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-Proposed Intervenor,

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 OPPOSITION TO MOTION FOR LEAVE TO INTERVENE AND STAY PROCEEDINGS

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OPPOSITION TO MOTION FOR LEAVE TO INTERVENE AND STAY PROCEEDINGS

These appeals arise from an action to collect on a $1.4 billion judgment that the Bolivarian Republic of Venezuela ("Venezuela") owes to Crystallex International Corporation ("Crystallex") but refuses to pay. The United States Court of Appeals for the D.C. Circuit recently affirmed that judgment and ordered sanctions against Venezuela for filing a "misleading and meritless" motion to stay that appeal. Venezuela was served in the D.C. action and had its day in court. It lost, and the amount and validity of that judgment is no longer in dispute. Because Venezuela is defying the D.C. judgment, its assets in the United States are subject to seizure, and Venezuela need not be served each time Crystallex locates an asset. Petróleos de Venezuela, S.A. ("PDVSA"), Venezuela's 100 percent-owned alter ego, intervened below and its arguments were heard and rejected.

Nothing in Venezuela's belated motion remotely justifies staying this appeal on the eve of oral argument. While Venezuela touts its "political, social, and economic circumstances," Mot. 1, the mere fact that a judgment debtor experiences a change in leadership does not, of course, free the debtor of its obligations to creditors. Regardless of *which* political party has been recognized as running the Venezuelan government, it is indisputable that Crystallex holds a valid and enforceable judgment that Venezuela still refuses to pay. Crystallex's efforts to execute against Venezuela's assets in the United States held in the name of its

instrumentality and alter ego, PDVSA, have nothing to do with political circumstances in Venezuela.

Crystallex's judgment against Venezuela has been outstanding for nearly two years, and nearly $1 billion of that judgment remains unsatisfied despite Crystallex's diligent enforcement efforts. Since 2011, Venezuela has fought vigorously to hinder and delay Crystallex, including twice agreeing to settle Crystallex's claims—first in November 2017 and again in September 2018—only to renege each time. Following the November 2017 settlement, Venezuela failed to make the promised payments. Following the 2018 amended settlement, Venezuela failed to post the required collateral. Ironically, the 2018 amended settlement required Venezuela to cause PDVSA to seek a stay of these appeals and for Crystallex to stay enforcement in the district court. While Crystallex complied with that obligation, Venezuela did not and caused PDVSA to file its opening brief.

Instead of posting the required collateral and making payment as required by the 2018 amended settlement, Venezuela now asks the Court to postpone the calendared argument while continuing the Court's *sua sponte* stay of enforcement of the writ of attachment—all without Venezuela having to comply with the terms of the settlement or Rule 62 of the Federal Rules of Civil Procedure. Venezuela does not even offer to maintain the status quo during its requested postponement. Its silence it telling. Published reports since Venezuela's motion to "intervene" indicate

that within weeks Venezuela will cause its United States instrumentality, CITGO Petroleum Corporation ("CITGO"), to assume $1.2 billion in new debt—debt that would come ahead of Crystallex's lien on the attached shares of CITGO's parent, PDV Holdings ("PDVH"). Moreover, published reports indicate that Venezuela has sought permission to use more than $70 million of its funds—out of more than $3 billion held in the United States—to pay PDVSA's creditors while making no apparent effort to pay Crystallex.[1]

Neither Venezuela nor PDVSA has posted a supersedeas bond to secure Crystallex's judgment pending appeal. The $1.2 billion that Venezuela and PDVSA's subsidiary, CITGO, have announced they intend to borrow this month would more than cover the amount necessary to bond Crystallex's judgment. And yet, Venezuela asks this Court to postpone these appeals and continue the stay of enforcement without a bond or even a promise to maintain the status quo—in other words, without any promise to preserve or maintain the value of PDVH.

There is no need for additional time for Venezuela to "evaluate its position." Mot. 1. The same counsel who filed this motion to stay also represented Venezuela in litigation against Crystallex under the Maduro regime, and declared its allegiance to Venezuela's new government in court filings only recently. And, before assuming

[1] *Guaido Is Seeking to Make Payment on CITGO-Backed PDVSA Bond*, BLOOMBERG (Feb. 28, 2019), https://bloom.bg/2CbdbIo.

his current position, José Ignacio Hernández—Special Counsel to the Venezuelan National Assembly tasked with evaluating creditor claims against Venezuela—provided expert testimony *supporting* Crystallex's alter ego arguments below. Venezuela's General Manager of Litigation even submitted a declaration supporting PDVSA's arguments in this Court.[2] It cannot be the case, therefore, that the new government needs additional time to "evaluate" Crystallex's claims.

