IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GOLD RESERVE INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Civil Action No. 1:14-cv-02014-JEB**
	)	
BOLIVARIAN REPUBLIC OF VENEZUELA,	)	
	)	
Respondent.	)	
	)	

GOLD RESERVE'S OPPOSITION TO RESPONDENT'S CORRECTED MOTION TO STAY EXECUTION OF JUDGMENT PENDING APPEAL

Respondent Bolivarian Republic of Venezuela ("Venezuela") has moved to stay execution of the Court's November 20, 2015 Judgment pending appeal without being required to post a supersedeas bond. *See* Resp.'s Corrected Mot. to Stay Execution of Judgment Pending Appeal (D.E. 51) ("VZ Mot."). An *unsecured* stay of enforcement is extraordinary relief reserved for only unusual circumstances, and only should be granted if such a stay does not endanger the judgment creditor's interest in ultimate recovery. Venezuela has not satisfied this high standard. Conspicuously, Venezuela nowhere states that it intends to ever voluntarily pay the Judgment. Instead, in its four-page motion, Venezuela's counsel assures the Court that an unsecured stay is appropriate because "it is beyond dispute that Venezuela has sufficient means to pay the award." VZ Mot. at 3 (citing an internet reference for the proposition that Venezuela's 2016 budget is approximately $245 billion). But if this is true, Venezuela will incur no hardship whatsoever in posting the bond that would entitle it to an automatic stay of enforcement. If this is not true, Petitioner Gold Reserve Inc. ("Gold Reserve") would be

substantially prejudiced by an unsecured stay of enforcement. In either event, Venezuela's motion should be denied.

LEGAL STANDARD

The D.C. Circuit set out the standards governing a motion to stay execution of judgment without posting a supersedeas bond in *Federal Prescription Service, Inc. v. American Pharmaceutical Association*:

> The purpose of the supersedeas bond is to secure the appellee from loss resulting from the stay of execution. Because the stay operates for the appellant's benefit and deprives the appellee of the immediate benefits of his judgment, ***a full supersedeas bond should be the requirement in normal circumstances***, such as where there is some reasonable likelihood of the judgment debtor's inability ***or unwillingness*** to satisfy the judgment in full upon ultimate disposition of the case and where posting adequate security is practicable. In ***unusual circumstances***, however, the district court in its discretion may order partially secured or unsecured stays ***if they do not unduly endanger the judgment creditor's interest in ultimate recovery***.

636 F.2d 755, 760-61 (D.C. Cir. 1980) (footnote citations omitted; emphasis added). Venezuela has the burden to "objectively demonstrate" reasons for departing from the usual requirement of posting a full supersedeas bond. *Grand Union Co. v. Food Employers Labor Relations Assoc.*, 637 F. Supp. 356, 357 (D.D.C. 1986) (citation omitted).

The traditional four-factor test governing motions for stay pending appeal also is relevant in determining whether to allow an unsecured stay of execution pending appeal. *See TMR Energy Ltd. v. State Property Fund of Ukraine*, No. 03-7191, 2004 U.S. App. LEXIS 8195, at *2 (D.C. Cir. Apr. 23, 2004) (per curiam) (citing *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2002)).[1] Those factors are:

[1] Although *TMR Energy* is an unpublished per curiam decision, it indicates that both the *Federal Prescription Service* test and the *Holiday Tours* test are relevant to determining whether to grant a motion for an unsecured stay pending appeal. *See also Draim v. Virtual Geosatellite Holdings, Inc.*, No. 07-

> (1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? Without such a substantial indication of probable success, there would be no justification for the court's intrusion into the ordinary processes of administration and judicial review. (2) Has the petitioner shown that without such relief, it will be irreparably injured? . . . (3) Would the issuance of a stay substantially harm other parties interested in the proceedings? . . . (4) Where lies the public interest? . . .

Holiday Tours, 559 F.2d at 843 (citation omitted). It also is Venezuela's burden to show why application of these four factors entitles it to the "extraordinary remedy" of a stay pending appeal. *Baker v. Socialist People's Libyan Arab Jamahirya*, 810 F. Supp. 2d 90; 96 (D.D.C. 2011) (citation omitted).

