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The International Emergency Economic Powers Act: Origins, Evolution, and Use

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The International Emergency Economic Powers Act: Origins, Evolution, and Use

The International Emergency Economic Powers Act (IEEPA) provides the President broad authority to regulate a variety of economic transactions following a declaration of national emergency. IEEPA, like the Trading with the Enemy Act (TWEA) from which it branched, sits at the center of the modern U.S. sanctions regime. Changes in the use of IEEPA powers since the act's enactment in 1977 have caused some to question whether the statute's oversight provisions are robust enough given the sweeping economic powers it confers upon the President during a declared emergency.

Over the course of the twentieth century, Congress delegated increasing amounts of emergency power to the President by statute. TWEA was one such statute. Congress passed TWEA in 1917 to regulate international transactions with enemy powers following the U.S. entry into the First World War. Congress expanded the act during the 1930s to allow the President to declare a national emergency in times of peace and assume sweeping powers over both domestic and international transactions. Between 1945 and the early 1970s, TWEA became the central means to impose sanctions as part of U.S. Cold War strategy. Presidents used TWEA to block international financial transactions, seize U.S.-based assets held by foreign nationals, restrict exports, modify regulations to deter the hoarding of gold, limit foreign direct investment in U.S. companies, and impose tariffs on all imports into the United States.

Following committee investigations that discovered that the United States had been in a state of emergency for more than 40 years, Congress passed the National Emergencies Act (NEA) in 1976 and IEEPA in 1977. The pair of statutes placed new limits on presidential emergency powers. Both included reporting requirements to increase transparency and track costs, and the NEA required the President to assess annually and extend, if appropriate, an emergency. However, some experts argue that the renewal process has become *pro forma*. The NEA also afforded Congress the means to terminate a national emergency by adopting a concurrent resolution in each chamber. A decision by the Supreme Court, in a landmark case, however, found the use of concurrent resolutions to terminate an executive action unconstitutional. Congress amended the statute to require a joint resolution, significantly increasing the difficulty of terminating an emergency.

Like TWEA, IEEPA has become an important means to impose economic-based sanctions since its enactment; like TWEA, Presidents have frequently used IEEPA to restrict a variety of international transactions; and like TWEA, the subjects of the restrictions, the frequency of use, and the duration of emergencies have expanded over time. Initially, Presidents targeted foreign states or their governments. Over the years, however, presidential administrations have increasingly used IEEPA to target non-state individuals and groups, such as terrorists, persons who engage in malicious cyber-enabled activities, and certain persons associated with the International Criminal Court.

As of January 15, 2024, Presidents had declared 69 national emergencies invoking IEEPA, 39 of which are ongoing. History shows that national emergencies invoking IEEPA often last nearly a decade, although some have lasted significantly longer—the first state of emergency declared under the NEA and IEEPA, which was declared in response to the taking of U.S. embassy staff as hostages by Iran in 1979, is in its fifth decade.

IEEPA grants sweeping powers to the President to control economic transactions. Despite these broad powers, until 2023, Congress had never attempted to terminate a national emergency invoking IEEPA. Instead, Congress has directed the President on numerous occasions to use IEEPA authorities to impose sanctions. Congress may want to consider whether IEEPA appropriately balances the need for swift action in a time of crisis with Congress's duty to oversee executive action. Congress may also want to consider IEEPA's role in implementing its influence in U.S. foreign policy and national security decision-making.

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Christopher A. Casey,
Coordinator

Analyst in International
Trade and Finance

Dianne E. Rennack

Specialist in Foreign Policy
Legislation

Jennifer K. Elsea

Legislative Attorney

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Introduction

The issue of executive discretion has been at the center of constitutional debates in liberal democracies throughout the twentieth century. Specifically, the question of how to balance a commitment to the rule of law with the exigencies of modern political and economic crises has been a consistent concern of legislators and scholars in the United States and around the world.¹

The U.S. Constitution is silent on the question of emergency power. As such, over the past two centuries, Congress and the President have answered that question in varied and often *ad hoc* ways. In the eighteenth and nineteenth centuries, the answer was often for the President to act without congressional approval in a time of crisis, knowingly risking impeachment and personal civil liability.² Congress claimed primacy over emergency action and would decide subsequently either to ratify the President's actions through legislation or indemnify the President for any civil liability.³

By the twentieth century, a new pattern had begun to emerge. Instead of retroactively judging an executive's extraordinary actions in a time of emergency, Congress enacted statutes authorizing the President to declare a state of emergency and make use of extraordinary delegated powers.⁴ The expanding delegation of emergency powers to executives, and the increase in governing via emergency power by executives, was a common trajectory among twentieth-century liberal democracies.⁵ As innovation quickened the pace of social change and global crises, some legislatures felt compelled to delegate to their executives, who traditional political theorists assumed could operate with greater "dispatch" than the more deliberate and future-oriented

¹ Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Princeton, NJ: Princeton University Press, 1948); Edward Corwin, *Total War and the Constitution* (New York: Knopf, 1963). Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005); Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 1985).

² Such an answer can be traced to, among others, John Locke, whose political theory was central to the development of American political institutions. John Locke, *Two Treatises of Government*, ed. Thomas Hollis (London: A. Millar et al., 1764), pp. 340-341: "This power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it, is that which is called prerogative [...]."

³ Jules Lobel, "Emergency Power and the Decline of Liberalism," *Yale Law Journal* 98, no. 7 (May 1989), pp. 1392-1398; John Fabian Witt, "A Lost Theory of American Emergency Constitutionalism," *Law and History Review* 36, no. 3 (August 2018); George M. Dennison, "Martial Law: The Development of a Theory of Emergency Powers, 1776-1861," *The American Journal of Legal History* 18, no. 1 (January 1974); Saikrishna Bangalore Prakash, *Imperial from the Beginning: The Constitution of the Original Executive* (New Haven, CT: Yale University Press, 2015), pp. 208-210; Matthew Warshauer, *Andrew Jackson and the Politics of Martial Law* (Knoxville: University of Tennessee Press, 2006). As Thomas Jefferson wrote, an executive officer acting illegally for what he determines to be the good of the country "does indeed risk himself on the justice of the controlling powers of the constitution, and his station makes it his duty to incur that risk." Qtd. in Prakash, *Imperial from the Beginning*, p. 214.

⁴ U.S. Congress, Special Committee on National Emergencies and Delegated Emergency Powers, *A Brief History of Emergency Powers in the United States*, committee print, 93rd Cong., 2nd sess., July 1974 (Washington, DC: GPO, 1974), pp. 40-41.

⁵ For scholarship on this general trend, see, e.g., William E. Scheuerman, *Liberal Democracy and the Social Acceleration of Time* (Baltimore: Johns Hopkins University Press, 2004); John M. Carey and Matthew Soberg Shugart, eds, *Executive Decree Authority* (Cambridge: Cambridge University Press, 1998); Peter L. Lindseth, "The Paradox of Parliamentary Supremacy: Delegation, Democracy, and Dictatorship in Germany and France, 1920s-1950s," *Yale Law Journal* 113, no. 7 (May 2004); Jules Lobel, "Emergency Power and the Decline of Liberalism"; Mary L. Dudziak, *War-Time: An Idea, Its History, Its Consequences* (Oxford: Oxford University Press, 2012); and Corwin, *Total War and the Constitution*; Rossiter, *Constitutional Dictatorship*.

legislatures.⁶ Whether such actions subvert the rule of law or are a standard feature of healthy modern constitutional orders has been a subject of debate.⁷

The International Emergency Economic Powers Act (IEEPA) is one example of a twentieth-century delegation of emergency authority.⁸ One of 117 emergency statutes under the umbrella of the National Emergencies Act (NEA),⁹ IEEPA grants the President extensive power to regulate a variety of economic transactions during a state of national emergency. Congress enacted IEEPA in 1977 to limit the emergency economic powers that it had delegated to the President under the Trading with the Enemy Act (TWEA). Nevertheless, some scholars argue that judicial and legislative actions subsequent to IEEPA's enactment have made it, like TWEA, a source of expansive and unchecked executive authority in the economic realm.¹⁰ Other scholars argue that IEEPA is a useful tool for Presidents to implement quickly the will of Congress either as directed by law or as encouraged by congressional activity.¹¹

Until the late 2010s, there had been little congressional discussion of modifying either IEEPA or its umbrella statute, the NEA. Presidential actions in the late 2010s and early 2020s, however, have drawn renewed attention to presidential emergency powers under the NEA of which IEEPA is the most frequently used.

Origins

The First World War and the Trading with the Enemy Act (TWEA)

The First World War (1914-1919) saw an unprecedented degree of economic mobilization.¹² The executive departments of European governments began to regulate their economies with or without the support of their legislatures. The United States, in contrast, was in a privileged

⁶ Scheuerman, *Liberal Democracy and the Social Acceleration of Time*, ch. 2; See, e.g., Carl Schmitt, "The Plight of European Jurisprudence," tr. G. L. Ulmen, *Telos* 83 (Spring 1990); John Locke, *Two Treatises of Government*, pp. 340-341: "[...] since in some governments the lawmaking power is not always in being, and is usually too numerous, and so too slow, for the dispatch requisite to execution; and because also it is impossible to foresee, and so by laws to provide for, all accidents and necessities that may concern the public, or to make such laws as will do no harm, if they are executed with an inflexible rigour, on all occasions, and upon all persons that may come in their way; therefore there is a latitude left to the executive power, to do many things of choice which the laws do not prescribe."

⁷ For arguments that emergency government subverts the rule of law, see, e.g., Sanford Levinson, "Constitutional Norms in a State of Permanent Emergency," *Georgia Law Review* 40, no. 3 (Spring 2006); Bruce Ackerman, *The Decline and Fall of the American Republic* (Cambridge, MA: Harvard University Press, 2010). For arguments that states of emergency can be a standard feature of healthy modern constitutional orders or that they can reflect or anticipate the preferences of the legislature, see, e.g., Kim Lane Scheppele, "Small Emergencies," *Georgia Law Review* 40, no. 3 (Spring 2006), p. 836; Carey and Shugart, *Executive Decree Authority*, p. 3.

⁸ International Emergency Economic Powers Act, P.L. 95-223 (October 28, 1977), 91 Stat. 1626, codified as amended at 50 U.S.C. §§1701 *et seq.* (2018) (IEEPA).

⁹ National Emergencies Act, P.L. 94-412 (September 14, 1976), 90 Stat. 1255, codified as amended at 50 U.S.C. §§1601 *et seq.* (2018) (NEA); CRS Report R46379, *Emergency Authorities Under the National Emergencies Act, Stafford Act, and Public Health Service Act*, coordinated by Jennifer K. Elsea.

¹⁰ See, e.g., Patrick A. Thronson, "Toward Comprehensive Reform of America's Emergency Law Regime," *Michigan Journal of Law Reform* 46, no. 2 (2013), pp. 757-759; "The International Emergency Economic Powers Act: A Congressional Attempt to Control Presidential Emergency Power," *Harvard Law Review* 96, no. 5 (March 1983), p. 1120.

¹¹ See, e.g., Scheppele, "Small Emergencies," pp. 845-847: Statutes like IEEPA show "that emergencies have been brought inside the constitutional order by being normalized in the ordinary legislative process."

¹² See Stephen Broadberry and Mark Harrison, eds., *The Economics of World War I* (Cambridge: Cambridge University Press, 2005).

position relative to its allies in Europe. Separated by an ocean from Germany and Austria-Hungary, the United States was never under substantial threat of invasion. Rather than relying on the inherent powers of the presidency, or acting unconstitutionally and hoping for a subsequent congressional ratification, President Wilson sought explicit pre-authorization for expansive new powers to meet the global crisis.¹³ Between 1916 and the end of 1917, Congress passed 22 statutes empowering the President to take control of private property for public use during the war.¹⁴ These statutes gave the President broad authority to control railroads, shipyards, cars, telegraph and telephone systems, water systems, and many other sectors of the American economy.¹⁵

TWEA was one of those 22 statutes.¹⁶ It granted to the executive an extraordinary degree of control over international trade, investment, migration, and communications between the United States and its enemies.¹⁷ TWEA defined “enemy” broadly and included “any individual, partnership, or other body of individuals [including corporations], of any nationality, resident within the territory ... of any nation with which the United States is at war, or resident outside of the United States and doing business within such a territory...”¹⁸ The first four sections of the act granted the President extensive powers to limit trading with, communicating with, or transporting enemies (or their allies) of the United States.¹⁹ These sections also empowered the President to censor foreign communications and place extensive restrictions on enemy insurance or reinsurance companies.²⁰

It was Section 5(b) of TWEA, however, that would form one of the central bases of presidential emergency economic power in the twentieth century. Section 5(b), as originally enacted, states

That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed.²¹

¹³ Rossiter, *Constitutional Dictatorship*, pp. 241-243; U.S. Congress, *A Brief History of Emergency Powers in the United States*, pp. 40-41.

¹⁴ J. Reuben Clark, *Emergency Legislation Passed Prior to December, 1917: Dealing with the Control and Taking of Private Property for the Public Use, Benefit, or Welfare* (Washington, DC: GPO, 1918), pp. 1-125.

¹⁵ Clark, *Emergency Legislation Passed Prior to December, 1917*, pp. 1-125; Rossiter, *Constitutional Dictatorship*, p. 243; David M. Kennedy, *Over Here: The First World War and American Society* (Oxford: Oxford University Press, 2004), ch. 2.

¹⁶ For an overview of TWEA’s development, see Benjamin A. Coates, “The Secret Life of Statutes: A Century of the Trading with the Enemy Act,” *Modern American History* 1, no. 2 (2018).

¹⁷ Trading with the Enemy Act, P.L. 65-91 (October 6, 1917) §2, 40 Stat. 411, codified as amended at 50 U.S.C. §4305 (2018) (TWEA).

¹⁸ TWEA §2.

¹⁹ TWEA §3.

²⁰ TWEA §4.

²¹ TWEA §5b.

The statute gave the President expansive control over private international economic transactions in times of war.²² While Congress terminated many of the war powers in 1921, TWEA was specifically exempted because the U.S. government had yet to dispose of a large amount of alien property in its custody.²³ Indeed, the disposition of property seized under emergency powers would become a central tension in the structure of emergency authority over the next century.

The Expansion of TWEA

The Great Depression, a massive global economic downturn that began in 1929, presented a challenge to liberal democracies in Europe and the Americas. To address the complexities presented by the crisis, nearly all such democracies began delegating discretionary authority to their executives to a degree that had previously been done only in times of war.²⁴ The U.S. Congress responded, in part, by dramatically expanding the scope of TWEA, delegating to the President the power to declare states of emergency in peacetime and assume expansive domestic economic powers.

Such a delegation was made politically possible by analogizing economic crises to war. In public speeches, President Franklin D. Roosevelt asserted that the Depression was to be “attacked,” “fought against,” “mobilized for,” and “combated” by “great arm[ies] of people.”²⁵ The economic mobilization of the First World War had blurred the lines between the executive’s military and economic powers. As the Depression was likened to “armed strife”²⁶ and declared to be “an emergency more serious than war”²⁷ by a Justice of the Supreme Court, it became routine to use emergency economic legislation enacted in wartime as the basis for extraordinary economic authority in peacetime.²⁸

As the Depression entered its third year, the newly-elected President Roosevelt asked Congress for “broad Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.”²⁹ In his first act as President, Roosevelt proclaimed a bank holiday, suspending all transactions at all banking institutions located in the United States and its territories for four days.³⁰ In his proclamation, Roosevelt claimed to have authority to declare the holiday under Section 5(b) of TWEA.³¹ However, because the United States was not in a state of war and the suspended transactions were primarily domestic, the President’s authority to issue such an order was dubious.³²

²² TWEA §2.

²³ U.S. Congress, House, *Trading with the Enemy Act Reform Legislation, Report of the Committee on International Relations on H.R. 7738*, 95th Cong., 1st sess., H.Rept. 95-459 (Washington, DC: GPO, 1977), p. 4.

²⁴ William E. Scheuerman, “The Economic State of Emergency,” *Cardozo Law Review* 21 (2000), p. 1872.

²⁵ See, e.g., Franklin D. Roosevelt’s Inaugural Address of 1933 (Washington, DC: National Archives and Records Administration, 1988); Rossiter, *Constitutional Dictatorship*, p. 256; U.S. Congress, *A Brief History of Emergency Powers in the United States*, p. 56.

²⁶ Franklin D. Roosevelt’s Inaugural Address of 1933.

²⁷ *New State Ice Co. v. Liebmann*, 285 U.S. 262, 306 (1932) (J. Brandeis, dissenting).

²⁸ Scheuerman, “The Economic State of Emergency,” p. 1878.

²⁹ Franklin D. Roosevelt’s Inaugural Address of 1933.

³⁰ Proclamation 2039 (March 6, 1933).

³¹ In his proclamation, President Roosevelt did not refer to the “Trading with the Enemy Act,” but instead chose to use the more opaque “Act of October 6, 1917.” Proclamation 2039.

³² President Herbert Hoover had likewise contemplated using TWEA for such a purpose. However, Hoover’s Attorney General, William D. Mitchell, had expressed serious doubts about the legality of such an action. In the last days of (continued...)

Despite the tenuous legality, Congress ratified Roosevelt's actions by passing the Emergency Banking Relief Act three days after his proclamation.³³ The act amended Section 5(b) of TWEA to read

*During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit....*³⁴

This amendment gave the President the authority to declare that a national emergency existed and assume extensive controls over the national economy previously only available in times of war. By 1934, Roosevelt had used these extensive new powers to regulate “[e]very transaction in foreign exchange, transfer of credit between any banking institution within the United States and any banking institution outside of the United States.”³⁵

With America's entry into the Second World War in 1941, Congress again amended TWEA to grant the President extensive powers over the disposition of private property, adding the so-called “vesting” power, which authorized the permanent seizure of property.³⁶ Now in its most expansive form, TWEA authorized the President to declare a national emergency and, in so doing, to regulate foreign exchange, domestic banking, possession of precious metals, and property in which any foreign country or foreign national had an interest.³⁷

The Second World War ended in 1945. Following the conflict, the allied powers constructed institutions and signed agreements designed to keep the peace and to liberalize world trade. However, the United States did not immediately resume a peacetime posture with respect to emergency powers. Instead, the onset of the Cold War rationalized the continued use of TWEA and other emergency powers outside the context of a declared war.³⁸ Over the next several decades, Presidents declared four national emergencies and assumed expansive authority over economic transactions in the postwar period.³⁹

During the Cold War, economic sanctions became an increasingly popular foreign policy and national security tool, and TWEA was a prominent source of presidential authority to use the tool.

Hoover's presidency, Mitchell said that Hoover “should not issue [such an] executive order unless it was unanimously agreed by [the] outgoing and incoming administrations that it was necessary and assurances [were] obtained from Congressional leaders that [such an action] would be ratified promptly and that enabling legislation would be passed” as there was only a “shoe string” on which to base the legality of such an order. Raymond Moley, *The First New Deal* (New York: Harcourt, Brace and World, 1966), pp. 146-147.

³³ Emergency Banking Relief Act, P.L. 73-1 (March 9, 1933), 48 Stat. 1 (EBRA). The House, despite having no copies of the bill and relying upon a draft text read aloud by the Speaker, passed the bill after only 38 minutes of debate. The Senate voted to pass the measure the same evening. U.S. Congress, *A Brief History of Emergency Powers in the United States*, p. 57.

³⁴ TWEA as amended by EBRA. Italics show the language added by EBRA.

³⁵ E.O. 6560 (January 15, 1934). These actions came in the context of greater participation by the executive in international economic transactions generally. The Reciprocal Trade Agreement Act of 1934 gave the President the authority to negotiate bilateral trade agreements, marking the beginning of a period of increasing U.S. trade liberalization through executive action. Douglas A. Irwin, *Clashing Over Commerce* (Chicago: Chicago University Press, 2017), chap. 9.

³⁶ P.L. 77-354 (December 18, 1941), 55 Stat. 838.

³⁷ *Ibid.*

³⁸ Scheuerman, “The Economic State of Emergency,” p. 1879; Robert S. Rankin and Winfried R. Dallmyr, *Freedom and Emergency Powers in the Cold War* (New York: Appleton-Century-Crofts, 1964).