These appeals are fully briefed, and Venezuela may not introduce new arguments. The only issues before this Court concern whether the district court, on the record before it, correctly ordered a writ of attachment against Venezuela's assets held in PDVSA's name. Subsequent events that Venezuela's motion attempts to raise offer no reason to question the correctness of the district court's decision. Nor would prompt disposition of these appeals "threaten[] judicial interference" with the United States' foreign policy objectives. Mot. 2. Allowing Crystallex to enforce its judgment like any other creditor in no way undercuts the United States' recognition of the Guiadó-led National Assembly as Venezuela's legitimate government; rather, it upholds the strong policy of voluntary compliance with U.S. court judgments.

[2] *See* Opp. to Mot. to Expedite Oral Arg., Decl. of Henry Antonio Rodríguez Facchinetti, *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, Nos. 18-2797, 18-3124 (3d Cir. Dec. 28, 2018), ECF No. 3113121203 ("Facchinetti Decl."). Venezuela cites this declaration (Mot. 4) even though it attached a version of the September 2018 settlement agreement that has never been legally operative.

Furthermore, Venezuela's motion comes far too late. Venezuela, a named party, deliberately sat on its rights for the year-and-a-half since Crystallex initiated these enforcement proceedings, content to let its alter ego, PDVSA, litigate this aspect of the dispute when it served Venezuela's strategic purposes. Venezuela's request for an eleventh-hour stay is the same type of litigation conduct that recently led to the D.C. Circuit issuing sanctions against the Republic.

Finally, if this Court decides to stay these appeals—for any duration—fundamental fairness requires that Venezuela should be ordered to post a supersedeas bond for the full value of Crystallex's unsatisfied judgment. Venezuela is actively seeking to monetize or shield its United States assets and does not even propose to maintain the status quo during its requested stay. Crystallex holds a now-affirmed $1.4 billion judgment against Venezuela that Venezuela steadfastly refuses to pay. Any delays in these appeals would frustrate Crystallex's ability to collect on a judgment that the United States courts have affirmed.

BACKGROUND

1. Crystallex initiated this judgment-enforcement proceeding after Venezuela refused to pay the $1.4 billion judgment (including interest) entered against Venezuela for expropriating Crystallex's gold mining interests. *See* Joint Appendix ("JA-") 16-17. Crystallex registered its judgment in federal court in Delaware and moved for a writ of attachment so that Crystallex could attach and sell

the common-stock shares of Venezuela's most valuable commercial asset in the United States, PDVH—the Delaware holding company that indirectly owns CITGO. JA-17-18, 108, 110. As Crystallex demonstrated below, the nominal owner of the shares—Venezuela's national oil company, PDVSA—has for more than twenty years been so extensively controlled by Venezuela that it is nothing more than an alter ego of the Republic, and therefore PDVSA's property is in fact the property of Venezuela. JA-53-69, 90.

Although Crystallex was not required to serve Venezuela or PDVSA with its attachment motion, *see infra* pp. 15-16, Crystallex nevertheless notified both Venezuela and PDVSA that it sought to attach the PDVH shares by sending them copies of the motion and supporting papers. JA-112-13. Specifically, Crystallex sent copies to (1) Venezuela's counsel in the ongoing litigation in Washington, D.C.; (2) the Minister of Political Affairs at the Venezuelan Embassy in the United States; and (3) Venezuela's Hague convention service authority, the Ministry of Foreign Affairs, in Caracas. *Id.* Crystallex also sent copies to PDVSA and its counsel in other enforcement actions. *Id.* Since at least November 2017, Venezuela has acknowledged the Delaware proceeding in numerous ways, including in its settlement agreements with Crystallex and in filings in this Court. *See, e.g.*, Facchinetti Decl. 1-2 & Ex. 1. Yet Venezuela chose not to appear, instead dispatching PDVSA to intervene below to challenge the attachment. JA-1206-14.

In August 2018, the district court ordered the attachment of the PDVH shares in two orders that are the subject of these consolidated appeals.

