

# **\$2B PDVSA Ruling Offers Insight Into Foreign-Issued Debt**

By **Richard Cooper, Boaz Morag and Miranda Herzog** (October 27, 2025)

A New York federal judge held last month in *Petroleos de Venezuela SA v. MUFG Union Bank NA* that roughly \$2 billion in defaulted bonds issued by Venezuela's state-owned oil company, which had been set to mature in 2020, were validly issued under Venezuelan law.[1]

Hearing the case on remand from the U.S. Court of Appeals for the Second Circuit, U.S. District Judge Katherine Polk Failla of the U.S. District Court for the Southern District of New York denied a motion for summary judgment filed by Petroleos de Venezuela, or PDVSA, seeking the invalidation of the 2020 bonds.

Judge Failla further held that the act of state doctrine, which bars U.S. courts from invalidating the official acts of foreign sovereigns, does not apply to resolutions by the National Assembly that PDVSA argued had the effect of invalidating the 2020 bonds.

Although PDVSA filed a notice of appeal on Oct. 17, Judge Failla's opinion offers new insight into how New York courts are analyzing the validity of foreign-issued debt.

## **PDVSA's Exchange Offer and Default**

The 2020 bonds saga began in September 2016, when PDVSA offered bondholders the chance to exchange bonds maturing in 2017 for bonds maturing in 2020 that would be secured by 50.1% of the shares of Citgo Holding. The pledge of Citgo Holding shares was made through PDVSA's wholly owned subsidiary PDVH, a Delaware corporation that, in turn, owns Citgo Holding.

MUFG Union Bank NA and GLAS Americas LLC served as trustee and collateral agent for the 2020 bonds. The governing documents, which consist of the 2020 bonds, the indenture and pledge agreement, all contain New York choice-of-law provisions.

Following the exchange offer announcement, the Venezuelan National Assembly, led by opposition leader Juan Guaidó, passed a resolution categorically rejecting the issuance of the 2020 bonds.

In January 2019, the National Assembly declared Nicolás Maduro's presidency to be illegitimate and named Guaidó interim president of Venezuela. Guaidó's government was recognized by the U.S. and, in February 2019, Guaidó appointed a competing ad hoc board for PDVSA.

In October 2019, the National Assembly issued another resolution stating that the indenture for the 2020 was a "national public contract" and was not properly authorized by that body, in accordance with Article 150 of the Venezuelan Constitution, which requires National Assembly authorization for "contracts of national public interest," but does not otherwise define the term.



Richard Cooper



Boaz Morag



Miranda Herzog

Later that month, PDVSA defaulted on the 2020 bonds by failing to make a scheduled interest and amortization payment.

## **Procedural Background**

The procedural history of the litigation over the validity of the 2020 bonds is complex.

Immediately following PDVSA's default on the bonds, the Guaidó-appointed ad hoc board for PDVSA filed a complaint against MUFG and GLAS in the Southern District of New York seeking a declaration that the agreements governing the 2020 bonds were invalid and void ab initio for not complying with the Article 150 requirements, and seeking injunctive relief to prevent MUFG and GLAS from enforcing those agreements.

MUFG and GLAS counterclaimed, seeking a declaration that the 2020 bonds were valid and enforceable, as well as damages for breach of contract, breach of warranty, unjust enrichment and quantum meruit.

In Judge Failla's first summary judgment ruling in October 2020, the court ruled in favor of MUFG and GLAS, finding the 2020 bonds valid and enforceable, and issuing a judgment in favor of MUFG/GLAS for \$1.9 billion in missed principal and interest payments.[2]

In determining that the bonds were valid, Judge Failla applied only New York law, rejecting PDVSA's argument that New York's choice of law rules required her to consider Venezuela law to determine the question of validity.

Judge Failla further held that the "act of state doctrine," which generally precludes U.S. courts from reviewing or questioning the validity of actions by foreign sovereign states conducted within that sovereign's territory, did not apply because the National Assembly resolutions would have effects outside the Republic of Venezuela — namely, they would amount to a taking by depriving bondholders outside of the republic of the value of the bonds without compensation.

Therefore, the court was not required to apply the act of state doctrine to the resolutions.

