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FEATURED Q&A

Will an Overturned Conviction Scuttle Brazil's 'Car Wash'?



Brazil's Supreme Court last month overturned the conviction of former Petrobras CEO Aldemir Bendine. The case may have major implications for others convicted in the "Car Wash" investigation. // File Photo: Brazilian Government.

Q In a landmark decision, Brazil's Supreme Court on Aug. 27 overturned the conviction of former Petrobras CEO Aldemir Bendine, ruling that Bendine should have been allowed to deliver a closing argument after he was accused in testimony from a plea bargain. The high court's ruling marked the first time that a conviction from the sprawling "Car Wash" corruption investigation had been overturned. What impact will the Supreme Court's ruling have on other Car Wash cases? What effect will the development have on the case of jailed former President Luiz Inácio Lula da Silva? How will the overturning of Bendine's conviction affect the Car Wash investigation going forward?

A Roberto Simon, senior director for policy and head of the Anti-Corruption Working Group at the Americas Society/Council of the Americas and politics editor for Americas Quarterly: "Not long ago, it would have been very hard to imagine the Supreme Court (STF) overturning a Car Wash conviction based on a procedural argument, such as in the Bendine case. So what changed? Two words can summarize the reason: Vaza Jato. The embarrassing leaks of communications among members of Operation Car Wash exposed an all-powerful and out-of-control group, as well as apparent cases of prosecutorial and judicial overreach. Vaza Jato changed the political climate in Brasília, pushing powerful players—including the STF—to demonstrate that they are ready to curb anti-corruption crusaders in the legal system. Politics, not jurisprudence, will determine whether Bendine's case leads to the reversal of other convictions. Technically, the same

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TODAY'S NEWS

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Venezuelan Gov't, Opposition in Talks Focused on Economy

Talks between the two sides have reportedly been happening as frequently as once a week, even as Norway-mediated talks have stalled.

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ECONOMIC

IMF May Delay Argentina Loan Disbursement

The lender could delay the \$5.4 billion disbursement until after the country's presidential election.

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POLITICAL

Twitter Blocks Accounts of Raúl Castro, Cuban Media

Twitter has blocked the accounts of Cuba's Communist Party leader, Raúl Castro, as well as the country's state-run media. A Twitter spokesman said the company's policies bar users from using multiple accounts to amplify or disrupt conversations.

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Castro // File Photo: Cuban Government.

ECONOMIC NEWS

Venezuelan Gov't, Opposition in Talks Focused on Economy

Representatives of Venezuela's government and the country's opposition are engaged in talks focused on the Andean nation's economy, despite stalled negotiations between the two sides that Norway has mediated, Reuters reported Thursday, citing nine people familiar with the matter. The talks on the country's economy involve officials of Venezuela's ruling Socialist Party who want the United States to end its sanctions and opposition leaders

Economy-focused talks between Venezuela's government and the opposition reportedly began in June.

who say President Nicolás Maduro must leave office in order for the country's battered economy to improve. The talks, which have occurred as frequently as once a week in August, indicate that Maduro is seeking contact with the opposition even as the country's economy continues to crumble, the wire service reported. The discussions, which reportedly began in June, have sometimes been held in a Caracas hotel and have been carried out through the Boston Group, a forum that members of the U.S. Congress formed nearly two decades ago in an effort to foster dialogue between Venezuelan lawmakers with differing political views. "It helps us know what they're up to," an opposition participant who asked not to be identified told Reuters. Venezuela's Information Ministry did not reply to a request by Reuters for a comment, and Pedro Díaz, a lawyer and former legislator who coordinates Boston Group activities, told the wire service that he was unable to discuss the matter. In related news, Maduro said Thursday that he would not travel to New York later this month

for the annual meeting of the United Nations General Assembly. However, he added that he would send two representatives to the meeting to denounce sanctions that the United States has imposed on the South American country. Executive Vice President Delcy Rodríguez and Foreign Minister Jorge Arreaza will attend the meeting where they are to present a petition with the signatures of 12 million Venezuelans who oppose the sanctions, Maduro said. [Editor's note: See related [Q&A](#) in the Aug. 15 issue of the Advisor.]