³⁹ Proclamation 2914 (December 16, 1950); Proclamation 3972 (March 23, 1970); Proclamation 3972 (February 23, 1971); Proclamation 4074 (August 15, 1971). See also CRS Legal Sidebar LSB10267, *Definition of National Emergency under the National Emergencies Act*, by Jennifer K. Elsea; CRS Report 98-505, *National Emergency Powers*, by L. Elaine Halchin.

In 1950, President Harry S. Truman declared a national emergency, citing TWEA, to impose economic sanctions on North Korea and China.⁴⁰ Subsequent Presidents referenced that national emergency as authority for imposing sanctions on Vietnam, Cuba, and Cambodia.⁴¹ Truman likewise used Section 5(b) of TWEA to maintain regulations on foreign exchange, transfers of credit, and the export of coin and currency that had been in place since the early 1930s.⁴² Presidents Richard M. Nixon and Gerald R. Ford invoked TWEA to continue export controls established under the Export Administration Act when the act expired.⁴³

TWEA was also a prominent instrument of postwar presidential monetary policy. Presidents Dwight D. Eisenhower and John F. Kennedy used TWEA and the national emergency declared by President Roosevelt in 1933 to maintain and modify regulations controlling the hoarding and export of gold.⁴⁴ In 1968, President Lyndon B. Johnson explicitly used Truman's 1950 declaration of emergency under Section 5(b) of TWEA to limit direct foreign investment by U.S. companies in an effort to strengthen the balance of payments position of the United States after the devaluation of the pound sterling by the United Kingdom.⁴⁵ In 1971, after President Nixon suspended the convertibility of the U.S. dollar to gold, he made use of Section 5(b) of TWEA to declare a state of emergency and place a 10% *ad valorem* supplemental duty on all dutiable goods entering the United States.⁴⁶

The reliance by the executive on the powers granted by Section 5(b) of TWEA meant that postwar sanctions regimes and significant parts of U.S. international monetary policy relied on continued states of emergency for their operation.

The Efforts of Congress to Limit Executive Emergency Authorities

By the mid-1970s, following U.S. military involvement in Vietnam, revelations of domestic spying, assassinations of foreign political leaders, the Watergate break-in, and other related abuses of power, Congress increasingly focused on checking the executive branch. The Senate formed a bipartisan special committee chaired by Senators Frank Church and Charles Mathias to

⁴⁰ Proclamation 2914 (December 16, 1950). This emergency would remain in place until 1976 and would be used to justify a host of emergency powers. See the partial list of executive orders issued pursuant to Proclamation 2914 in U.S. Congress, Special Committee on National Emergencies and Delegated Emergency Powers, *Executive Orders in Times of War and National Emergency, Report of the Special Committee on National Emergencies and Delegated Emergency Powers*, committee print, 93rd Cong., 2nd sess., June 1974 (Washington, DC: GPO, 1974), p. 15.

⁴¹ U.S. Congress, House Committee on International Relations, Subcommittee on Trade and Commerce, *United States Embargo on Trade with South Vietnam and Cambodia*, 94th Cong. 1st sess., June 4, 1975 (Washington, D.C., GPO, 1975), p. 2; 31 C.F.R. 500.101-500.808 (1975).

⁴² E.O. 10348 (April 26, 1952).

⁴³ E.O. 11677 (August 1, 1972); E.O. 11683 (August 29, 1972); E.O. 11796 (July 30, 1974); E.O. 11798 (August 14, 1974); E.O. 11810 (September 30, 1974); E.O. 11818 (November 5, 1974); E.O. 11940 (September 30, 1976).

⁴⁴ E.O. 10896 (November 29, 1960); E.O. 11037 (July 20, 1962).

⁴⁵ E.O. 11387 (January 1, 1968).

⁴⁶ Pres. Proclamation No. 4074 (January 21, 1971). Although the proclamation did not explicitly refer to TWEA in order to avoid the possible embarrassment of using a statute named the "Trading with the Enemy Act" to impose a tariff principally aimed at U.S. allies, the proclamation was carefully worded to not exclude TWEA as an authority under which the proclamation was issued. When a legal challenge was issued, the Government argued, and the U.S. Court of Customs and Patent Appeals agreed, that TWEA was the source of the authority for the proclamation. *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 584 (C.C.P.A. 1975). See also CRS Insight IN11129, *The International Emergency Economic Powers Act (IEEPA) and Tariffs: Historical Background and Key Issues*, by Christopher A. Casey.

reevaluate delegations of emergency authority to the President.⁴⁷ The special committee issued a report surveying the President's emergency powers in which it asserted that the United States had technically "been in a state of national emergency since March 9, 1933" and that there were four distinct declarations of national emergency in effect.⁴⁸ The report also noted that the United States had "on the books at least 470 significant emergency statutes without time limitations delegating to the Executive extensive discretionary powers, ordinarily exercised by the Legislature, which affect the lives of American citizens in a host of all-encompassing ways."⁴⁹

In the course of the Committee's investigations, Senator Mathias, a committee co-chair, noted, "A majority of the people of the United States have lived all of their lives under emergency government." Senator Church, the other co-chair, said the central question before the committee was "whether it [was] possible for a democratic government such as ours to exist under its present Constitution and system of three separate branches equal in power under a continued state of emergency."⁵⁰

Among the more controversial statutes highlighted by the committee was TWEA. In 1977, during the House markup of a bill revising TWEA, Representative Jonathan Bingham, Chairperson of the House International Relations Committee's Subcommittee on Economic Policy, described TWEA as conferring "on the President what could have been dictatorial powers that he could have used without any restraint by Congress."⁵¹ According to the Department of Justice, TWEA granted the President four major groups of powers in a time of war or other national emergency:

- (a) Regulatory powers with respect to foreign exchange, banking transfers, coin, bullion, currency, and securities;
- (b) Regulatory powers with respect to "any property in which any foreign country or a national thereof has any interest";

⁴⁷ The bipartisan special committee was called the "Senate Special Committee on the Termination of the National Emergency," and was charged with conducting "a study and investigation with respect to the matter of terminating the national emergency proclaimed by the President of the United States on December 16, 1950." U.S. Congress, Senate Subcommittee on International Trade and Commerce of the Committee on International Relations, *Trading with the Enemy: Legislative and Executive Documents Concerning Regulation of International Transactions in Time of Declared National Emergency*, committee print, 94th Cong., 2nd sess., November 1976 (Washington, DC: GPO, 1976), p. iii.

⁴⁸ U.S. Congress, *A Brief History of Emergency Powers in the United States*, p. v. The four national emergencies were those proclaimed by President Roosevelt in 1933, President Truman in 1950, and the two proclaimed by President Nixon in 1970 and 1971.

⁴⁹ U.S. Congress, *A Brief History of Emergency Powers in the United States*, p. v.

⁵⁰ Qtd. in U.S. Congress, *Trading with the Enemy: Legislative and Executive Documents*, p. iii.

⁵¹ U.S. Congress, House, Committee on International Relations, *Revision of the Trading with the Enemy Act: Markup before the Committee on International Relations ("House Markup")*, 95th Cong., 1st sess., June 1977 (Washington, DC: GPO, 1977), p. 5. House and Senate committee reports expressed the view that past Presidents had abused the authority to regulate economic transactions in a national emergency conferred by TWEA by using it in circumstances far removed from those that originally gave rise to the declaration of national emergency. H. Rept. No. 95-459 (June 23, 1977); S. Rept. No. 95-466 (October 3, 1977). Both reports noted that President Lyndon B. Johnson, citing President Truman's declaration of national emergency with respect to Korea in 1950, had imposed controls on direct investment abroad by U.S. nationals in 1968, and that President Gerald R. Ford had used President Nixon's declaration of national emergency with respect to the balance of payments in 1971 to justify extending the controls and regulations of the Export Administration Act when that act lapsed temporarily in 1976. H. Rept. No. 95-459, at 5; S. Rept. No. 95-466, at 2. More generally, the House report noted that the national emergency authority of TWEA had been used by President Franklin D. Roosevelt to regulate the banking industry in 1933 and to impose consumer credit controls in 1941 and by President Richard M. Nixon to impose a surcharge on imports into the United States in 1971. Thus, the House report concluded, TWEA "has become essentially an unlimited grant of authority for the President to exercise, at his discretion, broad powers in both the domestic and international economic arena, without congressional review." H. Rept. No. 95-459, 7.

- (c) The power to vest “any property or interest of any foreign country or national thereof”; and
- (d) The powers to hold, use, administer, liquidate, sell, or otherwise deal with “such interest or property” in the interest of and for the benefit of the United States.⁵²

The House report on the reform legislation called TWEA “essentially an unlimited grant of authority for the President to exercise, at his discretion, broad powers in both the domestic and international economic arena, without congressional review.”⁵³ The criticisms of TWEA centered on the following:

- (a) It required no consultation or reports to Congress with regard to the use of powers or the declaration of a national emergency.
- (b) It set no time limits on a state of emergency, no mechanism for congressional review, and no way for Congress to terminate it.
- (c) It stated no limits on the scope of TWEA’s economic powers and the circumstances under which such authority could be used.
- (d) The actions taken under the authority of TWEA were rarely related to the circumstances in which the national emergency was declared.⁵⁴

In testimony before the House Committee on International Relations, Professor Harold G. Maier, a noted legal scholar, summed up the development and the main criticisms of TWEA:

Section 5(b)’s effect is no longer confined to “emergency situations” in the sense of existing imminent danger. The continuing retroactive approval, either explicit or implicit, by Congress of broad executive interpretations of the scope of powers which it confers has converted the section into a general grant of legislative authority to the President.”⁵⁵

The Enactment of the National Emergencies Act and the International Emergency Economic Powers Act

Congress’s reforms to emergency powers under TWEA came in two acts. First, Congress enacted the National Emergencies Act (NEA) in 1976.⁵⁶ The NEA provided for the termination of all existing emergencies in 1978, except those making use of Section 5(b) of TWEA, and placed new restrictions on the manner of declaring and the duration of new states of emergency, including

- Requiring the President to transmit immediately to Congress a notification of the declaration of national emergency.
- Requiring a biannual review whereby “each House of Congress shall meet to consider a vote on a concurrent [now joint, see below] resolution to determine whether that emergency shall be terminated.”
- Authorizing Congress to terminate the national emergency through a privileged concurrent [now joint] resolution.⁵⁷

⁵² U.S. Congress, *Trading with the Enemy Act Reform Legislation*, p. 2.

⁵³ *Ibid.*

⁵⁴ *Ibid.*, 9.

⁵⁵ *Ibid.*

⁵⁶ P.L. 94-412 (September 14, 1976), 90 Stat. 1255, codified as amended at 50 U.S.C. §§1601 *et seq.* (2018).

⁵⁷ *Ibid.* While the NEA terminated the national emergencies on September 14, 1978, it explicitly enabled the continuation of those emergencies with respect to Section 5(b) of TWEA to give the Congress more time to consider (continued...)

Second, Congress tackled the more complicated question of TWEA. Because the authorities granted by TWEA were heavily entwined with postwar international monetary policy and the use of sanctions in U.S. foreign policy, unwinding it was a difficult undertaking.⁵⁸ The exclusion of Section 5(b) reflected congressional interest in preserving existing regulations regarding foreign assets, foreign funds, and exports of strategic goods.⁵⁹ Similarly, establishing a means to continue existing uses of TWEA reflected congressional interest in “improving future use rather than remedying past abuses.”⁶⁰

The subcommittee charged with reforming TWEA spent more than a year preparing reports, including the first complete legislative history of TWEA, a tome that ran nearly 700 pages.⁶¹ In the resulting legislation, Congress did three things. First, Congress amended TWEA so that it was, as originally intended, only applicable “during a time of war.”⁶² Second, Congress expanded the Export Administration Act to include powers that previously were authorized by reference to Section 5(b) of TWEA.⁶³ Finally, Congress wrote the International Emergency Economic Powers Act (IEEPA) to confer “upon the President a new set of authorities for use in time of national emergency which are both more limited in scope than those of section 5(b) and subject to procedural limitations, including those of the [NEA].”⁶⁴

The Report of the House Committee on International Relations summarized the nature of an “emergency” in its “new approach” to international emergency economic powers:

[G]iven the breadth of the authorities, and their availability at the President’s discretion upon a declaration of a national emergency, their exercise should be subject to various substantive restrictions. The main one stems from a recognition that emergencies are by their nature rare and brief, and are not to be equated with normal ongoing problems. A national emergency should be declared and emergency authorities employed only with respect to a specific set of circumstances which constitute a real emergency, and for no other purpose. The emergency should be terminated in a timely manner when the factual

how to address the issue of sanctions and international economic regulation. The International Emergency Economic Powers Act (IEEPA) grandfathered powers that “were being exercised [under TWEA] with respect to a country on July 1, 1977,” including those with respect to Cuba, North Korea, Vietnam, and Cambodia. P.L. 95-223 (December 28, 1977) §101(b). The grandfathered powers, however, would require a declaration or renewal. See, e.g., Memorandum of September 8, 1978, 45 *Federal Register* 40,695; Memorandum of September 12, 1979; Presidential Determination of September 8, 1980, 45 *Federal Register* 59,549; Memorandum of September 10, 1981, 46 *Federal Register* 45,321; Memorandum of September 8, 1982, 47 *Federal Register* 39,797; Memorandum of September 7, 1983, 48 *Federal Register* 40,695; Memorandum of September 11, 1984, 49 *Federal Register* 35,927.

⁵⁸ U.S. Congress, *Trading with the Enemy Act Reform Legislation*, pp. 6-7.

⁵⁹ U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *International Emergency Economic Powers Legislation*, Report to Accompany H.R. 7738, 95th Cong., 1st Sess., S.Rept. 95-466 (Washington, DC: GPO, 1977), p. 3.

⁶⁰ U.S. Congress, *Trading with the Enemy Act Reform Legislation*, 10.

⁶¹ *House Markup*, p. 9; U.S. Congress, House, Subcommittee on International Trade and Commerce of the Committee on International Relations, *Trading with the Enemy: Legislative and Executive Documents Concerning Regulation of International Transactions in a Time of Declared Emergency*, 94th Cong., 2nd sess., November 1976, committee print (Washington, DC: GPO, 1976).

⁶² P.L. 95-223 (December 28, 1977) (Title I) (“Section 5(b)(1) of the Trading With the Enemy Act // 50 USC app. 5. // is amended by striking out “or during any other period of national emergency declared by the President” in the text preceding subparagraph (A).”); 91 Stat. 1625, codified as amended at 50 U.S.C. §4305 (2018); House, *Trading with the Enemy Act Reform Legislation*, p. 2.

⁶³ *Ibid.* (Title III); House, *Trading with the Enemy Act Reform Legislation*, p. 2 (“Title III of the bill makes a series of conforming amendments to the Export Administration Act, which transfer to that act the authority, heretofore exercised under section 5(b) of the Trading With the Enemy Act to regulate exports of non-U.S.-origin goods and technology by foreign subsidiaries of U.S. concerns.”).

⁶⁴ *Ibid.* (Title II); House, *Trading with the Enemy Act Reform Legislation*, p. 2.

state of emergency is over and not continued in effect for use in other circumstances. A state of national emergency should not be a normal state of affairs.⁶⁵

IEEPA's Statute, its Use, and Judicial Interpretation

IEEPA's Statute

IEEPA, as currently amended, empowers the president to

(A) investigate, regulate, or prohibit:

- (i) any transactions in foreign exchange,
- (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or national thereof,
- (iii) the importing or exporting of currencies or securities; and

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.⁶⁶

These powers may be exercised “to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.”⁶⁷ Presidents may invoke IEEPA under the procedures set forth in the NEA. When declaring a national emergency, the NEA requires that the President “immediately” transmit the proclamation declaring the emergency to Congress and publish it in the *Federal Register*.⁶⁸ The President must also specify the provisions of law that he or she intends to use.⁶⁹

In addition to the requirements of the NEA, IEEPA provides several further restrictions. Preliminarily, IEEPA requires that the President consult with Congress “in every possible

⁶⁵ House, *Trading with the Enemy Act Reform Legislation*, p. 11.

⁶⁶ 50 U.S.C. §1702.

⁶⁷ 50 U.S.C. §1701.

⁶⁸ 50 U.S.C. §1621.

⁶⁹ 50 U.S.C. §1631.

instance” before exercising any of the authorities granted under IEEPA.⁷⁰ Once the President declares a national emergency invoking IEEPA, he or she must immediately transmit a report to Congress specifying

- (1) the circumstances which necessitate such exercise of authority;
- (2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;
- (3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;
- (4) why the President believes such actions are necessary to deal with those circumstances; and
- (5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.⁷¹

The President subsequently is to report on the actions taken under the IEEPA at least once in every succeeding six-month interval that the authorities are exercised.⁷² As per the NEA, the emergency may be terminated by the President, by a privileged joint resolution of Congress, or automatically if the President does not publish in the *Federal Register* and transmit to Congress a notice stating that such emergency is to continue in effect after such anniversary.⁷³

Amendments to IEEPA

Congress has amended IEEPA eight times (**Table 1**). Five of the eight amendments have altered civil and criminal penalties for violations of orders issued under the statute. Other amendments excluded certain informational materials and expanded IEEPA’s scope following the terrorist attacks of September 11, 2001. Congress also amended the NEA in response to a ruling by the Supreme Court to require a joint rather than a concurrent resolution to terminate a national emergency.

Table 1. Amendments to IEEPA

Date	Action
December 28, 1977	IEEPA Enacted (P.L. 95-223; 91 Stat. 1625)
August 16, 1985*	Following the Supreme Court’s holding in <i>INS v. Chadha</i> , 462 U.S. 919 (1983) finding so-called legislative vetoes unconstitutional, Congress amends the NEA to change “concurrent” resolution to “joint” resolution. (P.L. 99-93; 99 Stat. 407, 448). * While not technically an amendment to IEEPA, IEEPA is tied to the NEA’s provisions relating to the declaration and termination of national emergencies.
August 23, 1988	IEEPA amended to exclude informational materials (Berman Amendment, see elaboration below). (Omnibus Trade and Competitiveness Act of 1988; P.L. 100-418; 102 Stat. 1107, 1371)

⁷⁰ 50 U.S.C. §1703(a).

⁷¹ 50 U.S.C. §1703(b).

⁷² 50 U.S.C. §1703(c).

⁷³ 50 U.S.C. §1622.

Date	Action
October 6, 1992	Section 206 of IEEPA amended to increase civil and criminal penalties under the act. (Treasury, Postal Service, and General Government Appropriations Act, 1993; P.L. 102-393; 106 Stat. 1729)
October 6, 1992	Section 206 of IEEPA amended to decrease civil and criminal penalties under the act. (Department of Defense Appropriations Act, 1993; P.L. 102-396; 106 Stat. 1876)
April 30, 1994	IEEPA amended to update the definition of informational materials. (Foreign Relations Authorization Act for Fiscal Years 1994 and 1995; P.L. 103-236; 108 Stat. 382)
September 23, 1996	IEEPA amended to penalize attempted violations of licenses, orders, regulations or prohibitions issued under the authority of IEEPA. (National Defense Authorization Act for Fiscal Year 1997; P.L. 104-201; 110 Stat. 2725)
October 26, 2001	USA PATRIOT Act Amendments, see elaboration below. (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001; P.L. 107-56; 115 Stat. 272)
March 9, 2006	Section 206 of IEEPA amended to increase civil and criminal penalties under the act. (USA PATRIOT Improvement and Reauthorization Act of 2005; P.L. 109-177; 120 Stat. 192)
October 16, 2007	The International Emergency Economic Powers Enhancement Act amended Section 206 of IEEPA to increase civil and criminal penalties and added conspiracy to violate licenses, orders, regulations or prohibitions issued under the authority of IEEPA. Civil penalties are capped at \$250,000 or twice the amount of the transaction found to have violated the law. Criminal penalties now include a fine of up to \$1,000,000 and imprisonment of up to 20 years. (International Emergency Economic Powers Enhancement Act; P.L. 110-96; 121 Stat. 1011)

Source: Congressional Research Service (CRS), based on *United States Code*, annotated.

The Informational Materials Amendments to IEEPA

As originally enacted, IEEPA protected the rights of U.S. persons to participate in the exchange of “any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value” with a foreign person otherwise subject to sanctions. Amendments in 1988 and 1994 updated this list of protected rights to include the exchange of published information in a variety of formats.⁷⁴ As amended, the act currently protects the exchange of “information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds,” provided such exchange is not otherwise controlled for national security or foreign policy reasons related to weapons proliferation or international terrorism.⁷⁵

⁷⁴ P.L. 100-418 (August 23, 1988); P.L. 103-236 (April 30, 1994). The amendments were introduced by Rep. Howard Berman (D-CA) and are occasionally referred to as the “Berman Amendments.” For more background, see, “Sleeping with the Enemy? OFAC Rules and First Amendment Freedoms,” *Perspectives on History* (May 2004).

