IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CRYSTALLEX INTERNATIONAL CORPORATION, Petitioner, v. BOLIVARIAN REPUBLIC OF VENEZUELA, Respondent.	Civil Action No. 1:16-cv-00661-RC

OPPOSITION TO CRYSTALLEX'S MOTION PURSUANT TO 28 U.S.C. § 1610(c) AND 28 U.S.C. § 1963 (ORAL ARGUMENT REQUESTED)

Respondent Bolivarian Republic of Venezuela ("Venezuela") submits this Opposition to the motion by Crystallex International Corp. ("Crystallex") requesting that the Court: (1) find that a reasonable period of time has passed since the entry of judgment under 28 U.S.C. § 1610(c) so as to allow Crystallex to proceed with attachment or execution; and (2) permit Crystallex under 28 U.S.C. § 1963 to register the judgment in other judicial districts in the United States. For the reasons explained below, both requests should be denied.

I. The Court Should Deny Crystallex's Motion Pursuant to 28 U.S.C. § 1610(c)

Crystallex's request pursuant to § 1610(c) should be denied because the mere 18 days that elapsed between the Clerk's entry of judgment (on April 7, 2017) and the filing of the motion (on April 25, 2017) come nowhere close to the "reasonable period of time" mandated by the Foreign Sovereign Immunities Act ("FSIA").

A. Crystallex's Request Is Premature

1. Motions Under § 1610(c) Are Generally Granted Only After Several Months Have Elapsed Following the Entry of Judgment

The FSIA, as codified in 28 U.S.C. § 1610(c), prohibits the "attachment or execution referred to in subsections (a) and (b) of this section" until the Court has "determined that a reasonable period of time has elapsed following the entry of judgment." The FSIA's "reasonable period of time" requirement is significantly longer than the 14 days allotted to non-sovereigns under Rule 62(a) of the Federal Rules of Civil Procedure. *Ned Chartering & Trading, Inc. v. Republic of Pak.*, 130 F. Supp. 2d 64, 67 (D.D.C. 2001).

The longer time given to foreign sovereigns is motivated by a critical policy concern: governments often must engage in time-consuming procedures, such as enacting laws or regulations, before judgments can be paid. *See id.* In that regard, § 1610(c)'s legislative history reflects Congress's sensitivity to the fact that such procedures "may take several months." H.R. Rep. No. 1487, 94th Cong., 2d Sess. 30, reprinted in 1976 U.S. Code Cong. & Admin. News 6604, 6629. Accordingly, courts have required no less than a period of months, and sometimes as long as a year or more, before allowing attachment or execution against a foreign sovereign. *E.g.*, *Kapar v. Islamic Republic of Iran*, 105 F. Supp. 3d 99, 108 (D.D.C. 2015); *Agudas Chasidei Chabad v. Russian Fed'n*, 798 F. Supp. 2d 260, 269–70 (D.D.C. 2011).

Here, Crystallex waited only 18 days before filing the present motion. *See* D.E. 33 (judgment dated Apr. 7, 2017); D.E. 36 (motion dated Apr. 25, 2017).[1] That is only four more days than the 14 days required before attachment or execution may be commenced against non-sovereigns. *See* Fed. R. Civ. P. 62(a). It is not nearly long enough to give effect to the protections

[1] "D.E." refers to a "docket entry" in this action.

afforded to foreign sovereigns by the FSIA. As this Court held in *Ned Chartering* with respect to a motion filed 12 days after entry of judgment against Pakistan:

> [T]he plaintiff's request that foreign sovereigns be afforded no more than 2 days beyond what domestic defendants are afforded must be rejected. Two days . . . is a mere paucity of time to even the most organized of governments, and is much *less* time to the many less-organized governments that are covered by the Foreign Sovereign Immunities Act.

Ned Chartering, 130 F. Supp. 2d. at 67 (emphasis in original).[2]

Allowing attachment or execution to proceed after such a short period of time, this Court ruled, would "not bespeak the respect to foreign nations that is an important aspect of the FSIA." *Id.*; *see also Singleton v. Guangzhou Ocean Shipping Co.*, No. 90-5063, 1994 U.S. Dist. LEXIS 17600, at *2–3 (E.D. La., Dec. 7, 1994) (holding that "16 working days" since entry of judgment is a "short period of time" that "clearly does not satisfy the 'reasonable time' requirement contemplated by the FSIA").

