ALERT MEMORANDUM

Executive Asset Shields, Alter Ego, And Creditor Recoveries: Venezuela After President Trump's Executive Order

January 13, 2026

On January 9, 2026, President Trump signed an Executive Order (the "Venezuela Order") entitled "Safeguarding Venezuelan Oil Revenue for the Good of the American and Venezuelan People." In many respects, the Venezuela Order follows a similar executive order issued by President George W. Bush in the aftermath of the war in Iraq. But while there are many similarities between the two executive orders, there are important differences in the circumstances surrounding the issuance of these orders and the potential consequences for stakeholders of Venezuela and its state oil company, Petroleos de Venezuela, S.A ("PDVSA"). Whether the Venezuela Order ends up being merely a shield designed to protect Venezuelan oil revenues from creditor attachment or ultimately a tool to facilitate new investment and manage value and recoveries among and across existing creditors of Venezuela and PDVSA is not yet clear, but it certainly is worth paying attention to as U.S. administration policy evolves going forward.

If you have questions concerning this memorandum, please reach out to your regular firm contact or the following authors:

NEW YORK

Richard J. Cooper
Partner
+1 212 225 2276
rcooper@cgsh.com

Ignacio Lagos
Partner
+1 212 225 2852
ilagos@cgsh.com

Boaz S. Morag
Counsel
+1 212 225 2894
bmorag@cgsh.com

Miranda Herzog
Associate
+1 212 225 2152
mherzog@cgsh.com

Sean O'Connell;
Amanda Pareja Villegas
Law Clerks

WASHINGTON

Chase D. Kaniecki
Partner
+1 202 974-1792
ckaniecki@cgsh.com

Samuel H. Chang
Partner
+1 202 974-1816
sachang@cgsh.com

LONDON

Jim Ho
Partner
+44 20 7614 2284
jho@cgsh.com

SAO PAULO

Juan G. Giráldez
Partner
+55 11 2196 7202
jgiraldez@cgsh.com

Background

Following the capture of Venezuela's President Nicolas Maduro and his wife on January 3, 2026, on Friday, January 9, 2026, President Trump signed an Executive Order entitled *Safeguarding Venezuelan Oil Revenue for the Good of the American and Venezuelan People*.

Key Components of the Venezuela Executive Order

— **Declares a National Emergency:** Attachments against the Foreign Government Deposit Funds would be an "extraordinary threat" to national security.

— **Defines Protected Funds:** "Foreign Government Deposit Funds" mean funds held in U.S. Treasury accounts on behalf of Venezuela or its agencies (including the Central Bank and PDVSA) that are derived from the sale of natural resources or diluents.

— **Protects Funds from Attachment or Execution:** Prohibits any "attachment, judgment, decree, lien, execution, garnishment, or other judicial process" or transfers without express authorization, notwithstanding prior contracts, licenses, or permits.

— **Defines Funds as Venezuelan Property:** Funds are not the property of "any private party," including judgment creditors or commercial actors.

— **Precludes the FSIA's Commercial Activity Exception:** Provides that the funds "have not been and shall not be used for any commercial activity in the United States."

— **Affirms Sovereign Immunity:** Declares that placement into a U.S. Treasury account does not waive sovereign immunity and directs the Attorney General to assert sovereign immunity in litigation.

— **Asserts International Comity:** Finds that judicial process would interfere with U.S. foreign relations and undermine international comity.

In a press release associated with the order, the White House stated its principal objective is "preventing the seizure of Venezuelan oil revenue that could undermine critical U.S. efforts to ensure economic and political stability in Venezuela." The order protects from judicial attachment and execution funds held in U.S. Government accounts that are "derived from either the sale of natural resources from, or the sale of diluents to, the Government of Venezuela," including funds held in custody on behalf of Venezuela, its Central Bank, or its state-owned oil company PDVSA.

