Spring 2023

The Waiting Game: Who Benefits from Recovered Assets Associated with Venezuelan State Corruption? Remission as a Solution

Alejandro Rodriguez Vanzetti

Follow this and additional works at: https://ecollections.law.fiu.edu/lawreview

Part of the Law and Politics Commons, Law and Society Commons, Legal Remedies Commons, Litigation Commons, Other Law Commons, and the Torts Commons

Online ISSN: 2643-7759

Recommended Citation
DOI: https://dx.doi.org/10.25148/lawrev.17.4.12

This Comment is brought to you for free and open access by eCollections. It has been accepted for inclusion in FIU Law Review by an authorized editor of eCollections. For more information, please contact lisdavis@fiu.edu.
THE WAITING GAME: WHO BENEFITS FROM RECOVERED ASSETS ASSOCIATED WITH VENEZUELAN STATE CORRUPTION?
REMISSION AS A SOLUTION

Alejandro Rodriguez Vanzetti*

ABSTRACT

The Bolivarian Republic of Venezuela (“Venezuela”) has, and continues to undergo, significant political and economic challenges stemming from government corruption. In response, the United States government has seized assets of current or former Venezuelan state officials associated with criminal wrongdoing, imposed sanctions on Nicolás Maduro’s government, and proposed legislation to combat corruption.

The Department of Justice (“DOJ”) has led dozens of prosecutions against those responsible for these crimes through its use of asset forfeiture, a critical tool in the recovery of illicit proceeds. An estimated $300 billion of these assets are held in South Florida alone, with $1.5 billion identified in U.S. court filings. The U.S. government has freed up assets on a very limited basis for emergency use by the U.S.-recognized opposition government. This begs a few questions: will these assets be returned to victims of corruption, and, if so, when, to whom, and how?

To remedy this dilemma, the U.S. government should open the door to reviewing petitions for remission: a DOJ-led mechanism used to compensate victims that experienced a pecuniary loss as a result of a crime underlying forfeiture. This process, which is authorized under the forfeiture statutes and other regulations, has proven to be successful when compensating victims in large, multi-victim, white-collar crime cases. However, the review and approval of remission applications lies solely in the hands of the DOJ, with no possibility for judicial review. Still, victims that can meet the intricate requirements of remission have a chance at compensation for their financial losses. Through this process, the DOJ’s Asset Forfeiture Program can

* Juris Doctor 2023, Florida International University (FIU) College of Law. Many thanks to Arnoldo (Arnie) Lacayo of Sequor Law, Associate Dean Manuel Gomez of FIU Law, and the FIU Law Review for their contributions and feedback throughout the writing process. A special thank you to my family for their continued support and encouragement.
accomplish one of its primary goals in support of those affected by Venezuelan-state corruption: recover and return forfeited assets to victims.¹

I. Introduction ..................................................................................... 858
II. Corruption in Venezuela and U.S. Efforts to Combat It ................. 859
   A. Background on the DOJ’s Asset Forfeiture Efforts ................. 862
   B. DOJ Efforts Associated with Venezuelan State Crime .......... 863
   C. Third-Party Attempts at Compensation ................................... 867
III. Mechanisms for Victim Compensation .......................................... 869
   A. Overview ................................................................................. 869
   B. Authority for Remission .......................................................... 870
   C. Successful Return of Funds to Victims .............................. 873
IV. Remission Applied to Venezuelan State Corruption ...................... 877
   A. Gourevitch and Guruceaga ...................................................... 877
   B. Challenges Faced in Context of Venezuelan State Corruption 879
   C. Options for a Successful Remission Application ................... 880
   D. Application to Specific Victims .............................................. 883
      1. Hypothetical #1: Maria ...................................................... 883
      2. Hypothetical #2: Interim or Democratically Elected
         Government ....................................................................... 884
   E. Special Master and Non-Remission Alternatives .................. 885
V. Conclusion ...................................................................................... 886

I. INTRODUCTION

Your business was expropriated. The pension you were promised was never received. The government owes you money, and there’s nothing you can do about it because you have neither the time nor the resources to take on a government where the rule of law is virtually nonexistent. Meanwhile, those responsible for your hardships continue to commit crimes in the U.S. and abroad. The funds are run through a series of complex international financial transactions, making them nearly impossible to trace. Dozens of individuals associated with Venezuelan state-led corruption reap the fruits of these and other crimes. And even though the Venezuelan opposition government has established a procedure for creditors to recover assets associated with corruption, small-scale victims are left to fend for themselves. This circumstance presents a unique opportunity for the U.S. to recover and return illicit assets to these and other victims. Through remission, individuals and businesses that were affected by corruption may be

compensated if they can prove a pecuniary loss as a result of the commission of an offense underlying forfeiture. At a higher level, releasing assets to an interim or opposition Venezuelan government (or the legitimate democratic authority at that time) can provide the necessary aid to the country as it rebuilds institutions that suffered at the hands of government corruption.

Although one of the main goals of the DOJ’s Asset Forfeiture Program is to recover and return forfeited assets to victims using the remission or restoration processes, the U.S. government has blocked attempts by the Venezuelan opposition government from acquiring a slice of the assets that have been seized so far. As of this comment’s publishing, much of these assets are held by the U.S. government and are beyond the reach of the victims of crime.

This comment seeks to propose a legal framework for the DOJ to allow funds to flow to victims of Venezuelan state-related crimes through the use of remission, a mechanism that has historically been used to compensate victims of complex crimes. Part II will analyze U.S. efforts to combat Venezuelan state corruption thus far, introduce key Venezuelan corruption-related DOJ prosecutions, and highlight previous attempts made by Venezuelan-associated entities to recover forfeited assets. Part III will explore the different avenues of compensation that exist for victims of crime, focusing on remission as a preeminent tool. This section will also provide examples of the successful use of remission and other mechanism to compensate victims of financial crimes. Part IV applies this legal framework to Venezuelan-related prosecutions and provides hypotheticals that place the remission process in a real-life context.

II. CORRUPTION IN VENEZUELA AND U.S. EFFORTS TO COMBAT IT

The political climate in Venezuela needs little introduction. Hugo Chávez’s populist platform and rise to power in 1999 brought on a redistribution of oil wealth, a concentration of power, and a disregard for basic human rights. Chávez and his successor, Nicolás Maduro, chartered a policy of unprecedented support for Cuba, its ideological neighbor, further straining U.S. relations with Venezuela. But the U.S. government’s stance

---

2 See id.
on Venezuela’s internal politics has been largely consistent over the last twenty years, standing in opposition of the chavismo movement and characterizing Maduro as an authoritarian ruler who mishandled Venezuela’s economic and humanitarian crisis. In 2019, following an ongoing power struggle in the South American country, the U.S., along with nearly sixty countries, recognized Juan Guaidó as interim President of Venezuela. In the years that followed, only about eleven of those countries ended diplomatic relations with the Maduro government, and Venezuelans’ support of Guaidó dwindled as a result of the slow pace of change under his leadership. In December of 2022, Guaidó was voted out of power. Going forward, a committee consisting of opposition government members will oversee assets located abroad and initiate negotiations with Maduro to hold a free election in 2024.

