



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 11 2019

The Honorable Adam Smith
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 1004, the "Prohibiting Unauthorized Military Action in Venezuela Act." As to the general desirability of the bill, we defer to other Departments. However, as we explain below, the bill raises constitutional concerns.

H.R. 1004 would provide that no funds available to the Department of Defense or to any other federal department or agency "may be used to introduce the Armed Forces of the United States into hostilities with respect to Venezuela," except in three circumstances: (1) pursuant to a declaration of war; (2) pursuant to a specific statutory authorization under the War Powers Resolution; or (3) to repel an attack upon the United States, its territories or possessions, or the Armed Forces. *Id.* § 2(a).

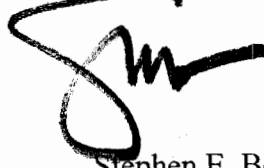
This spending prohibition could raise serious constitutional concerns regarding the President's exercise of his authority as Commander in Chief, U.S. Const. art. II, § 2, cl. 1. For example, the exceptions in section 2(a) would not appear to allow deployment of the Armed Forces even when necessary for the President to fulfill his constitutional duty to protect the lives and property of American civilians in Venezuela. *See Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 79 (1882) ("Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government."); *Durand v. Hollins*, 8 F. Cas. 111, 112 (C.C.S.D.N.Y. 1860) (No. 4186) ("Now, as it respects the interposition of the executive abroad, for the protection of the lives or property of the citizen, the duty must, of necessity, rest in the discretion of the president."); *cf. In re Neagle*, 135 U.S. 1, 59, 64 (1890).

Therefore, the legislation should be revised to clarify that it does not impinge upon the President's authority to use force to protect the lives of United States citizens.

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Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to be 'S.E. Boyd', written over a horizontal line.

Stephen E. Boyd
Assistant Attorney General

cc: The Honorable Mac Thornberry
Ranking Member