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## The Controversial Conviction of the Citgo 6: a New Wave of Anti-Corruption Enforcement in Venezuela?

Corruption has long been a “chronic and well-known problem” in the Venezuelan oil industry.<sup>1</sup> In recent years, investigations—mostly led by U.S. authorities without assistance from their Venezuelan counterparts—into corruption schemes involving Venezuelan state-owned oil company PDVSA have caused many to question the Venezuelan government’s willingness to enforce the country’s own anti-corruption laws.<sup>2</sup> However, just last week, Venezuela made international headlines by convicting six U.S.-based oil executives for violations of local anti-corruption laws. Following a non-public trial, a Venezuelan court imposed criminal sentences far exceeding those typically handed down by U.S. judges pursuant to the U.S. Foreign Corrupt Practices Act, in what many have called a politically-motivated prosecution.<sup>3</sup>

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### Conviction of the Citgo 6 on Corruption Charges

On November 26, a Venezuelan court convicted and sentenced six executives of Houston-based oil refining company Citgo, a subsidiary of PDVSA, of violations of local anti-corruption laws based on their offer to refinance approximately \$4 billion in Citgo bonds in return for sixty million dollars (1.5% of the total deal). The executives, colloquially referred to as “the Citgo 6,” include five U.S. citizens and one U.S. permanent resident. Each received lengthy prison sentences for their part in the alleged scheme. Former Citgo vice presidents and U.S. citizens Gustavo Cárdenas, Jorge Toledo, Tomeu Vadell, Alirio José Zambrano, and José Luis Zambrano were sentenced to prison terms of nearly nine years; Citgo’s former president and U.S. permanent resident José Angel Pereira was sentenced to a prison term of more than 13 years.<sup>4</sup>

The Citgo 6 were arrested by Venezuelan military intelligence officers in November 2017 after arriving in Caracas for what they were told was a last-minute budget meeting at PDVSA headquarters. They subsequently spent three years detained in Venezuela awaiting trial on corruption charges. Beginning in August 2020, the Citgo 6 faced trial in a proceeding that was closed to the media and about which many details are still unknown. All six men maintain their innocence and plan to appeal their convictions.

<sup>1</sup> *Six U.S. Oil Executives Are Convicted of Corruption in Venezuela*, NY TIMES (Nov. 26, 2020), <https://www.nytimes.com/2020/11/26/world/americas/venezuela-citgo-oil-americans.html>. The World Bank’s Worldwide Governance Indicator places Venezuela at a 4.33 percentile rank for “Control of Corruption.” *Worldwide Governance Indicators*, World Bank (2019 data), <https://info.worldbank.org/governance/wgi/Home/Reports>.

<sup>2</sup> See, e.g., *Miami Businessman Pleads Guilty to Foreign Bribery and Fraud Charges in Connection with Venezuela Bribery Scheme*, U.S. DEPT. OF JUSTICE, OFFICE OF PUBLIC AFFAIRS (March 23, 2016), <https://www.justice.gov/opa/pr/miami-businessman-pleads-guilty-foreign-bribery-and-fraud-charges-connection-venezuela>.

<sup>3</sup> According to a 2016 study, there have only been two FCPA-related prison sentences that have met or exceeded the prison sentences in this case (one for 180 months in 2011 and one for 156 months in 2009). Tillipman, Jessica, *The Ten Longest FCPA-Related Prison Sentences* (Aug. 15, 2016), <https://fcpablog.com/2016/08/15/jessica-tillipman-the-ten-longest-fcpa-related-prison-senten/>.

<sup>4</sup> *EE.UU. pide el regreso al país de los seis ejecutivos de Citgo condenados en Venezuela por corrupción [translation: U.S. requests return to the country of the six Citgo executives convicted in Venezuela for corruption]*, El Comercio (Nov. 28, 2020), <https://elcomercio.pe/mundo/eeuu/venezuela-condena-por-corrupcion-a-6-altos-ejecutivos-de-citgo-la-filial-de-pdvsa-en-estados-unidos-pais-que-los-quiere-de-vuelta-noticia/>.

## International Controversy over the Decision

These convictions may signal a possible launch of anti-corruption enforcement in Venezuela and underscore the harsh criminal penalties that Venezuelan judges can impose under the local Law Against Corruption.<sup>5</sup> They may also foreshadow future convictions of PDVSA officials and PDVSA contractors (many of whom are still awaiting trial) by Venezuelan courts. Conversely, the convictions may represent the next chapter in the frayed diplomatic relationship between the U.S. and Venezuela. The long period of imprisonment of the Citgo 6 while awaiting trial, repeated delays in the court proceedings, the poor conditions of the prison in which the six were held, and the timing of the convictions—on the U.S. holiday of Thanksgiving—may evidence heightened animus.<sup>6</sup> Shortly after the convictions, U.S. Secretary of State Michael Pompeo condemned them as a product of “the illegitimate Venezuelan legal system” and demanded return of the individuals to the U.S.<sup>7</sup> Furthermore, the U.S. has formally recognized opposition leader Juan Guaidó as the rightful president of Venezuela, has publicly denounced Maduro as an illegitimate dictator, and has imposed financial sanctions on many members of Maduro’s administration.

### Key Takeaway

Whatever the motivation for these convictions, international entities and non-Venezuelan individuals, particularly those with U.S. ties, should be prepared for enhanced scrutiny by the Venezuelan government of foreign business transactions that touch Venezuela. Now, more than ever, it is important for foreign entities operating in Venezuela to ensure they have in place adequate internal controls to detect wrongdoing, including potential bribery and money laundering, and that they proactively assess the risk to their personnel operating in Venezuela for prosecution. Foreign entities doing business in the country should also consider training their personnel on the severe punishments that Venezuela has imposed for violations of its anti-corruption laws.

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<sup>5</sup> See *Citgo 6: US oil executives convicted of corruption in Venezuela*, BBC News (Nov. 27, 2020), <https://www.bbc.com/news/world-latin-america-55097195>.

<sup>6</sup> See *Anniversary of the Wrongful Detention of the CITGO-6 in Venezuela*, U.S. DEPT. OF STATE (Nov. 21, 2020), <https://www.state.gov/anniversary-of-the-wrongful-detention-of-the-citgo-6-in-venezuela/>; Diaz, Jaclyn, *6 U.S. Citgo Executives Convicted and Sentenced in Venezuela*, NPR (Nov. 27, 2020), <https://www.npr.org/2020/11/27/939418623/six-u-s-citgo-executives-convicted-and-sentenced-in-venezuela>; Salama, Vivian and Hansler, Jennifer, *‘CITGO 6’ found guilty and sentenced in Venezuela*, CNN (Nov. 27, 2020), <https://www.cnn.com/2020/11/26/politics/citgo-6-found-guilty-venezuela/index.html>.

<sup>7</sup> *The United States Condemns the Conviction of the Citgo 6*, U.S. DEPT. OF STATE (Nov. 27, 2020), <https://www.state.gov/the-united-states-condemns-the-conviction-of-the-citgo-6/>.