

abroad.”³⁷ After a surge of COVID-19 cases in Brazil, on May 24, 2020, Trump imposed travel restrictions on certain categories of noncitizens “physically present within the Federative Republic of Brazil during the 14-day period preceding their entry or attempted entry into the United States.”³⁸

STATE JURISDICTION AND IMMUNITY

U.S. Department of Justice Indicts Venezuelan Leader Nicolás Maduro on Narcotrafficking Charges

doi:10.1017/ajil.2020.42

On March 26, 2020, the U.S. Department of Justice (DOJ) announced the indictment of Venezuelan leader Nicolás Maduro, along with fourteen current and former regime officials, on charges mostly related to drug trafficking. Specifically, an indictment unsealed in the Southern District of New York charges Maduro with leading the Venezuelan narcotrafficking group *Cártel de Los Soles* and conspiring with the Revolutionary Armed Forces of Colombia—People’s Army (FARC) guerilla group to “‘flood’ the United States with cocaine” and “us[e] cocaine as a weapon against America.”¹ Although the United States, consistent with international law, normally treats sitting heads of state as immune from prosecution, U.S. Attorney General Barr indicated that Maduro did not qualify for head-of-state immunity because the United States does not recognize him as the president of Venezuela. Instead, the United States and fifty-seven other countries recognize Interim President Juan Guaidó. The indictment may mark a shift in the broader U.S. policy toward Venezuela, which had largely relied on targeted sanctions against key Maduro allies to encourage defection.

After the contested 2018 Venezuelan elections, the United States became the first country to recognize Guaidó as the interim president of Venezuela, causing the incumbent Maduro and the United States to break diplomatic relations in 2019.² Fifty-seven other countries recognize Guaidó, but Maduro is still recognized as president of Venezuela within the United Nations, where his delegation won a seat on the Human Rights Council in October 2019.³ Guaidó

³⁷ *Id.* at 23,441.

³⁸ Donald J. Trump, Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Novel Coronavirus (May 24, 2020), at <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-novel-coronavirus> [<https://perma.cc/MPC3-E3XB>] (further providing that this restriction is “in effect until terminated by the President”).

¹ Superseding Indictment, para. 4, *United States v. Maduro*, No. 11-0205 (S.D.N.Y. unsealed Mar. 26, 2020), available at <https://www.justice.gov/opa/page/file/1261806/download> [<https://perma.cc/9LKP-MA2Z>] [hereinafter *Maduro Indictment*].

² Jean Galbraith, *Contemporary Practice of the United States*, 113 *AJIL* 601, 601, 602 & n. 11 (2019).

³ CLARE RIBANDO SEELKE, REBECCA M. NELSON, PHILLIP BROWN & RHODA MARGESSON, CONG. RESEARCH SERV., *VENEZUELA: BACKGROUND AND U.S. RELATIONS* 19 (2020), available at <https://fas.org/sgp/crs/row/R44841.pdf> [<https://perma.cc/99N7-HP5R>]; Michelle Nichols & Lesley Wroughton, *Who Represents Venezuela? U.N., International Lenders Stuck in Limbo*, *REUTERS* (Jan. 30, 2019), at <https://www.reuters.com/article/us-venezuela-politics-un/who-represents-venezuela-un-international-lenders-stuck-in-limbo-idUSKCN1PP00B>; Alexandria

supporters attempted two failed uprisings to oust Maduro from power in 2019.⁴ Meanwhile, the United States continued its “maximum pressure” campaign on the Maduro regime by imposing a series of new targeted sanctions on Venezuelan officials and key sectors of the economy, as well as sanctions restricting access to U.S. markets and blocking the U.S. assets of Maduro regime and persons transacting with it.⁵ In May 2019, Norway began facilitating talks between the Maduro regime and Guaidó, but the Maduro regime boycotted talks in response to increased U.S. sanctions; the negotiations ended in September without producing a deal.⁶

On March 26, 2020, the DOJ announced the indictment of Maduro along with fourteen current and former regime officials on charges related to drug trafficking and corruption.⁷ The announcement followed the unsealing of indictments in the Southern District of New York and the District of Columbia and the filing of a criminal complaint in the Southern District of Florida.⁸

