

The United States' Prosecution of Nicolás Maduro Moros: *United States v. Maduro*

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Following the [seizure](#) of Nicolás Maduro Moros (Maduro) by U.S. armed forces in Caracas, Venezuela, on January 3, 2026, a [superseding indictment](#) charging him and other defendants with narco-terrorism, narcotics, and weapons offenses was unsealed in the U.S. District Court for the Southern District of New York (SDNY). The January 2026 indictment supersedes [an indictment](#) filed against Maduro in the SDNY in March 2020. On January 5, 2026, Maduro was arraigned and [pleaded](#) not guilty to all counts in the indictment. This Legal Sidebar describes the charges in the January 2026 indictment, discusses the proceedings in Maduro's case thus far, and analyzes potentially relevant precedent that may govern this case, including the [judicial](#) opinions [arising](#) out of the United States' prosecution of Panama's military leader Manuel Noriega for drug trafficking offenses in the 1990s. This Sidebar then discusses some considerations for Congress.

The Charges in the January 2026 Indictment

The January 2026 indictment [names](#) Maduro and five other defendants: Cilia Adela Flores de Maduro (Maduro's wife), Diosdado Cabello Rondón and Ramón Rodríguez Chacín (current and former high-ranking Venezuelan government officials and politicians), Nicolás Ernesto Maduro Guerra (Maduro's son), and Hector Rusthenford Guerrero Flores (identified in the indictment as the alleged leader of Tren de Aragua (TdA), a Foreign Terrorist Organization (FTO) as [designated](#) by the State Department under [8 U.S.C. § 1189](#) in February 2025). The indictment [charges](#) Maduro, Rondon, and Chacin with narco-terrorism conspiracy in violation of [21 U.S.C. § 960a](#), and all five defendants are [charged](#) with conspiracy to import cocaine into the United States and weapons possession offenses.

The [first count](#) alleges narco-terrorism conspiracy in violation of 21 U.S.C. § 960a, which prohibits engaging in [certain drug trafficking offenses](#), or attempting or conspiring to do so, "[knowing or intending](#) to provide, directly or indirectly, anything of pecuniary value to any person or organization that has engaged or engages in terrorist activity ... or terrorism." The indictment [alleges](#) that Maduro and the two Venezuelan government officials named as defendants conspired to distribute and possessed with intent to distribute cocaine to support TdA and other organizations designated as FTOs by the State Department under [8 U.S.C. § 1189](#).

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The [second count](#) is conspiracy to import cocaine into the United States in violation of 21 U.S.C. §§ [952\(a\)](#) (importing controlled substances in Schedule I or II or narcotic drugs in Schedule III, IV or V of the [Controlled Substances Act](#)); [959\(a\)](#) (manufacture or distribution of a controlled substance for the purpose of unlawful importation); [959\(c\)](#) (possession, manufacture, or distribution of a controlled substance by a person on board an aircraft); [960\(a\)\(1\)](#) (knowing or intentional import or export of a controlled substance); [960\(a\)\(3\)](#) (manufacture, possession with intent to distribute, or distribution of a controlled substance); [960\(b\)\(1\)\(B\)](#) (certain unlawful acts involving threshold amounts of cocaine); and [963](#) (conspiracy). The specific acts that the indictment alleges the defendants took in furtherance of the narco-terrorism and drug trafficking conspiracies include providing drug traffickers with [diplomatic passports](#), private [planes under diplomatic cover](#), and [armed military escorts](#).

The [third count](#) alleges that the defendants used and carried machineguns and destructive devices in furtherance of drug trafficking crimes that are prosecutable in a U.S. court, in violation of 18 U.S.C. § [924\(c\)\(1\)\(A\)](#) and [\(c\)\(1\)\(B\)\(ii\)](#).

The [fourth count](#) also alleges that the defendants conspired to possess machineguns and destructive devices in furtherance of and in relation to the narcotics offenses alleged in counts one and two, in violation of 18 U.S.C. § [924\(c\)\(1\)\(A\)](#) and [\(c\)\(1\)\(B\)\(ii\)](#).

