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# The Trump Administration’s Actions in Venezuela Are Constitutional



President Donald Trump speaks as Secretary of State Marco Rubio and Defense Secretary Pete Hegseth look on after a U.S. strike in Venezuela that captured President Nicolás Maduro and his wife, Cilia Flores, at Mar-a-Lago in Palm Beach, Fla., January 3, 2026. (Jonathan Ernst/Reuters)

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Not only was the U.S. capture of Nicolás Maduro legal, but it also has significant precedent.

**T**HE president unilaterally launches a lightning-fast assault to overthrow a foreign dictator who harms Americans, oppresses his own people, and continues to threaten our national security. Critics accuse the president of

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That may describe President Donald Trump's order to execute the astounding snatch-and-grab of Nicolás Maduro, the leader of Venezuela. But it also describes President Barack Obama's 2011 campaign to bring down the Libyan regime of Moammar Qaddafi. Or President Bill Clinton's 2000 air war against Serbia, which stopped its invasion of Kosovo and led to the overthrow and trial of Slobodan Milošević. Or, in the example most similar to today's, President George H. W. Bush's 1989 decision to invade Panama, arrest its military leader Manuel Noriega, and try him for drug-trafficking.

As in those past conflicts, President Trump's toppling of Maduro has triggered an avalanche of criticism from the congressional opposition. Massachusetts Senator Elizabeth Warren called the attack "unconstitutional" and a threat to drag the U.S. into further regional conflicts. Vermont Senator Bernie Sanders (I., Vt.) condemned the action as "reckless." Senate Minority Leader Chuck Schumer of New York said he would push for a vote on a resolution to limit further military action without explicit authorization by Congress.

We should ask whether critics of President Trump today maintained the same position on Libya, Serbia, and even Panama, or whether their constitutional principles depend on the political party controlling the White House. In all of these cases, presidents of both parties used force to topple a dictator who posed a threat, in their judgment, to American national security. They relied on their authority as commander in chief and president, in whom Article II of the Constitution "vests" "the executive Power" of the United States. Those who claim that these presidents must seek a congressional permission slip misread the Constitution's text, structure, and history. If Congress believes a president has acted illegally, it has plenty of tools at hand, including the power of the purse and, ultimately, impeachment.

Critics of President Trump have one thing right, however. Last night's attack made clear what the administration has refused to admit: that the United States is at war with Venezuela. While the White House has portrayed its monthslong campaign as a war against drug cartels, drug-trafficking should remain a problem for law enforcement. Using force to preemptively kill drug runners violates the rules that govern the criminal justice system. The use of force can claim legality only if the United States is at war with Caracas and the drug cartels act as an arm of the Venezuelan government. Launching an overwhelming attack on the capital of the enemy and arresting its head of state takes place only in war and, indeed, is something that it appears only the United States can execute with its world-class military. It is just as legal as the other escalatory steps that Trump has taken in this war, such as shutting down Venezuelan airspace, imposing a naval blockade, and destroying ground targets.

But because yesterday's attack on Caracas confirms that the United States is in a state of war with Venezuela does not mean that Congress must consent before the warships moved onto station, the aircraft launched, and the special forces hit the ground. The declare-war clause simply does not convey that power to Congress, and critics must concede that historical practice by presidents and Congress denies such an understanding.

When the Framers ratified the Constitution, they would not have understood a declaration of war as necessary to initiate hostilities. The Constitution took the phrase "declare war" from British constitutional practice, which, as Blackstone's *Commentaries on the Laws of England* (1765), one of the leading authorities consulted by the Framers explains, was among the powers held by the Crown. The British, and their colonial brethren, did not understand declarations of war as serving the domestic function of constitutional authorization but rather as defining the legal status of hostilities under international law. In the one hundred years preceding the Constitution, the British waged more than a dozen wars, but they declared war only once before fighting began.

When declarations did appear, they usually came months or years after the start of the conflict. Declarations served as formal notices to other sovereigns of the legal status between countries at war and provided a public recitation of grievances. This would have been familiar to the Founding generation, which had fought a war in North America (the Seven Years' War) well before a formal declaration of war was issued. The Declaration of Independence itself was a declaration of war — which was issued a year after fighting had begun at Lexington and Concord.