⁷⁵ Codified as amended at 50 U.S.C. §1702(b)(3).

USA PATRIOT Act Amendments to IEEPA

Unlike the Trading with the Enemy Act (TWEA), IEEPA did not allow the President to vest assets as originally enacted.⁷⁶ In 2001, at the request of the George W. Bush Administration, Congress amended IEEPA as part of the USA PATRIOT Act⁷⁷ to return to the President the authority to vest frozen assets, but only under certain circumstances:

[T]he President may ... when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that [the President] determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.⁷⁸

Speaking about the efforts of intelligence and law enforcement agencies to identify and disrupt the flow of terrorist finances, Attorney General John Ashcroft told Congress

At present the President's powers are limited to freezing assets and blocking transactions with terrorist organizations. We need the capacity for more than a freeze. We must be able to seize. Doing business with terrorist organization must be a losing proposition. Terrorist financiers must pay a price for their support of terrorism, which kills innocent Americans.

Consistent with the President's [issuance of E.O. 13224⁷⁹] and his statements [of September 24, 2001], our proposal gives law enforcement the ability to seize the terrorists' assets. Further, criminal liability is imposed on those who knowingly engage in financial transactions, money-laundering involving the proceeds of terrorist acts.⁸⁰

The House Judiciary Committee report explaining the amendments described its purpose as follows:

Section 203 of the International Emergency Economic Powers Act (50 U.S.C. §1702) grants to the President the power to exercise certain authorities relating to commerce with foreign nations upon his determination that there exists an unusual and extraordinary threat to the United States. Under this authority, the President may, among other things, freeze certain foreign assets within the jurisdiction of the United States. A separate law, the Trading With the Enemy Act, authorizes the President to take title to enemy assets when Congress has declared war.

Section 159 of this bill amends section 203 of the International Emergency Economic Powers Act to provide the President with authority similar to what he currently has under the Trading With the Enemy Act in circumstances where there has been an armed attack

⁷⁶ P.L. 95-223. House, *Trading with the Enemy Act Reform Legislation*, p. 15 (“This grant of authorities does not include the following authorities ... : (1) the power to vest ... property.”); Senate, *International Emergency Economic Powers Legislation*, p. 5 (“Authority to vest property, seize records and regulate purely domestic economic transactions would not be granted.”).

⁷⁷ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, P.L. 107-56, 115 Stat. 272.

⁷⁸ P.L. 107-56 §106, 115 Stat. 272, 277, codified at 50 U.S.C. §1702(a)(1)(C) (2018).

⁷⁹ E.O. 13224, 66 *Federal Register* 49,079 (September 24, 2001).

⁸⁰ *Administration's Draft Anti-Terrorism Act of 2001: Hearing before the Committee on the Judiciary*, 107th Cong., 1st sess., serial no. 39 (Washington, DC: GPO, 2001), p. 7 (testimony of Attorney General Ashcroft).

on the United States, or where Congress has enacted a law authorizing the President to use armed force against a foreign country, foreign organization, or foreign national. The proceeds of any foreign assets to which the President takes title under this authority must be placed in a segregated account can only be used in accordance with a statute authorizing the expenditure of such proceeds.

Section 159 also makes a number of clarifying and technical changes to section 203 of the International Emergency Economic Powers Act, most of which will not change the way that provision currently is implemented.⁸¹

The government has apparently never employed the vesting power to seize Al Qaeda assets within the United States. Instead, the government has sought to confiscate them through forfeiture procedures.⁸²

The first, and to date, apparently only, use of this power under IEEPA occurred on March 20, 2003.⁸³ On that date, in Executive Order 13290, President George W. Bush ordered the blocked “property of the Government of Iraq and its agencies, instrumentalities, or controlled entities” to be vested “in the Department of the Treasury ... [to] be used to assist the Iraqi people and to assist in the reconstruction of Iraq.”⁸⁴ However, the President’s order excluded from confiscation Iraq’s diplomatic and consular property, as well as assets that had, prior to March 20, 2003, been ordered attached in satisfaction of judgments against Iraq rendered pursuant to the terrorist suit provision of the Foreign Sovereign Immunities Act and Section 201 of the Terrorism Risk Insurance Act⁸⁵ (which reportedly totaled about \$300 million).⁸⁶

A subsequent executive order blocked the property of former Iraqi officials and their families, vesting title of such blocked funds in the Department of the Treasury for transfer to the Development Fund for Iraq (DFI) to be “used to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq’s infrastructure, for the continued disarmament of Iraq, for the cost of Iraqi civilian administration, and for other purposes benefitting of the Iraqi people.”⁸⁷ The DFI was established by UN Security Council Resolution 1483, which required member states to freeze all assets of the former Iraqi government and of Saddam Hussein, senior officials of his regime and their family members, and transfer such assets to the DFI, which was then administered by the United States. Most of the vested assets were used by the Coalition Provisional Authority (CPA) for reconstruction projects and ministry operations.⁸⁸

The USA PATRIOT Act made three other amendments to Section 203 of IEEPA.⁸⁹ After the power to investigate, it added the power to block assets during the pendency of an investigation.⁹⁰

⁸¹ U.S. Congress, House, *Report of the Committee on the Judiciary to Accompany H.R. 2975*, 107th Cong., 1st sess., H.Rept. 107-236 (Washington, DC: GPO, 2001), p. 62.

⁸² See *United States v. All Funds on Deposit with R.J. O'Brien & Assocs.*, 783 F.3d 607, 617 (7th Cir. 2015) (insurance companies’ attempt to intercede in civil forfeiture action involving Al Qaeda assets).

⁸³ E.O. 13290, 68 *Federal Register* 14,307 (March 24, 2003).

⁸⁴ *Ibid.*

⁸⁵ P.L. 107-297, 116 Stat. 2322 (2002).

⁸⁶ See Tom Schoenberg, “Fights Loom for Iraqi Riches,” *Legal Times* (March 31, 2003). Judgment creditors were paid about \$140 million from the vested assets to cover the unsatisfied portions of judgments and interest.

⁸⁷ E.O. 13315, 68 *Federal Register* 52,315 (September 3, 2003).

⁸⁸ GAO-04-579T *Recovering Iraq’s Assets* (March 18, 2004). As of March 2004, according to GAO, the CPA had spent \$1.67 billion of the \$1.9 billion for “emergency needs, including salaries for civil servants and pensions, and for ministry operations.” *Ibid.*, 7. The CPA was also authorized to use the more than \$900 million in assets seized by the U.S. military in Iraq for humanitarian and reconstruction activities. *Ibid.*

⁸⁹ P.L. 107-56 §106, 115 Stat. 277 (2001).

⁹⁰ P.L. 107-56 §106, codified at 50 U.S.C. §1702(a)(1)(B) (2018).

It clarified that the type of interest in property subject to IEEPA is an “interest by any person, or with respect to any property, subject to the jurisdiction of the United States.”⁹¹ It also added subsection (c), which provides

In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.⁹²

As described in the House Judiciary Committee report, these provisions were meant to clarify and codify existing practices.⁹³

IEEPA Trends

Like TWEA prior to its amendment in 1977, the President and Congress together have often turned to IEEPA to impose economic sanctions in furtherance of U.S. foreign policy, national security, and economic objectives. While initially enacted to circumscribe presidential emergency authority,⁹⁴ presidential emergency use of IEEPA has expanded in scale, scope, and frequency since the statute’s enactment. The House report on IEEPA stated, “emergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems.”⁹⁵ National emergencies invoking IEEPA, however, have increased in frequency and length since its enactment.

Between 1977 and January 15, 2024, Presidents have invoked IEEPA in 69 new declarations of national emergency under the NEA.⁹⁶ On average, these emergencies last nearly nine years. Most emergencies have been geographically specific, targeting a specific country or government. However, since 1990, Presidents have declared non-geographically-specific emergencies in response to issues like weapons proliferation, global terrorism, and malicious cyber-enabled activities.⁹⁷ The erosion of geographic limitations has been accompanied by an expansion in the nature of the targets of sanctions issued under IEEPA authority. Originally, IEEPA was used to target foreign governments; however, Presidents have increasingly targeted groups and individuals.⁹⁸ Usually Presidents use IEEPA as an emergency power; however, Congress has directed the President to use IEEPA or expressed its approval of presidential emergency use in several statutes.⁹⁹ Between 1976, when the NEA was enacted, and 2019, Congress had never affirmatively voted to terminate a national emergency. However, in the late-2010s, some Members of Congress began to express concern with the NEA. Between 2019 and January 15, 2024, Members of Congress have introduced 15 joint resolutions to terminate a national

⁹¹ P.L. 107-56 §106, codified at 50 U.S.C. §1702(a) (2018).

⁹² P.L. 107-56 §106, codified at 50 U.S.C. §1702(c) (2018).

⁹³ House, *Report of the Committee on the Judiciary to Accompany H.R. 2975*, p. 62.

⁹⁴ House, *Trading with the Enemy Act Reform Legislation*, pp. 2-9.

⁹⁵ *Ibid.*, 11.

⁹⁶ This tally does not include IEEPA invocations made in connection with executive orders expanding the scope of an initial declaration of national emergency. See **Table A-1**.

⁹⁷ E.g., E.O. 13694, *Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities* (April 1, 2015); E.O. 13818, *Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption* (December 20, 2017); E.O. 13848, *Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election* (September 12, 2018); E.O. 13873, *Securing the Information and Communications Technology and Services Supply Chain* (May 15, 2019); E.O. 13920, *Securing the United States Bulk-Power System* (May 1, 2020); E.O. 13928, *Blocking Property of Certain Persons Associated With the International Criminal Court* (June 11, 2020).

⁹⁸ See “Presidential Emergency Use.”

⁹⁹ See “Congressional Nonemergency Use and Retroactive Approval.”

emergency, five of those resolutions involved IEEPA (**Table A-2**). Despite this new interest in terminating national emergencies, no emergency declared under the NEA has been terminated without Presidential assent.

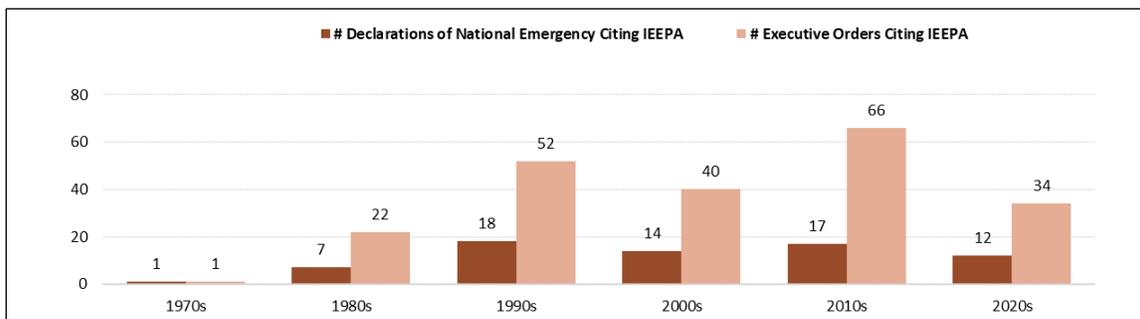
Presidential Emergency Use¹⁰⁰

IEEPA is the most frequently cited emergency authority when the President declares a national emergency under the NEA. Rather than referencing the same set of emergencies, as had been the case with TWEA, IEEPA has required the President to declare a national emergency for each independent use. As a result, the number of national emergencies declared under the terms of the NEA has proliferated over the past four decades. Presidents declared only four national emergencies under the auspices of TWEA in the four decades prior to IEEPA's enactment. In contrast, Presidents have invoked IEEPA in 70 of the 79 declarations of national emergency issued under the National Emergencies Act.¹⁰¹ As of January 15, 2024, there were 42 ongoing national emergencies; all but three involved IEEPA.¹⁰²

¹⁰⁰ The numbers here define emergencies by executive orders declaring an emergency. This choice causes some anomalies in the data. For example, the national emergency with regard to controlling the whereabouts of highly enriched uranium extracted from nuclear weapons in Russia lapsed when the notice extending the emergency was not published in the *Federal Register* by the emergency's anniversary date on June 21, 2012. As such, President Barack Obama issued an executive order declaring a new national emergency to reinstate the restrictions. For consistency, such anomalies have been treated as two distinct national emergencies. Such treatment decreases the average duration of emergencies. See, e.g., E.O. 13159, Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted From Nuclear Weapons (June 21, 2000); E.O. 13617, Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted From Nuclear Weapons (June 25, 2012).

¹⁰¹ The eight declarations of emergency under the NEA that did not involve IEEPA as of March 25, 2022 were all made by presidential proclamation. See Proclamation 6491, To Suspend the Davis-Bacon Act of March 3, 1931, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricanes Andrew and Iniki (October 14, 1992); Proclamation 6867, Declaration of a National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels around Cuba (March 1, 1996); Proclamation 6907, Declaration of a State of Emergency and Release of Feed Grain From the Disaster Reserve (July 1, 1996); Proclamation 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks (September 14, 2001); Proclamation 7924, To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina (September 8, 2005); Proclamation 8443, Declaration of a National Emergency With Respect to the 2009 H1N1 Influenza Pandemic (October 23, 2009); Proclamation 9844, Declaration of a National Emergency Concerning the Southern Border of the United States (February 15, 2019); Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020).

¹⁰² The three ongoing emergencies not involving IEEPA as of January 15, 2024 were declared in: Proclamation 6867, Proclamation 7463, Proclamation 10371. All were declared in response to foreign threats. Notably, while IEEPA was not invoked in the first declaration of national emergency following the terrorist attacks of September 11, 2001, President George W. Bush declared a second state of emergency invoking IEEPA. E.O. 13224, Blocking Property and Prohibiting Transaction with Persons who Commit, Threaten to Commit, or Support Terrorism (September 23, 2001).

Figure 1. Declarations and Executive Orders Citing IEEPA

Source: CRS. 2020s current as of January 15, 2024.

Note: Executive orders include declarations of national emergency that cite IEEPA that were made by executive order and any subsequent modifications or amendments to an emergency or such an order.

Each year since 1990, Presidents have issued roughly 4.5 executive orders citing IEEPA and declared 1.5 new national emergencies citing IEEPA.¹⁰³ (Figure 1.)

On average, emergencies invoking IEEPA last more than nine years.¹⁰⁴ The longest emergency was also the first. President Jimmy Carter, in response to the Iranian hostage crisis of 1979, declared the first national emergency under the provisions of the National Emergencies Act and invoked IEEPA.¹⁰⁵ Seven successive Presidents have renewed that emergency annually for more than 40 years. As of January 15, 2024, that emergency is still in effect, largely to provide a legal basis for resolving matters of ownership of the Shah's disputed assets.¹⁰⁶ That initial emergency aside, the length of emergencies invoking IEEPA has increased each decade. The average length of an emergency invoking IEEPA declared in the 1980s was four years. That average extended to 11 years for emergencies declared in the 1990s and 15 years for emergencies declared in the 2000s (Figure 2).¹⁰⁷ As such, the number of ongoing national emergencies has grown nearly continuously since the enactment of IEEPA and the NEA (Figure 3). Between January 1, 1979, and January 15, 2024, there were on average 15 ongoing national emergencies each year, 14 of which invoked IEEPA.

¹⁰³ The practice of issuing IEEPA-related executive orders has also changed over time. During the Iran hostage-taking in 1979, for example, President Carter issued a new and separate E.O. with each fine-tuning of the initial national emergency declaration; overall from November 1979 to his last day in office in January 1981, President Carter issued 12 executive orders relating to the hostage crisis and negotiations with Iran. Later presidents have opted, instead, to issue one executive order to declare the existence of a national emergency, and then to revisit that order to adjust or expand its reach by amending the original language.

¹⁰⁴ Emergencies invoking IEEPA that have been terminated lasted an average of 6.5 years. However, most emergencies citing IEEPA have not been terminated, including the first ever declared, which has been ongoing since 1979.

¹⁰⁵ E.O. 12170, Blocking Iranian Government Property (November 14, 1979).

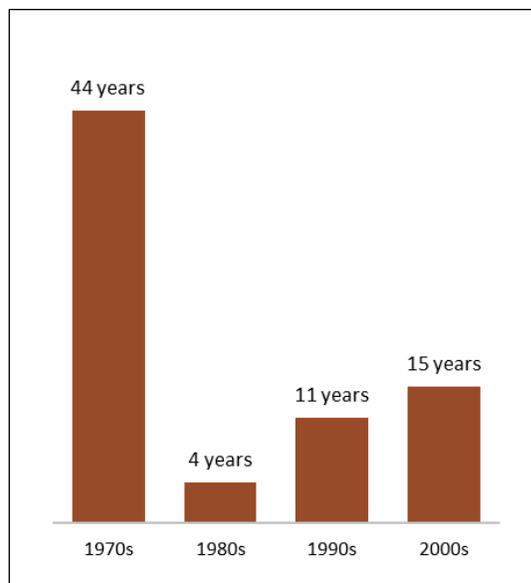
¹⁰⁶ Continuation of the National Emergency With Respect to Iran, 87 *Federal Register* 68,013 (November 8, 2022).

¹⁰⁷ Not enough time has passed to understand whether the trend will continue with those national emergencies declared in the 2010s.

In most cases, the declared emergencies citing IEEPA have been geographically specific. For example, in the first use of IEEPA, President Jimmy Carter issued an executive order that both declared a national emergency with respect to the “situation in Iran” and “blocked all property and interests in property of the Government of Iran.”¹⁰⁸ Five months later, President Carter issued a second order dramatically expanding the scope of the first EO and effectively blocked the transfer of all goods, money, or credit destined for Iran by anyone subject to the jurisdiction of the United States.¹⁰⁹ A further order expanded the coverage to block imports to the United States from Iran.¹¹⁰ Together, these orders touched upon virtually all economic contacts between any place or legal person subject to the jurisdiction of the United States and the territory and government of Iran.¹¹¹

Many of the executive orders invoking IEEPA have followed this pattern of limiting the scope to a specific territory, government, or its nationals. Executive Order 12513, for example, prohibited “imports into the United States of goods and services of Nicaraguan origin” and “exports from the United States of goods to or destined for Nicaragua.” The order likewise prohibited Nicaraguan air carriers and vessels of Nicaraguan registry from entering U.S. ports.¹¹² Executive Order 12532 prohibited various transactions with the “Government of South Africa or to entities owned or controlled by that Government.”¹¹³

Figure 2. Average Length of Emergencies Citing IEEPA



Source: CRS. Current as of January 15, 2024.

Notes: A single emergency was declared in the 1970s (Iran) and that has lasted 40 years. 2010s do not have sufficient data to create an average length that would be meaningful for the purposes of analysis.

¹⁰⁸ E.O. 12170.

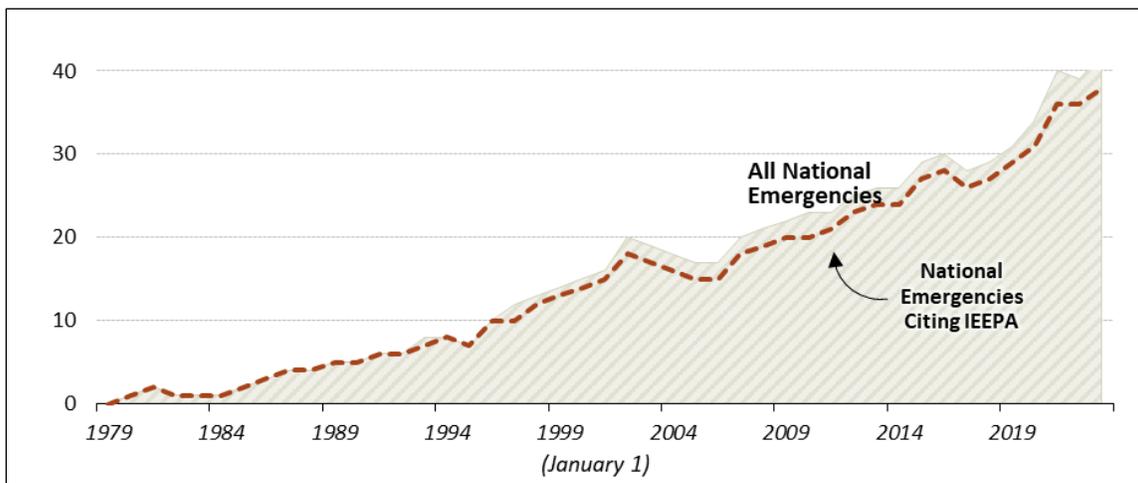
¹⁰⁹ E.O. 12205, Economic Sanctions Against Iran (April 7, 1980). The order exempted “food, medicine and supplies intended strictly for medical purposes, and donations of clothing intended to be used to relieve human suffering.”