The four-count indictment returned in the Southern District of New York charges Maduro, three Venezuelan officials, and two FARC leaders with narcoterrorism conspiracy,⁹ cocaine importation conspiracy,¹⁰ possession of machine guns and destructive devices,¹¹ and conspiracy to possess machine guns and destructive devices.¹² The indictment covers actions taken “[f]rom at least in or about 1999, up to and including in about 2020.”¹³ It alleges that Maduro:

helped manage and, ultimately, lead the *Cártel de Los Soles* as he gained power in Venezuela. Under the leadership of [Maduro] and others, the *Cártel de Los Soles*

Symonds, *Venezuela to Join U.N. Human Rights Council, Despite Track Record*, N.Y. TIMES (Oct. 17, 2019), at <https://www.nytimes.com/2019/10/17/world/americas/venezuela-united-nations-human-rights-council.html>.

⁴ SEELKE ET AL., *supra* note 3, at 6.

⁵ *Id.* at 23–26; see generally CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., IF10715, VENEZUELA: OVERVIEW OF U.S. SANCTIONS (2020), available at <https://fas.org/sgp/crs/row/IF10715.pdf> [<https://perma.cc/4LDZ-2XZ8>] (discussing U.S. sanctions on Venezuela); Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 103 (2018) (discussing the Trump administration’s imposition of sanctions in 2017 prohibiting certain transactions with the Venezuelan government and its state-owned oil company).

⁶ Galbraith, *supra* note 2, at 609; Rick Noack & Terrence McCoy, *Emissaries of Venezuela’s Government, Opposition in Norway for Talks*, WASH. POST (May 16, 2019), at https://www.washingtonpost.com/world/venezuelan-government-and-opposition-reportedly-headed-to-norway-for-talks/2019/05/16/607ee77c-77b4-11e9-bd25-c989555e7766_story.html; *Venezuela’s Opposition Says Norway-Mediated Dialogue with Maduro “Is Finished”*, REUTERS (Sept. 15, 2019), at <https://www.reuters.com/article/us-venezuela-politics/venezuelas-opposition-says-norway-mediated-dialogue-with-maduro-is-finished-idUSKBN1W100J>.

⁷ U.S. Dep’t of Justice Press Release, Nicolás Maduro Moros and 14 Current and Former Venezuelan Officials Charged with Narco-Terrorism, Corruption, Drug Trafficking and Other Criminal Charges (Mar. 26, 2020), at <https://www.justice.gov/opa/pr/nicol-s-maduro-moros-and-14-current-and-former-venezuelan-officials-charged-narco-terrorism> [<http://perma.cc/XFG3-9AJB>] [hereinafter DOJ Press Release].

⁸ *Id.*

⁹ Maduro Indictment, *supra* note 1, paras. 1–5; see 21 U.S.C. § 960(a) (2018) (prohibiting knowingly or intentionally importing or exporting controlled substances, as well as manufacturing, possessing with intent to distribute, or distributing a controlled substance).

¹⁰ Maduro Indictment, *supra* note 1, paras. 18–23; see 21 U.S.C. § 963 (prescribing the same penalty for attempts and conspiracies as for commission of drug trafficking crimes).

¹¹ Maduro Indictment, *supra* note 1, paras. 24–25; see 18 U.S.C. § 924(c) (enhancing penalties for individuals who use firearms during a drug trafficking crime).

¹² Maduro Indictment, *supra* note 1, paras. 26–28; see 18 U.S.C. § 924(o) (prescribing penalties for conspiring to commit a drug trafficking crime during which a machinegun or destructive device is used).

¹³ Maduro Indictment, *supra* note 1, para. 1.

sought not only to enrich its members and enhance their power, but also to “flood” the United States with cocaine and inflict the drug’s harmful and addictive effects on users in this country. Thus, whereas most drug-trafficking organizations in South and Central America have sought to recede from their roles in importing narcotics into the United States in an effort to avoid U.S. prosecution, the *Cártel de Los Soles*, under the leadership of [Maduro] and others, prioritized using cocaine as a weapon against America and importing as much cocaine as possible into the United States.