For that reason, this Court generally requires *months* to pass before attachment or execution may proceed against a foreign sovereign. For instance, in *Owens v. Republic of Sudan*, 141 F. Supp. 3d 1, 9 (D.D.C. 2015), the Court held that three months was a reasonable period of time under § 1610(c); that much time was allowed despite a lack of evidence that Sudan was attempting to pay the judgment. In *Baker v. Socialist People's Libyan Arab Jamahirya*, 810 F. Supp. 2d 90, 101 (D.D.C. 2011), a period of "more than 90 days" following judgment was held to be reasonable. In *Agudas Chasidei Chabad v. Russian Fed'n*, 798 F. Supp. 2d 260, 269–70 (D.D.C. 2011), approximately one year elapsed before the § 1610(c) motion was granted.

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[2] In *Ned Chartering*, the time period under Rule 62(a) was 10 days; an amendment to the Rule in 2009 increased it to 14 days. *See* Fed. R. Civ. P. 62 adv. cmte. notes.

District courts in other jurisdictions require similar lengths of time. *See, e.g.*, *Harrison v. Republic of Sudan*, No. MC 13-80116 JSW, 2013 U.S. Dist. LEXIS 102295, at *11–12 (N.D. Cal. June 24, 2013) (fourteen months); *Ferrostaal Metals Corp. v. S.S. Lash Pacifico*, 652 F. Supp. 420, 423 (S.D.N.Y. 1987) (four months).

Against this consensus, Crystallex's request, which was made only 18 days after the entry of judgment, must be denied as premature.

2. The Clerk's Entry of Judgment Is the Date from Which a Reasonable Period of Time Is Determined

Crystallex tries to evade this well-established jurisprudence – and implicitly concedes that sufficient time has not passed since entry of judgment – by erroneously suggesting, without citing any case law in support, that the date of the *arbitral award* is a relevant factor. *See* D.E. 36 at 2, 4.[3] That is incorrect; §1610(c), by its terms, specifies that the "reasonable period of time" is "following the *entry of judgment*" (emphasis added). It is for that reason that the district court in *Suraleb, Inc. v. Prod. Ass'n Minsk Tractor Works*, No. 1:06-cv-03496, 2006 U.S. Dist. LEXIS 88654, at *8 (N.D. Ill. Dec. 5, 2006), held that a § 1610(c) motion is not ripe until the court enters judgment confirming the underlying arbitral award.

Nor is there any merit to Crystallex's attempt to advance the clock by relying on the date of the Court's March 25, 2017 Order. The Clerk's April 7, 2017 entry of judgment constitutes the date from which the Court should determine whether a reasonable period of time has elapsed. *See* D.E. 33. The Court of Appeals for the D.C. Circuit made this clear in an analogous context when it held that entry of judgment is not complete until the Clerk enters judgment on the docket:

> In civil actions where the United States is not a party, a notice of appeal must be filed within thirty days after the date of entry of the judgment or order under appeal.

[3] Pincites to docket entries refer to the page numbers in the ECF ribbon at the top of each docket entry.

> The question in this case is when the time for appeal begins to run. The answer is to be found in Fed. R. Civ. P. 58(2), which provides: 'Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a).' The requirement in Fed. R. Civ. P. 79(a), in turn, is simply that the clerk of the District Court make an entry on the civil docket of the date of the judgment showing 'the substance of each order or judgment of the court. . . .' Thus, two procedural requirements exist for entry of a judgment, which triggers the running of the time for appeal: first, a statement of the judgment on a separate document, and second, *the entry of the judgment by the clerk on the civil docket*.

Diamond v. McKenzie, 770 F.2d 225, 227–28 (D.C. Cir. 1985) (emphasis added).[4]

Regardless, even if the date of the March 25, 2017 Order were relevant (it is not), Crystallex filed its motion only one month after that Order. That is still much less time than in the cases cited by Crystallex, and months less than other cases. *Agudas Chasidei Chabad*, 798 F. Supp. 2d at 269–70 (one year); *Gold Reserve, Inc. v. Bolivarian Republic of Venezuela*, No. 1:14-cv-2014, slip op. at 1–2 (D.D.C. Jan. 20, 2016) (two months); *Singleton v. Guangzhou Ocean Shipping Co.*, No. 90-5063, 1994 U.S. Dist. LEXIS 17600, at *2–3 (E.D. La. Dec. 5, 1994) (sixty days); *Gadsby & Hannah v. Socialist Republic of Romania*, 698 F. Supp. 483, 486 (S.D.N.Y. 1988) (two months).[5]

B. Crystallex Provides No Compelling Reason for Dispensing with the Court's Usual Approach to § 1610(c)

None of the reasons offered by Crystallex for dispensing with the standard approach to motions under § 1610(c) has any merit.