Americans did not alter the British approach to warmaking. In the initial burst of state constitution-making, the revolutionaries rejected the British monarchy and experimented with weakening the executive branch. But when the



because, in Hamilton's words, he can act with "decision, activity, secrecy, and dispatch." He emphasized that "energy in the executive is a leading characteristic of good government" and is essential for protecting the community against foreign threats.

The constitutional structure confirms this understanding. Article I, Section 10 declares: "No State shall, without the Consent of Congress, . . . engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay." The Framers knew exactly how to write a text that requires Congress's approval before military hostilities begin. They even included an exception for sudden attacks that all scholars agree must reside within the declare-war clause (even though it isn't there). If the Framers had really wanted Congress to control warmaking, they should have written, "The President shall not, without the Consent of Congress, engage in War, unless the United States is actually invaded or in such imminent Danger as will not admit of delay." But they did not. As Chief Justice Marshall observed in *McCulloch v. Maryland*, identical words in the Constitution should carry the same meaning, and different words must carry different meanings. By deliberately distinguishing "declare" war from "engage," the Framers created a system in which Congress and the president wield distinct tools in war within a flexible, political process.

The ratification debates further confirm this understanding. At the Virginia ratifying convention, for example, Anti-Federalist Patrick Henry warned that presidential command of the military would invite reckless wars. Federalist George Nicholas replied that Congress's regulation and funding powers would provide Congress with a sufficient check. James Madison further responded that liberty was preserved so long as "the sword" and "the purse" rested in different hands — just as in Britain, where the king commanded and Parliament funded. Even though Virginia narrowly ratified the Constitution by 88–80, Madison never invoked the declare-war clause as a check on presidential power.

History has fulfilled the Framers' design. For more than two centuries, neither presidents nor Congresses have required Congress to declare a war before the president could fight it. The United States has used force abroad more than a hundred times, but Congress has issued declarations only five times: 1812, 1848, 1898, 1917, and 1941. In other conflicts, such as in 1991, 2001, and 2002, Congress has passed authorizations to use military force. In still others, presidents acted without any formal congressional approval. Presidents have sent troops unilaterally to oppose the Russian Revolution, chase Mexican rebels, defend South Korea, and topple regimes in Panama, Serbia, and Libya.

Trump's critics today would overthrow this long historical practice of presidential initiative and congressional acquiescence. From Jefferson's naval expeditions to Lincoln's conduct of the Civil War, from Truman's Korea to the long struggles of the Cold War, presidents have acted with dispatch to the protect the nation while Congress has cooperated by funding and raising the military. Rather than raise a military solely to defend the homeland, Congress has created an expeditionary military designed to fight offensive wars in other countries and placed no funding restrictions on using it.

If leading Democrats had their way, Congress could control tactics and strategy rather than the president. But Congress's size and deliberative structure make it too unwieldy for decisions requiring speed, secrecy, and decisiveness. Its funding power instead provides a check right after hostilities begin. Congress can reduce or cut off resources, shrink the military, or halt supplies. It used these tools to end the Vietnam War and to block James Polk's attempt to occupy more of Mexico. If presidents lead the nation into disasters, Congress can cut off funds, launch impeachments, or call upon the voters to throw out the party in power. The Framers did not expect Congress to authorize every use of force or to manage military campaigns. When Congress chooses to declare war, fund conflicts, or do nothing, it is not surrendering authority. It is *exercising* authority.

Presidents have not always judged wisely, and some wars have proved costly mistakes. Trump's decisive action may have removed one of the leading threats to American national security in the Southern Hemisphere, but the administration still faces the difficult challenges posed by the transition of power. In Iraq, the Bush administration succeeded, after great cost, in fostering a democracy. But Bush, Obama, and Biden failed disastrously on the same score in Afghanistan. These victories and defeats do not mean the Constitution has failed. The Framers gave the president and Congress powers with which to cooperate or fight over control over war, and they trusted in politics to resolve their disagreements. That system should stand us in good stead now just as it has for two centuries.



