

ANALYSIS

No Legal Basis for Invading Venezuela

1989's U.S. military action in Panama offers no constitutional cover for Trump's Venezuela attack.



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Government Power

In the wake of President Donald Trump's bombing and regime-change operation in Venezuela, [administration officials](#) [\[link-1\]](#) and lawmakers supporting the action have defended its legality. Some have analogized Trump's operation to previous uses or threats of military force, most notably President George H.W. Bush's 1989 invasion of Panama. Others have suggested that the criminal indictment of Venezuelan President Nicolás Maduro justified the use of military force. Neither of these arguments holds water.

As a baseline, the Constitution gives Congress, not the president, the power to declare war. The Constitution additionally gives Congress the power to create and regulate the military. As far back as 1801, the Supreme Court [said](#) [\[link-2\]](#) that the Constitution vests in Congress the “whole powers of war” — or the sole prerogative to decide when, where, and against whom to use offensive force. At the same time, delegates at the Constitutional Convention recognized that the president, as commander in chief, would have an inherent power to “[repel](#)

[sudden attacks](#) [\[link-3\]](#) ” or the right to use defensive force when the nation comes under immediate threat and Congress has yet to debate and authorize a response.

Presidents have not always respected this balance of constitutional power. Especially since the Cold War, some have pushed the limits of what they can construe as “defensive” force. The 1989 invasion of Panama — undertaken just over a year before [Bush sought congressional authorization for the Gulf War](#) [\[link-4\]](#) — was one such overreach. With a force of nearly 30,000 troops, and without asking for Congress’s blessing, he took action to topple the de facto government of Panama under General Manuel Noriega and brought the deposed leader to the United States for prosecution on drug trafficking, racketeering, and money laundering charges.

Despite its facial similarities to Trump’s regime-change operation, the invasion of Panama was fundamentally different: At its core was a genuine claim of self-defense, albeit one widely considered to be disproportionate to the degree of

force used. Five days before Bush’s invasion, Noriega had [requested and received](#) [\[link-5\]](#) from Panama’s legislature a declaration of a “state of war” with the United States.

Panamanian forces shortly thereafter began [harassing U.S. servicemembers and other citizens](#) [\[link-6\]](#), killing a Marine and severely injuring others in Panama City. These provocations escalated years of tensions between the two nations, which had included Panamanian [armed incursions](#) [\[link-7\]](#) onto U.S. military facilities established under the Panama Canal Treaties and [standoffs](#) [\[link-8\]](#) with Panamanian forces. It was these actions, rather than the existence of criminal charges against Noriega, that Bush cited as the legal basis for the invasion.

The day after the invasion, Bush [reported to Congress](#) [\[link-9\]](#) that he had acted in self-defense because it was “clear that the lives and welfare of American citizens in Panama were increasingly at risk” and that the “safe operation of the Panama Canal” and implementation of the Panama Canal Treaties were in “serious jeopardy.”

Congress reacted favorably, having long debated potential responses to the simmering tensions with the Noriega regime. Lawmakers had previously [enacted legislation](#) [\[link-10\]](#) urging the administration to pursue diplomatic measures for effecting regime change, and the Senate had passed non-binding language calling for the use of military options.

Trump's operation in Venezuela is a stark departure from the Panama case. Venezuela has not declared a state of war with the United States. Nor has Venezuela perpetrated an armed invasion or incursion against U.S. territory or military facilities. In the context of Trump's invocation of the Alien Enemies Act of 1798, a wartime law, [U.S. courts](#) [\[link-11\]](#) have [overwhelmingly rejected](#) [\[link-12\]](#) the administration's argument that Venezuela has committed these acts of aggression.

Nor has Congress signaled support for a regime-change operation in Venezuela. Quite the opposite. In recent weeks, lawmakers raised concerns about a potential regime-change war on

the horizon. Invoking the War Powers Resolution of 1973, they pressed for a vote to withdraw from ongoing or imminent hostilities in the Caribbean. Administration officials were able to defeat these efforts in part by reassuring lawmakers that Trump lacked the legal authority to conduct land strikes without congressional go-ahead.

Finally, the administration's suggestion that Maduro's indictment served as the basis for its military attack is as baseless as it is dangerous. There is no precedent for treating criminal charges as an authority for bombing a foreign country and using military force to capture a head of state. (As noted above, arresting Noriega was not the legal basis for the military operation in Panama.) There are U.S. criminal charges pending against individuals in countries around the world. If the mere existence of these charges unlocked exceptional war powers, that would negate the Constitution's careful allocation of war powers and place the solemn decision to go to war almost entirely in the hands of the executive.

In our constitutional system, decisions about the use of force must be made democratically and accountably, not behind closed doors based on misinterpretations of history and the

law. Congress has a duty to the public and to the Constitution to reject this unprecedented usurpation of its war powers.

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Links

link-1: administration officials <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-venezuela-2/>

link-2: said

<https://supreme.justia.com/cases/federal/us/5/1/#:~:text=It%20is%20an%20established%20principle,the%20tribunals%20of%20the%20captors.>

link-3: repel sudden attacks https://press-pubs.uchicago.edu/founders/documents/a1_8_11s4.html

link-4: Bush sought congressional authorization for the Gulf War <https://www.nytimes.com/1991/01/09/world/confrontation-gulf-bush-asks-congress-back-use-force-if-iraq-defies-deadline.html?searchResultPosition=2>

link-5: requested and received <https://rinedtep.edu.pa/server/api/core/bitstreams/f4ffd452-3ff8-48ac-9514-1985dd965bf8/content>

link-6: harassing U.S. servicemembers and other citizens <https://www.nytimes.com/1989/12/18/world/panama-shooting-condemned-by-us.html?searchResultPosition=2>

link-7: armed incursions <https://www.latimes.com/archives/la-xpm-1988-04-14-mn-1934-story.html>

link-8: standoffs <https://history.army.mil/portals/143/Images/Publications/catalog/55-1-1.pdf?inline=1>

link-9: reported to Congress

https://assets.ctfassets.net/6hn51hpulw83/HgT9XWFQsDHNmiUFoh00u/a1589ce1b458183923befdda4aad126d/19891221-HW_Bush.pdf?inline=1

link-10: enacted legislation <https://www.congress.gov/101/statute/STATUTE-103/STATUTE-103-Pg988.pdf?inline=1>

link-11: U.S. courts <https://law.justia.com/cases/federal/appellate-courts/ca5/25-10534/25-10534-2025-09-02.html>

link-12: overwhelmingly rejected <https://www.politico.com/news/2025/05/06/trump-alien-enemies-act-court-ruling-00331487?source=email>