

Nos. 18-2797, 18-3124

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

CRYSTALLEX INTERNATIONAL CORP.,

Plaintiff-Appellee,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant,

PETRÓLEOS DE VENEZUELA, S.A.,

Intervenor-Appellant.

Appeal from the United States District Court for The District of Delaware
No. 1:17-mc-151-LPS, Chief Judge Leonard P. Stark

**CRYSTALLEX'S MOTION
TO EXPEDITE ORAL ARGUMENT**

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MOTION TO EXPEDITE ORAL ARGUMENT

Pursuant to Federal Rules of Appellate Procedure 27 and 34 and Local Appellate Rules 4.1 and 34.1, Plaintiff-Appellee Crystallex International Corporation (“Crystallex”) respectfully moves the Court for an order expediting oral argument in these consolidated appeals (*Crystallex International Corp. v. Bolivarian Republic of Venezuela*, Nos. 18-2797 and 18-3124) and mandamus petition (*In re Petróleos de Venezuela, S.A.*, No. 18-2889).

Crystallex holds a \$1.2 billion judgment (plus interest) against the Bolivarian Republic of Venezuela (“Venezuela”) stemming from the Venezuelan government’s unlawful expropriation of Crystallex’s valuable mining interests. The United States District Court for the District of Columbia entered the judgment in 2017, confirming an arbitral award issued in 2016 after more than five years of arbitration proceedings. Since that time, Crystallex has worked diligently to enforce its judgment, including by seeking a writ of attachment for property that Venezuela holds in Delaware in the name of Venezuela’s alter ego, a state-owned company known as Petróleos de Venezuela, S.A. (“PDVSA”). In August 2018, the United States District Court for the District of Delaware granted Crystallex a writ of attachment. PDVSA filed these consolidated appeals and a mandamus petition seeking to vacate the writ. Crystallex subsequently took steps to protect its

judgment by requesting that PDVSA post a supersedeas bond in the event enforcement was stayed.

In September, after the district court granted the writ of attachment, Crystallex and Venezuela entered into an amended settlement agreement (the “Settlement Agreement”) to provide a framework for resolving this dispute.¹ Venezuela agreed to make a \$425 million initial payment to Crystallex and then to cause “PDVSA and its subsidiaries” to “take all necessary steps to stay its appeal without prejudice” to give Venezuela additional time to prepare collateral to secure the remainder of the settlement amount according to specified terms. In turn, Crystallex agreed to stay all enforcement and—subject to Venezuela’s compliance with the Settlement Agreement—to accept payment on its judgment over time.

As contemplated by the Settlement Agreement, Venezuela completed making its \$425 million initial payment to Crystallex on November 23, 2018, thereby triggering PDVSA’s obligation to stay its appeals in this Court and Crystallex’s obligation to stay its enforcement action in the Delaware district court. On that same date, however, a motions panel of this Court issued an order (the

¹ The Settlement Agreement amends the terms of a prior settlement agreement that the parties reached in November 2017, but which never became fully effective because Venezuela failed to satisfy its payment obligations. The terms of the Settlement Agreement are confidential and are the subject of a protective order entered by the Ontario (Canada) Superior Court of Justice. Contemporaneous with this motion, Crystallex has filed with this Court a copy of the Settlement Agreement under seal, as well as a motion to seal.

“November 23 Order”) *sua sponte* staying all enforcement proceedings in the Delaware district court and referring the mandamus petition to the merits panel for disposition with PDVSA’s appeals. The Court did not request briefing from Crystallex before issuing the November 23 Order, and that Order effectively mooted a motion then pending in the district court that would have determined whether PDVSA must post a supersedeas bond to obtain a stay pending appeal.

Crystallex did not ask the Court to reconsider its *sua sponte* stay order because Venezuela’s completion of its \$425 million initial payment that same day triggered Crystallex’s contractual obligation to stay further enforcement efforts. However, after PDVSA took no action to stay its appeals, Crystallex’s counsel wrote to counsel for both Venezuela and PDVSA to request that they stay these appeals as required by the Settlement Agreement. PDVSA’s counsel did not respond; instead, on December 10, 2018, PDVSA filed its opening brief in these appeals.

PDVSA’s actions constitute a clear breach of the Settlement Agreement and make it urgent that Crystallex immediately resume its enforcement efforts against Venezuela’s property in Delaware and elsewhere. However, because of this Court’s November 23 Order, Crystallex’s hands are effectively tied; Crystallex now must litigate these appeals without a bond to secure payment on the nearly \$1 billion that Venezuela still owes on Crystallex’s judgment.

