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FEATURED Q&A

Will Collusion Allegations Derail Operation Car Wash?



Brazilian Justice Minister Sérgio Moro is facing allegations that during his time as a judge, he coordinated with prosecutors in the Car Wash corruption case. He denies wrongdoing. // File Photo: Brazilian Government.

Q The Brazilian Bar Association in June called for the suspension of Justice Minister Sérgio Moro following reports published in *The Intercept Brasil* claiming that when he was the judge overseeing the massive “Car Wash” corruption case, he coordinated with prosecutors in the case of former President Luiz Inácio Lula da Silva, who was convicted and is now imprisoned. Moro denies any wrongdoing. How significant and revelatory are the allegations against Moro, and what do they say about Brazil’s judicial system? What implications do the reports have on the legitimacy of the Car Wash investigation and for Lula’s case in particular? To what extent will the scandal derail President Jair Bolsonaro’s agenda and Moro’s role as justice minister?

A Jana Nelson, global fellow at the Woodrow Wilson Center’s Brazil Institute: “The Intercept revelations have tarnished the reputation of both Judge Sérgio Moro and the Lava Jato prosecutor Deltan Dallagnol by showing coordination between a judge and one of the parties to a judicial process. The underlying concern is that due process of law was breached and that one of Brazil’s most important corruption investigations may be derailed. There appears to be a judicial explanation for the coordination between Judge Moro and prosecutor Dallagnol, based on the Packer Model of Crime Control. This model argues that in complex crimes, such as the ones investigated by Lava Jato, the judge needs to be close to the investigators so as to better understand their needs and authorize seizures or arrests. But in the

Continued on page 4

TODAY’S NEWS

POLITICAL

Trump Still Committed to Maduro’s Ouster: Special Envoy

U.S. President Donald Trump is still committed to the ouster of Venezuelan President Nicolás Maduro, said Elliott Abrams, the White House’s special representative for the Andean country.

Page 2

BUSINESS

Detonations Eyed in Brazil Dam Collapse Probe

Investigators are looking into how detonations carried out by mining company Vale may have led to the deadly collapse of the Brumadinho tailings dam in January. At least 270 people were killed.

Page 3

POLITICAL

Acting Head of U.S. Customs & Border Protection Steps Down

John Sanders, the acting head of U.S. Customs and Border Protection, resigned Tuesday, effective late next week.

Page 2

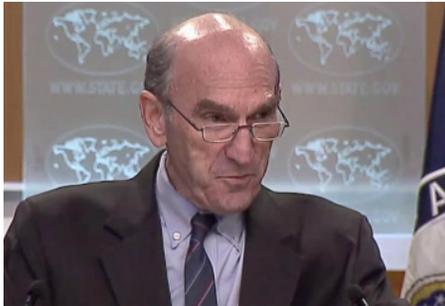


Sanders // File Photo: U.S. Customs and Border Protection.

POLITICAL NEWS

Trump Still Wants Maduro's Ouster: Special Envoy

U.S. President Donald Trump is still committed to forcing Venezuelan President Nicolás Maduro to step down and make way for opposition leader Juan Guaidó to become interim president, Elliott Abrams, the administration's special representative for Venezuela, told reporters Tuesday, Reuters reported. Abrams brushed aside questions over whether Washington had



Abrams // File Photo: U.S State Department.

lost interest in Venezuela amid other foreign policy priorities such as tensions with Iran and trade talks with China, according to the report. "The notion that there is at the highest levels of the government a diminution of interest is just simply false," Abrams said, citing as examples the fact that Trump raised the topic of Venezuela with Canadian Prime Minister Justin Trudeau during their June 20 meeting, and that Vice President Mike Pence recently traveled to Miami to help send off a Navy medical mission to South America to help with displaced Venezuelans. The opposition's hope for regime change surged in January, when Guaidó won the recognition as the legitimate interim president from more than 50 countries. However, massive street rallies, economic collapse and high-profile defections have failed to push Maduro out. In an interview Tuesday with CNBC, Guaidó's envoy in London, Vanessa Neumann, said she believes there is still reason to be hopeful when it comes to dislodging Maduro from power. "Things are advancing. There is a strategy that is advancing," she told

the broadcaster. [Editor's note: See related [Q&A](#) in the May 10 issue of the Advisor.]

