In 2020, Venezuelan officials (appointed by Maduro) traveled to Trinidad & Tobago aboard a PDVSA aircraft. (First Miranda Decl. Ex. 28)

159. On March 3, 2020, it was reported that Venezuela (via Maduro) was gifting "PDVSA" petroleum to Cuba. (First Miranda Decl. Ex. 35; Third Miranda Decl. Ex. 16)

160. In July 2020, it was reported that PDVSA gasoline was being loaded onto oil tankers destined for Cuba. (First Miranda Decl. Ex. 36; Fourth Miranda Decl. Ex. 17)

161. Since December 11, 2020, PDVSA's official Twitter account has retweeted at least 460 of Mr. Maduro's tweets. (First Miranda Decl. ¶ 4)

162. PDVSA's official Twitter account regularly retweets the Ministry of Petroleum's tweets about the government's fuel distribution schedule, implemented through PDVSA locations. (*See, e.g.*, First Miranda Decl. Ex. 43)

E. Whether adherence to separate identities would entitle Venezuela to benefits in United

States courts while avoiding its obligations

163. Adhering to the nominally separate identity between the Republic of Venezuela and PDVSA to allow PDVSA to have its assets in the District of Delaware be immune from attachment to satisfy the lawful judgments of the U.S. courts against its alter ego, Venezuela, would entitle Venezuela to benefits in U.S. courts while at the same time avoiding its obligations.

164. The Third Circuit's statements in *Crystallex II*, 932 F.3d at 149, are equally applicable here:

Venezuela owes [the judgment creditors] from ... judgment[s] that ha[ve] been affirmed in our courts. Any outcome where [a creditor before the Court] is not paid means that Venezuela has avoided its obligations. It is likewise clear from the record that PDVSA, and by extension Venezuela, derives significant benefits from the U.S. judicial system. Its 2020 bonds are backed by the common stock and underlying assets of U.S.-based corporations, and hence disputes stemming from default will be subject to U.S. laws and presumably be resolved through the U.S. legal system. Indeed, it is probable the U.S. legal system is the backstop that gives substantial assurance to investors who buy PDVSA's debt.

IX. PDVSA Continues To Use Its PDVH Shares For A Commercial Activity

165. As part of their effort to show that the particular property at issue in their motions is not immune from attachment under the FSIA, the judgment creditors involved in the actions being addressed in this Opinion have shown that PDVSA uses its shares of PDVH stock for a commercial activity in the Unit-

ed States. *See* 28 U.S.C. § 1610(a)(6).[13] In *Crystallex I*, 333 F. Supp. 3d at 417-18, this Court held that the PDVH shares are "used for a commercial purpose" because "PDVSA manages its ownership of PDVH and, consequently, CITGO, in the United States." "Specifically, Venezuela – through PDVSA – uses the shares to appoint directors, approve contracts, and pledge assets as security for PDVSA's debt." *Id.* at 418.

166. All of the commercial activities for which PDVSA's shares of PDVH had been used in the past, combined with the continued use of these shares for the same activities, render those shares not immune from attachment. *See Crystallex II*, 932 F.3d at 151 ("[T]he shares can still be used by PDVSA to run its business as an owner, to appoint directors, approve contracts, and to pledge PDVH's debts for its own short-term debt.").

167. In February 2019, Mr. Guaidó "appointed an ad hoc administrative board to represent PDVSA in its capacity as sole shareholder of PDVH for appointing a new board of directors of that entity." *Crystallex II*, 932 F.3d at 151. Since February 2019, PDVSA's

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[13] As the Third Circuit explained in *Crystallex II*, 932 F.3d at 150:

> [T]he phrase commercial activity captures the distinction between state sovereign acts, on the one hand, and state commercial and private acts, on the other. [W]hen a foreign government acts, not as a regulator of a market, but in the manner of a private player within it, the foreign sovereign's actions are commercial within the meaning of the [FSIA].

(Internal citations and quotation marks omitted) To determine whether property to be attached has been used for a "commercial activity" within the meaning of the FSIA, the Court applies a totality of the circumstances test, which includes "an examination of the uses of the property in the past." *Id.*

Ad Hoc Board has exercised PDVSA's shareholder rights to appoint PDVH's directors; PDVH's directors have, in turn, exercised PDVH's shareholder rights to appoint CITGO Holding's directors; and CITGO Holding's directors have, in turn, exercised CITGO Holding's shareholder rights to appoint CITGO Petroleum's directors. (Medina Decl. ¶ 4(d); Brewer-Carías Decl. Ex. B ¶ 16; *see also Jiménez*, 250 A.3d at 825-26)

168. Mr. Guaidó appointed additional directors to both PDVSA's and CITGO's board in summer 2020. (First Yanos Decl. Exs. 18, 24)

169. In the 2020 Bond proceedings, Mr. Guaidó's Ad Hoc Board confirmed that it continues to manage subsidiaries through PDVH. (First Yanos Decl. Ex. 16 at 31) (discussing "pledge of CITGO Shares to secure the 2020 Notes")

X. All Parties Agree There Has Been No Material Factual Change Since April 2021

170. On October 13, 2022, PDVSA made a binding representation that, since April 2021, "there has [not] been any material change to any fact relevant to the factual determination(s) the Court must make" in connection with the alter ego controversy. (*E.g., ACL* Action D.I. 46 at 4)

171. Also on October 13, 2022, all of the judgment creditors whose motions are addressed in this Opinion – OIEG, Huntington, ACL, and Rusoro – made the same representation. (*See, e.g., OIEG* Action D.I. 119 at 2-5)

172. It follows that the Court's findings and conclusions – that the Guaidó Government directs and controls PDVSA and its assets in the United States in a manner materially identical to that which the

Court found to exist in August 2018, and that the Maduro Regime directs and controls PDVSA and its assets inside Venezuela in a manner materially identical to that which the Court found to exist in August 2018 – are equally true and applicable on all pertinent dates, including through at least October 13, 2022.

173. No record is before the Court indicating any material change in fact since October 13, 2022, nor does the Court have any basis to find any such material change.[14]

DISCUSSION

I. Legal Standards

The Court adheres to, adopts, and hereby incorporates by reference its analysis of the legal standards governing the issuance of writs of attachment (including its discussion of Federal Rule of Civil Procedure 69(a)(1) and 10 Del. C. § 5031) with respect to property of an agency or instrumentality of a foreign sovereign as set out in *Crystallex I*, 333 F. Supp. 3d at 388-89, 394-95, 399-401, 404-05, including to the extent

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[14] In another judgment creditor action against the Republic of Venezuela, *Gold Reserve Inc. v. Bolivarian Republic of Venez.*, Misc. No. 22-453 (D.I. 15 at 1 & n.1), intervenor PDVSA advised the Court of the Venezuelan National Assembly's revised Transition Statute, adopted in December 2022, which in relevant part removed Mr. Guaidó from his position as Interim President of Venezuela. The issue of whether this is a post-April 2021 (or post October 13, 2022) material factual change has not been addressed by the parties or the Court in the *Gold Reserve* Action. More importantly for today's purposes, no party in any of the four actions addressed by this Opinion has provided notice of the same to the Court. The Court infers from the concerted, collective silence of these (generally highly-litigious) parties that they continue to agree there has been no material factual change since April 30, 2021.

modified on appeal by the Third Circuit in *Crystallex II*, 932 F.3d at 134, 136, 144-46. The Court further adheres to, adopts, and hereby incorporates by reference its analysis of the Foreign Sovereign Immunity Act ("FSIA" or "Act"), 28 U.S.C. § 1602 et seq., including the immunities (and exceptions to immunity) for a foreign sovereign and its property in the United States *see Crystallex I*, 333 F. Supp. 3d at 394-99, 401, 406, again including to the extent modified on appeal by the Third Circuit in *Crystallex II*, 932 F.3d at 140-47, 149-51.

Moreover, as the Third Circuit explained in *Crystallex II*, 932 F.3d at 137, "a district court has jurisdiction to enforce a federal judgment against a foreign sovereign when it is registered" in the District pursuant to 28 U.S.C. § 1963, which is indisputably the case here with respect to all four creditors. Therefore, the Court has jurisdiction over the Republic of Venezuela in all four actions being considered in this Opinion. The Court also has jurisdiction over PDVSA in these actions because, as the Third Circuit held in the analogous circumstances of *Crystallex II*, 932 F.3d at 139, "so long as PDVSA is Venezuela's alter ego under *Bancec*, the District Court ha[s] the power to issue a writ of attachment on that entity's non-immune assets to satisfy the judgment against the country."

The FSIA does not address the circumstances under which an agency or instrumentality of a foreign state may be treated effectively as the sovereign state itself for purposes of the former's property being used to pay the debts of the latter. Thus, to determine whether the creditors have rebutted the strong presumption of separateness between PDVSA and Venezuela, the Court applies standards developed pursuant to federal common law, particularly in two Su-

preme Court cases: *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 627, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983) ("*Bancec*"), and *Rubin v. Islamic Republic of Iran*, —— U.S. ——, 138 S. Ct. 816, 823, —— L.Ed.2d —— (2018) ("*Rubin*"). The *Bancec/Rubin* doctrine "exists specifically to enable federal courts, in certain circumstances, to disregard the corporate separateness of foreign sovereigns to avoid the unfair results from a rote application of the immunity provisions provided by the Sovereign Immunities Act." *Crystallex II*, 932 F.3d at 139.

In *Bancec*, the Supreme Court explained that the "presumption [of separateness] may be overcome in certain circumstances," including: (1) "where a corporate entity is so extensively controlled by its owner that a relationship of principal and agent is created, we have held that one may be held liable for the actions of the other," and "[i]n addition" (2) where adhering to "the broader equitable principle" of corporate separateness "would work fraud or injustice." 462 U.S. at 628-29, 103 S.Ct. 2591 (internal quotation marks omitted). This is "a disjunctive test for when the separate identities of sovereign and instrumentality should be disregarded," *Crystallex II*, 932 F.3d at 140, and a finding of "extensive[ ] control' " by the former over the latter can be sufficient, *id.* (quoting *Rubin*, 138 S. Ct. at 823).

The Supreme Court recently clarified the five factors most prominently used to conduct an extensive control (or alter ego) analysis, articulating them as follows:

(1) the level of economic control by the government;

(2) whether the entity's profits go to the govern-

ment;

(3) the degree to which government officials manage the entity or otherwise have a hand in its daily affairs;

(4) whether the government is the real beneficiary of the entity's conduct; and

(5) whether adherence to separate identities would entitle the foreign state to benefits in United States courts while avoiding its obligations.

Rubin, 138 S. Ct. at 823; *see also Crystallex II*, 932 F.3d at 141. There is no "mechanical formula," *Crystallex II*, 932 F.3d at 141 (quoting *Bancec*, 462 U.S. at 633, 103 S.Ct. 2591); these tests "are meant to aid case-by-case analysis" of specific records in order to identify situations involving extensive control, *id.* In this Opinion, the Court will apply the *Rubin* formulation (which will sometimes be referred to as the "*Bancec/Rubin*" factors, test, or standard), as the Third Circuit did in *Crystallex II*. As was true in *Crystallex II*, 932 F.3d at 141 n.8, "[e]ither inquiry [i.e., *Bancec* or *Rubin*] compels the same result." 932 F.3d at 141 n.8.

Importantly, the *Bancec/Rubin* factors are not exhaustive of all the considerations that go into an alter ego analysis. Nor is it necessary, in order to prove an alter ego relationship, that the moving party be able to demonstrate that all of the *Bancec/Rubin* factors favor such a conclusion. *See generally Rubin*, 138 S. Ct. at 823.

The burden of making the appropriate showing rests on the party seeking to rebut the presumption of separateness, which here are the judgment creditors. *See also Hester Int'l Corp. v. Fed. Republic of Nigeria*, 879 F.2d 170, 179 (5th Cir. 1989); *Foremost-*

McKesson, Inc. v. Islamic Republic of Iran, 905 F.2d 438, 447 (D.C. Cir. 1990) ("It is further clear that the plaintiff bears the burden of asserting facts sufficient to withstand a motion to dismiss regarding the agency relationship"). As the Third Circuit has confirmed, "preponderance of the evidence is the appropriate burden of proof" by which the creditors must prove their case, considering the *Bancec/Rubin* factors. *Crystallex II*, 932 F.3d at 144-46.

II. OIEG And Huntington Have Proven That PDVSA Remains The Alter Ego of Venezuela Under The Guaidó Government

The Venezuela Parties (and, to a large extent, the creditors) contend that the appropriate analysis of whether PDVSA is the Republic's alter ego must focus on the relationship between the Guaidó Government and PDVSA in the United States. The Court agrees.

The Guaidó Government's acts are the pertinent acts for the alter ego analysis because the Guaidó Government is recognized by the United States as the legitimate government of Venezuela. The recognition of a foreign government is a power reserved exclusively to the Executive Branch of the United States government. *See Zivotofsky v. Kerry*, 576 U.S. 1, 18-19, 30, 135 S.Ct. 2076, 192 L.Ed.2d 83 (2015) (discussing the Executive Branch's "exclusive" formal recognition power). Federal courts have no authority to question a decision by the Executive Branch on this issue. *See United States v. Belmont*, 301 U.S. 324, 330, 57 S.Ct. 758, 81 L.Ed. 1134 (1937) (addressing Executive Branch's "authority to speak as the sole organ" of government on external affairs). Thus, the fact that, in the litigation before this Court, the Republic is represented by the Guaidó Government, and the further fact that the Guaidó Government exclu-

sively holds all rights and interests to the Republic's property in the United States, are facts that cannot be disputed by any parties in these actions or second-guessed by this Court. *See Zivotofsky*, 576 U.S. at 18-19, 135 S.Ct. 2076; *Pfizer v. Government of India*, 434 U.S. 308, 319-20, 98 S.Ct. 584, 54 L.Ed.2d 563 (1978); *United States v. Pink*, 315 U.S. 203, 229, 62 S.Ct. 552, 86 L.Ed. 796 (1942); *Guaranty Tr. Co. v. United States*, 304 U.S. 126, 137-38, 58 S.Ct. 785, 82 L.Ed. 1224 (1938); *Belmont*, 301 U.S. at 327-30, 57 S.Ct. 758 (1937); *see also Nat'l Union Fire Ins. Co. v. Republic of China*, 254 F.2d 177, 186 (4th Cir. 1958); *The Maret*, 145 F.2d 431, 442 (3d Cir. 1944).