Venezuela's breach of the Settlement Agreement, coupled with its well-documented history of transferring billions of dollars out of the United States to hinder creditors—which this Court previously recognized, *see Crystallex Int'l Corp. v. Petróleos de Venezuela, S.A.*, 879 F.3d 79, 89 (3d Cir. 2018)—raise significant concerns that Venezuela and PDVSA will diminish the value of the attached property in an effort to evade creditors, including Crystallex. Indeed, Venezuela is in default on many of its debts, and other creditors of Venezuela are taking actions to advance their rights while Crystallex's enforcement efforts are stayed. Prompt resolution of these appeals would help ensure that Crystallex can recover the full value of its judgment through execution of the writ of attachment if that writ is affirmed by this Court. Therefore, to minimize the risk of irreparable harm, Crystallex respectfully requests that this Court schedule oral argument in these consolidated appeals for the earliest possible date following the conclusion of briefing on January 30, 2019.

BACKGROUND

These consolidated appeals and mandamus petition arise from an enforcement proceeding brought pursuant to a \$1.2 billion (plus interest) arbitral award that Crystallex holds against Venezuela. *See generally Crystallex Int'l Corp.*, 879 F.3d at 81-82. The United States District Court for the District of Columbia confirmed that arbitral award as a United States judgment on March 25,

2017, and Crystallex registered the judgment in the federal district court in Delaware, where Venezuela holds assets. *See* ECF No. 1.² Crystallex then moved the Delaware district court for a writ of attachment *feri facias* to execute against shares of PDV Holding, Inc. (“PDVH”), a Delaware corporation that Venezuela owns through its wholly-owned instrumentality, PDVSA. *See* ECF No. 2.

PDVSA intervened to oppose Crystallex’s motion and cross-moved to dismiss for lack of subject-matter jurisdiction. ECF Nos. 17, 25, 26. Following full briefing, including numerous affidavits submitted by both sides, declarations from experts, multiple rounds of supplemental briefing, and two oral arguments, the Delaware district court issued an order on August 9, 2018 denying PDVSA’s motion to dismiss, granting Crystallex’s motion for a writ of attachment, and inviting further briefing on certain procedural issues. ECF Nos. 78, 79. PDVSA immediately appealed. ECF No. 80. On August 23, 2018, the district court issued an order directing the U.S. Marshals to serve the writ of attachment and temporarily staying execution on the attached PDVH shares so that PDVSA could “file a Rule 62(d) motion” for a stay pending appeal “and post a supersedeas bond (or seek other appropriate relief).” ECF No. 95 at 2, 5. PDVSA instead moved to continue the stay *without* posting security, ECF Nos. 97, 98, and subsequently

² Citations to “ECF No. ___” refer to entries on the district court’s docket in *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, No. 17-mc-151-LPS (D. Del.).

appealed the August 23 order, ECF No. 117. Crystallex opposed PDVSA's request for an unconditional stay pending appeal and argued that any stay of enforcement pending appeal should be conditioned on PDVSA posting a supersedeas bond, as required under both Delaware and federal law. *See* ECF No. 112 at 24-29. The district court scheduled a hearing for December 20 to resolve, among other things, the parties' disputes over whether the enforcement proceedings should be stayed and whether PDVSA should be required to post a bond pending appeal. ECF No. 128.

In addition to its appeals, PDVSA filed a petition for a writ of mandamus in this Court seeking to vacate the August 23 order. *See In re Petróleos de Venezuela, S.A.*, No. 18-2889 (3d Cir. filed Aug. 27, 2018). After calling for and receiving Crystallex's answer, a motions panel denied PDVSA's mandamus petition. *See* Order, No. 18-2889 (3d Cir. Oct. 26, 2018), Doc. 3113072179. PDVSA subsequently petitioned for panel rehearing or rehearing en banc. Pet. for Panel Reh'g and Reh'g En Banc, No. 18-2889 (3d Cir. Nov. 9, 2018), Doc. 3113083862.