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[4] The changes to Rules 58 and 79 that have been made since *Diamond* do not affect its holding. *See, e.g.*, Fed. R. Civ. P. 58(b)(1) ("Subject to Rule 54(b) and unless the court orders otherwise, *the clerk must . . . enter the judgment*." (emphasis added)); Fed. R. Civ. P. 58(b)(2) ("[T]he court must promptly approve the form of the judgment, *which the clerk must promptly enter*." (emphasis added)).

[5] Even in *Ned Chartering*, where the judgment was a mere $268,000, the court still required six weeks to pass. This was because "most governments" would need that long to "pass the minor legislation necessary to appropriate" the necessary funds. *Ned Chartering & Trading, Inc.*, 130 F. Supp. 2d at 66–67. The same cannot be said of the approximately $1.4 billion judgment at issue here.

To begin with, Venezuela does not have a "declared policy of refusing to abide by arbitral awards." D.E. 36 at 3. That unfounded claim is a familiar one. Crystallex previously made it in support of its motion for a prejudgment bond. D.E. 14 at 9–10. When Venezuela showed that the claim is untrue – including by citing five cases where it has settled arbitral awards – Crystallex reversed course and argued that it was actually Venezuela's *settlement* of an arbitral award (with Gold Reserve, Inc.) that somehow created a risk of non-payment. D.E. 18 at 27.

Now, Crystallex has come full circle, again falsely claiming a Venezuelan policy of not paying arbitral awards. The assertion is no more meritorious this time around. Crystallex's only evidence is a five-year-old, out-of-context statement by Venezuela's former president that Crystallex found posted on the website of Venezuela's Embassy in Guyana. *See* D.E. 36 at 3; D.E. 36-7. But that is no answer to the fact that Venezuela has settled numerous arbitral awards and has recently settled the arbitral award that was rendered in Gold Reserve's favor, in an arbitration that Crystallex itself describes as "almost identical" to its own. D.E. 14-1 at 16; *see also* D.E. 16 at 40.

Allowing premature attachment or execution is no more justified by Crystallex's equally erroneous argument that Venezuela has allegedly taken "steps to make the enforcement of the Award more difficult by transferring assets out of the United States." D.E. 36 at 5. That mistaken claim concerns actions allegedly undertaken not by Venezuela, but *other* entities: PDVSA, a corporate subsidiary of Venezuela; and PDV Holding and CITGO Holding, which are indirectly held second- and third-tier subsidiaries. Crystallex raised these allegations in an action it brought against those entities before the U.S. District Court for the District of Delaware. *See Crystallex Int'l Corp. v. Petróleos de Venezuela, S.A.*, No. 1:15-cv-01082 (D. Del.). Notably, Crystallex did *not* bring any such claim against Venezuela. The claims are thus properly before the District of

Delaware, and Crystallex should not be permitted to attempt to litigate them in this case, where the entities against whom the allegations have been made are not present.

Regardless, the district court held that the actions of PDV Holding and CITGO Holding are not attributable to PDVSA, and Crystallex did not attempt to argue otherwise. *Crystallex Int'l Corp. v. PDV Holding Inc.*, No. 1:15-cv-01082, 2017 U.S. Dist. LEXIS 65515, at *13–14 & n.2 (D. Del. May 1, 2017). It follows, *a fortiori*, that they cannot be attributed to Venezuela, which is even further removed from those indirectly held subsidiaries.[6]

In sum, Crystallex has provided no basis for this Court to diverge from the usual time period of several months given to foreign sovereigns under § 1610(c). The Court should therefore deny Crystallex's motion under § 1610(c) because a reasonable period of time following the entry of judgment has not elapsed.

II. The Court Should Deny Crystallex's Motion Pursuant to 28 U.S.C. § 1963

The Court should likewise deny Crystallex's separate request that it be permitted to register the judgment in the District of Delaware or other judicial districts pursuant to 28 U.S.C. § 1963.