An additional reason for the Court's conclusion is that the property the creditors are seeking to attach is located in the United States. This, too, suggests that the focus of the alter ego analysis should be on the United States.

Although the Court disagrees with the arguments some creditors make that the focus must be on the relationship between the Maduro Regime and PDVSA in Venezuela, even under this view (which is an alternate ground asserted by at least some creditors) the creditors have met their burden, as explained later in this Opinion. Additionally, although the Court agrees with the Venezuela Parties that the focus must be on the relationship between the Guaidó Government and PDVSA in the U.S., it does not agree that this holding renders the "facts on the ground" in Venezuela entirely irrelevant to the proper alter ego analysis. Given that this analysis is meant to consider the totality of the circumstances, and is to have some flexibility to be applied to vastly divergent factual realities, there may be some relevance (though certainly not predominance) to the relationship between the Maduro Regime and PDVSA in Venezuela.

(The Court's conclusions would not be any different if it treated the Maduro-related facts as utterly irrelevant.)

Considering the record created in the *OIEG* and *Huntington* Actions and applying that record to the *Bancec/Rubin* factors, the Court concludes that OIEG and Huntington have proven, by a preponderance of the evidence, that PDVSA is the alter ego of Venezuela. In particular, the Guaidó Government exercises such extensive direction and control over PDVSA in the U.S. as to render PDVSA the alter ego of Venezuela. Each of the *Rubin* factors is supported by extensive evidence (*see supra* Parts IV, V, & VI), some of which is summarized below.[15]

The Guaidó Government maintains extensive economic control over PDVSA. Venezuela treats PDVSA's assets as its own. The Guaidó Government has accessed PDVSA's U.S. subsidiaries' assets in the United States and used them to fund itself, bypassing any right PDVSA may have had to corporate dividends. The Guaidó Government has also used PDVSA assets to fund Venezuela's legal defense. On occasion, PDVSA has started, only later to stop, paying its debts at the direction of Venezuela. President Guaidó announced that he intends to treat Venezuela's debts and PDVSA's debts the same in an eventual debt re-

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[15] The Court's decision to highlight only certain of the many findings of fact contained in this Opinion does not mean that the other findings of fact have no impact on the Court's analysis. The Court's conclusion that the creditors have proven PDVSA is Venezuela's alter ego is based, as it must be, on the totality of the evidence. In part because the evidence of Venezuela's extensive direction and control over PDVSA is so overwhelming, and in part for simplicity (since the detailed findings of fact are set out earlier in this Opinion), the Court's Discussion is abbreviated.

structuring. Economic control of PDVSA remains as engrafted in Venezuela's Constitution now as it was in August 2018. In *Crystallex II*, 932 F.3d at 147, the Third Circuit emphasized that these constitutional provisions result in substantial control over PDVSA and the Venezuelan oil industry, and this is no less true today.

Under the Guaidó Government, PDVSA's profits go to Venezuela, which remains the sole shareholder in PDVSA. *See id.* at 148.

The Guaidó Government, acting through PDVSA's Ad Hoc Board, which the government appointed, exercises control over PDVSA's daily activities. PDVSA's Ad Hoc Board has acknowledged that it operates under "directives" from the Guaidó Government. In litigation in U.S. courts, the Ad Hoc Board has noted that Venezuelan law gives the National Assembly the authority to approve any "public interest contract" PDVSA enters into and that, in its view, "any" PDVSA contract is a public interest contract.

The Guaidó Government is the real beneficiary of PDVSA's conduct. Among other things, the Guaidó Government has used PDVSA funds to conduct its legal defense. Mr. Guaidó and his government regularly characterize PDVSA and its related assets as assets of the Republic itself.

Finally, adherence to separate identities would entitle Venezuela to benefits in U.S. courts while allowing Venezuela to avoid its obligations. The Third Circuit's holding on this point in *Crystallex II* is equally applicable in the *OIEG* and *Huntington* Actions (and also in the *ACL* and *Rusoro* Actions):

Venezuela owes [the judgment creditors] from ... judgment[s] that ha[ve] been affirmed in our courts. Any outcome where [a creditor before the Court] is

not paid means that Venezuela has avoided its obligations. It is likewise clear from the record that PDVSA, and by extension Venezuela, derives significant benefits from the U.S. judicial system. Its 2020 bonds are backed by the common stock and underlying assets of U.S.-based corporations, and hence disputes stemming from default will be subject to U.S. laws and presumably be resolved through the U.S. legal system. Indeed, it is probable the U.S. legal system is the backstop that gives substantial assurance to investors who buy PDVSA's debt. 932 F.3d at 149.

In sum, then, considering the totality of the joint record made out in the *OIEG* and *Huntington* Actions, and carefully evaluating that record in light of the *Bancec/Rubin* factors – while recognizing that these factors are neither exhaustive nor mandatory – the Court concludes that PDVSA in the United States is the alter ego of Venezuela under the Guaidó Government.

III. ACL Has Proven That PDVSA Remains The Alter Ego of Venezuela Under The Guaidó Government

ACL did not participate in the April 2021 hearing and did not otherwise expressly agree to adopt the evidentiary record from OIEG's and Huntington's cases. Nevertheless, ACL supplied its own evidence which in all material respects matches the record in the other two actions already discussed. (*See ACL* Action D.I. 49, 51)[16] Therefore, and for the same reasons, the Court also concludes that ACL has established, by a preponderance of the evidence, that the Guaidó Government extensively controls PDVSA

[16] Any paragraph containing an ACL proposed finding of fact that the Court refers to by number is a finding of fact the Court is adopting as its own.

such that PDVSA is Venezuela's alter ego.

A brief summary of the evidence ACL presented in support of this conclusion is as follows:

• The Guaidó Government maintains extensive economic control over PDVSA through provisions in the Venezuela Constitution (*ACL* Action D.I. 49 ¶ 21), by controlling PDVSA's ability to make payments on its bonds and to the Maduro Regime (*id.* D.I. 49 ¶¶ 24, 31-32), requiring National Assembly approval for PDVSA to pay its legal fees (*id.* D.I. 49 ¶ 30), having access to PDVSA income (*id.* D.I. 51 ¶ 29), and by not distinguishing between Venezuela's and PDVSA's assets (*id.* D.I. 49 ¶ 33).

• The Guaidó Government receives PDVSA's profits, as PDVSA is wholly owned by Venezuela. (*ACL* Action D.I. 49 ¶¶ 4-5; *see also id.* D.I. 51 ¶ 29)

• The Guaidó Government manages PDVSA, including by exercising its powers under the Transition Statute, which enable the National Assembly to exercise veto power over PDVSA's business contracts (*ACL* Action D.I. 49 ¶¶ 23-25) and allow Guaidó to appoint the Ad Hoc Board (*id.* D.I. 49 ¶¶ 26-27), and also by closely monitoring the day-to-day workings of PDVSA (*id.* D.I. 49 ¶¶ 34-35, 38).

• The Guaidó Government is the real beneficiary of PDVSA's conduct (*see, e.g.*, *ACL* Action D.I. 49 ¶ 35).

• Adherence to separate identities would entitle Venezuela to benefits in U.S. courts while avoiding its obligations, for the same reasons already given above on this very same point with respect to OIEG's and Huntington's motions. (*See supra* Discussion Part II)

IV. Rusoro Has Proven That PDVSA Remains

The Alter Ego of Venezuela Under The Guaidó Government

Rusoro did not participate in the April 2021 Hearing and did not otherwise expressly agree to adopt the evidentiary record in OIEG's and Huntington's cases. Nevertheless, Rusoro supplied its own evidence which in all material respects matches the record in the other actions already discussed. (*See Rusoro* Action D.I. 35, 38)[17] Therefore, and for the same reasons, the Court also concludes that Rusoro has established, by a preponderance of the evidence, that the Guaidó Government extensively controls PDVSA such that PDVSA is Venezuela's alter ego.

A brief summary of the evidence Rusoro presented in support of this conclusion is as follows:

• The Guaidó Government maintains extensive economic control over PDVSA. (*See Rusoro* Action D.I. 35 ¶ 55; *id.* D.I. 38 ¶¶ 5-8)

• The Guaidó Government receives PDVSA's profits, as PDVSA is wholly owned by Venezuela. (*Rusoro* Action D.I. 34 ¶ 16)[18]

• The Guaidó Government manages PDVSA. (*Rusoro* Action D.I. 35 ¶¶ 56, 61; *id.* D.I. 38 ¶¶ 11-17)

• The Guaidó Government is the real beneficiary of PDVSA's conduct. (*Rusoro* Action D.I. 35 ¶ 57; *id.* D.I. 38 ¶¶ 18-19)

• Adherence to separate identities would entitle Venezuela to benefits in U.S. courts while avoiding

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[17] Any paragraph containing a Rusoro proposed finding of fact that the Court refers to by number is a finding of fact the Court is adopting as its own.

[18] The Court adopts this finding of fact, proposed by PDVSA, as its own finding.

its obligations, for the same reasons already given above on this very same point with respect to OIEG's and Huntington's motions. (*See supra* Discussion Part II)

V. OIEG And Huntington Have Proven That PDVSA Remains The Alter Ego of Venezuela Under The Maduro Regime

The Court has held that the proper focus for the alter ego analysis is on the relationship between the recognized Guaidó Government and PDVSA in the United States. However, the Court has before it, additionally, a record of the relationship between the Maduro Regime and PDVSA in Venezuela. The four creditors the Court is considering in this Opinion argue, to varying degrees (i.e., as either their principal argument or as an alternative basis for the relief they seek), that the alter ego analysis can meaningfully be undertaken with respect to the Maduro Regime and PDVSA in Venezuela. The Court agrees that this alternate approach leads to the same conclusion: PDVSA is the alter ego of Venezuela.[19]

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[19] "[R]ecognition or nonrecognition of the decrees of an unrecognized government which actually governs [is] a political matter for the sole determination of the Executive." *The Maret*, 145 F.2d at 440. Nevertheless, while the Executive Branch's determination of which of Venezuela's governments is recognized as legitimate "is conclusive on all domestic courts," courts still "are free to draw for themselves its legal consequences in litigations pending before them." *Guar. Tr. Co. of N.Y.*, 304 U.S. at 138, 58 S.Ct. 785; *see also Republic of Iraq v. ABB AG*, 920 F. Supp. 2d 517, 541 (S.D.N.Y. 2013), *aff'd* 768 F.3d 145 (2d Cir. 2014) ("The legitimacy or illegitimacy of the Hussein Regime's rule does not affect whether the Regime's acts may be attributed to the Republic of Iraq. Indeed, Courts have attributed conduct of allegedly unlawful regimes to the states they purported to represent.... [A]ttribution operates independently of diplomatic recognition.... What matters is control."); *Salimoff & Co. v. Standard Oil Co.*,

Applying the *Bancec/Rubin* factors to the record jointly admitted in the *OIEG* and *Huntington* Actions, the Court concludes that these creditors have proven, by a preponderance of the evidence, that PDVSA in Venezuela is the alter ego of Venezuela under the Maduro Regime. A selection of the evidence (all of which is set out in detail in the Court's findings of fact, *see supra*) leading the Court to this conclusion follows:

• The Maduro Regime exercises extensive economic control over PDVSA in Venezuela, as evidenced by, among other things, Mr. Maduro's announcement of gasoline price increases PDVSA subsequently enacted, the government's announcement of a corporate transaction executed by a PDVSA subsidiary, and Executive Order 4.090 (by which Mr. Maduro authorized PDVSA to take actions with respect to owners of licensed service stations).

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262 N.Y. 220, 227, 186 N.E. 679 (1933) ("The courts may not recognize the Soviet government as the de jure government until the State Department gives the word. They may, however, say that it is a government, maintaining internal peace and order, providing for national defense and the general welfare, carrying on relations with our own government and others. To refuse to recognize that Soviet Russia is a government regulating the internal affairs of the country, is to give to fictions an air of reality which they do not deserve."). Thus, for example, in cases like *The Denny*, 127 F.2d 404, 410 (3d Cir. 1942), courts have explained that they "may not ignore the fact that the [non-recognized] government did actually exercise governmental authority in [a country] at the time the decrees in question were made and the powers of attorney were given." *See also Bridas S.A.P.I.C v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (stating that courts must look to "reality and not form" in making alter ego determination). Based on these and similar authorities, the Court does not believe that the Maduro Regime's conduct in Venezuela is entirely irrelevant to the required alter ego analysis.

• The Maduro Regime profits from PDVSA's operations, as the Republic is the sole shareholder of PDVSA.

• The Maduro Regime manages PDVSA, as evidenced by, among other things, Mr. Maduro's appointment of members of PDVSA's Board (including appointments of government officials, including a Minister of Oil) and his appointment of high-level officers at PDVSA, at one of its subsidiaries, and at a CITGO entity.

• The Maduro Regime is the real beneficiary of PDVSA's conduct, as evidenced by, among other things, the government's use of PDVSA property (including airplanes) for government activities, Mr. Maduro's use of PDVSA petroleum to support Venezuela's foreign policy (including with respect to Cuba and China), and PDVSA's website's declaration that one of its strategic objectives is to "[s]upport the geopolitical positioning of Venezuela internationally."