As these events unfolded, Crystallex and Venezuela engaged in negotiations to effectuate an amended version of a settlement agreement that the parties had reached in November 2017, but which never became fully effective as a result of Venezuela's failure to satisfy its payment obligations. On September 10, 2018,

Crystallex and Venezuela executed the Settlement Agreement, which provides a framework for resolving the dispute between Crystallex and “Venezuela, together with all instrumentalities thereof involved in the actions described herein.” Decl. of Robert Weigel (“Weigel Decl.”) Ex. 1 at 1. Among other commitments, Venezuela agreed to make an increased \$425 million initial payment (in addition to approximately \$75 million in funds previously collected) to Crystallex, upon receipt of which Crystallex would seek a temporary stay of enforcement proceedings through and until January 10, 2019. *Id.* at 2-3. That stay would permit Venezuela sufficient time to prepare collateral to secure the remainder of the settlement amount, which Venezuela agreed to pay to Crystallex in installments according to specified terms. *Id.* at 3-4. The Settlement Agreement further specified that “Venezuela (*including PDVSA and its subsidiaries*) agrees to take all necessary steps to stay its appeal” in this Court, “without prejudice” to the district court’s August 9 order. *Id.* at 3 (emphasis added).

On Friday, November 23, 2018, Crystallex received the final portion of Venezuela’s agreed-upon initial payment of \$425 million. *See* ECF No. 130 at 2. Crystallex promptly fulfilled its obligation to seek a temporary stay of enforcement proceedings in the Delaware district court through and until January 10, 2019. *See id.* All that remained of the parties’ initial obligations was for Venezuela to ensure

that PDVSA stay its appeal in this Court and to provide the agreed-upon collateral by January 10, 2019. Weigel Decl. Ex. 1 at 3.

On the same day that Crystallex received the final portion of the initial payment due under the Settlement Agreement, however, the motions panel issued the November 23 Order. *See* Order, No. 18-2889 (3d Cir. Nov. 23, 2018), Doc. 3113093030. The November 23 Order granted PDVSA’s petition for panel rehearing, vacated the prior order denying PDVSA’s mandamus petition, and referred the mandamus petition to the merits panel. No response to the rehearing petition had been requested from Crystallex. The panel also *sua sponte* directed that “all proceedings in the District Court are hereby stayed pending the merits panel’s disposition of the petition for writ of mandamus and the consolidated appeals.” *Id.* at 2. The panel expressly noted that its action “should not be construed as a determination that mandamus relief is appropriate.” *Id.* at 1-2.³

Crystallex did not seek reconsideration of the November 23 Order because, as a result of its receipt of the initial payment that same day, Crystallex became obligated under the Settlement Agreement to seek a stay of its enforcement efforts until January 10, 2019. On December 7, 2018, when no motion to stay these appeals had been filed, counsel for Crystallex wrote to counsel for PDVSA and

³ As a result of the November 23 Order, the district court subsequently cancelled the hearing that had been scheduled for December 20 to resolve the contested stay and bond issues. ECF No. 132.

Venezuela to request that they fulfill Venezuela’s obligation under the Settlement Agreement to seek a stay of these appeals. *See* Weigel Decl. Ex. 2. Crystallex’s letter stated that “[f]ailure to seek the required stays puts the Republic [of Venezuela] in breach of its obligations under the Amended Settlement [Agreement],” and that if PDVSA filed its opening brief in these appeals on December 10, 2018, “without . . . having requested a stay of those proceedings, the Republic will be in breach.” *Id.* at 1. “In such a circumstance,” Crystallex warned, it “will have no choice but to assume that the Republic has no intention of honoring its commitments under the Amended Settlement [Agreement] and [will] take all necessary actions as a result.” *Id.* The letter requested that Venezuela promptly confirm that it intended to stay the pending appeals, as it had agreed to do. *Id.* at 2.

PDVSA’s counsel did not respond, but instead, on December 10, 2018, filed its opening brief in these consolidated appeals without requesting the agreed-upon stay. *See* No. 18-2797 (3d Cir. Dec. 10, 2018), Doc. 3113105847. In a subsequent press statement, PDVSA’s counsel reportedly stated that “[a]s far as I am aware, PDVSA is not a party to a settlement with Crystallex.” Weigel Decl. Ex. 3 at 4. Accordingly, Venezuela has breached the parties’ Settlement Agreement by failing to cause PDVSA—its 100% wholly owned instrumentality—to seek a stay of these consolidated appeals, as it had expressly committed to do in the Settlement

Agreement. These recent events make clear that Venezuela will not honor its contractual commitments, creating an urgent need for Crystallex to protect the value of its judgment as these appeals proceed.

ARGUMENT

This Court has broad discretion to expedite proceedings on appeal for “good cause,” 28 U.S.C. § 1657, including discretion to determine whether and when to hear oral argument, *see* Fed. R. App. P. 34; 3d Cir. L.A.R. 4.1, 34.1; *accord Kramer v. Thompson*, 947 F.2d 666, 669 (3d Cir. 1991) (noting that the court had “granted expedited argument”). Here, good cause exists to expedite oral argument in these consolidated appeals. Venezuela and PDVSA have failed to honor the commitments set forth in the Settlement Agreement, thus creating a severe risk of irreparable harm to Crystallex while these appeals are pending.

