No. ______

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CRYSTALLEX INTERNATIONAL CORPORATION,

Plaintiff-Appellee,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA, ET AL.,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Delaware
No. 17-mc-151 (Hon. Leonard P. Stark, United States Circuit Judge)

THE BOLIVARIAN REPUBLIC OF VENEZUELA, PETRÓLEOS DE VENEZUELA, S.A., PDV HOLDING, INC., AND CITGO PETROLEUM CORPORATION'S OPPOSED MOTION FOR A STAY PENDING APPEAL

George M. Garvey
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
50th Floor
Los Angeles, CA 90071
(213) 683-9100

Donald B. Verrilli, Jr.
Elaine J. Goldenberg
Ginger D. Anders
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave. NW
Suite 500E
Washington, DC 20001-5369
(202) 220-1100
Donald.Verrilli@mto.com

Counsel for Bolivarian Republic of Venezuela

Joseph D. Pizzurro
Kevin A. Meehan
Juan O. Perla
CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP
101 Park Avenue
New York, NY 10178
(212) 696-6000
jpizzurro@curtis.com

Counsel for Petróleos de Venezuela, S.A.

Noel J. Francisco
Brinton Lucas
John C. Brinkerhoff Jr.
JONES DAY
51 Louisiana Ave. NW
Washington, DC 20001
(202) 879-3939
nfrancisco@jonesday.com

Nathan P. Eimer
Daniel D. Birk
Gregory M. Schweizer
EIMER STAHL LLP
224 South Michigan Avenue
Suite 1100
Chicago, IL 60604
(312) 660-7600
NEimer@eimerstahl.com

Counsel for PDV Holding, Inc., and CITGO Petroleum Corporation

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit L.A.R. 26.1, Petróleos de Venezuela, S.A. ("PDVSA"), PDV Holding, Inc. ("PDVH"), and CITGO Petroleum Corporation ("CITGO") hereby disclose as follows:

PDVSA is a Venezuelan corporation that is wholly owned by the Venezuelan government. PDVH is a wholly owned subsidiary of PDVSA. CITGO is a wholly owned subsidiary of CITGO Holding, Inc., which is a wholly owned subsidiary of PDVH.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

TABLE OF AUTHORITIES
(Continued)

Page(s)

TABLE OF AUTHORITIES
(Continued)

Page(s)

TABLE OF AUTHORITIES
(Continued)

Page(s)

INTRODUCTION

The Venezuela Parties ("VPs")[1] respectfully request a stay of the district court's final sale order. In a ruling unprecedented both in its scope and its legal bases, the court ordered the transfer of CITGO—the indirect U.S. subsidiary of PDVSA, a foreign sovereign instrumentality of the Venezuelan government—to satisfy creditor judgments that resulted from expropriations committed, and bonds issued, by the corrupt Maduro/Chávez regime. That ruling raises issues of grave consequence that demand this Court's full consideration. But those issues could evade review unless this Court enters a stay.

The VPs are likely to prevail on the merits because the sale order rests on a fatal threshold legal error. To justify selling *PDVSA's* ultimate asset to satisfy judgments against the *Republic*, the district court had to find that PDVSA was the Republic's alter ego. Under Federal Rule 69, Delaware law governs that determination. As this Court recognized *in an earlier appeal in this case*, "Delaware law requires showing fraud—not just extensive control—to seize the property of a non-debtor like PDVSA." 24 F.4th 242, 247-48 (3d Cir. 2022).[2] But the district

---

[1] The VPs are the National Assembly of the Bolivarian Republic of Venezuela; Petróleos de Venezuela, S.A. ("PDVSA"); PDV Holding ("PDVH"), a Delaware corporation owned by PDVSA; and CITGO Petroleum Corp. ("CITGO"), which is owned by PDVH.

[2] Decisions are captioned *Crystallex Int'l v. Venezuela* unless noted.

court found there was no proof of fraud. The attachments therefore are invalid, as the VPs have long contended, including in earlier appeals dismissed as interlocutory. The sale of CITGO is thus flatly unlawful.

Apart from its substantive invalidity, the sale order was the product of a judicial process marred with errors that fatally undermine its legitimacy. One of the most glaring is that the Special Master and his key advisors who designed and ran the sale process operated under disqualifying conflicts of interest. The advisors had substantial and growing—but undisclosed—multi-million-dollar business relationships with the bidder they selected as the winner, Elliott Investment Management and its affiliates (together, "Elliott"), and with major holders of Maduro-issued bonds who are to be paid with sale proceeds under Elliott's bid (the "Bondholders"). When those conflicts recently came to light, the court excused them as immaterial. But they are plainly sufficient to raise doubts about the fairness and objectivity of the Special Master and his advisors and thus of the sale process itself—which, as events unfolded, was adjusted at every juncture to favor Elliott and the Bondholders—and therefore to require disqualification and vacatur of the sale order. 28 U.S.C. § 455.

The equities also overwhelmingly favor interim relief. Once the transaction is consummated, it will be difficult if not impossible to unwind. Permitting the grossly inadequate sale to close while this appeal is pending could extinguish the

VPs' opportunity for a meaningful appeal and inflict irreparable harm of the gravest sort. Although the district court has stayed closing until seven days after notification of necessary regulatory approvals, those could come without warning in the coming weeks. This Court should therefore grant a stay now, pending resolution of this expedited appeal. Only that course avoids the need for disruptive emergency litigation and protects the VPs' right to full appellate review.

