

# Brazil's "Operation Car Wash"—Recent Developments and Repercussions in Latin America

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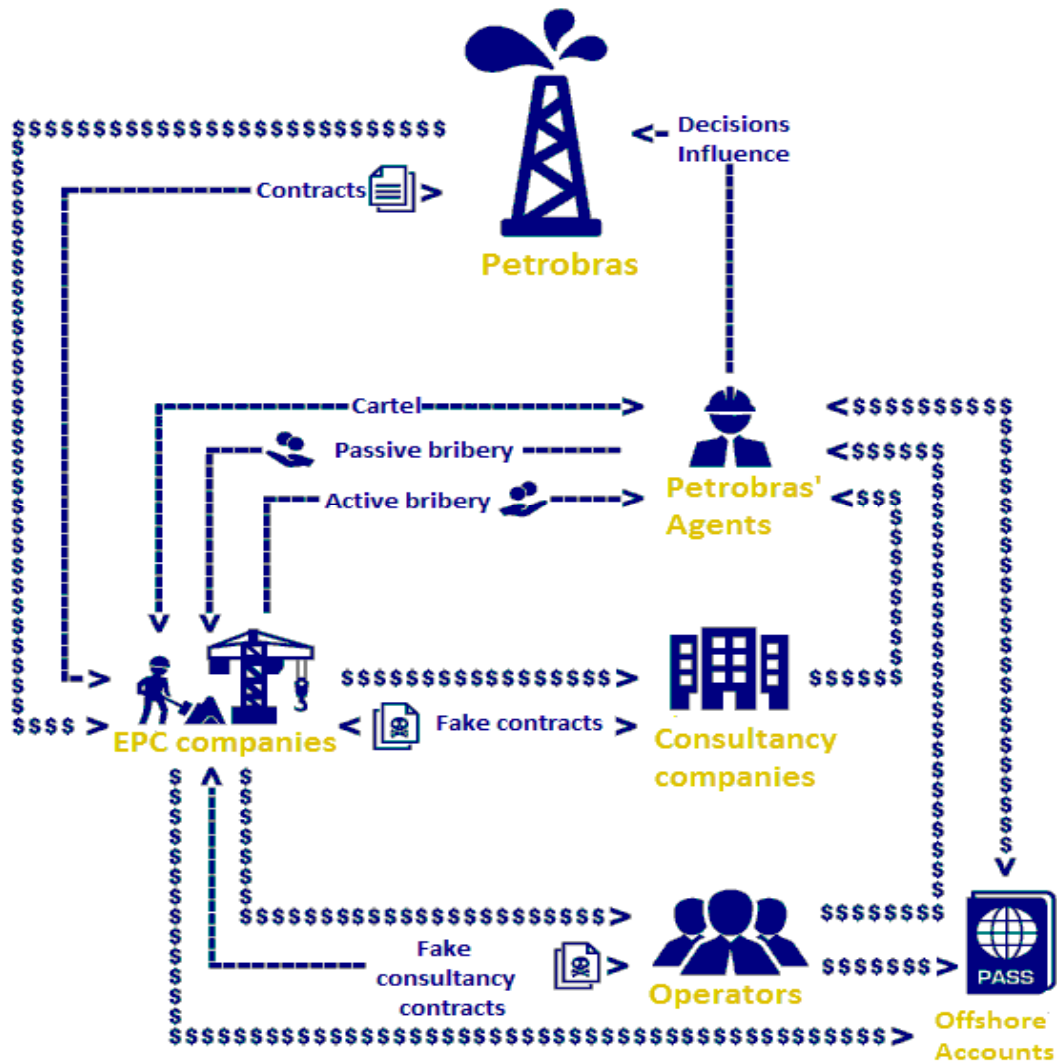


