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FEATURED Q&A

Is Brazil's Judiciary Interfering in the Country's Politics?



Brazil's attorney general last month charged presidential candidate Jair Bolsonaro (pictured) with inciting hatred. The charges came just days after the presidential race's front-runner, Luiz Inácio Lula da Silva, was imprisoned. // File Photo: Bolsonaro Campaign.

Q Brazil's attorney general on April 13 charged Jair Bolsonaro, the controversial right-wing presidential candidate who has been running near the front in polls ahead of this October's election, with inciting hatred and discrimination, allegations that could lead to a three-year prison sentence. The charges, which Bolsonaro's campaign called "groundless," came as debate continues in Brazil over the judiciary's role in deciding who can run in elections. Earlier in April, the front-runner in the race, former President Luiz Inácio Lula da Silva, lost a court appeal and began serving a 12-year sentence for corruption. The status of Lula's candidacy remains uncertain, however, despite his being imprisoned. Are Brazilian judges overstepping by disqualifying popular political candidates? How could these and other judicial rulings affect upcoming political races? What are the implications of recent court rulings against politicians for the legitimacy of the wide-ranging Lava Jato corruption investigation, and for Brazilian democracy in general?

A Peter Hakim, member of the Advisor board and president emeritus of the Inter-American Dialogue: "Brazilian judges are not overstepping by disqualifying popular candidates—even front-runner Luiz Inácio Lula da Silva, once the nation's most popular president ever—from contesting this year's presidential election. They are doing precisely what's expected of independent, honest and competent judges, sorting out the facts and applying the relevant laws. And the Clean Record law is crystal clear: anyone convicted of corruption is barred from running for elective office. The other issues,

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TODAY'S NEWS

POLITICAL

U.S. Sanctions Ex-Venezuelan Financial Official

The United States announced sanctions on a former Venezuelan financial intelligence chief and two of his associates in connection with drug trafficking allegations.

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BUSINESS

ConocoPhillips Moves to Seize PDVSA Assets

The U.S.-based oil company is seeking to seize assets of the Venezuelan state-run oil company in the Caribbean in connection with Venezuela's expropriation of ConocoPhillips assets.

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ECONOMIC

Mexico's AMLO Softens Stance on Airport Project

Mexican presidential front-runner Andrés Manuel López Obrador said that instead of canceling the \$13 billion Mexico City airport project entirely, he would be open to bids from the private sector to run the facility as a concession.

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López Obrador // File Photo: López Obrador Campaign.

POLITICAL NEWS

U.S. Sanctions Former Venezuelan Financial Official

The U.S. Treasury Department on Monday imposed sanctions against Venezuela's former financial intelligence chief over alleged crimes as a drug kingpin, The Wall Street Journal reported. Pedro Luís Martín Olivares was named "a significant foreign narcotics trafficker" under the Foreign Narcotics Kingpin Designation



We will deny corrupt Venezuelan regime officials access to the U.S. financial system."

— Steven Mnuchin

Act. "This action is in response to Martín's extensive drug trafficking and money laundering activities," said Treasury Secretary Steven Mnuchin. "We will deny corrupt Venezuelan regime officials access to the U.S. financial system," he added. Two others, Walter Alexander Del Nogal and Mario Antonio Rodríguez, were also sanctioned for providing support to Martín. Twenty companies in Venezuela and Panama that are allegedly owned or controlled by the three individuals were also sanctioned for laundering illicit proceeds from both narcotics trafficking and extortion. The sanctions are the latest in a string of steps taken by the United States against the government of socialist Venezuelan President Nicolás Maduro. U.S. Vice President Mike Pence on Monday urged Venezuela to suspend its May 20 election, which he denounced as a "sham," Agence France-Presse reported. "We call on Maduro to suspend the sham elections," Pence said in an address to the Organization of American States. Maduro shot back that Venezuela was not about to follow U.S. orders. "Do we listen to the imperialists?" Maduro asked supporters at a Caracas forum. "No!" they cheered.

ECONOMIC NEWS

AMLO Softens Stance on Mexico City Airport Project

Mexico's front-running presidential candidate, Andrés Manuel López Obrador, softened his stance on a \$13 billion airport project on Monday, saying that instead of canceling it entirely, he would be open to private sector bids to run the new facility as a concession, Reuters reported. López Obrador, a leftist who has been trading barbs in the press in recent weeks over the project with some of the country's top business leaders, said on Monday at a tourism conference he could compromise on the controversial project. "Why don't we do a concession? I wouldn't have a problem [with that]," said the candidate. "I'm not going to put half of public investment into one project," López Obrador added. The same idea was recently raised by Mexican business magnate Carlos Slim, who has invested heavily in the existing airport project but said he did not understand why the airport was not privately financed in a concession instead of publicly, Reuters reported. Critics of the new airport, which is nearly one-third complete, say it lacks risk management planning, with costs already running 50 percent higher than envisioned in original plans floated four years ago. Supporters say that canceling the new airport would hurt jobs, tourism and other commercial development in Mexico City. [Editor's note: See related [Q&A](#) in the May 4 issue of the Advisor.]