It would be deeply unjust—and contrary to the rule of law—to permit the forced sale of the multibillion-dollar crown-jewel asset of a foreign sovereign without full appellate consideration of the significant legal errors that permeated the sale process. Critically, when the VPs raised those issues in interlocutory appeals, this Court assured them that they could pursue full appellate relief from a final sale order. *E.g.*, 24 F.4th at 256; *OIEG v. Venezuela*, 73 F.4th 157, 174-76 (3d Cir. 2023).

STATEMENT

1. PDVSA—Venezuela's state-owned oil company—owns PDVH, which owns CITGO, a U.S. refining company. CITGO represents the foreign "crown jewel" of the Venezuelan oil industry.

The Maduro and Chávez presidencies were marked by extensive corruption. 333 F.Supp.3d 380, 407-08 (2018). In 2019, Venezuela's 2015 National Assembly declared Maduro's presidency illegitimate. *OIEG*, 73 F.4th at 164. The United

States recognizes that National Assembly as the sole legitimate government.[3] The Republic speaks on behalf of the 2015 National Assembly.

2. In 2017, Crystallex International Corporation ("Crystallex") obtained a judgment against Venezuela for expropriation. Invoking Rule 69 and Delaware law, Crystallex sought attachment of PDVSA's shares of PDVH. Dkt.2.[4] PDVSA moved to dismiss under the Foreign Sovereign Immunities Act ("FSIA"). Dkt.14-15. The court held that PDVSA was the Republic's alter ego for purposes of FSIA immunity and was therefore not immune from jurisdiction or attachment, and granted attachment. 333 F.Supp.3d at 426. This Court affirmed the immunity holding. 932 F.3d 126, 152 (3d Cir. 2019).

On remand, the VPs moved to quash the writ, arguing that under Rule 69, Delaware law governs whether PDVSA's shares can be attached and requires demonstrating fraud before executing on a judgment debtor's subsidiary. Dkt.179. The court denied the motion. 2021 WL 129803, at *18 (2021). This Court dismissed the appeal, stating that the decision was not "final" but the VPs "may raise their arguments in a future appeal from a final decision" and "seek a stay." 24 F.4th at 249, 258.

[3] https://www.state.gov/releases/office-of-the-spokesperson/2025/07/standing-with-the-venezuelan-people-one-year-after-yet-another-sham-election.

[4] "Dkt." is No. 17-mc-151.

Creditors holding over $20 billion in judgments against the Republic or PDVSA sought to attach PDVSA's shares. The VPs opposed attachments by the Republic's creditors because there was no showing of fraud. The court granted the attachments. *Tidewater Inv. v. Venezuela*, 2023 WL 7182179, at *12 (2023). In an interlocutory appeal, this Court again declined to "consider the propriety of attachment," noting that the VPs could "wait[]" for a final sale order. *OIEG*, 73 F.4th at 174-76.

3. As the United States warned, "a forced sale" of PDVSA's shares "would be a great political victory for the Maduro regime." Dkt.212-1.at.3. Nevertheless, the court appointed a Special Master to design a sale. Dkt.277.¶2. The Special Master retained Weil, Gotshal & Manges as transaction counsel and Evercore as financial advisor, Dkt.348.¶¶11-14, and the court granted them judicial immunity, Dkt.277.¶¶13, 21.

The sale process was mired in missteps, many of which benefited Elliott and the non-attachment-creditor Bondholders. For example, in September 2024, the Special Master recommended a lowball Elliott bid that would have escrowed sale proceeds to pay the Bondholders in full, even though their interest was being contested in other proceedings.[5] Dkt.1325. *Every* other interested party opposed. Dkt.1951-1.at.2-3.

In March 2025, the Special Master recommended a stalking-horse bid by a Bondholder-owned entity that was $3 billion lower than the highest bid. Dkt.1596.¶¶4, 24; Dkt.2370.¶¶167-70. The Special Master's purported justification was that the bidder had agreed to pay the Bondholders. *Id.* ¶25.

The Special Master then received final-round bids reflecting billions of dollars less than even the district court's estimate of fair market value, and he recommended a bid from Gold Reserve. Dkt.1837. Elliott later submitted an "unsolicited" bid that was ultimately $2 billion lower than Gold Reserve's. Dkt.2123.¶¶4, 7, 9. The Special Master deemed Elliott's bid superior because it paid the Bondholders $2.125 billion to release their claims to a controlling interest in CITGO Holding. *Id.* ¶16.

4. In September 2025, after learning of serious, undisclosed conflicts of interest involving Weil and Evercore, the VPs and Gold Reserve moved to disqualify the Special Master and his advisors. Dkt.2381, 2384. Weil and Evercore had stated that they had no active engagements with bidders and only minimal, mostly inactive engagements with Bondholders. Dkt.2386.Exs.5-6. That was false, as the VPs

[5] The Second Circuit is considering an appeal challenging the Bondholders' notes' validity on an expedited schedule because of its potential impact on the issues before this Court (No. 25-2562).

discovered in a September 2025 deposition: while advising the Special Master, Weil and Evercore received *more than $100 million* in fees from previously undisclosed engagements with Elliott and the Bondholders. Dkt.2385.at.1. Discovery revealed that Weil's restructuring co-chair, who was working to increase Weil's business with Elliott—but who was not on the team advising the Special Master—conducted back-channel advocacy in the sale process on Elliott's behalf, telling colleagues advising the Special Master that he would "hate for [Elliott] to not want to work with us." Dkt.2386.Ex.2.