ARGUMENT

Despite its burden and the extraordinary nature of its request, Venezuela offers ***no*** evidentiary support and a misguided legal analysis for its self-serving assertions that it is impracticable to post a supersedeas bond and Gold Reserve's interests would not be unduly endangered in the absence of a bond. Under *Federal Prescription Service*, Venezuela's motion must be denied. Venezuela's motion also fails because it has not even attempted to address the traditional stay factors set out in *Holiday Tours*, and an analysis of these factors shows that a stay is not justified in any event.[2]

7065, 2007 U.S. App. LEXIS 27251 (D.C. Cir. Nov. 21, 2007) (per curiam) (same); *Manion v. Am. Airlines, Inc.*, No. 03-7154, 2004 U.S. App. LEXIS 4657 (D.C. Cir. Mar. 10, 2004) (per curiam) (same). The D.C. Circuit Handbook of Practice and Internal Procedures requires a motion for stay to discuss the four *Holiday Tours* factors. *See* Handbook of Practice and Internal Procedures (June 2015), *available at* https://www.cadc.uscourts.gov/internet/internet.nsf.

[2] Venezuela argues that it could not have filed its present motion prior to January 20, 2016, when the Court granted Gold Reserve's motion under 28 U.S.C. § 1610(c) for an order declaring that a reasonable period of time had elapsed since the entry of judgment. VZ Mot. at 1 n.1. No authority is cited for this incorrect proposition. Venezuela could have filed its motion at any time after entry of the November 20, 2015 Judgment.

I. AN UNSECURED STAY IS NOT JUSTIFIED UNDER *FEDERAL PRESCRIPTION SERVICE*

Venezuela has failed to objectively demonstrate unusual circumstances that would justify departure from the standard practice of requiring a supersedeas bond as a condition for obtaining a stay pending appeal.

First, Venezuela contends that it should not have to post a bond due to its sovereign status, arguing that "this court has repeatedly declined to require foreign sovereigns to post security when granting stays." VZ Mot. at 2. Venezuela cites only two inapposite cases to establish this "repeated" practice by the Court, both of which involved requests for a stay of confirmation proceedings, not requests for a stay of execution of judgment pending appeal. *See id.* at 2-3 (citing *DRC, Inc. v. Republic of Honduras*, 774 F. Supp. 2d 66 (D.D.C. 2011)[3] and *Getma Int'l v. Republic of Guinea*, No. 14-1616, 2015 U.S. Dist. LEXIS 148482 (D.D.C. Nov. 3, 2015)). In that respect, this Court has already fully considered and denied Venezuela's prior request for a stay of enforcement. *See* Memorandum Opinion and Order (D.E. 42) at 33-39.

Venezuela also fails to note that both the D.C. Circuit and this Court have declined to grant unsecured stays of execution to foreign sovereign entities. *See TMR Energy Ltd.*, 2004 U.S. App. LEXIS 8195, at *1 (denying motion of State Property Fund of Ukraine, an organ of the State of Ukraine, to extend unsecured stay);[4] *Baker*, 810 F. Supp. 2d at 100 n.6 (denying motion for stay and noting that, even if a stay were appropriate, "it would only be granted on the condition that Syria post a supersedeas bond"); *see also Micula v. Gov't of Romania*, No. 15 Misc. 107, 2015 U.S. Dist. LEXIS 102907, at *13-14 (S.D.N.Y. Aug. 5, 2015) ("Romania would

[3] The stay granted in *DRC* subsequently was lifted and the order cited by Venezuela was vacated on other grounds. *See DRC, Inc. v. Republic of Honduras*, 999 F. Supp. 2d 1 (D.D.C. 2012).

[4] In *TMR*, this Court initially stayed its judgment pending a timely appeal and a ruling by the D.C. Circuit on the sovereign appellant's application for a stay pending appeal. *See* Order, *TMR Energy, Ltd. v. State Property Fund of Ukraine*, No. 03-0034 (D.D.C. Dec. 3, 2003) (D.E. 36).

be entitled to an automatic stay of the judgment pending its own appeal, provided it posts a supersedeas bond approved by the Court to protect the adverse party from any harm occasioned by the stay.") (citations omitted; emphasis omitted). That Venezuela is a foreign sovereign thus is not an "unusual circumstance" under *Federal Prescription Service*.