2. Execution of the writ of attachment has been stayed since it was issued on August 23, 2018, and the PDVH shares will not be sold until the stay is lifted. JA-8. Crystallex requested that the district court lift its temporary stay to allow execution to continue during these appeals, but a motion panel of this Court *sua sponte* stayed the district court proceedings during these appeals—albeit without expressing any view on the merits. *See* Order 2, *In re Petróleos de Venezuela, S.A.*, No. 18-2889 (3d Cir. Nov. 23, 2018), ECF No. 3113093030 ("Mandamus Rehearing Order"). Significantly, the panel did not require PDVSA to post security during the appeals, *see id.*, thus effectively mooting, without any briefing or hearing, Crystallex's then-pending request to the district court for an order conditioning any stay on a supersedeas bond.

While this litigation was proceeding, Crystallex and Venezuela attempted two settlement agreements. An initial settlement agreement in November 2017 never became enforceable because Venezuela failed to make the required payments. A subsequent amended settlement agreement executed in September 2018 became effective in late November 2018, when Venezuela belatedly satisfied its obligation to pay Crystallex $425 million as a condition of Crystallex staying its enforcement efforts in the Delaware district court. *See* Mot. to Expedite Oral Arg. 7, *Crystallex*

Int'l Corp. v. Bolivarian Republic of Venezuela, Nos. 18-2797, 18-3124 (3d Cir. Dec. 21, 2018), ECF No. 3113117411 ("Mot. to Expedite Oral Arg."). However, after this Court *sua sponte* stayed those district court proceedings without a bond, Venezuela reneged on its obligation under the settlement agreement to cause PDVSA to seek a stay of these appeals, and Crystallex subsequently declared Venezuela to be in breach. *See id.* at 8-10. Following Venezuela's breach, Crystallex moved to expedite the scheduling of oral argument to help minimize its harm from an inadequately secured judgment. *See id.* at 12-15. After the Court denied that motion, *see* Order, *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, Nos. 18-2797, 18-3124 (3d Cir. Jan. 2, 2019), ECF No. 3113122657, Venezuela further breached the settlement agreement by failing to provide Crystallex with nearly $1 billion in required collateral by January 10, 2019. *See* Crystallex's Resp. to Jan. 10, 2019 Per Curiam Order 3, *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, No. 17-7068 (D.C. Cir. Jan. 17, 2019), ECF No. 1768931 ("Crystallex D.C. Circuit Response").

These appeals are now fully briefed and the parties are preparing for oral argument calendared for Tuesday, April 16, 2019.

3. While Crystallex and PDVSA briefed these appeals, Crystallex prepared for oral argument in the D.C. Circuit on Venezuela's appeal from the judgment confirming Crystallex's arbitration award. One week before the oral argument

scheduled for January 14, 2019, Venezuela filed a purported "emergency motion to adjourn" the oral argument on the basis of the parties' settlement agreement—but without informing the court of Crystallex's position that Venezuela had breached the settlement. *See* Emergency Mot. to Adjourn Oral Arg., *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, No. 17-7068 (D.C. Cir. Jan. 8, 2019), ECF No. 1767518. The D.C. Circuit merits panel adjourned the oral argument. Following additional briefing, the court unanimously affirmed the district court's judgment on the merits and awarded Crystallex its attorneys' fees for defending a "misleading and meritless" emergency motion to stay. *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 2019 WL 668270 (D.C. Cir. Feb. 14, 2019) (per curiam).

ARGUMENT

Once again, Venezuela seeks to stay an appeal for no valid reason. Recent political events in Venezuela do not justify staying these appeals because they, like all appeals, will be decided on the basis of the record as it existed before the district court, not on the basis of issues and arguments raised for the first time on appeal. Regardless of the government in power, Venezuela still owes Crystallex nearly $1 billion on a valid and enforceable judgment that is unsecured by any bond. If this Court does order a stay (and it should *not*), it should condition that stay on Venezuela posting security for the full amount of the outstanding judgment to avoid further irreparable harm to Crystallex.

I. The Political Circumstances In Venezuela Do Not Affect These Appeals

Venezuela seeks to intervene and stay this appeal for 120 days to "evaluate its position" in "this and other cases involving the Republic currently pending in U.S. courts." Mot. 1. The motion should be denied.