5. On November 13, 2025, the court denied the disqualification motions. Dkt.2526. The court has now approved the sale to Elliott. Dkt.2556. Elliott may close the transaction upon obtaining a license from the Office of Foreign Assets Control ("OFAC") and antitrust approval. Elliott could obtain those approvals at any time. The Hart-Scott-Rodino approval waiting period has already expired, Dkt.2148.at.7, and foreign approval periods will soon, Dkt.2366.at.37.

The VPs sought a stay pending appeal below, Dkt.2540, but the court denied it, Dkt.2553.at.161. Instead, the court stayed the transaction's closing until seven days after notification of necessary approvals, Dkt.2553.at.162. That notification could come within weeks.

LEGAL STANDARD

The stay factors are: likelihood of success on the merits; irreparable injury absent a stay; whether issuance of the stay would substantially injure other interested parties; and the public interest. A likelihood of success is a "reasonable chance" of prevailing. *In re Revel AC, Inc.*, 802 F.3d 558, 565, 568 (3d Cir. 2015).

ARGUMENT

I. ATTACHMENTS HELD BY THE REPUBLIC'S CREDITORS ARE INVALID UNDER RULE 69 AND DELAWARE LAW

There is more than a reasonable chance that the VPs will establish that attachments issued to the Republic's creditors are invalid.

A. PDVSA's Property Is Not Subject To Attachment By The Republic's Creditors Under Delaware Law

1. Delaware law governs whether the Republic's judgment creditors may execute on PDVSA's property. Under Rule 69(a), which provides that the "procedure on execution … must accord with the procedure of the [forum] state," Fed.R.Civ.P. 69(a)(1), "a federal court must follow relevant state law in a proceeding to execute on a judgment, unless a federal statute dictates otherwise," *Schreiber v. Kellogg*, 50 F.3d 264, 267 (3d Cir. 1995). No federal statute dictates otherwise here. The FSIA provides that where, as here, immunity has been overcome, foreign states and their instrumentalities "shall be liable in the same manner and to the same extent as" private parties. 28 U.S.C. § 1606. Accordingly, under Rule 69, "[e]nforcement proceedings" against foreign-state instrumentalities "are governed by the law of the

state in which the court sits." *Peterson v. Islamic Rep. of Iran*, 627 F.3d 1117, 1130 (9th Cir. 2010).

2. "Delaware law requires showing fraud—not just extensive control—to seize the property of a non-debtor like PDVSA." 24 F.4th at 247-48. The creditors thus must establish *both* that the Republic and PDVSA "operate as a single entity" *and* "that the corporate structure cause[s] fraud or similar injustice"—that PDVSA is "a sham" and "a vehicle for fraud." *Harrison v. Soroof Int'l*, 320 F.Supp.3d 602, 614 (2018); *Wallace v. Wood*, 752 A.2d 1175, 1184 (Del. Ch. 1999).

No creditor has ever attempted to establish that PDVSA is a sham vehicle for fraud. The district court found the opposite, concluding in its immunity analysis that Crystallex had "not show[n] that the Republic abused PDVSA's corporate form to perpetrate a fraud or injustice." 333 F.Supp.3d at 403. Delaware law therefore forbids attachment of PDVSA's shares.

3. Notwithstanding the clarity of governing law, the district court, in its 2023 *Tidewater* ruling, erroneously held that no showing of fraud is necessary because federal law—specifically *First National City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983) ("*Bancec*")—governs the attachments' validity under Rule 69. 2023 WL 7182179, at *9. That is doubly wrong. First, this Court has held that *Bancec* governs whether a foreign-sovereign-owned instrumentality is the state's alter ego for purposes of FSIA *immunity*, and also

determines whether a foreign sovereign's "*substantive liability*" should be shifted to the instrumentality. 932 F.3d at 138; *see Bancec*, 462 U.S. at 620-21. Neither is relevant now. The court has held PDVSA non-immune; the question now is what property creditors may attach. And the creditors have emphatically stated that they are *not* seeking to shift the Republic's substantive liability to PDVSA, but instead to attach PDVSA's assets by deeming them the Republic's property. *See* Crystallex.Br.3-4, No.18-2797 (3d Cir.). Second, *Bancec* cannot supply the rule of decision under Rule 69(a), which provides that state law applies unless a federal *statute* governs. *Bancec* is not a federal statute.

The district court also stated that under Rule 69, state law governs only an undefined set of "procedural" questions. *Tidewater*, 2023 WL 7182179, at *9. That too is incorrect. Under Rule 69, state law governs attachment questions, including those that could be labeled "substantive," such as available remedies, the parties against whom a creditor may proceed, and the existence of a property interest. *E.g.*, *United States v. Yazell*, 382 U.S. 341, 355 (1966); *Burgos-Yantin v. Municipality of Juana Diaz*, 909 F.3d 1, 9 (1st Cir. 2018) ("state law governs" both "procedure" and "substantive rights"). Indeed, federal courts routinely apply state law to alter-ego theories in Rule 69 proceedings. *E.g.*, *Dexia Credit Local v. Rogan*, 629 F.3d 612, 622-23 (7th Cir. 2010).

