
**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Docket No. 25-10534

W.M.M., F.G.M., and A.R.P., *et al.*,

Petitioners – Appellants

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Respondents – Appellees

On Appeal from
United States District Court for the Northern District of Texas,
No. 1:25-cv-59-H

**PETITIONERS-APPELLANTS' OPPOSED MOTION FOR LEAVE
TO SUPPLEMENT THE RECORD**

Petitioners-Appellants move for leave to supplement the record with the National Intelligence Council (“NIC”) memorandum entitled “Venezuela: Examining Regime Ties to Tren de Aragua.”¹ The NIC memorandum bears directly on the parties’ arguments and provides critical context to address the issues in this case. Respondents-Appellees oppose the motion.

Petitioners-Appellants submit the NIC memorandum in direct response to Respondents-Appellees’ having submitted and relied heavily on an FBI assessment report as to TdA, *see* Answering Brief 9, 11, 28, 34, 43, 45, without submitting the contrary assessment of 17 other intelligence agencies. The memorandum’s inclusion is thus necessary to ensure the Court has a complete and accurate record.

This Court has the “inherent equitable authority to supplement the record on appeal.” *United States ex rel. Minna Ree Winer Children’s Class Trust v. Regions Bank of La.*, 110 F.3d 794 at *4 (5th Cir. 1997) (unpublished opinion); *Dickerson v. Alabama*, 667 F.2d 1364, 1367-68 (11th Cir. 1982). Declining to do so here “would be contrary to both the interests of justice and the efficient use of judicial resources.” *Gibson v. Blackburn*, 744 F.2d 403, 405 n.3 (5th Cir. 1984) (quoting *Dickerson*, 667 F.2d at 1367). And a remand for supplementation of the record

¹ The NIC memorandum became public after the government released it pursuant to a Freedom of Information Act request submitted by the Freedom of the Press Foundation. Letter from Erin Morrison, Office of the Director of National Intelligence, to Lauren Harper, Freedom of Press Foundation (May 5, 2025), <https://perma.cc/3GC7-TY3E>.

would only compound the inefficiency—delaying resolution of the important issues in this litigation despite all parties’ familiarity with the memorandum and the Supreme Court’s directive that this Court resolve both the merits and the notice questions in this case.

In the alternative, the Court should take judicial notice of the memorandum, which is public, directly relevant, and not subject to reasonable dispute. *See Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (affirming taking judicial notice of “publicly-available documents and transcripts produced by [a government agency], which were matters of public record directly relevant to the issue at hand”); *Kitty Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 457 (5th Cir. 2005) (taking judicial notice of document published by government agency).

Petitioners-Appellants respectfully submit that granting their request would aid the Court’s review of this case, as well as the Supreme Court’s review should it decide to grant certiorari.

Dated: June 17, 2025

Respectfully submitted,

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**Barred in Texas and Arizona only;
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CERIFICATE OF SERVICE

I certify that, on June 17, 2025, a true and correct copy of this document was transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit via the Court's CM/ECF document filing system, and on all counsel of record.

/s/Lee Gelernt
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Tab P

(b)(3)



NATIONAL INTELLIGENCE COUNCIL

SENSE OF THE COMMUNITY MEMORANDUM

7 April 2025

SOCM 2025-11374

(b)(3) Venezuela: Examining Regime Ties to Tren de Aragua

(b)(3) Tren de Aragua (TDA) is a transnational gang based in Venezuela that has spread to at least seven South America and Caribbean countries, operating in loosely-organized cells of localized, individual criminal networks. TDA leaders have historically been located and broadly benefitted from various permissive conditions and incapacities in Venezuela. They probably communicate to varying degrees with some TDA cells in other countries, although other cells probably operate and coordinate amongst themselves independently, judging from DHS reporting (b)(3).

(b)(1), (b)(3) Some self-described TDA criminal entities or individuals lack direct ties to TDA leadership but still use the TDA moniker for reputational benefits, complicating the IC's ability to identify and track authentic group members and networks.