There is no valid reason to permit a named party that chose not to appear but rather to direct this litigation from the sidelines for more than a year to "intervene" at the eleventh hour and request additional time to "evaluate its position." Venezuela has preserved no position on appeal. It filed no papers below. PDVSA and Crystallex already have taken their positions, and Venezuela is well aware of the positions that its instrumentality, PDVSA, has taken. Indeed, Venezuela's General Manager of Litigation personally supplied a declaration to assist PDVSA in opposing Crystallex's December motion to expedite oral argument. *See* Facchinetti Decl. Venezuela also is well familiar with Crystallex's positions given that José Ignacio Hernández—the Special Counsel to the National Assembly tasked with evaluating creditor claims against Venezuela—was *Crystallex's expert below* and opined on Venezuela's "day-to-day control over PDVSA." JA-1184-1205; https://twitter.com/jguaido/status/1100808293688270849.

The fact that Venezuela may have a new government is entirely beside the point, and certainly does not entitle Venezuela to breathe new issues into these appeals. Quite the contrary, these appeals, like all appeals, must be decided on the

record developed in the trial court below. This Court has explained that "[t]he only proper function of a court of appeals is to review the decision below on the basis of the record that was before the district court." *Acumed LLC v. Advanced Surgical Servs., Inc.*, 561 F.3d 199, 226 (3d Cir. 2009) (quoting *Fassett v. Delta Kappa Epsilon*, 807 F.2d 1150, 1165 (3d Cir. 1986)). The Court "can consider the record only as it existed at the time the court below made the order" at issue. *Jaconski v. Avisun Corp.*, 359 F.2d 931, 936 n.11 (3d Cir. 1966). And it is a hornbook principle that "[l]ike the original district court judgment, the appellate mandate relates to the record and issues then before the court, and does not purport to deal with possible later events." *Standard Oil Co. of Cal. v. United States*, 429 U.S. 17, 18 (1976) (per curiam).

Nor can Venezuela shirk its obligations to creditors simply because it has a new government. It is well-settled that "the obligations of a foreign state are unimpaired by a change in that state's government." *Republic of Iraq v. ABB AG*, 768 F.3d 145, 164 (2d Cir. 2014). Venezuela is liable on Crystallex's now-affirmed $1.4 billion judgment *regardless* of who is in charge of Venezuela's government. Regardless of its claimed good intentions for the future, should it ever attain full power, Venezuela's new government is bound by the old government's acts that led to the decision below.

Under Delaware law, the very purpose of the writ of attachment pending execution is to preserve the status quo between when the writ is served and when it is executed, so that the creditor's rights are not lost. *See* 10 Del. C. § 5031; 8 Del. C. § 324. A change in Venezuela's government in 2019 does not change the fact that the prior regime took Crystallex's mining interests in violation of international law. Nor does it affect the correctness of the district court's August 2018 decision.

In reality, Venezuela seeks a stay so that it can devise new strategies for avoiding its obligations to Crystallex and other creditors. It now purports to "reserve[] its rights" to raise "all arguments or defenses," Mot. 16, and even misleadingly suggests that the district court "specifically contemplated that—if the Republic did appear—it could 'seek to quash the writ' by 'argu[ing] that additional evidence materially alters the Court's findings,'" *id.* at 3 (quoting JA-89). What the district court actually said was that the question of Venezuela's ability to intervene in this action is "unsettled," and the court requested additional briefing on that issue. JA-89-90. In its response, Crystallex explained that "Venezuela was provided notice of the motion and declined to appear" because "its interests were represented by its alter ego," and therefore "Venezuela has no new legal or factual basis on which to attempt to quash the writ at this stage of the litigation." Ltr. from Travis S. Hunter to Chief Judge Leonard P. Stark 5 & n.7, *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, No. 1:17-mc-151-LPS (D. Del. Aug. 16, 2018), ECF No. 86. One week later, the

district court ordered that the writ of attachment be issued and served, while setting a deadline of seven days after service of the writ for "[a]ny motion to intervene" or "any other input any party (i.e., Crystallex, Venezuela, PDVSA) wishes to provide." JA-8. But Venezuela never appeared in the district court, where named defendants ordinarily are expected to present and preserve their contentions for review, nor offered input of any form, shape or description in that court. The time for doing so has long passed.

II. Venezuela's Intervention Request Is Untimely And Improper

Venezuela's request to "intervene"—even though it was named as the defendant below and always has been the debtor on Crystallex's judgment—also should be denied because it comes too late and is made for improper purposes. The instant motion appears to be nothing more than the latest example of Venezuela's long practice of seeking last-minute litigation stays designed to frustrate creditors and delay adverse judicial decisions. Venezuela's liability to Crystallex was established by the D.C. district court's judgment and affirmed on appeal. Venezuela's property in the United States is subject to seizure to satisfy that judgment. It has no legitimate position in this appeal.