The district court thus committed an obvious legal error that invalidates the attachments underlying the sale order.

B. Collateral Estoppel Does Not Apply

The district court held that the VPs' Rule 69 argument was collaterally estopped, assertedly because its *Crystallex* orders implicitly rejected the argument. Dkt.234.at.17. That reasoning is both wrong and unjust.

1. The parties did not litigate, and the court did not decide, the writs' validity in the *Crystallex* orders. The court held only that PDVSA was not immune from jurisdiction or attachment. 333 F.Supp.3d at 414. Those questions were governed by the FSIA and *Bancec*'s rule concerning alter-ego treatment for purposes of FSIA immunity—not Rule 69. *Id*. And on appeal the parties litigated, and the Court decided, only that the district court "acted *within its jurisdiction* when it issued a writ of attachment on PDVSA's shares … , and [that] the PDVH shares *are not immune* from attachment." 932 F.3d at 152 (emphasis added).

The resolution of that immunity question did not implicitly decide the separate question of the attachments' validity under Rule 69. Indeed, this Court expressly held that the two issues are distinct. In a subsequent appeal concerning *immunity*, this Court declined to exercise pendent jurisdiction over the attachments' Delaware-law *validity*. *OIEG*, 73 F.4th at 174. It explained that the validity of "the attachment of PDVSA's shares in PDVH"—"whether PDVSA's property can be attached to pay out a judgment" against the Republic—is "an issue *beyond* the Delaware District Court's denial of sovereign immunity." *Id*. (emphasis added). Thus, "resolution of the immunity issue does not dictate the outcome of the attachment issue." *Id*. at 176.

The district court found preclusion only by characterizing the "issue" purportedly litigated and decided as whether "Delaware law should be used to determine PDVSA's alter ego status for purposes of attaching the PDVH shares owned by PDVSA." *Tidewater*, 2023 WL 7182179, at *5. But that characterization conflates the distinct immunity and attachment-validity questions this Court recognized.

The district court also asserted that the VPs were estopped by its decision in *OIEG*, 663 F.Supp.3d 406. *Tidewater*, 2023 WL 7182179, at *5-7. But this Court declined to permit an interlocutory appeal of that ruling. *OIEG*, 73 F.4th at 176. Collateral estoppel cannot apply when the party "could not, as a matter of law, have obtained [appellate] review." Restatement (Second) of Judgments § 28(1) (1982).

2. The VPs have *never* had "a full and fair opportunity to litigate th[e] issue" of the attachments' validity under Rule 69, because they have never had the opportunity for appellate review. *Clark v. Coupe*, 55 F.4th 167, 177 (3d Cir. 2022). This Court has repeatedly declined to consider the issue but stated that the VPs could appeal a final judgment. 24 F.4th at 256; *OIEG*, 73 F.4th at 174-76. And when the district court addressed the VPs' argument in *Tidewater*, it refused to certify an

interlocutory appeal. The case-dispositive issue of the validity of billions of dollars of attachments has *never* been fully litigated. Collateral estoppel is designed to prevent a second bite at the apple, not to deny a first.

C. The Invalid Attachments Tainted the Sale

The Republic's creditors have not made the necessary showing of fraud. Judgments held by *PDVSA's* creditors represent only 10% of the total amount to be satisfied. Dkt.2123-1. Had the Republic's creditors been excluded as Delaware law requires, the sale process would have involved less than 100% of the shares, 8 Del. C. § 324(a)—and PDVSA could have satisfied the judgments without selling *any* shares. The court's errors therefore irredeemably prejudiced the judgment-enforcement process.

II. THE SPECIAL MASTER AND HIS ADVISORS SHOULD BE DISQUALIFIED

The VPs also have more than a reasonable chance of establishing that the Special Master and his advisors operated under disabling conflicts of interest, requiring their disqualification and the sale's vacatur. A judicial officer must be disqualified where his "impartiality might reasonably be questioned," 28 U.S.C. § 455(a), or where he has "a financial interest in the subject matter in controversy … or any other interest that could be substantially affected by the outcome of the proceeding," *id.* § 455(b)(4).

A. The Special Master And His Advisors Should Be Disqualified

Special masters are judicial officers who "must not have a relationship" requiring "disqualification of a judge under" Section 455." Fed.R.Civ.P. 53(a)(2). As an "arm of the Court," Dkt.277.¶20, the Special Master had a "duty to remain neutral" and "provide objective, unbiased information." *In re Kensington Int'l*, 368 F.3d 289, 303 (3d Cir. 2004).

The same duty applies to the Special Master's advisors Weil and Evercore. They were the architects of the recommendations to the court, *see, e.g.*, Dkt.1840-1.at.54, 2046-3.at.309-11, and executed the sale process as judicial officers, *e.g.*, Dkt.1838.¶14; Dkt.2386.Ex.4.at.11. The court gave them judicial immunity, Dkt.277.¶¶13, 21, making their judgments "functional[ly] comparab[le]" to judges'. *Antoine v. Byers & Anderson*, 508 U.S. 429, 436 (1993).