Reports from inside Venezuela show that an astronomical amount of government funds have been misappropriated under Chávez and Maduro’s leadership. In 2017, the National Assembly (led by the Guaidó government) announced that it had tracked about $87 billion in misappropriated funds. A legislative committee estimated that the cost of corruption over the span of twenty years was more than $350 billion. Further, the Organized Crime and Corruption Reporting Project (“OCCRP”) in a 2016 report approximated the total amount of funds stolen by the Maduro regime at about $70 billion per billion in subsidies and investments. Silvia Pedraza & Carlos A. Romero, Contemporary Crises in Cuba: Economic, Political, and Social, 17 FIU L. REV. 609, 613 (2023) (citing Carmelo Mesa-Lago, There’s Only One Way Out for Cuba’s Dismal Economy, N.Y. TIMES (Mar. 28, 2019), https://www.nytimes.com/2019/03/28/opinion/cuba-economy.html).

5 See SEELKE ET AL., supra note 3, at 1.
6 See id. at 5.
12 See id.
13 Id.
year. Additionally, an estimated $120 billion were lost to corruption from 2002 to 2015 according to a 2018 report by the former chair of the board of Transparency International.

The U.S. Department of the Treasury, DOJ, and Department of Homeland Security have coordinated their efforts to identify, confiscate, and forfeit assets tied to Venezuelan state corruption. An estimated $300 billion in illicit funds are held in South Florida, primarily in real estate. Proceeds of corruption in Venezuela listed in U.S. court filings total an estimated $1.5 billion. The Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) has published several reports highlighting widespread Venezuelan state corruption and has also issued alerts to financial institutions regarding corrupt transactions.

Congress has also taken steps to provide relief for Venezuelans through legislative action. Under the National Defense Authorization Act (“NDAA”), Congress prohibited the Department of Defense from contracting with those who do business with the Maduro government. Later, the introduction of the Venezuela Emergency Relief, Democracy Assistance, and Development Act of 2019 (“VERDAD Act”) would provide support for the country’s interim government as well as $400 million in humanitarian relief and proposed visa restrictions for family members of sanctioned individuals, among other solutions. One of the elements of the VERDAD Act includes “an assessment of whether the United States or another member of the international community should establish a managed fund to hold . . . assets . . . that could be returned to a future democratic government in Venezuela.”

Information regarding the source and use of this fund is not publicly

14 Id.
15 Id.
17 Camilleri, supra note 11, at 10.
19 SEELKE ET AL., supra note 3, at 17.
21 Id. at § 502(c)(3).
available. Congress also condemned past presidential elections and has pledged $33 million in support of democracy programs in Venezuela.²²

A. Background on the DOJ’s Asset Forfeiture Efforts

Assets can be recovered via administrative, civil, or criminal proceedings.²³ The most highly publicized recovery efforts against Venezuelan state-led corruption are brought via civil or criminal proceedings.²⁴ Civil forfeiture is an in rem judicial proceeding that begins against a property derived from or used in connection with a criminal offense.²⁵ For civil forfeiture, a criminal conviction is not necessary.²⁶ This tool is particularly useful because it provides a pathway for the government to bring a case against property that would not be reached through criminal forfeiture, such as property located abroad.²⁷

Criminal forfeiture, on the other hand, requires a criminal conviction and is an in personam action that is governed by Federal Rule of Criminal Procedure 32.2.²⁸ Federal statutes authorize criminal forfeiture for certain crimes, including money laundering under 18 U.S.C. §§ 1956, 1957, and 1960; mail fraud and wire fraud under 18 U.S.C. §§ 1341 and 1343; embezzlement under 18 U.S.C. § 656; and counterfeiting under 18 U.S.C. § 472, among others.²⁹ Once property is forfeited, it may be transferred to either victims, valid owners who have expressed interest, government agencies that contributed to the forfeiture, or the Asset Forfeiture Fund ("AFF").³⁰ The AFF is a fund authorized by statute³¹ to pay for costs associated with forfeitures, including costs of managing and disposing of the property, satisfying liens, and other costs.³²

---

²² Seelke et al., supra note 3, at 25.
²⁴ See discussion infra p. 5–12.
²⁵ Types of Federal Forfeiture, supra note 23.
²⁶ See id.
²⁷ See id.
²⁸ Fed. R. Crim. P. 32.2.
B. DOJ Efforts Associated with Venezuelan State Crime

The U.S. has not been silent when it comes to the relinquishment of seized Venezuelan state funds. In an August 2020 Report to Congress on Recovering Assets Stolen from the Venezuelan People, the State Department indicated that it “believe[s] that funds subject to forfeiture should be returned to the people of Venezuela to the greatest extent possible provided that doing so can be done in accordance with operative U.S. laws, regulations, and processes.” In fact, some of those funds have been released for use by the Guaidó government. In July of 2020, $17 million in frozen funds were distributed through international organizations to purchase supplies for medical workers. The Treasury Department also released funds from the Federal Reserve Bank of New York to pay 62,000 healthcare workers $300 each. Of the funds forfeited by the DOJ, however, the Trump administration also permitted the use of $20 million to assist 65,000 healthcare workers during the COVID-19 pandemic.

The DOJ appears to be at the forefront of the battle against Venezuelan state corruption. Its March 26, 2020, press conference introduced bombshell criminal charges against Maduro and fourteen other current and former Venezuelan officials. Former U.S. Attorney Ariana Fajardo Orshan stated that approximately $450 million had been seized from high-level regime officials and co-conspirators. Nine federal court cases are highlighted in the press release, which came after a decade-long effort by the U.S. government. These cases, as well as others, are summarized below:


35* Id.


United States v. Menegazzo Carrasquel et al., Case No. 2:10-CR-01462: This 2011 District of Arizona case alleges conspiracy to violate the Arms Export Control Act (“AECA”), violation of the AECA, and aiding and abetting against three former members of the Venezuelan air force: Giuseppe Luciano Menegazzo Carrasquel, Oscar Rafael Colmenarez Villalobos, and Roy Wayne Roby.\(^\text{40}\) The defendants allegedly conspired with others, including individuals associated with an aviation company in Arizona, to smuggle defense articles from the U.S. to Venezuela (designated on the United States Munition List) without first obtaining a license or written authorization for the exports.\(^\text{41}\) Carrasquel and Roby entered into plea agreements and were sentenced to nineteen months’ imprisonment and eighteen months’ imprisonment, respectively.\(^\text{42}\) Counsel for Villalobos has not officially appeared. Among the forfeited assets listed in the complaint are military aircrafts as well as $1.8 million.\(^\text{43}\)

United States v. Vladimir Padrino Lopez, Case No. 1:19-CR-176: A 2019 District of Columbia case against Vladimir Padrino Lopez (the Minister of Defense of the Maduro government) alleges Conspiracy to Distribute and Possess with Intent to Distribute Cocaine on Board an Aircraft Registered in the U.S.\(^\text{44}\) The government is also seeking forfeiture of all assets associated with the alleged crime.\(^\text{45}\) The U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) included Padrino Lopez on its Specially Designated Nationals List.\(^\text{46}\) Padrino Lopez continues to serve in the Maduro government.

United States v. Moreno Perez, Case No. 20-2407JJO: Moreno Perez is the current Chief Justice of the Venezuelan Supreme Court under the Maduro government.\(^\text{47}\) The 2020 complaint filed in the Southern District of Florida alleges conspiracy to commit money laundering and money laundering in connection with the receipt of tens of millions of dollars and bribes to fix


\(^43\) See generally Indictment, United States v. Menegazzo-Carrasquel, No. 2:10-cr-01462-GMS (D. Ariz. Oct. 12, 2010), ECF. No. 3.