U.N. Security Council Approves New Haiti Political Mission

The U.N. Security Council on Tuesday approved a resolution to establish a new political mission in Haiti, which will replace its peacekeeping missions in the Caribbean nation beginning Oct. 16, the United Nations said in a statement. The new mission, known as BINUH, will be run by a special representative who will assist Haiti's government in planning elections, training Haiti's national police on human rights, responding to gang violence, ensuring compliance with international human rights obligations, improving oversight of prisons and bolstering the country's justice system, the United Nations said. Acting U.S. Ambassador Jonathan Cohen said the United States was "clear-eyed" about challenges that lie ahead, and he said Haiti's government must accept responsibility for several issues, including free and fair elections, protection of human rights and reducing gang violence. Some Security Council envoys expressed concerns that the resolution to create the new mission, which the United States drafted, did not stress Haiti's vulnerability in the area of climate change. Germany's ambassador to the United Nations, Christophe Heusgen, said climate change can further destabilize Haiti and "create new conflicts over increasingly diminishing resources and derail efforts in peace-building and stabilization." Haitian Chargé d'Affaires Patrick Saint-Hilaire called the new mission "a step in the right direction" and said climate change was among the challenges that Haiti faces, along with cholera, national disasters and "even hunger riots." The resolution to create the mission passed on a vote of 13-0, with China and the Dominican Republic abstaining, the Associated Press reported. U.N. military peacekeepers departed the country in October 2017 after 13 years there. However, a stabilization mission has remained since then in order to train the country's national police officers, monitor

NEWS BRIEFS

Acting Head of U.S. Customs and Border Protection Steps Down

John Sanders, the acting head of U.S. Customs and Border Protection, resigned Tuesday, The Wall Street Journal reported. Sanders did not give a reason for his departure, but unnamed sources told the newspaper that he had been overwhelmed by the scale of the migration crisis at the country's southern border and with frequent policy and personnel changes in the Trump administration.

Guatemala Election Officials to Begin Recount

Election officials in Guatemala on Tuesday said they are ready to begin a recount of the country's June 16 general election results starting today, the Associated Press reported. Political party leaders said they had reached an agreement with election officials to review disputed vote tallies. In a statement, Guatemala's Supreme Electoral Tribunal said a software malfunction caused a counting error and said it will file a complaint against the attorney general's office. Guatemala's runoff election is scheduled for Aug. 11.

Mexican Power Utility Seeking 'Fairer' Deal to Resolve Disputes

Mexican state-run power utility CFE said on Tuesday it will seek to negotiate a "fairer" resolution to contractual disputes with companies behind several pipelines, Reuters reported. The dispute, which Andrés Manuel López Obrador has weighed in on, concerns seven projects undertaken by companies that include Grupo Carso, TransCanada and IEnova, a unit of San Diego-based Sempra Energy. IEnova said in a statement on Tuesday that it had received an arbitration request from the CFE and that it was ready to continue dialogue with the state-run firm.

human rights and also aid the government in strengthening judicial and legal institutions. Earlier this month, thousands of protesters took to the streets in Haiti to demand President Jovenel Moïse's resignation. An investigation by the country's Senate recently alleged that at least 14 government officials misused \$3.8 billion during the administration of former President Michel Martelly.

BUSINESS NEWS

Detonations Eyed in Brazil Dam Collapse Investigation

Authorities in Brazil are investigating how detonations carried out by mining company Vale in January could have triggered the Brumadinho tailings dam collapse, which killed at least 270 people, The Wall Street Journal reported Tuesday. Luiz Augusto Pessoa Nogueira, Brazil's top police official, told the newspaper that forensic studies suggest Vale may have carried out an explosion at its mine less than a mile from the

“This is one of the hypotheses that we are investigating as being the trigger.”

— Luiz Augusto Pessoa Nogueira

dam in the hours before it burst, sending a wall of water and debris surging through the mining facility and nearby town of Brumadinho. Most of the dead were Vale's own workers. “This is one of the hypotheses that we are investigating as being the trigger,” Nogueira said. The dam's safety inspector, German firm TÜV SÜD, had warned Vale that explosions near the 280-foot-high dam could lead to its collapse, according to documents reviewed by the Journal. Vale has denied conducting any detonations at the mine in the hours before the dam collapsed, and in a statement Tuesday, the company said

JOB POSTINGS

EDITOR'S NOTE: We are pleased to share Latin America-related job postings that companies reading the Advisor and others have posted recently.

Liberty Mutual: Vice President and West Region CIO, Miami

Starkey Hearing Technologies: Director, Latin America Operations, Eden Prairie, Minn.