Section 455(a). Section 455(a) required disqualification because an "objective, reasonable layperson" from "outside the judicial system" would recognize that the impartiality of the Special Master and his advisors might reasonably be questioned. *Kensington*, 368 F.3d at 294, 303. A "*perception* of bias" triggers disqualification, even absent "*actual* bias." *Id.* The advisors' activities are attributable to the Special Master, as "there is an almost irrebuttable presumption" that a judicial officer "must be disqualified where … he surrounds himself with individuals who may not be truly disinterested"—particularly where they have a "unique level of access and influence" and "overlapping issues and clients." *Id.* at 309-09.

The advisors' conflicting roles created an obvious "appearance of partiality." *Liljeberg v. Health Servs. Acquisition*, 486 U.S. 847, 860 (1988). While advising the Special Master, Weil and Evercore advocated for key players, including the winning bidder. In early 2025—just as Weil was advising the Special Master whether to support Elliott's bid—Weil's business with Elliott grew substantially, yielding over $3 million. Dkt.2386.Ex.10. That growth was self-evidently important to Weil's restructuring co-chair, who managed the Weil lawyers, some of whom worked both for Elliott and the Special Master, and had powerful incentives to expand his Elliott relationship; indeed, that partner intervened to advocate on Elliott's behalf *in these proceedings* with the Weil attorneys advising the Special Master. Dkt.2386.Ex.2.at.2. Since 2021, Weil has also collected $62 million from the Bondholders and groups including them. Dkt.2386.Ex.19. Evercore has collected $8.9 million from groups involving Elliott, $15.5 million from Bondholders, and $75 million from Bondholder affiliates. Dkt.2386.Ex.23.at.8-10; Dkt.2385.at.8-9.

Those conflicts are a very plausible explanation for the Special Master's otherwise inexplicable efforts to benefit Elliott and the Bondholders: granting Elliott exclusivity, Dkt.1373; recommending Elliott's lowball initial bid favoring Elliott and the Bondholders at the creditors' expense, Dkt.1418; and repeatedly treating resolution of the Bondholder litigation as a prerequisite, chilling bidder participation and diverting value from creditors to the Bondholders, *e.g.*, Dkt.1741.at.4.

The Special Master also ultimately recommended Elliott's bid of only $5.9 billion (including payment to the Bondholders), Dkt.2123.¶¶7-9, even though it represented less than half of Evercore's own, unrealistically low preliminary valuation, Dkt.2374-2.¶30. That price is "grossly inadequate" as a matter of law even absent a conflict, justifying vacatur. *Burge v. Fid. Bond & Mortg.*, 648 A.2d 414, 419 (Del. 1994). Elliott's bid also pays the Bondholders even though the Second Circuit could invalidate their claims. Dkt.1741.at.7-8 (court acknowledging "fundamental injustice" of paying claims later invalidated). At minimum, those defects are powerful evidence that the sale process ran off the rails.

This is a textbook "structural conflict of interests." *Kensington*, 368 F.3d at 303. The Special Master's advisors "owed [their clients] a fiduciary duty," which required the advisors to "take positions" that "favored" those clients in advising a judicial officer. *Id.* at 304. And, as in *Kensington*, those conflicts inevitably "tainted" the judicial officer. *Id.* at 306-09; *In re Kempthorne*, 449 F.3d 1265, 1270 (D.C. Cir. 2006); *Hall v. SBA*, 695 F.2d 175, 178-79 (5th Cir. 1983).

The district court's contrary ruling cannot be justified. First, the court observed that the sale process was "public." Dkt.2526.at.28-29. But the *conflicts* were not.

Second, the court emphasized that the advisors earned fees in matters "*unrelated* to the Sale Process." Dkt.2526.at.37-39. But divided loyalties need not arise within a *single* matter. *Kensington*, 368 F.3d at 306-07. Here, the advisors' large and growing relationships with multiple interested parties raise *at least* a reasonable question about the Special Master's impartiality—particularly given that a Weil partner expressly linked favorable treatment in the sale process to the firm's ability to obtain additional Elliott business. Dkt.2386.Ex.18.at.2.

Finally, the court insisted that the fees the advisors received—over $164 million—represented too small a portion of revenue to be "problematic." Dkt.2526.at.37-38. But that is a large sum for any firm and directly affects individual partner compensation. And the court failed to define (or support) its materiality threshold, which the evidence undermines. *E.g.*, Dkt.2386.Ex.2 (Weil's practice leader telling colleagues on Special-Master team that the Elliott relationship was important).

Section 455(b)(4). For similar reasons, the Special Master and his advisors should have been disqualified based on their financial interest in certain parties and their substantial interest in the outcome. 28 U.S.C. § 455(b)(4). Weil and Evercore served as “adviser[s]” or “other active participant[s] in the affairs” of Elliott and certain Bondholders and thus have a financial interest in them. *Id.* § 455(d)(4). Contrary to the district court’s suggestion, Elliott and the Bondholders were parties for purposes of Section 455(b)(4), as they are “interested in the litigation.” Party, Ballentine’s Law Dictionary (3d ed. 2010). And given their extensive business with Elliott and the Bondholders, Weil and Evercore (and by extension the Special Master) have interests that could be substantially affected by the outcome. That requires disqualification. *E.g.*, *SCA Servs. v. Morgan*, 557 F.2d 110, 115 (7th Cir. 1977).