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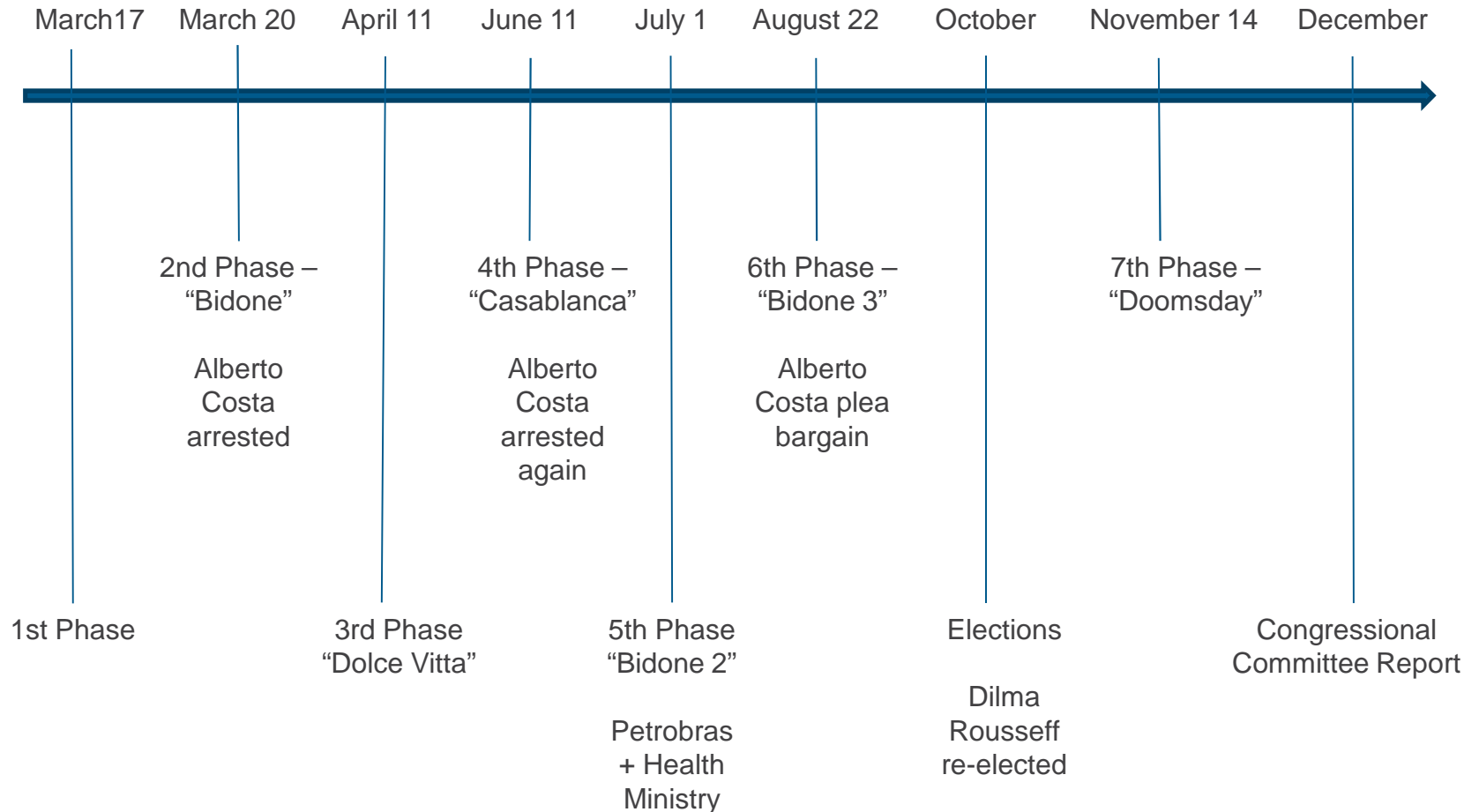