• Adherence to separate identities would entitle Venezuela to benefits in U.S. courts while avoiding its obligations, for the same reasons already given above on this very same point. (*See supra* Discussion Part II)

VI. ACL Has Proven That PDVSA Remains The Alter Ego of Venezuela Under The Maduro Regime

ACL did not participate in the April 2021 Hearing and did not otherwise expressly agree to adopt the evidentiary record in OIEG's and Huntington's cases. Nevertheless, ACL supplied its own evidence which in all material respects matches the record in the other two actions already discussed. (*See ACL* Action

D.I. 49, 51)[20] Therefore, and for the same reasons, the Court also concludes that ACL has established, by a preponderance of the evidence, that the Maduro Regime extensively controls PDVSA such that PDVSA is Venezuela's alter ego.

A brief summary of the evidence ACL presented in support of this conclusion is as follows:

• The Maduro Regime maintains extensive economic control over PDVSA in numerous ways, including by exercising its powers under the Venezuelan Constitution, by Mr. Maduro ordering PDVSA's office in Lisbon to be relocated to Moscow, causing PDVSA to sell oil products at below-market prices for political ends, and causing PDVSA to deliver oil to China to service Venezuela's sovereign debt and to Cuba to support Venezuela's political ally. (*ACL* Action D.I. 49 ¶¶ 16, 19, 21; *see also* Barger Decl. Ex. 2)

• The Maduro Regime receives PDVSA's profits, as PDVSA is wholly owned by Venezuela. (*ACL* Action D.I. 49 ¶¶ 4-5; *see also id.* D.I. 51 ¶ 29)

• The Maduro Regime manages PDVSA, including by exercising appointment power, requiring PDVSA employees to avoid publicly opposing governmental aims, and using PDVSA aircraft for travel by government officials. (*ACL* Action D.I. 49 ¶¶ 15, 17-18)

• The Maduro Regime is the real beneficiary of PDVSA's conduct, as evidenced by the execution by Venezuela of a deal under which PDVSA was required to deliver approximately $260 million of crude oil to supply food for a government program. (*ACL* Action D.I. 49 ¶ 20)

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[20] Again, any paragraph containing an ACL proposed finding of fact that the Court refers to by number is a finding of fact the Court is adopting as its own.

• Adherence to separate identities would entitle Venezuela to benefits in U.S. courts while avoiding its obligations, for the same reasons already given above on this very same point. (*See supra* Discussion Part II)

VII. Rusoro Has Proven That PDVSA Remains The Alter Ego of Venezuela Under The Maduro Regime

Rusoro did not participate in the April 2021 Hearing, and did not otherwise expressly agree to adopt the evidentiary record in OIEG's and Huntington's cases. Nevertheless, Rusoro supplied its own evidence which in all material respects matches the record in the other actions already discussed. (*See Rusoro* Action D.I. 35, 38)[21] Therefore, and for the same reasons, the Court also concludes that Rusoro has established, by a preponderance of the evidence, that the Maduro Regime extensively controls PDVSA such that PDVSA is Venezuela's alter ego.

A brief summary of the evidence Rusoro presented in support of this conclusion is as follows:

• The Maduro Regime maintains extensive economic control over PDVSA. (*See Rusoro* Action D.I. 35 ¶¶ 12-16, 20, 31-33, 36-38, 40-41)

• The Maduro Regime receives PDVSA's profits, as PDVSA is wholly owned by Venezuela. (*Rusoro* Action D.I. 34 ¶ 16)[22]

• The Maduro Regime manages PDVSA. (*Rusoro*

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[21] Again, any paragraph containing a Rusoro proposed finding of fact that the Court refers to by number is a finding of fact the Court is adopting as its own.

[22] Once again, the Court adopts this proposed finding of fact of PDVSA's as its own finding of fact.

Action D.I. 35 ¶¶ 21-24)

• The Maduro Regime is the real beneficiary of PDVSA's conduct. (*Rusoro* Action D.I. 35 ¶¶ 26-30, 45-53)

• Adherence to separate identities would entitle Venezuela to benefits in U.S. courts while avoiding its obligations, for the same reasons already given above on this very same point. (*See supra* Discussion Part II)

VIII. The Creditors Have Proven That PDVSA Is The Alter Ego Of Venezuela As Of All Potentially Pertinent Dates

In *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, Misc. No. 17-151-LPS, 2021 WL 129803, at *6 (D. Del. Jan. 14, 2021), this Court held that "the pertinent time" for purposes of an alter ego analysis is "the period between the filing of the motion seeking a writ of attachment and the subsequent issuance and service of that writ." The Court continues to adhere to this view.[23] It reflects the reality that the judgment creditors' actions are brought against the *property* of the Bolivarian Republic of Venezuela (i.e., the property of its alter ego, PDVSA, found in this District) and

[23] In May 2022, Court certified the pertinent-time question for interlocutory appeal, in this formulation: "Whether the pertinent time for conducting an alter ego analysis with respect to the Bolivarian Republic of Venezuela and Petróleos de Venezuela, S.A. is: (i) the period between a judgment creditor filing a motion seeking a writ of attachment and the subsequent issuance and service of the writ, (ii) the time of the injury that gave rise to the judgment creditor's judgment, or (iii) some other time." (*E.g.*, *OIEG* Action D.I. 114) The Third Circuit denied the petitions for leave to appeal that followed. *See, e.g.*, *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, No. 22-8024 D.I. 28 (3d Cir. July 26, 2022).

not against PDVSA itself. It follows that this Court is only able to grant the relief sought by the judgment creditors so long as Venezuela has property in this District. Since the focus is on the property, and not the party, what matters is the location and ownership status of the property, characteristics that can change at any time. This strongly suggests to the Court that the pertinent time has to be related to the time that the judgment creditor seeks to attach the property of the judgment debtor and not, by contrast, some (potentially distant) time in the past (e.g., the time of the injury that gave rise to the creditor's judgment).

Because the Court continues to conclude that the pertinent time is the period between the filing of the motion seeking a writ of attachment and the subsequent issuance and service of that writ, in evaluating the motions of the four creditors the Court is considering in this Opinion the pertinent times for the Court's alter-ego determination are as follows: (i) for OIEG, from the date of filing of its renewed attachment motion on February 19, 2021 through the date of issuance and/or service of the writ; (ii) for Huntington, from the date of filing of its amended motion on February 19, 2021 through the date of issuance and/or service of the writ; (iii) for ACL, from the date of filing of its motion on November 22, 2021 through the date of issuance and/or service of the writ; and (iv) for Rusoro, from the date of filing of its motion on February 9, 2022 through the date of issuance and/or service of the writ.

The Court recognizes that the judgment creditors disagree with the Court's pertinent time analysis. OIEG, Huntington, ACL, and Rusoro all argue that the pertinent time is the time they were injured via the expropriation of their assets: OIEG in 2010 when

the Chávez regime expropriated two of OIEG's glass factories (*OIEG* Action D.I. 49 at 2); Huntington in February 2018 (*Huntington* Action D.I. 64 Ex. 1 at 17; *id.* D.I. 64 at 2 ("facts pertinent to the moment the debt arose are the only pertinent facts"); ACL in January 2018, when Venezuela failed to make timely payments on its bonds, or in December 2018, when the full principal became due (*ACL* Action D.I. 3 at 10, 14); and Rusoro in 2011, when its property and gold-mining rights were seized by Venezuela (*Rusoro* Action D.I. 4 Ex. 1 at 3, 27). Alternatively, the creditors contend that the pertinent date is August 2018, because as of that date the Venezuela Parties have been barred by collateral estoppel from arguing against an alter-ego finding, due to the Court's ruling in *Crystallex I*. (*See, e.g.*, *OIEG* Action D.I. 49 at 23-25; *Huntington* Action D.I. 64 Ex. 1 at 6-8; *see ACL* Action D.I. 3 at 14-15; *Rusoro* Action D.I. 4 Ex. 1 at 26-28) The Court has already rejected this position and continues to do so.

The record before the Court, and the Court's findings with respect to that record, is sufficient such that the Court finds, in the alternative, that if the pertinent dates begin on the date of injury, as identified just above, each of the four judgment creditors has proven, by a preponderance of the evidence, that PDVSA was the alter ego on all such pertinent dates, continuing at least through October 13, 2022. The Court reaches these conclusions based on the same findings of fact given above and throughout this Opinion, based on its consideration of the *Bancec/Rubin* factors.

IX. Venezuela Parties' Counter-Arguments

In addition to the arguments and objections that have already been addressed in connection with the analysis above, the Court here discusses certain addi-

tional contentions made by the Venezuela Parties, raised by the Venezuela Parties.

First, throughout these proceedings, the Venezuela Parties have maintained that the OFAC regulations "broadly prohibit any conceivable steps toward enforcing a judgment against blocked property, such as the PDVH shares, without a license."[24] (*E.g.*, *Huntington* Action D.I. 32 at 27) More specifically, the Venezuela Parties have argued that "resolution of the alter ego issue in favor of [the judgment creditors] ... would alter or affect PDVSA's interests in the PDVH shares and create an interest in the PDVH shares," which is prohibited by the sanctions regime in the absence of a specific license from OFAC. (*E.g.*, *OIEG* Action D.I. 101 at 1;[25] *see also id.* D.I. 65 at 29-30 (creditor cannot obtain "contingent priority interest in the PDVH shares in the absence of a specific license from OFAC"); *id.* D.I. 95 at 2-5 ("any order or judicial process that purports to create a future or contingent interest, or otherwise alters or affects directly or indirectly any right or interest in the PDVH shares, in the absence of a license would be a nullity"); *ACL* Action D.I. 22 at 4, 30-32; *Rusoro* Action D.I. 33 at 2 n.2, 18-19) The Venezuela Parties relatedly argue that OFAC sanctions disallow the Court from "making findings of fact tending to establish that PDVSA is the alter ego of Venezuela," regardless of whether the Court orders issuance and service of any writ. (*See, e.g.*, *OIEG* Action D.I. 95 at 7-9; *see also id.* D.I. 101

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[24] The Republic submitted filings in the *OIEG* Action, but not in the *Huntington, ACL*, or *Rusoro* Actions. (*See, e.g.*, *OIEG* Action D.I. 11-13, 18-19, 30, 39, 44, 69, 75, 98, 123, 126)

[25] PDVSA filed identical post-hearing briefs in the *OIEG* and *Huntington* Actions. (*See OIEG* Action D.I. 95, 101; *Huntington* Action D.I. 51, 53) For convenience, in this section the Court cites only to the version of the briefs filed in the *OIEG* Action.

at 8-10) If the Court were to issue findings of fact or were to conditionally grant a motion for writ of attachment, the Venezuela Parties continue, the Court would be acting inconsistently with the Article III doctrines of standing, ripeness, and mootness, or otherwise rendering an advisory opinion. (*See, e.g.*, *OIEG* Action D.I. 95 at 9-13; *id.* D.I. 101 at 10-13); *Huntington* Action D.I. 32 at 28; *ACL* Action D.I. 22 at 30-33; *id.* D.I. 32 at 7-10); *Rusoro* Action D.I. 33 at 20)

The Court rejected each of these contentions in its March 2, 2022 Opinion, holding that "the OFAC sanctions regime does not require a specific license before the Court may enter an order authorizing the eventual issuance of a writ of attachment." (*E.g.*, *OIEG* Action D.I. 109 at 18)[26] The Court also held that "no OFAC license is required before it may issue findings of fact regarding whether PDVSA is the Republic's alter ego." (*Id.* at 17 n.13) The Court further rejected PDVSA's ripeness challenge and other "vague" Article III challenges, concluding it has jurisdiction under Article III. (*See, e.g.*, March 2022 Op. at 8-11, 12 & n.9) The Court adheres to and hereby incorporates by reference the analysis and conclusions it reached in the March 2022 Opinion.

Rusoro is the only judgment creditor whose case is addressed in the instant Opinion and was not a party to the March 2022 Opinion. With respect to Rusoro, the Venezuela Parties incorporate their prior arguments by reference. (*See, e.g.*, *Rusoro* Action D.I. 33 at 2 n.2, 18-20) Accordingly, the Court rejects these arguments for the same reasons provided in the March 2022 Opinion.

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[26] The March 2022 Opinion was also docketed in the *Huntington* Action (D.I. 58) and the *ACL* Action (D.I. 33).

Second, PDVSA has moved to dismiss these judgment creditor actions for lack of subject-matter jurisdiction and lack of personal jurisdiction under the FSIA. (*See OIEG* Action D.I. 64; *Huntington* Action D.I. 31; *ACL* Action D.I. 21; *see also Rusoro* Action D.I. 32 (also seeking dismissal for lack of subject matter jurisdiction under Article III and to vacate Rusoro's registered judgment pursuant to Federal Rule of Civil Procedure 60(b)(4)) The Court concludes it has subject-matter jurisdiction over all the actions against Venezuela it is addressing in this Opinion.[27]

In *Crystallex I*, 333 F. Supp. 3d at 399, "the Court ha[d] subject matter jurisdiction over Venezuela under § 1605(a)(6)(A) due to Crystallex's $1.2 billion arbitral award against Venezuela, which was confirmed by the United States District Court for the District of Columbia and is now registered in the District of Delaware." Similarly, here, (a) OIEG has an arbitral award against Venezuela, which was confirmed by the DC Court and is now registered in this District (*see OIEG* Action D.I. 1; *id.* D.I. 3 at 1-3); (b) *Huntington* has an arbitral award against Venezuela, which was confirmed by the Southern District of Mississippi and subsequently registered in this District (*Huntington* Action D.I. 1; *id.* D.I. 4 at 1-2 & n.1); (c) ACL registered its judgment against Venezuela from the

[27] To the extent that PDVSA is challenging the justiciability of Rusoro's pending attachment motion under Article III (*see Rusoro* Action D.I. 33 at 1 n.1), the Court already rejected PDVSA's position in the March 2022 Opinion at 12 n.9. PDVSA also moves to vacate Rusoro's registered judgment, alleging that even registration of a judgment violates the OFAC sanctions regime. (*See id.* D.I. 33 at 5, 19-20) As PDVSA acknowledges (*see, e.g.*, *id.* D.I. 33 at 2 n.2), the Court has already rejected these positions, and does so again here. (*See, e.g.*, March 2022 Opinion at 19-20)

Southern District of New York in this District and Venezuela "irrevocably waive[d]" "immunity from suit" (*ACL* Action D.I. 1; *id.* D.I. 3 at 15-16); and (d) Rusoro has an arbitral award against Venezuela, confirmed by the DC Court and registered in this District (*Rusoro* Action D.I. 1; *id.* D.I. 4 Ex. 1 at 3-4).

