UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VENEZUELA US SRL, Petitioner, v. BOLIVARIAN REPUBLIC OF VENEZUELA, Respondent.	Civil Action No. 22-cv-3822 ORAL ARGUMENT REQUESTED

MEMORANDUM IN OPPOSITION TO PETITION TO RECOGNIZE AND ENFORCE A FOREIGN ARBITRAL AWARD

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The Bolivarian Republic of Venezuela (the "Republic" or "Venezuela") respectfully submits this memorandum in opposition to the *Petition to Recognize and Enforce a Foreign Arbitral Award* (the "Petition") [ECF No. 1] filed by Venezuela US SRL (VUS).

PRELIMINARY STATEMENT

This is an action to enforce a foreign arbitral award rendered under the auspices of the Permanent Court of Arbitration (PCA) in The Hague, Netherlands, pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Recognition and enforcement of this award is governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 (the "New York Convention"), as implemented by the Federal Arbitration Act (FAA), 9 U.S.C. § 201 *et seq*. Under Article V(2)(b) of the New York Convention, U.S. courts may refuse to enforce a foreign arbitral award if enforcement would violate U.S. public policy.

The public policy at issue here is the U.S. Executive's exclusive power to recognize foreign governments—a fundamental principle of U.S. constitutional law that is rooted in this nation's foundational system of separation of powers. *See Zivotofsky v. Kerry*, 576 U.S. 1, 14 (2015) ("[T]he Nation must have a single policy regarding which governments are legitimate in the eyes of the United States and which are not."). Enforcement of this award would violate this basic U.S. public policy.

Between the liability and damages phases of the underlying arbitral proceedings, the then-president of Venezuela, Nicolás Maduro, claimed victory in a widely discredited election, and the Venezuelan National Assembly declared its president, Juan Guaidó, as the Interim President of the Republic under Article 233 of the Venezuelan constitution. The U.S. President then recognized the National Assembly and its leadership as the only legitimate government of

Venezuela (the "Interim Government"). In consequence, only the Interim Government has any authority to speak and act on behalf of the Republic as a matter of U.S. law.

While the parties were awaiting a decision on liability, the arbitral tribunal allowed the unrecognized, illegitimate Maduro regime to replace the Republic's counsel to the exclusion of the Interim Government. Neither the tribunal nor the petitioner, VUS, notified the Interim Government or the Republic's prior counsel of this change in representation. It was not until after the tribunal rendered a decision on liability, and that decision became public, that the Interim Government and the Republic's counsel learned of the change in representation. Representatives of the Maduro regime then continued to act purportedly on behalf of the Republic through the final, damages phase of the proceedings. The tribunal thus rendered a Final Award without the participation of the Interim Government.

VUS now seeks to enforce the Final Award in the United States in a transparent effort to reach assets of the Republic in which the Maduro regime has no cognizable interest. Because a U.S. court cannot recognize a regime other than the Interim Government as acting for the Republic, it necessarily follows that it cannot enforce an award against Venezuela in which only the Maduro regime was treated as if it had the authority to act for and bind the Republic. In effect, to convert the Final Award into an enforceable U.S. judgment against the Republic would amount to a recognition of the Maduro regime as acting on behalf of Venezuela in violation of the United States' policy of speaking with one voice on the recognition of foreign governments, here, the recognition of the Interim Government as the only legitimate government of the Republic.

This Court should thus deny enforcement of the Final Award on public policy grounds under Article V(2)(b) of the New York Convention.

BACKGROUND

A. The Underlying Arbitral Proceedings

1. The Jurisdiction and Liability Phases

On March 22, 2013, VUS filed a notice of arbitration against the Republic, alleging that the Republic had breached certain provisions of the Agreement between the Government of Barbados and the Republic of Venezuela for the Promotion and Protection of Investments (the "BIT") in connection with a joint venture between VUS and the Republic that holds the rights to oil production in a block of oil fields in eastern Venezuela. The arbitration proceeded under the UNCITRAL Arbitration Rules before the PCA in The Hague, Netherlands. The Republic initially participated in the proceedings under the government of then-president Maduro, and was represented by Curtis, Mallet-Prevost, Colt & Mosle LLP ("Curtis"). *See* Declaration of Eloy G. Barbará de Parres, dated December 8, 2023 ("Barbará de Parres Decl.") ¶ 3, filed concurrently herewith in support of this opposition brief.

