

## **Members of the Constitutional Chamber of the Supreme Court of Justice.<sup>1</sup>**

We, Carlos Calderón Arias and Roberto Hung Cavalieri, Venezuelans, of legal age, identified by identity cards Nos. V-\_\_\_\_\_ and V-\_\_\_\_\_, attorneys registered with the Venezuelan Bar Association under Nos. \_\_\_\_\_ and \_\_\_\_\_, acting on our own behalf, appear in accordance with the provisions of Article 34 of the Organic Law on States of Exception to present arguments and elements of proof that serve to demonstrate the constitutionality or unconstitutionality of Decree No. 5.200, by which the State of External Commotion is declared throughout the National Territory dated January 3, 2026, published in Official Gazette No. 6.954 Extraordinary of the same date, which is attached marked "A", which we proceed to do as follows:

### **I.- Preliminary considerations regarding the objective, technical, legal, and logical-rational nature of the application and the allegations and elements of conviction presented.**

Certainly, the context and factual circumstances surrounding the issuance of Decree No. 5,200, which declared a State of External Disturbance throughout the National Territory on January 3, 2026, and was published in Official Gazette No. 6,954 Extraordinary, are quite complex from multiple perspectives, including geopolitics, domestic politics, economics, and social issues, among others. This complexity may well give rise to numerous analyses and evaluations. This request will be based on and focused primarily on the technical and legal perspective and assessment of constitutional law, and more precisely, constitutional procedural law, given the objective judicial constitutional nature of the control of such emergency decrees by the constitutional jurisdiction, expressly developed by the Organic Law on States of Exception, specifically in Articles 31 to 40. All of this will be addressed in relation to the "constitutionality" or "unconstitutionality" of the decree and its effects, without extending to other considerations that, while of great importance and interest, are not the subject of this request of this application.

### **II.- Of the circumstances of facts and actions of interest in which the "Decree which declares the State of External Commotion throughout the National Territory" was issued.**

Before presenting specific arguments and evidence to be evaluated for consideration of the constitutionality or unconstitutionality of the aforementioned decree, it is necessary to highlight important events that can justify said act and its direct and indirect legal consequences. In this regard, we observe:

In the early morning of Saturday, January 3, 2026, as can be seen in various traditional and digital print media, as well as from the experience of residents mainly of the city of Caracas, on the coast of La Guaira and the town of Higuero, an operation was

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<sup>1</sup> The English and French translations were produced with the assistance of artificial intelligence. In the event of any doubt regarding their interpretation, the original Spanish version shall prevail.

carried out by the Armed Forces of the United States of America, which resulted in the extraction of citizen Nicolás Maduro Moros from what was said to be his place of residence, ultimately transferring him to the territory of the United States of America, specifically to the State of New York to face a federal process against him; the considerations of which are beyond the scope of this request and constitutional control process.<sup>2</sup>

The extraction operation, from its beginning to its completion, would have been carried out from 01:45 to 04:29 Caracas time (GMT -4), during which the following events would have occurred, although there is no official information to date:

Caracas Time (GMT-4) 03/01/2026	Phase of the operation
23:15 (One 2)	Aircraft take off from the Caribbean Sea and start of the operation.
01:45	Start of attacks against the defense system.
02:01	Arrival at the extraction site.
02:05	Detention.
03:00	Extraction.
04:29	Arrival at the US Navy ship USS Iwo Jima in international waters.

On the same day, January 3, 2026, the Constitutional Chamber of the Supreme Court of Justice issued a ruling stating “*a protective measure to guarantee the administrative continuity of the State and the defense of the Nation, without implying a substantive decision on the definitive legal classification of the presidential absence (temporary or absolute), nor substituting the powers of other State bodies to carry out said classification in subsequent proceedings.*”<sup>3</sup>

In that measure, after declaring itself competent to “...to know *ex officio*, or to exercise its function of Constitutional Interpretation *Ex Officio*, of articles 234 and 239 of the CRBV, in order to determine the applicable legal regime to guarantee the continuity of the State, the management of government and the defense of sovereignty in the event of the forced absence of the President of the Republic, all in accordance with articles 266.1, 335 and 336.10 of the Constitution of the Bolivarian Republic of Venezuela (CRBV) and 5 of the Organic Law of the Supreme Court of Justice”, “... ORDERS that citizen DELCY ELOÍNA RODRÍGUEZ GÓMEZ, Executive Vice President of the Republic, ASSUME AND EXERCISE in the capacity of CHARGE all the powers, duties and faculties inherent to the position of President of the Bolivarian Republic of Venezuela, in order to guarantee administrative continuity and the integral defense

<sup>2</sup>Press release from the White House and the United States Department of War.

<https://www.whitehouse.gov/gallery/operation-absolute-resolve-january-3-2026/>

<https://www.war.gov/News/News-Stories/Article/Article/4370431/trump-announces-us-militarys-capture-of-maduro/>

An operation that would have been planned for the last week of December, as suggested by the memorandum from the Legal Counsel of the United States Department of Justice dated 12/23/2025 on the proposal for operational support by the Department of War for law enforcement and compliance work in Venezuela (*Proposed War Department Operation to Support Law Enforcement Efforts in Venezuela* Memorandum available from the United States Department of Justice website. Available at:

<https://www.justice.gov/olc/media/1423306/dl>

<sup>3</sup> <https://historico.tsj.gob.ve/decisiones/scon/enero/352131-0001-3126-2026-26-0001.HTML>

*of the Nation.", and "...orders that the Executive Vice President, the National Defense Council, the High Military Command, and the National Assembly be notified immediately.."*

On Monday, January 5, 2026, *"The National Assembly (AN) swore in Delcy Eloína Rodríguez Gómez as acting president of the Bolivarian Republic of Venezuela, in the Triptych Hall of the Federal Legislative Palace..."*, *"In accordance with Article 335 of the Constitution, and in compliance with the ruling of the Supreme Court of Justice (TSJ), the President of Parliament, Deputy Jorge Rodríguez, reaffirmed the designation of lawyer and diplomat Delcy Rodríguez as acting president of Venezuela."*, *"The purpose of this action is to dispel any legal and administrative uncertainty following the US military aggression, which resulted in the kidnapping of the constitutional president of the Republic, Nicolás Maduro, on January 3."*<sup>4</sup>