The Settlement Agreement expressly provides that “Venezuela (*including PDVSA and its subsidiaries*) agrees to take all necessary steps to stay its appeal” in this Court. Weigel Decl. Ex. 1 at 3 (emphasis added). Venezuela further stipulated that the Settlement Agreement was binding on “all instrumentalities [of Venezuela] involved in the actions described” in that agreement—including the Delaware enforcement action and, “[f]or the avoidance of doubt,” PDVSA’s appeal from that action. *Id.* at 1, 3. And, putting aside the district court’s finding that PDVSA is Venezuela’s alter ego, it is undisputed—and indisputable—that

PDVSA is a wholly owned “instrumentality” of Venezuela, Br. for Intervenor-Appellant at 1, No. 18-2797 (3d Cir. filed Dec. 10, 2018), Doc. 3113105847, and therefore capable of being bound by Venezuela’s sovereign commitments. It is well-settled that the sovereign can bind its own agencies and instrumentalities, and even its citizens, *see, e.g., Dames & Moore v. Regan*, 453 U.S. 654, 679 (1981) (President can “renounce or extinguish claims of United States nationals against foreign governments in return for lump-sum payments or the establishment of arbitration procedures”), so there can be no doubt here that Venezuela had authority to bind PDVSA—its wholly owned and controlled instrumentality—in exchange for bargained-for consideration. Crystallex was entitled to rely on Venezuela’s commitments, including its commitments with respect to PDVSA, and Venezuela was on a path toward honoring those commitments prior to the November 23 Order.

Nevertheless, following this Court’s November 23 Order, Venezuela has not sought to stay these appellate proceedings. Nor has Venezuela directed PDVSA, concededly an instrumentality of the Government of Venezuela, to seek the required stay—despite the fact that Crystallex sought the required stay until January 10, 2019 in the District Court. By filing its opening brief in this Court on December 10, PDVSA and Venezuela have made clear that they intend to prosecute these appeals notwithstanding the contractual commitments to

Crystallex. Indeed, PDVSA's counsel has publicly disavowed that PDVSA is bound by the Settlement Agreement. *See Weigel Decl. Ex. 3 at 4.*

Crystallex entered into the Settlement Agreement in part to obtain bargained-for security on its judgment against Venezuela. As a result of Venezuela's breach, however, Crystallex no longer can rely on the Settlement Agreement as protection for the nearly \$1 billion that remains unpaid on its judgment. Moreover, because of the stay imposed by this Court's November 23 Order and the stay in the District Court that Crystallex was compelled to seek under the Settlement Agreement, Crystallex cannot now protect its interests by immediately resuming enforcement proceedings in the Delaware district court and obtaining proceeds from the sale of the attached shares in PDVH. As noted, Crystallex complied with its contractual obligation to request a stay of the Delaware enforcement proceedings through January 10, 2019, and this Court's November 23 Order stayed further proceedings below until these appeals are resolved on the merits.

Given Venezuela's deliberate breach of the Settlement Agreement, extending the stay of enforcement risks irreparably injuring Crystallex. Venezuela and PDVSA have a long history of frustrating their creditors by looting Venezuela-owned companies in Delaware. As just one example, while the parties' arbitration was pending, Venezuela and PDVSA caused a subsidiary of PDVH, CITGO

Holding, to borrow \$2.8 billion and then transferred those funds out of the United States through a dividend from CITGO Holding to PDVH to PDVSA—all for no consideration. *Crystallex Int’l Corp.*, 879 F.3d at 82. Although Crystallex now has a lien on the shares of PDVH and the United States has imposed sanctions against Venezuela, the lien itself cannot adequately protect Crystallex’s interests. CITGO continues to transact large volumes of business with PDVSA that are largely shielded from public scrutiny. Such transactions may diminish the value of the attached shares and create a substantial risk of irreparable harm to Crystallex even if it prevails in these appeals. Indeed, this Court already has recognized that Venezuela and PDVSA have manipulated PDVH and other indirect subsidiaries with the “intent . . . to hinder creditors,” including Crystallex. *Id.* at 89. At the same time, Venezuela is in default on many of its debts, and other creditors are looming. The holders of nearly \$1.7 billion in PDVSA bonds due to mature in 2020 have sought leave to file an amicus brief supporting PDVSA in these appeals. *See* Mot. of Bondholders, No. 18-2797 (3d Cir. Dec. 17, 2018), Doc. 3113112157. Moreover, the holders of \$1.5 billion of Venezuelan 2034 bonds, which have been in default for months, reportedly have moved to accelerate the debt. Weigel Decl. Ex. 4 at 1-2. Other creditors undoubtedly will follow.