¹¹⁰ E.O. 12211, Economic Sanctions Against Iran (April 17, 1980).

¹¹¹ Exceptions were made for family remittances.

¹¹² E.O. 12513, Prohibiting Trade and Certain Other Transactions Involving Nicaragua (May 1, 1985).

¹¹³ E.O. 12532, Prohibiting Trade and Certain Other Transactions Involving South Africa (September 9, 1985).

Figure 3. Cumulative Number of Ongoing National Emergencies by Year

Source: CRS. Current as of January 15, 2024.

Notes: Orange dashed line indicates national emergencies citing IEEPA. Hashed space indicates all national emergencies.

While the majority of national emergencies invoking IEEPA have been geographically specific, many recent emergencies have lacked explicit geographic limitations.¹¹⁴ President George H.W. Bush declared the first geographically nonspecific emergency in response to the threat posed by the proliferation of chemical and biological weapons.¹¹⁵ Similarly, President George W. Bush declared a national emergency in response to the threat posed by “persons who commit, threaten to commit, or support terrorism.”¹¹⁶ President Barack Obama declared emergencies to respond to the threats of “transnational criminal organizations” and “persons engaging in malicious cyber-enabled activities.”¹¹⁷ President Donald Trump declared an emergency to respond to “foreign adversaries” who were “creating and exploiting vulnerabilities in information and communications technologies and services.”¹¹⁸ Without explicit geographic limitations, these orders have included provisions that are global in scope. These geographically nonspecific emergencies invoking IEEPA have increased in frequency over the past 40 years.¹¹⁹

¹¹⁴ This number excludes those emergencies declared to extend the Export Administration Act of 1979.

¹¹⁵ E.O. 12735, Chemical and Biological Weapons Proliferation (November 16, 1990).

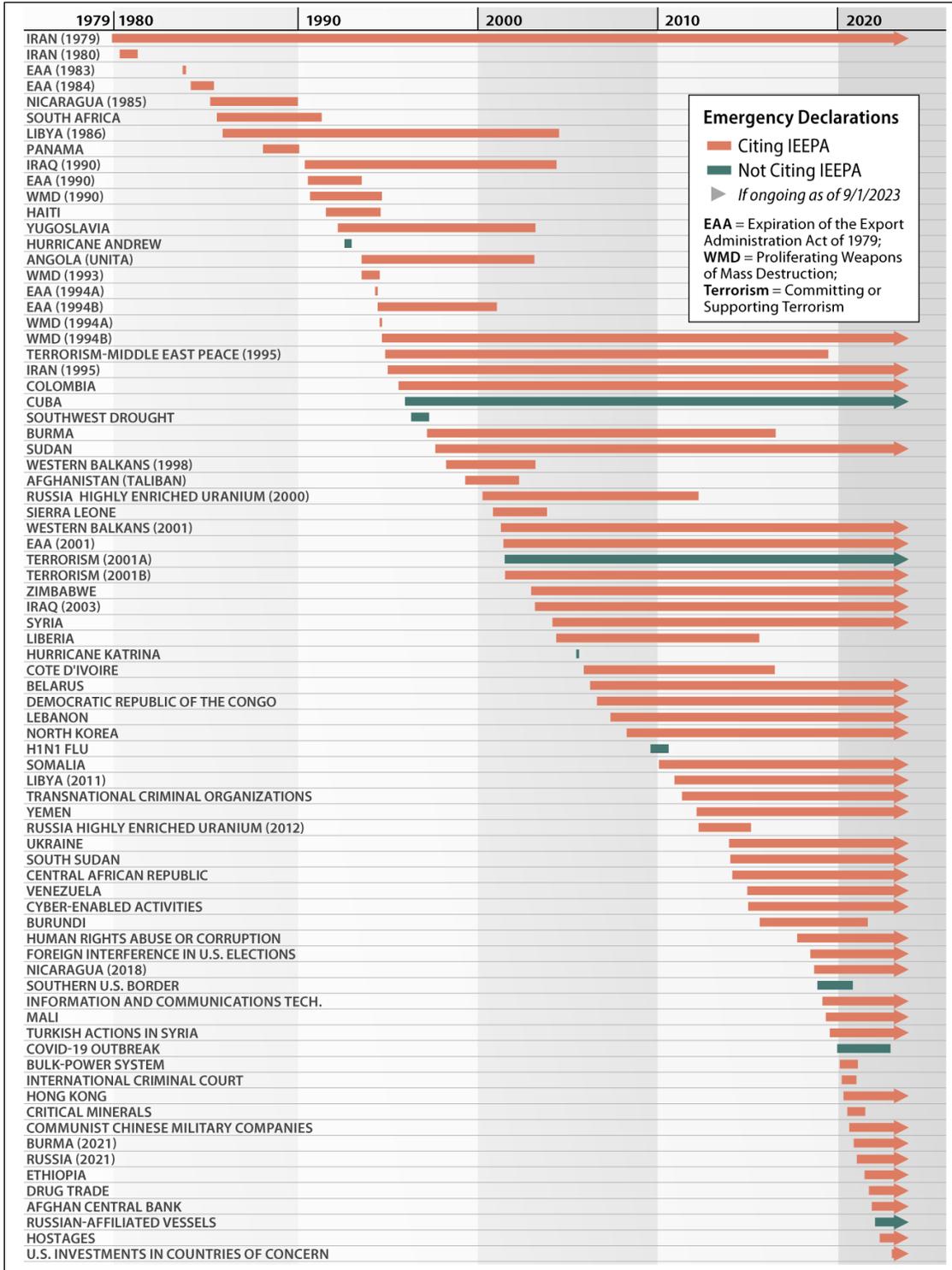
¹¹⁶ E.O. 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (September 23, 2001).

¹¹⁷ E.O. 13581, Blocking Property of Transnational Criminal Organizations (July 24, 2011); E.O. 13694, Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities (April 1, 2015).

¹¹⁸ E.O. 13873, Securing the Information and Communications Technology and Services Supply Chain (May 14, 2019).

¹¹⁹ See, e.g., E.O. 13694, Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities (April 1, 2015); E.O. 13818, Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption (December 20, 2017); E.O. 13848, Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election (September 12, 2018); E.O. 13873, Securing the Information and Communications Technology and Services Supply Chain (May 15, 2019); E.O. 13920, Securing the United States Bulk-Power System (May 1, 2020); E.O. 13928, Blocking Property of Certain Persons Associated With the International Criminal Court (June 11, 2020). Some have argued that this shift was the result of humanitarian concerns about the effects of sanctions on the populations of the targeted states. Beginning in the 1990s, United Nations Security Council sanctions began to target the political and economic elites of a state, rather than the whole population. Kern Alexander, *Economic Sanctions: Law and Public Policy* (London: Palgrave Macmillan, 2009), p. xi. However, use of such orders has expanded beyond political and economic elites. See, e.g., E.O. 13928.

Figure 4. National Emergency Act Declarations



Source: Federal Register; CRS.

In addition to the erosion of geographic limitations, the stated motivations for declaring national emergencies have expanded in scope as well. Initially, stated rationales for declarations of national emergency citing IEEPA were short and often referenced either a specific geography or the specific actions of a government. Presidents found that circumstances like “the situation in Iran,”¹²⁰ or the “policies and actions of the Government of Nicaragua,”¹²¹ constituted “unusual and extraordinary threat[s] to the national security and foreign policy of the United States” and would therefore declare a national emergency.¹²²

The stated rationales have, however, expanded over time in both the length and subject matter. Presidents have increasingly declared national emergencies, in part, to respond to human and civil rights abuses,¹²³ slavery,¹²⁴ denial of religious freedom,¹²⁵ political repression,¹²⁶ public corruption,¹²⁷ and the undermining of democratic processes.¹²⁸

While the first reference to human rights violations as a rationale for a declaration of national emergency came in 1985,¹²⁹ most of such references have come in the past twenty years. (**Table A-3**).

Presidents have also expanded the nature of the targets of IEEPA sanctions. Originally, the targets of sanctions issued under IEEPA were foreign governments. The first use of IEEPA targeted “Iranian Government Property.”¹³⁰ Use of IEEPA quickly expanded to target geographically defined regions.¹³¹ Presidents have also increasingly targeted groups, such as political parties,

Examples of Actions Taken in Non-Geographic Emergencies Citing IEEPA

- Chemical and biological weapons proliferation
- Measures to restrict the participation by United States persons in weapons proliferation activities
- Measures to prevent proliferation of weapons of mass destruction
- Prohibiting transactions with terrorists who threaten to disrupt the Middle East peace process
- Blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism
- Blocking property of transnational criminal organizations
- Blocking the property of certain persons engaging in significant malicious cyber-enabled activities
- Blocking the property of persons involved in serious human rights abuse or corruption
- Imposing certain sanctions in the event of foreign interference in a United States election
- Limiting investments by U.S. persons in certain national security technologies in countries of concern

¹²⁰ E.O. 12170.

¹²¹ E.O. 12513.

¹²² Ibid.

¹²³ E.O. 12532; E.O. 13396, Blocking Property of Certain Persons Contributing to the Conflict in Cote d'Ivoire (February 7, 2006); E.O. 13067, Blocking Sudanese Government Property and Prohibiting Transactions With Sudan (November 3, 1997); E.O. 13692, Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela (March 8, 2015).

¹²⁴ E.O. 13067.

¹²⁵ E.O. 13067.

¹²⁶ E.O. 13405, Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus (June 16, 2006).

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ E.O. 12532.

¹³⁰ E.O. 12170.

¹³¹ See, e.g., E.O. 12513.

corporations, or terrorist organizations, and individuals, such as supporters of terrorism, suspected narcotics traffickers, or associates of the International Criminal Court.¹³²

The first instances of orders directed at groups or persons were limited to *foreign* groups or persons. For example, in Executive Order 12978, President Bill Clinton targeted specific “foreign persons” and “persons determined ... to be owned or controlled by, or to act for or on behalf of” such foreign persons.¹³³ An excerpt is included below:

Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, I hereby order blocked all property and interests in property that are or hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, of:

- (a) the *foreign persons* listed in the Annex to this order;
- (b) *foreign persons* determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State:
 - (i) to play a significant role in international narcotics trafficking centered in Colombia; or
 - (ii) materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and
- (c) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to this order.¹³⁴

However, in 2001, President George W. Bush issued Executive Order 13219 to target “persons who threaten international stabilization efforts in the Western Balkans.” While the order was similar to that of Executive Order 12978, it removed the qualifier “foreign.” As such, persons in the United States, including U.S. citizens, could be targets of the order.¹³⁵ The following is an excerpt of the order:

Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, P.L. 106-387), and in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, all property and interests in property of:

- (i) *the persons* listed in the Annex to this order; and

¹³² See, e.g., E.O. 12865 (prohibiting transactions with the National Union for the Total Independence of Angola (UNITA), the second largest political party in Angola); E.O. 13129 (prohibiting transactions with the Taliban); E.O. 13224 (prohibiting transactions with persons who commit, threaten to commit, or support terrorism); E.O. 12978 (prohibiting transactions with certain narcotics traffickers); E.O. 13928 (blocking property of certain persons associated with the International Criminal Court). See also CRS Insight IN11428, *International Criminal Court: U.S. Sanctions in Response to Investigation of War Crimes in Afghanistan*, by Matthew C. Weed and Dianne E. Rennack.

¹³³ E.O. 12978, Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers (October 21, 1995).

¹³⁴ *Ibid.* Emphasis added.

¹³⁵ See, e.g., *Aaran Money Wire Serv., Inc. v. United States*, 2003 WL 22143735, at *3 (D. Minn. August 21, 2003).

(ii) *persons* designated by the Secretary of the Treasury, in consultation with the Secretary of State, because they are found:

(A) to have committed, or to pose a significant risk of committing, acts of violence ...¹³⁶

Several subsequent invocations of IEEPA have similarly not been limited to foreign targets.¹³⁷

In sum, presidential emergency use of IEEPA was directed at foreign states initially, with targets that were delimited by geography or nationality. Since the 1990s, however, Presidents have expanded the scope of their declarations to include groups and individual persons, regardless of nationality or geographic location, who are engaged in specific activities.

Congressional Nonemergency Use and Retroactive Approval

While IEEPA is often categorized as an emergency statute, Congress has used IEEPA outside of the context of national emergencies. When Congress legislates sanctions, it often authorizes or directs the President to use IEEPA authorities to impose those sanctions.

In the Nicaragua Human Rights and Anticorruption Act of 2018, for example, Congress directed the President to exercise “all powers granted to the President [by IEEPA] to the extent necessary to block and prohibit [certain transactions].”¹³⁸ Penalties for violations by a person of a measure imposed by the President under the act would be, likewise, determined by reference to IEEPA.¹³⁹

This trend has been long-term. Congress first directed the President to make use of IEEPA authorities in 1986 as part of an effort to assist Haiti in the recovery of assets illegally diverted by its former government. That statute provided

The President shall exercise the authorities granted by section 203 of the International Emergency Economic Powers Act [50 USC 1702] to assist the Government of Haiti in its efforts to recover, through legal proceedings, assets which the Government of Haiti alleges were stolen by former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime. This subsection shall be deemed to satisfy the requirements of section 202 of that Act. [50 USC 1701]¹⁴⁰

In directing the President to use IEEPA, Congress waived the requirement that he declare a national emergency (and none was declared).¹⁴¹

Subsequent legislation has followed this general pattern, with slight variations in language and specificity.¹⁴² The following is an example of current legislative language that has appeared in several recent statutes:

¹³⁶ E.O. 13219, Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans (June 26, 2001). Emphasis added.

¹³⁷ See, e.g., E.O. 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (September 23, 2001); E.O. 13396, Blocking Property of Certain Persons Contributing to the Conflict in Côte d'Ivoire (February 7, 2006).

¹³⁸ P.L. 115-335 (December 20, 2018), 132 Stat. 5019.

¹³⁹ *Ibid.*

¹⁴⁰ P.L. 99-529 (October 24, 1986), 100 Stat. 3010.

¹⁴¹ *Ibid.*

¹⁴² See, e.g., National Defense Authorization Act for Fiscal Year 1993, P.L. 102-484 (October 23, 1992), 106 Stat. 2315; Iran and Libya Sanctions Act of 1996, P.L. 104-1172 (August 5, 1996), 110 Stat. 1541; Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, P.L. 105-261 (October 17, 1998) 112 Stat. 1920; Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386 (October 28, 2000), 114 Stat. 1464; Comprehensive (continued...)

(a) IN GENERAL.—The President shall impose the sanctions described in subsection (b) with respect to—

...

(b) SANCTIONS DESCRIBED.—

(1) IN GENERAL.—The sanctions described in this subsection are the following:

(A) ASSET BLOCKING.—The exercise of all powers granted to the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in all property and interests in property of a person determined by the President to be subject to subsection (a) if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

...

(2) PENALTIES.—A person that violates, attempts to violate, conspires to violate, or causes a violation of paragraph (1)(A) or any regulation, license, or order issued to carry out paragraph (1)(A) shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.¹⁴³

Congress has also expressed, retroactively, its approval of unilateral presidential invocations of IEEPA in the context of a national emergency. In the Countering Iran’s Destabilizing Activities Act of 2017, for example, Congress declared, “It is the sense of Congress that the Secretary of the Treasury and the Secretary of State should continue to implement Executive Order No. 13382.”¹⁴⁴

Presidents, however, have also used IEEPA to preempt or modify parallel congressional activity. On September 9, 1985, President Reagan, finding “that the policies and actions of the Government of South Africa constitute an unusual and extraordinary threat to the foreign policy

Peace in Sudan Act of 2004, P.L. 108-497 (December 23, 2004), 118 Stat. 4012; Darfur Peace and Accountability Act of 2006, P.L. 109-344 (October 13, 2006), 120 Stat. 1869; Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, P.L. 111-195 (July 1, 2010) 124 Stat 1312; National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81, December 31, 2011, 125 Stat 1298; Iran Threat Reduction and Syria Human Rights Act of 2012, P.L. 112-158 (August 10, 2012) 126 Stat 1214 (makes some of the most extensive use of IEEPA); Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, P.L. 112-208 (December 14, 2012) 126 Stat 1496; Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act P.L. 113-291 (December 19, 2014), 128 Stat. 3293; Hizballah International Financing Prevention Amendments Act of 2018, P.L. 115-272 (October 25, 2018) 132 Stat. 4144.

¹⁴³ Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, P.L. 113-95 (April 3, 2014) 128 Stat. 1088. Identical language can be found, for example, in: The Venezuela Defense of Human Rights and Civil Society Act of 2014, P.L. 113-278 (December 18, 2014) 128 Stat. 3011; National Defense Authorization Act for Fiscal Year 2017, P.L. 114-328 (December 23, 2016) 130 Stat. 2000. Similar language can be found, for example, in: the North Korea Sanctions and Policy Enhancement Act of 2016, P.L. 114-122 (February 18, 2016) 130 Stat. 93; the Countering America’s Adversaries through Sanctions Act, P.L. 115-44 (August 2, 2017) 130 Stat 886. Depending on the circumstance, Congress also includes a clause waiving the requirement to declare a national emergency. See, e.g., P.L. 115-44; P.L. 115-272 (“(1) ASSET BLOCKING.—The exercise of all powers granted to the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (except that the requirements of section 202 of such Act (50 U.S.C. 1701) shall not apply) to the extent necessary to block and prohibit all transactions [...].”).

¹⁴⁴ Countering Iran’s Destabilizing Activities Act of 2017, title I of the Countering America’s Adversaries through Sanctions Act, P.L. 115-44 (August 2, 2017) §104 (22 U.S.C. §9403); E.O. 13382 of June 28, 2005, “Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,” 70 *Federal Register* 38,567 (July 1, 2005).

and economy of the United States,” declared a national emergency and limited transactions with South Africa.¹⁴⁵ The President declared the emergency despite the fact that legislation limiting transactions with South Africa was quickly making its way through Congress.¹⁴⁶ In remarks about the declaration, President Reagan stated that he had been opposed to the bill contemplated by Congress because unspecified provisions “would have harmed the very people [the U.S. was] trying to help.”¹⁴⁷ Nevertheless, members of the press at the time¹⁴⁸ (and at least one scholar since)¹⁴⁹ noted that the limitations imposed by the executive order and the provisions in legislation then winding its way through Congress were “substantially similar.”¹⁵⁰

Current Uses of IEEPA

In general, IEEPA has served as an integral part of the postwar international sanctions regime.¹⁵¹ The President, either through a declaration of emergency or via statutory direction, has used IEEPA to limit economic transactions in support of administrative and congressional national security and foreign policy goals. Much of the action taken pursuant to IEEPA has involved blocking transactions and freezing assets.

Once the President declares that a national emergency exists, he may use the authority in Section 203 of IEEPA (Grants of Authorities; 50 U.S.C. §1702) to investigate, regulate, or prohibit foreign exchange transactions, transfers of credit, transfers of securities, payments, and may take specified actions relating to property in which a foreign country or person has interest—freezing assets, blocking property and interests in property, prohibiting U.S. persons from entering into transactions related to frozen assets and blocked property, and in some instances denying entry into the United States.

Pursuant to Section 203, Presidents have

- prohibited transactions with and blocked property of those designated as engaging in malicious cyber-enabled activities, including “interfering with or undermining election processes or institutions” [Executive Order 13694 of April 1, 2015, as amended; 50 U.S.C. §1701 note. See also Executive Order 13848 of September 12, 2018; 83 F.R. 46843.];
- prohibited transactions with and blocked property of those designated as illicit narcotics traffickers including foreign drug kingpins;
- prohibited transactions with and blocked property of those designated as engaging in human rights abuses or significant corruption;
- prohibited transactions related to illicit trade in rough diamonds;
- prohibited transactions with and blocked property of those designated as Transnational Criminal Organizations;
- prohibited transactions with “those who disrupt the Middle East peace process;”

¹⁴⁵ E.O. 12532.