Court Proceedings and Relevant Historical Precedent

On September 2, 2026, Maduro filed a [motion to dismiss](#) all charges in the indictment on the grounds that he is immune from prosecution because he is head of a foreign state and the charges are based on acts undertaken in his official capacity on behalf of Venezuela. Additionally, he filed a [separate motion to dismiss](#) challenging the first count only—narco-terrorism conspiracy in violation of [21 U.S.C. § 960a](#)—on the grounds that the government failed to properly allege the offense in the indictment, and that its extraterritorial application in Maduro’s case violates constitutional due process requirements and exceeds Congress’s constitutionality authority. As of this writing, the government has not filed its responses to either motion to dismiss, and the court has not ruled on either motion.

As this case progresses, a number of other issues may arise, including whether the indictment should be dismissed based on issues regarding the seizure and transfer of Maduro and his wife to the United States. The case against former military leader Manuel Noriega raised similar issues that have been and that may be raised by Maduro. The SDNY may consider the judicial opinions that arose out of Noriega’s case—which was heard in the U.S. District Court for the Southern District of Florida and appealed to the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit)—to be persuasive, but those opinions typically [are not considered](#) binding or controlling in other federal circuits such as the U.S. Court of Appeals for the Second Circuit (Second Circuit), which has appellate jurisdiction over the SDNY.

Head-of-State Immunity

Head-of-state immunity is a [status-based immunity doctrine](#) that prohibits criminal and civil cases against *current* heads of state in U.S. courts—that is, immunity applies only while the defendant is in office. Courts have often [deferred](#) to the [executive branch](#) to determine whether a defendant is a head of state, as the district and [appellate](#) courts did in the Noriega case. The district court [concluded](#) that Noriega had “[never been recognized](#) as Panama’s Head of State either under the Panamanian Constitution or by the United States,” and [rejected](#) Noriega’s claims that he was entitled to immunity as the de facto ruler of Panama. The Eleventh Circuit affirmed, [concluding](#) with deference to the executive branch that Noriega was not entitled to head-of-state immunity. The January 2026 indictment against Maduro [states](#) that he “was previously the President of Venezuela, and is now, having remained in power despite losses in recent elections, the de facto but illegitimate ruler of the country.”

Maduro's arguments in support of his claim that he is entitled to head-of-state immunity include that his case [should be distinguished](#) from that of Noriega because Maduro is Venezuela's head of state under Venezuela's constitution, which, Maduro [maintains](#), entitles him to absolute immunity under long-settled principles of common law and international law. Accordingly, Maduro [argues](#), the court should not defer to any determination by the executive branch that he should not be recognized as the president of Venezuela for purposes of judicial immunity.

Immunity for Official Acts

In contrast to head-of-state immunity, immunity for official acts is a [conduct-based](#) doctrine rather than a status-based one—meaning it may protect defendants from prosecution for [past official acts](#) even if they do not currently hold a head-of-state or other governmental office. In determining whether defendants are entitled to this type of immunity, courts assess whether the “[claims arise](#)” out of their official acts while in office,” or instead out of “[private acts](#) where the officer purports to act as an individual and not as an official.” In determining whether a current or former official is entitled to conduct-based immunity, courts may give [some deference](#) to the executive branch's position. Unlike status-based head-of-state immunity, which precludes courts' exercise of jurisdiction over a defendant entirely, this conduct-based immunity doctrine [applies only](#) to those acts deemed to be “official,” and the case may proceed with respect to any acts that a court determines to have been undertaken in a private capacity.

In [rejecting](#) an argument made by Noriega based on a [doctrine](#) similar to immunity for official acts, the district court [explained](#) that “[t]he inquiry is not whether Noriega used his official position to engage in the challenged acts, but whether those acts were taken on behalf of Noriega instead of Panama.” Additionally, some courts have [suggested](#) that some criminal acts, “such as drug possession or fraud,” are not normally “attributable to the state” and therefore could be treated as private acts for which no immunity is available.

Maduro [argues](#) that he is entitled to conduct-based immunity because the indictment's allegations are based on his official acts attributable to Venezuela, including “issuing diplomatic passports,” “coordinating diplomatic missions,” providing military escorts, and convening meetings with high-level Venezuelan government officials and “foreign political actors.” Similar to his argument in support of his claim to head-of-state immunity, Maduro [maintains](#) that the court should not defer to the executive branch's determination that he is not entitled to immunity for official acts because such a determination is inconsistent with federal common law.