International Youth Foundation: Program Coordinator, Americas, Baltimore

Prudential: Vice President, Communications, International, Newark

National Geographic Society: Vice President, International, Washington

CIM: Associate Vice President, Investments (Latin America), Los Angeles

BlackRock: Vice President, Corporate Accountant, Latin America, New York

Atlantic Council: Associate Director, Adrienne Arsht Latin America Center, Washington

Inter-American Dialogue: Multiple Positions in Guatemala

it carried out two explosions that day only after the dam's rupture. It had already planned those detonations, it said, and decided to carry them out as a safety measure to eliminate explosives in the ground. The Brumadinho disaster, Brazil's deadliest and Vale's second dam collapse within three years, prompted the company earlier this month to create the new role of executive director for safety and operational excellence, Reuters reported. Carlos Medeiros, a Brazilian executive who led the North and Central American operations of aluminum can maker Ball Corporation, has been recruited for the position. [Editor's note: See related [Q&A](#) in the Feb. 12 issue of the Advisor.]

U.S. Supreme Court Rejects Argentina's Appeal in YPF Case

The U.S. Supreme Court on Monday rejected an appeal by Argentina to fend off a lawsuit by energy company Petersen Energía Inversora seeking compensation for shares it owned in Argentina's now-nationalized oil firm, YPF,

Reuters reported. The U.S. justices upheld a ruling by a lower New York appeals court that allowed Petersen to sue after the Argentine government refused to buy back the company's shares. Last July, the court rejected YPF's arguments that the suit should be dismissed based on a U.S. law called the Foreign Sovereign Immunities Act, which deprives U.S. courts of jurisdiction over “sovereign acts of expropriation.” The three-judge panel of the 2nd U.S. Circuit Court of Appeals unanimously ruled that the suit classified as commercial activity and was therefore an exception to the law. Petersen was not challenging the expropriation itself but argued that the move had triggered shareholder protection provisions in YPF's bylaws, the wire service reported. In 2012, Argentina expropriated 51 percent of YPF's shares, all from Spain-based Repsol, but it declined to tender an offer to buy out other shareholders. Argentine lawyers estimate the lawsuit's value at nearly \$3 billion, La Nación reported. The Argentine government had engaged in significant diplomatic efforts with the administration of U.S. President Donald Trump to lobby for the appeal, according to La Nación. The case remains pending at a district court in New York.

FEATURED Q&A / Continued from page 1

Packer model, the final presiding judge who decides over culpability is different from the procedural judge. In Brazil, the deciding judge and procedural judge are the same, which blurs lines and makes impartiality hard to maintain. That said, public opinion on the scandal has fallen along partisan lines. Those on the left, who defend Lula, always thought Lava Jato was political and now feel vindicated. Those on the right are downplaying the texts that Intercept is unearthing. So far, the scandal has had a stronger negative effect on Judge Moro's reputation than on President Jair Bolsonaro's agenda. And, even then, Judge Moro has shown no inclination that he plans to step down, feels remorseful or believes he did anything improper."

A Daniel Cerqueira, senior program officer at the Due Process of Law Foundation: "The undue coordination between Moro and Dallagnol is certainly a blow to the confidence in Brazil's judicial system. The seriousness of this crisis is rooted in how the Car Wash probe has been depicted as a moral quest of a few judges and prosecutors against corruption, and not as an institutional commitment to eradicate this practice from political processes. The conduct of Moro and Dallagnol is serious enough to raise doubts about the fairness of Lula's conviction. However, it would be a mistake to read the recent revelations as a partisan fever of the Brazilian judicial system overall. While judicial populism is unsuitable to the rule of law, the conduct of a judge and a prosecutor in one out of several probes faced by Lula is far from vindicating the role that he and his Workers' Party have played in the social and political turmoil in Brazil. Moro's moral fall is only a brief chapter of this novel, and it should be an opportunity

to place judicial and political celebrities where they belong in a society committed to democratic values: sometimes with and sometimes without the public's support, but never above the law."

A Luis Claudio Martins de Araújo, professor of constitutional law at Ibmecc (Instituto Brasileiro de Mercado de Capitais): "With regard to the Car Wash case, we should state that, besides the theoretical debate of the impartiality of the judges, this kind of close relationship between judges and prosecutors is quite common in Brazil. Thus, we can't say, at least at this moment, that there are implications on the legitimacy of the Car Wash investigation, or for Lula's case in particular. Of course, as you would expect, the

“ This kind of close relationship between judges and prosecutors is quite common in Brazil.”

— Luis Claudio Martins de Araújo

information of The Intercept Brasil and Folha de São Paulo is still in the very beginning stages. In the near future, we could receive more material regarding the case. However, currently, we don't have a clear scenario of the extent to which the information will derail the presidential agenda. Moreover, it is still unclear what the next steps of the investigation are, or even if there will be an invalidation of former President Lula's conviction. Therefore, it will be necessary to closely follow the case as it unfolds."

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