Venezuela then argues that an unsecured stay is appropriate because "it is beyond dispute that Venezuela has sufficient means to pay the award[,]" and therefore Gold Reserve's interest in ultimate recovery would not be endangered. VZ Mot. at 3. It cites a government website in support of this broad assertion, which purportedly shows that "Venezuela's budget for 2016 is approximately $245 billion, which is more than 200 times larger than the judgment." *Id.* Venezuela cannot obtain a stay of its responsibility to pay the $750 million+ judgment at issue in this case on the basis of an internet posting. *See Grand Union Company*, 637 F. Supp. at 357 (explaining movant's burden to "objectively demonstrate" the basis for stay). More importantly, Venezuela's supposed "budget" is irrelevant given Venezuela's continued "unwillingness" to pay the Judgment. *Federal Prescription Service,* 636 F.2d at 760-61. Venezuela also does not state that it has set aside in this "budget" the necessary funds for paying Gold Reserve or that any of these budgeted amounts, or any other assets, give Venezuela the "ability" to pay the Judgment. *See Poplar Grove Planting & Refining Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (7th Cir. 1979) ("The record . . . contains no evidence which would permit a court to objectively determine that Bache is capable of responding to the judgment. Nor have we evidence that such present capability as it now has will continue for an indefinite time into the future.").

Nevertheless, if Venezuela's assertion that it has $245 billion available in 2016 to pay the Judgment is accepted at face value, then it should not in any way be impracticable or a hardship

for Venezuela to post the requisite bond to obtain a stay of execution pending appeal. *See Godfrey v. Iverson*, No. 05-2044, 2007 U.S. Dist. LEXIS 76267, at *4-5 (D.D.C. Oct. 16, 2007) (requiring defendants to post bond for stay despite the fact that one defendant "undoubtedly has sufficient assets and income to satisfy the judgment"); *Grand Union Company*, 637 F. Supp. at 358 (noting "plaintiff offers no reasons other than the proportion of its net worth to the award to justify a departure from the normal practice of the posting of a full supersedeas bond" and finding "the evidence offered by plaintiff indicates that the requirement of posting a bond will cause it little hardship"). If Venezuela "is as financially secure as it assures the Court it is, its ability to obtain the bond will not be difficult." *Cipes v. Mikasa, Inc.*, 404 F. Supp. 2d 367, 370 (D. Mass. 2005).[5]

Venezuela complains that it should not be required to post a bond "because it would impose substantial and unnecessary costs on Venezuela without hastening any payment to Gold Reserve." VZ Mot. at 4. This is not the point. Before the Court can allow for an unsecured stay in "unusual circumstances," it must be shown that a stay will not "unduly endanger the judgment creditor's interest in ultimate recovery." *Fed. Prescription Serv.*, 636 F.2d at 760-61. Venezuela has been legally obligated to pay Gold Reserve since the arbitral Award was issued on September 22, 2014, and yet Venezuela has refused to make any payment. Now, numerous public sources point to a possible debt default by Venezuela in upcoming months.[6] And, less than eight months ago, Venezuela urged this Court to stay enforcement on the grounds that its

[5] The judgment at issue here is substantially larger than the $665,000 judgment at issue in *Cipes*, but Venezuela also professes to have a substantially larger "budget" than the judgment debtor in *Cipes*.

[6] *See, e.g.*, Matt O'Brien, *Venezuela is on the brink of a complete economic collapse*, The Washington Post, January 29, 2016, *available at* https://www.washingtonpost.com/news/wonk/wp/2016/01/29/venezuela-is-on-the-brink-of-a-complete-collapse/; Paul Kilby, *Oil rout raises fears of Venezuela debt default*, Reuters, January 20, 2016, *available at* http://www.reuters.com/article/venezuela-bonds-idUSL2N1540UK.

dire financial condition would make it difficult to pay the amount it owes Gold Reserve. *See* Resp. Mot to Dismiss Petition or to Stay Enforcement (D.E. 19) at 43 ("Given the size of the Award—over $700 million plus interest—it is beyond dispute that payment of badly needed funds from the public treasury by Venezuela prior to completion of the [pending annulment] proceedings in France would be a significant hardship."). In these circumstances, a full supersedeas bond is required. *Id.* at 760 ("Because the stay operates for the appellant's benefit and deprives the appellee of the immediate benefits of his judgment, a full supersedeas bond should be the requirement in normal circumstances, such as where there is some reasonable likelihood of the judgment debtor's inability or unwillingness to satisfy the judgment in full upon ultimate disposition of the case and where posting adequate security is practicable.").