Challenges Regarding the Legality of the Seizure

In addition to his defenses based on immunity doctrines, Noriega [argued](#) that his seizure and transfer to the United States as part of the U.S. military invasion of Panama merited dismissal of the charges lodged against him because these actions violated international law and his right to substantive due process under the Fifth Amendment to the U.S. Constitution. With respect to international law, Noriega [argued](#) that his seizure violated various international treaties and principles of customary international law, including Article 2(4) of the United Nations (U.N.) Charter, a Senate-approved treaty that [prohibits](#) the threat or use of force against the sovereign territory of another country without its consent, except in the limited circumstances of [self-defense](#) against an armed attack or U.N. Security Council [authorization](#). To dismiss the case, the district court [required](#) Noriega to establish that the treaty in question was “self-executing in the sense that it confers individual rights upon citizens of the signatory nations” and that the terms of the treaty contain “a self-imposed limitation on the jurisdiction of the United States and hence on its courts.”

A few months before U.S. armed forces invaded Panama and seized Noriega in December 1989, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion in June 1989 [arguing](#) that the President has “inherent” constitutional authority to undertake extraterritorial law enforcement activities

without congressional authorization, even if those activities are contrary to the U.N. Charter or customary international law. (Although OLC opinions are legal arguments and not binding on courts or Congress, the executive branch has historically treated them as internally controlling.) In reaching this conclusion, the OLC pointed out that it did not interpret any statutes as prohibiting the President from conducting law enforcement activities in contravention of customary international law. Along similar lines, the OLC based its conclusion that the President had unilateral constitutional authority to undertake law enforcement actions in violation of the U.N. Charter on the OLC's determination that this treaty is not self-executing, and accordingly Congress "must execute [it] before it can become a rule" enforceable in U.S. courts.

The district court in Noriega's case did not address the issue regarding the President's inherent constitutional authority and, instead, determined that the treaties in question did not create, either expressly or impliedly, an enforceable private right of action giving Noriega standing to challenge violations of such treaties. The court further reasoned that Noriega's claim should be rejected because the court concluded that Supreme Court caselaw has held that "violations of international law alone do not deprive a court of jurisdiction over a defendant in the absence of specific treaty language to that effect." As a result, the court explained that it was unnecessary to "reach the question of whether [international law] was violated by the United States military action in Panama."

In a memorandum written on December 23, 2025, assessing the legality of the United States' then-proposed military operation in Venezuela, the OLC relied on its 1989 opinion in arguing that it was "unnecessary to address the issue" of whether the planned operation would comply with international law because "[i]nternational law ... does not restrict the President as a matter of domestic law." The OLC further argued that the President had inherent authority under Article II of the Constitution to conduct the military operation in the absence of congressional authorization in order to seize Maduro. (For further discussion of the President's unilateral Article II authority to use military force and its potential implications for congressional authority, see CRS Report R48524, *Congress and the Scope of the President's Article II Foreign Policy Authorities*, by Karen Sokol (2025).)

The district court also rejected Noriega's argument that his seizure by U.S. forces was so "shocking to the conscience" as to amount to a violation of his Fifth Amendment right to substantive due process and thus required dismissal, a ruling upheld by the Eleventh Circuit on appeal. In upholding the district's court's conclusion, the Eleventh Circuit explained that under the Supreme Court's *Ker-Frisbie* doctrine—which is named after two of the Court's cases—the way in which a defendant was brought before a court does not impact the court's jurisdiction over the defendant. In both cases, the Supreme Court held that "the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a forcible abduction."

The Eleventh Circuit rejected Noriega's argument that his seizure fell within an exception to the *Ker-Frisbie* doctrine recognized by the Second Circuit that permits defendants to defeat a court's jurisdiction on grounds of a due process violation by establishing that their seizure involved not merely a "simply illegal" abduction, but rather "cruel, inhuman and outrageous treatment." Without deciding whether it also recognized such an exception, the Eleventh Circuit determined that Noriega's seizure did not meet that standard because he "has not alleged that the government mistreated him personally," and "whatever harm Panamanian civilians suffered during the armed conflict that preceded Noriega's arrest cannot support a due process claim."