PDVSA appealed the judgment to the Second Circuit, which certified the choice of law question to the New York Court of Appeals.[3]

On Feb. 20, 2024, the New York Court of Appeals unanimously held that New York law "requires courts to consider if the 2020 Notes were issued with defects going to their validity under Article 150 and other related provisions of Venezuela's Constitution." [4]

Accordingly, the Second Circuit remanded the case to the Southern District of New York for further consideration.

On remand, Judge Failla ordered the parties to brief the validity of the 2020 bonds and governing documents under Venezuelan law; the role of the act of state doctrine in the proceedings; and any relevant factual or legal developments since her prior decision in 2020.

The republic, still represented by the U.S.-recognized leadership of the 2015 National Assembly, was also granted permission to file an amicus curiae brief.

## **The SDNY Decision: Venezuelan Law**

In her Sept. 18 ruling, Judge Failla held that the 2020 bonds and associated governing documents were validly issued under Venezuelan law because the agreements were not contracts of national public interest, and therefore did not require National Assembly approval.

A key point of dispute between the parties was the interpretation and significance of the Venezuelan Constitutional Chamber's 2002 decision in *Andrés Velásquez*, which held that only contracts to which the republic was party qualify as "national public interest contracts."

The trustee for the 2020 bonds argued that *Andrés Velásquez* precluded any argument that the 2020 bonds issued by PDVSA were national public interest contracts, because *Andrés Velásquez* was a binding interpretation of Article 150.

PDVSA, on the other hand, argued that *Andrés Velásquez* was not binding under Venezuelan law; *Andrés Velásquez* did not preclude contracts involving PDVSA from qualifying as national public interest contracts, because PDVSA is part of Venezuela's "decentralized public administration;" and other decisions by the Venezuelan Constitutional Chamber postdating *Andrés Velásquez* suggest that contracts to which the republic is not a party may still qualify as national public interest contracts.

The court rejected all of PDVSA's arguments, holding that *Andrés Velásquez* establishes binding precedent under Venezuelan law; contracts made by entities in the decentralized public administration, such as PDVSA, cannot be national public interest contracts; and no case postdating *Andrés Velásquez* changes that conclusion.

The court further held that, because a "necessary ingredient," or the "participation of the Republic itself, is missing" from the contracts at hand, the governing documents are not "national public interest contracts" and did not require National Assembly approval.

Accordingly, the 2020 bonds and the governing documents were validly issued without National Assembly approval under Venezuelan law.

The court also considered the republic's views, as outlined in its amicus curiae brief, that the 2020 bonds and the governing documents are national public interest contracts and, because they were not approved by the National Assembly, are void ab initio and unenforceable under Venezuelan law.[5]

The court noted that, while it affords substantial weight and respectful consideration to the republic's views, the republic's arguments did not persuade the court to deviate from its analysis of Venezuelan law.

### **The SDNY Decision: Act of State Doctrine**

The court next reaffirmed its prior conclusion that the act of state doctrine does not apply. The act of state doctrine generally requires a court to treat as valid any official acts of a foreign sovereign.

The act of state doctrine does not apply, however, to official acts that effect takings of property outside the territory of the sovereign. Instead, acts of foreign governments purporting to have extraterritorial effect should be recognized by U.S. courts only if they are consistent with the law and policy of the U.S.

PDVSA argued that the resolutions by the National Assembly were official acts that had the effect of rendering the 2020 bonds void ab initio. Judge Failla rejected this argument,

concluding that "(1) these official acts resulted in extraterritorial takings," rendering the act of state doctrine inapplicable; and "(2) the Resolutions did not invalidate the 2020 Bonds *ex ante*."

Reviewing the record and new submissions on the act of state doctrine, Judge Failla remained unpersuaded that the doctrine applied, finding that, because the only purported invalidation occurred after the 2020 bonds were already in circulation in New York, any taking effected by National Assembly resolution was "extraterritorial" in that it could not be effectively accomplished exclusively within the territory of Venezuela.

Thus, the National Assembly's resolutions were not subject to the act of state doctrine and did not affect the validity of the issuance of the 2020 bonds.