The arbitration was divided into three general phases: jurisdiction, liability and damages. Barbará de Parres Decl. ¶ 4. In March 2014, after submitting their respective statement of claim and statement of defense, the parties agreed to address the Republic's initial objection to jurisdiction. *Id.* Following briefing, the tribunal conducted a hearing in July 2014, and ultimately dismissed the Republic's objection in an Interim Award dated July 26, 2016. *Id.*

The parties proceeded to discovery and briefing on the Republic's remaining jurisdictional objections and the merits on liability. Barbará de Parres Decl. ¶ 5. Following a two-day hearing in November 2017, the parties filed their respective submissions on costs for the jurisdiction and liability phase of the proceedings in February 2018. *Id.* At that point, the arbitral proceedings remained inactive while the tribunal deliberated on matters of jurisdiction and liability. *Id.*

2. The United States Recognizes a New Government in Venezuela

The political situation changed dramatically in Venezuela while the tribunal's decision on jurisdiction and liability was pending. On May 20, 2018, Maduro claimed to have "won" another presidential term in a highly disputed election that was widely reported in the media. Barbará de Parres Decl. ¶ 6, Ex. A. In response, on January 23, 2019, the only democratically elected institution remaining in Venezuela, the National Assembly, declared its president, Juan Guaidó, as the Interim President of the Republic pursuant to Article 233 of the Venezuelan Constitution. Barbará de Parres Decl. ¶ 7. That same day, the U.S. President recognized the Interim Government as the only legitimate government of Venezuela and derecognized the illegitimate Maduro regime. Barbará de Parres Decl. ¶ 7, Ex. B, Ex. C. As of that date, U.S. courts, including the D.C. Circuit, have consistently recognized the representatives of the Interim Government as the sole legitimate representatives of the Republic in proceedings before them, as they are constitutionally bound to do. *See Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, No. 18-7044, 2019 U.S. App. LEXIS 17543, at *1-2 (D.C. Cir. May 1, 2019); *accord, e.g., PDVSA United States Litig. Tr. v. Lukoil Pan Ams. LLC*, 65 F.4th 556, 562-63 (11th Cir. 2023) ("*Lukoil*"); *Jiménez v. Palacios*, 250 A.3d 814, 830-31 (Del. Ch. Aug. 2, 2019), *aff'd*, 237 A.3d 68 (Del. 2020).

Although Guaidó is no longer the leader of the National Assembly, to date, the U.S. Executive continues to recognize the Interim Government as the only legitimate government of Venezuela. Barbará de Parres Decl. ¶ 12, Ex. D; *see also Lukoil*, 65 F.4th at 561 ("The executive branch has given no indication that it will change its longstanding position that the Maduro

government is illegitimate.").[1] In accordance with the United States' recognition policy, Curtis has continued to represent the Republic only at the instruction of the Interim Government. Barbará de Parres Decl. ¶ 12.

3. The Damages Phase

As the political situation continued to unfold in Venezuela, unauthorized changes in the representation of the Republic affected the nature of the arbitral proceedings.

On February 5, 2021, the tribunal issued a Partial Award on Jurisdiction and Liability, in which it rejected the majority of VUS's claims but found the Republic liable under the BIT for arbitrary or discriminatory conduct as a result of its non-payment of dividends to VUS in 2008 and 2009. The Partial Award revealed that, unbeknownst to the Interim Government or Curtis, the Maduro regime had appointed new counsel for the Republic in the arbitral proceedings. Barbará de Parres Decl. ¶ 9. Specifically, Paragraph 2 of the Partial Award states that the Republic had been represented by Curtis until June 30, 2020, at which point representation shifted to Guglielmino & Associados S.A. ("Guglielmino"). *Id.* Neither the Interim Government nor Curtis received notice of this purported replacement, and did not learn of this change until the award was made public shortly after it was issued. Barbará de Parres Decl. ¶ 10. In effect, the tribunal accepted the replacement of the Republic's counsel without notifying Curtis or the Interim Government—notwithstanding that less than six months before Guglielmino's alleged appointment, the PCA had provided notice to Curtis regarding VUS's change in counsel.[2]

[1] According to the U.S. State Department, "[t]he United States recognizes the 2015 democratically elected Venezuelan National Assembly as the only legitimate branch of the Government of Venezuela." U.S. Relations With Venezuela, Bilateral Relations Fact Sheet, Dep't of State (June 27, 2023) (emphasis added), https://www.state.gov/u-s-relations-with-venezuela/.