This Court sets a "high threshold for intervening for the first time on appeal." *In re Syntax-Brillian Corp.*, 610 F. App'x 132, 135 n.6 (3d Cir. 2015). "[W]hile a court of appeals has power to permit intervention[,] that power should be exercised

only in exceptional circumstances for imperative reasons." *In re Grand Jury Investigation*, 587 F.2d 598, 601 (3d Cir. 1978). Courts should consider not only "what proceedings of substance on the merits have occurred," but also "the prejudice the delay in intervention may cause to the parties already involved." *Choike v. Slippery Rock Univ. of Pa. of State Sys. of Higher Educ.*, 297 F. App'x 138, 141 (3d Cir. 2008) (quoting *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 369-70 (3d Cir. 1995)) (affirming denial of motion to intervene in district court proceedings).

Allowing Venezuela to intervene at this late stage to raise new arguments, ostensibly distinct from those already raised by PDVSA, would be unfair and prejudicial to Crystallex. "The obvious reason for the rule against belated intervention is that it is unduly disruptive and places an unfair burden on the parties to the appeal." *Amalgamated Transit Union Int'l, AFL-CIO v. Donovan*, 771 F.2d 1551, 1553 (D.C. Cir. 1985). "It would be entirely unfair, and an inexcusable waste of judicial resources, to allow a potential intervenor to lay in wait until after the parties and the trial and appellate courts have incurred the full burden of litigation before deciding whether to participate in the judicial proceedings." *Id.* That unfairness is magnified where, as here, the would-be intervenor was a named party below that declined to appear yet orchestrated the proceedings from the sidelines through its instrumentality.

As its primary authority for authorizing late-stage intervention, Venezuela cites an unpublished Eleventh Circuit decision, *Gonzalez v. Reno*, 2000 WL 502118 (11th Cir. Apr. 27, 2000). *See* Mot. 10. That decision—from a divided panel—was truly exceptional; it involved the fast-tracked review of proceedings involving the Cuban refugee Elián González (which had embroiled the United States in an international controversy), and permitted the intervention of Elián's father, a Cuban citizen who had arrived in the United States only a few weeks before intervening. *Gonzalez*, 2000 WL 502118, at *1. Even then, one judge on the panel considered the motion to intervene "untimely." *Id.* at *2 (Dubina, J., dissenting in part). Here, in contrast, Venezuela has studiously avoided appearing in these enforcement proceedings for a year and a half, and it can offer no good reason for its delay. It should not be permitted to intervene now. *See Amalgamated Transit*, 771 F.2d at 1552-53; *In re Grand Jury*, 587 F.2d at 601.

To be sure, Venezuela suggests that its delay in seeking to intervene might be excused because it did not receive formal Hague Convention service of the registration of judgment and attachment motion in the Delaware district court. Mot. 2, 12-13, 16. But "[u]nder section 1963"—the judgment registration statute—"a judgment creditor is not required to file a new complaint, serve the judgment debtor or establish an independent basis for jurisdiction." *United States v. Febre*, 978 F.2d 1262, 1992 WL 288321, at *2 (7th Cir. 1992); *see also* 28 U.S.C. § 1963; *Peterson*

v. Islamic Republic of Iran, 627 F.3d 1117, 1129-30 (9th Cir. 2010) (rejecting argument "that Iran should have been served with the registration of judgment" because "[s]ervice of post-judgment motions is not required" under § 1963 and the Foreign Sovereign Immunities Act). Crystallex's registration of the judgment and action to enforce it in the Delaware court had the same effect as if Crystallex had proceeded to enforce the judgment in Washington, D.C., where the judgment issued, and Hague Convention service on Venezuela certainly would not have been necessary to proceed with such an enforcement motion in the D.C. court. In any event, Venezuela's quibble with Hague Convention service cannot excuse its delay because it indisputably *did* receive multiple forms of notice of these enforcement proceedings shortly after they were initiated in 2016, *see* JA-112-13, as it acknowledged in its settlement negotiations and elsewhere, *see, e.g.*, Facchinetti Decl. 1-2.