While pursuing these and other objectives, [Maduro] negotiated multi-ton shipments of FARC-produced cocaine; directed that the *Cártel de Los Soles* provide military-grade weapons to the FARC; coordinated foreign affairs with Honduras and other countries to facilitate large-scale drug trafficking; and solicited assistance from FARC leadership in training an unsanctioned militia group that functioned, in essence, as an armed forces unit for the *Cártel de Los Soles*.¹⁴

Explaining Maduro’s role in the alleged crimes, U.S. Attorney Geoffrey S. Berman stated: “The scope and magnitude of the drug trafficking alleged was made possible only because Maduro and others corrupted the institutions of Venezuela and provided political and military protection for the rampant narco-terrorism crimes described in our charges.”¹⁵

An additional unsealed indictment in the District of Columbia charged Maduro’s current Minister of Defense Vladimir Padrino López and several undisclosed defendants with cocaine trafficking.¹⁶ A second unsealed Southern District of New York indictment and a Southern District of Florida criminal complaint further implicate former Vice President Tareck Zaidan El Aissami Maddah, the Superintendent of Cryptocurrencies Joselit Ramírez Camacho, and President of the Supreme Tribunal of Justice Maikel José Moreno Pérez in money laundering and corruption.¹⁷ Longer-standing cases against current and former Maduro regime officials

¹⁴ *Id.*, paras. 4–5 (emphasis omitted).

¹⁵ DOJ Press Release, *supra* note 7.

¹⁶ Indictment, *United States v. Padrino Lopez*, No. 19-0176 (D.D.C. May 24, 2019), available at <https://www.justice.gov/opa/page/file/1261721/download> [<https://perma.cc/EP7T-WKHV>].

¹⁷ See Superseding Indictment, *United States v. El Aissami Maddah*, No. 19-0144 (S.D.N.Y. unsealed Mar. 26, 2020), available at <https://www.justice.gov/opa/page/file/1261556/download> [<https://perma.cc/K5KV-AV4R>] (indicting Tareck Zaidan El Aissami Maddah, Joselit Ramirez Camacho, and a Venezuelan businessman for money laundering and violating sanctions imposed under the International Emergency Economic Powers Act and the Kingpin Designation Act); Criminal Complaint, *United States v. Moreno Perez*, No. 20-2407 (S.D. Fla. Mar. 12, 2020), available at <https://www.justice.gov/opa/page/file/1261816/download> [<https://perma.cc/C8WF-7YP9>] (alleging that Maikel Jose Moreno Perez participated in money laundering schemes). A separate indictment in the Southern District of Florida charged two individuals working at state-owned corporations with money laundering. Indictment, *United States v. Motta Dominguez*, No. 19-20388 (S.D. Fla. June 27, 2019), available at <https://www.justice.gov/opa/page/file/1261781/download> [<https://perma.cc/XMP8-L48U>].

and their alleged co-conspirators are pending in the District of Arizona,¹⁸ the Eastern District of New York,¹⁹ and the Southern District of Texas.²⁰

The U.S. Department of State has offered up to \$15 million for information leading to Maduro's arrest.²¹ Though Barr stated that the administration would "explore all options for getting custody" of the defendants, he declined to comment on whether it would seek to extradite Maduro from Venezuela,²² which has an extradition treaty with the United States.²³ One of the indicted individuals, retired general Clíver Alcalá Cordones, surrendered to U.S. authorities on March 27, 2020, and reportedly agreed to cooperate with U.S. prosecutors.²⁴ Intensifying efforts to counter narcotrafficking by "malign actors," the Trump administration announced on April 1 that it was deploying "enhanced counternarcotics operations" in the Eastern Pacific Ocean and the Caribbean Sea.²⁵

Responding to the indictment, Maduro tweeted: "There's a conspiracy from the United States and Colombia and they've given the order of filling Venezuela with violence. As head of state I'm obliged to defend peace and stability for all the motherland, under any circumstances."²⁶ Longtime Maduro allies Russia and Cuba criticized the indictment. The spokesperson for Russia's Foreign Ministry claimed that the indictment was

¹⁸ Indictment, *United States v. Menegazzo Carrasquel*, No. 10-01462 (D. Ariz. Oct. 12, 2010), available at <https://www.justice.gov/opa/page/file/1261981/download> [<https://perma.cc/NW3R-NPS4>] (indicting three individuals for violating the Arms Export Control Act by exporting military aircraft engines to Venezuela).