[2] On February 17, 2020, the PCA advised Curtis that VUS had changed its counsel effective February 15, 2020. The PCA invited VUS to provide the Republic with a copy of the relevant power of attorney or letter of representation. Neither the Interim Government nor Curtis received any further communications from the tribunal or VUS. Barbará de Parres Decl. ¶ 8.

The Maduro regime, through Guglielmino, continued to act purportedly on behalf of the Republic for the remaining damages phase of the proceedings. Barbará de Parres Decl. ¶ 11. VUS and the Maduro regime submitted their memorials as to damages between April and October 2021, culminating in a two-day hearing in February 2022. *Id.* No representatives from the Interim Government participated in the remaining phase of the proceedings. *Id.*

On November 4, 2022, the tribunal issued its Final Award, in which it awarded VUS $58,870,898 for the unpaid dividends, plus interest. [ECF 1-2 ¶107]. The tribunal also awarded €615,056.47 and $3,215,534.99, plus interest, for VUS in arbitration costs and legal fees. *Id.*

B. This Action

On December 27, 2022, VUS filed its petition seeking to convert the Final Award into a U.S. judgment. Service was completed on October 11, 2023. [ECF No. 16]. The Republic now files this brief in opposition to VUS's petition.[3]

ARGUMENT

I. The Final Award Is Unenforceable on Public Policy Grounds under Article V(2)(b) of the New York Convention

Article V of the New York Convention empowers courts to refuse recognition and enforcement of foreign arbitral awards in certain enumerated circumstances. *See* New York Convention, art. V. Here, the Court should refuse to enforce the Final Award under Article V(2)(b), which provides that "[r]ecognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought

[3] Under the FSIA, the Republic has 60 days to file a response, 28 U.S.C. § 1608(d), which would make the deadline Sunday, December 10, 2023. [*See* ECF No. 16.] Under FED. R. CIV. P. 6(a)(1)(C), when a deadline lands on a weekend, the filing is due the following business day, here, Monday, December 11.

finds that . . . [t]he recognition or enforcement of the award would be contrary to the public policy of that country." New York Convention, art. V(2)(b).[4]

The party invoking Article V(2)(b) must "identify a well-defined public policy." *Enron Nig. Power Holding, Ltd. v. Fed. Republic of Nigeria*, 844 F.3d 281, 287 (D.C. Cir. 2016). The "public policy must be 'explicit' and 'well-defined and dominant, and is to be ascertained by reference to the laws and legal precedents.'" *Hardy Expl. & Prod. (India), Inc. v. Gov't of India, Ministry of Petroleum & Nat. Gas*, 314 F. Supp. 3d 95, 109 (D.D.C. 2018) (quoting *United Paperworkers v. Misco, Inc.*, 484 U.S. 29, 43 (1987)). Article V(2)(b) applies not only when enforcement affects "individual rights of personal liberty or of private property," but also when it "tends clearly to undermine the public interest" and "the public confidence in the administration of the law." *Enron*, 844 F.3d at 289 (quoting *TermoRio S.S. v. Electranta S.P.*, 487 F.3d 928, 938 (D.C. Cir. 2007)); *see, e.g.*, *Hardy*, 314 F. Supp. 3d at 109-10, 113-14 (refusing to enforce portions of arbitral award under the New York Convention because they violated U.S. public policies of respecting other nations' sovereignty and prohibiting punitive damages against foreign states, as expressed in the Foreign Sovereign Immunities Act, international comity principles and supporting case law). In deciding whether to rely on the public policy exception, the court must account for "the countervailing and 'emphatic federal policy in favor of arbitral dispute resolution[.]'" *Enron*, 844 F.3d at 289 (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985)); *see also Hardy*, 314 F. Supp. 3d at 109. However, any refusal to apply Article V(2)(b) cannot be based on a determination that a party