A. Counsel for Crystallex Did Not Discuss Its Anticipated Motion Under § 1963 with Counsel for Venezuela as Required by Local Rule 7(m)

As an initial matter, the request under § 1963 should be summarily denied because Crystallex failed to comply with the mandate of Local Civil Rule 7(m) that "[b]efore filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement." As this Court has held, Local Rule 7(m) "requires

[6] As discussed in greater depth below, the district court dismissed the action against PDVSA for lack of jurisdiction. *Crystallex Int'l Corp.*, 2017 U.S. Dist. LEXIS 65515.

. . . at the absolute minimum, that counsel 'discuss the anticipated motion' and that they do so 'in person or by telephone.'" *Ellipso, Inc. v. Mann*, 460 F. Supp. 2d 99, 102 (D.D.C. 2006).

Crystallex failed to fulfill this requirement. On April 24, 2016, when counsel for Crystallex informed counsel for Venezuela that Crystallex intended to file the present motion, only the request under § 1610(c) was mentioned; no contemplated request pursuant to § 1963 was revealed. Affidavit of Andrew B. Loewenstein, ¶¶ 2–3, 7.

The next day, counsel for Venezuela, in a good faith attempt to resolve the § 1610(c) matter, offered to not oppose the motion if Crystallex agreed not to file until a mutually-agreed upon date, and to that end, suggested 75 days after the Clerk's entry of judgment as a reasonable compromise. *Id.* ¶ 4. Counsel for Crystallex agreed to consider the proposal, but then rejected it. *Id.* ¶¶ 4–5. When counsel for Crystallex rejected Venezuela's proposal, he did not propose an alternative date for Venezuela to consider. *Id.* ¶ 5. Nor did counsel for Crystallex mention that the motion, which was filed shortly thereafter that same day, would include a request under § 1963. *Id.* ¶¶ 5–7.

It is undisputed that counsel for Crystallex did not discuss the anticipated § 1963 request. Before filing this Opposition, counsel for Venezuela informed counsel for Crystallex that Venezuela intended to seek denial of the § 1963 request on the ground that Rule 7(m) had not been complied with. *Id.* ¶ 8; Exh. 1 (Email from Andrew B. Loewenstein to Alexander A. Yanos, dated May 8, 2017). Counsel for Venezuela informed counsel for Crystallex that, in order to avoid having to involve the Court, if Crystallex agreed to withdraw that portion of its motion, Venezuela would not object to allowing Crystallex to re-file it as a separate motion, if, after meeting and conferring in accordance with Rule 7(m), the parties remained unable to come to a resolution. *Id.*

Notwithstanding this attempt to resolve the matter, Crystallex declined to withdraw the § 1963 request. Exh. 2 (Email from Alexander A. Yanos to Andrew B. Loewenstein, dated May 9, 2017). In response to the proposal, counsel for Crystallex did not dispute that the § 1963 request was a separate motion, distinct from the request under § 1610(c). *See id.* Nor did counsel for Crystallex dispute that there had been no discussion in accordance with Local Rule 7(m) in regard to relief sought under § 1963. *See id.*

The only explanation offered by counsel for Crystallex for the failure to discuss § 1963 was that "[w]e concluded that conferring on the 1963 motion was futile given your refusal to consent to our motion that a reasonable time for enforcement had passed under Section 1610." *Id.* No explanation was provided for why, during the parties' initial consultations on April 24, 2017, Crystallex did not mention that the motion would include a request pursuant to § 1963. *See id.* Nor was there any explanation for why, the next day, Crystallex concluded that discussing § 1963 would be "futile," given that Venezuela had attempted to resolve the § 1610(c) matter by agreeing not to oppose the § 1610(c) request if Crystallex agreed not to file it until a mutually agreeable date. *See id.* Indeed, no explanation was provided for why a party's subjective view as to whether discussion might be "futile" is relevant to Local Rule 7(m)'s requirement that every nondispositive motion must be discussed. *See id.*

In light of these undisputed facts, Venezuela respectfully submits that Crystallex's failure to comply with Local Civil Rule 7(m) requires denial of its request pursuant to § 1963. *See Abbott GmbH & Co. KG v. Yeda Research & Dev., Co.*, 576 F. Supp. 2d 44, 48 (D.D.C. 2008) (denying motion for failure to comply with Rule 7(m)); *Ellipso, Inc.*, 460 F. Supp. 2d at 102 (denying motions for failure to comply with Rule 7(m)).

