

Mr. Chairman, Madam Ranking Member, and distinguished Members of the Committee, thank you for the opportunity to testify. My name is Gina D'Andrea, and I serve as General Counsel of the America First Policy Institute. I am here to address the legal bases for the president's authority to take military action to protect the American people from external threats, specifically with respect to recent actions involving Venezuela. As I will explain, the president's authority to take military action in such situations rests on long-accepted constitutional grounds and has, in fact, been exercised by various presidents dating back to the Founding Fathers.

First, I'd like to give a brief recap of what is going on in America's own backyard. Evidence shows that the United States is confronting a narco-terrorist network that operates within the Venezuelan government itself. First under Hugo Chavez, and now Nicolas Maduro, [Venezuela has served as a hub for extra-hemispheric actors](#) who are hostile to the United States and has enabled them to traffic drugs and criminals into our homeland. This includes China, Russia, and perhaps now most notably, Iran.

[Maduro was indicted](#) by a federal grand jury in the Southern District of New York on charges of narco-terrorism and conspiracy to import cocaine into the United States. Neither the United States, under both the Biden and Trump Administrations, nor the European Union recognizes him as a legitimate head of state. In fact, under the prevailing norms of customary international law, even the United Nations would be hard-pressed to recognize Maduro's legitimacy: Maduro lost the 2024 presidential election, refused to cede power, and no principle of international recognition, whether grounded in effective control or democratic legitimacy, can sustain a claim to lawful governance by a leader who holds office in defiance of his own electorate. (*See, e.g.,* U.N. Doc. S/1466 (Mar. 9, 1950); Murphy, *Democratic Legitimacy and the Recognition of States and Governments*, 48 I.C.L.Q. 545, 566-79 (1999).) He has been named by the Department of State as the official [leader the Cartel de los Soles](#) and has used his power to weaponize an illegitimate militia to traffic narcotics into American communities on an industrial scale. He is also alleged to have worked against the United States interests with Iran, including potentially aiding Iranians in entering the United States under the illegal CHNV parole program that operated during the Biden Administration.

The evidence is clear. This is not a foreign policy dispute. This is the protection of the American people and the enforcement of American criminal law.

To start, the authority of the President under Article II of the U.S. Constitution is sufficient to support action to address these threats from America's neighbors. As Commander-in-Chief, the president bears the primary responsibility, and truthfully, obligation, to protect the American people and ensure national security. This authority to address external threats before they reach the homeland has bipartisan recognition dating back to the founding fathers.

The Administration's [Executive Order](#) designating the cartel networks as foreign terror organizations recognizes that these are not ordinary criminals and are instead paramilitary entities that pose a direct threat to the United States. This designation bolsters the President's authority to take action in defense of the American people.

In the face of narco-terrorists operating as a foreign government and funneling dangerous drugs and criminals into U.S. territory, the President has both the authority and the duty to take action and protect America from her enemies.

Turn first to the strikes on narcotrafficker vessels. Congress itself designated the Department of War as the lead federal agency for detecting and monitoring the maritime transit of illegal drugs into the United States. (10 U.S.C. § 124). Consonantly, the Maritime Drug Law Enforcement Act vests federal jurisdiction over drug trafficking aboard vessels on the high seas. (46 U.S.C. §§ 70501-70507). The strikes were carried out as a result of evidence showing such drug trafficking was taking place. More to the point, the Commander in Chief power has always been understood to encompass the authority to direct military operations against threats to national security. (U.S. Const. art. II, § 2; *The Prize Cases*, 67 U.S. 635 (1863)). Striking vessels that evidence shows serve as instrumentalities of narco-terrorism is a lawful exercise of that power.

Turn next to the capture of Maduro. Operation Absolute Resolve was not an act of war. It was a targeted law enforcement operation to execute a federal arrest warrant. And it was not the first time that the United States has engaged in such an operation. In 1989, the United States deployed military forces to apprehend General Noriega, a sitting leader

indicted on federal drug-trafficking charges. The courts upheld jurisdiction and rejected his claim of head-of-state immunity. (*United States v. Noriega*, 746 F. Supp. 1506 (S.D. Fla. 1990), *aff'd*, 117 F.3d 1206 (11th Cir. 1997)). Importantly, the Supreme Court has long held that the manner of a defendant's apprehension does not divest a court of jurisdiction to try him. (*Ker v. Illinois*, 119 U.S. 436 (1886); *United States v. Alvarez-Machain*, 504 U.S. 655 (1992)). Perhaps most relevant is that Maduro, like Noriega, enjoys no sovereign immunity because the United States does not recognize him as a legitimate head of state.

Both operations draw further support from the President's constitutional authority over foreign affairs. The Executive stands as the Nation's sole organ in international relations. (*United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936)). The President holds the exclusive power to recognize or refuse to recognize foreign governments. (*Zivotofsky v. Kerry*, 576 U.S. 1 (2015)). Success in foreign relations demands one national voice, and the constitution is clear that the Executive alone carries it. When the evidence showed the President that an indicted narco-terrorist commanding no legitimate authority posed a continuing threat to the American people, he acted squarely within his constitutional power to counteract that threat.

The War Powers Resolution does not foreclose these actions. It expressly preserves the President's independent Article II authority. (50 U.S.C. §§ 1541-1548.) The Administration complied with its procedural requirements. The Office of Legal Counsel has maintained, [across administrations of both parties](#), that the President may act without prior congressional authorization when the operation serves important national interests and does not rise to a constitutional war.¹ Consonantly, the Supreme Court has recognized that the President retains the authority to act where Congress has imposed no prohibition. (*Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring)). Congress has not prohibited these actions. To the contrary, Congress appropriated counter-narcotics funds, designated the Department of War as the lead counter-drug agency, and a federal grand jury returned the very indictment this operation enforced.

¹ See also Proposed Deployment of United States Armed Forces into Bosnia, 19 Op. O.L.C. 327 (1995), https://www.justice.gov/d9/olc/opinions/1995/11/31/op-olc-v019-p0327_0.pdf.

Members of this Committee, the Framers designed a Constitution that balances energy in the Executive with accountability through the Legislature. These operations honored that design. The strikes on narcotrafficker vessels enforced congressionally authorized counter-narcotics authorities under the Commander in Chief's operational direction. The capture of Maduro executed a federal warrant against a man no free nation recognizes as legitimate. Both were targeted, both were limited, and both were grounded in the text of our Constitution and over two centuries of Executive practice.

Thank you, and I look forward to your questions.