[4] On December 8, 2023, the D.C. Circuit issued a decision in *Valores Mundiales, S.L. v. Bolivarian Republic of Venezuela*, No. 23-7077, 2023 U.S. App. LEXIS 32539 (D.C. Cir. Dec. 8, 2023), in which it affirmed a district court decision enforcing an arbitral award rendered by a tribunal that excluded the Interim Government from representing the Republic in proceedings conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159 (entered into force Oct. 14, 1966) (the "ICSID Convention"). That holding does not dispose of this case. Unlike the ICSID Convention, the New York Convention expressly provides a public policy exception to enforcement of awards.

has waived its rights, "because public policy violations implicate the integrity of the enforcing court." *Enron*, 844 F.3d at 288 (citing *Hurd v. Hodge*, 334 U.S. 24, 34-35 (1948); RESTATEMENT (THIRD) OF THE U.S. LAW OF INT'L COMMERCIAL ARBITRATION § 2-16(b) (Am. L. Inst. 2015)).

A. The Executive's Exclusive Constitutional Power to Recognize Foreign Governments Is a Matter of U.S. Public Policy

The public policy implicated in these proceedings is the Executive's "exclusive prerogative" to recognize the only effective government of a foreign state—a well-established principle of U.S. law that is rooted in the Constitution as repeatedly affirmed by the Supreme Court and confirmed by historical practice. *See Zivotofsky*, 576 U.S. at 19; *see also, e.g., Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 410 (1964) ("Political recognition is exclusively a function of the Executive."); *Guaranty Trust Co. v. United States*, 304 U.S. 126, 137-38 (1938) ("What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question, and is to be determined by the political department of the government."). The recognition doctrine is specifically grounded in Article II, Sections 2 and 3 of the Constitution and is an expression of foundational principles of separation of powers. *See Zivotofsky,* 576 U.S. at 14 (holding that "the text and structure of the Constitution grant the President the power to recognize foreign nations and governments," and concluding that such "power is exclusive"). And the concept of separation of powers was designed to safeguard the public interest. *See, e.g., Bowsher v. Synar*, 478 U.S. 714, 721-22 (1986) ("The declared purpose of separating and dividing the powers of government, of course, was to '[diffuse] power the better to secure liberty.'" (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring))).

The recognition doctrine and related separation-of-powers principles are precisely the sort of public policy that Article V(2)(b) was designed to protect. As the U.N. committee that

prepared the draft convention indicated in its report to the U.N. Conference, the public policy exception applies "to cases in which the recognition or enforcement of a foreign arbitral award would be distinctly contrary to the *basic principles of the legal system* of the country where the award was invoked." U.N. ESCOR, Report of the Committee on the Enforcement of International Arbitral Awards § 49, U.N. Doc. E/2704 and Corr. 1, E/AC.42/rev.1 (1955) (emphasis added); *see also* REINMAR WOLFF, NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS: COMMENTARY 403 (2012) ("The public policy defense serves as a safety-valve allowing the Contracting States to prevent intrusion into their legal system of awards they consider irreconcilable with it."); Margaret L. Moses, *Chapter 11: Public Policy under the New York Convention: National, International, and Transnational*, *in* KATIA FACH GOMEZ AND ANA M. LOPEZ-RODRIGUEZ (EDS), 60 YEARS OF THE NEW YORK CONVENTION: KEY ISSUES AND FUTURE CHALLENGES 170-71 (Kluwer Law International 2019) (explaining that the drafters of the New York Convention considered that the public policy exception was necessary to "prevent intrusion on state sovereignty if a foreign award was irreconcilable with the enforcing country's legal structure," and that Article V(2)(b) reflects the drafters' intent to strike "a balance between party autonomy and the state's interest in protecting its most fundamental principles").[5]

The recognition doctrine is without question a fundamental or basic principle of the U.S. legal system. The Constitution, as the supreme law of the land, represents the highest source of public policy. *See, e.g., Hurd v. Hodge*, 334 U.S. 24, 34-35 (1948) ("The power of the federal