### **Impact of the SDNY Decision on the PDVH Sale**

The decision is not the last word on the matter.[6] The PDVSA/Citgo Petroleum side has filed a notice of appeal of Judge Failla's decision.[7]

Nevertheless, the decision has already affected enforcement actions brought by other creditors of the republic and PDVSA. In the U.S. District Court for the District of Delaware,[8] an auction process is currently underway for the sale of PDVH to satisfy judgments against the republic and PDVSA.[9] The PDVH sale process is nearing completion, with U.S. Circuit Judge Judge Leonard Stark expected to approve a winning bid in early 2026.

The decision will presumably bolster one of the two competing bids, the Elliott/Amber Energy bid, which includes a settlement with the 2020 bondholders valued at \$2.125 billion — a discount to the approximately \$2.85 billion judgment Judge Failla entered in the Southern District of New York case.

In contrast, the ruling increases the closing risk of the alternate Gold Reserve/Dalinar bid, which does not include a settlement with the 2020 bondholders and which the 2020 bondholders have threatened to move to enjoin if the bid were to prevail.

Failla's ruling increases the likelihood that Judge Stark will approve the Elliott bid, which has the support of the special master and the PDVH creditors who are senior to Gold Reserve.

On Sept. 19, Judge Stark granted the special master's request to terminate the share purchase agreement executed with Gold Reserve and to instead execute an SPA with Elliott.

Judge Stark further denied Gold Reserve's competing motion to strike the Special Master's recommendation of the Elliott bid. Judge Stark has directed parties to the PDVH sale hearing to file further briefing setting out their positions on the effect of Judge Failla's ruling, among other issues, through the end of October.

### **Implications for Other Foreign-Issued Securities**

Going forward, the Southern District of New York decision serves as a guide for the scope of review required in assessing the validity of foreign-issued securities with New York choice-of-law provisions.

Even under the New York Court of Appeals' decision that local law — in this case, Venezuelan law — governs the question of validity absent an express adoption of New York law on that issue, Judge Failla's decision demonstrates that the court's application of local

law is still a complex exercise depending on local law and its clarity.

The decision illustrates this approach in detail, with the court's undertaking substantial analysis of the republic's amicus curiae brief, despite it ultimately not adopting the republic's interpretation of Venezuelan law.

While investors remain well advised to give careful consideration to potential validity issues with foreign-issued debt at the outset, the decision reaffirms the low probability that a validity challenge will be successful, even where the uncertainties of foreign law are involved.

Investors can also take comfort from last year's decision by the New York Court of Appeals, which reaffirmed that New York law governs the consequences of any invalidity, including a potential safe harbor for a good faith purchaser for value without notice of the defect.[10]

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*Richard Cooper is a partner, Boaz Morag is counsel and Miranda Herzog is an associate at Cleary Gottlieb Steen & Hamilton LLP.*

*Cleary partner Francesca L. Odell, and associates Cassandra Allen and Stephanie Spear, contributed to this article.*

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[1] <https://www.law360.com/articles/2389605/bonds-valid-under-venezuelan-law-judge-rules-in-2b-case>.

[2] <https://www.law360.com/articles/1320345>.

[3] <https://www.law360.com/cases/5fd7ce95c2a51531a0258c55/articles>.

[4] <https://www.law360.com/articles/1783782/ny-court-mulls-how-to-define-validity-in-sovereign-debt-case>.

[5] <https://www.law360.com/articles/2285426>.

[6] <https://www.clearygottlieb.com/news-and-insights/publication-listing/southern-district-of-new-york-holds-that-pdvsas-2020-bonds-are-valid-under-venezuelan-law>.

[7] <https://www.reuters.com/world/us-judge-declares-venezuelan-oil-company-pdvsas-2020-bonds-valid-2025-09-18/>.

[8] <https://www.law360.com/dockets/68829c9731136d1e2591fc32>.

[9] <https://www.law360.com/articles/2345068>.

[10] <https://www.clearygottlieb.com/news-and-insights/publication-listing/new-york-court-of-appeals-holds-that-venezuelan-law-governs-the-validity-of-pdvsas-2020-bonds>.