B. Crystallex Has Not Shown Good Cause for Granting Its § 1963 Motion

Should the Court be inclined to reach the substance of Crystallex's § 1963 request, that request should be denied. Section 1963 provides that "[a] judgment in an action for the recovery of money or property . . . may be registered by filing a certified copy of the judgment in any other district . . . when the judgment has become final by appeal or expiration of the time for appeal." When an appeal is pending – as is the case here (*see* D.E. 34 (Notice of Appeal)) – registration in other districts is allowed only "*for good cause shown*." *Id.* (emphasis added).

There is no such good cause. Crystallex concedes, D.E. 36 at 7, as it must, that good cause requires demonstrating "the presence of substantial assets in the registration forum." *Non-Dietary Exposure Task Force v. Tagros Chems. India, Ltd.*, 309 F.R.D. 66, 69 (D.D.C. 2015) (quoting *Cheminova A/S v. Griffin L.L.C.*, 182 F. Supp. 2d 68, 80 (D.D.C. 2002)); *see also Chevron Corp. v. Republic of Ecuador*, 987 F. Supp. 2d 82, 84 (D.D.C. 2013) (requiring "substantial assets" in the place of registration). Crystallex, however, has presented no evidence of Venezuela having substantial assets in the District of Delaware, which is the focus of its request. *See* D.E. 36 at 1; *see also id.* at 9 (requesting only to register the judgment in Delaware).

First, Crystallex presents no evidence that "substantial assets" belonging to *Venezuela* are located in the District of Delaware. Indeed, it makes no claim that Venezuela *itself* has any assets there. Instead, Crystallex's claim is confined to advancing the unsubstantiated assertion that it "believes that certain *Delaware entities*—in particular Venezuela's indirect subsidiaries, PDVH, CITGO Holding, and CITGO Petroleum . . . may have assets belonging to, or obligations owing to, Venezuela." D.E. 36 at 8 (emphasis added). However, this attempt to rely on assets allegedly held by corporate subsidiaries cannot support a finding of good cause to register a judgment that has been made against Venezuela.

In that regard, PDVH, CITGO Holding, and CITGO Petroleum is each an independent corporate entity, separate and distinct from Venezuela. As the Supreme Court has stated:

> A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities. . . . A corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary; and, it follows with even greater force, the parent does not own or have legal title to the subsidiaries of the subsidiary. The fact that the shareholder is a foreign state does not change the analysis.

Dole Food Co. v. Patrickson, 538 U.S. 468, 474–75 (2003) (citations omitted).

Nor is there any basis for conflating these separate corporate entities with Venezuela. Indeed, the U.S. District Court for the District of Delaware rejected that very gambit. As noted, Crystallex alleged that PDSVA (Venezuela's directly held corporate subsidiary), and PDVH and CITGO Holding (both indirectly held subsidiaries), engaged in transfers designed to frustrate Crystallex's enforcement of the arbitral award. *Crystallex Int'l Corp.*, 2017 U.S. Dist. LEXIS 65515, at *2–4. In dismissing the claims against PDVSA, the district court affirmed that the separate legal status of these entities must be respected: "While the Delaware Subsidiaries' actions [*i.e.*, the actions of PDVH and CITGO Holding] are adequately alleged to have taken place in the U.S., it does not follow that the alleged actions of their parent, PDVSA, are also adequately alleged to have taken place in the U.S." *Id.* at *13–14. The court continued: "*Crystallex does not appear to seriously contest PDVSA's assertion that applying the principles of agency—and treating the Delaware Subsidiaries' actions in the U.S. as PDVSA's actions in the U.S.—would be inappropriate here*." *Id.* at *14 n.2 (emphasis added).

If, as the district court correctly held, PDVH and CITGO Holding cannot be equated with PDVSA, still less can they be conflated with Venezuela, which is an additional corporate step removed from them. *Dole Food Co.*, 538 U.S. at 474–75. Crystallex's request to register the

judgment in Delaware simply because Venezuela has indirectly held subsidiaries in that jurisdiction therefore must fail.