- (b)(3) TDA formed around 2007 in the Tocoron Prison located in Aragua State, Venezuela, which served as its initial base of operations. The group's senior founders and probable core leaders are Hector Guerrero Flores, a.k.a. Nino Guerrero or El Nino, Yohan Jose Romero a.k.a. Johan Petrica, and Larry Alvarez Nunez, a.k.a. Larry Changa. Alvarez Nunez is in Colombian custody.
- (b)(3) In recent years, TDA leadership has faced setbacks, including losing their centralized location in Tocoron Prison and having several senior TDA leaders arrested in Colombia by the Colombian National Police. In 2023, the Venezuelan regime cleared TDA from Tocoron Prison, although the group's leaders were able to escape in the operation, possibly assisted by low-level Venezuelan military and political leaders, judging from DHS reporting. The regime may have expelled TDA from the prison to undercut regional press alleging TDA ties to disputed Venezuelan President Nicolas Maduro, or to disrupt further destabilizing activities by gang members inside Venezuela.
- (b)(3) TDA and other Venezuelan organized criminal groups have spread to other countries, aided by the movement of the larger body of Venezuelan migrants into Bolivia, Chile, Colombia, Ecuador, Peru, Trinidad and Tobago, and the United States, in particular. Nicaragua and Panama have also reported encountering TDA affiliates, (b)(1), (b)(3) From 2021 to 2024 there was a spike in Venezuelan encounters at the US-Mexico border, in which some TDA members could have been present as they have generally moved with Venezuelan migrant communities and profit from human trafficking and migrant smuggling. (b)(1), (b)(3) The small size of TDA's cells, its focus on low-skill criminal activities, and its decentralized structure make it highly unlikely that TDA coordinates large volumes of human trafficking or migrant smuggling.

(U) This assessment was prepared under the auspices of the National Intelligence Officer (NIO) for Western Hemisphere. It was drafted by the National Intelligence Council (b)(1), (b)(3)

Classified By: (b)(3) | Derived From: (b)(3)

Declassify On: (b)(3)

(b)(3)



(b)(3) Maduro Regime Probably Maintains Ad Hoc Links to Some Criminal Groups in Venezuela

(b)(3) Maduro regime leadership probably sometimes tolerates TDA's presence in Venezuela, and some government officials may cooperate with TDA for financial gain. **(b)(1), (b)(3)** instances of regime officials' cooperation with various armed and criminal groups, such as Colombia's National Liberation Army or Los Colectivos, have been ad-hoc and reportedly driven by the regime's desire for help controlling territory or deterring a perceived threat of invasion, or for individual financial gain.

- **(b)(3)** The Maduro regime generally does not impede illegal armed and criminal groups from operating in Venezuela, but it does combat and seek to contain them when it fears they could destabilize the regime or when corrupt deals sour. Venezuela's security services lack the capacity to fully control Venezuelan territory, giving the regime an interest in cooperating with armed groups for insight and control in areas outside the services' traditional areas of operation. Furthermore, combatting such groups often results in personnel losses, probably encouraging the regime to at times cooperate with some groups instead of contesting them.
- **(b)(3)** Some mid- to low-level Venezuelan officials probably profit from TDA's illicit activities, according to **(b)(1), (b)(3)** and press reporting. For example, local military officials have alerted other armed and criminal groups conducting aerial drug shipments to Venezuelan Air Force patrols and might have alerted TDA leadership of a planned raid in 2023 against the prison that was its base of operations.

(b)(3) Maduro Regime Probably Not Directing TDA Activities

(b)(3) While Venezuela's permissive environment enables TDA to operate, the Maduro regime probably does not have a policy of cooperating with TDA and is not directing TDA movement to and operations in the United States. The IC bases this judgment on Venezuelan law enforcement actions demonstrating the regime treats TDA as a threat; an uneasy mix of cooperation and confrontation rather than top-down directives characterizing the regime's ties to other armed groups; and the decentralized makeup of TDA that would make such a relationship logistically challenging. Furthermore, most of the IC judges that intelligence indicating that regime leaders are directing or enabling TDA migration to the United States is not credible and would need **(b)(1), (b)(3)** reporting **(b)(1), (b)(3)**

(b)(1), (b)(3) corroborated **(b)(1), (b)(3)** While FBI analysts agree with the above assessment, they assess *some* Venezuelan government officials facilitate TDA members' migration from Venezuela to the United States and use members as proxies in Chile, Colombia, Ecuador, Peru, and the United States to advance what they see as the Maduro regime's goal of destabilizing governments and undermining public safety in these countries, based on DHS and FBI reporting as of February 2024.

- **(b)(3)** Venezuelan intelligence, military, and police services view TDA as a security threat **(b)(1), (b)(3)** and operate against it in ways that make it highly unlikely the two sides would cooperate in a strategic or consistent way, according to **(b)(1), (b)(3)** and press reporting. **(b)(1), (b)(3)**

(b)(3) In late January, at least two Venezuelan National Guard units arrested TDA members in Venezuela in separate operations.

- **(b)(3)** Since at least 2016, Venezuelan security forces have periodically engaged in armed confrontations with TDA, resulting in the killing of some TDA members, according to **(b)(1), (b)(3)** press reporting. **(b)(1), (b)(3)**



- (b)(3) The IC has not observed the regime directing TDA, including to push migrants to the United States, which probably would require extensive (b)(1), (b)(3) coordination, and funding between regime entities and TDA leaders that we would collect. (b)(1), (b)(3)

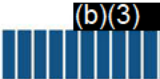
(b)(3) The IC also recognizes the regime appreciates migration as a safety valve, allowing discontented Venezuelans to leave. US border encounters of Venezuelan national have decreased since January because of migrant perceptions of new US enforcement policies. Since late January, border encounters have plummeted more than 80 percent, according to (b)(1), (b)(3) reaching the lowest level in decades.