[5] The drafting history of the New York Convention should be considered when interpreting its meaning. *See Medellin v. Texas*, 552 U.S. 491, 507 (2008) ("Because a treaty ratified by the United States is 'an agreement among sovereign powers,' we have also considered as 'aids to its interpretation' the negotiation and drafting history of the treaty as well as 'the postratification understanding' of signatory nations.") (quoting *Zicherman v. Korean Air Lines Co*., 516 U.S. 217, 226 (1996)); *see also Zicherman*, 516 U.S. at 226 (stating that in construing a treaty, "we have traditionally considered as aids to its interpretation [the] negotiating and drafting history (*travaux preparatoires*) and the postratification understanding of the contracting parties").

courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and applicable legal precedents."); *Hanauer v. Woodruff*, 82 U.S. 439, 442 (1872) ("There can be no public policy in this country which contravenes the law of the land."). The recognition doctrine arises out of the core "concern for uniformity in this country's dealings with foreign nations," which "animated the Constitution's allocation of the foreign relations power to the National Government in the first place." *Am. Ins. Ass'n v. Garamendi,* 539 U.S. 396, 413 (2003) (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 n.25 (1964)). The doctrine thus serves the overarching national interest in ensuring the United States speaks with one voice on the international stage. *See Zivotofsky*, 576 U.S. at 14; *see also* THE FEDERALIST NO. 42, at 279 (James Madison) (Jacob E. Cooke ed., 1961) ("If we are to be one nation in any respect, it clearly ought to be in respect to other nations."); THE FEDERALIST NO. 44, at 299 (James Madison) (Jacob E. Cooke ed., 1961) (emphasizing "the advantage of uniformity in all points which relate to foreign powers"). As the Supreme Court explained in *Zivotofsky*, "[r]ecognition is an act with immediate and powerful significance for international relations, so the President's position must be clear." 576 U.S. at 21; *see also United States v. Curtiss-Wright Exp. Corp*., 299 U.S. 304, 319-20 (1936) (noting that uniformity with respect to positions on foreign affairs is required in order to prevent international "embarrassment").

Grounded in the Constitution, separation-of-power principles, and historical practice, the recognition doctrine is of a higher order than the modern policy favoring the enforcement of foreign arbitral awards under the New York Convention. As the Supreme Court has made clear, international law and treaties cannot supersede the Constitution. *See Reid v. Covert*, 354 U.S. 1,

16 (1957). This is because the "United States is entirely a creature of the Constitution." *Id.* at 5-6. "Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution." *Id*. at 6. By signing and ratifying the New York Convention, the United States did not and could not have empowered the Judiciary to infringe on the Executive's recognition power by enforcing foreign arbitral awards that recognize a different regime than the one recognized by the Executive as the effective government of a foreign state. Indeed, "[n]o treaty can authorize the judiciary to undertake an inquiry forbidden to it by the Constitution." *United States v. Valentine*, 288 F. Supp. 957, 986 (D.P.R. 1968).

B. Enforcement of the Final Award Would Violate the Recognition Doctrine

Enforcement of the Final Award would flatly contradict the U.S. Executive's recognition of the Interim Government as the only legitimate government of Venezuela. It would give this Court's imprimatur to the Maduro regime's purported representation of the Republic in the arbitral proceedings by transforming the Final Award into a U.S. judgment binding on the Republic, even though it is indisputable that the Maduro regime has no authority to bind the Republic as a matter of U.S. law. Indeed, the plain language of Article V(2)(b) makes clear that "it is not the award itself but its *recognition and enforcement* that needs to stand the public policy test." WOLFF, NEW YORK CONVENTION at 414.

Again, the Executive's recognition of a foreign government refers to the "formal acknowledgement . . . that a particular regime is the effective government of a state." *Zivotofsky*, 576 U.S. at 11 (quoting RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 203 cmt. a (Am. L. Inst. 1986)); *see also* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 203 (stating that recognition "implies a commitment to treat that regime as the government of that state"). As the Supreme Court has explained, "[l]egal consequences follow formal recognition." *Zivotofsky*, 576 U.S. at 11. Thus, where, as