¹⁴⁶ 99 H.R. 1460; See also P.L. 99-440 (October 2, 1986).

¹⁴⁷ Economic Sanctions Against South Africa, Remarks and a Question-and-Answer-Session with Reporters on Signing E.O. 12532, September 9, 1985, 21 *Weekly Comp. Pres. Doc.* 1048, 1050.

¹⁴⁸ See, e.g., questions by Helen Thomas, United Press International, *Ibid.*, 1050.

¹⁴⁹ Carter, *International Economic Sanctions*, p. 201.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, ch. 9.

- prohibited transactions related to overflights with certain nations;
- instituted and maintained maritime restrictions;
- prohibited transactions related to weapons of mass destruction, in coordination with export controls authorized by the Arms Export Control Act and the Export Administration Act of 1979,¹⁵² and in furtherance of efforts to deter the weapons programs of specific countries (i.e., Iran, North Korea);
- prohibited transactions with those designated as “persons who commit, threaten to commit, or support terrorism;”
- maintained the dual-use export control system at times when its then-underlying authority, the Export Administration Act authority had lapsed;
- blocked property of, and prohibited transactions with, those designated as engaged in cyber activities that compromise critical infrastructures including election processes or the private sector’s trade secrets;
- blocked property of, and prohibited transactions with, those designated as responsible for serious human rights abuse or engaged in corruption;
- blocked certain property of, and prohibited transactions with, foreign nationals of specific countries and those designated as engaged in activities that constitute an extraordinary threat;
- prohibited transactions with those who pose “an undue risk of sabotage to or subversion of the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of information and communications technology or services in the United States.”

No President has used IEEPA to place tariffs on imported products from a specific country or on products imported to the United States in general. However, IEEPA’s similarity to TWEA, coupled with its relatively frequent use to ban imports and exports, suggests that such an action could happen.¹⁵³ In addition, no President has used IEEPA to enact a policy that was primarily domestic in effect. Some scholars argue, however, that the interconnectedness of the global economy means it would probably be permissible to use IEEPA to take an action that was primarily domestic in effect.¹⁵⁴

IEEPA vs Section 232 for Imposing Tariffs in Response to a National Security Threat

While a President could likely use IEEPA to impose additional tariffs on imported goods as President Nixon did under TWEA, no President has done so. Instead, Presidents have turned to Section 232 of the Trade Expansion Act of 1962 in cases of purported emergency.¹⁵⁵ Section 232 provides that if the Secretary of Commerce “finds that an article is being imported into the United States in such quantities or under such circumstances as to

¹⁵² Legislation to replace the Export Administration Act was passed as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, P.L. 115-232 (August 13, 2018), as the Export Control Reform Act of 2018, Title XVII(B).

¹⁵³ President Nixon, in effect, used TWEA to place a 10% ad valorem tariff on all imports to the U.S. Pres. Proclamation No. 4074 (January 21, 1971; *United States v. Yoshida Int’l, Inc.*, 526 F.2d 560, 584 (C.C.P.A. 1975); See also Jason Luong, “Forcing Constraint: The Case for Amending the International Emergency Economic Powers Act,” *Texas Law Review* 78 (2000), p. 1190.

¹⁵⁴ “The International Emergency Economic Powers Act,” p. 1111; Thronson, “Toward Comprehensive Reform of America’s Emergency Law Regime,” pp. 757-758.

¹⁵⁵ Trade Expansion Act of 1962, P.L. 87-794, §232(b)–(c), 76 Stat. 877 (codified as amended at 19 U.S.C. §1862(b)–(c)).

threaten to impair the national security,” then the President may take action to adjust the imports such that they will no longer impair national security.¹⁵⁶ While the use of Section 232 requires findings by the Secretary of Commerce, the restrictions and reporting requirements of the NEA do not apply. For that reason, Section 232 may be an attractive source of presidential authority for imposing additional tariffs for national security purposes. Using this authority, President Donald J. Trump applied additional duties on steel and aluminum in March 2018.¹⁵⁷ However, IEEPA is not subject to the same procedural restraints as Section 232. As no investigation is required, IEEPA authorities can be invoked at any time in response to a national emergency based on an “unusual and extraordinary threat, which has its source in whole or substantial part outside the United States.” As such, IEEPA may be a source of authority for the President to impose a tariff quickly. On May 30, 2019, President Trump announced his intention to use IEEPA to impose and gradually increase a five percent tariff on all goods imported from Mexico until “the illegal migration crisis is alleviated through effective actions taken by Mexico.”¹⁵⁸ The tariffs were scheduled to be implemented on June 10, 2019, with five percent increases to take effect at the beginning of each subsequent month. On June 7, 2019, President Trump announced that that “The Tariffs scheduled to be implemented by the U.S. [on June 10], against Mexico, are hereby indefinitely suspended.”¹⁵⁹

Use of Assets Frozen under IEEPA

The ultimate disposition of assets frozen under IEEPA may serve as an important part of the leverage economic sanctions provide to influence the behavior of foreign actors. The President and Congress have each at times determined the fate of blocked assets to further foreign policy goals.

Presidential Use of Foreign Assets Frozen under IEEPA

Presidents have used frozen assets as a bargaining tool during foreign policy crises and to bring a resolution to such crises, at times by unfreezing the assets, returning them to the sanctioned entity, or channeling them to a follow-on government. The following are some examples of how Presidents have used blocked assets to resolve foreign policy issues.

President Carter invoked authority under IEEPA to impose trade sanctions against Iran, freezing Iranian assets in the United States, in response to the hostage crisis in 1979.¹⁶⁰ On January 19, 1981, the United States and Iran entered into a series of executive agreements brokered by Algeria under which the hostages were freed and the frozen assets were distributed to various entities.¹⁶¹ Of the blocked assets, the agreements directed \$5.1 billion to repay outstanding U.S.

¹⁵⁶ *Ibid.*; CRS In Focus IF10667, *Section 232 of the Trade Expansion Act of 1962*, by Rachel F. Fefer and Vivian C. Jones; CRS Report R44707, *Presidential Authority over Trade: Imposing Tariffs and Duties*, by Caitlain Devereaux Lewis.

¹⁵⁷ Procl. 9704, 83 *Federal Register* 11,619 (March 15, 2019); Procl. 9705, 83 *Federal Register* 13,361 (March 15, 2019). CRS Report R45249, *Section 232 Investigations: Overview and Issues for Congress*, coordinated by Rachel F. Fefer and Vivian C. Jones.

¹⁵⁸ Statement from the President Regarding Emergency Measures to Address the Border Crisis, May 30, 2019, available at <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-emergency-measures-address-border-crisis/>.

¹⁵⁹ President Donald J. Trump, Twitter Post, June 7, 2018, 5:31 p.m., <https://twitter.com/realdonaldtrump/status/1137155056044826626>. The suspension preceded the release of a U.S. Mexico Joint Declaration on migration. Department of State, Office of the Spokesperson, U.S.-Mexico Joint Declaration, June 7, 2019, available at <https://www.state.gov/u-s-mexico-joint-declaration/>.

¹⁶⁰ E.O. 12170, 44 *Federal Register* 65,729 (November 14, 1979).

¹⁶¹ The Algiers Accords comprise the following five documents: The Declaration of the Government of the Democratic and Popular Republic of Algeria, January 19, 1981, 81 Dep’t St. Bull., No. 2047 1, 1 (1981) [hereinafter “General Declaration”], reprinted in 1 *Iran-U.S. Cl. Trib. Rep.* 3; The Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America (continued...)

bank loans to Iran, \$2.8 billion returned to Iran, \$1 billion transferred into a security account in the Hague to pay other U.S. claims against Iran as arbitrated by the Iran-U.S. Claims Tribunal (IUSCT), and \$2 billion remained blocked pending further agreement with Iran or decision of the Tribunal. The United States also froze the assets of the former Shah's estate along with those of the Shah's close relatives pending litigation in U.S. courts to ascertain Iran's right to their return. Iran's litigation was unsuccessful, and none of the contested assets were returned to Iran.¹⁶²

Presidents have also channeled frozen assets to opposition governments in cases where the United States continued to recognize a previous government that had been removed by coup d'état or otherwise replaced as the legitimate government of a country. For example, after Panamanian President Eric Arturo Delvalle tried to dismiss de facto military ruler General Manuel Noriega from his post as head of the Panamanian Defense Forces, which resulted in Delvalle's own dismissal by the Panamanian Legislative Assembly, President Reagan recognized Delvalle as the legitimate head of government and instituted economic sanctions against the Noriega regime.¹⁶³ As part of these sanctions, the Department of State, in February 1988, advised U.S. banks not to disburse funds to the Noriega regime, and Delvalle obtained court orders permitting him access to those funds.¹⁶⁴ In April 1988, President Reagan issued Executive Order 12635, which "blocked all property and interests in property of the Government of Panama that are in the United States ... or that come within the possession or control of persons located within the United States."¹⁶⁵ In June 1988, the Department of the Treasury issued regulations directing most payments from the U.S. government owed to Panama and all payments owed "to Panama from the operation of the Panama Canal Commission" to an escrow account established at the Federal Reserve Bank of New York.¹⁶⁶ One escrow account contained funds for the payment of operating expenses of the Delvalle government.¹⁶⁷ After the U.S. invasion of Panama ended in early 1990, President George H.W. Bush lifted economic sanctions against the country¹⁶⁸ and used some of the frozen funds to repay debts owed by Panama to foreign creditors, with remaining funds turned over to the successor government.¹⁶⁹

The Obama and Trump Administrations took similar actions in response to the political situation in Venezuela. President Barack Obama initially froze Venezuelan government assets in 2015

and the Government of the Islamic Republic of Iran, January 19, 1981, 81 Dep't St. Bull., No. 2047, at 3, reprinted in 1 Iran-U.S. Cl. Trib. Rep. 9; Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with Respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, 19 January 1981, 81 Dep't St. Bull., No. 2047, at 4, reprinted in 1 Iran-U.S. Cl. Trib. Rep. 13; Escrow Agreement Among the United States, Federal Reserve Bank of New York, Bank Markazi Iran, and the Banque Centrale d'Algerie, January 20, 1981, 81 Dep't St. Bull., No. 2047, at 6, reprinted in 1 Iran-U.S. Cl. Trib. Rep. 16; and Technical Arrangement Between Banque Centrale d'Algerie and the Governor and Company of the Bank of England and the Federal Reserve Bank of New York, January 20, 1981, 81 Dep't St. Bull., No. 2047, at 14, reprinted in 1 Iran-U.S. Cl. Trib. Rep. 20 (hereinafter "Algiers Accords").

¹⁶² Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law*, 94 Am. J. Int'l L. 677, 704 (October 2000) (explaining that "[a]ll of Iran's lawsuits in U.S. courts [to recover the Shah's assets] were eventually dismissed, principally on grounds of forum non conveniens").

¹⁶³ GAO Review of Economic Sanctions Imposed Against Panama, GAO/T-NSIAD-89-44, 4-5 (July 26, 1989).

¹⁶⁴ *Ibid.*, 5.

¹⁶⁵ E.O. 12635, 53 *Federal Register* 12,134 (April 8, 1988).

¹⁶⁶ GAO Report, *supra* note 159, at 5.

¹⁶⁷ *Ibid.*, 7.

¹⁶⁸ E.O. 12,710, 55 *Federal Register* 13,099 (April 5, 1990).

¹⁶⁹ See 1989 Cong. Q. Almanac 607 (reporting that the Department of the Treasury had concluded "that the net amount still due Panama, after 'offsets, was about \$200 million").

under IEEPA and the Venezuela Defense of Human Rights and Civil Society Act of 2014.¹⁷⁰ In January 2019, the Trump Administration officially recognized Venezuelan opposition leader Juan Guaidó as Venezuela’s interim president¹⁷¹ and permitted Guaidó access to the frozen Venezuelan *government* assets that were “held at the United States Federal Reserve and other insured United States financial institutions.”¹⁷² The Trump Administration also imposed additional sanctions under IEEPA to freeze the assets of the main Venezuelan state-owned oil company, Petróleos de Venezuela (Pdvsa),¹⁷³ which significantly reduced funds available to the regime of Nicolas Maduro.¹⁷⁴ The Biden Administration continued to recognize Guaidó’s interim government¹⁷⁵ until its dissolution in December 2022, and now recognizes the 2015 National Assembly as the “last remaining democratic institution in Venezuela.”¹⁷⁶ The disposition of Venezuelan assets frozen abroad is uncertain, after negotiations between the Maduro government and the opposition to establish a U.N.-administered fund for humanitarian programs supported by these assets has proceeded very slowly since its announcement in November 2022.¹⁷⁷ The United States reportedly assured the U.N. that assets in the fund would be shielded from creditors.¹⁷⁸ In September 2023, Francisco Palmieri, Chief of Mission of the Venezuelan Affairs Unit at the U.S. Embassy to Columbia, repeated past U.S. offers to provide sanctions relief, which could include unfreezing some assets in the United States, if the Maduro administration allows for the release of political prisoners, allows all opposition candidates to run, and allows international observers to monitor the 2024 elections.¹⁷⁹

There is also precedent for using frozen foreign assets for purposes authorized by the U.N. Security Council. After the first war with Iraq, President George H.W. Bush ordered the transfer of frozen Iraqi assets derived from the sale of Iraqi petroleum held by U.S. banks to a holding account in the Federal Reserve Bank of New York to fulfill “the rights and obligations of the

¹⁷⁰ E.O. 13692, 80 *Federal Register* 12,747 (March 8, 2015). For information about current sanctions against Venezuela, see CRS In Focus IF10715, *Venezuela: Overview of U.S. Sanctions Policy*, by Clare Ribando Seelke.

¹⁷¹ *President Donald J. Trump Supports the Venezuelan People’s Efforts to Restore Democracy in Their Country*, White House Fact Sheet January 29, 2019, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-supports-venezuelan-peoples-efforts-restore-democracy-country/>. For background of the situation in Venezuela, see CRS Report R44841, *Venezuela: Background and U.S. Relations*, coordinated by Clare Ribando Seelke.

¹⁷² *Trump Supports the Venezuelan People’s Efforts*.

¹⁷³ E.O. 13857, 84 *Federal Register* 509 (January 25, 2019); *Treasury Sanctions Venezuela’s State-Owned Oil Company Petroleos de Venezuela, S.A.*, U.S. Department of the Treasury (January 28, 2019), <https://home.treasury.gov/news/press-releases/sm594>.

¹⁷⁴ Marianna Parraga, “Venezuela’s oil exports sink to 17-year low, choked by U.S. sanctions,” *Reuters*, June 2, 2020, <https://www.reuters.com/article/us-venezuela-oil-exports/venezuelas-oil-exports-sink-to-17-year-low-choked-by-us-sanctions-idUSKBN2392SG>.

¹⁷⁵ Press Statement, U.S. Department of State, U.S. Recognition of Venezuela’s 2015 National Assembly and Interim President Guaidó, January 4, 2022, <https://www.state.gov/u-s-recognition-of-venezuelas-2015-national-assembly-and-interim-president-guaido/>.

¹⁷⁶ Press Statement, U.S. Department of State, Venezuela’s Interim Government and the 2015 National Assembly, January 3, 2023, <https://www.state.gov/venezuelas-interim-government-and-the-2015-national-assembly/>.

¹⁷⁷ Geoff Ramsey and Ignacia Ulloa Peters, “Getting Venezuela’s historic humanitarian accord up and running,” Atlantic Council Issue Brief, August 11, 2023, <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/getting-venezuelas-historic-humanitarian-accord-up-and-running/>. For more information, see CRS In Focus IF10230, *Venezuela: Political Crisis and U.S. Policy*, by Clare Ribando Seelke.

¹⁷⁸ Matt Spetalnick, Vivian Sequera and Mayela Armas, “US tells UN it will shield Venezuela humanitarian fund from creditors,” *Reuters*, May, 18, 2023, <https://www.reuters.com/world/americas/us-tells-un-it-will-shield-venezuela-humanitarian-fund-creditors-sources-2023-05-18/>.

¹⁷⁹ Luz Mely Reyes, “Venezuela 2024: Looking beyond María Corina Machado,” *El País*, September 6, 2023, <https://english.elpais.com/opinion/2023-09-26/venezuela-2024-looking-beyond-maria-corina-machado.html>.

United States under U.N. Security Council Resolution No. 778.”¹⁸⁰ The President cited a section of the United Nations Participation Act (UNPA),¹⁸¹ as well as IEEPA, as authority to take the action.¹⁸² The President ordered the transferred funds to be used to provide humanitarian relief and to finance the United Nations Compensation Commission,¹⁸³ which was established to adjudicate claims against Iraq arising from the invasion.¹⁸⁴ Other Iraqi assets remained frozen and accumulated interest until the United States vested them in 2003 pursuant to IEEPA.¹⁸⁵

In some cases, the United States has ended sanctions and returned frozen assets to successor governments. For example, as a condition of releasing sanctions, the United States released \$237.6 million in frozen funds that had belonged to the Central Bank of the Socialist Federal Republic of Yugoslavia to the central banks of the successor states in 2003.¹⁸⁶ In 2002, the United States released \$217 million in frozen funds that had belonged to the Taliban to the Afghan Interim Authority.¹⁸⁷

As of the date of this report, the fate of the Afghan Central Bank (DaB) assets held in the United States at the time of the Taliban takeover of Afghanistan in 2021 remains undecided. Some victims—including survivors and family members—of the September 11, 2001 terrorist attacks with judgments against the Taliban have obtained a writ of attachment with respect to the assets.¹⁸⁸ The Biden Administration subsequently blocked the funds pursuant to IEEPA¹⁸⁹ and filed a statement of interest¹⁹⁰ asking the district court for permission to make half (\$3.5 billion) of the assets available for transfer under the OFAC license¹⁹¹ issued on behalf of the people of Afghanistan to “to address significant humanitarian and economic concerns and to avoid further regional instability and other conditions contrary to the foreign policy interests of the United States.”¹⁹² The other half of the assets would remain blocked to avail the judgment plaintiffs of

¹⁸⁰ E.O. 12817, 3 C.F.R. §317 (1992). President George H.W. Bush froze Iraqi assets under U.S. jurisdiction pursuant to IEEPA in response to Iraq’s invasion and occupation of Kuwait. E.O. 12,722, 55 *Federal Register* 31,803 (August 2, 1990).

¹⁸¹ 22 U.S.C. §287c (2018). The provision authorizes the President to give effect to U.N. Security Council resolutions by “investigat[ing], regulat[ing], or prohibit[ing], in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.” The provision does not explicitly mention asset confiscation.

¹⁸² E.O. 12817, 57 *Federal Register* 48,433 (October 23, 1992).

¹⁸³ See Ronald J. Bettauer, “Establishment of the United Nations Compensation Commission: The U.S. Government Perspective,” *The United Nations Compensation Commission* (Leiden: Brill, 1994), p. 35.

¹⁸⁴ S.C. Res. 687, para. 16 (April 8, 1991) (reaffirming that “Iraq ... is liable under international law for any direct loss, damage, ... or injury to foreign Governments, nationals and corporations, as a result of Iraq’s unlawful invasion and occupation of Kuwait”; S.C. Res. 692 (May 20, 1991) (establishing the United Nations Compensation Commission (UNCC) to administer a system to provide compensation for claims for which Iraq is liable under paragraph 16 of S.C. Res. 687); S.C. Res. 706 and 712 (1991) (establishing an escrow account administered by the U.N. Secretary General to fund the costs of the UNCC and other activities); S.C. Res. 778 (1992) (directing all States in possession of funds due to Iraq for the sale of petroleum and petroleum products to transfer those funds to the U.N. escrow account).

¹⁸⁵ See “USA PATRIOT Act Amendments to IEEPA.”

¹⁸⁶ Foreign Regimes’ Assets, GAO-04-1006, 11 (September 2004).

¹⁸⁷ *Ibid.*, 12.

¹⁸⁸ *Havlish v. Bin Laden*, No. 3-cv-09848 (S.D.N.Y. September 13, 2021).

¹⁸⁹ E.O. 14064, 87 *Federal Register* 8391 (February 15, 2022).

¹⁹⁰ United States Government Statement of Interest, *Havlish v. Bin Laden*, No. 3-cv-09848, ECF 563 (S.D.N.Y. February 11, 2022) (hereinafter SOI).