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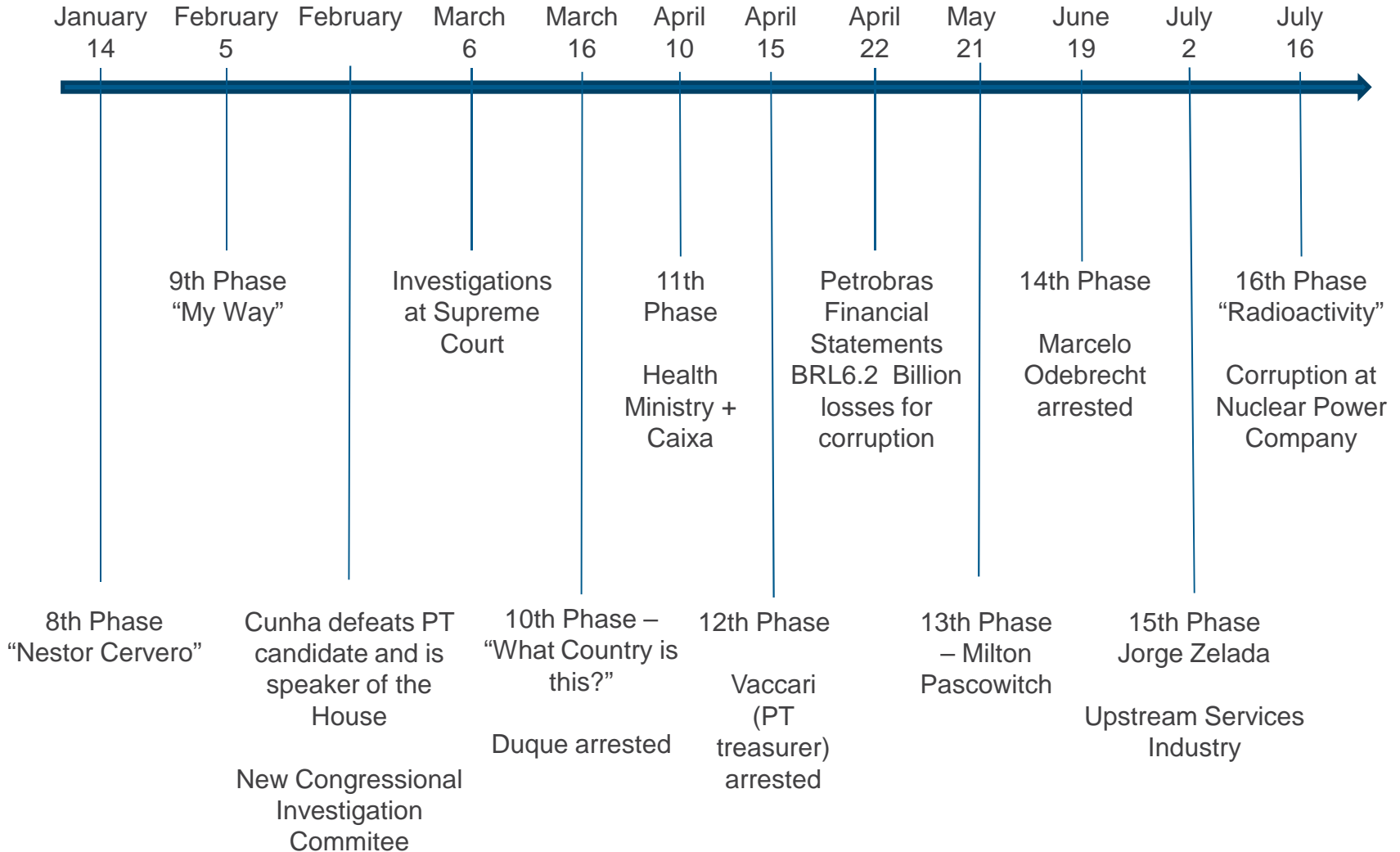
# Operation Car Wash - Scheme



# Operation Car Wash - 2014



# Operation Car Wash - 2015



# History

- 17<sup>th</sup> phase – “Pixuleco” (slang for bribe) – August 3, 2015
  - Former Minister of Institutional Relations José Dirceu (*Lula administration*) investigated for creating the corruption scheme in Petrobras and soliciting bribes – Dirceu indicated Petrobras officers, including Renato Duque
  - Based on Julio Camargo (Toyo Setal) and Milton Pascowitch (lobbyist) depositions
  - 40 judicial warrants issued:
    - 26 for search and seizure - including for JD Consultoria e Assessoria, José Dirceu consulting company allegedly utilized by the former minister to receive unlawful payments in the corruption scheme
    - 3 for preventive arrest - including for José Dirceu
    - 5 for temporary arrest
    - 6 for coercive conduction for questioning

*José Dirceu, former Minister of Institutional Relations*



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*João Vaccari Neto, PT treasurer who utilized the slang “Pixuleco” to refer to the bribes in the context of Operation Car Wash*



TAUIL & CHEQUER

# History

- 18<sup>th</sup> phase – “Pixuleco 2” – August 13, 2015

- Former councilman in the City of Americana (SP) Alexandre Romano arrested in the Congonhas airport for BRL 52 million diverted from the Ministry of Planning
- 10 search and seizure warrants enforced in four different cities: São Paulo, Brasília, Porto Alegre and Curitiba
- Romano is a former PT affiliate and the bribery scheme in the Ministry of Planning involved Luiz Gushiken, former Secretary of Communication in the Lula administration



# History

- **19<sup>th</sup> phase – “Nessum Dorma” – September 21, 2015**
  - Focused on the investigations of Petrobras International and power sector
  - 11 judicial warrants enforced in São Paulo, Florianópolis and Rio de Janeiro:
    - 7 for search and seizures
    - 1 for preventive arrest - João Augusto Rezende Henriques, lobbyist of PMDB
    - 1 for temporary arrest - José Antunes Sobrinho, Engevix partner
    - 2 detentions for questioning





# Current Status

- It now comprises a set of operations and investigations carried out by several governmental authorities (e.g. Federal Police, Public Prosecutors' Office, CADE, CGU, TCU)
- The Federal Police and the Public Prosecutor's Office are still questioning several individuals and we cannot be certain of which of these did or did not execute a plea bargain and what was said in their depositions
- Meanwhile, lawsuits have already been filed against high-level executives of EPC companies, politicians and operators
- As investigations have unfolded, other public entities have been found to be involved in the findings, and the Supreme Court has determined that unlawful acts with no relation to Petrobras will be subject to Operation Car Wash federal judge jurisdiction

