

Maduro and Wife Face Uphill Battle in Challenging Unique Arrest

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By Robert Appleton

January 9, 2026



Ousted Venezuelan President Nicolás Maduro arrives at the Wall Street heliport ahead of his appearance in federal court in New York, on Jan. 5, 2026. Photographer: Michael Nagle/Bloomberg via Getty Images

The Department of Justice's past experience in rendition—the tool used to capture Nicolás Maduro and his wife—and established US legal precedent will leave little room for the couple to make successful arguments in US courts challenging their arrests.

Rendition is used in exceptional cases when indicted defendants are located abroad and are brought to the US without formal extradition, use of the local legal apparatus, or through treaty requests.

Maduro's capture by the US military in a stated joint operation with US law enforcement is much less frequent and differentiated from most prior arrests of foreign defendants apprehended on foreign soil because of the extensive use of the military in this case, but apprehending indicted foreign nationals abroad isn't unusual. While used sparingly, rendition has been held to be lawful unless the manner in which the defendant is arrested includes treatment that "shocks the conscience."

Importantly, the arrest warrant for Maduro was issued more than five years ago when a federal grand jury in the US District Court for the Southern District of New York returned a multi-count indictment charging narcotics and terrorism conspiracy, as well as drug and weapons offenses.

At least one other defendant in the indictment has already pleaded guilty but hasn't yet been sentenced, suggesting a likely possibility that the individual is cooperating with US law enforcement. While there is much discussion over whether this case is more appropriate for an international tribunal, and whether international law and treaties such as the United Nations Charter or the US 1922 Treaty with Venezuela should apply, the case is pending in a US court, which can only apply US law.

Potential Legal Challenges

Maduro can only raise legal challenges recognized under US law, with US Supreme Court and the US Court of Appeals for the Second Circuit precedent providing the legal backdrop. Maduro, a head of state whose legitimacy is questioned and whose status as president of Venezuela isn't recognized by the US, will likely raise several legal arguments. He may argue that the forceful rendition is illegal; that he enjoys sovereign immunity as a head of state; and that his arrest was unlawful. He may also seek to move the case to an international tribunal.

It is well settled that the US Foreign Sovereign Immunities Act is inapplicable to foreign defendants in US courts facing criminal charges. As a result, under US law, the decision whether to recognize an immunity defense for heads of state has been held to rest exclusively with the Executive Branch. If the Department of State doesn't recognize Maduro as a legitimate head of state, it is highly unlikely that it will allow the defense to be raised.

While Maduro may challenge the modalities and the manner of the arrest—namely that it was a military operation, a rendition, outside of a treaty, and involved a forced entry into his home in Venezuela without compliance with local law—this strategy will also be difficult. The Supreme Court and courts in this circuit have held that the Fourth Amendment doesn't apply to foreign defendants for activities on foreign soil. Whether there might have been a violation of local law or that a treaty wasn't followed becomes irrelevant once the defendant is in the US and before a US court.

US courts sometimes find violations of due process in the event of extreme conduct by apprehending authorities, especially where there has been “government conduct of a most shocking and outrageous character.” These situations typically have involved circumstances where the conduct of arresting officials “shocks the conscience,” such as significantly long periods of detention without presentation to a neutral court, or forms of torture or physical or psychological abuse.

Given that Maduro and his wife were quickly arrested, apparently unharmed physically, and were taken to the US within 36 hours and presented to a court within two days, this argument will be difficult to make.

Forfeiture Possibility

An important aspect of the indictment not gaining a lot of attention thus far is that it contains both a forfeiture count and a substitute assets provision. This means that if Maduro and his wife are convicted of the underlying charges, all of the proceeds of the drug-trafficking offense are forfeitable to the US.

The substitute assets provision is important because if the proceeds of the offense, which is alleged to be in the billions of dollars, aren't located—the US government can seize anything else that the defendants own. In an authoritarian state such as Venezuela, the US government could potentially seize billions in other assets.

Much uncertainty surrounds the future of Venezuela and US involvement there, but for Maduro and his wife, the future will almost certainly bring a trial or a plea in federal court. The prospect of his cooperation with US authorities is also a real possibility, as Maduro is facing a life sentence if convicted of either of the main counts.

Author Information

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