¹⁹ Indictment, *United States v. Reverol Torres*, No. 15-0020 (E.D.N.Y. Jan. 21, 2015), available at <https://www.justice.gov/doj/page/file/1261891/download> [<https://perma.cc/7EJP-M9NA>] (indicting two officials in the Venezuelan National Anti-Drug Office for conspiring with narcotraffickers to distribute cocaine); Indictment, *United States v. Villaroel Ramirez*, No. 11-0247 (E.D.N.Y. Mar. 20, 2013), available at <https://www.justice.gov/opa/page/file/1261616/download> [<https://perma.cc/6PXL-KKWU>] (charging three members of the Venezuelan National Guard and a customs broker with conspiracy to distribute and distribution of cocaine).

²⁰ Indictment, *United States v. De Leon-Perez*, No. 17-0514 (S.D. Tex. Aug. 23, 2017), available at <https://www.justice.gov/opa/page/file/1262301/download> [<https://perma.cc/B7Y8-V8GA>] (charging five former officials with money laundering and conspiracy).

²¹ U.S. Dep't of State Press Release, Nicolás Maduro Moros — New Target (Mar. 26, 2020), at <https://www.state.gov/nicolas-maduro-moros-new-target> [<https://perma.cc/YW6B-K7KJ>].

²² U.S. Dep't of Justice Press Conference, Attorney General Barr and DOJ Officials Announce Significant Law Enforcement Actions Relating to International Narco-Terrorism, at 24:17 (Mar. 26, 2020), at <https://www.justice.gov/opa/video/attorney-general-barr-and-doj-officials-announce-significant-law-enforcement-actions> [hereinafter DOJ Press Conference].

²³ Extradition, U.S.-Venez., Jan. 19, 1922, 43 Stat. 1698.

²⁴ Angus Berwick, Luis Jaime Acosta & Sarah Kinoshian, *Alleged Maduro Accomplice Surrenders to U.S. Agents, Will Help Prosecution: Sources*, REUTERS (Mar. 27, 2020), at <https://www.reuters.com/article/us-usa-venezuela-dea-exclusive/alleged-maduro-accomplice-surrenders-to-us-agents-will-help-prosecution-sources-idUSKBN21E3IQ>.

²⁵ Remarks at a White House Coronavirus Task Force Press Briefing, 2020 DAILY COMP. PRES. DOC. 222, at 1 (Apr. 1, 2020); Matt Spetalnick & Phil Stewart, *Trump Doubles U.S. Military Assets in Caribbean, Bolstering Drug Fight After Maduro Indictment*, REUTERS (Apr. 1, 2020), at <https://www.reuters.com/article/us-usa-venezuela-navy/trump-doubles-us-military-assets-in-caribbean-bolstering-drug-fight-after-maduro-indictment-idUSKBN21J6VH> [<https://perma.cc/8YN6-PM4A>].

²⁶ Anthony Faiola, Matt Zapotosky & Karen De Young, *U.S. Indicts Venezuela's Maduro on Narcoterrorism Charges, Offers \$15 Million Reward for His Capture*, WASH. POST (Mar. 26, 2020), at https://www.washingtonpost.com/world/the_americas/the-united-states-indicts-venezuelas-maduro-on-narco-terrorism-charges/2020/03/26/a5a64122-6f68-11ea-a156-0048b62cdb51_story.html; accord Nicolás Maduro (@NicolasMaduro), TWITTER (Mar. 26, 2020, 10:44 AM), at <https://twitter.com/NicolasMaduro/status/1243187029875331072> [<https://perma.cc/FW8P-BU49>]. Shortly afterward, Maduro's chief prosecutor launched an investigation into Guaidó and members of the interim government for allegedly plotting a coup against Maduro with Alcalá Cordones—one of the indicted individuals—and "US advisors." Simon Garcia, *MP Appoints Two Prosecutors to Investigate the Alleged Crime of Attempted Coup Against President Maduro*, MINISTERIO DEL PODER POPULAR