Second, even if assets belonging to Venezuela's indirectly held subsidiaries could somehow be construed as belonging to Venezuela itself, Crystallex has not identified any actual assets in Delaware, let alone substantial ones. It does not particularize – even in the most general terms – what these alleged assets might be. It simply alleges, without even a modicum of evidence, that it "*believes*" there "*may*" be assets there. D.E. 36 at 8 (emphasis added).

This is pure speculation, untethered from actual evidence.[7] Moreover, Crystallex's professed belief about supposed assets in Delaware contradicts what it argued before the district court in that jurisdiction, where it claimed the transactions at issue "left CITGO Holding insolvent on a GAAP basis." *Crystallex Int'l Corp. v. Petróleos de Venezuela, S.A.*, No. 1:15-cv-01082 (D. Del.) (docket entry #31 at 7, 12); *see also Crystallex Int'l Corp.*, 2017 U.S. Dist. LEXIS 65515, at *21 (citing a similarly-worded statement).

Crystallex's speculations about hypothesized assets in Delaware bear no resemblance to the concrete evidence that this Court requires for finding good cause to register judgments in other jurisdictions. For example, in *Johns v. Rozet*, 143 F.R.D. 11, 12 (D.D.C. 1992), plaintiffs pointed to the defendant's financial statements, which indicated they had assets in the Central District of California, to show good cause for registering the judgment in that jurisdiction. *See also Chevron Corp.*, 987 F. Supp. 2d at 84 (granting a motion to register a judgment on the basis of a declaration

[7] Crystallex also speculates that the Delaware entities "may have . . . obligations owing to" Venezuela, D.E. 36 at 8, but fails to demonstrate the relevance of any such obligations, even if they exist. Under this Court's established jurisprudence, Crystallex must show the presence of "substantial assets" in the registration forum, not obligations owing to the respondent. *Non-Dietary Exposure Task Force*, 309 F.R.D. at 69. In any case, Crystallex has failed to identify or provide any evidence that such obligations exist.

that "described several districts in which Ecuador possesses substantial assets" and described the assets).

Other district courts similarly require actual proof of assets in other jurisdictions before permission to register there is granted. For instance, in *Funai Elec. Co. v. Daewoo Elecs. Corp.*, No. C-04-1830 JCS, 2009 U.S. Dist. LEXIS 21885 (N.D. Cal. Mar. 9, 2009), the court relied on detailed evidence regarding the defendant's assets, including a check from an account with a Chicago bank, a check identifying the defendant's New Jersey business address, a New Jersey Division of Corporations statement identifying the defendant's principal place of business in New Jersey, and a declaration describing the defendant's Florida office and equipment. *Id.* at *9-10.[8] Likewise, the Eastern District of Kentucky permitted registration in the Northern District of Georgia based on the submission of financial statements showing bank accounts, retirement accounts and properties in and around Atlanta. *Alliant Tax Credit Fund 31-A, Ltd. v. Nicholasville Cmty. Hous., LLC*, Civil Action No. 5:07-388-KKC, 2010 U.S. Dist. LEXIS 110707, at *5 (E.D. Ky. Oct. 18, 2010).[9] As these and many other cases demonstrate, evidence beyond Crystallex's non-specific statement that it "believes" that there "may" be assets in Delaware is required.[10]

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[8] *See* 04-CV-1830 (N.D. Cal.) (docket entries #821-1–821-6, 828, 931–932) (declaration of counsel attaching a certificate of defendant's corporate dissolution in California, documents identifying open and closed bank accounts, bank signature cards, and property sale records).

[9] *See* 07-CV-00388 (E.D. Ky.), (docket entries #205-3–205-5) (filing two financial statements under seal and testimony admitting the existence of property in Georgia).

[10] *Lyman Commerce Solutions, Inc. v. Lung*, No. 12 Civ. 4398 (TPG), 2015 U.S. Dist. LEXIS 114777, at *2–3 (S.D.N.Y. Aug. 28, 2015) (permitting registration based on an asset search that revealed that the defendant had "at least two parcels of real property located in Bartow County, Georgia"); *Ambac Assur. Corp. v. Adelanto Pub. Util Auth.*, No. 09 Civ. 5084 (JFK), 2014 U.S. Dist. LEXIS 87697, at *11–12 (S.D.N.Y. June 26, 2014) (holding that plaintiff had shown good cause to register a judgment in the Central District of California by providing public record searches and the defendant's financial statement showing that the defendant owned eight properties and held over $3 million in net assets in that district); *Haldeman v. Golden*, CV No. 05-00810 DAE-KSC, 2010 U.S. Dist. LEXIS 90311, at *18 (D. Haw. Aug. 30, 2010) (holding that a party had shown good cause to register a judgment in the Western District of Washington by attaching evidence to their motion which showed that the judgment debtors owned a condominium there); *HSH Nordbank AG v. Swerdlow*, 08 Civ. 6131 (DLC), 2010 U.S. Dist. LEXIS 47956, at *3 (S.D.N.Y. May 14, 2010) (holding that plaintiff "submitted sufficient evidence to demonstrate good cause" in the