However, given the nature and magnitude of the events that occurred in the early morning of January 3, 2026, they must be investigated with due depth and rigor to determine the resulting consequences and responsibilities, regardless of any preliminary assessment thereof. The following are unequivocal and proven facts:

In the early morning of January 3, 2026, a military operation carried out by the United States Armed Forces removed citizen Nicolás Maduro Moros from Venezuelan territory, transferring him to the territory of the United States, and in response to said *"forced absence"* Delcy Eloína Rodríguez Gómez was appointed as *"IN CHARGE of all the powers, duties and faculties inherent to the position of President of the Bolivarian Republic of Venezuela, to guarantee administrative continuity and the integral defense of the Nation."*

### **III.- On the nature and importance of the study of states of exception and their legal treatment in Venezuela.**

Situations related to states of exception, emergencies, and the suspension of constitutional guarantees, and others like them, are phenomena that, due to their nature, scope, and transcendence, have historically been subjected to profound research and analysis by different areas of human knowledge such as political science and philosophy and law, more specifically constitutional law, which range from immemorial times such as that of classical Rome to recent events such as the one that occurred on January 3, 2026 in Venezuela.

In this sense, one can observe the important contributions of Kemelmajer regarding the Decrees of Necessity and Urgency in Argentina, insofar as they would have served to give validity to the de facto governments, stating that *"History has shown that states of emergency have served as a pretext for systematic human rights violations by both unconstitutional and anti-democratic regimes and governments that have come to power through the ballot box; that is why it has been said that only time will tell*

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<sup>4</sup> <https://www.asambleanacional.gob.ve/noticias/an-juramenta-a-delcy-rodriguez-como-presidenta-encargada-de-la-republica>

*whether this new exceptional law is based on abuse or necessity*<sup>5</sup>, or those of Professor Sagüés regarding “*The relationship between Constitutional Law and Emergency Law has been neither clear nor peaceful... the boundaries of emergency law and whether it is fully encompassed by the Constitution are still debated; analyzing the relationship between Constitutional Law and Emergency Law is very serious and complex. Jurists must recognize that behind this problem lies another, belonging to the realm of political philosophy, concerning the ethical value of necessity.*”... “*Without a doubt, one of the most devalued and worn-out notions among us is that of emergency: provisional emergency, social, health, and food emergency, economic emergency, and so on. The recurrent use of states of emergency in one area or another has generated a kind of conceptual erosion, to the point of turning emergency into one of the main indeterminate legal categories of our legal system, an idea in crisis in itself.*” “*...which has led Bidart Campos to say that “we are sick with emergencies”*”<sup>6</sup>...even to such profound and devastating pronouncements as those expressed by the Italian philosopher Giorgio Agamben, who, regarding “States of Exception,” asserted that rather than exceptionality, such situations constitute a “*legal vacuum, and the idea of an original indistinction and plenitude of power... analogous to the idea of a state of nature*”, resulting in what he called a “Kenomatic State”.<sup>7</sup>

In the particular case of Venezuela, it is worth highlighting, regarding the cases of states of exception, the work and presentation of Roberto Hung, the interested applicant in this document, on the states of exception in the country, presented in 2016 at the Congress of Constitutional Procedural Law, in which he stated that such “exceptional” situations resulted in an undue legislative delegation and a significant number of violations of fundamental rights.<sup>8</sup>

As can be inferred, the phenomenon of states of exception and their treatment are of great importance due to their significant impact on the political and democratic institutions of states, areas that are beyond the scope of this document and request. However, what is particularly important, and indeed relevant to the merit of this petition, is their impact and application in the legal system on the matter and the constitutional legal control of the decrees that establish states of exception, as is the specific case of Decree No. 5,200.

Regarding the rules that regulate these exceptional actions, such as articles 337, 338, and 339 of the constitutional text, states of exception in Venezuela are regulated by

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<sup>5</sup>Kemelmajer de Carlucci, Aída, “Emergency and Legal Security”. *Journal of Private and Community Law*. 2002. Pages 13-48, citing Fraidenraij, Susana, Grecco, C., Muñoz G. et al.

<sup>6</sup>Kemelmajer citing Sagüés, Carnota and Bidart Campos.

<sup>7</sup> Giorgio Agamben, *State of Emergency*. Homo sacer II, 1. Buenos Aires, Adriana Hidalgo Publisher, 2005. Pp. 30.

<sup>8</sup>Hung, Roberto. “States of Exception and Emergency in Venezuela: Legislative Delegation and Emergency, Violation of Human Rights and the Deconstitutionalization of the State.” Paper and article presented at the VI International Congress of Constitutional Procedural Law and IV of Administrative Law, a tribute to the Venezuelan jurist Carlos Ayala Corao, held at Monteávila University in Caracas in November 2016. The professor and researcher presented the paper entitled [title missing]. Available at:<https://robertohung.com/wp-content/uploads/2026/01/R-Hung-Estados-de-excepcion-y-desconstitucionalizacion-del-Estado.pdf>

the Organic Law on States of Exception<sup>9</sup>It is worth noting that articles 16 and 27, which were challenged in favor of Carlos Calderón, who was also interested in and applying for annulment.<sup>10</sup>This legal text, in addition to outlining the types of states of emergency, their characteristics, scope, content, limits, and the process for issuing decrees, also develops the mechanisms for their control, both by the National Assembly through its political oversight<sup>11</sup>, as in the present case, an objective constitutional judicial control.<sup>12</sup>

Regarding the control of decrees of states of exception, both the political control by the National Assembly and the constitutional legal objective, it is of interest to mention the ruling of the Constitutional Chamber on the diffuse non-application of article 33 of the Organic Law on States of Exception<sup>13</sup>Regarding the termination of the proceedings due to disapproval by the National Assembly or the Delegated Commission of such decrees or denial of their extension, which is not the case in the present situation since there has been no express disapproval, and the legally provided period of eight days for this has elapsed, it would be considered approved<sup>14</sup>.