[i]n line with [the U.S.] design to overthrow the legitimate Venezuelan government (no one is hiding it) . . . Such statements are absurd and outrageous. At a time when the entire world is joining efforts in fighting the coronavirus pandemic, Washington is carrying on its political bullying of a sovereign state.²⁷

Likewise, Cuba's foreign minister tweeted his condemnation of "the #US immoral drug-trafficking accusation against president @NicolasMaduro and #Venezuela, which is based on brazen lies."²⁸

Maduro's indictment raises international and domestic law questions about the prosecution of foreign heads of state.²⁹ Sitting heads of state enjoy status-based immunity from prosecution in other countries under customary international law.³⁰ As a matter of domestic law, the U.S. Supreme Court has indicated that common law governs immunity for foreign officials,³¹ but the Court has not specifically addressed in recent years how much deference to give to the executive branch's views with respect to who should receive immunity.³² The Court has held, however, that the president has exclusive power as a matter of U.S. constitutional law to recognize foreign nations and governments.³³ The Department of State takes the position that "the Executive Branch has authority to determine the immunity from suit of sitting heads of state."³⁴

PARA RELACIONES EXTERIORES (Mar. 26, 2020), at <http://mppre.gob.ve/en/2020/03/26/mp-prosecutors-investigate-coup-president-maduro> [<https://perma.cc/7DDU-HWTV>].

²⁷ Maria Zakharova, Spokesperson, Ministry of Foreign Affairs of the Russian Fed'n, Briefing by Foreign Ministry Spokesperson Maria Zakharova, Moscow (Mar. 27, 2020), at https://www.mid.ru/en/foreign_policy/news/-/asset_publisher/ckNonkJE02Bw/content/id/4093042 [<https://perma.cc/RK79-64S5>].

²⁸ Bruno Rodríguez Parrilla (@BrunoRguezP), TWITTER (Mar. 26, 2020, 6:04 PM), at <https://twitter.com/BrunoRguezP/status/1243297728307908610> [<https://perma.cc/CH7J-72QG>].

²⁹ The indictment also raises question about the extraterritorial application of U.S. criminal laws. Asked about the U.S. interest at stake during his press conference, Barr stated that the Maduro operation "deliberately targeted" the United States by seeking to import cocaine into the country and using U.S. facilities in their money laundering operations. DOJ Press Conference, *supra* note 22, at 39:11.

³⁰ See OFFICE OF THE LEGAL ADVISOR, U.S. DEP'T OF STATE, DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW: 2018, at 412 (2018), available at <https://www.state.gov/wp-content/uploads/2019/10/2018-Digest-Chapter-10.pdf> [<https://perma.cc/ASM2-8X8P>] ("The doctrine of head of state immunity is well established in customary international law") (quoting Suggestion of Immunity Submitted by the United States, *Miango v. Democratic Republic of the Congo*, No. 15-1265, 2019 WL 2191806 (D.D.C. Jan. 19, 2019) [hereinafter *Kabila Suggestion of Immunity*] [hereinafter OFFICE OF THE LEGAL ADVISOR, 2018 DIGEST]; Int'l L. Comm'n, Immunity of State Officials from Foreign Criminal Jurisdiction, UN Doc. A/CN.4/L.814, at <https://legal.un.org/docs/?symbol=A/CN.4/L.814> (stating in draft article 3 that "Heads of State . . . enjoy immunity *ratione personae* from the exercise of foreign criminal jurisdiction); cf. Vienna Convention on Diplomatic Relations, Art. 31, Apr. 18, 1961, 23 UST 3227, 500 UNTS 95 (providing diplomats with status-based immunity from criminal prosecution in a foreign state).

³¹ See *Samantar v. Yousuf*, 560 U.S. 305 (2010).

³² See *Samantar v. Yousuf*, 699 F.3d 763 (4th Cir. 2012), *cert. denied*, 571 U.S. 1156 (2014) (taking up these issues). The Fourth Circuit "conclude[d] that the State Department's pronouncement as to head-of-state immunity is entitled to absolute deference," while its "determination regarding conduct-based immunity, by contrast, is not controlling, but it carries substantial weight." *Id.* at 772–73.