Because the Court has concluded that PDVSA is the alter-ego of Venezuela in all of these actions, and because the Court has subject-matter jurisdiction over Venezuela in all of these actions under 38 U.S.C. § 1605(a), "the Court may exercise subject matter jurisdiction with respect to PDVSA as well." *Crystallex I*, 333 F. Supp. 3d at 394. PDVSA's personal-jurisdiction argument is entirely premised on the Court agreeing with PDVSA that the Court lacks subject-matter jurisdiction and that PDVSA was never properly served. (*See, e.g.*, *OIEG* Action D.I. 65 at 9 n.2; *Huntington* Action D.I. 32 at 1 n.1; *ACL* Action D.I. 22 1 n.1; *Rusoro* Action D.I. 33 1 n.1) The Court does not agree with PDVSA on these points. Moreover, PDVSA intervened in these actions (*see OIEG* Action D.I. 57; *Huntington* Action D.I. 19; *ACL* Action D.I. 13; *Rusoro* Action D.I. 14), did not object to personal jurisdiction at the time, and is (as the Court has found) the alter ego of Venezuela. For this combination of reasons, the Court may exercise personal jurisdiction over PDVSA in all of the above-captioned actions. Accordingly, PDVSA's cross-motions to dismiss (*OIEG* Action D.I. 64; *Huntington* Action D.I. 31; *ACL* Action D.I. 21; *Rusoro* Action D.I. 32) will be denied.

Third, the Venezuela Parties argue that Delaware law applies to this proceeding, that it precludes attachment of the PDVH shares absent a showing of fraud, and that the judgment creditors have not made a showing of fraud. (*See, e.g.*, *OIEG* Action D.I. 65 at

31-35; *id.* D.I. 69 at ¶ 4; *id.* D.I. 98 at 4-6; *Huntington* Action D.I. 32 at 29-30; *ACL* Action D.I. 22 at 33-35; *Rusoro* Action D.I. 33 at 17-18) This Court and the Third Circuit have previously rejected these contentions. *See Crystallex II*, 932 F.3d at 145 ("*Bancec* is binding federal common law for disputes under the [FSIA]."); *Crystallex I*, 333 F. Supp. 3d at 397 (explaining fraud is not required under governing federal common law). No new or persuasive arguments have been provided in the actions addressed in this Opinion (even assuming, for the sake of argument, the Court were free to revisit this issue). Thus, the Court adheres to and hereby adopts and incorporates by reference its holding and analysis in its earlier rejections of these positions.

Fourth, the Venezuela Parties emphasize that the Republic of Venezuela is PDVSA's sole shareholder, giving the Republic all the same extensive rights any controlling shareholder would have, and suggesting that the evidence shows nothing more than the kinds of actions any controlling shareholder might take with respect to a corporate entity it controls. *See generally Gater Assets Ltd. v. Moldovagaz*, 2 F.4th 42, 55-56 (2d Cir. 2021) ("To qualify as sufficiently extensive under *Bancec*, the sovereign's control over an entity must rise above the level that corporations would normally tolerate from significant shareholders or expect from government regulators."). For instance, a controlling shareholder may have the right to appoint directors and to be provided with information about a company's operations. *See generally Arch Trading Corp. v. Republic of Ecuador*, 839 F.3d 193, 203 (2d Cir. 2016) ("[C]ourts have consistently rejected the argument that the appointment or removal of an instrumentality's officers or directors, standing alone, overcomes the *Bancec* presumption") (internal quota-

tion marks omitted). The Court recognizes these realities. However, for all the reasons set out in detail throughout this Opinion, the Court finds that the Republic is regularly exercising powers far beyond those accorded to it through its role as sole and controlling shareholder of PDVSA. (*See, e.g.*, April 2021 Tr. at 251-54 (Huntington counsel describing evidence of commingling of Venezuela and PDVSA funds, use of government funds to pay corporation's lawyers, and arguing, persuasively, that no "normal shareholder would ... be able to get at and make direct orders of second – third, and fourth-order subsidiaries without going through the company it actually owns")) Moreover, actions taken by the Republic that happen to correspond to actions any controlling shareholder may be empowered to take do not, thereby, lose all probative value in an alter ego analysis. Fundamentally, after according all of the facts found here their appropriate weight, including the fact that Venezuela is PDVSA's sole shareholder, the Court has found, by a preponderance of the evidence, that Venezuela directs and controls PDVSA to an extent and in a manner rendering PDVSA the alter ego of Venezuela.

Finally, as already noted, the Venezuela Parties insist that the Court's consideration of the Maduro Regime's actions is inconsistent with caselaw in this area. (*See, e.g.*, *OIEG* Action D.I. 11 at 11-12 & n.12; *id.* D.I. 65 at 11-12, 14-20; *id.* D.I. 69 at 3-4; *id.* D.I. 101 at 15-20; *Huntington* Action D.I. 53 at 15-20; *ACL* Action D.I. 22 at 12-16; *id.* D.I. 32 at 3-4; *Rusoro* Action D.I. 33 at 15-16) As the Court has stated (*see supra* Discussion Part II), the Court largely agrees and, thus, has held that the relevant analysis is of the recognized Guaidó Government's relationship with PDVSA in the United States. The Court has considered the numerous cases relied on by the Vene-

zuela Parties and finds in them no basis not to have also considered, as an alternative ground for its ruling, that the relationship between the Maduro Regime and PDVSA in Venezuela is also an alter-ego relationship.[28]

CONCLUSION

For the reasons given above, the Court will grant OIEG's, Huntington's, ACL's, and Rusoro's motions for writs of attachment of PDVSA's shares of PDVH, as these creditors have rebutted the presumption that Venezuela and PDVSA are separate, as the creditors have proven, by a preponderance of the evidence, that in fact PDVSA is the alter ego of the judgment debtor, the Republic of Venezuela. The Court has found that this alter ego relationship existed at all possibly pertinent dates and regardless of whether the analysis is properly focused on the relationship between the Guaidó Government and PDVSA in the United States (as the Court holds is the correct analysis) or, alternatively, centers on the relationship between the Maduro Regime and PDVSA in Venezuela. The Court will order the parties to meet and confer and provide their positions on how the Court should now proceed. An appropriate order follows.

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[28] *See, e.g.*, *Zivotofsky*, 576 U.S. at 14, 18-19, 22, 135 S.Ct. 2076; *Pink*, 315 U.S. at 229-33, 62 S.Ct. 552; *Guaranty Tr. Co.*, 304 U.S. at 137-38, 58 S.Ct. 785; *Belmont*, 301 U.S. at 328-30, 57 S.Ct. 758; *PDVSA U.S. Litig. Trust v. Lukoil Pan Ams. LLC*, —— F. 4th ——, 2023 WL 2469178, 2023 U.S. App. LEXIS 5950 (11th Cir. 2023); *Nat'l Union Fire Ins. Co.*, 254 F.2d at 186-87; *Latvian State Cargo & Passenger S.S. Line v. McGrath*, 188 F.2d 1000, 1002-04 (D.C. Cir. 1951); *The Maret*, 145 F.2d at 433, 439-42.

APPENDIX C

National Assembly
Caracas - Venezuela

[*Translation*]

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Decrees

The following:

STATUTE TO GOVERN A TRANSITION TO DEMOCRACY TO REESTABLISH THE FULL FORCE AND EFFECT OF THE CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

PRELIMINARY RECITALS

The *Statute that governs a Transition to democracy to restore the full force and effect of the Constitution of the Bolivarian Republic of Venezuela* is an act to directly and immediately execute article 333 of our Magna Carta. The purpose of the Statute is to return to the Constitution, based on the Constitution itself, to provide for an orderly and rational path for the unprecedented and imminent process of political change that has begun in the country. The Statute is a legislative initiative by the National Assembly, which aspires to preserve the 1999 Constitution as a covenant of coexistence for the civic life of Venezuelans and the foundation of a transition to democracy.

I

For twenty years during the Bolivarian Revolution, a political system has been imposed which is divorced from Venezuela's constitutional principles and republican tradition. Venezuelans suffer serious material shortages, and a radical curtailment of all their

rights, including political rights. Real socialism has subjected them to persecution, chaos and misery. Faced with this situation an urgent need arises to return to constitutional democracy. In this sense, the superior values that inspire the present Statute "are life, liberty, justice, equality, solidarity, democracy, social responsibility, constitutional supremacy and, in general, the pre-eminence of Human Rights, ethics, and political pluralism"(article 5).

II

A narrative of the democratic struggle that has been fought in recent years is required to explain the relevance of the rules that are submitted below. The conditions currently in favor of political change are not a random event. They are not about the spontaneous collapse of a dictatorship. They are a heroic deed by all of the people of Venezuela, with the support of the international community, in view of the severity of the autocratic expansion of the Bolivarian Revolution.

The moment of liberation which began on January 10, 2019 had its origin in the opposition's refusal to participate in the fraudulent process of May 20, 2018, following its refusal to sign the Electoral Agreement proposed by the emissaries of Nicolás Maduro Moros in the Dominican Republic. On May 20, 2018, the *de facto* regime tried to simulate an electoral process in which the Venezuelan people were unable to exercise their right to vote in freedom and the foundation was laid for the current usurpation scenario. The silence of the citizenry at the polls became a deafening cry for freedom that stripped the regime of its legitimacy and has expanded to this day. Thus, when the time came for a new President-elect to be sworn in under the Constitution, that did not take place, and Nicolás Maduro Moros clung to the Executive power, as a

matter of fact, deepening the usurpation.

III

Since January 10, 2019, Nicolás Maduro Moros continues to usurp the Presidency of the Bolivarian Republic of Venezuela, and a *de facto* government has been set up in the country. However, article 333 of the National Constitution in force reads: *this Constitution shall not lose its effectiveness if it ceases to be observed by an act of force, or because it is repealed by any other means than the means contained in the Constitution. In such a case, any citizen, whether invested with such authority or not, shall have the duty to cooperate in restoring the Constitution's full force and effect.* In this sense, by being faithful to our Magna Carta and by responding to their civic conscience, the Venezuelan people are obliged to promote actions to allow the restoration of constitutional order.

It should be noted that the Statute deals with a reality, present both in the country and the world. While the Legislative Branch is enacts this Statute, the Venezuelan people are rebelling peacefully against the usurpation and the group of free nations has acknowledged that constitutional order has been broken. The whole world is witness to massive demonstrations of a peaceful and constitutional nature, which evidence the irreversible demand for change and freedom within the heart of every Venezuelan.

Thus, we find ourselves in a political, legal, and constitutional situation that favors the restoration of constitutional order. The National Assembly is aware of the urgency of this moment, and offers this Statute as an efficient way to return to democracy along the paths established by the Constitution and, in that manner, guarantee an orderly transition which will

permit the establishment of a system of liberties that offers lasting and stable peace, from generation to generation.

IV

The Statute that governs the transition to democracy, and restore the full force and effect of the Constitution of the Bolivarian Republic of Venezuela consists of seven (7) chapters and thirty-nine (39) articles. It is at the same time specific and flexible in its design. It is intended to efficiently address the challenges of institutional reconstruction, while remaining open to the dynamics of political change. These design guidelines -specificity and flexibility - respond to the challenges that will bring about democratic openness, pluralism and the need to find paths of consensus among the different political forces that will be involved in the process of restoring constitutional order. In short, the Statute attempts to rationalize, morally, legally, and technically, the democratizing energies of political organizations and civil society in order to frame them in the best Venezuelan republican tradition.

The first chapter - *General Provisions* - includes the definition of democratic transition, the legal nature of the Statute, the superior values that guided the legislators and their objectives. Regarding the definition of democratic transition (article 3), it is worth mentioning that three progressive phases are identified. First, ceasing the usurpation. Next, establishing a provisional government and, finally, holding free, clear, and fair elections. In each of these phases, the National Assembly shall exercise certain powers, in a progressive manner, until the democratic transition is achieved and constitutional order is restored.

The second chapter deals with *usurpation of the Na-*

tional Executive Branch. It confirms the absence of an elected president in Venezuela; qualifies the situation as a usurpation; specifies the ineffectiveness of the usurped authority; establishes the cessation of any duty of obedience to Nicolás Maduro Moros; and identifies the end of usurpation as a milestone marking the liberation from the autocratic regime.

The third chapter deals with *the role of the National Assembly* and its President for as long as usurpation of the Presidency of the Republic continues. First, it reaffirms the validity of the constitutional period of the Legislative Branch. Next, it establishes that, "the President of the National Assembly is, in accordance with article 233 of the Constitution, the legitimate President in charge of the Bolivarian Republic of Venezuela" (article 14). The following articles discuss the role of the National Assembly, the path to reintegrate the Venezuelan State into the group of free nations, and the rules that will guide the political and economic transition.

The fourth chapter discusses the *re-institutionalization of bodies of the Citizen Branch, the National Electoral Council, and the Supreme Court of Justice*. The Statute specifies the National Assembly competence to renew public powers and a path is established to legitimize the Citizen Branch, the Supreme Court of Justice, and the rectors of the National Electoral Council, establishing a transitional period for the Public Powers designated during the provisional Government.