\(^44\) DOJ Charges, supra note 39.


\(^46\) DOJ Charges, supra note 39.

\(^47\) Id.
dozens of civil and criminal cases in Venezuela.\textsuperscript{48} The criminal complaint shows that from 2012 to 2016, Moreno Lopez spent approximately $3 million in South Florida, purchasing a private aircraft and spending $600,000 in credit or debit card purchases.\textsuperscript{49}

\textit{United States v. Luis Alfredo Motta Dominguez, et al.}, Case No. 1:19-CR-20388: Motta Dominguez is a former Minister of Energy who was charged in 2019 in the Southern District of Florida for conspiracy to commit money laundering and seven counts of money laundering.\textsuperscript{50} A second defendant, Eustiquio Jose Lugo Gomez, who is a former Brigadier General of the Venezuelan National Guard, was charged with the same crimes.\textsuperscript{51} Both are fugitives.\textsuperscript{52}

\textit{United States v. Nestor Luis Reverol Torres, et al.}, Case No. 1:15-CR-20: Reverol Torres (former General Director of Venezuela’s La Oficina Nacional Antidrogas (“ONA”)) and Edylberto Jose Molina (sub-director of Venezuela’s ONA, and currently Venezuela’s military attaché to Germany) were charged in the Eastern District of New York for participating in an international cocaine distribution conspiracy.\textsuperscript{53}

\textit{United States v. Vassyly Kotosky Villarroel Ramirez, et al.}, Case No. 1:11-CR-247: Villarroel Ramirez (captain in the Venezuelan Guardia Nacional), Adriana Zunilde Suppa Penate (customs broker who arranged the shipping of cocaine from Venezuela to Mexico),\textsuperscript{54} and Rafael Antonio Villasana Fernandez (officer in the Venezuelan Guardia Nacional) were charged in 2013 with participating in an international cocaine distribution conspiracy.\textsuperscript{55}

\textit{United States v. Nicolas Maduro Moros}, Case No. 1:11-CR-205: Maduro Moros, Diosdado Cabello Rondón (illegitimate leader of Venezuela’s Constituent Assembly), Hugo Armando Carvajal Barrios (former member of the Venezuela’s Constituent Assembly), Cliver Antonio

\textsuperscript{48} Id.

\textsuperscript{49} Id.

\textsuperscript{50} Id.


\textsuperscript{52} See Fugitive Notice, United States v. Motta Dominguez, No. 1:19-cr-20388-JEM (S.D. Fla. Aug. 28, 2019), ECF. No. 5.


\textsuperscript{55} Id.
Alcalá Cordones (former Major General of the Venezuelan Army), Luciano Marin Arango (member of the Revolutionary Armed Forces of Colombia ("FARC")), and Seuxis Paucis Hernández Solarte (member of the FARC), have been charged with participating in a narco-terrorism conspiracy and conspiring to import cocaine into the United States, among other drug and firearm-related charges.⁵⁶

*United States v. Tareck Zaidan el Aissami Maddah*, Case No. 1:19-CR-144: El Aissami Maddah (Venezuela’s Vice President for the economy), Joselit Ramirez Camacho (Venezuelan superintendent of cryptocurrency ("Sunacrip")), and Samark Jose Lopez Bello (Venezuelan businessman) were charged in the Southern District of New York with crimes related to efforts to evade sanctions imposed by OFAC against Maduro, El Aissami Maddah, and Lopez Bello.⁵⁷

*United States v. Luis Carlos de Leon-Perez*, Case No. 1:17-CR-514: Luis Carlos De Leon-Perez (former Financial Director of a state-run electric company and subsidiary of Petróleos de Venezuela, S.A. ("PDVSA")), Nervis Gerardo Villalobos-Cardenas (former Vice Minister of Electrical Energy), Cesar David Rincon-Godoy (former General Manager of the procurement subsidiary of PDVSA, Bariven), Alejandro Istitiriz-Chiesa (Assistant to the president of Bariven), and Rafael Ernesto Reiter-Munoz (Former Corporate Security Chief at PDVSA) were charged in 2017 in the Southern District of Texas with conspiracy to commit money laundering, among other crimes.⁵⁸

*United States v. Alex Nain Saab Moran*, Case No. 19-20450: More recently, the extradition of Colombian businessman and financial fixer of Maduro, Alex Saab, has captured significant media attention as Maduro’s government fought Saab’s extradition.⁵⁹ Saab was charged with conspiracy to launder money under 18 U.S.C. § 1956(h), and seven counts of money laundering under 18 U.S.C. § 1956(a)(2) in connection with a scheme to pay bribes to take advantage of Venezuela’s government-controlled exchange rate.⁶⁰ After his extradition to the United States from Cape Verde, the DOJ asked the judge to drop seven of the initial eight charges against Saab in order

---

⁵⁶ *See DOJ Charges, supra note 39.*

⁵⁷ *Id.*

⁵⁸ *See generally Indictment, United States v. De Leon-Perez, No. 4:17-cr-00514 (S.D. Tex. Aug. 23, 2017), ECF. No. 1.*


to comply with assurances made to the government of Cape Verde.\textsuperscript{61} Saab is awaiting trial in the Southern District of Florida.\textsuperscript{61} United States v. Guruceaga, Case No. 1:18-cr-20685: In Guruceaga, the government alleged a multi-billion dollar laundering scheme perpetrated by a group of well-connected businessmen and government officials.\textsuperscript{62} According to the Criminal Complaint, $1.2 billion were embezzled from PDVSA, the Venezuelan state-owned oil company, through a currency exchange scheme.\textsuperscript{63} The alleged scheme virtually multiplied U.S. Dollars to Bolivars (Venezuelan currency) using the government’s foreign currency exchange system.\textsuperscript{64} All eight defendants were charged with conspiracy to commit money laundering (18 U.S.C. § 1956(h)), among other offenses.\textsuperscript{65}

\textbf{C. Third-Party Attempts at Compensation}

In an effort to reduce Venezuela’s debts to creditors, Guaidó’s government established a procedure that authorized creditors of Venezuela to sue “the holders of Venezuelan assets obtained through acts of corruption,” and to use the recovered assets “to repay the debts owed by the Republic.”\textsuperscript{66} The mechanism requires that a proposal be submitted to the Special Attorney General of the Republic with all necessary documentation, including the final judgment obtained by the creditor.\textsuperscript{67} Creditors must agree to waive their right to pursue Venezuelan public entities, at least until the pending judgment enforcement proceedings conclude.\textsuperscript{68} If the Special Attorney General approves the proposal, he or she may contact OFAC stating that Venezuela has no objection to the license request made by the creditor.\textsuperscript{69} The effect of this law on creditors’ post-judgment actions could significantly

\begin{itemize}
  \item \textsuperscript{61} See Order of Dismissal, United States v. Saab Moran, No. 1:19-cr-20450 (S.D. Fla. Nov. 1, 2021), ECF. No. 64.
  \item \textsuperscript{62} See Criminal Complaint at 3–8, United States v. Guruceaga, No. 1:18-cr-20685 (S.D. Fla. July 23, 2018), ECF. No. 3.
  \item \textsuperscript{63} \textit{Id.} at 6.
  \item \textsuperscript{64} \textit{Id.} at 4.
  \item \textsuperscript{65} See Indictment, United States v. Guruceaga, No. 1:18-cr-20685 (S.D. Fla. Aug. 16, 2018), ECF. No. 19.
  \item \textsuperscript{66} Exhibit C of Judgment Creditor’s Reply in Further Support of Its Motion for Leave to Amend by Interlineation the \textit{Ex Parte} Expedited Motion to Commence Proceedings Supplementary, to Implead Defendants & For Issuance of Statutory Notices to Appear, Casa Express Corp. v. Bolivarian Republic of Venez., No. 1:21-mc-23103 (S.D. Fla. Aug. 27, 2021), ECF. No. 50-3.
  \item \textsuperscript{67} \textit{Id.}
  \item \textsuperscript{68} \textit{Id.}
  \item \textsuperscript{69} \textit{Id.}
\end{itemize}
alleviate Venezuela’s debts, which have been reported to be approximately $140 billion.\footnote{Venezuela’s Debt Problem: To Default or To Pay, BBC NEWS (Nov. 13, 2017), https://www.bbc.com/news/world-latin-america-41967871.}