³³ *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2094 (2015).

³⁴ OFFICE OF THE LEGAL ADVISOR, 2018 DIGEST, *supra* note 30, at 411 (quoting *Kabila Suggestion of Immunity*). The State Department asserts that the executive branch's determination of immunity "is controlling and is not subject to judicial review." *Id.*

The closest prior parallel to Maduro's indictment was an indictment issued in 1988 against Manuel Noriega of Panama for racketeering and drug trafficking.³⁵ At the time of the indictment, Noriega served as the commander-in-chief of Panama's military³⁶ and the de facto leader of the country.³⁷ Later that year, the United States invaded Panama and gained custody of Noriega, who was brought to the United States to stand trial.³⁸ The district court found that Noriega was not entitled to head-of-state immunity because

Noriega has never been recognized as Panama's Head of State . . . under the Panamanian Constitution More importantly, the United States government has never accorded Noriega head of state status, but rather continued to recognize President Eric Arturo Delvalle as the legitimate leader of Panama while Noriega was in power.³⁹

The court further rejected Noriega's argument that he was entitled to head-of-state immunity as the de facto leader because "the grant of immunity is a privilege which the United States may withhold from any claimant."⁴⁰

In response to questions about the implications of indicting a sitting president, Attorney General Barr made a similar argument: "[W]e do not recognize Maduro as the President of Venezuela. Obviously, we indicted Noriega under similar circumstances. We did not recognize Noriega as the President of Panama."⁴¹

The indictment of Maduro may affect the broader U.S. strategy with respect to Venezuela, which had focused on using sanctions to pressure key Maduro allies to defect from his regime.⁴²

³⁵ See Philip Shenon, *Noriega Indicted by U.S. for Links to Illegal Drugs*, N.Y. TIMES (Feb. 6, 1988), at <https://www.nytimes.com/1988/02/06/world/noriega-indicted-by-us-for-links-to-illegal-drugs.html> ("The Justice Department said this was only the second time it had indicted the sitting leader of a foreign nation."); Aruna Viswanatha, José de Córdoba & Ian Talley, *U.S. Charges Venezuelan President Nicolás Maduro with Drug Trafficking*, WALL ST. J. (Mar. 26, 2020), at <https://www.wsj.com/articles/u-s-indicts-venezuelan-president-nicolas-maduro-on-allegations-of-drug-trafficking-11585236443> ("Mr. Noriega's case was the last time the U.S. charged a sitting head of state."). Several years before Noriega's indictment, in 1985, the United States indicted Chief Minister of Turks and Caicos Norman Saunders for drug trafficking and racketeering—but since Turks and Caicos is a British protectorate, prosecutors argued that Saunders was simply a local leader and that the Queen of England was the actual head of state. See Associated Press, *Three Island Officials Indicted in Drug Case*, N.Y. TIMES (Mar. 15, 1985), at <https://www.nytimes.com/1985/03/15/us/three-island-officials-indicted-in-drug-case.html>; David C. Adams, *Does Venezuela's Maduro Enjoy Head of State Immunity from Prosecution?*, UNIVISION (Mar. 26, 2020), at <https://www.univision.com/univision-news/latin-america/does-venezuelas-maduro-enjoy-head-of-state-immunity-from-prosecution>. Though U.S. prosecutors implicated current Honduran President Juan Orlando Hernández in drug trafficking and corruption during his brother's 2019 trial, Hernández was not—and has not been—publicly indicted on related charges. Claudia Mendoza & Mary Beth Sheridan, *Another U.S. Court Filing Ties the Honduran President, a Trump Ally, to Narco-trafficking*, WASH. POST (Apr. 30, 2020), at https://www.washingtonpost.com/world/the_americas/another-us-court-filing-ties-the-honduran-president-a-trump-ally-to-narcotrafficking/2020/04/30/e2a96406-8b05-11ea-80df-d24b35a568ae_story.html

³⁶ *Full Text of Indictment Against Noriega, Others With PM-Noriega*, AP NEWS (Jan. 5, 1990), at <https://apnews.com/c3ddd507811087aeab4389996e5d8c75>.