The fifth chapter establishes the guidelines *to create a provisional Government for national unity*. Once the usurpation is ended, the National Assembly shall guarantee full compliance with article 233 of the National Constitution, once liberation from the autocracy is completed. The President of the Legislative

Branch "shall act for thirty (30) consecutive days as President in Charge for the purpose of conducting the process which will bring about the establishment of a provisional Government for national unity and adopting the necessary measures to hold free and fair presidential elections" (article 25). This section provides for the mechanisms that will govern the political process following the end of usurpation.

Following the transition path established in article 3, the sixth chapter refers to *free elections*. It establishes mechanisms to guarantee free, just and fair elections. It also establishes a clear and unequivocal commitment to "strengthening political organizations, in accordance with the provisions of article 67 of the Constitution" (article 32). This commitment is specifically made in recognition of the importance of guaranteeing political participation and a stable democratic system.

And in conclusion, in the *Final Provisions,* the publication of the Statute is authorized and extraordinary measures are ordered for its promulgation, given the impossibility publishing it in the Official Gazette.

V

The Statute that governs *the Transition to democracy to re-establish the full force and effect of the Constitution of the Bolivarian Republic of Venezuela* is an expression of the democratic vocation and desire for freedom of the Venezuelan people. It is proof of the people's political maturity and, through it, the country will be guided toward the reestablishment of the constitutional order, in a peaceful and orderly manner, and to set the foundation for a stable and lasting democracy.

National Assembly
Caracas - Venezuela

[*Translation*]

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Based on Article 7, and Article 333, of the Constitution,

DECREES

The following

STATUTE TO GOVERN A TRANSITION TO DEMOCRACY, TO REESTABLISH THE FULL FORCE AND EFFECT OF THE CONSTITUTION OF THE REPUBLIC OF VENEZUELA

CHAPTER I GENERAL PROVISIONS

Purpose

Article 1. The purpose of this Statute is to establish a legal framework to govern a democratic transition in the Bolivarian Republic of Venezuela.

Democratic Transition

Article 2. For the purposes of this Statute, transition is understood as the process of democratization and re-institutionalization involving the following phases: liberation from the autocratic regime that oppresses Venezuela, creation of a provisional Government for national unity, and holding free elections.

Purpose of the Democratic Transition

Article 3. The objectives of the democratic transition are to fully restore the constitutional order, rescue the popular sovereignty through free elections, and reverse the complex humanitarian emergency, for the purpose of rescuing the system of liberties, constitu-

tional guarantees and human rights.

Legal Nature

Article 4. The present Statute is a legal act in direct and immediate execution of article 333 of the Constitution of the Bolivarian Republic of Venezuela. Any action decreed by entities of the Public Branch to carry out the guidelines established in this Statute are also based on article 333 of the Constitution, and are mandatory for all authorities and public officials, as well as all individuals.

Principles

Article 5. The superior values which govern this Statute are life, liberty, justice, equality, solidarity, democracy, social responsibility, constitutional supremacy and, in general, preeminence of human rights, ethics, and political pluralism.

Objectives

Article 6. In accordance with article 333 of the Constitution, the objectives of this Statute are to:

1. Regulate actions by the different branches of the Public Power during the process of democratic transition, in accordance with article 187, paragraph 1 of the Constitution, allowing the National Assembly to begin the process of re-establishing constitutional and democratic order.

2. Establish guidelines for the National Assembly to protect the rights of the Venezuelan State and people before the international community, until a provisional Government for national unity is set up.

3. Lay the foundation to initiate a process of national reconciliation among citizens.

4. Establish political guidelines to guide the National Assembly to set up a Government for national uni-

ty, which shall act during the absence of a President-elect until free and transparent elections are completed in the shortest time possible.

5. Define criteria and timing to appoint or ratify public officials within the Citizen Branch, the Electoral Branch and the Supreme Court of Justice, in accordance with the Constitution and the laws.

6. Establish guidelines to guarantee a constitutional integration of the National Armed Forces in the democratic transition process, in accordance with the directives of article 328 of the Constitution.

7. Define the bases for economic transition under the terms of article 299 of the Constitution and reverse the complex humanitarian emergency.

8. Establish a general framework to implement reforms aimed at rescuing popular sovereignty through free, fair and transparent elections.

9. Fully reinsert the Venezuelan State into the international organizations for the protection of human rights, rendering the renunciation of the OAS Charter null and void, ratify the American Convention on Human Rights and the compulsory contentious jurisdiction of the Inter-American Court of Human Rights; as well as ratify the other treaties on human rights in the inter-American system and in the United Nations system.

Progressive Application of this Statute

Article 7. To progressively achieve the objectives defined in the previous article, the three phases of the democratic transition enshrined in article 2 of this Statute shall be taken into account:

1. Liberation from the dictatorial regime, which shall occur with the cessation of the *de facto* powers

exercised by Nicolás Maduro Moros.

2. Establishment of a provisional Government for national unity, which shall ensure that the democratic system is restored and free elections are held.

3. Restoration of a democratic State by holding free, clear and fair elections in the shortest time possible.

CHAPTER II

On the Usurpation of the Executive Branch

Absence of President-elect

Article 8. The political event held on May 20, 2018 was not a legitimate presidential election. Therefore, there is no legitimate President-elect to assume the Presidency of the Bolivarian Republic of Venezuela for the 2019-2025 period.

Usurpation of the Presidency of the Republic

Article 9. By virtue of the provisions of the preceding article, the assumption of the Presidency of the Bolivarian Republic of Venezuela by Nicolás Maduro Moros, or by any other official or representative of the *de facto* regime, is a usurpation of authority under the terms of article 138 of the Constitution.

Ineffectiveness of usurped presidential authority

Article 10. The usurpation of the Presidency of the Bolivarian Republic of Venezuela is derived from the assumption of that position by a person who is not the President-elect and does not have a constitutional right to so assume it. All acts by the usurping authority as of January 10, 2019 shall be considered null and void, in accordance with article 138 of the Constitution of the Bolivarian Republic of Venezuela.

Cessation of the duty of obedience to usurped authority

Article 11. No citizen, whether invested with authority or not, shall obey any mandate by the usurping authority. Public officials who contribute to the usurpation shall be liable, as established in articles 25 and 139 of the Constitution. All public officials have the duty to abide by article 7 and article 333 of the Constitution in order to obey the mandates of Venezuela's legitimate Public Branches, especially with regard to the execution of this Statute.

Cessation of usurpation and liberation from the autocratic regime

Article 12. The cessation of the usurped authority of Nicolás Maduro Moros, and the creation of a provisional Government for national unity are concurrent elements that will free the country from the autocratic regime as established in article 2 herein.

CHAPTER III

On Actions by the National Assembly and its President

Validity of the National Assembly term

Article 13. The National Assembly, elected by popular vote on December 6, 2015, shall exercise its constitutional functions within the framework of the current Legislature until January 4, 2021. On January 5, 2021, a new legislature of the National Assembly shall be installed, in accordance with article 219 of the Constitution of the Bolivarian Republic of Venezuela. To that end, parliamentary elections shall be held during the last quarter of the 2020, as established in the constitutional rules and electoral laws.

The NA President as Interim President of the Bolivarian Republic of Venezuela

Article 14. The President of the National Assembly

is, in accordance with article 233 of the Constitution, the legitimate Interim President of the Bolivarian Republic of Venezuela. The acts of the Interim President shall be submitted to the parliamentary control of the National Assembly under article 187, numeral 3, of the Constitution.

Defense of the rights of the Venezuelan people and State

Article 15. The National Assembly may adopt any decisions necessary to defend the rights of the Venezuelan State before the international community, to safeguard assets, property and interests of the State abroad, and promote the protection and defense of human rights of the Venezuelan people, all in accordance with Treaties, Conventions, and International Agreements in force.

In exercising the powers derived from article 14 of this Statute, and within the framework of article 333 of the Constitution, the Interim President of the Bolivarian Republic of Venezuela shall exercise the following powers, subject to authorization and control by the National Assembly under the principles of transparency and accountability.

a. Appoint *ad hoc* Administrative Boards to assume the direction and administration of public institutes, autonomous institutes, State foundations, State associations and organizations, State companies, including companies established abroad, and any other decentralized entity, for the purpose of appointing administrators and, in general, adopting the measures necessary to control and protect State company assets. The decisions adopted by the Interim President of the Republic shall be executed immediately, with full legal effect.

b. While an Attorney General is validly appointed in

accordance with article 249 of the Constitution, and within the framework of articles 15 and 50 of the Organic Law of the Attorney General of the Republic, the Interim President of the Republic may appoint a special attorney general to defend and represent the rights and interests of the Republic, State companies and other decentralized entities of the Public Administration abroad. The special attorney general shall have the power to appoint judicial representatives, including before international arbitration proceedings, and shall exercise the powers set forth in article 48, paragraphs 7, 8, 9 and 13, of the Organic Law of the Attorney General of the Republic, subject to the limitations derived from article 84 of that Law and this Statute. Such representation shall be especially oriented toward ensuring the protection, control, and recovery of State assets abroad, as well as executing any action required to safeguard the rights and interests of the State. The attorney general thus appointed shall have the power to execute any action and exercise all of the rights that the Attorney General would have, with regard to the assets described herein. For such purposes, such special attorney general shall meet the same conditions that the Law requires to occupy the position of Attorney General of the Republic.

Actions by the National Assembly

Article 16. By virtue of the provisions of the previous article, the National Assembly shall:

1. Authorize the appointment of the heads of permanent diplomatic missions by the Interim President, in accordance with article 236, numeral 15, of the Constitution.

2. Within the framework of the control powers established in the Constitution, defend the assets of the

Bolivarian Republic of Venezuela and its entities abroad.

3. Participate in the investigation of any serious human rights violation, and the investigation of any illicit activity related to corruption and money laundering in order to ensure the recovery of capital derived from such illicit activities;

4. Promote the implementation of international cooperation mechanisms to address the humanitarian emergency and the refugee and migrant crisis, in accordance with International Humanitarian Law and article 23 of the Constitution of the Bolivarian Republic of Venezuela.

5. Adopt measures that will permit the recovery of state sovereignty throughout the territory of the Bolivarian Republic of Venezuela.

6. Articulate actions with civil society to promote mechanisms for public participation that will legitimize the democratic transition process and assist in bringing about the cessation of the usurpation of presidential powers by Nicolás Maduro Moros.

7. Exercise any other power that may be assumed by the National Assembly under article 333 of the Constitution, the laws of the Republic, and this Statute, within the limits established by Treaties and other international human rights instruments in force.

Re-insert the Venezuelan State into the group of free nations

Article 17. In exercise of the powers set forth in this Chapter, the National Assembly shall take actions designed to re-insert as soon as possible the Venezuelan State into the group of free nations, in accordance with the provisions of the Charter of the Organization of American States, the Inter-American Demo-

cratic Charter, the Charter of the United Nations, and other international instruments, in particular those relating to human rights in the inter-American and universal systems.

Guidelines for political transition

Article 18. The National Assembly shall enact Laws to promote the political transition in accordance with article 333 of the Constitution. The objectives of such Laws will be the following:

1. Create legal incentives and guarantees for civilian and military officials to act in accordance with the Constitution and disregard any order from the usurpers of the Presidency of the Republic since January 10, 2019, as well as other bodies tht have been established unconstitutionally, such as the current Supreme Court of Justice, the National Electoral Council, the Public Ministry, the Ombudsman's Office, and the Comptroller General of the Republic. The purpose of such incentives to for such civilian and military officials to cooperate and participate in the transition process and restoration of constitutional order.

2. Develop a transitional justice system, aimed at recovering human dignity, justice, protection and integral reparations for victims of human rights violations. The system shall include measures to establish the truth, and promote national reconciliation, in accordance with current human rights treaties and article 30 of the Constitution. Once the usurpation ceases, the National Assembly shall create by law an independent Truth Commission, which shall be charged with investigating human rights violations, proposing political and legislative guidelines for reparations to victims, and promoting democratic education, a culture of peace and national reconciliation.

3. Decree amnesty for citizens, both civilian and mil-

itary, who are still deprived of their liberty for political reasons, and guarantee a democratic reintegration of citizens who cooperate in restoring constitutional order, all in accordance with articles 23, 29 and 187, numeral 5, of the Constitution and the standards of International Law on Human Rights.

4. Define policies aimed at effective compliance with article 328 of the Constitution and constitutional integration of the Armed Forces into the democratic transition process.

Guidelines for an economic transition

Article 19. The National Assembly shall issue laws to address the humanitarian emergency and promote the recovery of the Venezuelan economy, in accordance with article 299 of the Constitution.

CHAPTER IV

On the Re-institutionalization of the Citizen Branch, Supreme Court of Justice and National Electoral Council

National Assembly jurisdiction to renew public branches

Article 20. It shall the National Assembly's responsibility to determine when to implement, in full or in part, the necessary procedures under article 333 of the Constitution to enable modifications to timing and legal requirements in order to recover the legitimacy of the Public Branch. It is the duty of every citizen and public official to cooperate in such process.

The National Assembly shall proceed to appoint or ratify public officials within Public Branches: Citizen Branch, Rectors of the National Electoral Council, and Judges of the Supreme Court of Justice.

Legitimizing the Citizen Branch

Article 21. The National Assembly shall determine when the process of appointing or ratifying public officials of the Citizen Branch.

Given that the Republican Moral Council cannot function constitutionally and democratically, and the factual impossibility of convening the Nominations Committee of the Citizen Branch while the usurpation by Nicolás Maduro Moros persists, the National Assembly, under article 333 of the Constitution, shall establish mechanisms pursuant to which citizens, organized through academies, universities and nongovernmental organizations, may publicly post lists of candidates for public office within the Citizen Branch. The foregoing shall be in compliance with article 279 of the Constitution.