Under both federal and Delaware law, the normal protection for judgment creditors in Crystallex’s position is for enforcement proceedings to continue *unless*

the debtor posts a supersedeas bond or letter of credit for the amount of the judgment. *See* Fed. R. Civ. P. 62(b); Del. Const. art. IV, § 24 (requiring “sufficient security” for a stay pending appeal). “The purpose of the supersedeas bond” requirement set forth in Federal Rule of Civil Procedure 62(b) is to “secure[] the prevailing party against any loss sustained as a result of being forced to forgo execution on a judgment during the course of an ineffectual appeal.” *In re W.R. Grace & Co.*, 475 B.R. 34, 209 (D. Del. 2012) (alteration in original; citation omitted), *aff’d* 729 F.3d 332 (3d Cir. 2013). Under Delaware law—which governs these execution proceedings pursuant to Federal Rule of Civil Procedure 69—courts “d[o] not have the discretion to waive the requirement of a supersedeas bond, and ‘sufficient security’ is, at a minimum, the full amount of the money judgment.” *Gates v. Texaco, Inc.*, No. 05C-05-043, 2008 WL 1952162, at *1 (Del. Super. Ct. May 2, 2008).

The district court had no opportunity to rule on Crystallex’s request that PDVSA be required to post a bond as a condition for obtaining a stay pending appeal. Although the district court had scheduled a hearing for that purpose, the hearing was cancelled after this Court *sua sponte* stayed the enforcement proceedings in its November 23 Order. Shortly thereafter, once PDVSA was not at immediate risk of having to post a bond or face the immediate sale of the PDVH shares, PDVSA promptly refused to seek a stay of this appeal, in violation of the

Settlement Agreement. In these circumstances, expedited calendaring of oral argument would help to mitigate the risk of irreparable harm to Crystallex while these appeals are pending and while enforcement proceedings are stayed.

Expediting the oral argument would help ensure that Crystallex's judgment remains unsecured by a bond for no longer than necessary for the Court promptly to dispose of these appeals, and it would permit Crystallex to resume enforcement on the attached property at the earliest possible date in the event Crystallex prevails in these consolidated appeals and mandamus petition.

Crystallex thus respectfully requests that this Court schedule oral argument for the earliest date possible following the conclusion of briefing on January 30, 2019.

CONCLUSION

For the foregoing reasons, Crystallex respectfully requests that the Court schedule oral argument for the consolidated appeals in Nos. 18-2797 and 18-3124 and, if necessary, the petition for a writ of mandamus in No. 18-2889, on an expedited basis.

December 21, 2018

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Respectfully submitted,

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Counsel for Plaintiff-Appellee Crystallex International Corp.

CERTIFICATION OF BAR MEMBERSHIP

I hereby certify that at least one attorney whose name appears on this Motion is a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

December 21, 2018

/s/ Miguel A. Estrada
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CERTIFICATE OF COMPLIANCE

1. This Motion to Expedite Oral Argument complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d) because it contains 3,446 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f); and

2. This Motion to Expedite Oral Argument complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font; and

3. This Motion to Expedite Oral Argument complies with this Court's Rule 31.1(c) because the document has been scanned with version 14 of Symantec Endpoint Protection and is free of viruses.

December 21, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2018, I caused the foregoing Crystallex's Motion to Expedite Oral Argument and Declaration of Robert L. Weigel to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the Court's CM/ECF system. I further certify that service was accomplished on all parties via the Court's CM/ECF system.

I further certify that a true and correct copy of Exhibit 1 to the Declaration of Robert L. Weigel (sealed version) was served via electronic mail upon counsel for Intervenor-Appellant at the following addresses:

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December 21, 2018

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

CRYSTALLEX INTERNATIONAL
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BOLIVARIAN REPUBLIC OF
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PETRÓLEOS DE VENEZUELA, S.A.,

Intervenor-Appellant.

Case Nos. 18-2797 & 18-3124

Appeals from the United States District
Court for The District of Delaware,

No. 1:17-mc-151-LPS (Stark, C.J.)