**Regarding the regime and states of exception, we can generally observe:**

*A. Types of states of emergency and the duration for which they can be declared<sup>15</sup>.*

Social, economic, political, natural, or ecological circumstances that seriously affect the security of the Nation, its institutions, and its citizens, and for which the powers available to address such events are insufficient.<sup>16</sup>

(i) State of alarm when catastrophes, public calamities, or other similar events occur, up to thirty days, being extendable for up to thirty more days.<sup>17</sup>

(ii) State of economic emergency when extraordinary economic circumstances arise that seriously affect the economic life of the Nation, up to sixty days, extendable for an equal period.<sup>18</sup>

(iii) State of internal commotion in the event of an internal conflict that seriously endangers the security of the Nation, its citizens, or its institutions.<sup>19</sup>

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<sup>9</sup>Official Gazette No. 37,261 of August 15, 2001.

<sup>10</sup>Judgment of the Constitutional Chamber of the Supreme Court of Justice of 06/12/2005. Available at:<https://historico.tsj.gob.ve/decisiones/scon/diciembre/3567-061205-02-1905.HTM>

<sup>11</sup>Articles 26 to 30 LOEE.

<sup>12</sup>Articles 31 to 40 LOEE.

<sup>13</sup>Judgment No. 7 of the Constitutional Chamber of the Supreme Court of Justice (TSJ), dated February 11, 2016. Available at:<http://historico.tsj.gob.ve/decisiones/scon/febrero/184885-07-11216-2016-16-0117.HTML>

<sup>14</sup>Article 27 LOEE.

<sup>15</sup>Article 338 of the Constitution.

<sup>16</sup>Article 337 of the Constitution. Art. 2 LSEE.

<sup>17</sup>Article 8 LOEE.

<sup>18</sup>Article 10 LOEE.

<sup>19</sup>Article 13 LOEE.

(iv) State of external commotion in case of external conflict, also when the security of the Nation, its citizens, or its institutions is seriously endangered.<sup>20</sup>

These last two scenarios, internal commotion and external commotion, will last up to ninety days, and can be extended for up to ninety more days.

B.- Form and process for declaring a state of exception.

By decree of the President in the Council of Ministers.<sup>21</sup>

Referral of the decree to the National Assembly and Constitutional Chamber for the control of its constitutionality.<sup>22</sup>

C.- On the “exceptional”, “objective” and “restorative” character of states of exception.

However, the very nature of states of exception is their "exceptional" character, which must materialize in the fact that any interpretation of them, whatever it may be, whether alarm, emergency or commotion, must be restrictive and extensive, that is, their application can never be interpreted as a limitation of fundamental rights, whether these are expressly provided for in the constitutional text or not, it is pertinent to insist on this, since, as will be highlighted, the material application of the law, far from attending to regularizing situations that even authorities have indicated are in "absolute normality", has resulted in direct violations of subjective rights of citizens.

It should be noted that the constitutional system itself provides that, indeed, during states of emergency, constitutionally enshrined guarantees may be restricted, which in no way extends to inalienable rights such as the right to life, the prohibition of incommunicado detention or torture, due process, the right to information, and other "intangible human rights."<sup>23</sup>, all of which by direct reference not only to Article 23 of the Constitution<sup>24</sup> to the treaties, pacts or conventions on human rights, which are considered to have constitutional status and which prevail in the internal order with immediate and direct application, to which is added the express reference of article 339 of the Constitution to the International Covenant on Civil and Political Rights and to the American Convention on Human Rights.

Furthermore, it is also necessary to draw attention to the fact that decrees declaring states of emergency must determine with accuracy and precision, given the

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<sup>20</sup>Article 14 LOEE.

<sup>21</sup>Article 337 of the Constitution, Article 6 of the LOEE. Articles 52 to 59 of the particular (\*) Decree with the Rank, Value and Force of the Organic Law of the Public Administration.

<sup>22</sup>Articles 26 to 30 and 31 to 40 LOEE.

<sup>23</sup>Article 337 of the Constitution.

<sup>24</sup>Article 23. Treaties, pacts and conventions relating to human rights, signed and ratified by Venezuela, have constitutional status and prevail in the internal order, insofar as they contain rules on their enjoyment and exercise that are more favorable than those established by this Constitution and in the laws of the Republic, and are of immediate and direct application by the courts and other organs of Public Power.

exceptional nature of the situation, which "guarantees" are "restricted." It must be emphasized that it is in no way rights that can be affected, but rather their guarantees, and only in an exceptional manner and with a restricted interpretation. All of this is confirmed and enshrined in the constitutional mandate itself, which is derived from the wording of the aforementioned Article 339 when it expressly states: "...*Decree declaring a state of emergency, in which the exercise of the right whose guarantee is restricted will be regulated...*"

It is worth reiterating and insisting that it is inherent to the nature of states of exception, in addition to their "exceptionality" beyond the simple name. In their declaration, application, and especially their effects, these decrees must address the restoration of the situations affected by the causes that justify them. Therefore, their effects may in no way constitute any norms or regulations, since once the causes that gave rise to the decree's justification are overcome or cease, and its justification lapses, the decree must likewise cease. All of this is enshrined in the constitutional and legal system on the matter, as can be seen in Article 339, which establishes the obligation of the national executive or national assembly to revoke emergency decrees "upon cessation of the causes that motivated them." It is important to highlight how the wording clearly distinguishes between the president's power to extend the decree, stating that he "may" do so if the causes persist, and the obligation to revoke it, as it "shall be revoked" upon their cessation.

We also insist that, given the restorative nature of states of exception to normal conditions, understood as the normative channeling of the situations presented, the suspension of guarantees, but not rights, must be temporary and proportionate. This temporary nature refers not only to the maximum duration they can last, 30, 60 or 90 days as the case may be and with their extensions, but also to the fact that the exceptional situation should only be maintained for as long as the causes that generated it exist, and the measures restricting the affected guarantees must be proportionate.