The government’s opposition to restitution rested on two arguments: Bariven is excluded from the CVRA’s definition of “crime victim” because (1) it is a state-owned instrumentality of the foreign sovereign of Venezuela; and (2) it was a participant in the bribery and money laundering scheme charged by the government.\footnote{See Gov’t’s Response to Bariven S.A.’s Mot. for Recognition of Its Rights as a Victim & Entitlement to Restitution at 6, United States v. Rincón-Fernandez, No. 4:15-cr-00654 (S.D. Tex. Feb. 20, 2017), ECF. No. 113.} The Court denied Bariven’s motion seeking recognition as victim without prejudice, noting that the motion was premature and was more properly addressed at the time of the Defendants’ sentencing.\footnote{Order, United States v. Rincón-Fernandez, No. 4:15-cr-00654 (S.D. Tex. Feb. 20, 2017), ECF. No. 114.}

In Guruceaga, PDVSA similarly sought recognition as a victim of the crimes committed by one of the defendants, moving for an award of restitution of $560 million.\footnote{Mot. of Petróleos de Venez., S.A. for Victim Status & Restitution, & Inc. Memorandum at 1, United States v. Ortega, No. 1:18-cr-20685, (S.D. Fla. Apr. 24, 2020), ECF. No. 191 [hereinafter Ortega Motion].} PDVSA attempted to use the CVRA and the MVRA, arguing that it suffered pecuniary losses exceeding $560 million as a result of the defendant’s false-investment schemes that were perpetrated
during his employment with PDVSA. PDVSA highlighted the U.S. recognition of Guaidó as Interim President, likely hoping to signal that the funds, if restituted, would land in safe hands. But its efforts failed after the Court held that PDVSA is not a “person” covered under the CVRA and not a “victim” covered under the MVRA. Rather than focusing on the alleged causal connection between the crime committed and PDVSA as “victim,” the Court focused on how PDVSA was complicit in the crime.

III. MECHANISMS FOR VICTIM COMPENSATION

A. Overview

Restitution, restoration, and remission each work to compensate victims. Restitution is intended to make a crime victim whole and prevent unjust enrichment to the perpetrator. The mechanism was introduced in 1982 by Congress when it enacted the Victim Witness Protection Act (“VWPA”). Later in 1996, Congress enacted the MVRA, which made restitution a mandatory part of sentencing in federal criminal cases, regardless of the defendant’s financial state. Although the MVRA was a big step in criminal prosecutions, it was mostly ineffective at compensating victims in complex schemes that included hundreds of victims. The creation of the CVRA in 2014 followed, requiring officers and employees of the DOJ to “make their best efforts to see that crime victims are notified of, and accorded” certain rights, “including the right to full and timely restitution as provided in law.”

But the MVRA provides exceptions to the rules establishing mandatory restitution for victims if:


77 Ortega Order, supra note 76, at 5–6.

78 See Asset Forfeiture Pol’y Manual, supra note 30, at 163.


80 Id.

81 Id.

the number of identifiable victims is so large as to make restitution impracticable; or determining complex issues of fact related to the cause or amount of the victim’s losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.\footnote{Mandatory Victims’ Restitution Act (MVRA) of 1996, 18 U.S.C. § 3663A(c)(3).}

Enter restoration and remission. Authority for both restoration and remission exists for virtually all offenses: 18 U.S.C. § 981(e)(6) applies to civil forfeiture; 21 U.S.C. § 853(i)(1) governs the procedure for disposing property criminally forfeited under the drug abuse prevention and control laws; 18 U.S.C. § 982(b)(1) extends those procedures to most other criminal offenses.\footnote{See Asset Forfeiture Pol’y Manual, supra note 30, at 163.} Restoration is used to satisfy the defendant’s order of restitution by transferring forfeited property to the court.\footnote{Id. at 167.} It requires a court order of restitution and an order (or declaration) of forfeiture.\footnote{Id. at 168.} For remission, the DOJ solicits, considers, and rules on petitions for payment, which can be submitted by victims. No criminal conviction or restitution order is needed; only a forfeiture of assets.\footnote{Id. at 173.}

\section*{B. Authority for Remission}

“The remission of forfeitures is neither a right nor a privilege, but an act of grace.”\footnote{In re Sixty Seven Thousand Four Hundred Seventy Dollars ($67,470.00), 901 F.2d 1540, 1543 (11th Cir. 1990); United States v. One 1961 Cadillac, 337 F.2d 730, 733 (6th Cir. 1964); Arca Airlines v. U.S. Customs Serv., 726 F. Supp. 827, 830 (S.D. Fla. 1989); LaChance v. Drug Enf’t Admin., 672 F. Supp. 76, 79 (E.D.N.Y. 1987).} One of the purposes of the regulation is to grant the executive the power to ameliorate the potential harshness of forfeiture.\footnote{United States v. One 1976 Porsche 911S, 670 F.2d 810, 813 (9th Cir. 1979); One 1961 Cadillac, 337 F.2d at 733; In re Sixty Seven Thousand Four Hundred Seventy Dollars ($67,470.00), 901 F.2d at 1543.} The remission power was proposed and put in motion by Alexander Hamilton, giving the Treasury Secretary broad authority to return seized property to those who initially violated the law.\footnote{Kevin Arlyck, The Founders’ Forfeiture, 119 COLUM. L. REV. 1449, 1452 (2019).} Hamilton and his successors felt obligated to exercise the remission authority, granting over ninety percent of applications between 1789 and 1807.\footnote{Id.} Today, remission requirements are much stricter
than they were in the past. Still, the Attorney General exercises its remission authority in a number of civil and criminal forfeiture matters, ensuring that victims of crime are treated fairly while incurring little to no expenses, which avoids the depletion of funds from the forfeited assets.

Remission is governed by 28 C.F.R. Part 9. The regulation states that its purpose is to “provide a basis for the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture . . . .” Once assets are judicially forfeited, the Attorney General has the sole authority to distribute them to owners, lienholders, and victims. Then, victims are notified of the opportunity to file a petition for remission. Victims should be notified by mail and potential unknown victims may be notified by publication. The USAO must also send a notice of seizure and intent to forfeit property to any persons who may have a present ownership interest in the property, advising them to submit a petition for remission or mitigation within thirty days of the receipt of the notice. Officials are required to deny applications who do not establish a good faith and legally cognizable interest in the seized property.