DECLARATION OF ROBERT L. WEIGEL

I, Robert L. Weigel, an attorney duly licensed to practice law before the United States Court of Appeals for the Third Circuit, declare as follows:

1. I am a partner with the law firm Gibson, Dunn & Crutcher LLP, counsel of record for Plaintiff-Appellee Crystallex International Corporation (“Crystallex”) in the above-captioned action. I submit this declaration in support of Crystallex’s Motion to Expedite Oral Argument. Unless otherwise stated, I have personal knowledge of the matters stated below, and if called upon to do so, I could and would competently testify to those facts.

2. Attached as Exhibit 1 is a true and correct copy of the Amended and Restated Contract of Transaction and Settlement (“Settlement Agreement”) entered into by Crystallex and the Bolivarian Republic of Venezuela (“Venezuela”) on September 10, 2018. The terms of the Settlement Agreement are confidential and are the subject of a protective order entered by the Ontario (Canada) Superior Court of Justice. Crystallex is filing with this Court a copy of the Settlement Agreement under seal, as well as a motion to seal.

3. Attached as Exhibit 2 is a true and correct copy of a letter dated December 7, 2018, which counsel for Crystallex sent by electronic mail on that date to counsel for Venezuela and counsel for Venezuela’s instrumentality (and Intervenor-Appellant in the above-captioned action), Petróleos de Venezuela, S.A. (“PDVSA”).

4. Attached as Exhibit 3 is a true and correct copy of a Reuters article written by Tom Hals and published on December 11, 2018, entitled “Venezuela’s deals to shield Citgo from creditors now in doubt,” which is available at <https://www.reuters.com/article/us-venezuela-pdvsa-crystallex/venezuelas-deals-to-shield-citgo-from-creditors-now-in-doubt-idUSKBN1OA2M9>.

5. Attached as Exhibit 4 is a true and correct copy of a *Wall Street Journal* article written by Micah Maidenberg and Julie Wernau and published on December 17, 2018, entitled “Investors Push Venezuela for Payment on \$1.5

Billion Defaulted Bond,” which is available at

<https://www.wsj.com/articles/investors-push-venezuela-for-payment-on-1-5-billion-defaulted-bond-11545084278>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 21, 2018, in New York, New York.

/s/ Robert L. Weigel

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*Counsel for Plaintiff-Appellee Crystallex
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CERTIFICATE OF CONSENT

Pursuant to L.A.R. 113.9(c), I hereby certify that I have obtained the consent of Robert L. Weigel to file the above Declaration using the Court’s CM/ECF system.

December 21, 2018

/s/ Miguel A. Estrada

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December 7, 2018

VIA ELECTRONIC MAIL

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Re: *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, 17-7068 (D.C. Cir.); *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, 18-2797 & 18-3124 (3rd Cir.)

Dear Counsel:

We write with respect to the September 10, 2018 Amended and Restated Contract of Transaction and Settlement between our client, Crystallex International Corporation (“Crystallex”), and the Bolivarian Republic of Venezuela (“Venezuela”) (the “Amended Settlement”).

Since receiving the \$425 million required under the Amended Settlement, Crystallex has diligently sought the required stay of further proceedings in the Delaware Court. On November 30, 2018, the Delaware Court confirmed the stay, thereby commencing the “Temporary Stay Period” under Clause 2 of the Amended Settlement. Yet, neither the Republic nor PDVSA has taken any action to stay the appeals currently pending in the United States Courts of Appeals for the Third Circuit and the District of Columbia as required. *See, e.g.*, Amended Settlement Agreement, Clause 2 (“For the avoidance of doubt, Venezuela (including PDVSA and its subsidiaries) agrees to take all necessary steps to stay its appeal without prejudice to the Delaware Order during the Temporary Stay Period.”). Failure to seek the required stays puts the Republic in breach of its obligations under the Amended Settlement. This matter has become particularly urgent now given that PDVSA’s opening brief in the Third Circuit appeals is due on Monday, December 10, 2018. If that brief is filed without the Republic having requested a stay of those proceedings, the Republic will be in breach. In such a circumstance, our client will have no choice but to assume that the Republic has no intention of honoring its commitments under the Amended Settlement and take all necessary actions as a result.

While Crystallex has continued to act in good faith, the Republic’s ongoing failure to take actions required under the Amended Settlement leads our client to question whether the

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Kent A. Yalowitz
Joseph D. Pizzurro
December 7, 2018
Page 2

Republic truly intends to comply with the terms of the Amended Settlement. Our client sincerely hopes that the Republic's inaction is simply an oversight, rather than a repudiation of the Amended Settlement. But, Crystallex is fully prepared to proceed to enforce the Award should the Republic decide to abandon its obligations under the Amended Settlement.