¹⁹¹ OFAC License No. DABRESERVES-EO-2022-886895-1, <https://s3.documentcloud.org/documents/21226931/ex-b-ofac-license.pdf>.

¹⁹² *Ibid.*, SOI.

the opportunity to make their case for entitlement to attach them in satisfaction of their judgments. In the statement of interest, the Administration did not take a position with respect to the plaintiffs' right to the assets, but set forth some legal considerations that seem to militate against the judgment plaintiffs.¹⁹³ In February, 2023, the district court denied the plaintiffs' motion for post-judgment attachment of the DaB assets, holding that, "[p]ursuant to the FSIA, TRIA, and the U.S. Constitution, the Taliban—not the former Islamic Republic of Afghanistan or the Afghan people—must pay for the Taliban's liability in the 9/11 Attacks."¹⁹⁴ The court found that recognizing the DaB as an "agency or instrumentality" of the Taliban would require the court to recognize the Taliban as the government of Afghanistan, and that such authority to recognize governments is entrusted solely to the President.¹⁹⁵ Plaintiffs have appealed to the U.S. Court of Appeals for the Second Circuit.¹⁹⁶

Congressionally Mandated Use of Frozen Foreign Assets and Proceeds of Sanctions

The executive branch has traditionally resisted congressional efforts to vest foreign assets to pay U.S. claimants without first obtaining a settlement agreement with the country in question.¹⁹⁷ Congress has overcome such resistance in the case of foreign governments that have been designated as "State Supporters of Terrorism."¹⁹⁸ U.S. nationals who are victims of state-supported terrorism involving designated states have been able to sue those countries for damages under an exception to the Foreign Sovereign Immunities Act (FSIA) since 1996.¹⁹⁹

To facilitate the payment of judgments under the exception, Congress passed Section 117 of the Treasury and General Government Appropriations Act, 1999,²⁰⁰ which further amended the FSIA by allowing attachment and execution against state property with respect to which financial transactions are prohibited or regulated under Section 5(b) TWEA, Section 620(a) of the Foreign Assistance Act (authorizing the trade embargo against Cuba), or Sections 202 and 203 of IEEPA, or any orders, licenses or other authority issued under these statutes. Because of the Clinton Administration's continuing objections, however, Section 117 also gave the President authority to "waive the requirements of this section in the interest of national security," an authority President Clinton promptly exercised in signing the statute into law.²⁰¹

The Section 117 waiver authority protecting blocked foreign government assets from attachment to satisfy terrorism judgments has continued in effect ever since, prompting Congress to take other actions to make frozen assets available to judgment holders. Congress enacted Section 2002

¹⁹³ CRS In Focus IF12052, *Afghanistan Central Bank Reserves*, coordinated by Martin A. Weiss.

¹⁹⁴ *In re Terrorist Attacks on Sept. 11, 2001*, 657 F. Supp. 3d 311, 336 (S.D.N.Y. Feb. 21, 2023) (consolidated cases).

¹⁹⁵ *Ibid.*, 335.

¹⁹⁶ *John Does 1 Through 7 v. The Taliban*, No. 23-263 (2d Cir. Mar. 1, 2023).

¹⁹⁷ See, generally, 22 U.S.C. §§1621-1645o (Settlement of International Claims).

¹⁹⁸ Current states designated as sponsors of terrorism are Iran (1984), Cuba (2021), North Korea (2017) and Syria (1979). See U.S. Department of State, *State Sponsors of Terrorism*, <https://www.state.gov/j/ct/list/c14151.htm>.

¹⁹⁹ The so-called terrorism exception to the Foreign Sovereign Immunities Act (FSIA) was originally codified at 28 U.S.C. §1605(a)(7), but an amended version is now codified at 28 U.S.C. §1605A (2018). See CRS Report RL31258, *Suits Against Terrorist States by Victims of Terrorism*, by Jennifer K. Elsea.

²⁰⁰ P.L. 105-277, Div. A, Title I, §117, 112 Stat. 2681-491 (1998), *codified at* 28 U.S.C. §1610(f)(1)(A) (2018).

²⁰¹ Presidential Determination 99-1 (October 21, 1998), reprinted in 34 WEEKLY COMP. PRES. DOC. 2088 (October 26, 1998).

of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA)²⁰² to mandate the payment from frozen Cuban assets of compensatory damages awarded against Cuba under the FSIA terrorism exception on or prior to July 20, 2000.

The Department of the Treasury subsequently vested \$96.7 million in funds generated from long-distance telephone services between the United States and Cuba in order to compensate claimants in *Alejandre v. Republic of Cuba*, the lawsuit based on the 1996 downing of two unarmed U.S. civilian airplanes by the Cuban air force.²⁰³ Another payment of more than \$7 million was made using vested Cuban assets to a Florida woman who had won a lawsuit against Cuba based on her marriage to a Cuban spy.²⁰⁴

As unpaid judgments against designated state sponsors of terrorism continued to mount, Congress enacted the Terrorism Risk Insurance Act (TRIA).²⁰⁵ Section 201 of TRIA overrode long-standing objections by the executive branch to make the frozen assets of terrorist states available to satisfy judgments for compensatory damages against such states (and organizations and persons) as follows:

Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.²⁰⁶

²⁰² P.L. 106-386, §2002, 114 Stat. 1541 (2000). Section 2002(b)(1) required the President to “vest and liquidate up to and not exceeding the amount of property of the Government of Cuba and sanctioned entities in the United States or any commonwealth, territory, or possession thereof that has been blocked pursuant to [TWEA or IEEPA]” to pay the compensatory damages portion of such judgments. Judgments against Iran were paid from appropriated funds.

²⁰³ *Alejandre v. Republic of Cuba*, 996 F. Supp. 1239 (S.D. Fla. 1997) (\$50 million in compensatory damages and \$137.7 million in punitive damages awarded to the families of three of the four persons who were killed when Cuban aircraft shot down two Brothers to the Rescue planes in 1996). The payment represented compensatory damages, judicially imposed sanctions, and interest.

²⁰⁴ *Martinez v. Republic of Cuba*, No. 13-1999-CA 018208 (Miami-Dade Co., Fla., Cir. Ct. 2001) (awarding \$7.1 million in compensatory damages and \$20 million in punitive damages).

²⁰⁵ P.L. 107-297, 116 Stat. 2322 (2002), codified as amended at 28 U.S.C. §1610 note.

²⁰⁶ *Ibid.* The term “blocked asset” is defined in §201(d) of TRIA to mean

(A) any asset seized or frozen by the United States under [TWEA or IEEPA]; and

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than [IEEPA] or the United Nations Participation Act of 1945 (22 U.S.C. 287 *et seq.*); or

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

The International Court of Justice (ICJ) ruled in March 2023, that the United States, acting pursuant to TRIA, violated the now-defunct Treaty of Amity, Economic Relations, and Consular Rights, Iran-U.S., Aug. 15, 1955, U.S.T. 900, by permitting judgment creditors, to enforce terrorism judgments against Iran through the attachment of assets of Iranian agencies or instrumentalities who were not participants in the underlying lawsuit. The ICJ found the United States unreasonably ignored those companies’ separate juridical status and deprived Iranian companies of the independent legal personality conferred on them by such status. *Certain Iranian Assets (Iran v. U.S.)*, Judgment, ¶ 159 (Mar. 30, 2023), <https://icj-cij.org/sites/default/files/case-related/164/164-20230330-JUD-01-00-EN.pdf>. The ICJ will decide the amount of damages the United States owes to Iran at a later phase of the case. *Ibid.*, ¶ 231.

Subsection (b) of Section 201 provided waiver authority “in the national security interest,” but only with respect to frozen foreign government “property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.” When Congress amended the FSIA in 2008²⁰⁷ to revamp the terrorism exception, it provided that judgments entered under the new exception could be satisfied out of the property of a foreign state notwithstanding the fact that the property in question is regulated by the United States government pursuant to TWEA or IEEPA.²⁰⁸ Congress has also crafted legislation on occasion that makes specific assets available to satisfy specific judgments.²⁰⁹

Congress has also directed that the proceeds from certain sanctions violations be paid into a fund for providing compensation to the former hostages of Iran and terrorist state judgment creditors.²¹⁰ To fund the program, Congress designated that certain real property and bank accounts owned by Iran and forfeited to the United States could go into the United States Victims of State Sponsored Terrorism Fund, along with the sum of \$1,025,000,000, representing the amount paid to the United States pursuant to the June 27, 2014, plea agreement and settlement between the United States and BNP Paribas for sanctions violations.²¹¹ The fund is replenished through criminal penalties and forfeitures for violations of IEEPA or TWEA-based regulations, or any related civil or criminal conspiracy, scheme, or other federal offense related to doing business or acting on behalf of a state sponsor of terrorism.²¹² Three-quarters of all civil penalties and forfeitures relating to the same offenses are also deposited into the fund.²¹³ The Fund sunsets in 2039.

Russia’s 2022 large-scale invasion of Ukraine has led the executive branch to levy new sanctions against Russia, in addition to sanctions imposed for other reasons.²¹⁴ Some Members of Congress have introduced legislation seeking to seize and repurpose Russian frozen assets for the benefit of Ukraine,²¹⁵ or impose a tax on any earnings.²¹⁶ Some of the proposals, to the extent that they permit the seizure of assets of aliens with significant ties to or property in the United States, if enacted, may invite legal challenges based on the Fifth Amendment Takings and Due Process

²⁰⁷ P.L. 110-181 §1083 (2008) (amending the Foreign Sovereign Immunities Act).

²⁰⁸ 28 U.S.C. §1610(g) (2018). It is unclear whether “regulated” property and “blocked asset” are meant to be synonymous. The provision also overrides the separate juridical status ordinarily accorded to agencies and instrumentalities of foreign states. *Ibid.* The ICJ determined that this provision violated the Treaty of Amity for the same reason it found TRIA to be “unreasonable.” *Certain Iranian Assets*, ¶ 159.

²⁰⁹ P.L. 112-158, Title V, §502, 126 Stat. 1258 (2012); P.L. 116-92, div. A, Title XII, §1226, 133 Stat. 1645 (2019), both codified at 22 USC §8772. The Supreme Court upheld this approach in *Bank Markazi v. Peterson*, 136 S. Ct. 1310 (2016). For an explanation of the case, see CRS Report R44967, *Congress’s Power over Court Decisions: Jurisdiction Stripping and the Rule of Klein*, by Joanna R. Lampe. In *Certain Iranian Assets*, the ICJ found that Bank Markazi, as Iran’s central bank, was not a “company” entitled to favorable treatment under the Treaty of Amity, and the ICJ did not have jurisdiction over the claim based on *Peterson*. *Certain Iranian Assets* ¶ 54.

²¹⁰ See the Justice for United States Victims of State Sponsored Terrorism Act, div. O, title IV (2015), 129 Stat. 3007, codified as amended at 34 U.S.C. §20144 (2020).

²¹¹ *Ibid.*, for more information about the program and funding for it, see CRS In Focus IF10341, *Justice for United States Victims of State Sponsored Terrorism Act: Eligibility and Funding*, by Jennifer K. Elsea.

²¹² 34 U.S.C. §20144(e) (2021).

²¹³ *Ibid.*

²¹⁴ See CRS Report R45415, *U.S. Sanctions on Russia*, coordinated by Cory Welt; CRS Insight IN11869, *Russia’s War Against Ukraine: Overview of U.S. Assistance and Sanctions*, by Cory Welt; CRS In Focus IF12062, *Russia’s War on Ukraine: Financial and Trade Sanctions*, coordinated by Rebecca M. Nelson.

²¹⁵ From the 117th Cong., see, e.g., H.R. 3838; H.R. 6869; H.R. 6930; H.R. 7015; H.R. 7083; H.R. 7086; S. 3723; S. 3838. From the 118th Cong., see e.g., H.R. 892; H.R. 4175; H.R. 5370; H.R. 5925; H.R. 6491; S. 536; S. 1254; S. 2003; S. 3359.

²¹⁶ H.R. 6416.

Clauses.²¹⁷ Separately, Congress in the Consolidated Appropriates Act, 2023, authorized the Attorney General to “transfer to the Secretary of State the proceeds of any covered forfeited property for use by the Secretary of State to provide assistance to Ukraine to remediate the harms of Russian aggression towards Ukraine.”²¹⁸ The provision appears to authorize forfeiture of property involved in certain sanctions violations as well as blocked property owned or controlled by a person designated under the specified executive orders pertaining to Russia, which is forfeitable under the identified statutes. There is a proposal to expand that authority to cover additional parties and offenses.²¹⁹

Judicial Interpretation of IEEPA

A number of lawsuits seeking to overturn actions taken pursuant to IEEPA have made their way through the judicial system, including challenges to the breadth of presidential authority and congressionally delegated authority, and challenges asserting violations of constitutional rights. Most of these challenges have failed, and the few challenges that succeeded did not seriously undermine the overarching statutory scheme for sanctions.

Dames & Moore v. Regan

The breadth of presidential power under IEEPA is illustrated by the Supreme Court’s 1981 opinion in *Dames & Moore v. Regan*.²²⁰ In *Dames & Moore*, petitioners had challenged President Carter’s executive order establishing regulations to further compliance with the terms of the Algiers Accords, which the President had entered into to end the hostage crisis with Iran.²²¹ Under these agreements, the United States was obligated (1) to terminate all legal proceedings in U.S. courts involving claims of U.S. nationals against Iran, (2) to nullify all attachments and judgments, and (3) to resolve outstanding claims exclusively through binding arbitration in the Iran-U.S. Claims Tribunal (IUSCT). The President, through executive orders, revoked all licenses that permitted the exercise of “any right, power, or privilege” with regard to Iranian funds, nullified all non-Iranian interests in assets acquired after a previous blocking order, and required banks holding Iranian assets to transfer them to the Federal Reserve Bank of New York to be held or transferred as directed by the Secretary of the Treasury.²²²

Dames & Moore had sued Iran for breach of contract to recover compensation for work performed.²²³ The district court had entered summary judgment in favor of *Dames & Moore* and issued an order attaching certain Iranian assets for satisfaction of any judgment that might

²¹⁷ See sections below “Fifth Amendment Takings Clause” and “Fifth Amendment Due Process Clause”.

²¹⁸ P.L. 117-328, § 1708, 136 Stat. 5200 (2022).

²¹⁹ See S. 1905 (proposal to expand §1708 authority to cover forfeitures by additional persons in relation to offenses such as export control violations).

²²⁰ 453 U.S. 654 (1981).

²²¹ Declaration of the Government of the Democratic and Popular Republic of Algeria Relating to the Commitments Made by Iran and the United States and Declaration of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, 20 I.L.M. 223 (1981) (collectively “Algiers Accords”).

²²² E.O. 12170, 44 *Federal Register* 65,729 (November 14, 1979); E.O. 12279, 46 *Federal Register* 7,919 (January 19, 1981). On February 24, 1981 President Reagan ratified the Executive orders that President Carter had signed on January 19, 1981. E.O. 13294, 46 *Federal Register* 14,111 (1981).

²²³ *Dames & Moore*, 453 U.S. at 644.

result,²²⁴ but stayed the case pending appeal.²²⁵ The executive orders and regulations implementing the Algiers Accords resulted in the nullification of this prejudgment attachment and the dismissal of the case against Iran, directing that it be filed at the IUSCT.

In response, Dames & Moore sued the government. The plaintiff claimed that the President and the Secretary of the Treasury exceeded their statutory and constitutional powers to the extent they adversely affected Dames & Moore's judgment against Iran, the execution of that judgment, the prejudgment attachments, and the plaintiff's ability to continue litigation against the Iranian banks.²²⁶

The government defended its actions, relying largely on IEEPA, which provided explicit support for most of the measures taken—nullification of the prejudgment attachment and transfer of the property to Iran—but could not be read to authorize actions affecting the suspension of claims in U.S. courts. Justice Rehnquist wrote for the majority:

Although we have declined to conclude that the IEEPA ... directly authorizes the President's suspension of claims for the reasons noted, we cannot ignore the general tenor of Congress' legislation in this area in trying to determine whether the President is acting alone or at least with the acceptance of Congress. As we have noted, Congress cannot anticipate and legislate with regard to every possible action the President may find it necessary to take or every possible situation in which he might act. Such failure of Congress specifically to delegate authority does not, "especially ... in the areas of foreign policy and national security," imply "congressional disapproval" of action taken by the Executive. On the contrary, the enactment of legislation closely related to the question of the President's authority in a particular case which evinces legislative intent to accord the President broad discretion may be considered to "invite" "measures on independent presidential responsibility." At least this is so where there is no contrary indication of legislative intent and when, as here, there is a history of congressional acquiescence in conduct of the sort engaged in by the President.²²⁷

The Court remarked that Congress's implicit approval of the long-standing presidential practice of settling international claims by executive agreement was critical to its holding that the challenged actions were not in conflict with acts of Congress.²²⁸ For support, the Court cited Justice Frankfurter's concurrence in *Youngstown Sheet and Tube Co. v. Sawyer*,²²⁹ which stated that "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned ... may be treated as a gloss on 'Executive Power' vested in the President by §1 of Art. II."²³⁰ Consequently, it may be argued that Congress's exclusion of certain express powers in IEEPA do not necessarily preclude the President from exercising them, at least where a court finds sufficient precedent exists.

Lower courts have examined IEEPA under a number of other constitutional doctrines.

²²⁴ *Ibid.*

²²⁵ *Ibid.*, 666.

²²⁶ *Ibid.*, 666-67.

²²⁷ *Dames & Moore*, 453 U.S. at 678-79 (internal citations omitted).

²²⁸ *Ibid.*, 680 (citing the International Claims Settlement Act of 1949, 64 Stat. 13, codified as amended at 22 U.S.C. §§1621 *et seq.* (1976 ed. and Supp. IV)).

²²⁹ *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 610-11 (1952).

²³⁰ *Dames & Moore*, 453 U.S. at 686 (citing *Youngstown*, 343 U.S. at 610-11 (Frankfurter, J., concurring)).

Separation of Powers—Non-Delegation Doctrine

Courts have reviewed whether Congress violated the non-delegation principle of separation of powers by delegating too much power to the President to legislate, in particular by creating new crimes.²³¹ These challenges have generally failed.²³² As the U.S. Court of Appeals for the Second Circuit explained while evaluating IEEPA, delegations of congressional authority are constitutional so long as Congress provides through a legislative act an “intelligible principle” governing the exercise of the delegated authority.²³³ Even if the standards are higher for delegations of authority to define criminal offenses, the court held, IEEPA provides sufficient guidance.²³⁴ The court stated

The IEEPA “meaningfully constrains the [President’s] discretion,” by requiring that “[t]he authorities granted to the President ... may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared.” And the authorities delegated are defined and limited.²³⁵

The Second Circuit found it significant that “IEEPA relates to foreign affairs—an area in which the President has greater discretion,”²³⁶ bolstering its view that IEEPA does not violate the non-delegation doctrine.

Conversely, plaintiffs have had little success challenging IEEPA sanctions where Congress has imposed limitations on the President’s authority. The Ninth Circuit rejected a challenge to the then-existing Iraq travel ban based on the claim that the ban imposed an indirect restriction on the

²³¹ *United States v. Dhafir*, 461 F.3d 211, 212-13 (2d Cir. 2006) (appeal of whether IEEPA constitutes an appropriate delegation of congressional authority to the executive).

²³² *United States v. Amirnazmi*, 645 F.3d 564, 576 (3d Cir. 2011) (upholding IEEPA’s delegation of authority to the President); *United States v. Mirza*, 454 F. App’x 249, 256 (5th Cir. 2011) (same); *Dhafir*, 461 F.3d at 216-17 (same); *United States v. Arch Trading Co.*, 987 F.2d 1087, 1092-94 (4th Cir.1993) (same); see also *United States v. Nazemzadeh*, No. 11 CR 5726 L, 2014 WL 310460, at *8 (S.D. Cal. January 28, 2014); *United States v. Vaghari*, No. CRIM.A. 08-693-01-02, 2009 WL 2245097, at *1 (E.D. Pa. July 27, 2009); *Clancy v. Office of Foreign Assets Control*, No. 05-C-580, 2007 WL 1051767, at *20-21 (E.D. Wis. March 31, 2007), *aff’d*, 559 F.3d 595 (7th Cir.2009); *United States v. Chalmers*, 474 F. Supp. 2d 555, 566-68 (S.D.N.Y. 2007); *United States v. Esfahani*, No. 05-CR-0255, 2006 WL 163025, at *1-4 (N.D. Ill. January 17, 2006); *United States v. Anvari-Hamedani*, 378 F. Supp. 2d 821, 829-30 (N.D. Ohio 2005); *Global Relief Found., Inc. v. O’Neill*, 207 F. Supp. 2d 779, 807 (N.D. Ill. 2002), *aff’d*, 315 F.3d 748 (7th Cir. 2002).