Legitimizing the Supreme Court of Justice

Article 22. For the purposes of this Statute, any individual appointed by the National Assembly in accordance with the Constitution and the Organic Law of the Supreme Court of Justice, in the July 21, 2017 session, shall be considered a legitimate judge.

The National Assembly shall appoint or ratify judges to the Supreme Court of Justice who were appointed during legislatures prior to the 2016-2021 Legislature.

Once all Judges have been appointed, and vacancies have been filled, such Judges shall be incorporated into the highest jurisdictional body of the Bolivarian Republic of Venezuela in accordance with the provisions of the Organic Law of the Supreme Court of Justice.

Legitimizing the Rectors of the National Electoral Council

Article 23. The National Assembly shall exercise its

powers, under article 295 of the Constitution and the Organic Law of the Electoral Branch, to appoint or ratify the Rectors of the National Electoral Council.

The appointment of the Rectors of the National Electoral Council shall be a priority for the National Assembly. The Electoral Nominations Committee shall exercise its powers as soon as possible so that a new National Electoral Council may proceed to hold free and fair elections without undue delay such that, once usurpation has come to an end and a provisional Government for national unity has been formed, such elections shall enable the consolidation of democracy.

Transitory period for re-legitimized Public Branches

Article 24. All Public Branches legitimized by the National Assembly in accordance with this Statute shall exercise their functions until the end of the first six months of 2021. The National Assembly that is elected in the last quarter of the year 2020, pursuant to article 13 of this Statute, shall appoint or ratify public officials within the Citizen Branch, judges of the Supreme Court of Justice, and Rectors of the National Electoral Council. Such appointed or ratified officials shall hold office for complete constitutional periods as set forth in the Constitution of the Bolivarian Republic of Venezuela.

CHAPTER V

On the creation of a Provisional Government for National Unity

Continuity in the application of article 233 of the Constitution

Article 25. Once usurpation of the Presidency of the Bolivarian Republic of Venezuela by Nicolás Maduro Moros and other representatives of the *de facto* re-

gime ends, the National Assembly shall ensure that article 233 of the Constitution will continue to apply. The President of the National Assembly shall be Interim President of the Republic for thirty (30) consecutive days for the purpose of leading the process to create a provisional Government of national unity and adopt measures required to hold free and fair presidential elections.

Appointment of a temporary President to form a provisional Government

Article 26. Once the two assumptions set forth in the previous article are met, and in case of a technical impossibility to call and hold free and fair elections within thirty (30) continuous days as established in article 233 of the Constitution, the National Assembly shall ratify the Interim President as provisional President of the Bolivarian Republic of Venezuela for the purpose of forming a Government of national unity, which will initiate a second phase of the transition to democracy, as established in article 2 of this Statute, and within the framework of article 333 of the Constitution.

article 333 of the Constitution establishes that the mandate of the provisional Government will end when a new President-elect is sworn in before the National Assembly. The President-elect will be have been elected in free and fair elections convened and organized by the Electoral Branch and benefitting from all guarantees established by national and international electoral transparency standards. Such elections shall result in a Presidential period from 2019 to 2025, as established in article 233 of the Constitution. In any event, presidential elections must be held as soon as possible, as soon as all technical conditions are met and within a maximum period of twelve (12) months.

Governance rules and minimum government program

Article 27. The National Assembly, after consulting civil society and political organizations, shall approve by parliamentary agreement the rules of governance and guidelines of the minimum program to be implemented by the provisional Government within the principles of social market economy. To this end, guidelines for a political transition and guidelines for an economic transition derived from the provisions of articles 17 and 18 of this Statute shall be taken into consideration. That minimum program will respect the principles of the socioeconomic regime and role of the State in the economy as established in article 299 of the Constitution.

International cooperation

Article 28. The provisional Government for national unity shall procure international financial cooperation from multilateral organizations and other nations in the free world in order to initiate a process of economic transition and pursue the reversal of the humanitarian emergency. The provisional Government shall also request the permanent presence of international organizations specialized in guaranteeing and defending human rights to accompany the democratic transition process and inform the international community on the status of such rights in Venezuela.

Rescuing state sovereignty throughout the territory of the Republic

Article 29. The provisional Government may request the assistance of the international community for the purpose of restoring State sovereignty in the territory of the Republic, with prior authorization by the National Assembly, in accordance with the powers

granted in article 187 of the Constitution.

CHAPTER VI

On Elections

Holding free elections

Article 30. The National Assembly shall adopt, by application of articles 233 and 333 of the Constitution, measures to restore the conditions for electoral integrity and permit a presidential election to be held for the 2019-2025 presidential term.

Restoring political rights

Article 31. Once the other Public Branches have been renewed, the National Assembly shall adopt measures to ensure the right to seek nomination for elected office and the right of suffrage may be freely exercised, in accordance with the Constitution and international electoral integrity standards.

Strengthening political organizations

Article 32. The National Assembly and the other legitimized Public Branches shall adopt measures to strengthen political organizations in accordance with article 67 of the Constitution.

VII

Transitory and Final Provisions

Parliamentary acts for the execution of this Statute

Article 33. The National Assembly shall adopt any decision, Agreements and Laws necessary to implement this Statute, in order to allow the effective restoration of the Constitution and to put an end to the usurpation of the Presidency of the Republic. Until such objectives are achieved, the provisions in this Statute and other decisions adopted within the

framework of articles 233 and 333 of the Constitution shall apply preferentially.

Transitional rules regarding PDVSA and PDVSA subsidiaries

Article 34. Given the risks faced by PDVSA and its subsidiaries as a result of the usurpation referred to in Chapter II of the present Statute, and while such a situation persists, under the authoritative control of the National Assembly and within the framework of the application of article 333 of the Constitution, the Interim President shall appoint an *ad hoc* Administrative Board for Petróleos de Venezuela S.A. (PDVSA), in accordance with article 15, letter a, of the present Statute, to exercise PDVSA's rights as shareholder of PDV Holding, Inc. The powers shall be exercised in accordance with the following principles:

1. The *ad hoc* Administrative Board may be composed of persons domiciled abroad and shall have powers to act as shareholders' assembly and board of directors of PDVSA, with the objective of taking all actions that may be necessary to designate the board of directors of PDV Holding, Inc., in representation of PDVSA as sole shareholder of that company. The new directors of PDV Holding, Inc. shall proceed to appoint new boards of directors for the PDV Holding, Inc.'s subsidiaries, including Citgo Petroleum Corporation.

2. This transitory provision shall prevail over any other applicable rule, and shall govern the interpretation of any other formality required by the Venezuelan legal system and corporate documents, in order to exercise the representation of PDVSA as sole shareholder of PDV Holding, Inc.

3. The new directors of PDV Holding, Inc. and its subsidiaries shall guarantee the functional autonomy of said companies, particularly with respect to PDVSA. Based on the foregoing:

   a) The autonomous management of the business of PDV Holding, Inc. and its subsidiaries shall follow commercial efficiency criteria, subject only to the control and accountability mechanisms exercised by the National Assembly, and other applicable control mechanisms.

   b) PDV Holding, Inc. and its subsidiaries shall have no relationship whatsoever with the people currently usurping the Presidency of the Republic. For as long as such usurpation persists, PDV Holding, Inc. and its subsidiaries shall make no payments or distributions to PDVSA.

Publicity concerning present Statute

Article 35. The National Assembly shall communicate as soon as possible the contents of this Statute to the Venezuelan Nation, as well as the international community, including foreign Governments, the Secretary General of the United Nations (UN), the Secretary General of the OAS, the UN High Commissioner for Human Rights, the Inter-American Commission on Human Rights, the European Union, the African Union, the Organization of Petroleum Exporting Countries, the World Bank, the International Monetary Fund, the Inter-American Development Bank, and the Andean Development Corporation-Latin American Development Bank, among others.

Disposition and management of State assets

Article 36. State assets that are recovered through

the mechanisms established in this Statute may not be disposed of or realized until the usurpation ends and a provisional Government of national unity is formed. To this end, and by virtue of the continuous budgetary renewal process that the Republic has experienced since 2016, the National Assembly may issue a special law on financial and budgetary matters, in accordance with article 187, paragraphs 6, 7 and 8 of the Constitution.

Entry into Force

Article 37. This Statute shall enter into force after being approved by the members of the National Assembly, pursuant to Constitutional rules for legislative procedures and in accordance with the National Assembly's Internal and Debate Rules.

Extraordinary means to promulgate the present Statute

Article 38. By virtue of the fact that access to the Official Gazette is an impossibility because of the *de facto* regime and the usurpation that prevails in Venezuela, the Statute and the decisions that are to be implemented shall be published in such manner as may be determined by the National Assembly for such purpose.

For such purposes, and while the situation indicated in this article persists, the Laws and Agreements issued by the National Assembly, as well as the decisions issued by the Interim President of the Republic, shall be published in the Legislative Gazette, in accordance with the provisions of the Internal and Debate Regulations. Laws, Agreements, and other decisions shall become effective upon publication in the Legislative Gazette, including in digital format. The Official Publications Act shall apply supplementally.

Residual Clause

Article 39. In order to ensure a democratic transition, anything not covered by this Statute shall be resolved by the National Assembly by application of article 333 of the Constitution.

Issued, signed and sealed at the Federal Legislative Palace, seat of the National Assembly of the Bolivarian Republic of Venezuela, in Caracas, on February 5, 2019. 209th Year of Independence and 150th Year of the Federation.

[*Signed*]
JUAN GERARDO GUAIDO MARTINEZ
President

[*Signed*]
EDGAR JOSE ZAMBRANO RAMIREZ
First Vice-President

[*Signed*]
IVAN STALIN GONZALEZ MONTANO
Second Vice-President

[*Signed*]
EDINSON DANIEL FERRER ARTEAGA
Secretary

[*Signed*]
JOSE LUIS CARTAYA PINANGO
Undersecretary

APPENDIX D

[emblem:]

OFFICE OF THE PRESIDENCY

Bolivarian Republic of Venezuela

PRESIDENCY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Executive Order No. 3

Caracas, April 10, 2019

JUAN GERARDO GUAIDÓ MÁRQUEZ

President of the National Assembly

Interim President of the Bolivarian Republic of Venezuela

In execution of the duties arising from Articles 233, 236, points 1, 2 and 11 and 333 of the Constitution, and in accordance with the provisions established in Articles 14, 15, subparagraph "a" and 34 of the Law Governing the Transition to Democracy to Restore the Validity of the Constitution of the Bolivarian Republic of Venezuela, and Articles 103, 108 and 118 of the Public Administration's Organic Law and Article 30 of the Organic Hydrocarbons Law,

WHEREAS

On February 8, 2019, the ad-hoc administrative board of Petróleos de Venezuela, S.A. (PDVSA) was created to represent said company as the shareholder of PDV Holding Inc. in order to designate the new board of directors of Citgo Petroleum Corporation;

WHEREAS

The creation of this ad-hoc administrative board revealed the need to adopt new actions to protect the State of Venezuela's foreign assets, directly or

indirectly controlled by PDVSA, in order to comply with the provisions established in the Law Governing the Transition to Democracy to Restore the Validity of the Constitution of the Bolivarian Republic of Venezuela;

WHEREAS

The kleptocratic and predatory policies of the usurping regime of the presidency of the Republic constitute a risk for the protection of Venezuela's foreign assets, which are required for economic recovery and to address the complex humanitarian crisis;

WHEREAS

Despite the fact that the usurping regime of the presidency of the Republic is still illegally retaining the control of the natural bodies that enable the performance of the formal duties established by the Venezuelan trade legislation, in accordance with subparagraph "a" of Article 15 of the Law Governing the Transition to Democracy to Restore the Validity of the Constitution of the Bolivarian Republic of Venezuela, in accordance with its Article 34, the National Assembly has full authority to authorize the designation of ad-hoc administrative boards to assume the management and administration of the State's companies and, in general, to adopt the necessary measures to control and protect its assets;

WHEREAS

In order to fulfil the preceding objectives, the ad-hoc administrative board, created on February 8, 2019, needs to be reorganized and new responsibilities and duties need to be attributed thereto;

I hereby issue the following

EXECUTIVE ORDER ON THE SPECIAL RULES GOVERNING THE AD-HOC ADMINISTRATIVE BOARD OF PETRÓLEOS DE VENEZUELA, S.A. (PDVSA) AND ITS SUBSIDIARY COMPANIES

CHAPTER I

ON THE DUTIES OF THE AD-HOC ADMINISTRATIVE BOARD OF PETRÓLEOS DE VENEZUELA, S.A. (PDVSA) AND ITS SUBSIDIARY COMPANIES

Article 1. The ad-hoc administrative board of Petróleos de Venezuela, S.A. (PDVSA), created on February 8, 2019, shall be governed by the provisions contained in this Executive Order.

Article 2. The ad-hoc administrative board shall exercise all the powers that, pursuant to the Law, Code, and other regulations, are attributed to the shareholders' meeting, board of directors, and the presidency of Petróleos de Venezuela, S.A. (PDVSA) and its subsidiary companies incorporated in Venezuela, in order to exercise the following rights:

1. To adopt any resolutions required to designate the boards of directors and other administrators of PDVSA's foreign subsidiaries, thus representing PDVSA and its subsidiary companies in the relevant shareholders' meetings, pursuant to the provisions established in Article 3.
2. To order payments to extinguish PDVSA's obligations relating to bonds or debt issued by PDVSA in accordance with the provisions established in Article 4.
3. To legally represent PDVSA and its subsidiary companies for the purposes indicated in Article 5.

A subsidiary company shall be understood as:

1. Any business corporation controlled by PDVSA.
2. Any company in which any corporation controlled by PDVSA is also a controlling shareholder.
3. Any company in which any corporation controlled by the corporations mentioned in these points is the controlling shareholder, regardless of the level of control.

Control refers to any interest equal to or exceeding fifty percent (50%) of the capital stock, or shares that are held which, although they represent an interest less than fifty percent (50%) of the capital stock, pursuant to the corporation's bylaws, grant their holder special controlling rights in management. Jointly owned companies organized under the framework of the Organic Hydrocarbons Law are exempt from this definition.