Our clients have managed to reach an agreement that resolve their disputes to the benefit of all involved. Both sides have taken many steps towards making that agreement a reality, and it is in all parties' interests to continue to implement the Amended Settlement.

Accordingly, in the hope of avoiding the need for further litigation between Crystallex and the Republic, we ask that the Republic promptly confirms that it intends to take all steps necessary to immediately stay the appeals pending in the United States Courts of Appeals. Given PDVSA's imminent filing deadline in the Third Circuit, Crystallex requests a response to this request by no later than close of business on Monday, December 10, 2018.

Sincerely,



Robert Weigel

RLW/jwm

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Venezuela's deals to shield Citgo from creditors now in doubt

Tom Hals

3 MIN READ



WILMINGTON, Del. (Reuters) - Venezuela is facing the possible unraveling of a pair of billion-dollar settlements aimed at protecting the cash-strapped country's U.S.-based Citgo Petroleum Corp from seizure by creditors.

The logo of PDVSA's U.S. unit Citgo Petroleum is seen at a gas station in Stowell, Texas, U.S., June 12, 2018. REUTERS/Jonathan Bachman

A lawyer for Canadian mining company Crystallex International Corp said on Tuesday Venezuela had breached the \$1.4 billion November agreement that resolved a long-running fight over an expropriated gold mine.

Separately, Venezuela's \$1.3 billion settlement in October with Rusoro Mining of Vancouver, also over expropriated mining assets, has been upended by U.S. sanctions on Caracas, a source told Reuters.

Venezuela's Information Ministry did not immediately reply to a request for comment.

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Both companies had their sights on getting a U.S. court order to auction the parent company of Citgo, which is indirectly owned by Venezuela through its state oil company, PDVSA.

While Venezuela has been crippled by an economic crisis and has defaulted on tens of billions of dollars of debt, it has struck deals to protect Citgo's refineries, a key destination for Venezuela's crude.

Crystallex attorney Robert Weigel said in a statement that Venezuela breached its agreement because PDVSA continued to try to overturn a court order that allowed Crystallex to seize the stock in Citgo's parent company.

A lawyer for PDVSA disputed that a Monday filing with a federal appeals court amounted to a breach.

“As far as I’m aware, PDVSA is not a party to a settlement with Crystallex,” said Joseph Pizzurro, the Curtis, Mallet-Prevost, Colt & Mosle.

Crystallex plans to restart efforts to auction Citgo, according to Weigel, of Gibson, Dunn & Crutcher.

Crystallex also hired the Moelis & Company investment bank to advise it on a possible sale of Citgo, although that process has been stayed during the appeal by Venezuela and PDVSA.

Rusoro’s deal in October required Venezuela to pay \$100 million by the end of November. Caracas transferred some of that payment to a Canadian bank which returned the funds to Venezuela due to concerns about violating U.S. sanctions, a source familiar with the situation told Reuters.

An attorney for Rusoro did not respond to a request for comment.



Malaysia hits Goldman Sachs with criminal charges

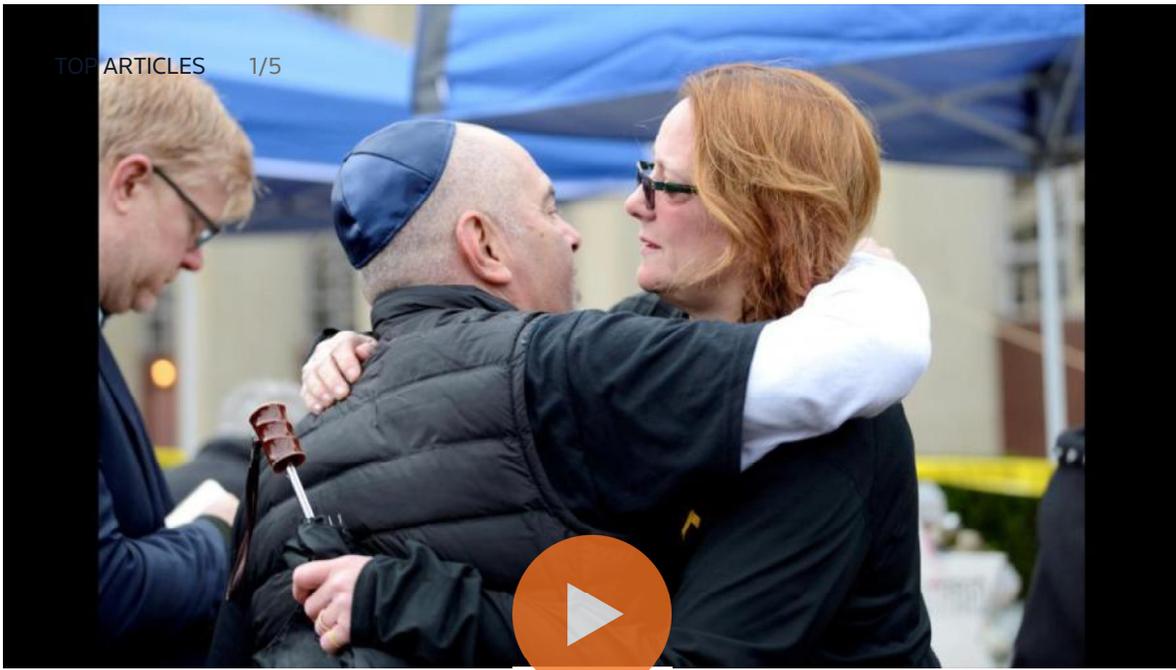
Sanctions have become a headline concern since Meng Wanzhou, the chief financial officer of China’s telecoms giant Huawei Technologies Co Ltd [HWT.UL], was arrested in Canada on Dec. 1 at the request of U.S. authorities.