The Attorney General delegates the authority to decide petitions for remission in judicial cases to the Chief of the Money Laundering and Asset Recovery Section ("MLARS"). To be considered a victim, the person seeking remission must have “incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture.” The requirements needed to file for remission are comprehensive:

1. A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported by documentary evidence including invoices and

---

92 See generally 28 C.F.R. § 9.3(b) (allowing only persons who fit into the regulation’s intricate requirements to submit applications and allowing almost no recourse after denial of applications).
93 U.S.’ Motion to Strike Claim of Victim Trinidad and Tobago for Lack of Standing at 7, United States v. One Piece of Real Prop. Located at 13500 S.W. 63rd Ave Pine Crest, Fla. et al., No. 1:07-cv-20368, (S.D. Fla. May 30, 2007), ECF. No. 35.
95 Id.
96 28 C.F.R. § 9.4(a).
97 28 C.F.R. § 9.5(a)(1).
99 28 C.F.R. § 9.2 (emphasis added). Note that Title 18 crimes that do not contain forfeiture provisions may still be subject to forfeiture as long as the offense underlying the forfeiture includes a provision containing forfeiture, such as money laundering. See Anthony Saler, Petition the Government or Go to Court: What an Innocent Victim Should Do When the Government Seizes Property for Forfeiture, 53 CONSUMER FIN. L. Q. REP. 16, 19 (1999).
receipts; (2) The **pecuniary loss** is the **direct result** of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of a criminal offense; (3) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture; (4) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and (5) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.\(^{100}\)

If a victim’s loss is from property damages, physical injuries, or from a tort related to the illegal activity that the forfeiture was based on, the victim is ineligible for remission.\(^{101}\) The statute also requires that the victim’s pecuniary loss be supported by documentary evidence such as invoices and receipts.\(^{102}\) However, victims do not need to show that their funds are among the funds that were forfeited in order to establish eligibility.\(^{103}\) Remission is limited to the “fair market value of the property of which the victim was deprived as of the date of the occurrence of the loss.”\(^{104}\) The term “fair market value” is not defined in the regulation.

The ruling official may deny petitions where:

1. There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims; 
2. The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the Government in determining whether to grant remission; or 
3. The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.\(^ {105}\)

There is no right to a hearing on the petition and judicial review of a denial of remission is not available.\(^ {106}\) Petitioners are entitled to one request

\(^{100}\) 28 C.F.R. § 9.8(b) (emphasis added).  
^{101} 28 C.F.R. § 9.8(d).  
^{102} 28 C.F.R. § 9.8(b)(1).  
^{104} 28 C.F.R. § 9.8(c).  
^{105} Id. at § 9.8(e).  
for reconsideration, which is reviewed and decided by a different ruling official within the Asset Forfeiture and Money Laundering Section (“AFMLS”). Importantly, the regulation does not treat non-U.S. citizens differently than U.S. citizens. This significantly expands the reach of remission for victims living abroad. Finally, MLARS may hire a trustee or claims administrator (also known as a “special master”) in large, multi-victim cases to notify potential victims, process petitions, and make decision recommendations.

In FY 2021, $782 million were expensed to return property to qualifying victims. The estimates for FY 2022 and 2023 are $357 million and $280 million, respectively. According to the Department of Justice’s 2023 performance budget, “a significant portion” of proceeds are paid to victims when victims are identified. In fact, payment to victims represents thirty-seven percent of all the Asset Forfeiture Program’s expenses sustained over the last ten years.

C. Successful Return of Funds to Victims

Over the last twenty-three years, over $9 billion were returned to victims of financial fraud and theft. The government’s success is attributed to its cost-saving capabilities in asset tracing and the tools available to it by statute. As such, the government can recover more assets than private parties—including asset recovery firms and bankruptcy trustees—and can collect on a judgment faster than “untutored or impecunious victims of crime.” Victims largely rely on the government to recover and distribute assets, and courts have acknowledged as much: “a victim’s hope of getting

108 Id. at § 9.9(c); See Asset Forfeiture Pol’y Manual § 14–A.3 (2021).
110 Id.
111 Id. at 10.
112 Id.
113 Id. at 2.
paid may rest on the government’s superior ability to collect and liquidate a defendant’s assets.”\textsuperscript{117}

Remission has been successfully used as a tool in white-collar multi-victim cases. In \textit{Adelphia Communications Corp.}, John J. Rigas, and his son, Timothy J. Rigas, were convicted of securities fraud and other offenses at trial after misappropriating billions of dollars from Adelphia, the nation’s sixth-largest cable television company in the 1990s.\textsuperscript{118} Given the complexity and high number of victims, the Attorney General initiated the process of remission pursuant to 28 C.F.R. Part 9, and a special master was appointed to identify, notify, and verify victims and to recommend distribution to the Attorney General.\textsuperscript{119} Over $700 million were forfeited and distributed.\textsuperscript{120} The district court decided not to impose a restitution order, which was later upheld by the Second Circuit.\textsuperscript{121} The appellate court noted that the case was complex (with numerous victims) and held that the lower court had not erred in substituting restitution for remission.\textsuperscript{122}

A second and more well-known example of the use of remission (and subsequently a compensation fund) is the case of Madoff.\textsuperscript{123} After being sentenced to 150 years in prison for running the largest fraud scheme in history, 40,000 victims were compensated using $3.7 billion in forfeited funds.\textsuperscript{124} Given the scope and duration of the fraud, calculating victim losses was particularly difficult.\textsuperscript{125} A special master was appointed, who worked with the government and the Securities Investor Protection Act Trustee to evaluate victims’ petitions for remission.\textsuperscript{126}

An example of a sweeping prosecution that ended in successful applications for remission by \textit{organizations} as opposed to \textit{individuals} is the case of FIFA.\textsuperscript{127} More than 50 individuals and corporate defendants were

\textsuperscript{117} \textit{Id.}

\textsuperscript{118} \textit{Id.}

\textsuperscript{119} \textit{Id.}

\textsuperscript{120} \textit{Id.}

\textsuperscript{121} \textit{Id.}

\textsuperscript{122} \textit{Id.}

\textsuperscript{123} \textit{Id.; Richard C. Breeden and RCB Fund Services LLC: About the Distribution Agent, RCB FUND SERVICES,} \url{https://madoffvictimfund.com/about-rcb/}.

\textsuperscript{124} \textit{Id.; Cohen Levin & Ramachandran, supra note 79, at 18.}

\textsuperscript{125} \textit{Press Release, U.S. Dep’t of Just., Justice Department Approves Remission of Over $32 Million in Forfeited Funds to Victims in the FIFA Corruption Case (Aug. 24, 2021),}
charged in connection with bribes and kickbacks paid by sports marketing companies to officials in exchange for media rights to several soccer tournaments and events.\textsuperscript{128} FIFA, CONCACAF, and CONMEBOL first sought restitution for legal fees and other costs, seeking $28 million, $10 million, and $85 million, respectively.\textsuperscript{129} The district court ultimately discounted the claims and awarded the organizations $108,268, $1.74 million, and $783,662, respectively.\textsuperscript{130} The organizations’ lawyers turned to remission instead of appealing to the Second Circuit. Upon the DOJ’s review of the applications for remission, more than $201 million were paid to the applicants.\textsuperscript{131} Even though the reasoning behind the DOJ’s decision is not public, commentators concluded that the petitioners took advantage of two differences between restitution and remission: (1) the fact that the remission process prioritizes victims who had cooperated with the government’s investigations and (2) the possibility that the petitioner’s arguments resonated with prosecutors more than it did with the judge that ordered the discounted restitution claims.\textsuperscript{132}

In \textit{Stanford}, the government successfully sought an order from a Texas judge finding that restitution would be impracticable given the tens of thousands of potential victims, the complex issues of fact in the case, and the difficulties in calculating the victims’ loss.\textsuperscript{133} In 2012, R. Allen Stanford, former chairman of the board of directors of Stanford International Bank, was convicted for directing a fraud scheme that misappropriated $7 billion from the company to his personal businesses.\textsuperscript{134} He held several accounts abroad located in Canada, Switzerland, and the United Kingdom.\textsuperscript{135} The SEC also filed a civil fraud action against Stanford and others.\textsuperscript{136} The DOJ was clear in its intent to return assets to victims via remission, explaining that, when a restitution order is impracticable, the government uses remission to

\textsuperscript{128} Id.