²³³ *Dhafir*, 461 F.3d at 215 (citing *Mistretta v. United States*, 488 U.S. 361, 372 (1989)).

²³⁴ *Ibid.*, 216 (“Even if a heightened standard should apply to delegations concerning criminal offenses, the IEEPA’s delegation is subject to constraints similar to those found sufficient in [*Touby v. United States*, 500 U.S. 160, 111 (1991)]”); see also *Amirnazmi*, 645 F.3d at 576 (“We too conclude that IEEPA “meaningfully constrains” the President’s discretion.”); *Arch Trading Co.*, 987 F.2d at 1092-94 (holding “constraining factors” in IEEPA sufficient to conclude the President’s powers are “explicitly defined and circumscribed”).

²³⁵ *Dhafir*, 461 F.3d at 216-17 (internal citations omitted). See also *United States v. Shih*, 73 F.4th 1077, 1092 (9th Cir. 2023) (upholding the use of IEEPA to maintain the Export Administration Regulations despite lapse of the Export Administration Act did not violate the non-delegation doctrine because IEEPA “specifies the steps the President must take before invoking an emergency, including consultation with Congress, and establishes reporting requirements”) The court further held that IEEPA “limits the President’s authority to prohibit certain types of transactions, and prohibits the punishment of unwitting violators.”) *Ibid.* The court explained that, “[b]ecause these statutory restrictions strike ‘a careful balance between affording the President a degree of authority to address the exigencies of national emergencies and restraining his ability to perpetuate emergency situations indefinitely by creating more opportunities for congressional input,’” it agreed with every Circuit to have considered the issue, and determined “that IEEPA is constitutional.” *Ibid.* (citing *United States v. Amirnazmi*, 645 F.3d 564, 577 (3d Cir. 2011); see also *United States v. Dhafir*, 461 F.3d 211, 215-17 (2d Cir. 2006); *United States v. Arch Trading Co.*, 987 F.2d 1087, 1092-94 (4th Cir. 1993); *United States v. Mirza*, 454 F. App’x 249, 255-56 (5th Cir. 2011)).

²³⁶ *Dhafir*, 461 F.3d. at 217 (citing *Dames & Moore*, 453 U.S. at 675).

provision of medical supplies in violation of IEEPA.²³⁷ In a case where plaintiffs sought injunctive relief from the imposition of sanctions by arguing that the President’s authority did not extend to imposing sanctions involving medical supplies and humanitarian aid for Iran, the district court dismissed the claim in part because the statutory restrictions on such sanctions do not create a private right of action.²³⁸

Separation of Powers—Legislative Veto

The U.S. Court of Appeals for the Eleventh Circuit considered whether Section 207(b) of IEEPA is an unconstitutional legislative veto. That provision states

The authorities described in subsection (a)(1) may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act [50 U.S.C. §1622] and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.²³⁹

In *U.S. v. Romero-Fernandez*, two defendants convicted of violating the terms of an executive order issued under IEEPA argued on appeal that IEEPA was unconstitutional, in part, because of the above provision. The Eleventh Circuit accepted that the provision was an unconstitutional legislative veto (as conceded by the government) based on *INS v. Chadha*,²⁴⁰ in which the Supreme Court held that Congress cannot void the exercise of power by the executive branch through concurrent resolution, but can act only through bicameral passage followed by presentment of the law to the President.²⁴¹ The Eleventh Circuit nevertheless upheld the defendants’ convictions for violations of IEEPA regulations,²⁴² holding that the legislative veto provision was severable from the rest of the statute.²⁴³

Fifth Amendment Takings Clause

Courts have also addressed whether certain actions taken pursuant to IEEPA have effected an uncompensated taking of property rights in violation of the Fifth Amendment. The Fifth Amendment’s Takings Clause prohibits “private property [from being] taken for public use,

²³⁷ *Sacks v. Off. of Foreign Assets Control*, 466 F.3d 764, 775 (9th Cir. 2006) (finding that IEEPA does not burden the President’s powers with respect to humanitarian aid when he acts under the UNPA). IEEPA does not provide authority to regulate “donations ... of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations” would risk certain harms. 50 U.S.C. §1702(b)(2).

²³⁸ *Iran Thalassaemia Soc’y v. Off. of Foreign Assets Control*, No. 3:22-CV-1195-HZ, 2022 WL 9888593, at *5 (D. Or. Oct. 14, 2022) (declining to enjoin “maximum pressure” sanctions against Iran for violating the Trade Sanction Reform and Export Enhancement Act (TSREEA, P.L. 106-387, §1, found at 22 U.S.C. §7202) and the Iran financial sector sanctions provision, found at 22 U.S.C. §8513a(d)(2)), *appeal dismissed*, No. 22-35850, 2022 WL 18461465 (9th Cir. Dec. 1, 2022).

²³⁹ 50 U.S.C. §1706(b) (2018).

²⁴⁰ *United States v. Romero-Fernandez*, 983 F.2d 195, 196 (11th Cir. 1993) (citing *Chadha*, 462 U.S. 919 (1983)).

²⁴¹ *Chadha*, 462 U.S. at 954–55.

²⁴² *Romero-Fernandez*, 983 F.2d at 197 (“Because [defendants] were charged and convicted under 50 U.S.C. §1705(b), and this section is not affected by the unconstitutionality of §1706(b), the constitutionality of the legislative veto is irrelevant to their convictions.”). Although the original NEA authorized termination through a concurrent resolution, which does not require the President’s signature, Congress amended the provision in 1985 to require a joint resolution as a response to *Chadha*. Notwithstanding this amendment, Section 207 of IEEPA continues to refer to termination by concurrent resolution.

²⁴³ *Ibid.*, 196 (finding that the balance of IEEPA is capable of functioning independently and noting Congress’s inclusion of a severability clause).

without just compensation.”²⁴⁴ The Fifth Amendment’s prohibitions apply as well to regulatory takings, in which the government does not physically take property but instead imposes restrictions on the right of enjoyment that decreases the value of the property or right therein.²⁴⁵

The Supreme Court has held that the nullification of prejudgment attachments pursuant to regulations issued under IEEPA was not an uncompensated taking, suggesting that the reason for this position was the contingent nature of the licenses that had authorized the attachments.²⁴⁶ The Court also suggested that the broader purpose of the statute supported the view that there was no uncompensated taking:

This Court has previously recognized that the congressional purpose in authorizing blocking orders is “to put control of foreign assets in the hands of the President....” Such orders permit the President to maintain the foreign assets at his disposal for use in negotiating the resolution of a declared national emergency. The frozen assets serve as a “bargaining chip” to be used by the President when dealing with a hostile country. Accordingly, it is difficult to accept petitioner’s argument because the practical effect of it is to allow individual claimants throughout the country to minimize or wholly eliminate this “bargaining chip” through attachments, garnishments, or similar encumbrances on property. Neither the purpose the statute was enacted to serve nor its plain language supports such a result.²⁴⁷

Similarly, a lower court held that the extinguishment of contractual rights due to sanctions enacted pursuant to IEEPA does not amount to a regulatory taking requiring compensation under the Fifth Amendment.²⁴⁸ Even though the plaintiff suffered “obvious economic loss” due to the sanctions regulations, that factor alone was not enough to sustain plaintiff’s claim of a compensable taking.²⁴⁹ The court quoted long-standing Supreme Court precedent to support its finding:

A new tariff, an embargo, a draft, or a war may inevitably bring upon individuals great losses; may, indeed, render valuable property almost valueless. They may destroy the worth of contracts. But whoever supposed that, because of this, a tariff could not be changed, or a non-intercourse act, or an embargo be enacted, or a war be declared? ... [W]as it ever

²⁴⁴ U.S. CONST. Amdt. V. For more information, see Congressional Research Service, *Takings Clause: Overview*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt5-9-1/ALDE_00013280/.

²⁴⁵ See *Paradissiotis v. United States*, 49 Fed. Cl. 16, 20 (2001) (describing a regulatory taking as “not involv[ing] physical invasion or seizure of property [but rather] concern[ing] action that affects an owner’s use of property, ... based on the ‘general rule ... that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking’”) (citing *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)), *aff’d*, 304 F.3d 1271 (Fed. Cir. 2002).

²⁴⁶ *Dames & Moore*, 453 U.S. at 673 n. 6. (noting that “an American claimant may not use an attachment that is subject to a revocable license and that has been obtained after the entry of a freeze order to limit in any way the actions the President may take” pursuant to IEEPA).

²⁴⁷ *Ibid.*, 673–674; see also *Marschalk Co. v. Iran Nat. Airlines Corp.*, 657 F.2d 3, 4 (2d Cir. 1981) (“The President’s action in nullifying the attachments did not constitute a taking of property for which compensation must be paid.”).

²⁴⁸ *767 Third Ave. Assocs. v. United States*, 48 F.3d 1575, 1581 (Fed. Cir. 1995) (landlord leasing office space to a foreign government “did so against the backdrop of the government’s foreign policy power” and did not have reasonable investment-backed expectation that its contract would be fulfilled); *Rockefeller Ctr. Properties v. United States*, 32 Fed. Cl. 586, 592 (1995) (“[T]hose who trade with foreign governments must ... take the President’s power into account in structuring their transactions.”); *Chang v. United States*, 859 F.2d 893, 897 (Fed. Cir. 1988) (“[T]hose who enter into employment contracts overseas do so in light of one salient fact of economic life: that their ability to perform and compel performance is contingent upon the continuation of friendly relations between nations” (citing *Chang v. United States*, 13 Cl. Ct. 555, 559-60 (1987))); *Paradissiotis*, 49 Fed. Cl. at 21 (holding there was no taking because “plaintiff’s [stock options] were ‘in every sense subordinate to the President’s power under the IEEPA.’”).

²⁴⁹ *Paradissiotis*, 49 Fed. Cl. at 21.

imagined this was taking private property without compensation or without due process of law?²⁵⁰

Accordingly, it seems unlikely that entities whose business interests are harmed by the imposition of sanctions pursuant to IEEPA will be entitled to compensation from the government for their losses.

Persons whose assets have been directly blocked by the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) pursuant to IEEPA have likewise found little success challenging the loss of the use of their assets as uncompensated takings.²⁵¹ Many courts have recognized that a temporary blocking of assets does not constitute a taking because it is a temporary action that does not vest title in the United States.²⁵² This conclusion is apparently so even if the blocking of assets necessitates the closing altogether of a business enterprise.²⁵³ In some circumstances, however, a court may analyze at least the initial blocking of assets under a Fourth Amendment standard for seizure.²⁵⁴ One court found a blocking to be unreasonable under a Fourth Amendment standard where there was no reason that OFAC could not have first obtained a judicial warrant.²⁵⁵

Fifth Amendment Due Process Clause

Some persons whose assets have been blocked have asserted that their right to due process has been violated. The Due Process Clause of the Fifth Amendment provides that no person shall be deprived of life, liberty, or property, without due process of law.²⁵⁶ Where one company protested that the blocking of its assets without a pre-deprivation hearing violated its right to due process, a district court found that a temporary deprivation of property does not necessarily give rise to a right to notice and an opportunity to be heard.²⁵⁷ A second district court stated that the exigencies of national security and foreign policy considerations that are implicated in IEEPA cases have meant that OFAC historically has not provided pre-deprivation notice in sanctions programs.²⁵⁸ A third district court stated that OFAC's failure to provide a charitable foundation with notice or a hearing prior to its designation as a terrorist organization and blocking of its assets did not violate its right to procedural due process, because the OFAC designation and blocking order serve the important governmental interest of combating terrorism by curtailing the flow of terrorist

²⁵⁰ *Ibid.* (citing *Knox v. Lee*, 79 U.S. 457, 551 (1870), quoted in *Chang*, 859 F.2d at 897).

²⁵¹ *Glob. Relief Found., Inc. v. O'Neill*, 207 F. Supp. 2d 779, 802 (N.D. Ill.) (“Takings claims have often been raised—and consistently rejected—in the IEEPA context.”), *aff'd*, 315 F.3d 748 (7th Cir. 2002).

²⁵² *Ibid.* (citing *Tran Qui Than v. Regan*, 658 F.2d 1296, 1304 (9th Cir.1981); *Miranda v. Secretary of Treasury*, 766 F.2d 1, 5 (1st Cir.1985)); *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 78–79 (D.D.C. 2002) (“[T]he case law is clear that a blocking of this nature does not constitute a seizure.” (citations omitted)), *aff'd*, 333 F.3d 156 (D.C. Cir. 2003).

²⁵³ *IPT Co. v. U.S. Dep’t of Treasury*, No. 92 CIV. 5542 (JFK), 1994 WL 613371, at *5 (S.D.N.Y. 1994) (holding that the blocking of assets is not a taking as title to the property has not vested in the Government, the company IPT did not become a government-owned enterprise, and any proceeds from a sale of the business or its assets will still vest in its owners, who may claim such assets when the blocking order is lifted).

²⁵⁴ *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner*, 647 F. Supp. 2d 857, 872 (N.D. Ohio 2009); *Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of Treasury*, 585 F. Supp.2d 1233, 1263 (D. Or. 2008).

²⁵⁵ *KindHearts*, 647 F. Supp. 2d at 883.

²⁵⁶ U.S. Constitution, Amdt. V.

²⁵⁷ *IPT Co.*, 1994 WL 613371, at *6 (citing *United States v. James Daniel Good Real Property*, 114 S. Ct. 492, 498 (1993); *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976)).

²⁵⁸ *Glob. Relief Found.*, 207 F. Supp. 2d at 803-04 (emphasizing “the Executive’s need for speed in these matters, and the need to prevent the flight of assets and destruction of records”), *aff'd*, 315 F.3d 748 (7th Cir. 2002).

financing.²⁵⁹ That same court also held that prompt action by the government was necessary to protect against the transfer of assets subject to the blocking order.²⁶⁰

In *Al Haramain Islamic Foundation v. U.S. Department of the Treasury*, the U.S. Court of Appeals for the Ninth Circuit considered whether OFAC's use of classified information without any disclosure of its content in its decision to freeze the assets of a charitable organization, and its failure to provide adequate notice and a meaningful opportunity to respond, violated the organization's right to procedural due process.²⁶¹ The court applied the balancing test set forth by the Supreme Court in its landmark case *Mathews v. Eldridge*²⁶² to resolve these questions.²⁶³ Under the *Eldridge* test, to determine if an individual has received constitutional due process, courts must weigh

- (1) [the person's or entity's] private property interest,
- (2) the risk of an erroneous deprivation of such interest through the procedures used, as well as the value of additional safeguards, and
- (3) the Government's interest in maintaining its procedures, including the burdens of additional procedural requirements."²⁶⁴

While weighing the interests and risks at issue in *Al Haramain*, the Ninth Circuit found the organization's property interest to be significant:

By design, a designation by OFAC completely shuts all domestic operations of an entity. All assets are frozen. No person or organization may conduct any business whatsoever with the entity, other than a very narrow category of actions such as legal defense. Civil penalties attach even for unwitting violations. Criminal penalties, including up to 20 years' imprisonment, attach for willful violations. For domestic organizations such as AHIF—Oregon, a designation means that it conducts no business at all. The designation is indefinite. Although an entity can seek administrative reconsideration and limited judicial relief, those remedies take considerable time, as evidenced by OFAC's long administrative delay in this case and the ordinary delays inherent in our judicial system. In sum, designation is not a mere inconvenience or burden on certain property interests; designation indefinitely renders a domestic organization financially defunct.²⁶⁵

Nevertheless, the court found “the government's interest in national security [could not] be understated.”²⁶⁶ In evaluating the government's interest in maintaining its procedures, the Ninth Circuit explained that the Constitution requires that the government “take reasonable measures to ensure basic fairness to the private party and that the government follow procedures reasonably designed to protect against erroneous deprivation of the private party's interests.”²⁶⁷ While the Ninth Circuit had previously held that the use of undisclosed information in a case involving the exclusion of certain longtime resident aliens should be considered presumptively

²⁵⁹ *Holy Land Found.*, 219 F. Supp. 2d at 77 (D.D.C. 2002).

²⁶⁰ *Ibid.*

²⁶¹ 686 F.3d 965, 979 (9th Cir. 2012).

²⁶² 424 U.S. 319 (1976).

²⁶³ *Al Haramain*, 686 F.3d at 979.

²⁶⁴ *Ibid.* (citing *Mathews*, 424 U.S. at 334-35).

²⁶⁵ *Ibid.*, 979–80 (internal citations omitted).

²⁶⁶ *Ibid.*, 980.

²⁶⁷ *Ibid.*

unconstitutional,²⁶⁸ the court found that the presumption had been overcome in this case.²⁶⁹ The Ninth Circuit noted that all federal courts that have considered the argument that OFAC may not use undisclosed classified information in making its determinations have rejected it.²⁷⁰ Although the court found that OFAC's failure to provide even an unclassified summary of the information at issue was a violation of the organization's due process rights,²⁷¹ the court deemed the error harmless because it would not likely have affected the outcome of the case.²⁷²

In the same case, the Ninth Circuit also considered the organization's argument that it had been denied adequate notice and an opportunity to be heard.²⁷³ Specifically, the organization asserted that OFAC had refused to disclose its reasons for investigating and designating the organization, leaving it unable to respond adequately to OFAC's unknown suspicions.²⁷⁴ Because OFAC had provided the organization with only one document to support its designation over the four-year period between the freezing of its assets and its redesignation as a specially designated global terrorist (SDGT), the court agreed that OFAC had deprived the organization's procedural due process rights.²⁷⁵ However, the court found that this error too was harmless.²⁷⁶

The U.S. District Court for the District of Columbia found that a foreign individual could not challenge his designation as a specially designated national under IEEPA on due process grounds because he had not established a sufficient connection with the United States to warrant constitutional protections.²⁷⁷ The court acknowledged that the D.C. Circuit has not articulated a specific test for determining whether a foreign national residing outside the United States maintains the requisite "substantial connections" to avail himself of due process rights.²⁷⁸ The court held that, irrespective of the proper test, the individual had failed to meet the requisite constitutional standard because he "ha[d] not established *any* connection to the United States, let

²⁶⁸ *Al Haramain*, 686 F.3d at 981 (stating the use of classified information "should be presumptively unconstitutional" (citing *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1070 (9th Cir. 1995))).

²⁶⁹ *Ibid.*, 982 "[T]he use of classified information in the fight against terrorism, during a presidentially declared 'national emergency,' qualifies as sufficiently 'extraordinary' to overcome the presumption.").

²⁷⁰ *Ibid.*, 981 (citing *Holy Land*, 333 F.3d at 164; *Global Relief Found., Inc. v. O'Neill*, 315 F.3d 748, 754 (7th Cir. 2002); *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner (KindHearts II)*, 710 F. Supp. 2d 637, 660 (N.D. Ohio 2010); *Al-Aqeel v. Paulson*, 568 F. Supp. 2d 64, 72 (D.D.C. 2008)). See also *Olenga v. Gacki*, 507 F. Supp. 3d 260, 278 (D.D.C. 2020) ("[G]iven the overriding governmental interest at stake in protecting classified information and the wide berth afforded the executive branch in matters relating to foreign affairs and national security, the Court concludes that OFAC has provided Olenga with sufficient notice of the reasons for his designation to comply with the due process clause of the Fifth Amendment.").

²⁷¹ *Al Haramain*, 686 F.3d at 984 ("OFAC's failure to pursue potential mitigation measures violated AHIF-Oregon's due process rights.").

²⁷² *Ibid.*, 990.

²⁷³ *Ibid.*, 984.

²⁷⁴ *Ibid.*, 984-85.

²⁷⁵ *Al Haramain*, 686 F.3d at 987 (holding that, at a minimum, OFAC must provide a timely statement of reasons for the investigation).

²⁷⁶ *Ibid.* at 990 ("Even if [the organization] had enjoyed better access to classified information and constitutionally adequate notice, we are confident that it would not have changed OFAC's ultimate designation determination.").