Meng, the 46-year-old daughter of Huawei's founder, was accused of misleading multinational banks about Huawei's business in Iran, putting the banks at risk of violating U.S. sanctions against Iran, court documents said.

Reporting by Tom Hals in Wilmington, Delaware; Additional reporting by Brian Ellsworth in Caracas, Venezuela; Editing by Sandra Maler

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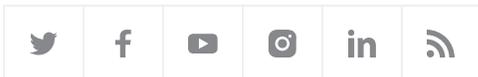
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CREDIT MARKETS

Investors Push Venezuela for Payment on \$1.5 Billion Defaulted Bond

The action will likely touch off similar moves by holders of other Venezuelan debt



A man walking in front of Venezuela's central bank in Caracas on Aug. 17. PHOTO: MIGUEL GUTIERREZ/EPA-EFE/REX/SHUTTERSTOCK

By *Micah Maidenberg and Julie Wernau*

Dec. 17, 2018 5:04 p.m. ET

A group of investors is demanding the Venezuelan government pay off both the interest and principal of a defaulted \$1.5 billion bond that won't mature until 2034, escalating the battle between bondholders and President Nicolás Maduro's administration.

The group of five investment firms owns about \$380 million worth of the sovereign debt that has been in default since January, according to S&P Global Ratings. The default, plus the size of the firms' stake, gives the group the right to call for immediate payment, according to Mark Stancil, an attorney in Washington who represents the investors.

"Unfortunately, the Republic has stopped paying on these bonds," Mr. Stancil, an attorney at Robbins, Russell, Englert, Orseck, Untereiner & Sauber, said of Venezuela in an email. "My clients have therefore exercised their contractual rights to protect their interests."

The investor group is the first to demand full payment of Venezuelan debt since the country began spiraling into widespread default late last year. U.S. sanctions, a paucity of seizable assets, and the abundance of creditors have made investors reticent to push for payment, which will likely to touch off a complicated and costly legal battle.

Mitu Gulati, a Duke University economics professor who has closely followed the Venezuelan default, said the move to force payment will prompt holders of other Venezuelan debt to organize and follow suit.

"In a world in which you have limited assets, it's whoever grabs the assets first," he said.

A spokesman for Venezuela's Information Ministry didn't immediately respond to calls and emails seeking comment.

The investor group notified Bank of New York Mellon, which serves as the fiscal agent for the bonds, on Dec. 6 that it wanted to accelerate the payments. Mr. Stancil declined to name the investors. The bank didn't comment.

Mr. Stancil represented Aurelius Capital Management in Argentina's epic 15-year debt battle with creditors. The hedge funds that fought Argentina for payment following a 2001 default on

\$80 billion, notched solid returns when the matter was finally settled in 2016.

Reuters reported on the acceleration request earlier Monday.

Amid an economic and humanitarian crisis, Venezuela has stopped making bond payments, except for a 2020 bond tied to Petróleos de Venezuela SA, the state-owned oil company that generates 95% of the government's dollar revenues. In October, the company made a nearly \$1 billion payment on that bond.

--Kejal Vyas contributed to this article.

Write to Micah Maidenberg at micah.maidenberg@wsj.com and Julie Wernau at Julie.Wernau@wsj.com

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