- (b)(3) The limited IC reporting suggesting a link between TDA and some Venezuelan officials aimed at facilitating TDA migration to the United States (b)(1), (b)(3) In some cases, reporting warns that these sources could also be motivated to fabricate information. (b)(1), (b)(3)

(b)(3) Some regime officials are probably willing to capitalize on migration flows for personal financial or other benefits, even though the Maduro regime probably is not systematically directing Venezuelan outflows, such as to sow chaos in receiving countries. The intelligence record indicates Venezuelans have migrated voluntarily, often at great personal risk, to flee political instability and near-collapse of Venezuela's economy. The IC attributes increased migration flows, including the spike in US arrivals from 2021 to 2024, (b)(1), (b)(3) of Venezuelan nationals – which could include some TDA members – to a variety of push and pull factors including socioeconomic conditions, family ties to the United States, and migrants' perceptions of US and regional enforcement. At the same time, Maduro has not taken meaningful steps to curb migration, highlighting his partial accountability, probably because it has helped him retain power by having dissidents leave the country, increasing remittances to Venezuela that help ease economic strains for remaining populations, and allowing the regime to spend less on social services. The Maduro regime may have also welcomed the logistical, financial, and political headaches that unregulated migration has caused for the US Government, its perceived principal adversary, even if not a principal intent.

- (b)(3) Since 2014, an estimated 7.8 million Venezuelans have departed their country, with roughly 6.6 million now residing in Latin America and the Caribbean as of late 2024. Increased migration flows have coincided with periods of acute political and economic instability in Venezuela, and irritated regional receiving countries, including neighboring Colombia, Ecuador, and Peru. Most Venezuelan migrants, including those traveling to the United States and in the region, seek more stable economic and political environments, judging from surveys and interviews with regional and US-bound Venezuelan migrants.
- (b)(3) The lack of transparency and accountability in Venezuela has created an environment for widespread corruption and for regime officials to benefit from a variety of illicit activities, an environment fueled by Maduro's illegitimate and autocratic grip on power. This persistent outflow of migrants probably offers opportunities for some regime officials in capacities to facilitate migration movement to look for and receive personal kickbacks for their services, and to conceal the benefits they receive.

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(b)(3) Evaluating Reporting of Maduro Regime Ties to Tren de Aragua

(b)(3) We examined the body of intelligence reporting on this topic, evaluating the nature of **(b)(1), (b)(3)** claimed access to understand whether they could credibly have access to the information reported, whether the report contained details that could be corroborated, **(b)(1), (b)(3)**

(b)(3) or details of the kinds of support the regime has provided TDA in exchange for following its directions. Outside of DHS, FBI, and an additional US law enforcement report, the IC **(b)(1), (b)(3)**

- **(b)(1), (b)(3)**
(b)(3)
- **(b)(3)** US law enforcement reports claim members of the regime, including Cabello and former Venezuelan Minister of Penitentiaries Iris Varela, have cooperated with TDA by providing financial or materiel support, but we cannot verify the sources' access. Even so, these reports do not claim that these figures direct the group.
- **(b)(3)** Some reports come from people detained for involvement in criminal activity in the United States or for entering the country illegally, which could motivate them to make false allegations about their ties to the Venezuelan regime in an effort to deflect responsibility for their crimes and to lessen any punishment by providing exculpatory or otherwise "valuable" information to US prosecutors.

(b)(3) Potential Indicators of a Change in the Maduro Regime-TDA Relationship

(b)(3) The IC is closely tracking key indicators of any shift in the relationship between the Maduro regime and TDA, including **(b)(1), (b)(3)** weapons transfers, **(b)(1), (b)(3)** If the regime's relationship with the group became more cooperative, the IC would expect to see most regime operations against TDA to cease and some indication that the regime was providing TDA state resources. **(b)(1), (b)(3)**

- **(b)(1), (b)(3)**
(b)(3)



- (b)(1), (b)(3)

Local press provides some insight on potential ties between the regime and TDA, but the IC typically does not rely solely on such media given the highly polarized media environment.

- (b)(3) US law enforcement reporting has the most focus on TDA and its activities in the United States because of its unique legal collection authorities among IC components. (b)(1), (b)(3)

- (b)(3) The next event that may shed light on regime ties to TDA involves the legal case in 2023 of a junior Venezuelan military officer who escaped imprisonment in Venezuela after he participated in coup plotting against the regime and was killed in Chile in 2024. Last week, Chilean officials took the case to the International Criminal Court (ICC), alleging the Maduro regime is involved in the killing, acting via TDA. (b)(1), (b)(3)

(b)(3)

(b)(3)

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