Article 3. For the purpose of exercising the right defined in Article 2.1, PDVSA's ad-hoc administrative board shall perform the following actions:

1. Represent PDVSA and its subsidiary companies incorporated in Venezuela in shareholders' meetings of its foreign subsidiary companies, particularly for the purpose of adopting any resolutions that allow for the designation of boards of directors and other administrators of these foreign subsidiary companies. To this end, the ad-hoc administrative board shall hold all powers of a shareholders', board of directors, and chairmanship meetings of PDVSA and its subsidiary companies incorporated in

Venezuela.

2. For the purposes specified in the preceding point, the controls arising from Article 15, subparagraph "a" of the Law Governing the Transition to Democracy to Restore the Validity of the Constitution of the Bolivarian Republic of Venezuela, shall be fulfilled.

3. Particularly, and notwithstanding any other powers indicated herein, the ad-hoc administrative board shall represent PDVSA and its subsidiary companies incorporated in Venezuela who are shareholders of the following foreign subsidiary companies, for the purpose of designating their directors and members of their board of directors:

   a) PDVSA Argentina, S.A., a corporation organized in Argentina. Accordingly, the ad-hoc administrative board shall hold all powers of a shareholders', board of directors, and chairmanship meetings of PDVSA and its subsidiary companies incorporated in Venezuela who are shareholders of PDVSA Argentina, S.A., including the following corporations: PDVSA América, S.A., PDV Sur, S.A., PDV Andina, S.A., Deltaven, S.A. and any other corporations formed in Venezuela and are subsidiaries of PDVSA.

   b) Propernyn, B.V. and PDV Europa, B.V., corporations formed in the Netherlands and whose shares are wholly owned by PDVSA. The designation of administrators and members of the board of directors of these corporations shall enable the designation of administrators and members of the board of

directors of the corporation AB Nynas Petroleum, formed in the Kingdom of Sweden.

c) PDVSA Isla Curaçao B.V., a corporation formed in Curacao.

4. Notwithstanding the foregoing, the ad-hoc administrative board shall hold all powers of a shareholders', board of directors, and chairmanship meetings of the corporations PDVSA América S.A. and PDVSA Caribe S.A., for the purpose of designating the board of directors and other administrators of these corporations' foreign subsidiary companies.

Article 4. The ad-hoc administrative board shall hold all powers of a shareholders', board of directors, and chairmanship meetings of PDVSA, and particularly, of PDVSA Petróleo, S.A., for the purpose of ordering bank transfers on behalf of these corporations, and/or requesting third parties to make payments on their behalf, solely for the payment of interest or principal from bonds issued by PDVSA. The chairman of the ad- hoc administrative board shall sign all the documents required to exercise this power.

Accordingly, the ad-hoc administrative board may make these payments once they are inspected by the National Assembly pursuant to Article 36 of the Law Governing the Transition to Democracy to Restore the Validity of the Constitution of the Bolivarian Republic of Venezuela.

Article 5. The ad-hoc administrative board, in coordination with the special attorney appointed by the interim President of the Republic, shall legally represent PDVSA and its subsidiary companies abroad, pursuant to the following terms:

1. Legal representation shall only be exercised to defend the rights and the best interests of these corporations, without this representation enabling them to execute instruments and contracts for the disposal of assets belonging to PDVSA's foreign subsidiaries. This authority shall not be exercised for representation in judicial or extrajudicial claims or disputes.

2. In particular, the ad-hoc administrative board shall hold all power and authority of a shareholders', board of directors, and chairmanship meetings of PDV Caribe, S.A. and PDVSA América, S.A., for the purpose of representing these corporations in international energy cooperation agreements and similar international agreements executed beforehand, for the purposes indicated in this Article. Particularly, when exercising these powers, the ad-hoc administrative board shall be entitled to legally represent PDVSA Caribe, S.A., in the following cases:

   a) Forced acquisition or other similar resolutions adopted by the Government of Jamaica in relation to PDV Caribe, S.A.'s shares in the jointly owned company Petrojam Ltd. (Petrojam).

   b) Any resolutions relating to PDV Caribe, S.A.'s shares in the corporation Refinería Dominicana de Petróleo PDV, S.A. (Refidomsa PDV, S.A.), formed in the Dominican Republic.

3. The President of the ad-hoc administrative board shall act as legal representative pursuant to this Executive Order.

Article 6. While the usurpation of the presidency of

the Republic continues, and pursuant to the Law Governing the Transition to Democracy to Restore the Validity of the Constitution of the Bolivarian Republic of Venezuela, all the rights and powers of the shareholders', the board of directors and the chairmanship meetings of PDVSA and its existing subsidiary companies formed in Venezuela or designated after January 10, 2019, are suspended, along with the rights and powers of the Ministry of the hydrocarbons sector and, in general, any other Ministry, body or agency that may act as the assigned and representative body of the Republic in shareholders' meetings of PDVSA and its subsidiaries formed in Venezuela.

Article 7. The ad-hoc administrative board shall autonomously and independently exercise the powers conferred herein, following only technical standards aimed at efficiently managing the direct and indirect foreign subsidiaries of PDVSA. Accordingly, the ad-hoc administrative board shall refrain from following political or partisan guidelines and shall not adopt any resolutions that affect the management and operation of any direct or indirect subsidiaries of PDVSA. In particular, the ad-hoc administrative board shall not adopt any resolution that allows for the use of resources or assets of these subsidiaries for the benefit of the Republic. The foreign subsidiaries of PDVSA shall adopt the corporate governance provisions that ensure their autonomy and independence.

CHAPTER II

ON THE STRUCTURE AND RESOLUTIONS OF THE AD-HOC ADMINISTRATIVE BOARD

Article 8. The ad-hoc administrative board of PDVSA and its subsidiary companies incorporated in

Venezuela, is made up of nine (9) members appointed by the interim President of the Republic under the control of the National Assembly, pursuant to the Statute governing the transition to democracy to re-establish the validity of the Constitution of the Bolivarian Republic of Venezuela. They may be removed at the discretion of the interim President.

Article 9. The ad-hoc administrative board shall have a Chairman appointed from among its members, in order to represent the administrative board with third parties, including, for signing any instruments or documents required to exercise the rights of PDVSA and its subsidiaries and, in particular, for signing on bank accounts and other documents in accordance with the provisions of Article 4.

Article 10. The administrative board shall be validly convened for deliberations when at least five (5) of its members are present and its resolutions shall be adopted on a majority-vote basis of its members in attendance. The meetings may be held electronically.

Article 11. The Special Attorney designated in accordance with Article 15 of the Law Governing the Transition to Democracy to Restore the Validity of the Constitution of the Bolivarian Republic of Venezuela and the Organic Law of the Attorney General's Office of the Republic shall be exclusively responsible for the judicial and extrajudicial representation of PDVSA and its direct and indirect subsidiaries, including its foreign subsidiaries.

CHAPTER III

ON THE SPECIAL SYSTEM OF CITGO PETROLEUM CORPORATION

Article 12. Pursuant to Article 34, point 3 of the Law Governing the Transition to Democracy to Restore

the Validity of the Constitution of the Bolivarian Republic of Venezuela, and in accordance with Article 3 of this Executive Order, PDV Holding, Inc., Citgo Holding Inc., and Citgo Petroleum Corporation, shall not operate under the control of any authority or agency of the National Executive Branch currently usurped by Nicolás Maduro's regime, including PDVSA and its subsidiary companies. Accordingly:

1. The rights of PDVSA as sole shareholder of PDV Holding, Inc. are hereby temporarily suspended. As a result of the foregoing, the corporations mentioned in this Article shall not respond to any orders, instructions, communications or guidelines issued by PDVSA via its shareholders' meeting, board of directors or president.
2. The powers the competent Ministry for the hydrocarbons sector may exercise over the corporations mentioned in this Article as an agency assigned to the PDVSA, are hereby temporarily suspended.
3. While the usurpation of the presidency of the Republic continues, PDV Holding Inc. may not pay dividends or make any other payments to PDVSA, or grant any security interest on its assets, in favor of PDVSA or any third parties designated by PDVSA.
4. While the usurpation of the presidency of the Republic continues, PDVSA's representation as shareholder of PDV Holding Inc. shall be exercised by PDVSA's ad-hoc administrative board.

Article 13. It is hereby ratified that, pursuant to Article 34, point 3 of the Law Governing the Transition to Democracy to Restore the Validity of

the Constitution of the Bolivarian Republic of Venezuela, the National Assembly, the President of the National Assembly, acting as interim President of the Republic, and any agency appointed by the President, including the ad-hoc administrative board, shall not be able to adopt any resolutions that affect the normal business activities of PDV Holding Inc. or its subsidiaries, including Citgo Petroleum Corporation.

For these purposes, "business activities" include normal managerial and operational decisions of these corporations and, in particular, Citgo Petroleum Corporation. Therefore:

1. No resolutions may be adopted that directly or indirectly designate or influence the designation of the executive bodies of these corporations. In particular, the board of directors of Citgo Petroleum Corporation shall have the autonomy to appoint and remove, company officials, executives and other workers from its governing bodies, in accordance with their corporate regulations.
2. No resolutions may be adopted that directly or indirectly affect contracts entered into and enforced by these corporations and, in particular, by Citgo Petroleum Corporation.
3. No resolutions may be adopted that directly or indirectly allow for the use or benefit of these corporations' assets and, in particular, those of Citgo Petroleum Corporation, by the legitimate authorities of the Venezuelan Government.
4. No resolutions may be adopted or approved that affect the equity, or otherwise alter the equity structure of PDV Holding Inc. for more onerous terms, notwithstanding its possible

restructuring to best defend the interests of the State as the final controlling shareholder.

CHAPTER IV

FINAL PROVISIONS

Article 14. The validity of all the resolutions adopted by the ad-hoc administrative board designated on February 8, 2019, is hereby ratified. The new members of this board shall be designated by the interim President under the control of the National Assembly, pursuant to the Law Governing the Transition to Democracy to Restore the Validity of the Constitution of the Bolivarian Republic of Venezuela.

Article 15. The unlawful provisions arising from Executive Order No. 3,368, published in Official Gazette No. 41,776 on April 12, 2018 and in Resolution No. 115, published in Official Gazette No. 41,474 on September 4, 2018, shall not apply to the issues referred to herein, as they are the result of the unconstitutional and fraudulent exemption status enforced in Venezuela since January 2016. The provisions of this Executive Order shall apply preferentially and exclusively to the provisions contained in the Corporate Bylaws of PDVSA and its subsidiaries and those of any other Executive Order, incorporation document or bylaws related to the issues addressed herein.

Article 16. The provisions established herein shall remain in full force and effect while the usurpation of the presidency of the Republic continues.

Article 17. The following persons are appointed as members of the ad-hoc administrative board: Simón Antúnez, Gustavo J. Velásquez, Carlos José Balza, Ricardo Alfredo Prada, Luis Pacheco, Claudio

Martínez, León Miura, María Lizardo and Alejandro Grisanti, all Venezuelan citizens, holders of Identity Card numbers 1.550.440, 4.506.173, 9.966.565, 4.588.284, 4.518.157, 3.511.923, 4.712.768, 4.360.127 and 6.976.369, respectively. Luis Pacheco shall act as Chairman.

Article 18. This Executive shall become effective upon its publication in the Legislative Gazette.

Delivered in the Federal Legislative Palace, in Caracas, on April 4, 2019. 208th year of the Independence and 159th year of the Federation.

Implement, (L.S.)

[stamp:]

BOLIVARIAN REPUBLIC OF VENEZUELA
NATIONAL ASSEMBLY

PRESIDENCY

[signature:]

JUAN GERARDO GUAIDÓ MÁRQUEZ (Signed)

APPENDIX E

National Assembly

Caracas – Venezuela
April 26, 2021 – 12:12 p.m.

AGREEMENT TO EXPAND THE POWERS GRANTED AND THE NUMBER OF MEMBERS OF THE *AD HOC* ADMINISTRATIVE BOARD OF PETRÓLEOS DE VENEZUELA, S.A. (PDVSA)

"Download"

**THE NATIONAL ASSEMBLY
OF THE BOLIVARIAN REPUBLIC OF VENEZUELA**

In the defense of the Constitution, Democracy, and the Rule of Law

AGREEMENT THAT AUTHORIZES THE CITIZEN - PRESIDENT OF THE REPUBLIC, JUAN GERARDO GUAIDÓ MÁRQUEZ, TO EXPAND THE POWERS GRANTED AND THE NUMBER OF MEMBERS OF THE *AD HOC* ADMINISTRATIVE BOARD OF PETRÓLEOS DE VENEZUELA, S.A. (PDVSA)

WHEREAS CLAUSE

That, on April 5, 2019, the un-numbered official letter bearing the same date, signed by the citizen JUAN GUAIDÓ, the President of the Republic, was received by the Permanent Energy and Petroleum Commission of the National Assembly, by which he asked the same Commission to amend the Agreement approved by the plenary session of the National Assembly on February 12, 2019.

WHEREAS CLAUSE

That, in the same request, the President of the Republic asked the Permanent Energy and Petroleum Commission of the National Assembly to study, analyze and express an opinion on the expansion of the powers granted in the agreement dated February 12, 2019, and – after those observations – refer the outcome for approval by the Plenary Session of the National Assembly.

WHEREAS CLAUSE

That, after the creation of the *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. ("PDVSA"), it became clear that it was necessary to take fresh measures to protect the assets of the Venezuelan State held abroad that were controlled directly or indirectly by PDVSA, in order to fulfill the provisions of the Statute over the Transition to Democracy to reestablish the validity of the Constitution of the Bolivarian Republic of Venezuela.