Creditors, investors and commentators quickly drew parallels to a superficially similar executive order issued in the wake of another U.S. intervention into an oil-rich and debt-burdened state. On May 22, 2003, President Bush signed Executive Order 13303 (the "Iraq Order") which prohibited attachment or execution on both funds in the Development Fund for Iraq and "all Iraqi petroleum and petroleum products" in the United States or under its control. In the following months and years, the United States led a holistic debt restructuring effort of Iraq's Saddam Hussein-era finances, which resulted in an 80% debt haircut for bilateral and commercial creditors.

The parallels between these executive orders, and the geopolitical events preceding them, raises questions about President Trump's economic plans for Venezuela, and what role its U.S. creditors and potential investors will play. To understand what might come next, it is useful to understand in more detail the nuances and distinctions that define this new executive order.

Comparing the Iraqi and Venezuelan Frameworks

The Iraqi asset protection framework outlined by President Bush's executive order rested on what can only be described as highly unusual circumstances–-namely, a global consensus on assisting Iraq in the aftermath of the overthrow of Saddam Hussein. Executive Order 13303 was issued in tandem with UN Security Council Resolution 1483, which obligated all member states to protect Iraqi oil assets and proceeds. The Development Fund for Iraq already existed, revenues were funneled through a clearly delineated mechanism, and international law supplied both legitimacy and reach. Creditor enforcement was not merely suspended in U.S. courts; it was effectively foreclosed worldwide.

For example, at the European Union level, Council Regulation (EC) No 1210/2003 provided that Iraqi petroleum (until title passed a purchaser) and proceeds and obligations arising from Iraqi petroleum sales, including amounts deposited into the Development Fund for Iraq, were to be immune from legal proceedings and not subjected to attachment, garnishment or execution, subject to limited exceptions. Under English law, the UN framework was implemented through domestic instruments made under the United Nations Act 1946, including the Iraq (United Nations Sanctions) Order 2003, which, among other things, expressly conferred privileges and immunities to the Development Fund for Iraq, its property and assets wherever located and by whomsoever held, including any rights or obligations owned by or to the Development Fund for Iraq, subject to limited exceptions. All petroleum, petroleum products and natural gas originating in Iraq also had immunity from suit and legal process as a matter of English law under the same order.

By contrast, at the time of this publication, there is no—and given current geopolitical dynamics will likely not be any—UN Security Council resolution, nor will there be any internationally mandated reconstruction fund or globally binding immunity regime. Instead, the Venezuela Order relies entirely on domestic executive authority, reinforced by a set of carefully framed findings. Section 4 is central: it declares the covered funds to be sovereign property, held in a custodial and non-commercial capacity, and therefore immune from attachment under the Foreign Sovereign Immunities Act's (the "FSIA's") commercial-activity exceptions. In that respect, the Venezuela Order is arguably more explicit than the Iraq Order in preempting the most common enforcement pathways pursued by creditors in U.S. courts.

Comparing the Iraq and Venezuela Executive Orders

Similarities

— **Domestic Legal Authority:** Both orders invoke IEEPA and the National Emergencies Act and declare a national emergency based on threats from attaching or executing on foreign assets.

— **Judicial Prohibition Language:** Both orders prohibit "any attachment, judgment, decree, lien, execution, garnishment, or other judicial process" against the protected assets.

— **Protection of Petroleum Revenue:** The Iraq Order covered Iraqi oil and associated interests; the Venezuela Order covers funds derived from the sale of natural resources or diluents.

Differences

— **International Legal Equivalency:** The Iraq Order was issued alongside a U.N. Resolution which required members to extend immunity to Iraqi assets. The Venezuela Order applies only within the United States and those subject to U.S. jurisdiction; Venezuelan assets lack similar protections from other jurisdictions. Notably, neither the EU nor the UK has, at the time of publication, implemented any similar legislation.

— **Structure of Protected Funds:** The Iraq Order protected the Development Fund for Iraq, established by Iraq's Central Bank and overseen by an International Advisory and Monetary Board for Iraq's economic reconstruction. The Venezuela Order establishes "Foreign Government Deposit Funds" in U.S. Treasury custodial accounts, though how the U.S. would receive Venezuelan revenues remains unclear.