BUSINESS NEWS

ConocoPhillips Moves to Seize PDVSA Assets

Houston-based oil major ConocoPhillips is moving to seize several of PDVSA's assets in the Caribbean over Venezuela's oil expropria-

NEWS BRIEFS

Alvarado to Take Office Today as Costa Rica's President

Carlos Alvarado, who won last month's presidential runoff in Costa Rica, is set to take office today as the youngest president in the country's modern history. Alvarado, 38, is to be sworn in today in the Plaza de la Democracia, next to the National Museum in San José, the Tico Times reported. Alvarado is expected to travel to the ceremony in a hydrogen-powered bus. Among his goals, Alvarado wants to end the use of fossil fuels in public transportation, Reuters reported.

Paraguay to Move Embassy to Jerusalem: Israeli Foreign Ministry

Israel's foreign ministry said on Monday that Paraguay would move its embassy from Tel Aviv to the disputed city of Jerusalem, The Guardian reported. Paraguayan officials did not confirm or deny the reports, saying that Foreign Minister Eladio Loizaga "will speak on the issue when there is something concrete," Agence France-Presse reported. The move would make Paraguay the second to follow the United States' recent decision to move its embassy to Jerusalem, after Guatemala.

Chile's Economy Sees Highest Growth Rate Since 2013

The Chilean economy grew at a 4.6 percent rate in March, compared to the same period a year ago, giving the country its highest growth rate since 2013, Reuters reported on Monday. The growth came mostly from the country's mining sector, which expanded 31.7 percent in March and is expected to show similar progress when April data are released. Chilean Finance Minister Felipe Larraín welcomed the news, but said his ministry would keep its growth projection at 3.5 percent for this year.

tions, Reuters reported on Sunday, citing three unnamed sources with knowledge with the actions. ConocoPhillips received legal attachments from to freeze the Venezuelan state-run oil firm's assets on the island of St. Eustatius, where PDVSA rents storage tanks at a terminal, and on Bonaire, where it owns a 10 million-barrel terminal. Conoco has also initiated legal procedures to attach the 335,000 barrel-per-day (bpd) Isla refinery on Curaçao. PDVSA has not yet commented on the seizures. Conoco's actions are an effort to enforce a \$2 billion settlement it received from the International Chamber of Commerce on April 25 over then-President Hugo Chávez's expropriation of oil assets in 2007. Venezuela called the award a "tough lesson" for Conoco, which was far less than the \$22 billion it had previously sought. Conoco, which lost more assets than any other firm during the expropriations, is awaiting another settlement decision from the World Bank's International Centre for the Settlement of Investment Disputes. Separately, energy analyst firm S&P Global Platts on May 3 reported that Venezuela's oil output could fall a further 200,000 bpd by December of this year, according to ministry sources. Production has plummeted due to lack of equipment, labor disputes, and hyperinflation, deepening Venezuela's economic crisis. "Venezuela would not be able to increase production even if they wanted to," Tamas Vargas, analyst with brokerage firm PVM Oil Associates, told Platts. "Only God knows how low oil production will fall."

Microsoft Must Simplify Data Opt-Out: Brazilian Court

A federal court in São Paulo on Monday ordered Microsoft to simplify its data-sharing opt-out in Windows 10 to comply with Brazil's personal data protection laws, O Estado de S.Paulo reported. Microsoft will now have up to 30 days to make the changes necessary to comply with the order, as well as notify consumers so they may change their settings. Windows 10 allowed Microsoft to collect data on users' email content, Internet search history

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particularly the potential consequences for Brazilian democracy, are far more difficult to address. Surely, a persuasive case can be made that the best way to protect democracy is to consistently and equitably apply the rule of law. But the case may not hold under the deeply troubled circumstances of Brazil's governance and institutions. Despite the exceptional efforts of the country's judges and prosecutors, bribery and graft permeate from top to bottom in politics, business and sports. Never before have Brazil's president and Congress been so reviled and

Brazilian judges are not overstepping by disqualifying popular candidates..."