#### **IV. Regarding the Decree, the constitutionality or unconstitutionality of which must be determined by the constitutional court. Elements that would affect its validity and legal existence relating to its motivation, formation process, requirements, content, and material application.**

As mentioned, on January 3, 2026, Decree No. 5,200 was published in Official Gazette No. 6,954 Extraordinary, declaring a State of External Commotion throughout the National Territory. This decree, which is hereby reproduced in its entirety as a public document, was issued in very particular circumstances that warrant special attention. These circumstances transcend its own integrity as a legal act within such an important constitutional institution as states of exception, in terms of their declaration, scope, limits, process, and consequences. They also affect other major issues, such as the rule of law itself, and more importantly, the protection of the fundamental rights of citizens in general. This latter aspect, in particular, must be

examined when a ruling is issued on the constitutionality or unconstitutionality of said decree.

### **Elements that would affect the validity and legal existence of the decree.**

#### **1.- On the motivation of the Decree.**

It can be inferred from the six recitals of the decree that the declaration of “**external commotion**” is due to the “*Confirmation of an armed attack by military personnel of the United States of America against the territory and population of the Bolivarian Republic of Venezuela, which constitutes a serious violation of the territorial integrity, sovereignty and independence of the Nation*”, that such an attack “...constitutes a gross violation of International Law...”, that “*The Bolivarian Republic of Venezuela has the inherent right to its legitimate self-defense against an armed attack that ...make it necessary and urgent to adopt extraordinary security and defense measures to repel aggression against Venezuelan territory, **to protect the rights of the population** and guarantee the sacred interests of the Republic*”, and “*It is the responsibility of the President of the Republic, in the Council of Ministers, to decree the state of exception of External Commotion in case of external conflict, which seriously endangers the security of the Nation, its citizens or its institutions.*”

Given the terms in which the reasons for the emergency decree are presented, the first thing to highlight is whether it corresponds to factual scenarios of "internal commotion" or "external commotion," all with the clear understanding that both forms of exceptionality are included in the statement of article 338 of the Constitution, and although in two different articles of the Organic Law on States of Exception, articles 13 and 14, their treatment is very similar and have similar effects, we can distinguish elements that are of great interest in the present process of constitutional control.

While in both cases it similarly refers to factual scenarios in which “*seriously endanger the security of the Nation, its citizens and/or its institutions*<sup>25</sup>” with a limit of 90 days, which may be extended,

In the case of a state of internal commotion, the rule refers to the fact that its causes correspond to “*all those exceptional circumstances that involve major disturbances of internal public order and that signify a notorious or imminent danger to institutional stability, citizen coexistence, public safety, the maintenance of free and democratic order; or when the functioning of the Public Powers is interrupted.*”, and in the case of external shock, that its causes may be “*-among others - ... all those situations that imply a threat to the Nation, the integrity of the territory or sovereignty*”, to which “*...all measures deemed appropriate to defend and ensure the interests, national objectives and the survival of the Republic.*”

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<sup>25</sup>In the case of internal unrest, it states “...citizens **the** citizens **and** of their institutions...” and in the case of external shock “...citizens **and** citizens, **the** of their institutions...”

As can be seen, certainly in the case of “external unrest”, the scope of the state of exception would be much broader than that of internal unrest, since it can extend to “*all measures deemed appropriate*” “But all of this, given the nature of proportionality, temporality, restoration and exceptionality, must be duly justified and that in the terms in which the decree was issued this has not been the case, additionally as will be seen, if such causes would have ceased, or their risk had diminished with respect to the conditions existing at the time of their declaration, the same sort of cessation and decay must follow the decree.”

In the specific case of the decree under examination, it in no way refers to what the elements of “externality” of the commotion clearly consist of, which are more closely identified with those of “internal commotion” insofar as the events indicated as the cause of the declaration would have been verified in Venezuelan territory as indicated in the declaration itself and the public facts about the military operation by the armed forces of the United States, in addition, as will be observed in the section relating to the content of the decree, in such factual scenarios corresponding to aggressions that warrant the defensive deployment of the Venezuelan armed forces, in no way does it require the declaration of commotion to face the active aggressions.

In addition to the above, it should be noted that if the events are considered to correspond to situations of “external conflict” as indicated in the statement of article 14, a very important action by the United States Senate must be taken into consideration, namely, its approval on January 8, 2026, “*A joint resolution to order the withdrawal of United States Armed Forces from hostilities within or against Venezuela not authorized by Congress*”.

Indeed, on January 8, 2026, at 10:59 a.m. local time, the Senate approved, with 52 votes in favor, 47 votes against, and 1 abstention, resolution S.J.Res.98A *joint resolution to order the withdrawal of United States Armed Forces from hostilities within or against Venezuela not authorized by Congress* (S.J.Res.98 - *A joint resolution to direct the removal of United States Armed Forces from hostilities within or against Venezuela that have not been authorized by Congress*)<sup>26</sup>, and that it resulted after not having approved a similar resolution, the one identified as S.J.Res.90 of October 16, 2025.<sup>27</sup>

Given this important action, in the case of our interest, the causes that would have motivated the declaration of the state of exception, of “external commotion” as expressly referred to in the decree, or even if it had been of “internal commotion,” if the occurrence and effects verified in the territory led us to think that perhaps the declaration should eventually be that of such “internal commotion,” are indicated in the recitals as “...*armed attack by military personnel of the United States of America*

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<sup>26</sup> <https://www.congress.gov/119/bills/sjres98/BILLS-119sjres98pcs.pdf>  
[https://www.senate.gov/legislative/LIS/roll\\_call\\_votes/vote1192/vote\\_119\\_2\\_00005.htm](https://www.senate.gov/legislative/LIS/roll_call_votes/vote1192/vote_119_2_00005.htm)  
<https://www.congress.gov/bill/119th-congress/senate-joint-resolution/98/all-actions>

<sup>27</sup> <https://www.congress.gov/119/bills/sjres90/BILLS-119sjres90is.pdf>

*against the territory and population of the Bolivarian Republic of Venezuela, which constitutes a serious violation of the territorial integrity, sovereignty and independence of the Nation...*”, which would indeed have ceased, and the attack that would have justified the declaration of a state of exception no longer exists, either because it ended in the early morning of January 3, 2026, at 4:29 a.m. Caracas time (GMT-4) with the execution of the planned operational objectives. The cessation of the cause that led to the decree's expiration, a situation that nevertheless can generate and does generate other legal consequences both domestically and in other jurisdictions, such as those of “forced absence” and the defenses that may be raised in the federal proceedings before the courts of the State of New York, among others, which, despite their great importance, fall outside the scope of the objective and technical review of the constitutionality of the decree and of this document.