here, the U.S. President has officially recognized the Interim Government as the sole government of Venezuela, that determination "is conclusive on all domestic courts, which are bound to accept [it]." *Guaranty Trust*, 304 U.S. at 138; *see also, e.g., Republic of China v. Pang-Tsu Mow*, 101 F. Supp. 646, 648 (D.D.C. 1951) ("The recognition by the political department of the United States government of a foreign government is conclusive of its legal status as far as the United States Court[s] are concerned." (citing *Oetjen v. Cent. Leather Co.*, 246 U.S. 297 (1918))), *aff'd*, 201 F.2d 195 (D.C. Cir. 1952). That means that only representatives of Interim Government have standing to appear on behalf of the Republic in U.S. courts. *Rusoro*, 2019 U.S. App. LEXIS 17543, at *1-2; *accord Lukoil*, 65 F.4th at 562-63; *Jiménez*, 250 A.3d at 830-31.

Formal recognition also precludes other co-equal branches of government from issuing any decrees that expressly or implicitly contradict the Executive's recognition of a foreign government. *Zivotofsky*, 576 U.S. at 29-30 (holding that Congress could not direct the U.S. State Department to recognize Jerusalem as part of the State of Israel in contravention of the Executive's recognition policy); *The Maret*, 145 F.2d 431, 442 (3d Cir. 1944) (holding that a court cannot give effect to the acts or decrees of an unrecognized government as if they were the acts or decrees of the foreign state because that would violate the Executive's recognition policy).

These well-settled principles foreclose the enforcement of the Final Award too. Since the Maduro regime could not do in a domestic court what it purported to do in the underlying arbitration, it necessarily follows that this Court cannot indirectly give effect to the Maduro regime's acts by converting the resulting award into a U.S. judgment. Indeed, enforcement or confirmation of an arbitral award is akin to enforcement of a contractual obligation. "Arbitration awards, including international ones, 'are not self-enforcing and are only given legal effect

through court orders and judgments enforcing them.'" *Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.*, 66 F.4th 876, 882 (11th Cir. 2023) (quoting 3 Martin Domke, Domke on Commercial Arbitration § 42:1 (3d ed. 2022)). An unconfirmed arbitral award is merely a "contract right that may be used as the basis for a cause of action." *Stafford v. IBM*, 78 F.4th 62, 68 (2d Cir. 2023) (quoting *Florasynth, Inc. v. Pickholtz*, 750 F.2d 171, 176 (2d Cir. 1984)). Like a lawsuit on a contractual claim, enforcement or confirmation "is the process by which an arbitration award is converted to a legal judgment." *LLC SPC Stileks v. Republic of Mold.*, 985 F.3d 871, 875 (D.C. Cir. 2021).

Had the Maduro regime purported to enter into a contract with a third party on behalf of the Republic, this Court could not enforce that contractual obligation as if it were an obligation of the Republic. *See The Maret*, 145 F.2d at 442 ("When the fact of nonrecognition of a foreign sovereign and nonrecognition of its decrees by our Executive is demonstrated as in the case at bar, the courts of this country may not examine the effect of decrees of the unrecognized foreign sovereign and determine rights in property, subject to the jurisdiction of the examining court, upon the basis of those decrees."). Likewise, this Court may not enforce a foreign arbitral award rendered in proceedings in which only the Maduro regime purported to act on behalf of Venezuela, as if the award were binding on the Republic, because that would "necessarily and impermissibly impl[y] that [the Maduro regime] constitutes the recognized government of [Venezuela]." *In re Terrorist Attacks on September 11, 2001*, No. 03 MDL 1570 (GBD) (SN), 2023 U.S. Dist. LEXIS 28773, at *197-98 (S.D.N.Y. Feb. 21, 2023).

Moreover, converting the award into an enforceable U.S. judgment against the Republic would impermissibly infringe on the Executive's policy underlying its decision to recognize only the Interim Government. *See United States v. Pink*, 315 U.S. 203, 229 (1942) ("[The recognition]

authority is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition."); *The Maret*, 145 F.2d at 440 ("The authority of the Executive to determine a political matter such as the recognition of a foreign government is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition.").