\textsuperscript{130} Id.

\textsuperscript{131} Id.

\textsuperscript{132} Id.


\textsuperscript{135} Id.

compensate victims. The total amount of funds that were returned to victims through remission—if any—is unclear. However, the universe of investors that lost money through the scheme is over 21,000 according to government estimates.

Other cases add the twist of state-led corruption to compensate victims. A public corruption scheme organized by former Korean President Chun Doo Hwan in the 1990s led to two civil forfeiture actions. The FBI seized approximately $726,000 in Los Angeles and approximately $500,000 associated with the Chun’s corruption scheme. After reaching a settlement agreement in the two civil forfeiture actions, $1.1 million was returned to the government of Korea, though it is unclear whether remission was used. Similarly, a separate prosecution sought to recover $1.7 billion related to the international conspiracy to launder funds misappropriated from 1Malaysia Development Berhad (“1MDB”). So far, the U.S. has recovered $460 million, which have been returned to the Malaysian government.

But none of these examples link state-led corruption to remission like Gourevitch. The prosecution of Eugene Gourevitch led to uncovering facts that showed that $6 million were stolen by Maxim Bakiyev, son of the former president of Kyrgyzstan, Kurmanbek Bakiyev. The subsequent Kyrgyz government filed a petition for remission with the DOJ, and the petition was granted in 2018.

---

137 Id. at 6.
138 Id. at 3.
140 Id.
143 Petition of the Kyrgyz Republic to Adjudicate Interest in Property Pursuant To 21 U.S.C. Section 853(n) at 1, United States v. Gourevitch, No. 1:12-cr-00758 (E.D.N.Y. Sept. 16, 2014), ECF. No. 33 [hereinafter Petition of the Kyrgyz Republic].
144 Id.
IV. REMISSION APPLIED TO VENEZUELAN STATE CORRUPTION

A. Gourevitch and Guruceaga

The facts and outcomes in Gourevitch and Guruceaga overlap in two major ways: state-led corruption was at the center of the prosecutions and different parties were seeking access to the illicitly obtained funds via restitution. Both parties failed to seek restitution through a court order, but only the claimant in Gourevitch was ultimately successful in recovering funds via its application for remission. There is no information—in court documents or media sources—regarding whether an application for remission was submitted in Guruceaga. Still, these cases exemplify the different outcomes that can result from a court’s analysis of who or what qualifies as a victim that suffered a pecuniary loss compared to the same analysis conducted by the DOJ through remission.

In Gourevitch, even though the details behind the DOJ’s approval of the Kyrgyz Republic’s remission application are not public, the Kyrgyz government’s attempt at establishing restitution is. As established above, the restitution and remission analyses differ, but both require at least a causal connection between the alleged crimes and the victims. It is very likely that the causal connection argued by the Kyrgyz’s government in its attempts to establish restitution may have played a part in its successful application for remission.

Gourevitch involved the ransacking of Kyrgyz government funds by Eugene Gourevitch and his accomplices, which included the son of the former President of the country. Kurmanbek Bakiev’s short presidency (2005–2010) was plagued with theft, which led to the insolvency of the country’s leading banks. Gourevitch assisted in disguising state funds used to conduct stock transactions. In the same light as the allegations made by the DOJ in Guruceaga, Bakiev allegedly created a criminal organization and engaged in racketeering through extortion and fraud. He illegally seized almost every market-dominating company in the country, including telecommunications companies, banks, and the country’s largest energy and mining companies. Accomplices laundered and transferred the stolen funds through Asia Universal Bank and JSC Baltic International Bank. Bakiev was prosecuted in Kyrgyzstan and was convicted on several charges,
including his funding of a counter-revolution that “resulted in mass killings, gang rapes, and torture, and leaving an estimated 2,000 dead and the internal displacement of almost 400,000 Kyrgyz citizens.”

John Doe #1, a putative victim whose identity was withheld from all publicly filed documents, argued that it was the victim of the defendant’s crimes and suffered a pecuniary loss. But, like PDVSA’s petition for restitution in Guruceaga, the motion was denied. In its letter to the court, John Doe #1 argued that he transferred $6 million into a corporate account controlled by Gourevitch, which Gourevitch then stole from John Doe #1. The court noted that these facts alone do not establish that John Doe #1 suffered a pecuniary loss in its personal capacity—regardless of whether or not it controlled the corporate account—because the lost funds would not establish a pecuniary loss in his personal capacity. Additionally, the government stated that the identity of the victim of the wire fraud scheme could not be determined. The Court went on the say that, while it is undisputed that Gourevitch acquired $6 million under false pretenses and kept it for himself, “it is impossible to determine the identity [of] the victim of this wire fraud scheme” because it was unclear to whom the $6 million belonged to. The Court also acknowledged that a remission application was filed by John Doe #1, but it had no knowledge of that process because the application was presented to the Attorney General. On October 4, 2018, the DOJ repatriated $6 million stolen from the Kyrgyz government, which were deposited in the account of the Government of the Kyrgyz Republic.

In Guruceaga, PDVSA argued that it was proximately harmed by the commission of the offense to which Abraham Edgardo Ortega (one of several defendants) pled guilty: charges of conspiracy to commit money laundering. The judge denied the motion and refused to analyze the causal connection established by PDVSA in its motion, and instead analyzed the

151 See id. at 5.
152 Opinion and Order at 6, United States v. Gourevitch, No. 1:12-cr-00758 (E.D.N.Y. Sept. 16, 2014), ECF. No. 35.
153 See id.
154 See id.
155 See id.
156 Id. at 5. Note that the U.S. Probation Department subsequently issued an addendum to the sentence report recommending that no restitution be issued.
157 Id. at 8.
158 Id. at n. 5.
159 Kyrgyz Republic Repatriation, supra note 145.
fact that PDVSA was complicit in the crimes. The reason for the judge’s refusal to analyze the causal connection is unclear, but it leaves the door open for PDVSA to use its already crafted causation analysis in a potential application for remission.

B. Challenges Faced in Context of Venezuelan State Corruption

Applicants would face a number of hurdles in their applications of remission. First, there are dozens of ongoing prosecutions dealing with violations of U.S. laws, all of which bring different claims against different government and non-government officials. Unless the forfeited assets are accumulated into a single pot used for distribution, the number of alleged criminal schemes—not to mention the number of victims—would lead to an extraordinary amount of work for the DOJ, let alone a special master. Of course, the biggest problem is the establishment of the “pecuniary loss” by victims, each of which could have experienced varying degrees of monetary losses and in distinct manners. In other words, the application of 28 C.F.R. Part 9 is not as clear as in Madoff, where the pecuniary loss suffered by the victims was clear: the loss was a direct result of the perpetrator’s use of the victims’ funds in one continuing scheme.