Now, regarding US Senate Resolution S.J.Res.98 “*...to order the withdrawal of the United States Armed Forces from hostilities within or against Venezuela that have not been authorized by Congress*”, however, it contains an opinion dated January 8th from the Executive Office of Administration and Budget of the Office of the President of the United States (*Executive Office of the President Office of Management and Budget*), regarding the recommendation to reject and veto said Resolution, which would require a qualified 2/3 vote for its approval<sup>28</sup>In addition to verifying the completion of the military operation in the early morning of January 3, it constitutes a cessation of the risk and the situation of “commotion” existing for the dates of the attack and previous days, which is also presented as a cessation of the causes that would motivate the decree of a state of exception, which as has been observed would have been “the attack” already executed and not some other cause.

Having said that, this constitutional control process must analyze the foundations of the establishment, validity, and necessity of the existence of “Decree No. 5,200, by which the State of External Commotion is declared throughout the National Territory dated January 3, 202,6 published in Official Gazette No. 6,954 Extraordinary”.

## **2.- On the process of forming the decree.**

The constitutional and legal norms indicate that the declaration of a state of exception must be made by decree of the president in the Council of Ministers, which obliges us to review to verify the process necessary for its formation, the information relating to such institution, its composition, and deliberations provided for in the special norm that regulates the functioning of the public administration.

They develop articles 52 to 59 of the “Decree with the Rank, Value and Force of the Organic Law of the Public Administration<sup>29</sup>”, normative text from which we can generally highlight the following aspects:

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<sup>28</sup>Available on the White House website:<https://www.whitehouse.gov/wp-content/uploads/2026/01/SAP-SJR98.pdf>

<sup>29</sup>Official Gazette No. 6.147 Extraordinary of November 17, 2014.

(i) The council shall be composed of the president, the vice-president, who shall preside over it, and the assembled ministers. The Attorney General shall attend with the right to speak, and other officials or persons may be invited when the nature or importance of the matter so requires. The Council shall appoint its secretary.<sup>30</sup>

(ii) Sessions will only be valid with the presence of the President or Executive Vice President, who has previously authorized the President to chair the session. A quorum of two-thirds of the members is required, and in cases of urgency, an absolute majority of the members is required.<sup>31</sup>

(iii) The Council may be convened extraordinarily by the president when he deems it appropriate.<sup>32</sup>

(iv) The Secretary of the Council shall draw up minutes which shall be recorded in a special book and certified once approved. *“The minutes will contain the circumstances relating to the time and place of its holding, the list of attendees, the decisions adopted on each of the matters discussed at the meeting, and the reports presented”*.<sup>33</sup>

(v) The deliberations will be secret. *“The decisions adopted... will not be confidential or secret. However, for reasons of national interest or strategic importance, ... some of the decisions may be declared confidential... in which case, the corresponding item in the minutes will be confidential or secret for the strictly necessary time, after which... the confidentiality of the adopted decision will be lifted...”*<sup>34</sup>

(vi) The executive vice-president, sectorial vice-presidents, and ministers are jointly and severally liable for the decisions adopted at the Council meetings they attended, unless they have recorded their negative vote.<sup>35</sup>

It can be seen from the text of the decree that the following thirty-five (35) sectorial ministers and vice presidents, in addition to the president and vice president who are identified, would have signed it and attended the aforementioned council: (i) Office of the Presidency and Monitoring of Government Management, (ii) Foreign Affairs, (iii) Interior Relations, Justice and Peace, (iv) Defense, (v) Communication and Information, (vi) Economy and Finance, (vii) Foreign Trade, (viii) Industries and National Production, (ix) National Trade, (x) Tourism, (xi) Productive Agriculture and Lands, (xii) Fisheries and Aquaculture, (xiii) Food, (xiv) Hydrocarbons, (xv) Ecological Mining Development, (xvi) Planning, (xvii) Health, (xviii) Indigenous Peoples, (xix) Women and Gender Equality, (xx) Water Resources, (xxi) Youth, (xxii) Sports, (xxiii) Penitentiary Service, (xxiv) Social Process of Work, (xxv) Culture,

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<sup>30</sup>Article 52

<sup>31</sup>Article 55.

<sup>32</sup>Article 56.

<sup>33</sup>Article 57.

<sup>34</sup>Article 58.

<sup>35</sup>Article 59.

(xxvi) Education, (xxvii) Science and Technology, (xxviii) University Education, (xxix) Ecosocialism, (xxx) Habitat and Housing, (xxxii) Transport, (xxxiii) Public Works, (xxxiv) Electric Energy, (xxxv) Older Adults, Grandparents of the Nation.

### **3.- Regarding whether or not the Council of Ministers will meet and the necessary determination thereof.**

Since it is inferred that the events that resulted in the removal of citizen Nicolás Maduro Moros occurred in the early morning of January 3, 2026, and that the Constitutional Chamber, in a decision of the same date, confirms his "forced absence," it is improbable that from 12:01 to 4:29 a.m. Caracas time, it would have been possible to comply with what is legally established in the regulations regarding the convocation, meeting, verification of quorum, deliberation, and adoption of decisions that resulted in the declaration of the state of exception and the formation of the corresponding decree, beyond the signing by the attendees of the meeting minutes that must necessarily exist.