In recognizing the Interim Government, the United States sought to protect Venezuelan assets from the acts and abuses of the Maduro regime and preserve them for use by the Interim Government for the benefit of the Venezuelan people. *See, e.g.*, Fact Sheets, President Donald J. Trump is Cutting Off Financial Resources to Maduro and His Cronies (Aug. 6, 2019) (referring to measures taken for the purpose of "isolat[ing] Maduro's illegitimate regime from the global financial system and the international community"), https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-cutting-off-financial-resources-maduro-cronies/; Press Release, Stephen T. Mnuchin, Sec. of Treasury, U.S. Dep't of Treasury, Treasury Sanctions Venezuela's State-Owned Oil Company Petroleos de Venezuela, S.A. (Jan. 28, 2019) ("Today's designation of PdVSA will help prevent further diverting of Venezuela's assets by Maduro and preserve these assets for the people of Venezuela. The path to sanctions relief for PdVSA is through the expeditious transfer of control to the Interim President or a subsequent, democratically elected government."), https://home.treasury.gov/news/press-releases/sm594.[6]

Enforcement or confirmation of an award carries with it significant benefits; namely, it provides "the winning party a variety of remedies for enforcement" of the resulting judgment.

[6] The U.S. State Department has repeatedly affirmed its support for the National Assembly's "efforts … to return democracy to Venezuela," and emphasized that "[m]embers of the National Assembly have the democratic aspirations of the Venezuelan people at heart." Press Briefing, Ned Price, Department Spokesperson, Department of State (Jan. 3, 2023), https://www.state.gov/briefings/department-press-briefing-january-3-2023/.

Stafford, 78 F.4th at 68 (citing *Florasynth*, 750 F.2d at 176). Thus, enforcing the Final Award by entering a judgment of this Court against the Republic would enable VUS to use all available judicial mechanisms in an effort to enforce that judgment against the Republic's assets in the United States. *See LLC SPC Stileks,* 985 F.3d at 875 ("Once Energoalliance had a judgment in hand, it could go about enforcing the arbitration award by, for example, attaching Moldova's commercial assets in the United States."). This is not a hypothetical concern. VUS is in a race with creditors of the Republic to attach and execute on assets in Delaware belonging to Venezuela's national oil company, PDVSA, on the theory that PDVSA is the Republic's alter ego. *See, e.g.*, *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 932 F.3d 126, 152 (3d Cir. 2019); *OI European Grp. B.V. v. Bolivarian Republic of Venezuela*, 73 F.4th 157, 176 (3d Cir. 2023). That is certainly the reason VUS has brought its award to the United States.

However, whatever assets of the Republic VUS may be able to target, there can be no dispute that the unrecognized, illegitimate Maduro regime has no cognizable interest in those assets. *See, e.g.*, *Jiménez*, 250 A.3d at 830-32; *see also In re Terrorist Attacks on September 11, 2001*, 2023 U.S. Dist. LEXIS 28773, at *163, *188-89 (recognition doctrine precluded judgment creditors' motion for turnover of assets held in the name of Afghanistan's central bank because their judgments were against the Taliban, and U.S. court was "constitutionally restrained from determining the Taliban is the legitimate government of Afghanistan as required to attach [the central bank's] assets"); *Repub. of Panama v. Rep. Nat. Bank of N.Y.*, 681 F. Supp. 1066, 1071 (S.D.N.Y. 1988) (quoting *Bank of China v. Wells Fargo Bank & Union Trust Co.*, 104 F. Supp. 59, 66 (N.D. Cal. 1952)) (rejecting attempt by an unrecognized regime to assert ownership of funds in Panama's U.S. bank account).

Only the Interim Government can exercise any ownership rights in the Republic's property in the United States. *See Lukoil*, 65 F.4th at 562-63; *Jiménez*, 250 A.3d at 830-31. Yet, the Interim Government had no role in the defense of the Republic in the damages phase of the proceedings that resulted in the Final Award. To enforce the Final Award would allow VUS to do indirectly what it could not do directly: use the U.S. judicial system to execute upon the Republic's assets in the United States by obtaining a judgment on an arbitral award that was rendered in proceedings in which only the Maduro regime purported to act on behalf of Venezuela—all in contravention of the Executive's recognition of the Interim Government and the underlying policy of preserving the Republic assets for use by a democratically elected government for the benefit of the Venezuelan people.

CONCLUSION

For these reasons, the Court should deny the Petition.

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Respectfully submitted,

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