Another issue is that the regulation requires the victim to have “a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder . . .” as defined in the regulation or as an innocent owner within 18 U.S.C. § 983(D)(2)(A) or 983(d)(3)(A). “Owner” is defined in the regulation as a “person in whom primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another.” A victim may be considered an owner if “he or she has a present legally cognizable ownership interest in the property forfeited.” Although victims of theft offenses, like a bank robbery, qualify as owners because they have primary title to the stolen property, a fraud victim may not qualify as an owner because he or she does not hold primary title to the property. Even so, remission applications

---

161 Order at 1, 6–9, United States v. Ortega, No. 1:18-cr-20685 (S.D. Fla. June 18, 2021), ECF. No. 428.
164 Id.
165 See Anthony Saler, Petition the Government or Go to Court: What an Innocent Victim Should Do When the Government Seizes Property for Forfeiture, 53 CONSUMER FIN. L. Q. REP. 16, 17 (1999) (quoting DAVID B. SMITH, PROSECUTION & DEFENSE OF FORFEITURE CASES ¶ 15.02, at 15–9 n.18 (1998)).
have historically been granted for fraud victims, as exemplified in Madoff. The alternative of mitigation addressed below can obviate these issues. Finally, as previously explained, perhaps the biggest obstacle for victims is the fact that the DOJ has the sole discretion to grant remission applications.\textsuperscript{166} There are no judicial proceedings available for remission applicants.

C. Options for a Successful Remission Application

Remission regulation does not require the government to follow a specific distribution method, and, even if it did, the DOJ’s unilateral application review process would provide flexibility to distribute funds as it desires, so long as the remission regulation is followed. Given that the DOJ has charged dozens of current and former Venezuelan officials, including military officials, judges, and employees of PDVSA and its subsidiaries,\textsuperscript{167} allowing remission of funds from a single pot—accumulated from every Venezuela-related corruption case—may seem like a desirable option, but is unlikely. Proponents will argue that a causal connection may exist between the former Venezuelan government itself, which includes those individuals named in the aforementioned proceedings, and the crimes that were committed. In other words, schemes perpetrated in every Venezuelan-related prosecution, whether it be narco-terrorism conspiracy or money laundering, stemmed from the actions of a corrupt Venezuelan government. But a blanket assertion that Venezuelan government misconduct is tied to the loss of victims is too attenuated to establish a causal connection with the pecuniary loss suffered by specific victims. On the other hand, allowing remission on an individual-case basis is the clearer (and more conventional) path. Although this option would involve reviewing petitions for remission in each of the several cases filed, it is more in line with the requirement of the remission regulation of showing a pecuniary loss that was directly caused by the criminal offense or related offenses. Further, although the regulation outlines the criteria to grant a remission application,\textsuperscript{168} it provides no guidance as to how the government will apply the criteria.\textsuperscript{169} The same applies for the circumstances where an official can deny a petition.\textsuperscript{170} Without such criteria, it’s difficult to determine whether an application will be successful or not.

\textsuperscript{166} United States v. Kravitz, 738 F.2d 102, 105 (3d Cir. 1984).
\textsuperscript{167} See S\textsc{e}l\textsc{e}k\textsc{e} \textsc{e}t \textsc{a}l., supra note 3, at 28.
\textsuperscript{168} 28 C.F.R. § 9.8(b) (2012).
\textsuperscript{169} See \textsc{s}a\textsc{l}er, supra note 99, at 27.
\textsuperscript{170} Id. at 17, 20, 22.
A potential solution to these issues can be founded on the use of “related offense” in the regulation. Given that remission covers “related offense[s],” the government is not bound to remit funds solely to those losses resulting from the “offense of conviction.” A broad reading of the definition of “related offense” in the regulation can form a basis for the DOJ to grant applications for remissions for individuals who suffered pecuniary losses for certain offenses. “Related offense” is defined in its application to 28 C.F.R. Part 9.2 as:

(1) Any predicate offense charged in a federal Racketeer Influenced and Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or
(2) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which forfeiture was ordered.

This section of the regulation applies to victims who do not have a present ownership interest in the forfeited property and to “property forfeited pursuant to statutes that authorize . . . remission of forfeited property to victims.” To the benefit of the victims, most of the criminal forfeiture statutes, as well as the civil money laundering statute, provide for remission to victims.

Further, 28 C.F.R. Part 9 includes a fallback provision should remission fail:

1. The ruling official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:
   (i) Where the petitioner has not met the minimum conditions for remission, but the ruling official finds that some relief should be granted to avoid extreme hardship, and that return of the property combined with imposition of monetary or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law. Extenuating circumstances justifying such a finding include those circumstances that reduce the responsibility of the petitioner for knowledge of the illegal activity,

---

173 Id.
knowledge of the criminal record of a user of the property, or failure to take reasonable steps to prevent the illegal use or acquisition by another for some reason, such as a reasonable fear of reprisal; or

(ii) Where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the ruling official, complete relief is not warranted.\textsuperscript{175}

The lack of judicial review for remission applications has not stopped courts from opining on the DOJ’s denial of remission and mitigation. In \textit{Chan},\textsuperscript{176} the District Court for the District of Hawaii stated that “[t]he DOJ’s conclusions [in its denial of the application for remission] are an abuse of discretion and clearly erroneous.”\textsuperscript{177} It went on to say that the extenuating circumstances were “clearly established”\textsuperscript{178} due to the DOJ’s failure to live up to a contractual promise made in a plea agreement, which led to Mid-Pac’s (the party seeking restitution and remission) failure to file a civil action against the defendant.\textsuperscript{179} The court also noted that the victim had a “clearly traceable interest” in the funds in question.\textsuperscript{180} It ultimately granted Mid-Pac’s motion to compel the U.S. to comply with the Court’s restitution order, but it did not (and could not) decide the remission issue.\textsuperscript{181}

Finally, note the timing of the remission application and review process. The DOJ can take up to sixteen months to make a final determination on petitions for remission.\textsuperscript{182} An individual does not have the right to a speedy disposition of their remission petition.\textsuperscript{183} Unfortunately, the Supreme Court has not addressed a potential due process right to a “speedy answer to a remission petition.”\textsuperscript{184}

\begin{itemize}
  \item \textsuperscript{175} 28 C.F.R. § 9.5(b)(1) (2012) (emphasis added).
  \item \textsuperscript{176}  See generally United States v. Chan, 22 F. Supp. 2d 1123 (D. Haw. 1998).
  \item \textsuperscript{177}  Id. at 1126.
  \item \textsuperscript{178}  Id.
  \item \textsuperscript{179}  Id.
  \item \textsuperscript{180}  Id.
  \item \textsuperscript{181}  Id. at 1126, 1128.
  \item \textsuperscript{182}  See McCoy v. United States, 758 F. Supp. 299, 302 (E.D. Pa. 1991); Vereda, Ltda. v. United States, 41 Fed. Cl. 495, 497 (Fed. Cl. 1998); see also United States v. One 1971 Opel G.T., 360 F. Supp. 638, 640 (C.D. Cal. 1973) (ten and one-half month delay); Kiefer v. U.S. Dep’t of Just., 687 F. Supp. 1363, 1366 (D. Minn. 1988) (three and one-half months to merely refer petition to ruling agency which anticipated “delay of several months” prior to its decision); In re $67,470.00, 901 F.2d 1540, 1546 (11th Cir. 1990) (166 day delay); Willis v. United States, 787 F.2d 1089, 1092 (7th Cir. 1986) (108 day delay); Gete v. I.N.S., 121 F.3d 1285, 1288 (9th Cir. 1997) (“several months” delay); Johns v. McKinley, 753 F.2d 1195, 1198 (2d Cir. 1985) (65 day delay).
  \item \textsuperscript{183}  United States v. Von Neumann, 474 U.S. 242, 249 (1986).
  \item \textsuperscript{184}  Id. at 250.
\end{itemize}
D. Application to Specific Victims