— **Scope of Protected Assets:** The Iraq Order protected Iraqi petroleum assets. The Venezuela Order protects only Foreign Government Deposit Funds, but these can include revenue from "natural resources," not just oil.

— **Emphasis on Legal Immunity:** The Venezuela Order explicitly retains sovereign immunity for funds in U.S. Treasury accounts and guards against FSIA commercial activity challenges. The Iraq Order was silent on legal immunities.

At the same time, the scope of protection is narrower and more finely drawn in the Venezuela Order. Rather than insulating all oil assets and proceeds, the order applies to a defined category of "Foreign Government Deposit Funds." These comprise "funds paid to or held by the United States Government in designated United States Department of the Treasury accounts or funds on behalf of the Government of Venezuela or its agencies or instrumentalities, including the Central Bank of Venezuela and Petróleos de Venezuela, S.A., that are derived from either the sale of natural resources from, or the sale of diluents to, the Government of Venezuela or its agencies or instrumentalities."

That definition does a great deal of work, while leaving material questions unanswered.[1] It covers "funds," but not receivables or payment obligations owed by traders, customers and counterparties. It is keyed to custody and deposit, suggesting that protection may attach only once proceeds enter specified accounts. The inclusion of diluent sales broadens the category in one dimension while potentially exposing upstream payment flows in another. Compared to the Iraq Order's sweeping treatment of oil assets and proceeds, the Venezuela Order—at least as it currently stands—invites line-drawing, and with it the possibility of some litigation.

That risk is amplified by the structure through which future Venezuelan oil sales are expected to occur. To the extent that near-term exports are generated not by Venezuela or PDVSA but through newly formed joint ventures ("JVs") between PDVSA and U.S. energy companies, the executive order's protective framework may not apply. Such JVs (particularly if they are tiered, minority-owned by Venezuelan interests, or organized as U.S. entities) may fall outside the definition of an "agency or instrumentality" of the Republic of Venezuela under the FSIA. In that case, proceeds generated by those JVs could sit uncomfortably at the margins of the definition of "Foreign Government Deposit Funds," even if the Republic is the ultimate economic beneficiary. If the policy objective is to insulate future oil revenues regardless of the commercial vehicle used, the order may require revision or clarification to capture JV-based structures; otherwise, creditors may argue that those proceeds and receivables related thereto remain fair game, at least prior to deposit into protected accounts.

Alter Ego and Creditor Recoveries

The ownership structure adds another layer of complexity. Although the definition of Foreign Government Deposit Funds encompasses amounts held on behalf of PDVSA and the Central Bank of Venezuela, Section 4(a) of the order vests ownership of all such funds squarely in the Republic. No ownership interest is recognized in PDVSA or the Central Bank themselves. That is, the Venezuela Order appears to collapse ownership at the level of the state (at least for purposes of immunity and protection) without clearly explaining whether that collapse is meant to have broader consequences.

This ambiguity matters for alter-ego analysis. On the one hand, the order reinforces a narrative of unitary sovereign control over oil proceeds—an argument the Republic's creditors have long advanced in seeking to treat PDVSA as the state's alter ego. Executive findings that all covered funds are property of the Government of Venezuela may be cited as further evidence of pervasive control. On the other hand, one may argue that these findings are functional and limited: designed to establish immunity and custodial status, not to dissolve PDVSA's separate juridical personality for liability purposes. Alter-ego determinations ultimately rest with the courts under the FSIA, but the factual and political context in which those determinations are made (which are central for alter-ego determinations) has plainly shifted.