Allowing Venezuela to intervene now would only reward it for its improper behavior throughout its litigation with Crystallex. In the D.C. Circuit, Venezuela used a variety of ploys to delay that court's judgment affirming the confirmation of the arbitration award, including the substitution of counsel that resulted in several months' delay and the filing of an "emergency motion" one week before the oral argument. The D.C. Circuit found that motion not just "misleading and meritless" but also sanctionable. *Crystallex Int'l Corp.*, 2019 WL 668270 at *2.

The Court should not reward Venezuela's gamesmanship and turn these appeals into a repeat of the D.C. Circuit appeal; it should, instead, deny Venezuela's motion for leave to intervene on appeal.

III. Crystallex Is Entitled To A Bond If This Appeal Is Stayed

If this Court is inclined to permit Venezuela to intervene on appeal, its request for a 120-day "stay [of] all proceedings" (Mot. 15) should not be granted without requiring Venezuela to post a supersedeas bond. To participate in these appeals and obtain a stay, Venezuela should post the same bond that would be required had it participated in the district court from the outset.

Courts of appeals have the same authority as district courts to condition a stay on the posting of security. Just as Federal Rule of Civil Procedure 62(b) permits an appellant to stay enforcement of a judgment pending appeal "by providing a bond or other security," Federal Rule of Appellate Procedure 8(a)(2)(E) provides that where a party seeks a stay in the court of appeals, the appellate court "may condition relief on a party's filing a bond or other security in the district court." "The purpose of the supersedeas bond is to secure the prevailing party against the risk that the judgment debtor will be unable to meet the obligations pending appeal and to protect the prevailing party from the costs that it incurs in foregoing execution of judgment until the appeal is decided." *Chalfonte Condo. Apartment Ass'n, Inc. v. QBE Ins. Corp.*,

695 F.3d 1215, 1232 (11th Cir. 2012) (citing *Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190-91 (5th Cir. 1979)).

Had Venezuela participated in the district court and filed its own appeal, it would have had no basis to obtain a stay of execution absent a supersedeas bond. A district court may forego the bond requirement only under "exceptional circumstances" and "when there are other means to secure the judgment creditor's interests," such that the court is "convinced that the judgment is adequately secured." *In re Diet Drugs*, 582 F.3d 524, 552 (3d Cir. 2009); *FEC v. O'Donnell*, 2017 WL 2200911, at *2 (D. Del. May 19, 2017); *Montalvo v. Larchmont Farms, Inc.*, 2011 WL 6303247, at *2 (D.N.J. Dec. 15, 2011). Indeed, Delaware law, which governs this execution proceeding pursuant to Federal Rule of Civil Procedure 69, provides that stays of execution may be granted only where the judgment debtor provides, "at a minimum, the *full amount* of the money judgment." *Gates v. Texaco, Inc.*, 2008 WL 1952162, at *1 (Del. Super. Ct. May 2, 2008) (emphasis added); *see also Owens Corning Fiberglas Corp. v. Carter*, 630 A.2d 647, 648 (Del. 1993) (affirming denial of stay unless appellant "paid the full amount of the judgment plus legal interest" into the court). Venezuela's payment of $425 million to Crystallex under the settlement agreement was not security for the judgment—it was a partial payment of what Crystallex is owed.

Moreover, public reports indicate that the real reason for Venezuela's requested stay is not to "evaluate" this case, but to protect the attached assets. Venezuela is increasing the debt carried by CITGO by $1.2 billion—thereby reducing the value of the PDVH shares. *See Citgo Eyes $1.2 Billion Term Loan Amid Fight for Refiner*, BLOOMBERG (Mar. 8, 2019), https://bloom.bg/2Cdwvox. And Venezuela's National Assembly announced a plan to protect the PDVH shares attached by Crystallex. Ex. A at 3. In other words, while Venezuela seeks to delay these proceedings, it is accelerating efforts to devalue or shield the attached asset.

If Venezuela simply paid Crystallex's now-affirmed judgment, these appeals would be unnecessary. But to delay these appeals so that Venezuela can protect the attached asset *while it is refusing to comply with a valid U.S. judgment* would inappropriately reward its strategy of defiance. United States courts should stand for voluntary compliance with their judgments. In these circumstances, a supersedeas bond is essential.

In any event, Delaware courts generally "do[] not have the discretion to waive the requirement of a supersedeas bond." *Gates*, 2008 WL 1952162, at *1. As the judgment debtor and named defendant, Venezuela should not be excused from these requirements simply because it is attempting to leapfrog the district court and land in this appeal as an intervenor rather than as an appellant.