Regardless of the pecuniary loss suffered by victims or the extenuating circumstances experienced, remission applications may be denied. If not for failing to meet the strict requirements of 28 C.F.R. Part 9, then for the lack of precedent for allowing victims of state-related crimes to be compensated. As such, providing specific examples of when (and to whom) remission applies is not an exact art: victims that meet these requirements may not exist, or, if they do exist, their applications may fall short of remission requirements. Still, applying the criteria to specific cases may help put the regulation in context for victims. Note that the following hypotheticals are not based on real life individuals or cases and only serve as a guide for potential applicants.

1. Hypothetical #1: Maria

Maria was a successful businesswoman in Caracas, Venezuela, being the owner and operator of the most profitable auto repair shops in the city. In 2019, she was accused of illegal activity and became a defendant in a civil forfeiture proceeding in a Venezuelan court. As a result of the forfeiture, Maria lost all of the assets tied to her forfeited property. Having no family ties in her home country, Maria left Venezuela and moved to the U.S. to live with her sister. After a few months, she began working as a cook at a Miami high school. One day, Maria comes across a DOJ press release regarding the prosecution of the current Chief Justice of the Venezuelan Supreme Court under the Maduro government, Maikel Moreno.185 The charges against Justice Moreno include conspiracy to commit money laundering in connection with bribes to fix civil and criminal cases in Venezuela.186 Maria reads the indictment and realizes that one of the civil cases examined in the complaint is similar to the civil forfeiture case against her. Specifically, Justice Moreno’s indictment states that he “personally directed the issuance of the order relating to the seizure . . . .” of a General Motors car assembly plant in Venezuela.187 Upon further investigation by Maria, she finds out that the judge that granted the forfeiture of her business is one of the judges that allegedly colluded with Justice Moreno, as described in the DOJ’s indictment.

185 Criminal Compl. at 2, United States. V. Moreno Perez, No. 20-2407JJO (S.D. Fla. Mar. 12, 2020), ECF. No. 1.
186 See id. at 1.
187 Id. at 5.
Maria contacts an attorney, who, after further investigation, believes that Maria has a legally cognizable interest in the assets seized in connection with Justice Moreno’s crimes. She cooperates with the government, providing useful information about Justice Moreno’s involvement in the Venezuelan forfeiture matter. Maria can prove the specific amount of her pecuniary loss that was directly caused by the criminal offense through documentary evidence. Maria did not contribute to or participate in the criminal offense. Maria has not been compensated, and she has no other recourse reasonably available to recoup her assets, given the fact that Venezuelan courts lack legitimacy and are widely known to disrespect the rule of law. Going beyond remission, mitigation may be used if Maria provides proof that she has experienced (and continues to experience) extreme hardship.

Maria’s attorneys contact the U.S. Attorney’s Office handling the Moreno case and explain Maria’s situation. If the U.S. attorney believes that Maria (and possibly others) may qualify for remission, he or she may allow an application to be submitted for review.

2. Hypothetical #2: Interim or Democratically Elected Government

An interim or democratically elected government may also petition for remission by using the causal analysis in Guruceaga, where it connected the defendant’s crimes to the loss by PDVSA. In Guruceaga, the charged offense at issue (conspiracy to commit money laundering in violation of 18 U.S.C §§ 1956(h) and 1957(a)) is a qualifying offense under the MVRA. The government may argue that it suffered a direct pecuniary loss as a result of the defendant’s actions. Further, “victim” (as defined by the remission regulation) does not limit compensation to individuals. Companies and foreign governments may qualify as victims as well. If the government cooperates with the DOJ, its chances at a successful remission application may increase significantly. The restitution analysis in Gourevitch directly supports the victim’s claim here.

One issue that PDVSA or other similarly situated state-owned enterprises or instrumentalities may face is that it may be considered a contributor or participant to the crimes that were committed. In fact, the

---

188 Ortega Motion, supra note 75, at 4–5.
189 “Victim” is defined as “a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture.” “Person” is defined as “an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.” 28 C.F.R. § 9.2 (2012).
190 See supra Part IV.
DOJ made this argument in PDVSA’s request for restitution. However, the argument does not necessarily stand on solid ground, as new governments may bring new leadership to formerly corrupt institutions. Further, the U.S.’s recognition of Guaidó as Venezuela’s interim president may increase PDVSA’s chances at being successful in its petition, as PDVSA is a state-owned company that, in theory, will reflect the goals and values of the administration in charge.

E. Special Master and Non-Remission Alternatives

The remission regulation allows for the appointment of a special master, trustee, or claims administrator to assist with the managing of petitions for remission. For example, the Adelphia matter used a special master given the number of potential victims. Delegating the claims process appears to be a necessary step when the government receives a large number of applications. In fact, the DOJ contracted with three private claims administration firms in 2012 to assist in processing petitions in large cases. The firms provided assistance with contacting victims, making remission recommendations, and distributing funds.

A non-remission alternative that creates a compensation fund exists via the legislative branch. The most well-known example is the September 11 Compensation Fund, which was established in 2001 to bring relief to those affected by the events of September 11, 2001. The special master relied on a complex system of establishing eligibility for compensation. The process involved collecting all necessary documents from each victim, confirming whether the physical condition stemmed from 9/11-related events and whether the victim was present at the site of the attack. Once a decision was rendered, a compensation review was conducted to determine the exact economic or non-economic loss suffered by the victim. Congress can use this and other compensation funds as a starting point for compensating victims described in this comment.

---

192 See Asset Forfeiture Pol’y Manual, supra note 30, at 166.
194 Id.
198 See id.
199 See id.
V. CONCLUSION

Remission has been characterized as an act of grace\(^{200}\) and an obscure bureaucratic mechanism.\(^{201}\) The process has been criticized for its failure to incorporate the possibility of judicial review. The lack of transparency in the remission process is akin to a lawyer’s reliance on a legal theory with little to no supporting case law. But remission has been granted in both state and non-state-related prosecutions, compensating individual victims as well as large organizations in complex white-collar cases. *Adelphia Communications Corp.*, *Madoff*, *FIFA*, and *Gourevitch* all contain similar elements as most of the Venezuelan-state prosecutions led by the DOJ: complex schemes were used to defraud individuals and companies, leading to significant financial losses.

In the context of Venezuelan state corruption, the DOJ should consider the large number of potential victims that were affected by the crimes that are being prosecuted in U.S. Courts across the country. For the victims that qualify, the relief provided may contribute to rebuilding businesses and improving lives. The seized assets will be freed for use by those who need them most.

---


\(^{201}\) Barr, *supra* note 129, at 1.