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U.S. EXECUTIVE AUTHORITY | LEGAL BRIEF

MILITARY ACTION, AND VENEZUELA

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I. Background

The Venezuela operation was an America First law enforcement action undertaken to execute an arrest warrant against a narco-terrorist threat and to safeguard the Nation and its communities. Even President Biden, while in office, increased the reward for the arrest or capture of Nicolás Maduro to [\\$25 million](#). Neither the United States nor the European Union recognizes Maduro as a legitimate head of state. Maduro led the [Cartel de los Soles](#) and formed an illegitimate militia to carry out large-scale drug trafficking operations.

Yet critics now contend that this narco-terrorist capture was a constitutional violation, despite having earlier [criticized](#) President Trump during his first term for failing to act more decisively. The bottom line is simple: this was not an act of war, and it does not involve a sustained presence of American troops on the ground in Venezuela. This brief, therefore, provides a concise overview of law-enforcement actions abroad and the constitutional separation-of-powers authorities that govern them.

On January 3, 2026, U.S. special operations forces executed [Operation Absolute Resolve](#), capturing Venezuelan President Nicolás Maduro and his wife, Cilia Flores, in Caracas amid airstrikes on military targets. The aim was simple: to effectuate an arrest arising from federal narco-terrorism indictments. It was not a war, not a regime-change campaign, and not a sustained military engagement. This operation nevertheless reignited debate over the President's Commander-in-Chief authority vis-à-vis Congress's war powers.

That relationship is defined by the Constitution itself. [Article II](#) vests command authority in the President and [Article I](#) assigns to Congress the responsibility of declaring war. This constitutional balance between presidential initiative and congressional authority is further structured by the [War Powers Resolution of 1973](#).

Far from creating mutually exclusive spheres, the Constitution establishes overlapping authorities designed to ensure both energy in the Executive and accountability through the Legislature. In other words, these constitutional mandates do not conflict but rather reflect a carefully calibrated design that enables the President to act decisively to protect the Nation while reserving to Congress control over sustained wartime actions.

Importantly, historical practice confirms that not every use of military force constitutes “war” in the constitutional sense requiring prior congressional authorization, particularly where, as here, the action is limited, targeted, and undertaken to enforce criminal law against a transnational narco-terrorist threat.

Key Takeaways:

- **Division of War Powers:** Congress declares war and controls funding for long-term conflicts. The President, as Commander in Chief, directs military operations and responds quickly to threats.
- **War Powers Resolution (1973):** This requires the President to notify Congress within 48 hours, limits unauthorized hostilities to 60 days (with a 30-day withdrawal period), and preserves—not supplants—the President’s independent Article II defensive authority.
- **Supreme Court and Legal Practice:** Cases such as *The Prize Cases* (1863), *United States v. Curtiss-Wright Export Corp.* (1936), *Zivotofsky v. Kerry* (2015), and *Youngstown Sheet & Tube Co. v. Sawyer* (1952) recognize the President’s broad authority in foreign affairs and as Commander in Chief, while also highlighting the legal and statutory limitations that constrain that authority.

II. Constitutional Separation of Powers

The Constitution divides war powers between the Executive and Legislative branches—an allocation that reflects both democratic accountability and practical necessity, and one that has been the subject of ongoing separation-of-powers debate and interbranch communication, particularly since the Vietnam War. Article I, Section 8 grants Congress the authority to “declare War,” “raise and support armies,” and regulate the armed forces. Article II, Section 2 provides that “The President shall be Commander in Chief of the Army and Navy of the United States.”

This division reflects a deliberate choice by the Framers in balancing legislative forward action with executive responsive action. Congress, made for the people by the people, is vested with the power to calculate whether the Nation should enter into war. At the same time, the President is vested with authority to command the military and to respond swiftly to threats of national security.

III. Article II Powers: Commander in Chief Authority

The designation of the President as Commander in Chief has long been understood through the history and traditions of our nation, the Executive Branch's interpretation, and Supreme Court precedent to include authority to direct military operations without prior congressional authorization in certain circumstances.

Importantly, while Congress may declare war, simultaneously, the President is vested with the authority to:

- Conduct military operations,
- Superintend the armed forces, and
- Act decisively to protect the Nation from attack.

This distinction between declaring war and using military force is central to the Constitutional design. From the founding of America and onward, Presidents have exercised authority to use military force defensively and protect national interests short of initiating a full-scale war. This understanding aligns with Madison's view that Congress decides whether the Nation enters war, while the [Executive](#) must be able to act quickly to protect the Nation. Historically, this authority has encompassed:

- Repelling foreign invasion,
- Suppressing insurrection,
- Protecting U.S. citizens, personnel, and facilities, and
- Responding to imminent threats to national security.

IV. The War Powers Resolution (1973)

A. Purpose

The War Powers Resolution was enacted in 1973 in response to concerns that the balance of war powers between the Legislative and Executive Branch had been eroded during the Vietnam War. Through the War Powers Resolution,

Congress established a statutory framework that clarifies the existing constitutional division of war powers.

As its “Purpose and Policy” section explains, the War Powers Resolution seeks to ensure that “the collective judgment of both the Congress and the President” guides decisions involving hostilities.

The Executive Branch has consistently maintained that the Resolution cannot constitutionally eliminate the President’s inherent Article II authority to use force in defense of [national interests](#).