The district court asserted that these interests were *de minimis*. Dkt.2526.at.43-44. But Section 455(b)(4) “requires disqualification no matter how insubstantial the financial interest and regardless of whether” the interest “actually creates an appearance of impropriety.” *Liljeberg*, 486 U.S. at 859 n.8. And the advisors’ interests in the outcome went well beyond the hypothetical “possibility of future fees,” Dkt.2526.at.44, as they were working assiduously to increase revenues from an existing client, *see* p.15, *supra*.

B. The VPs Timely Brought Their Motion and Did Not Waive Their Arguments

1. Section 455 contains no time limitation. A judicial officer has an independent duty to recuse and to “disclose possible grounds for disqualification.” *Kensington*, 368 F.3d at 301, 313. An objection is untimely only where a party with

"actual knowledge" of disqualification grounds holds back for "strategic advantage." *Id.* at 294, 314.

The district court deemed the VPs' October 2025 motion untimely because some VPs learned in March that Weil had represented Elliott (in 2024) and a Bondholder (in 2023), and that Evercore represented that same Bondholder. Dkt.2526.at.6-8. But that disclosure *falsely represented* that Weil had represented Elliott only once and Evercore never had, and it understated representations of other bidders and Bondholders. The truth emerged only in September 2025, when Elliott disclosed ongoing relationships with the advisors and discovery revealed previously undisclosed high-dollar-value engagements between the advisors and Elliott and Bondholders. Dkt.2386 Exs.7-8; Dkt.2287.

The court acknowledged that those disclosures were new but blamed the discovery requests' purported imprecision. Dkt.2526.at.6-11. Faulting the VPs for not "uncover[ing]" conflicts, rather than holding the Special Master and his advisors to their burden "to disclose possible grounds for disqualification," gets the ethical calculus backwards. *Kensington*, 368 F.3d at 313. The Special Master and his advisors were officers of the court. They had a duty to act uprightly, not to make fine distinctions in interpreting discovery requests that a hyper-aggressive private litigant might make so as to hide evidence that bore directly on their fitness to carry out their judicial roles. In any event, the VPs could gain no "strategic advantage," *id.* at 294, from holding back their serious concerns.

2. The district court's assertion of waiver is meritless. The court recognized that Section 455(b)(4) disqualification cannot be waived, but found waiver of Section 455(a) because Evercore's and Weil's engagement letters generally disclosed the possibility of relationships with interested parties. Dkt.2526.at.14. But the VPs did not consent to those agreements—or even *receive* Weil's. Dkt.2526.at.14 n.10. The agreements also failed to identify any conflicts and promised ethical screens never implemented. They thus cannot possibly constitute "full disclosure on the record of the basis for disqualification," as would be necessary for a knowing and voluntary waiver. 28 U.S.C. § 455(e); Fed.R.Civ.P. 53(a)(2).

C. The Sale Must Be Vacated

Because the Special Master and his advisors "should have been recused," their work "must also be 'recused'—that is, suppressed." *Kempthorne*, 449 F.3d at 1269. The Special Master's recommendations—the product of "input" from his advisors "received *ex parte* and therefore untested by the adversary process," *id.* at 1271—informed the entire sale process. That created risks of "injustice to the parties"; "injustice in other cases," including by encouraging advisors not to "promptly disclose" conflicts; and "undermining" of "the public's confidence in the judicial process." *Selkridge v. United of Omaha*, 360 F.3d 155, 171 (3d Cir. 2004).

De novo review of the Special Master's work is no cure. Such review "does not solve th[e] problem" of diminished confidence in the courts, *Litovich v. Bank of Am.*, 106 F.4th 218, 228 (2d Cir. 2024), and offers no "assurance against the biases of the [advisor] affecting the judgment of the court," *In re Brooks*, 383 F.3d 1036, 1045-46 (D.C. Cir. 2004). That latter concern is particularly acute here, where the bidding process—indeed, the *bids*—arose from Weil's and Evercore's conflicted decisions. The court's approval of the sale cannot be separated from the Special Master's decisions about which bidders to present.

III. EQUITABLE CONSIDERATIONS OVERWHELMINGLY FAVOR A STAY

A. Absent a stay, ownership of CITGO—an asset critically important to the Republic and its opposition government—may be transferred to Elliott before this Court can resolve the VPs' appeal. This Court should not permit the precipitous transfer a foreign sovereign's multibillion-dollar crown-jewel asset without fully considering the VPs' substantial legal challenges.

1. If Elliott is permitted to consummate the transaction, the VPs will suffer immediate irreparable harm and their right to a meaningful appeal could be extinguished. Upon closing, Elliott can immediately take near-irreversible steps such as replacing CITGO's management, selling equity, and disposing of assets. It could even dismantle CITGO. Those decisions would be difficult if not impossible to unwind even if the VPs prevail on appeal. Dkt.2123-1.at.424. Moreover, the SPA

requires that sale proceeds be transferred to creditors upon closing. Dkt.2320-1.at.2; Dkt.2387-5.at.7-8. Because some creditors are insolvent, the distributed payments will be disbursed to those creditors' creditors, "after which it will be impossible to trace … the funds." Dkt.121.at.6. And even if ownership of CITGO could somehow be returned to PDVSA, it is hard to see how the pre-sale status quo could ever be restored.