# Current Status in Brazil

- Investigations and criminal proceedings being conducted at the Supreme Federal Court against sitting members of Congress and Ministers of State
- Investigations and criminal proceedings being conducted at the Federal Court in Curitiba against other individuals
- Proceedings against companies for cartel violations at CADE – Brazilian Antitrust Authority
- Proceedings against companies for corruption before the CGU – 29 proceedings
- Improbity lawsuits against individuals and companies
- Congressional Investigations Committee – CPI Petro

# CPI - PETRO

- Congressional Investigations Committee started on February 5, 2015 after request of Congressman Carlos Sampaio (PSDB-SP)
- Chaired by Congressman Hugo Motta (PMDB-PB)
- Created to investigate unlawful actions within Petrobras from 2005 to 2015 in connection with:
  - Overpricing and reckless management within the construction of refineries in Brazil;
  - Creation of subsidiaries and SPCs with the purpose of committing unlawful conducts;
  - Overpricing and reckless management within the construction and chartering of transport vessels, platforms and drilling rigs;
  - Irregularities in the operation of Sete Brasil; and
  - Irregularities in the sale of Petrobras' assets in Africa.
- The final report was presented and approved on October 22, 2015



# Is Peru Involved?

- A collaborator in the Brazilian investigation alleges that in 2008, a former Brazilian government official visited Peru to meet with two ministers and a representative of the Peruvian government with the objective of obtaining contracts for Brazilian companies
- The collaborator also affirms that a Brazilian business woman who is married to a Peruvian former minister and who worked for the former Brazilian government official received 20 wire transfers totaling US\$210,000 between January 16, 2009 and April 9, 2010 from Brazilian companies in exchange for obtaining public infrastructure contracts in Peru
- Brazilian investigators have identified a group of Brazilians who would have been involved in transferring money from Brazil to Peru
- The same large Brazilian construction companies involved in the Brazilian “Car Wash” investigations all have operations in Peru

# Main Peruvian Projects Involving Brazilian Investigated Companies

- “Línea Amarilla” freeway in Lima
  - Investment: US\$600 million
- Lima Convention Center (recently concluded)
  - Investment: US\$538.8 million
- South-Peruvian Gas Pipeline
  - Investment: US\$7.3 billion
- Line 1 for the Lima Metrorail System
  - Investment: Not public
- Phase 4 of Inter-Oceanic Highway
  - Investment: Not public
  - Cost overruns of more than 230% between 2006-2015

# Status of Investigation in Peru

- The Peruvian Congress has created a special investigation committee for purposes of investigating Car Wash suspects in Peru and possible alleged bribes paid during the governments of Presidents Toledo, García and Humala
- The anti-corruption prosecutor in Peru has stated that it will request the Public Ministry to investigate any connections between the Car Wash suspects and Peru
- An investigation by the Public Ministry is already in place with respect to alleged bribes in the Inter-Oceanic Highway case
- Car Wash investigations in Brazil have uncovered connections with Peru through the sending of money for presumed bribes, but the investigations have not been able to determine who the recipients of these funds were

# Effects of the Car Wash Case in Peru

- The projects being developed by the Brazilian companies involved in the Car Wash investigation are of great public interest in Peru
- These projects have been developed without major obstacles as of this date; however, as the investigations evolve, all eyes will be on these projects and the companies involved

# The Role of U.S. Law Enforcement

- Assisting the Brazilian and Peruvian authorities
  - Formal and informal cooperation
  - Tracing money through the international banking system
- Independent investigations, prosecutions, and enforcement actions
  - DOJ and SEC enforce the FCPA against “issuers,” such as Petrobras
    - DOJ case would focus on the bribery of foreign officials
    - SEC enforcement action would focus on books and records violations and the lack of adequate internal controls
  - DOJ and SEC can also enforce the FCPA if the conduct takes place in the United States
    - E-mails, telephone calls, or the movement of money could all suffice



# The Role of U.S. Law Enforcement

- Petrobras illustrates the new era of multi-polar enforcement
  - Historically, the United States was really the only game in town when it came to enforcing international anti-corruption standards, but that has been changing rapidly
  - We are likely to see Petrobras-related enforcement actions in many countries, including
    - Brazil
    - Netherlands
    - United States
    - Peru

# The Role of U.S. Law Enforcement

- New scrutiny on state-owned oil companies
  - Potential new “industry sweep”
  - Press reports assert that US authorities have opened investigations into corruption involving Petróleos de Venezuela (“PDVSA”), Venezuela’s state-run petroleum company
  - Press reports detail a “pay-to-play” scheme that strikingly similar to what appears to have occurred at Petrobras
- Key difference: Venezuela authorities unlikely to work cooperatively with US investigations
  - Heightened potential for unilateral enforcement

# Thank You

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