Given the great importance to constitutional law of the events that occurred and their significant consequences and effects on constitutional institutions and the rule of law, the decision to be issued on the constitutionality of the decree must verify whether the requirements for such a declaration were met. It must be emphasized that such a declaration is exceptional, since determining its validity is essential. If it is found that due process was not followed in its formation, it would not only constitute a serious flaw that would render it legally null and void, but it would also have very serious consequences, as indicated in the constitutional framework and in the very idea of constitutional justice, if the appropriate decisions are not made.

In this regard, the decision must expressly analyze and address the following aspects:

- (i) The "extraordinary" call to the Council of Ministers and the opportunity for its realization on January 3, 2026.
- (ii) The effective presence of the president and the effective or non-attendance of the ministers who appear signing the decree, thirty-five, and verification of the quorum necessary for the validity of the decisions.
- (iii) Assistance from the Attorney and/or other officials or persons given the nature or importance of the matter.
- (iv) The manner in which the meeting was conducted and the "circumstances relating to the time and place of its holding, the list of attendees, the decisions adopted on each of the matters discussed at the meeting and the reports presented" all of which must be recorded in the minutes entered and certified by the Secretary of the Council in the

special book, and whether any of the decisions were declared confidential, or any negative vote of the attendees.

#### **4.- On the requirements and content of the decree and its material application.**

Of the fourteen (14) articles that make up the decree under examination, none of them expressly or implicitly indicate the exceptionally suspended guarantees and their treatment, as is unequivocally evident from Article 339 of the Constitution itself when it refers to the fact that decrees declaring states of exception must regulate the exercise of the rights whose guarantees are restricted, a situation that is further reinforced in cases of objective constitutional control when Article 38 of the Organic Law on States of Exception establishes that *“The decision of nullity that falls on the decree will have retroactive effects, the Constitutional Chamber of the Supreme Court of Justice must immediately restore the infringed general legal situation, by annulling all the acts issued in execution of the decree that declares the state of exception, its extension or **increase in the number of restricted constitutional guarantees**, without prejudice to the right of individuals to request the restoration of their individual legal status and to exercise all appropriate actions....”*

It must be emphasized and reiterated as many times as necessary that what can be exceptionally suspended are the guarantees and not the rights, even if these are expressly provided for in the constitutional text or in the International Covenant on Civil and Political Rights.<sup>36</sup>, in the American Convention on Human Rights known as the Pact of San José<sup>37</sup>, or any other intangible fundamental right provided for in any other treaty, pact or convention text by virtue of Articles 339 and 23 of the Constitution, and Article 7 of the Organic Law of States of Exception.

While it is observed that the decree itself does not specify which guarantees are suspended and how they are addressed, paradoxically, Article 6 of the decree states that in its implementation “all measures will be taken to guarantee the rights to life; recognition of legal personality; protection of the family; equality before the law; nationality; personal liberty or the prohibition of enforced disappearance of persons; personal, physical, mental and moral integrity; the prohibition of subjection to slavery or servitude; freedom of thought, conscience and religion; legality and non-retroactivity of laws, especially criminal laws; due process; constitutional protection; participation, suffrage and access to public office and the right to information.” These mentions, while not strictly necessary since they are mandated by the Constitution and the law, although not frequently reiterated in the article, all clash with the material implementation of the decree, especially Article 5, which is discussed below.

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<sup>36</sup>Specifically, Article 4.2. Available from the website of the Office of the United Nations High Commissioner for Human Rights:<https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>37</sup>Specifically, Article 27.2. Convention available on the Organization of American States website:[https://www.oas.org/dil/esp/1969\\_Convenci%C3%B3n\\_Americana\\_sobre\\_Derechos\\_Humanos.pdf](https://www.oas.org/dil/esp/1969_Convenci%C3%B3n_Americana_sobre_Derechos_Humanos.pdf)

**V.- On the material actions in execution of the law that would be resulting in direct violations of citizens' rights.**

Of the articles that make up the decree, there is one whose material application has generated more than anxiety, much concern in its execution, namely article 5 which reads:

*Article 5. The national, state and municipal police bodies shall immediately undertake the search and capture throughout the national territory of any person involved in the promotion or support of the armed attack by the United States of America against the territory of the Republic, for the purpose of placing them at the disposal of the Public Ministry and the criminal justice system, with a view to their trial, with compliance with all the procedural guarantees inherent to due process and the right to defense.*

In practice, this provision has been used in such a way that not only military officials, or at least those who appear in military uniforms but are otherwise unidentified, with their faces covered and carrying long guns typical of the armed forces, but also national, state, and municipal police officers, as well as armed private citizens whose status as public officials is unknown, set up checkpoints or pursue citizens in public areas demanding to check their phones and computers, especially on social media. If there is any news or publication, whether sent or received, that makes any reference to the military operation, they are intimidated and threatened with arrest and charges of crimes such as conspiracy or treason, terrorism, or incitement to hatred.

We, the undersigned, were able to conduct a brief field investigation and short interviews, verifying what is reported on social media and various cable television news programs: that there have indeed been arrests in which people are required to show their phones, and that some cases have been referred to the public prosecutor's office for the alleged commission of such alleged crimes. We also learned of people who have proceeded to delete all their content on social media, while others have been victims of extortion, forced to pay sums of money to those who detain them, without knowing whether they were military or police officials. The people interviewed indicated that they were unwilling to testify due to fear for their safety, and yet we, the undersigned, believe that since this is not a process to rule on subjective matters of particular cases but on the “constitutionality” or “unconstitutionality” of the decree, whose causes that motivated it have ceased, its material application has resulted in a decline in the rights and freedoms of society in general and the citizens who comprise it, all of which goes against even the very nature of states of exception and their decree, which must be intended for the protection of citizens, especially in their sphere of fundamental rights.