In short, Venezuela cannot have it both ways. If, as it claims, it has more than sufficient funds to satisfy the Judgment from its $245 billion annual budget, then the 1% fee of circa $7.5 million to post a supersedeas bond would neither be impracticable nor a substantial hardship. If it does not, then it is all the more important that Gold Reserve be allowed to continue to attempt to enforce the Judgment during the pendency of the appeal. This is particularly true given Venezuela's continued unwillingness to the pay the amount it owes Gold Reserve.[7]

Venezuela's remaining arguments are readily dismissed. It contends that a bond is not necessary here because it is a "long-time resident of the District of Columbia," and there is no

[7] In this respect, Gold Reserve notes that Venezuela has attempted to delay and forestall these confirmation and enforcement proceedings at every turn – from refusing to accept service of the petition to confirm in November 2014, to the filing of three new expert opinions in its reply brief in July 2015, to its February 2016 opposition to Gold Reserve's motion for leave to register the Judgment in other federal district courts. This also is not the only matter in which Venezuela has attempted to avoid or delay its obligations under an international arbitration award. *See* ICSID Case No. ARB/07/27, *Venezuela Holdings, B.V. et al. v. Bolivarian Rep. of Venezuela*, Decision on Revision (June 12, 2015), *available at* www.italaw.com/sites/default/files/case-documents/italaw4322.pdf, ¶ 4.1.7 ("[T]he Tribunal finds that the purpose of [Venezuela's] Application was not to request the revision of the Award on the basis of a genuine concern that an unknown decisive fact had been left out, but rather to hinder the Respondents' swift attempt at enforcement.").

indication that it has any intention to leave the jurisdiction. VZ Mot. at 4. Venezuela is not a "resident" of D.C. Unlike like the appellant in *Federal Prescription Service*,[8] Venezuela is a foreign sovereign with "tense" relations with the United States,[9] and that has only one apparent asset in D.C. – its embassy. The implication that Venezuela and its assets will always be in the "reach" of Gold Reserve, *see* VZ Mot. at 4, is thus wrong and wholly unsupported. It also ignores that the process of enforcing a judgment in the United States against a foreign sovereign is complex, time-consuming, and uncertain, and Venezuela has offered no assurance that it will ever voluntarily pay the Judgment. In this context, a supersedeas bond is necessary to provide sufficient security pending appeal. *Cf. Lightfoot v. Walker*, 797 F.2d 505, 506 (7th Cir. 1986) ("The fact that the state has the financial wherewithal to pay a judgment for $700,000 can be of little solace to the plaintiffs when the . . . procedure for collecting a judgment against the state is not only cumbersome and time-consuming, but uncertain in outcome, since the judgment cannot be paid unless and until the state legislature votes to appropriate the money necessary to pay it."); *Southeast Booksellers Assoc. v. McMaster*, 233 F.R.D. 456, 460 (D.S.C. 2006) (requiring bond from state government defendants, noting, *inter alia*, the "cumbersome, complex, and time-consuming" process of collecting on the judgment); *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, No. 01-0634, 2002 U.S. Dist. LEXIS 3976, at *6-7 (S.D. Tex. Jan. 25, 2002) ("This Court is unwilling to extend the FSIA-imposed stay on execution of the judgment longer than the approximate 50 days that have passed since judgment issued. . . . the difficulties Pertamina faces in voluntarily paying the judgment underscore the

[8] Another factor that favored a stay in *Federal Prescription Service* but which is not present here is that, in *Federal Prescription Service*, both parties had appealed the judgment at issue. *See* 636 F.2d at 761.

[9] *See* "U.S. Relations with Venezuela," U.S. Department of State Bureau of Western Hemisphere Affairs Fact Sheet (July 20, 2015), *available at* http://www.state.gov/r/pa/ei/bgn/35766.htm.

necessity of allowing KBC to proceed to take other steps to satisfy the judgment.") (citation omitted).[10]

In closing, Venezuela pleads: "Venezuela respectfully suggests that it should not be constrained to incur such unrecoverable costs for *exercising its right to stay execution of the Court's money judgment* while the appeal is pending." VZ Mot. at 4 (emphasis added). This sense of entitlement is mistaken. Venezuela has no "right" to a stay of execution of the Court's Judgment. To the contrary, a stay pending appeal is an "'intrusion into the ordinary processes of . . . judicial review, and accordingly is not a matter of right.'" *Baker*, 810 F. Supp. 2d at 96 (citation omitted); *see also Poplar Grove Planting & Refining Co.*, 600 F.2d at 1191 ("[A] supersedeas bond is a privilege extended the judgment debtor as a price of interdicting the validity of an order to pay money.").