Even the cases on which Crystallex relies demonstrate the inadequacy of its request. In both *Non-Dietary Exposure Task Force*, 309 F.R.D. at 69, and *Spray Drift Task Force v. Burlington Bio-Medical Grp.*, 429 F. Supp. 2d 49, 51–52 (D.D.C. 2006), the party seeking to register the judgment provided a declaration by counsel stating that they had conducted due diligence which had located assets in the district where registration was sought.[11] The declaration accompanying Crystallex's motion makes no such representations. *See* D.E. 36-1. Indeed, it has no discussion of assets whatsoever. *Id.*

Because Crystallex has failed to present any such evidence for this Court's consideration, its motion should be denied.[12] *See, e.g.*, *Hockerson-Halberstadt, Inc. v. Nike, Inc.*, No. 91-1720, 2002 U.S. Dist. LEXIS 6255, at *3–4 (E.D. La. Apr. 2, 2002) (denying motion to register judgment because "Plaintiff makes no showing that the Defendant actually has substantial property in other districts"); *Bingham v. Zolt*, 823 F. Supp. 1126, 1136 (S.D.N.Y. 1993) (holding that the mere fact

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form of an asset search that showed that the defendants owned real property and held personal assets in Florida); *Jack Frost Lab. v. Physicians & Nurses Mfg. Corp.*, 951 F. Supp. 51, 52 (S.D.N.Y. 1997) (granting leave to register a judgment in Florida after plaintiff "presented evidence" that the defendant had substantial assets there, and denying the motion with respect to other jurisdictions as to which plaintiff had not presented any evidence); *Graco Children's Prods. v. Century Prods. Co.*, Civil Action No. 93-6710, 1996 U.S. Dist. LEXIS 10356, at *108–09 (E.D. Pa. July 24, 1996) (permitting registration in three districts based on reports supplied by the plaintiff establishing that the defendant had property there).

[11] *Non-Dietary Exposure Task Force*, No. 1:15-cv-00132-JDB (docket entry #1-1, ¶¶ 9–10); *Spray Drift Task Force*, No. 1:05-cv-01726-JGP (docket entry #1 at 18).

[12] Crystallex seeks to distract from its failure to show that Venezuela has any assets in Delaware by arguing that it should be able to register there because Venezuela "has a demonstrated record of dissipating its own assets—as well as the assets of its Delaware-based subsidiaries." D.E. 36 at 8–9. Unsurprisingly, Crystallex does not cite any part of the purported "demonstrated record," because none exists. And, as explained *supra*, there is no basis to the attempt to conflate Venezuela with legally separate corporate entities. Regardless, even if there were, it could not cure Crystallex's failure to make the required showing of "the presence of substantial assets" in the District of Delaware. *Non-Dietary Exposure Task Force*, 309 F.R.D. at 69.

that the defendant was a Pennsylvania resident was insufficient to establish good cause to register a judgment there).[13]

Conclusion

WHEREFORE, Venezuela respectfully requests that this Court deny Crystallex's motion pursuant to 28 U.S.C. § 1610(c) and pursuant to 28 U.S.C. § 1963.

Respectfully submitted,

BOLIVARIAN REPUBLIC OF VENEZUELA

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[13] In addition to requesting registration in Delaware, Crystallex seeks leave to register the judgment in unspecified "*other* judicial Districts in the United States." D.E. 36 at 1 (emphasis added). However, Crystallex provides no evidence that there are any assets belonging to Venezuela in any such district. The request thus suffers from the same flaws described above in connection with Crystallex's attempt to register the judgment in Delaware.

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as unregistered participants on May 9, 2017.

/s/ Lawrence H. Martin
Lawrence H. Martin