Courts therefore recognize that changes in corporate control, including forced sales, threaten irreparable harm—even for transactions far less consequential than this one. "There is no doubt" that a party seeking to prevent a transaction "faces irreparable injury" absent a stay, where the transaction "will be practically impossible to rescind." *Hollinger v. Black*, 844 A.2d 1022, 1090 (Del. Ch. 2004); *Flynn v. United States ex rel. Eggers*, 786 F.2d 586, 591 n.6 (3d Cir. 1986).

That grave harm will be exacerbated by irreparable injury to the reputation and functioning of the Republic's opposition government. The United States has stated that the sale will erode the opposition government's "domestic legitimacy," as Maduro will "claim[] that the United States" and the opposition government "are conspiring to 'steal' CITGO." Dkt.212 Ex. 1.at.1-2. Because CITGO is "by far the most important strategic foreign asset" of Venezuela, the loss will "damage the reputation and credibility" of the opposition government, likely irreparably. Dkt.313-2 ¶¶3-4 ; Dkt.212-1.at.3.

2. Absent a stay, those irreparable injuries will likely occur before this Court adjudicates this appeal. Although the district court stayed closing until seven days after notification of regulatory approvals, those could come without warning in the coming weeks. OFAC's most recent licensing-related statement is that it will "favorabl[y]" consider a license request for closing. D.I. 553-1.at.2; D.I. 2320-1.§2.2. And antitrust waiting periods will soon expire. *See Siemens USA v. Geisenberger*, 17 F.4th 393, 409-10 (3d Cir. 2021) (irreparable harm present where contingent events are likely but timing is unpredictable).

This Court therefore should grant a stay pending appeal now. That course is necessary to avoid emergency stay litigation upon the license's issuance and protect the VPs' appellate rights during an orderly resolution of this expedited appeal.

B. In contrast to the irreparable harm to the VPs if the sale closes, a stay will have minimal effect on the other parties.

Elliott itself confirmed that a stay would merely delay the sale, with no prejudice to Elliott's rights pending appeal. Dkt.2511.at.342; Dkt.2320-1, Article VI. Such delay-based harms pale in comparison to the irreparable injury that the VPs would suffer were the transaction to close. And the same is true of the "temporary" wait the creditors will face in collecting their judgments. *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 765 (9th Cir. 2014).

C. The public interest strongly favors a stay. In response to the VPs' previous efforts to appeal, this Court instructed the VPs to "wait" for a final order. *OIEG*, 73 F.4th at 174-76. That time is now—but allowing the sale to proceed midstream would render illusory this Court's earlier promise of review.

Those concerns are particularly weighty given that at stake here is the principal asset of a foreign sovereign fighting to restore legitimate governance. The United States has recently reaffirmed its "important foreign policy and national security interests" in Venezuela and in supporting the U.S.-recognized opposition government. *PDVSA v. MUFG Union Bank*, No. 1:19-cv-10023, Dkt.393.at.3 (S.D.N.Y. Aug. 29, 2025). Permitting the sale to close mid-appeal would unfairly undermine the VPs' appellate rights and hand the Maduro government a propaganda victory, damaging U.S. interests. *Id*. at 3. And requiring emergency-stay litigation upon regulatory approval would needlessly consume judicial and party resources and disrupt the appellate process.

CONCLUSION

This Court should expedite consideration of this motion under Cir. Rule 27.7 and grant a stay pending appeal.

Dated: December 1, 2025 Respectfully submitted,

<u>/s/ Donald B. Verrilli, Jr.</u>
Donald B. Verrilli, Jr.
Elaine J. Goldenberg
Ginger D. Anders
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave. NW
Suite 500E
Washington, DC 20001-5369
(202) 220-1100
Donald.Verrilli@mto.com

George M. Garvey
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
50th Floor
Los Angeles, CA 90071
(213) 683-9100

Counsel for the Bolivarian Republic of Venezuela

Nathan P. Eimer
Daniel D. Birk
Gregory M. Schweizer
EIMER STAHL LLP
224 South Michigan Avenue
Suite 1100
Chicago, IL 60604
(312) 660-7600
NEimer@eimerstahl.com

Noel J. Francisco
Brinton Lucas
John C. Brinkerhoff Jr.
JONES DAY
51 Louisiana Ave. NW
Washington, DC 20001
(202) 879-3939
nfrancisco@jonesday.com

Counsel for PDV Holding, Inc., and CITGO Petroleum Corporation

Joseph D. Pizzurro
Kevin A. Meehan
Juan O. Perla
CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP
101 Park Avenue
New York, NY 10178
(212) 696-6000
jpizzurro@curtis.com

Counsel for Petróleos de Venezuela, S.A.

CERTIFICATE OF BAR MEMBERSHIP

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

Date: December 1, 2025

Respectfully submitted,

/s/ Donald B. Verrilli, Jr.
Donald B. Verrilli, Jr.

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limitation in Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 5199 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point, Times New Roman.

3. The electronic copy of the Brief has been scanned for viruses by CrowdStrike Falcon Sensor and Microsoft Defender and none were detected.

Date: December 1, 2025

Respectfully submitted,

/s/ Donald B. Verrilli, Jr.
Donald B. Verrilli, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2025, the foregoing document was served on all parties or their counsel of record through email and in paper through the means and addresses listed below.

Dated: December 1, 2025

/s/ Donald B. Verrilli, Jr.
Donald B. Verrilli, Jr.