II. VENEZUELA HAS FAILED TO ADDRESS, AND CANNOT SATISFY, THE *HOLIDAY TOURS* STAY FACTORS

Venezuela's motion also should be denied because it has not attempted to satisfy "the stringent standards required for a stay pending appeal." *TMR Energy Ltd.*, 2004 U.S. App. LEXIS 8195, at *2 (citing *Holiday Tours*, 559 F.2d at 843; D.C. Cir. Handbook of Practice and Internal Procedures 33 (2002)) . There are four factors relevant to a request for a stay: (1) whether the movant has made a strong showing on its likelihood of success on the merits; (2) whether the movant has shown it will be irreparably injured absent a stay; (3) whether issuance

[10] Venezuela relies on *Kanuth v. Prescott, Ball, & Turben*, No. 88-1416, 1990 U.S. Dist. LEXIS 17156 (D.D.C. Dec. 14, 1990), a case where the court waived the supersedeas bond requirement, but whose facts bear no resemblance to this matter. In *Kanuth*, the judgment debtor had already paid over $8 million in damages to the judgment creditor prior to the stay, was making ongoing monthly payments on the judgment of over $600,000, and had increased its capital following issuance of the arbitral award. *See id.* at *5. The judgment debtor supported its motion for stay through an affidavit of its officer, not through unsupported assertions and internet links in a motion. *See id.* Here, Venezuela has not paid Gold Reserve anything, has not promised to pay Gold Reserve anything, and has provided no sworn testimony in support of its stay motion.

of the stay will substantially harm the other parties interested in the proceeding; and (4) where the public interest lies. *See Holiday Tours*, 559 F.2d at 843 (citations omitted);[11] *see also Nken v. Holder*, 556 U.S. 418, 435 (2009).

The first two factors "are the most critical[,]" *Nken*, 556 U.S. at 435, and yet Venezuela has made ***no*** showing on either the likelihood of success on appeal or irreparable harm. Nor could it make a sufficient showing. The Court's November 20, 2015 Memorandum Opinion (D.E. 42) exhaustively rejected Venezuela's arguments raised in opposition to Gold Reserve's petition for confirmation. On this record, Venezuela is not likely to succeed on the merits of its appeal. And Venezuela cannot show any "irreparable harm" if execution were allowed to continue pending appeal. Venezuela may complain of alleged uncertainty in recovering its assets in the unlikely event it were to prevail on appeal, but any such economic concerns are both highly speculative and by definition not irreparable. *See Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) ("[T]he injury must be both certain and great; it must be actual and not theoretical."); *id.* ("It is also well settled that economic loss does not, in and of itself, constitute irreparable harm."). In any event, these concerns are entirely within Venezuela's power to abate by simply posting a bond.

On the remaining two factors, a stay would substantially injure Gold Reserve, because it would be forced to stall execution on the significant judgment in its favor, and face the risk that Venezuela will continue to refuse to voluntarily pay the Judgment if the Court's ruling were

[11] In this Circuit, "[t]hese four factors have typically been evaluated on a 'sliding scale,' whereby if the movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor. . . . [I]t is unclear whether the 'sliding scale' is still controlling in light of the Supreme Court's decision in *Winter v. NRDC, Inc.*, 555 U.S. 7, 129 S. Ct. 365, 172 L.Ed. 2d 249 (2008) . . . ." *Council of the District of Columbia v. Gray*, No. 14-655, 2014 U.S. Dist. LEXIS 185218, at *6 (D.D.C. May 22, 2014) (citations omitted). Here, because Venezuela has failed to make *any* showing under the traditional four-factor test, the Court does not need to decide whether a "sliding scale" analysis applies.

affirmed on appeal and will not have sufficient assets available on which to enforce the Judgment. In addressing the balance of possible hardships to the parties in its ruling on Venezuela's motion to stay enforcement, the Court found that "on balance this factor seems to weigh at least as strongly for Gold Reserve as it does for Venezuela." Memorandum Opinion (D.E. 42), at 38. The balance now tips even more in favor of Gold Reserve given that it has a final, enforceable judgment in its favor. Finally, the public interest favors full and prompt satisfaction of the Judgment, just like all other court judgments.

CONCLUSION

For the foregoing reasons, Gold Reserve respectfully requests that Venezuela's motion to stay execution of judgment pending appeal without posting a supersedeas bond be denied. A proposed order is filed herewith.

Dated: February 5, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing and all papers filed in support thereof were served by hand delivery on February 5, 2016, on counsel for Respondent at the address shown:

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