It must be noted that the practical and material execution of the decree concerning its article 5 results in a very aggravated direct violation of rights such as personal liberty and due process, since they would be detained without the commission of a crime in flagrante delicto with the total absence of investigation and judicial order<sup>38</sup>, thus transgressing articles 44 and 49 of the constitutional text, and it could even be considered that in specific cases article 44 would be violated Article 45, which expressly prohibits “public authority, whether civil or military, *even in a state of emergency, exception or restriction of guarantees, to practice, permit or tolerate the enforced disappearance of persons.*”

In the cases mentioned, the right to "secrecy and inviolability of private communications in all their forms" is enshrined in article 48, which, with article 5 of the decree, is completely emptied of content, and which also orders that any interference must be by order of a court and in compliance with due process.

The material execution of Article 5 violates and empties of content the right to freedom of expression enshrined in Article 57 of the Constitution, not only in its public manifestation, but also in the private sphere of citizens, as well as the constitutional right to information, freedom, and plurality of communication.<sup>39</sup>

It is essential to bear in mind, in the analysis of the constitutional viability of the state of exception decree in question, that the social pact agreed upon by Venezuelans in 1999, the Constitution of the Bolivarian Republic of Venezuela, gave full guarantee to the enjoyment of human rights as a whole, not only those expressly referred to in its text but also those contained, as we have said, in international agreements and conventions related to fundamental rights, all in order to foster a democratic, participatory and peaceful society where only in very special and exceptional circumstances such as states of exception, would the restriction of its guarantees be permitted temporarily and always subject to the political control of the National Assembly and judicial control by this Constitutional Chamber. But never, under any circumstances, can such an exception to the full use of fundamental rights and guarantees be upheld if the reasons that motivated them cease to exist and the factual reality indicates that the security of the Nation is no longer at risk, or if the rules contained in the decree of state of exception that supports them reflect more the need for social control due to an internal conflict than to protect society from a non-existent external threat, which would be appropriate for a state of exception due to internal unrest, which is not the case at hand.

## **VI.- On the proper referrals and communications in the process of declaring states of exception.**

The normative corpus that governs states of exception, made up of the National Constitution, articles 337 to 339, the Organic Law on States of Exception, articles 26

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<sup>38</sup>Articles 44 and 49 of the Constitution.

<sup>39</sup>Article 57 of the Constitution.

to 40, the International Covenant on Civil and Political Rights, article 4.3 and the American Convention on Human Rights, article 27.3, establish that in those situations in which states of exception are decreed, a series of referrals and communications must be made for the purposes of both controlling the act, as well as informing the community about such situation.

In this regard, we note that the author of the decree must send a copy of it to both the National Assembly and the Constitutional Chamber for the aforementioned control, but also immediately inform the other States Parties to the International Covenant on Civil and Political Rights through the Secretary-General of the United Nations, indicating the provisions whose application has been suspended, the reasons for the suspension, and then the termination of the suspension. Likewise, the author must immediately inform the States Parties to the American Convention on Human Rights through the Secretary-General of the Organization of American States of the provisions whose application has been suspended, the reasons for the suspension, and the termination of such suspension.

From the text of the Decree itself, article 10, which instructs the Minister of Foreign Affairs to notify the *“The United Nations Security Council acknowledged the measures taken by the Republic in the exercise of its right of self-defense against the armed attack by the United States of America, and requested that the United States, in turn, adopt additional measures to maintain international peace and security.”*, as well as *“... to the international community, the United Nations and other international multilateral bodies, regarding the illegitimate and unjustified aggression to which the Bolivarian Republic of Venezuela is subjected, as well as regarding the measures taken... to protect the existence of the Republic and to protect the rights of the population.”*

Similarly, in article 13, it is stated that the decree *“...It will be submitted to the National Assembly within eight (8) consecutive days following its issuance, for its consideration and approval. Within the same period, it will also be submitted to the Constitutional Chamber of the Supreme Court of Justice, so that it may rule on its constitutionality...”*

It is unknown whether the required submissions and communications, that is, those provided for in the aforementioned regulatory body, as well as those referred to in article 10 of the decree, have been submitted. What we, the undersigned, have been able to verify is that immediately prior to its presentation, there is no record on the website of the National Assembly that they have received such decree for their control, nor does such submission appear reflected in the accounts section of the Constitutional Chamber.

Given the importance of the present situation in the context of constitutional law, constitutional justice, the rule of law, and fundamental rights, for the purposes of

determining the constitutionality or unconstitutionality of the decree, due attention must be paid to it in the opinion to be issued.

### **VII.- On procedural time limits and timely presentation of arguments and elements of conviction.**

Article 34 of the Organic Law on States of Emergency states that those interested in presenting arguments and evidence may do so within the first 5 days of the 10 days following the 8 days within which the Decree must be presented to the National Assembly for its political oversight and to the Constitutional Chamber for its judicial review. All of these days are business days.<sup>40</sup>

Since the decree is dated January 3, 2026, the eight-day period expired on January 11, a period that included the following days: January 4, 5, 6, 7, 8, 9, 10 and 11, 2026, resulting in the five days legally established for the presentation of arguments and elements of conviction being the following: January 12, 13, 14, 15 and 16, 2026, thus verifying the absolute timeliness of the presentation of this document.

### **VIII.- The Principle of Explosion that would affect the validity, validity, and very existence of the decree and the declaration of a state of exception.**

In classical logic there is a rule known as the “explosion principle” or “*ex contradictione quodlibet*” (from the contradictory anything follows), which consists of the fact that within a formal system, by allowing the inclusion and acceptance of a contradiction as true, the process and structure of inferences is affected, making it possible to deduce any possible statement by accepting as true a premise and its negation simultaneously, that is, a premise "P" and "Not P" are the same, then "Q" which can be inferred to be literally anything.

The system becomes trivial; that is, the system explodes, since the distinction between truth and falsehood, the principle of non-contradiction, would cease to exist because absolutely any statement, however absurd, could be proven valid.