Via FedEx

Adelso A. Adrianza
4 Repton Cir. Unit 4210
Watertown, MA 02472
859-803-2279

Matthew H. Kirtland
Norton Rose Fulbright US LLP
799 9th Street NW, Suite 1000
Washington, DC 20001
202-662-4659
Counsel for Gold Reserve

Alessandra Glorioso
Dorsey & Whitney (Delaware) LLP
300 Delaware Avenue
Suite 1010
Wilmington, DE 19801
302-245-7171
Counsel for U.S. Bank National Association, as Trustee

Miguel Estrada
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202-955-8500
Counsel for Crystallex International Corporation

Amy R. Wolf
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
212-403-1245
Counsel for Conoco Phillips

Melissa N. Brochwicz Donimirski
Stevens & Lee PC
919 N Market Street
Suite 1300
Wilmington, DE 19801
302-425-2608
Counsel for LDA Cimontubo - Tubagens E Soldadura

Andrew J. Rossman
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
212-849-7000
Counsel for Amber Energy Inc.

Arthur G. Connolly, III
Connolly Gallagher LLP
1201 North Market Street, 20th Floor
Wilmington, DE 19801
302-757-7300
Counsel for Mobil Cerro Negro Holding, LLC; Venezuela Holdings, B.V.; Mobil Cerro Negro, Ltd.

Christopher M. Winter
Duane Morris LLP
1201 N. Market Street
Suite 501
Wilmington, DE 19801
302-657-4904
Counsel for Rudi Lovati; Alessandro Lucibello Piani

Christopher P. Simon
Cross & Simon, LLC
1105 North Market Street
Suite 901
Wilmington, DE 19801
302-777-4200
Counsel for Rosneft Trading S.A.

Michael Joseph Joyce
Law Office of Joyce LLC
1225 King Street, Suite 800
Wilmington, DE 19801
302-388-1944
Counsel for Ricardo Devengoechea

Michael W. Yurkewicz
Lehr Harrison Harvey Branzburg LLP
919 N. Market Street, Suite 1000
Wilmington, DE 19801
302-552-5519
Counsel for Vitol Inc.

Steven F. Molo
Mololamken LLP
430 Park Avenue
New York, NY 10022
212-607-8170
Counsel for Red Tree Investments, LLC

Miguel Lopez Forastier
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
202-662-5185
Counsel for Tidewater Investment SRL; Tidewater Caribe S.A.; Valores Mundiales, S.L.; Consorcio Andino, S.L.

Daniel A. Mason
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1313 North Market St., Suite 806
Wilmington, DE 19801
302-655-4425
Counsel for Blackrock Financial Management, Inc.; Contrarian Capital Management, L.L.C.

Justin M. Forcier
ReedSmith
1201 Market Street, Suite 1500
Wilmington, DE 19801
302-778-7555
Counsel for Siemens Energy Inc.

Jennifer Becnel Guzzo
Saul Ewing LLP
1201 N. Market Street, Suite 2300
Wilmington, DE 19801
302-421-6811
Counsel for Koch Minerals Srl and Koch Nitrogen International Srl

Stephen B. Brauerman
Bayard, P.A.
600 N. King Street
Suite 400
Wilmington, DE 19801
302-655-5000
Counsel for Altana Credit Opportunities Fund SPC; Altana Credit Opportunities Fund 1 SP; Altana Funds Ltd. Cayman

Jody C. Barillare
Morgan Lewis
1201 N. Market St., Suite 2201
Wilmington, DE 19801
302-574-7294
Counsel for OIEG

Robert Craig Martin
DLA Piper LLP
1201 N. Market Street, Suite 2100
Wilmington, DE 19801
302-468-5655
Counsel for Rusoro Mining Limited

John C. Gentile
Benesch, Friedlander, Coplan & Aronoff LLP
1313 N. Market Street, Suite 1201
Wilmington, DE 19801
302-442-7071
Counsel for Blue Water Venture Partners, LLC

Scott James Leonhardt
Esbrook P.C.
1000 N. West Street
Suite 1200
Wilmington, DE 19801
302-650-7540
Counsel for Ostrider Limited

Joseph O. Larkin
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
920 North King Street
Wilmington, DE 19801
302-651-3000
Counsel for Girard Street Investment Holdings LLC; G&A Strategic Investments; Tenaris S.A.; Talta-Trading e Marketing Sociedad Unipessoal Lda.; Gramercy Distressed Opportunity Fund LLC

Stanley Byron Tarr
Blank Rome LLP
1201 North Market Street
Suite 800
Wilmington, DE 19801-4226
302-425-6479
Counsel for GLAS Americas LLC, solely in its capacity as Collateral Agent

Via USPS

Peter James Keane
Pachulski, Stang, Ziehl & Jones, LLP
919 North Market Street, Suite 1600
P.O. Box 8705
Wilmington, DE 19899-8705
302-652-4100
Counsel for Northrop Grumman Ship Systems, Inc.; Saint-Gobain Performance Plasics Europe

Myron T. Steele
Potter Anderson & Corroon, LLP
1313 N. Market St.
Hercules Plaza, 6th Flr.
P.O. Box 951
Wilmington, DE 19899-0951
302-964-6030
Counsel for Robert B. Pincus, Esq.

Marie M. Degnan
500 Delaware Ave., 8th Floor
P.O. Box 1150
Wilmington, DE 19899
Counsel for ACL1 Investments Ltd., ACL2 Investments Ltd., and LDO (Cayman) XVIII Ltd