³⁷ *United States v. Noriega*, 746 F. Supp. 1506, 1520 (S.D. Fla. 1990).

³⁸ *Id.* at 1511–12.

³⁹ *Id.* at 1519.

⁴⁰ *Id.* at 1520; see also *United States v. Noriega*, 117 F.3d 1206, 1212 (11th Cir. 1997) (upholding the district court's conclusion, while observing that "the Executive Branch has manifested its clear sentiment that Noriega should be denied head-of-state immunity" and that "Noriega has cited no authority that would empower a court to grant head-of-state immunity under these circumstances").

⁴¹ DOJ Press Conference, *supra* note 22, at 30:58.

⁴² Geoff Ramsey, *By Indicting Maduro, Trump Is Kneecapping a Transition in Venezuela*, WASH. POST (Mar. 27, 2020), at <https://www.washingtonpost.com/opinions/2020/03/27/by-indicting-maduro-trump-is-kneecapping->

Some observers worry that the indictment may incentivize Maduro and his allies to entrench themselves, hampering attempts to negotiate a democratic transition.⁴³

Less than a week after the unveiling of the Maduro indictment, on March 31, 2020, the Department of State released a proposal for the transfer of power within Venezuela.⁴⁴ Among other things, this “Democratic Transition Framework for Venezuela” calls for the formation of a transitional government composed of members from Maduro’s regime and Guaidó’s opposition party, the creation of an executive body headed by an interim president (who would not be allowed to run for president in the new elections), and the establishment of a Truth and Reconciliation Commission.⁴⁵ In return, the United States would lift sanctions.⁴⁶ Maduro’s foreign minister rejected this proposal:

Venezuela is free, sovereign, independent and democratic country that does not accept, nor will it ever accept, any tutelage from any foreign government.

The United States policy towards Venezuela has completely lost its direction. In one week it has digressed between constant contradictions: it transits from the extortion and threat to Bolivarian Government officials, including rewards for their capture; to the presentation of an eyesore of an agreement for the installation of an unconstitutional so-called transition government, disregarding the democratic will expressed by the Venezuelan people at the polls.⁴⁷

U.S. relations with the Maduro regime worsened even further after a failed operation, conducted on May 3, 2020, to “capture/detain/remove Nicolás Maduro[,] . . . remove the current Regime and install the recognized Venezuelan President Juan Guaidó”—an operation organized in part by U.S. citizens and which Maduro attributed to Guaidó and Trump.⁴⁸

[transition-venezuela](#); see also SEELKE ET AL., *supra* note 3, at 27 (discussing the use of sanctions to encourage defection from the Maduro regime and the lifting of sanctions on a general who defected from the regime in 2019).

⁴³ E.g., Julian Borger & Joe Parkin Daniels, *US Indicts Nicolás Maduro and Other Top Venezuelan Leaders for Drug Trafficking*, GUARDIAN (Mar. 26, 2020), at <https://www.theguardian.com/world/2020/mar/26/nicolas-maduro-us-indictment-venezuela-drug-trafficking-leaders> (“These indictments seriously increase the exit costs for Maduro . . . These moves effectively ensure a longterm deadlock between the US and Venezuela, just as we have seen with Cuba.”); Joshua Goodman & Scott Smith, *US Indicts Venezuela’s Maduro on Narcoterrorism Charges*, AP NEWS (Mar. 26, 2020), at <https://apnews.com/d82797206561db03851e47df125c243f> (“[The indictment] could fragment the U.S.-led coalition against Maduro if European and Latin American allies think the Trump administration is overreaching.”).

⁴⁴ U.S. Dep’t of State Press Release, *Democratic Transition Framework for Venezuela* (Mar. 31, 2020), at <https://www.state.gov/democratic-transition-framework-for-venezuela> [<https://perma.cc/XYN9-28HR>].

