Expert explains: Can Nicolás Maduro claim sovereign immunity before a US court?

The Venezuelan President was retrieved by an American operation in January 2026. While his counsel has moved for the charges to be dismissed citing the applicability of sovereign immunity, how have such cases really been tackled in the past?

Written by: **Shashank Maheshwari**
New Delhi Updated: Sep 10, 2026

Maduro, the Venezuelan President, has been detained in the USA since January, 2026 (Wikimedia Commons)

On January 3 this year, a US military operation in Caracas forcibly brought Nicolás Maduro into American custody.

Maduro, the former Venezuelan President, now faces trial in the Southern District of New York under the Department of Justice's 2020 charges which include narco-terrorism, cocaine trafficking conspiracy and firearms offences. The charges allege that Maduro led the "Cartel de los Soles" (designated as a Foreign Terrorist Organisation by the USA in 2025) and used Venezuela's state apparatus to flood the US with drugs.

On September 3, his counsel moved before Judge Alvin Hellerstein to dismiss the indictment. The argument hinged on head-of-state immunity, a doctrine, they said, rested on "the perfect equality and absolute independence of sovereigns."

The motion raises the question that does a serving (or recently deposed) head- of- state retain absolute immunity from criminal prosecution for conduct as grave as narco-terrorism, and does it matter that Washington has refused to recognise him as Venezuela's president since 2019 and has backed Juan Guaidó since then?

Until 1952, US courts followed an absolute theory of immunity that was largely based on executive say so.

The founding case began with a dispute over a ship: two Baltimore merchants sued to reclaim a schooner — a sailing ship with two or more masts — that had been seized by the French and turned into a French warship. In The Schooner Exchange v McFadden (1812), Chief Justice John Marshall held that a friendly sovereign's public vessel was immune from suit as a matter of implied consent between nations.

This ruling anchored American immunity law for the next century and a half, with the State Department deciding case by case whether a foreign government deserved immunity. The 1952 Tate Letter tried to bring order to this by shifting policy toward a restrictive theory which granted immunity for a state's sovereign acts but not its commercial ones, but the State Department still made the call each time.

Congress ended this in 1976 with the Foreign Sovereign Immunities Act, 28 U.S.C. §§1602 to 1611 and moved the determination from the Executive to the courts. Section 1604 makes foreign states presumptively immune unless a §1605 exception, commercial activity, tortious acts, or state sponsored terrorism, applies. It left unclear, however, whether an individual official counted as part of the "foreign state."

The Supreme Court answered this in Samantar v Yousuf (2010), where Somali torture survivors sued Somalia's former Defence Minister — then living in Virginia — only for the Court to hold that the FSIA covers states and not individuals which meant that an official's immunity was governed by common law informed by the Executive's views.

The closest parallel to Maduro is United States v Noriega (S.D. Fla. 1990), where Panama's de facto military ruler was seized and flown to Florida and subsequently denied head-of-state immunity on narcotics charges since Washington never recognised him the legitimacy of his office. Contrast Lafontant v Aristide (E.D.N.Y. 1994), where Haiti's sitting President, accused of ordering a political assassination, was granted absolute immunity from a civil suit precisely because Washington still recognised him. Gravity of conduct decided neither case; recognition did.

The lesson these cases teach together should not be construed as some crimes being judged too grave for immunity and others not so due to one defendant being tried while the other was not. They were separated by a single recurring feature which was the deference of the US courts to the Executive's own position on the issue of immunity.

This is the "one voice" doctrine — a principle traced to the President's exclusive power to recognise foreign governments. The United States must speak with a single voice in matters of foreign recognition, and the judiciary must not contradict the Executive's determination of who legitimately leads a foreign state. It was this doctrine, not the gravity of the underlying conduct, that decided both Noriega and Lafontant, and it places Maduro in a uniquely difficult position — the Executive that must certify his status is the same Executive prosecuting him, and it is safe to presume it will not extend recognition, and therefore immunity, to him at all.

How have other domestic courts across the world ruled

Comparative practice has been markedly more protective of incumbents. One of the landmark judgments in this field was delivered by the House of Lords in the Pinochet case.
Augusto Pinochet, Chile's former military ruler, was arrested in London in 1998 pursuant to a Spanish international arrest warrant seeking his extradition for alleged torture crimes committed under his rule. His claim that, as a former Head of State, he was immune from prosecution for acts committed while in office was ultimately rejected by the House of Lords.

France's Cour de Cassation went further. In 2000, it quashed a Paris court's attempt to prosecute Libya's Muammar Gaddafi — then a sitting head of state — over the 1989 UTA airliner bombing that killed 170 people. They held that absolute personal immunity admits no terrorism exception.
Strikingly, on 25 July 2025, the Cour de Cassation annulled an arrest warrant against Bashar al-Assad over sarin-gas attacks that killed over a thousand civilians, ruling that no exception, however grave the crime, lifts an incumbent head of state's personal immunity, while confirming that immunity ends once he leaves office.

International tribunals: a different rule for a different forum

International courts have drawn a sharp national/international line. In Arrest Warrant (DRC v Belgium, ICJ, 2002), the ICJ held that an incumbent foreign minister enjoyed full immunity before national courts (paras 51, 54, 58), but noted, obiter, that immunity would not bar prosecution before "certain international criminal courts, where they have jurisdiction" and their own country's domestic courts (Para 61).

The Special Court for Sierra Leone applied this in Prosecutor v Taylor (2004), holding that Charles Taylor's status as Liberia's sitting president gave him no immunity before an international tribunal, even though it would have barred a national prosecution. The ICC's Pre-Trial Chamber extended this logic in the Al-Bashir non-cooperation decisions of December 2011, finding that customary law creates an exception to head-of-state immunity specifically for arrest by an international court acting under Security Council referral.

What is at stake

Maduro's case forces the US court to choose between two incompatible instincts — the protection of Head of States not only from Criminal Jurisdiction who also enjoy "personal immunity" from such prosecution, which was endorsed by US in the International Law Commission Draft Articles on Criminal Immunity of State Officials As Adopted by the Commission in 2022 submissions.
On the other hand, the authority of the Executive to override any such immunity as happened in various abovementioned case laws. A ruling against Maduro on non-recognition grounds, where the prosecuting Executive is also the non-recognising Executive, would set a global precedent and invite any powerful state to strip a rival's leader of immunity merely by declining to recognise them, undermining the very stability the doctrine exists to protect.

The author is an Assistant Professor at the Jindal Global Law School (JGLS) in Sonipat, Haryana.