In the case of interest to us, that of the state of exception decree, beyond the eminently legal considerations such as those indicated, we find ourselves facing postulates that are in such a degree of internal contradiction that, by pure logic, any reasoning that attempts to justify it is invalidated, resulting in it being absolutely lacking in validity, validity, without any existence in the legal universe, its application resulting, as has been highlighted, in other very serious consequences such as the violation of fundamental rights of civil society, which is left unprotected against the threats of abuse of power.

In our case study, several related statements can be highlighted, among which we can certainly emphasize:

- (i) The existence of threats of attack by the United States of America from September 2025
- (ii) The attack by the armed forces of the United States of America on Venezuelan territory.
- (iii) The removal of citizen Nicolás Maduro Moros from Venezuelan territory.

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<sup>40</sup>Article 39 LOEE.

- (iv) The transfer to the territory of the United States of North America.
- (v) A publication in the Official Gazette of a Decree of a State of Exception.
- (vi) The “absence” of citizen Nicolás Maduro Moros from Venezuelan territory. Regardless of the nature of said absence.
- (vii) Decision recognizing the “forced” “absence”.
- (viii) The “charge” of “*all the powers, duties and faculties inherent to the office of President...*”
- (ix) US Senate resolution approving the limitation of new military actions and attacks without authorization from Congress.
- (x) Statements from various spokespeople of both governments that demonstrate a rapprochement and understanding between them on fundamental aspects of this country, especially regarding the oil industry.
- (xi) Announcements by both parties to initiate the process required for the normalization of diplomatic relations.

And like these, we can make a huge list of statements that will serve us for the logical and rational analysis of the arguments and narratives that arise related to such an important event for Venezuelan constitutional history, as well as the challenges of constitutional justice and other forums, such as the academic one, which will have to issue their opinions.

Regarding the matter of interest, such as the validity, enforceability, and legal existence of the decree declaring a state of emergency, multiple contradictions arise concerning the occurrence or non-occurrence of events and their consequences. In this regard, we observe:

Given the unequivocal and incontrovertible facts of the occurrence of the threat, the attack, the extraction, and the "absence" of the person who appears as the author of the decree examined, it would be an absolute contradiction to maintain that, given the hours in which the events occurred, any Council of Ministers could have been convened and held.

To attempt to argue that the Council of Ministers met, declared a state of emergency, and issued the corresponding decree, while simultaneously claiming that the author of the decree was removed from the country by an attack from the United States armed forces, causing his "forced absence" that necessitated ordering the Vice President to "assume" "all the powers, duties, and faculties inherent to the office of President," is not difficult to deduce. This is all consistent with the aforementioned principle of explosion, which compels us, through basic classical logic, to conclude that no Council of Ministers was validly convened or held, nor was the state of emergency validly declared, and that Decree No. 5,200, declaring a State of External Commotion throughout the National Territory on January 3, 2026, published in Official Gazette No. 6,954 Extraordinary, cannot be considered valid, in force, or legally operative.

Similarly, given the numerous events already mentioned, with the necessary certainty of their occurrence, it is reckless, in our view, to assert that there are still certain threats of a new attack by foreign armed forces, particularly the American one, that justify the state of exception due to external commotion decreed by the authority based on the already known threats, which, in fact, has ultimately made civil society the victim of everything that has happened, seeing its fundamental rights threatened and/or violated, leaving it unprotected against the abuse of power.

## **IX. Further considerations regarding the importance of controlling states of emergency for constitutional law and fundamental rights. Strategic treatment of the process.**

Given that the treatment of states of exception is essential to constitutional law and international human rights law, which, as we have observed both within States and within the framework of international instruments such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights, which expressly state that any act declaring the suspension of guarantees must be communicated to the States Parties, given the very particular conditions in which the present process of constitutional control is verified, this represents an important challenge and responsibility for constitutional justice and constitutionalism, both for Venezuela and for the global community.

Having said that, and given that this case is emblematic for Venezuela and the region, and that there will undoubtedly be abundant work and research to be done, and for which the greatest number of sources must be made available to future researchers, this document, annexes, instruments and the references made will be made openly available to the universal legal forum as research material in Spanish, English and French.

## **X. Conclusions and Petition**

Having reviewed the arguments and evidence presented in this document, and being at the procedural stage in the judicial process of objective constitutional review of Decree No. 5,200, which declares a State of External Disturbance throughout the National Territory dated January 3, 2026, published in Official Gazette No. 6,954 Extraordinary of the same date, we formally request that the following aspects, sufficiently developed, be expressly considered in the ruling that will be issued on its constitutionality or unconstitutionality in the present document:

**First:** If indeed, in the early morning of January 3, 2026, from 2:00 hours in Caracas, a Council of Ministers was held or could have been held, having complied with the legally established requirements for its validity regarding the quorum, deliberation, and decision recorded and certified in minutes, and which must be requested for its analysis.

**Second:** If the events that would have been cited as causes that motivated the declaration of a state of exception had already ceased upon completion of the execution of the attack and verification of its results with a view to the approval of the joint resolution of the United States Senate and the various public statements from different spokespeople of the respective governments of the United States of America and Venezuela.

**Third:** Whether the text and wording of the decree declaring the state of exception sufficiently complied with the requirement of specifically indicating the restricted constitutional guarantees and their treatment during such restriction.

**Room:** If the terms in which Article 5 of the decree was drafted, and its material execution constitute an infringement of fundamental rights of citizens, specifically addressing the acts by military, police, and other armed groups of detention and review of private information against the rights not only enshrined in the Venezuelan constitutional order but also in Universal and Inter-American human rights protection systems.

**Fifth:** If the requirements of immediate notification to the States Parties of the International Covenant on Civil and Political Rights through the Secretary-General of the United Nations and of the American Convention on Human Rights through the Secretary-General of the Organization of American States were met, indicating the provisions whose application has been suspended and the reasons for it.

#### **XI.- Contact information.**

For any notification that may need to be made in connection with this document of arguments and evidence, the following email address is indicated as contact: [calderoncarlos1948@gmail.com](mailto:calderoncarlos1948@gmail.com)

In Caracas, on the fifteenth (15) day of January 2026.