The Eleventh Circuit also relied on Supreme Court caselaw in rejecting Noriega's claim that he should not have been tried because his seizure violated the extradition treaty between the United States and Panama. In *United States v. Alvarez-Machain*, the Supreme Court held that, because the United States' extradition treaty with Mexico did not prohibit forcible abductions, the *Ker-Frisbie* doctrine governed, and the court had jurisdiction to try the defendant notwithstanding that he was forcibly abducted from Mexico by U.S. law enforcement officials. According to the Eleventh Circuit, Noriega similarly failed to "demonstrate, by

reference to the express language of a treaty and/or the established practice thereunder, that the United States affirmatively agreed not to seize foreign nationals from the territory of its treaty partners,” and accordingly the district court’s exercise of jurisdiction over him was proper under the *Ker-Frisbie* rule.

In its December 2025 opinion on the prospective Venezuela military operation, the OLC also relied on the Supreme Court’s *Ker-Frisbie* doctrine in [arguing](#) that, even if the operation “were to exceed the President’s constitutional authority to order the use of force,” Maduro would not succeed in challenging his prosecution on those grounds.

In his motion to dismiss based on claims of immunity as head of state and for official acts, Maduro [states](#) that discovery proceedings related to circumstances of his seizure “through a military invasion” are ongoing, and that he “fully preserves his right to bring . . . a challenge” to the court’s jurisdiction based on his seizure “should the case against him otherwise proceed.” In the event that Maduro mounts a defense based on the legality of his seizure, the federal district court in New York hearing Maduro’s case and, if there is an appeal, the Second Circuit, might consider, but are not bound by, the Eleventh Circuit’s reading of Supreme Court precedent or its analysis of Second Circuit cases regarding a potential exception to the *Ker-Frisbie* doctrine.

Considerations for Congress

The court proceedings and any judicial opinions in *United States v. Maduro* may have implications for Congress’s legislative and oversight authorities. Accordingly, as it examines developments in the case, Congress may consider a variety of actions.

For example, immunity as a head of state or for official acts, which may be asserted by current or former foreign government *officials*, is [governed by federal common law](#)—that is, judge-made—doctrines, under which courts often give some level of [deference](#) to the executive branch on the question of whether the official is entitled to immunity. That was also the case with the doctrine governing foreign *state* immunity in civil cases [until 1976, when Congress enacted the Foreign Sovereign Immunities Act \(FSIA\)](#) (codified at 28 U.S.C. §§ 1602–11). The FSIA provides courts with a statutorily-delineated [set of legal standards](#) to apply in determining whether a foreign state is immune from the jurisdiction of U.S. courts [in civil cases](#). Congress may consider whether to permit courts to continue applying federal common law to claims of immunity by current or former foreign officials or whether to codify legal standards for courts to apply in assessing such claims in civil or criminal cases.

Additionally, Congress may engage in oversight and consider how the executive branch is conducting extraterritorial law enforcement activities that result in a seizure. As discussed in its December 2025 opinion on the Venezuela military operation, the OLC maintained that the President had unilateral inherent constitutional authority to [conduct the Venezuela operation using armed forces](#) and to [seize Maduro for law enforcement purposes](#), even if his seizure violates international law [because](#) “[i]nternational law ... does not restrict the President as a matter of domestic law ... when it comes to extraordinary rendition.” The OLC further [argued](#) that, even if the operation exceeded the President’s constitutional authority to order the use of force, that would not impact the ability of the United States to prosecute Maduro because the exercise of jurisdiction by U.S. courts would nevertheless be proper under Supreme Court precedent. Congress may consider the implications these claims of authority may have for Congress’s own authority, and whether to seek further information from the executive branch regarding its position on the scope of the President’s Article II authority to conduct, without congressional authorization, military operations that it claims are in support of law enforcement.

In addition to oversight measures, Congress may consider legislation similar to what was [introduced](#) in the 110th Congress that would restrict the President’s authority to seize individuals abroad. There are also some [treaties](#) where the Senate has [specified](#) in its resolutions consenting to the President’s ratification

that certain treaty provisions are not self-executing, and Congress has enacted legislation [making](#) aspects of [treaties](#) or [customary international law](#) enforceable by U.S. courts. While any legislation impacting courts' jurisdiction may change any common-law rules made by courts, it would have to be consistent with any requirements that courts [determine](#) to be constitutionally based.

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