The order also sharpens the tension between Republic creditors and PDVSA creditors. If proceeds generated by PDVSA activity are treated as sovereign property

[1] While the scope and composition of the "Foreign Government Deposit Funds" remain unclear, they are likely related to a U.S.-Venezuela oil sales agreement announced by President Trump on January 6, 2026 and currently under negotiation.

and potentially deployed to satisfy Republic-level obligations, PDVSA creditors may find themselves structurally subordinated. Value that might otherwise have supported PDVSA's capital structure risks being redirected upward to the state. That raises not only questions of relative recovery, but also fundamental questions about treaty protections and takings. Using PDVSA-linked assets to satisfy sovereign debts could invite claims that creditor rights are being expropriated or impaired in violation of investment treaties, particularly if PDVSA creditors are effectively subordinated without a clear legal process.

In addition, because the Venezuela Order applies only within the United States and to persons subject to U.S. jurisdiction, it places U.S. creditors at a relative disadvantage. U.S. persons are constrained from executing against covered assets, while non-U.S. creditors remain free to pursue enforcement in jurisdictions not bound by U.S. executive action. This asymmetry did not arise in Iraq, where international law largely harmonized outcomes across fora. In the Venezuela case, it brings a familiar (i.e., OFAC's prior secondary-trading ban) but consequential distortion.

The order's implications for the CITGO sale process are similarly indirect but no doubt will be raised by parties seeking to hold up the sale process. While it is not entirely clear what the Trump Administration's current position is regarding the sale process, OFAC approval remains required, and the order underscores that preservation of sovereign and PDVSA property is a matter of U.S. national security and foreign policy.[2] That framing raises the prospect that OFAC approval in the process could be withheld or conditioned in ways that materially affect the sale. Such conditions would be consistent with the order's stated objectives, even if they complicate valuation and deal economics.

What the Venezuela Order does not do is eliminate creditor activity altogether. It restricts execution, not adjudication. Even while Section 3 prohibits judgments or other judicial process, such prohibition is limited to "with respect to the Foreign Government Deposit Funds" and does not prohibit litigation against Venezuela or PDVSA altogether. Creditors can continue to pursue judgments and arbitral award recognition in U.S. courts, both to preserve claims and to establish priority. Those judgments remain exportable to foreign jurisdictions not subject to the order. Unlike Iraq, where a UN-backed regime largely closed off non-U.S. enforcement, Venezuela remains exposed to parallel proceedings abroad.

Implications: Last Step or First Foot Forward?

Taken as a whole, the Venezuela Order appears to function less as a final resolution than as a gatekeeping mechanism. By insulating a defined pool of oil-related funds from attachment, it prevents chaotic, first-mover enforcement in the United States (where most litigation against Venezuela and PDVSA has taken place so far) and preserves executive control over key assets. In doing so, it creates the conditions for a more managed process (perhaps even a *de facto* receivership) in which assets are pooled, priorities negotiated, and new-money investors and/or creditors are invited, implicitly or explicitly, to participate in an allocation or restructuring in exchange for certainty. New money could sit at the top of such a structure; existing creditors could be induced to tender claims at a discount; and enforcement would give way to coordination.

By contrast, the Iraq Order functioned as a definitive move by the Bush Administration to protect Iraqi assets and associated oil revenues from international attachment ahead of a traditional restructuring of Iraq's debts. Following the order's promulgation in May 2003, the Bush Administration led efforts with the Paris Club and commercial creditors to negotiate a debt restructuring that respected the diplomatic and legal priority principles traditionally associated with an 'orderly' sovereign restructuring. The Iraq Order thus acted more as a way to keep commercial creditor parties at the traditional negotiating table. It did not create a new restructuring tool or a mechanism to

[2] Notably, in a January 11, 2026 interview, Secretary of Energy Chris Wright appeared to encourage the Treasury Department to approve the Citgo sale, calling it "fantastic" and "part of bringing redress to creditors."

facilitate new financings through which creditor recoveries might be allocated.

Iraq marked the outer boundary of how far executive action, reinforced by international law, can go in displacing creditors. Venezuela occupies a more contested middle ground: legally tighter in some respects, more porous in others, and ultimately dependent on how the U.S. authorities, foreign jurisdictions, and markets respond. The order has not resolved Venezuela's debt problem, but it has unmistakably altered the terrain on which new-money investors may lend and creditor recoveries will be determined.

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