B. Key Procedural Requirements

When U.S. forces are introduced into hostilities or situations where hostilities are imminent, the President must:

- Notify Congress within 48 hours,
- Identify the constitutional and legal basis for the action, and
- Describe the scope and anticipated duration of operations.

Absent congressional authorization, the hostilities authorized by the President must [terminate](#) within 60 days, with an additional 30-day withdrawal period if necessary. Any use of force during this period must fall within the President’s independent defensive war powers under Article II. Beyond the President’s independent war powers, advanced congressional authorization is required.

V. The Supreme Court’s Response to the Constitutional Balancing of Article II and the War Powers

A. The Prize Cases (1863)

In the *Prize Cases*, the Supreme Court affirmed the President’s broad authority as Commander in Chief, upholding Lincoln’s decision to impose a naval blockade after the Confederate attack on Fort Sumter, even in the absence of a congressional declaration of war. Speaking for the majority, Justice Grier, explained “If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority.”

The Court held that a declaration of war is not a prerequisite to the lawful use of force. The President of the United States may respond to hostilities that threaten national security.

B. Presidential Power Abroad: Curtiss-Wright, Zivotofsky, and Youngstown

In *United States v. Curtiss-Wright Export Corp.* (1936), the Supreme Court recognized the President's broad authority in foreign affairs, describing the Executive as the Nation's "sole organ" in external relations. This principle is frequently cited by the Executive Branch to justify discretion in international matters, including military operations abroad. The President's authority is further strengthened by the exclusive Executive power to recognize foreign governments, as confirmed by the Supreme Court in *Zivotofsky v. Kerry* (2015). Although the President has broad authority to direct military operations under Article II, the Supreme Court has recognized that this power is not absolute. In *Youngstown Sheet & Tube Co. v. Sawyer* (1952), the Court held that presidential authority is at its strongest when acting with congressional approval or in the absence of statutory limitation, and more constrained when Congress has legislated contrary to the President's actions.

C. Judicially Reviewable Standard

Courts have consistently declined to adjudicate disputes over presidential war powers, citing:

- The political question doctrine, and
- Lack of judicially manageable standards.

VI. Modern Executive Branch Framework

The Executive Branch, particularly through the Department of Justice's Office of Legal Counsel, has maintained a consistent framework for unilateral presidential use of military force throughout changing administrations. Under this framework, the President may act without prior congressional authorization when: (1) the operation serves important national interests, and (2) the expected scope, duration, and intensity of hostilities do not constitute a full-scale [constitutional "war."](#)

This framework has guided multiple administrations and reflects a longstanding practice of the Executive Branch. For example, the Office of Legal Counsel applied it to justify President Obama's military operations in

Libya in 2011, U.S. deployments to Bosnia in 1995, Haiti in 1994, 2004, Somalia in 1992, and Kosovo in 2000. [Testimony before Congress](#) has confirmed that past Presidents of both parties have relied on this authority in directing limited military operations to protect U.S. national interests.

VII. Law Enforcement Action

The use of U.S. military forces to assist in the enforcement of federal criminal law overseas is neither novel nor legally uncertain. In 1989–1990, the United States lawfully deployed military forces to capture General Manuel Noriega, a foreign leader indicted in U.S. courts on federal drug-trafficking charges. The capture of Noriega confirms that the President has the authority to deploy U.S. military forces abroad to apprehend indicted foreign fugitives and bring them before U.S. courts when their criminal conduct substantially harms [United States interests](#).

Like Manuel, Nicolás Maduro had been [indicted](#) in the Southern District of New York on charges including narco-terrorism and cocaine importation conspiracy. These charges alleged a long-running scheme to traffic massive quantities of cocaine into the United States and to use narcotics proceeds to undermine U.S. security interests. Accordingly, Operation Absolute Resolve was undertaken to secure Maduro’s custody in direct support of ongoing U.S. federal criminal proceedings, and not as an act of declared war against a foreign sovereign.

Moreover, the action taken in Venezuela is fully consistent with the Posse Comitatus Act. The [Posse Comitatus Act](#), passed in 1878, is a foundational U.S. statute that prohibits the use of the Nation’s armed forces to execute or enforce civilian laws within the United States. The restriction on the use of the U.S. armed forces governs only domestic law enforcement and does not extend beyond our Nation’s borders.

The President may [lawfully deploy](#) U.S. military forces to assist in the apprehension of indicted fugitives overseas when doing so serves legitimate prosecutorial objectives. A 1989 [Justice Department memorandum](#) squarely recognizes that the President possesses inherent constitutional authority to use U.S. armed forces in support of an FBI arrest operation abroad. Properly understood, the Posse Comitatus Act permits Operation Absolute Resolve, which was conducted in support of federal criminal process against an

indicted narco-terrorist and therefore accords with longstanding limits on military involvement in law enforcement.

VIII. Conclusion

In conclusion, the Constitution intentionally balances the war powers between Congress and the President. The President can act quickly to defend U.S. interests and respond to threats, while Congress' approval is required for sustained or large-scale military operations. The War Powers Resolution reinforces this balance by ensuring congressional notification and limiting the duration of unauthorized hostilities, while preserving the President's independent Article II authority to protect the nation. Finally, the Venezuela operation represents a lawful exercise of executive authority: a targeted law-enforcement action rather than a war, squarely grounded in the separation-of-powers framework established by the Framers.