To be sure, this Court previously stayed the district court proceedings without requiring PDVSA to post a bond—albeit without the benefit of briefing from the parties regarding the propriety of a stay. *See* Mandamus Rehearing Order 2. But Venezuela is the judgment debtor and the D.C. Circuit has now affirmed that judgment on the merits. Moreover, the ostensible reason for excusing *PDVSA* from posting a bond does not apply to Venezuela: PDVSA claimed it would face irreparable injury from the purported burden of even participating in further proceedings in the district court pending appeal based on its claim (at issue in this appeal) that it is immune from the district court's jurisdiction under the Foreign Sovereign Immunities Act. *See, e.g.*, Pet. for Writ of Mandamus 22-25, *In re Petróleos de Venezuela, S.A.*, No. 18-2889 (3d Cir. Aug. 27, 2018), ECF No. 3113018517. Whatever this Court ultimately may make of *PDVSA*'s claim that it is entitled to immunity from suit, that claim is separate and apart from this Court's jurisdiction over Venezuela, which now seeks to insert itself in these proceedings *voluntarily*.

Venezuela suggests that this case somehow "implicates the Republic's … immunity from suit." Mot. 16. But it never explains how that could be so, given that its immunity was conclusively overcome in the D.C. courts. *See Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 244 F. Supp. 3d 100, 109 (D.D.C. 2017) ("Here, the [sovereign immunity] exception in § 1605(a)(6) applies."), *aff'd*, 2019

WL 668270. Moreover, Crystallex explained in its merits brief that "the jurisdiction to enter a judgment under the [Foreign Sovereign Immunities Act] 'continues long enough to allow proceedings in aid of any money judgment that is rendered in the case,'" Br. for Appellee 32, *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, Nos. 18-2797, 18-3124 (3d Cir. Jan 23, 2019), ECF No. 3113141891 (quoting *First City, Tex.-Houston, N.A. v. Rafidain Bank*, 281 F.3d 48, 54 (2d Cir. 2002)), and PDVSA did not take issue with that proposition. Having already failed to contest the federal courts' jurisdiction to enter judgment against it, Venezuela cannot bring judgment enforcement to a standstill with unexplained hints at "immunity" in a belated motion for a stay.

Venezuela argues that the parties' September 2018 settlement agreement eliminates any prejudice from further delaying the resolution of this appeal. Mot. 15. But Venezuela breached that settlement agreement by allowing PDVSA to continue litigating these appeals in November 2018, and breached it again when Venezuela failed to provide nearly $1 billion in required collateral by January 10, 2019. *See* Mot. to Expedite Oral Arg. 10-12; Crystallex D.C. Circuit Response 3. Absent the posting of the required collateral, the argument that an unsecured contractual obligation to make payments—set forth in a contract that Venezuela has breached—somehow ensures that the nearly $1 billion that Venezuela still owes on

Crystallex's affirmed judgment will be paid is a *non sequitur*. Venezuela cannot claim all the benefits of the agreement while disavowing its obligations.

* * *

In moving to expedite oral argument, Crystallex explained that any delay in the resolution of these appeals would cause irreparable harm to Crystallex by giving Venezuela and PDVSA further opportunity to devalue CITGO and frustrate Venezuela's creditors. Mot. to Expedite Oral Arg. 12-15. These arguments take on new urgency now. In opposing Crystallex's motion to expedite argument, PDVSA (in concert with Venezuela) successfully urged the Court not to "depart from its ordinary scheduling procedures." Opp. to Mot. to Expedite Oral Arg. 18. Venezuela should not be heard to argue now that Crystallex would not be harmed if the Court delayed the argument without requiring additional security. In these circumstances, there can be no justification for staying these proceedings without Venezuela posting a bond or other security in the full amount of the unpaid judgment.

CONCLUSION

For the foregoing reasons, Crystallex respectfully requests that the Court deny Venezuela's motion to intervene and to stay proceedings.

March 11, 2019

Respectfully submitted,

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CERTIFICATION OF BAR MEMBERSHIP

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

March 11, 2019

/s/ Miguel A. Estrada
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CERTIFICATE OF COMPLIANCE

1. This Opposition complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d) because it contains 5,194 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f); and

2. This Opposition 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 Opposition 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.

March 11, 2019

/s/ *Miguel A. Estrada*
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 2019, I caused the foregoing Opposition 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.

March 11, 2019

/s/ Miguel A. Estrada
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