WHEREAS CLAUSE

That, owing to the expansion of the powers of the *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. and the dispersion of the affiliates and companies, it is necessary to raise to nine (9) the number of members of the *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. (PDVSA). The prior approval of the National Assembly is required for the appointment of the *Ad Hoc* Administrative Board and the directors of its affiliates.

WHEREAS CLAUSE

That the *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. (PDVSA) is an intervening agency in that commercial company, formed on the basis of competences that pertain to the President of the Republic, in his capacity as the Head of the Government

and the highest authority in the administration of the national public treasury, based on Article 236(1), (2), and (11) of the national Constitution.

WHEREAS CLAUSE

That the power to intervene is regulated, in general, by Articles 103, 108 and 118 of the Organic Public Administration Act. That power allows the President of the Republic to create the agency that, in a particular manner, will exercise all the prerogatives of the bodies of State enterprises incorporated as commercial companies, namely the Shareholders' Meeting, the Board of Directors and the Presidency, all according to the corporate provisions that govern those companies.

WHEREAS CLAUSE

That this power to intervene is justified by the unique circumstances arising from the usurpation of the Presidency of the Republic, according to the Statute over the Transition to Democracy to re-establish the validity of the Constitution of the Bolivarian Republic of Venezuela. Consequently, the appointment of *ad hoc* administrative boards of public companies is justified as a temporary measure to ensure control over the assets of the Venezuelan State held abroad.

WHEREAS CLAUSE

That the acts of the President should be subject to the parliamentary control of the National Assembly, while it exercises its constitutional duties, according to Article 187 of the Constitution of the Bolivarian Republic of Venezuela and Articles 13, 15, and 16 of the Statute over the Transition to Democracy to re-establish the validity of the Venezuelan Constitution.

AGREEMENT

ONE. To give authorization to the citizen Juan Gerardo Guaidó Márquez, the President of the Bolivarian Republic of Venezuela, so that, while using the powers available to him by law, he may amend, through a fresh Presidential Decree, the Decree that appointed the *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. (PDVSA), approved by this esteemed National Assembly on the twelfth of February in the year two thousand and nineteen. Those amendments should consist of expanding the powers of the *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. (PDVSA), in order to enable it to act in its own name and in the name of the affiliate companies.

TWO. The *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. (PDVSA) will exercise all the powers that, according to the Law, the Statutes and other regulations pertain to the Shareholders' Meeting, the Board of Directors and the Presidency of Petróleos de Venezuela, S.A. (PDVSA) and its affiliate companies, incorporated in Venezuela, to exercise the following rights:

1. Take all decisions required to appoint the boards of directors and other directors of affiliates of Petróleos de Venezuela, S.A. (PDVSA) incorporated abroad. To that end, it will represent Petróleos de Venezuela, S.A. (PDVSA) and its affiliate companies at the relevant shareholders' meetings. Those appointments will require the prior approval of the National Assembly.
2. Carry out the legal representation of Petróleos de Venezuela, S.A. (PDVSA) and its affiliate companies.
3. Expressly attribute the functions of control

that, according to the corporate provisions, pertain to the shareholder of PDV Holding, Inc.

THREE. The *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. (PDVSA) will have all the powers that pertain to the Shareholders' Meeting, the Board of Directors and the Presidency of Petróleos de Venezuela, S.A. (PDVSA) and, in particular, PDVSA Petróleo, S.A., for the purpose of giving instructions for bank transfers to accounts held in the name of those commercial companies and asking third parties to make payments in its name but purely to pay interest or the principal on bonds issued by Petróleos de Venezuela, S.A. (PDVSA).

For that purpose, the *Ad Hoc* Administrative Board can only make those payments following checks by the National Assembly on compliance with Article 36 of the Statute over the Transition to Democracy to re-establish the validity of the Constitution of the Bolivarian Republic of Venezuela.

FOUR. The *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. (PDVSA), in coordination with the Special Attorney appointed by the President of the Republic, will carry out the legal representation of Petróleos de Venezuela, S.A. (PDVSA) and its affiliate companies abroad.

FIVE. To raise to nine (9) the members and appoint the citizens listed below as members of the *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. (PDVSA), in light of the provisions set out expressly in Article 236(1), (2), and (11) and Article 333 of the Constitution of the Bolivarian Republic of Venezuela, as well as Article 15(a) and Article 34 of the Statute over the Transition to Democracy to re-establish the validity of the Constitution of the Bolivarian Republic

of Venezuela.

The following citizens have been appointed:

Forename and surname	**Identity Card number**
SIMÓN ANTUNEZ	V-1.550.440
GUSTAVO J. VELÁS-QUEZ	V-4.506.173
CARLOS JOSÉ BALZA	V-9.966.565
RICARDO ALFREDO PRADA	V-4.588.284
LUIS PACHECO	V-4.518.157
CLAUDIO MARTÍNEZ	V-3.511.923
LEÓN MIURA	V-4.712.768
MARÍA LIZARDO	V-4.360.127
ALEJANDRO GRISANTI	V-6.976.369

The office of the Presidency of the *Ad Hoc* Administrative Board will be filled by the citizen **LUIS PACHECO** (engineer), who holds the Identity Card no. V-4.518.157.

The expansion of the *Ad Hoc* Administrative Board of Petróleos de Venezuela, S.A. (PDVSA) does not affect the exercise of the powers of control that belong to the National Assembly, according to Article 187(3) of the Constitution and Article 15 of the Statute over the Transition to Democracy to re-establish the validity of the Constitution of the Bolivarian Republic of Venezuela. Equally, confirmation is given that the earlier decisions taken by the *Ad Hoc* Administrative Board are fully lawful and, in particular, those regarding the appointment of the directors of PDV Holding, Inc.

SIX. While the usurpation of the powers of the Presidency of the Republic persists and in accordance with the Statute over the Transition to Democracy to reestablish the validity of the Constitution of the Bolivarian Republic of Venezuela, all rights and powers are suspended that pertain to the Shareholders' Meeting, the Board of Directors and the Presidency of Petróleos de Venezuela, S.A. (PDVSA) and its affiliate companies incorporated in Venezuela, which either already existed by or were appointed after January 10, 2019, as well as the rights and powers held by the Ministry responsible for hydrocarbons and, in general, any other ministry, agency or entity able to act as a signatory body and representative of the Republic in the Shareholders' Meeting of Petróleos de Venezuela, S.A. (PDVSA) and its affiliates incorporated in Venezuela.

SEVEN. To publicize this Agreement in the Official Gazette and though the media.

Given, signed, and stamped at the Federal Legislative Building, on the premises of the National Assembly of the Bolivarian Republic of Venezuela, in Caracas, on the ninth of April in the year two thousand and nineteen - the 209th year since Independence and the 160th year of the Federation.

JUAN GERARDO GUAIDÓ MÁRQUEZ

President

ÉDGAR JOSÉ ZAMBRANO RAMÍREZ

First Vice-President

IVÁN STALIN GONZÁLEZ MONTAÑO

Second Vice-President

EDINSON DANIEL FERRER ARTEAGA

Secretary

JOSÉ LUIS CARTAYA PIÑANGO
Sub-Secretary

APPENDIX F

National Assembly

Caracas – Venezuela
April 26th, 2021 / 12:22 p.m.

The National Assembly
LEGISLATIVE POWER
Bolivarian Republic of Venezuela

AGREEMENT THAT AUTHORIZES THE USE OF RESOURCES OF PETRÓLEOS DE VENEZUELA, S. A. (PDVSA) TO DEFEND ITS ASSETS ABROAD

"Download"

THE NATIONAL ASSEMBLY

OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

In the defense of the Constitution, Democracy, and the Rule of Law

AGREEMENT THAT AUTHORIZES THE USE OF RESOURCES OF PETRÓLEOS DE VENEZUELA, S. A. (PDVSA) TO DEFEND ITS ASSETS ABROAD

WHEREAS CLAUSE

That, according to Article 36 of the Statute over the Transition to Democracy to re-establish the validity of the Constitution of the Bolivarian Republic of Venezuela, it is not possible to use the recovered assets to support public expenditure, except in cases of urgent necessity and subject to the express and justified authorization of this National Assembly, according to the principles of parliamentary control established in this Statute and Article 187(3) of the Constitution of the Bolivarian Republic of Venezuela.

WHEREAS CLAUSE

That the regimes of Hugo Chávez and Nicolás Maduro have produced an external public debt that results in various private obligations and claims against the public sector and, in particular, against PDVSA, all of which jeopardizes assets essential to dealing with the country's complex humanitarian crisis and economic reconstruction.

WHEREAS CLAUSE

That, without prejudice to the intentions of the legitimate Government of Venezuela to start agreed and orderly processes to reconcile and renegotiate those obligations and claims from the private sector, it may be necessary to conduct the judicial and out-of-court defense of PDVSA in order to provide due protection for its assets and defend the legality of the public credit transactions associated with the regimes of Hugo Chávez and Nicolás Maduro Moros.

WHEREAS CLAUSE

That PDVSA has the financial readiness to use resources deposited with entities in the financial system of the USA and they may be directed to meet the most urgent and priority needs to ensure the due defense of its assets.

IT AGREES

ONE: To authorize PDVSA, on a one-off basis, to use the sums of money currently available and in its favor in the USA, up to two million US dollars ($US 2,000,000.00), only and exclusively to pay the professional fees required to meet the most urgent and priority needs associated with the judicial and out-of-court defense of its assets.

TWO: To give authorization to the Special Attorney's

Office of the Bolivarian Republic of Venezuela so that, within the sense of Article 15(b) of the Statute over the Transition to Democracy to re-establish the validity of the Constitution of the Bolivarian Republic of Venezuela and the Organic Act of the Attorney General's Office, following the authorization of the *ad hoc* committee of PDVSA, it may sign the contracts required to meet the objective identified in this Agreement. To that end, the prior authorization will be needed of the Permanent Finance and Economic Development Commission of the National Assembly, which will ensure the legality, transparency, and rational nature of the contracting, based on the principles of fiscal control defined in the Constitution of the Bolivarian Republic of Venezuela and the Organic Act of the Comptroller General's Office of the Bolivarian Republic of Venezuela.

THREE: To establish that the Special Attorney's Office will provide a periodic report to the Permanent Finance, Economic Development, and Comptroller Commissions of the National Assembly on the contracting, the payments made and the outcomes of all the judicial and out-of-court initiatives to protect PDVSA's assets.

Given, signed, and stamped at the Federal Legislative Building, on the premises of the National Assembly of the Bolivarian Republic of Venezuela, in Caracas, on the first of October in the year two thousand and nineteen - the 209th year since Independence and the 160th year of the Federation.

JUAN GERARDO GUAIDÓ MÁRQUEZ

President

EDGAR JOSÉ ZAMBRANO RAMÍREZ

First Vice-President

IVÁN STALIN GONZÁLEZ MONTAÑO
Second Vice-President
EDINSON DANIEL FERRER ARTEAGA
Secretary
JOSÉ LUIS CARTAYA PIÑANGO
Sub-Secretary

APPENDIX G

STATUTES

1. 28 U.S.C. § 1603 provides, in part:

Definitions

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity--

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

* * *

2. 28 U.S.C. § 1604 provides:

Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

3. 28 U.S.C. § 1605 provides:

General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case--

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign

state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to--

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a

maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That--

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time

notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

[**(e), (f)** Repealed. Pub.L. 110-181, Div. A, Title X, § 1083(b)(1)(B), Jan. 28, 2008, 122 Stat. 341.]

(g) Limitation on discovery.--

(1) In general.--(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A or section 1605B, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for

additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) Sunset.--(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would--

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) Evaluation of evidence.--The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) Bar on motions to dismiss.--A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) Construction.--Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

(h) Jurisdictional immunity for certain art exhibition activities.--

(1) In general.--If--

(A) a work is imported into the United States from any foreign state pursuant to an agreement that provides for the temporary exhibition or display of such work entered into between a foreign state that is the owner or custodian of such work and the United States or one or more cultural or educational institutions within the United States;

(B) the President, or the President's designee, has determined, in accordance with subsection (a) of Public Law 89-259 (22 U.S.C. 2459(a)), that such work is of cultural significance and the temporary exhibition or display of such work is in the national interest; and

(C) the notice thereof has been published in accordance with subsection (a) of Public Law 89-259 (22 U.S.C. 2459(a)),

any activity in the United States of such foreign state, or of any carrier, that is associated with the temporary exhibition or display of such work shall not be considered to be commercial activity by such foreign state for purposes of subsection (a)(3).

(2) Exceptions.--

(A) Nazi-era claims.--Paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and--

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a covered government during the covered period;

(iii) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and

(iv) a determination under clause (iii) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(B) Other culturally significant works.--In addition to cases exempted under subparagraph (A), paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and--

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a foreign government as part of a systematic campaign of coercive confiscation or misappropriation of works from members of a targeted and vulnerable group;

(iii) the taking occurred after 1900;

(iv) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and

(v) a determination under clause (iv) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(3) Definitions.--For purposes of this subsection--

(A) the term "work" means a work of art or other object of cultural significance;

(B) the term "covered government" means--

(i) the Government of Germany during the covered period;

(ii) any government in any area in Europe that was occupied by the military forces of the Government of Germany during the covered period;

(iii) any government in Europe that was established with the assistance or cooperation of the Government of Germany during the covered period; and

(iv) any government in Europe that was an ally of the Government of Germany during the covered period; and

(C) the term "covered period" means the period beginning on January 30, 1933, and ending on May 8, 1945.

4. 28 U.S.C. § 1609 provides:

Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

5. 28 U.S.C. § 1610 provides:

Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign

state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if--

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property--

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state,

provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if--

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in

subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if--

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency

Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries--

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(3) Waiver.--The President may waive any provision of paragraph (1) in the interest of national security.

(g) Property in certain actions.--

(1) In general.--Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of--

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) United States sovereign immunity inapplicable.--Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) Third-party joint property holders.--Nothing

in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.