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Ministerio del Poder Popular para Relaciones Exteriores, Gobierno Bolivariano de Venezuela Press Release, *Bolivarian Government Reiterates that Venezuela Is a Free and Sovereign Country that Does Not Accept the Tutelage of Foreign Governments* (Mar. 31, 2020), at <http://mppre.gob.ve/en/comunicado/bolivarian-governement-reiterates-venezuela-free-and-sovereign-does-not-accept-tutelage-governments> [<https://perma.cc/G9HK-YL34>].

⁴⁸ Anthony Faiola, Karen De Young & Ana Vanessa Herrero, *From a Miami Condo to the Venezuelan Coast, How a Plan to “Capture” Maduro Went Rogue*, WASH. POST (May 6, 2020), at https://www.washingtonpost.com/world/the_americas/from-a-miami-condo-to-the-venezuelan-coast-how-a-plan-to-capture-maduro-went-rogue/2020/05/06/046222bc-8e4a-11ea-9322-a29e75effc93_story.html (quoting a contract prepared in relation to this operation); Colin Dwyer, *After Failed Coup Plot, Maduro Touts Video of Detained American Conspirator*, NPR (May 6, 2020), at <https://www.npr.org/2020/05/06/851487678/after-failed-coup-plot-maduro-touts-video-of-detained-american-conspirator>.

This operation, which was quickly squelched by Maduro's forces, involved two speedboats containing a "ragtag band" of several dozen fighters, including two U.S. citizens who had previously served in the U.S. military.⁴⁹ Guaidó denied involvement with the attempted attack, accusing Maduro of "trying to create a state of apparent confusion, an effort to hide what's happening in Venezuela."⁵⁰ Similarly, U.S. Secretary of State Mike Pompeo stated that "there was no U.S. Government direct involvement in this operation."⁵¹ Maduro asserted that since the failed operation, the Trump administration "would not answer the phones. They are mute. We have used three different routes with three different officials from the Donald Trump government. We have sent them texts, and they are completely silent."⁵²

INTERNATIONAL ORGANIZATIONS

U.S. Refusal to Appoint Members Renders WTO Appellate Body Unable to Hear New Appeals
doi:10.1017/ajil.2020.43

Over the last few years, the United States has been pressuring the World Trade Organization (WTO) to reform the Appellate Body by refusing proposals to fill vacancies. On December 10, 2019, the terms of two Appellate Body members expired, leaving one member left for the seven-member body. This has brought new appeals to a standstill, as an appeal from a panel established by the Dispute Settlement Body must be heard by three Appellate Body members. In February of 2020, the United States elaborated on its complaints about the Appellate Body in a report published by the Office of the United States Trade Representative. In the spring of 2020, in response to the continued U.S. resistance to filling vacancies on the Appellate Body, a group of WTO members established an interim arrangement to handle appeals through arbitration. Also in the spring of 2020, the United States described as invalid a recent Appellate Body report regarding a dispute between Canada and the United States, asserting that none of the three persons who issued the report were in fact bona fide Appellate Body members.

⁴⁹ John Otis, Kejal Vyas & Jessica Donati, "Freedom Fighters" Led by American Tried Invading Venezuela, WALL ST. J. (May 6, 2020), at <https://www.wsj.com/articles/freedom-fighters-led-by-american-tried-invading-venezuela-11588722164>.

⁵⁰ *Trump Denies Ties to Americans Linked to Venezuela "Coup Plot,"* AL JAZEERA (May 5, 2020), at <https://www.aljazeera.com/news/2020/05/trump-denies-link-venezuelan-attack-men-jailed-200505191938812.html>.

⁵¹ Michael R. Pompeo, Sec'y of State, Secretary Michael R. Pompeo at a Press Availability (May 6, 2020), at <https://www.state.gov/secretary-michael-r-pompeo-at-a-press-availability-5> [<https://perma.cc/Y6AB-9TKG>] (adding "[i]f we had been involved, it would have gone differently. As for who bankrolled it, we're not prepared to share any more information about what we know took place.").

⁵² César Torres, *U.S. Has to Acknowledge Guaidó's Failure as "Puppet President,"* MINISTERIO DEL PODER POPULAR PARA RELACIONES EXTERIORES (May 8, 2020), at <http://mppre.gob.ve/en/2020/05/08/us-failure-guaidos-puppet-presidency> [<https://perma.cc/3SE8-RGX6>].