IMF May Delay Loan Disbursement to Argentina

The International Monetary Fund has not yet made a decision over whether it will release the \$5.4 billion disbursement due for Argentina this month as part of the country's bailout deal with the lender, the Financial Times reported Thursday, citing people familiar with the country's financial crisis. The disbursement could be delayed beyond Argentina's Oct. 27 presidential election, the sources said. "The market is already pricing in a delay in the IMF disbursements for both September and October," said John Morton, a portfolio manager at Lord Abbett, the newspaper reported. "Any type of disbursement before the new government would actually be quite positive for the market," he added. The IMF has deferred its decision following a financially hectic month in August, when President Mauricio Macri lost by a wider-than-expected margin against Peronist opposition candidate Alberto Fernández, who has so far been giving mixed signals on possible future policies. "Our engagement remains strong with Argentina," IMF spokesman Gerry Rice told reporters on Thursday, Reuters reported. "The IMF's objective has been to try to help the authorities stabilize the challenging situation and allow for a return of confidence that would pave the way for growth," he added. New Finance Minister Hernán Lacunza is scheduled to travel to Washington on Sept. 26 to meet with IMF officials. [Editor's note: See related [Q&A](#) in the Sept. 3 issue of the Advisor.]

NEWS BRIEFS

Twitter Blocks Accounts of Raúl Castro, Cuban Media

Twitter has blocked the accounts of Cuban Communist Party leader Raúl Castro and the country's top state-run media outlets, including the Communications Ministry, prompting the Cuban Union of Journalists to denounce the move as "massive censorship," Reuters reported Thursday. The block came as President Miguel Díaz-Canel was addressing the nation on state-run television, issuing a warning of an energy crisis he said was due to U.S. sanctions. A Twitter spokesman said the company's manipulation policies ban users from artificially amplifying or disrupting conversations by using multiple accounts, Reuters reported.

Nine Killed in Fire at Rio de Janeiro's Badim Hospital

A fire Thursday night at a hospital in Rio de Janeiro has left nine people dead, according to local media, BBC News reported today. Patients from the private Badim Hospital were evacuated as flames and smoke engulfed the building, with a witness describing the scene as one of panic. Some of the patients had been in the intensive care unit. The fire was under control at around 8 p.m. local time.

Brazil's XP Investimentos Hires Banks to Handle Initial Public Offering

Brazilian financial services company XP Investimentos has hired investment banking units of JPMorgan Chase, Goldman Sachs and Morgan Stanley to handle an initial public offering in the United States, Reuters reported Thursday, citing two unnamed sources. XP had pursued an IPO in 2017 but then reached an agreement with Brazilian lender Itaú Unibanco, which acquired a 49.9 percent stake in the firm. XP, which declined to comment, reportedly plans to list its shares by January.

POLITICAL NEWS

Peru's High Court Cuts Keiko Fujimori's Pre-Trial Jail Time

Peru's Supreme Court on Thursday cut opposition leader Keiko Fujimori's jail time by half in connection with a corruption case involving Brazilian construction giant Odebrecht, El Comercio reported. Judges ordered Fujimori be held in pre-trial detention for 36 months last October, but now she is to serve only 18 months and be released in April. Fujimori had requested immediate release in court, and her lawyer said she would appeal the Supreme Court ruling to the Constitutional Court. "We are going to exhaust all avenues," Guillian Loza, her lawyer, told reporters, Agence France-Presse reported. Fujimori has been jailed at a women's prison south of Lima since Oct. 31. She is accused of accepting \$1.2 million in illicit party funding from Odebrecht during her 2011 presidential campaign. If released in April, Fujimori, the eldest daughter of disgraced former President Alberto Fujimori, would theoretically have time to campaign for the presidential election initially scheduled for 2021. However, President Martín Vizcarra recently called for elections to be moved forward to April 2020 in a bid to overcome an institutional deadlock with Congress, where the opposition has a majority, AFP reported. [Editor's note: See related [Q&A](#) in the Oct. 24 issue of the Advisor.]

U.S. Supreme Court Decision on Asylum 'Astonishing': Ebrard

Mexican Foreign Minister Marcelo Ebrard said Thursday that the Mexican government does not agree with the U.S. Supreme Court's "astonishing" decision allowing the United States to deny asylum claims from migrants who travel through Mexico and other nations without requesting protection there first, the

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procedural argument could apply to several high-profile cases, including Lula's. However, Car Wash remains extremely popular among Brazilians, and the image of the STF getting convicted politicians out of jail will certainly shock the public. The same is true for another consequential decision that the court will likely make over the next months, regarding defendants' detention before appeals are exhausted. The STF has been sensitive to external pressure on several occasions in recent years. But without significant public mobilization, the court can feel emboldened to take controversial actions. Even if it does not, Car Wash and other major anti-corruption operations have already been transformed. Prosecutors and judges understand that they are under a much more adverse environment, with higher scrutiny coming from all sides—the STF, Congress, the Bolsonaro administration, the press and elsewhere."