— Peter Hakim

distrusted—not surprising when nearly half of the country's legislators, President Temer himself, and some 15 of 20 prospective presidential candidates are under criminal investigation. Even the judiciary, which has been widely lauded for its attack on corruption, has recently come under growing criticism. Brazil's population is increasingly polarized and angry. As things stand now, somewhat more than half of Brazilian voters applaud Lula's imprisonment, while somewhat less want him re-elected president. Not a healthy situation. Interestingly, both Temer and former President Cardoso have said Brazil would be best served by Lula losing

and location. Brazilian prosecutors brought the case before the court on April 25, saying that Microsoft had collected, processed and transferred users' personal data without their "express consent," violating several laws, Reuters reported. The company has faced similar criticisms in Europe over the difficulty of opting

the October election. They understand that, absent Lula's participation, the election may not confer much legitimacy on the winner. But both stopped short of acknowledging that Lula can only lose if he is permitted to run. It just may be that, given the parlous state of Brazilian governance, the decision on Lula's eligibility to compete should not be left to Brazil's Supreme Court, but rather turned over to the people of Brazil, perhaps in a referendum before the election—or simply by putting him on the ballot."

A **Jana Nelson, former Brazil Desk Officer at the U.S. Department of State:** "The politicization of the judiciary, especially around elections, is a hot-button issue of our time. Although Brazilian Attorney General Raquel Dodge has the right to charge Bolsonaro, in doing so she likely undermined the perception of her impartiality in politically charged proceedings. The alleged crime was committed a year before Dodge's accusation, and Bolsonaro had already been convicted of it by a lower court. Therefore, it should not have been a top item on Dodge's agenda. Coming so soon after Lula's sentence for corruption, Dodge's decision gives the impression that there is a judicial witch hunt against certain politicians. Most Brazilian judges are doing their job appropriately. But some high-level judges—on both sides of the political spectrum—and some ill-advised decisions are giving the Brazilian judiciary a bad name. The strength and legitimacy of any judiciary depends on the perception of impartiality and fairness. It does not take much to undermine it. The current politicization of the Brazilian judiciary could lead to an increase in tensions and

Continued on page 4

out of data-sharing processes. Microsoft said it is committed to protecting users' privacy. "It is a priority for us to guarantee that all of our products and services are in compliance with the applicable laws and we are ready to work with [the office of the public prosecutor] to clear up its comments related to Windows."

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political polarization. In the particular case of Bolsonaro, it might strengthen rather than weaken him, as he will be seen as a victim of those more powerful. Along the same lines, Lava Jato has had its fair share of criticisms of political bias. So far it has weathered the accusations, but with the elections coming up, Lava Jato prosecutors will be increasingly accused of taking sides. This could mean less public support for the corruption investigations down the road."

A **Charles H. Blake, professor of political science at James Madison University's School of Public & International Affairs:**

"On April 4, Luiz Inácio Lula da Silva had his earlier corruption conviction upheld in a 6-5 decision by the Supreme Federal Tribunal. Lula, who was leading tracking polls ahead of Brazil's October presidential election, has further legal actions that he can take. Last month's decision is another step toward his disqualification as a candidate. Then, on April 13, the second-most popular candidate in the polls, Jair Bolsonaro, was hit with charges that might lead to his disqualification. In turn, during the same week, the PSDB candidate Geraldo Alckmin had his campaign finance case referred by the Supreme Federal Tribunal to the electoral court; many analysts believe that decision makes Alckmin's potential disqualification less likely. These court cases all have potential implications for the legality of these candidacies because the 2010 'Clean Record' Law bans for eight years anyone convicted by a multi-judge legal procedure or anyone removed from office in an impeachment proceeding. While supporters of the Clean Record Law call the statute a key tool in fighting corruption in Brazil, several critics are concerned that the law has enabled judges to block the candidacy of the most popular candidate rather than permitting voters to determine whether he is unfit to serve as president. Opinions differ on the desirability of this

heightened political role of the judiciary, but the overall public opinion trend line during Brazil's ongoing political crisis is clear: public confidence in all three branches of government has declined markedly in Brazil between 2013 and the present."

A **Gilberto Rodrigues, professor of international relations at the Federal University of ABC in Brazil and member of Coordinadora Regional de Investigaciones Económicas y Sociales in Buenos Aires:**

"Brazil's judiciary has been an unexpected protagonist in the country's politics. Lava Jato and other judicial operations have been creating legal constraints for politicians. The Supreme Federal Tribunal (STF) became a central actor in politics and in many other issues. From gay marriage to distribution of gas royalties, the STF has been establishing rules that in a democracy should be the task of Congress. In the political arena, judicial activism is crossing a line. In Lula's case, there has been political bias in the whole legal process that resulted in the former president's imprisonment while in other cases, such as Jair Bolsonaro's, the judiciary is expected to play its role as the Constitution's guardian. Bolsonaro has benefited from his immunity as a member of Congress to avoid lawsuits on allegations of inciting serious violations of human rights, such as racism, gender discrimination and violence against women. Congress failed to revoke his mandate and punish him properly under the parliamentary code of ethics. In such cases, the STF should defend human rights norms, making room for blocking candidates for president or governor. Nevertheless, it seems that the judiciary, in other cases, is overstepping its constitutional role by regulating politics."

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