A **Mary Rose Brusewitz, member at Clark Hill Strasburger:** "This decision has caused serious ripples in Brazil. Prosecutors in the 'Lava Jato' cases may have cause for concern if the procedural flaw upon which the decision (which was not unanimous) was based is present in other cases. Defendants may base appeals on the same grounds. However, Justice Carmen Lúcia, who may have cast the deciding vote, was clear that her position was limited to the Bendine case. Her vote to overturn convictions in other

potential appeals on this basis may not be guaranteed. However, her stance in this case could be interpreted as a signal to prosecutors that affirmations of convictions are also

“ Justice Carmen Lúcia, who may have cast the deciding vote, was clear that her position was limited to the Bendine case.”

— Mary Rose Brusewitz

not guaranteed. Bendine will likely stand trial again in a lower court, but he could be released pending the outcome of the new case, which could take years. Lula's defense team is already pressing forward for relief based on this basis. For Lula, however, many other cases are in process. His near-term release is not a foregone conclusion. Events have chipped away at the reputations of Justice Minister Sérgio Moro and the other members of the Lava Jato prosecutorial team. This essentially procedural decision may suggest that, in part, the justice sought by Brazilian society may be postponed. Justice delayed can become justice denied. The symbolism of released defendants living large while new cases are brought might not be tolerable to portions of Brazilian society. Moro remains popular; it has yet to be seen how this will play out for Brazil."

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Associated Press reported. The U.S. high court on Wednesday ruled that the new rule could take effect while challenges to its legality are heard, a process that could take as long as a year. "The court's decision is astonishing in the impact that it is going to have," Ebrard said during Mexican President Andrés Manuel López Obrador's daily news conference, though he declined to explain what that "impact" would be. Ebrard added that a so-called safe third country designation could not come as a result of another nation's courts, El Financiero

reported. "This can't come about from a court ruling by another country. It's an agreement between two or more countries," Ebrard said. Mexico has been resisting pressure by the administration of U.S. President Donald Trump to formally sign a "safe third country" agreement that would require it to hear the asylum cases of migrants, mostly from Central America, who travel to the United States through its territory, Reuters reported. "Mexico won't accept it under any circumstances," Ebrard said, the wire service reported.

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A **Gilberto M. A. Rodrigues, professor and head of the graduate program in international relations at the Federal University of ABC (UFABC) in Brazil:** “The reversal of Bendine’s Car Wash conviction by the Brazilian Supreme Court will have a considerable impact on other similar cases. It was an important and necessary review of the decision of then-Judge Sérgio Moro, who systematically violated due process of law, particularly the principle of full defense. Appeals courts will certainly review many other cases, which may produce a massive number of overturned convictions. Based on

“**It was an important and necessary review of the decision of then-Judge Sérgio Moro, who systematically violated due process of law...**”

— Gilberto M. A. Rodrigues

legal arguments, the Supreme Court decision happened at a moment in which the Car Wash investigation has been progressively weakened through a series of leaks mediated by The Intercept, showing that federal prosecutors and Moro overstepped their legal boundaries and became a ‘Car Wash party,’ acting politically to disfavor some politicians to others’ detriment. It is now clear that former President Lula’s case was politically conducted by Car Wash prosecutors under Judge Moro’s guidelines—a situation that was totally outside of constitutional law. However, it is difficult to believe the Lula case could be overturned. The Supreme Court is already under significant pressure from the president, Congress and a part of the public that want to keep Lula from any chance of political activity, due to the real

political threat he personifies as a still very popular leader. The Car Wash investigation will be progressively adjusted to the limits of the rule of law, and it will remain, though with much less credibility.”

A **Lucas Fernandes, consultant at BMJ Consultores Associados:** “The recent ruling of the Supreme Court’s Second Panel is a significant setback to Operation Car Wash, which heavily relied on plea bargain content to push investigations forward. The ruling is restricted to the Bendine case, but it is estimated that more than 100 convictions made by then-Judge Sérgio Moro, including that of former President Luiz Inácio Lula da Silva, could be reviewed based on this precedent. Such a process is not automatic, and each convicted individual will have to plead separately, a process that is usually drawn-out. The ruling deals with a gap in the current legislation (both the Plea Bargain Law and the Criminal Code) and highlights a change in the predominant position of the Supreme Court’s Second Panel, which used to present favorable decisions to the Car Wash task force. This is happening amid the disclosure of leaked conversations among prosecutors, putting into question the operation’s impartiality. This scenario opens new avenues for further attacks from the political class and magistrates opposed to the actions of the involved prosecutors. It is important to consider, however, that public opinion remains largely favorable to Operation Car Wash and that many justices may be sensitive to street voices. The same prudence is to be observed in the debate over Lula’s legal situation. At this moment, the former president is unlikely to be released based on this merely procedural ruling.”

The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org.

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