²⁷⁷ *Rakhimov v. Gacki*, No. CV 19-2554 (JEB), 2020 WL 1911561, at *5 (D.D.C. April 20, 2020) (citing *People's Mojahedin Org. of Iran v. U.S. Dep't of State*, 182 F.3d 17, 22 (D.C. Cir. 1999)); see also *Fulmen Co. v. Office of Foreign Assets Control*, 547 F. Supp. 3d 13, 22 (D.D.C. 2020) ("Because Fulmen's own pleadings demonstrate no property or presence in the United States, it cannot establish the 'substantial connections' necessary to potentially entitle it to constitutional protections as a non-resident alien.").

²⁷⁸ *Rakhimov*, 2020 WL 1911561 at *5 (citing *Nat'l Council of Resistance of Iran v. U.S. Dep't of State*, 251 F.3d 192, 201-03 (D.C. Cir. 2001); *32 Cty. Sovereignty Comm. v. U.S. Dep't of State*, 292 F.3d 797, 799 (D.C. Cir. 2002)).

alone a substantial one.”²⁷⁹ The court did, however, hold that the foreign national retained the right to procedural review under the Administrative Procedure Act (APA).²⁸⁰

First Amendment Challenges

Some courts have considered whether asset blocking or penalties imposed pursuant to regulations promulgated under IEEPA have violated the subjects’ First Amendment rights to free association, free speech, or religion. Challenges on these grounds have typically failed.²⁸¹ Courts have held that there is no First Amendment right to support terrorists.²⁸² The U.S. Court of Appeals for the District of Columbia Circuit distinguished advocacy from financial support and held that the blocking of assets affected only the ability to provide financial support, but did not implicate the organization’s freedom of association.²⁸³ Similarly, a district court interpreted relevant case law to hold that government actions prohibiting charitable contributions are subject to intermediate scrutiny rather than strict scrutiny, a higher standard that typically applies to regulations implicating political contributions.²⁸⁴

With respect to a free speech challenge brought by a charitable organization whose assets were temporarily blocked during the pendency of an investigation, a district court explained that “when ‘speech’ and ‘nonspeech’ elements are combined in the same course of conduct, a sufficiently important government interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.”²⁸⁵ Accordingly, the district court applied the following test to determine whether the designations and blocking actions were lawful. Citing the Supreme Court’s opinion in *United States v. O’Brien*, the court stated that a government regulation is sufficiently justified if

- (1) it is within the constitutional power of the government;
- (2) it furthers an important or substantial governmental interest;
- (3) the governmental interest is unrelated to the suppression of free expression; and

²⁷⁹ *Ibid.*

²⁸⁰ See *ibid.*, *6 (observing that the court must follow “the APA’s [5 U.S.C. §706(2)(A)] ‘highly deferential standard,’ meaning that [it] may set aside Treasury’s action ‘only if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law’”) (quoting *Zevallos v. Obama*, 793 F.3d 106, 112 (D.C. Cir. 2015)).

²⁸¹ *KindHearts*, 647 F. Supp. 2d at 889 (“Courts have uniformly held that OFAC’s blocking and designation authorities do not reach a substantial amount of protected speech, and that its restrictions are narrowly tailored.”). *Islamic Am. Relief Agency v. Unidentified FBI Agents*, 394 F. Supp. 2d 34, 52-55 (D.D.C. 2005) (rejecting claims that OFAC blocking action violated plaintiff’s First Amendment freedom of speech, freedom of association and freedom of religion, and noting that “nothing in the IEEPA or the executive order prohibits [the plaintiff] from expressing its views”); *United States v. Lindh*, 212 F. Supp. 2d 541, 570 (E.D. Va. 2002) (“The First Amendment’s guarantee of associational freedom is no license to supply terrorist organizations with resources or material support in any form, including services as a combatant.”).

²⁸² *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 735 (D.C. Cir. 2007) (holding that “where an organization is found to have supported terrorism, government actions to suspend that support are not unconstitutional” under the First Amendment); *Holy Land*, 333 F.3d at 166 (holding “as other courts have,” with respect to a First Amendment right to association claim, that “there is no First Amendment right nor any other constitutional right to support terrorists” (citing *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1133 (9th Cir. 2000)).

²⁸³ *Islamic Am. Relief Agency*, 477 F.3d at 736 (“The blocking was not based on, nor does it prohibit, associational activity other than financial support.”).

²⁸⁴ *Kadi v. Geithner*, 42 F. Supp. 3d 1, 32 (D.D.C. 2012) (noting cases that concluded that intermediate scrutiny applies to a designation as a specially designated global terrorist (SDGT) and blocking order affecting funds purportedly intended for charitable purposes).

²⁸⁵ *Glob. Relief Found.*, 207 F. Supp. 2d at 806 (citing *United States v. O’Brien*, 391 U.S. 367, 376-77 (1968)), *aff’d on other grounds*, 315 F.3d 748 (7th Cir. 2002).

(4) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.²⁸⁶

The court found the government’s actions fell within the bounds of this test:

First, the President clearly had the power to issue the Executive Order. Second, the Executive Order promotes an important and substantial government interest—that of preventing terrorist attacks. Third, the government’s action is unrelated to the suppression of free expression; it prohibits the provision of financial and other support to terrorists. Fourth, the incidental restrictions on First Amendment freedoms are no greater than necessary.²⁸⁷

With respect to an organization that was not itself designated as an SDGT but wished to conduct coordinated advocacy with another organization that was so designated, one appellate court found that an OFAC regulation barring such coordinated advocacy based on its content was subject to strict scrutiny.²⁸⁸ The court rejected the government’s reliance on the Supreme Court’s decision in *Holder v. Humanitarian Law Project*²⁸⁹ to find that the regulation impermissibly implicated the organization’s right to free speech.²⁹⁰ Accordingly, there may be some circumstances where the First Amendment protects speech coordinated with (but not on behalf of) an organization designated as an SDGT.

First Amendment—Informational Materials and Communications Exception under IEEPA

Although caselaw is sparse, it appears that criminal defendants have had little success asserting a defense that their conduct amounted to conduct under the provision of informational materials or protected communications exception. The U.S. Court of Appeals for the Third Circuit rejected a claim that OFAC’s regulation, which exempts informational materials that were “not fully created and in existence at the date of the transactions” from the scope of the statutory exception for informational materials, was *ultra vires*.²⁹¹ The Third Circuit upheld the defendant’s conviction for violating Iran sanctions regulations by marketing a dynamic chemical engineering software program to various Iranian entities.²⁹² A district court validated an indictment for IEEPA violations against a defendant who spoke at a conference in the Democratic People’s Republic of North Korea (DPRK) involving cryptocurrency and blockchain technologies.²⁹³ The court held that the jury could decide if the speech was part of a long-term conspiracy to persuade and assist the DPRK in using cryptocurrency services in an effort to avoid U.S. sanctions and launder money.²⁹⁴ Another court upheld regulations that provided that software does not qualify as

²⁸⁶ *Ibid.* (citing *O’Brien*, 391 U.S. at 376-77).

²⁸⁷ *Ibid.*

²⁸⁸ *Al Haramain*, 686 F.3d at 997 (holding strict scrutiny applies and that, “[a]ccordingly, the prohibition survives only if it is narrowly tailored to advance the concededly compelling government interest of preventing terrorism”).

²⁸⁹ 561 U.S. 1, 38 (2010) (upholding the prohibition on material support of terrorist organizations, 18 U.S.C. §2339B, against First Amendment challenge).

²⁹⁰ *Al Haramain*, 686 F.3d at 1001 (holding that under the prevailing fact circumstances, OFAC’s content-based prohibitions on speech violate the First Amendment).

²⁹¹ *United States v. Amimazmi*, 645 F.3d 564, 583 (3d Cir. 2011).

²⁹² *Ibid.*, 567.

²⁹³ *United States v. Griffith*, 515 F. Supp. 3d 106, 115 (S.D.N.Y. 2021).

²⁹⁴ *Ibid.*, 117.

excepted “information and informational materials” if it is subject to export controls.²⁹⁵ Likewise, source code was held not entitled to protection insofar as it was used to conduct cryptocurrency transactions.²⁹⁶

Civil litigants have had some success challenging IEEPA regulations that effectively shut down communications platforms altogether. On May 15, 2019, President Donald J. Trump, finding “that the unrestricted acquisition or use in the United States of information and communications technology or services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries” constituted an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, declared a national emergency under the authority of the NEA and invoked authorities granted by IEEPA.²⁹⁷

A little more than a year later, on August 6, 2020, President Trump issued two executive orders under that same national emergency to address “the spread in the United States of mobile applications developed and owned by companies in [China].”²⁹⁸ The executive orders applied to the video sharing platform TikTok²⁹⁹ and the communications platform WeChat, among others,³⁰⁰ and prohibited certain transactions, as identified by the Secretary of Commerce, with ByteDance Ltd., TikTok’s owner, and Tencent Holdings Ltd., WeChat’s owner.³⁰¹

After the Trump Administration issued regulations barring transactions involving the TikTok and WeChat communications applications (apps) in the United States, users of TikTok and WeChat challenged the executive orders and the Commerce Department memorandums implementing them on constitutional and statutory grounds. Specifically, in two separate cases, litigants argued that orders and memorandums violated their First Amendment right to free speech and violated the IEEPA restriction on regulating transactions of informational materials.³⁰² TikTok also brought a separate suit to enjoin the restrictions.³⁰³

In the first case, *Marland v. Trump*, plaintiffs, users of the video-sharing application TikTok, challenged the Commerce Department’s memorandum that identified six prohibited transactions under E.O. 13942.³⁰⁴ The Commerce TikTok Identification specified that it bans only business-to-business transactions and does not apply to exchanges of business or personal information among

²⁹⁵ *United States v. Alavi*, No. CR 07-429-PHX-NVW, 2008 WL 1989773, at *2 (D. Ariz. May 5, 2008) (denying motion to dismiss superseding indictment).

²⁹⁶ *Van Loon v. Dep’t of Treasury*, No. 1:23-CV-312-RP, 2023 WL 5313091, at *12 (W.D. Tex. Aug. 17, 2023).

²⁹⁷ E.O. 13873 (May 15, 2019), *Securing the Information and Communications Technology and Services Supply Chain*, 84 *Federal Register* 22,689 (May 17, 2019).

²⁹⁸ E.O. 13942 (August 6, 2020), *Addressing the Threat Posed by TikTok, and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain*, 85 *Federal Register* 48,637 (August 11, 2020); E.O. 13943 (August 6, 2020), *Addressing the Threat Posed by WeChat, and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain*, 85 *Federal Register* 48,641 (August 11, 2020).

²⁹⁹ E.O. 13942.

³⁰⁰ E.O. 13943.

³⁰¹ E.O. 13942; E.O. 13943.

³⁰² *Marland v. Trump*, 498 F. Supp. 3d 624 (E.D. Pa. 2020), appeal dismissed, 2021 WL 5346749, at *1 (3d Cir. July 14, 2021); *U.S. WeChat Users Alliance v. Trump*, 488 F. Supp. 3d 912 (N.D. Cal. 2020), appeal dismissed, 2021 WL 4692706 (9th Cir. August 9, 2021).

³⁰³ *TikTok, Inc. v. Trump*, 507 F. Supp. 3d 92 (D.D.C. 2020), appeal dismissed, 2021 WL 3082803, at *1 (D.C. Cir. July 14, 2021).

³⁰⁴ *Marland*, 498 F. Supp. 3d at 632.

TikTok users.³⁰⁵ An earlier Commerce Department memorandum noted that the effect of the prohibitions, most of which were scheduled to apply on November 12, 2020, would be to “significantly reduce the functionality and usability of the app in the United States,” and that “these prohibitions may ultimately make the application less effective and may be challenging for U.S.-based TikTok users.”³⁰⁶

The plaintiffs contended that the Commerce Identification violated the First and Fifth Amendments to the U.S. Constitution, as well as the APA.³⁰⁷ The district court declined to address the plaintiffs’ First Amendment challenges and certain other claims, and considered instead their claim that the Commerce TikTok Identification was an *ultra vires* exercise of agency authority under the APA because it violates IEEPA’s “informational material” exception as well as the exception for “personal communication[s] ... not involv[ing] a transfer of anything of value.”³⁰⁸ The court employed a textual interpretation of IEEPA’s informational material bar to find that the short-format videos exchanged via TikTok clearly fell into IEEPA’s nonexhaustive exemplary list of informational materials protected from regulation or prohibition because they are “analogous to the ‘films,’ ‘artworks,’ ‘photographs,’ and ‘news wire feeds’ expressly protected under §1702(b)(3).”³⁰⁹

The court next determined that the Commerce TikTok Identification, even though it did not directly ban TikTok users from communicating via TikTok, amounted, at minimum, to an indirect regulation of such communications by making them impossible to carry out.³¹⁰ The government sought to characterize the burden on TikTok users as merely incidental to the Commerce Identification’s intended objective of prohibiting TikTok’s commercial transactions, and that any incidental burden cannot be violated IEEPA.³¹¹ The court, pointing to legislative history of the Berman Amendments, rejected the government’s contention that the object of the regulation must itself involve transactions of informational material to be in violation of IEEPA’s informational material exception.³¹² The court observed, “[t]he Government’s suggested reading ignores Congress’s deliberate insertion of the word ‘indirectly’ into IEEPA.”³¹³ While the court accepted the notion that some burdens on transactions involving informational materials might be so tangential as to survive review, it declared that this case “does not present a line-drawing problem” between indirect regulation and tangential effects.³¹⁴

In the next case, TikTok and its Beijing-based parent company ByteDance sued to enjoin the Commerce TikTok Identification prohibitions and were initially granted a nationwide preliminary injunction on the first of the prohibitions, which involved availability of the video-sharing app in app stores.³¹⁵ The district court determined that the plaintiffs were likely to succeed on the merits

³⁰⁵ Identification of Prohibited Transactions to Implement Executive Order 13942 and Address the Threat Posed by TikTok and the National Emergency with Respect to the Information and Communications Technology and Services Supply Chain, 85 *Federal Register* 60,061 (September 24, 2020) (the “Commerce TikTok Identification”).

³⁰⁶ *Marland*, 498 F. Supp. 3d at 632 (quoting September 17 Commerce Department memorandum).

³⁰⁷ *Ibid.*, 634.

³⁰⁸ *Ibid.* (citing 5 U.S.C. §702; 50 U.S.C. §1702(b)(1) and (3)).

³⁰⁹ *Ibid.*, 636.

³¹⁰ *Ibid.*, 637 (“[T]he effect of the Identification will be to undermine the app’s functionality such that U.S. users will be prevented from exchanging data on the app.”).

³¹¹ *Ibid.*

³¹² *Ibid.*, 638.

³¹³ *Ibid.*

³¹⁴ *Ibid.*, 639.

³¹⁵ *TikTok, Inc. v. Trump*, 490 F. Supp. 3d 73 (D.D.C. 2020).

of their claim that the prohibition contravened the informational material exception.³¹⁶ The court explained that the content users share through TikTok falls into the category of informational materials because it “appears to be (or to be analogous to) ‘publications, films, ... photographs, ... artworks, ... and news wire feeds.’”³¹⁷ Like the court in *Marland*, the district court in *TikTok Inc.* rejected the government’s contention that the prohibition involved only business-to-business transactions based on the finding that the “purpose and effect” of the prohibition on U.S. users was “to limit, and ultimately reduce to zero, the number of U.S. users who can comment on the platform and have their personal data on TikTok.”³¹⁸ The court also found it implausible that information exchanged on TikTok would fall within a carve-out to the informational materials exception under the Espionage Act for “shar[ing] U.S. defense secrets ... with foreign adversaries.”³¹⁹

The IEEPA exception also covers “personal communication, which does not involve a transfer of anything of value.”³²⁰ The government in *TikTok* argued that, even if personal communications shared over TikTok have no economic value to the creators and recipients, such communications nevertheless have an economic value to the platform as a whole.³²¹ The district court rejected this argument, stating “such an expansive reading of the phrase ‘anything of value’ would write the personal-communications limitation out of the statute.”³²² The court reasoned that, “[a]ll communication service providers—from television stations and publishers to cellular phone carriers—get some value from a user’s ‘presence on’ their platform.”³²³

The third case stems from the Commerce Secretary’s issuance of “Identification of Prohibited Transactions to Implement Executive Order 13943 and Address the Threat Posed by WeChat and the National Emergency with Respect to the Information and Communications Technology and Services Supply Chain,” identifying the prohibited transactions (Commerce WeChat Identification).³²⁴ The Commerce WeChat Identification further clarified that these prohibitions “only apply to the parties to business-to-business transactions” and did not apply to “[t]he exchange between or among WeChat mobile application users of personal or business information using the WeChat mobile application, to include the transferring and receiving of funds,” among other things.³²⁵ The U.S. users of the messaging, social-media, and mobile-payment app WeChat, sued to challenge the constitutionality of Executive Order 13943 on First Amendment and Fifth Amendment grounds, as well its compliance with the IEEPA exception precluding regulation of personal communications.³²⁶ The government did not contest that the prohibitions would result in shutting down WeChat for users as a platform for the exchange of information.³²⁷

³¹⁶ *Ibid.*, 80.

³¹⁷ *Ibid.*, 82 (quoting 50 U.S.C. §1702(b)(3)).

³¹⁸ *Ibid.*, 81.

³¹⁹ *Ibid.*, 83.

³²⁰ 50 U.S.C. §1702(b)(1).

³²¹ *TikTok*, 490 F. Supp. 3d at 83.

³²² *Ibid.*

³²³ *Ibid.*

³²⁴ U.S. Commerce Department, <https://www.commerce.gov/files/identification-prohibited-transactions-implement-executive-order-13943-and-address-threat>.

³²⁵ *Ibid.*

³²⁶ *U.S. WeChat Users Alliance v. Trump*, 488 F. Supp. 3d 912 (N.D. Cal. 2020).

³²⁷ *Ibid.*, 926 (referring to plaintiffs’ description of WeChat as “a public square for the Chinese-American and Chinese-speaking community in the U.S”).

Addressing the plaintiffs' First Amendment challenge, the district court agreed that the plaintiffs established a strong showing that the WeChat ban unlawfully foreclosed "an entire medium of public expression" or amounted to an unlawful prior restraint of their communications.³²⁸ The court concluded that Chinese-American and Chinese-speaking WeChat users in the United States do not have any other viable means of communicating electronically, "not only because China bans other apps, but also because Chinese speakers with limited English proficiency have no options other than WeChat."³²⁹ The court suggested, without deciding, that the WeChat ban could receive heightened First Amendment strict scrutiny if decided on the merits.³³⁰ With regard to intermediate scrutiny, the court concluded that the plaintiffs were likely to prevail on their First Amendment challenge. An intermediate form of scrutiny is normally reserved for restrictions on the "time, place, or manner," and a time, place, or manner restriction survives such scrutiny if it "(1) is narrowly tailored, (2) serves a significant governmental interest unrelated to the content of the speech, and (3) leaves open adequate channels for communication."³³¹ The court agreed that the government's national security interest in preventing WeChat (and China) collection of data from U.S. users is significant, but that the "effective ban" did not advance that interest in a narrowly tailored way given the "obvious alternatives to a complete ban, such as barring WeChat from government devices" or enhancing data security.³³² The court concluded that "[o]n this limited record, the prohibited transactions burden substantially more speech than is necessary to serve the government's significant interest in national security, especially given the lack of substitute channels for communication."³³³

The court further determined that the immediate shutdown of WeChat would cause irreparable harm to the plaintiffs by eliminating their platform for communication.³³⁴ In assessing the balance of equities and the public interest (elements that merge where the government is a party),³³⁵ the court found that the balance of equities tipped in plaintiffs' favor and the public interest favored protecting the plaintiffs' constitutional rights.³³⁶ The court framed the government's contention that an injunction would "frustrate and displace the President's determination of how best to address threats to national security"³³⁷ as important, but deemed the evidence of the threat posed specifically by WeChat to be only modest, noting that the wholesale shutdown of WeChat burdens more speech than necessary to serve the government's national security and foreign policy interests.³³⁸ Accordingly, the court entered a preliminary nationwide injunction of the Commerce WeChat Identification.³³⁹

³²⁸ *Ibid.*, 927.

³²⁹ *Ibid.* (discounting government's "argument that other substitute social-media apps permit communication").

³³⁰ *Ibid.*, 926-27. In order to justify a prior restraint, the government must demonstrate that the restraint is "narrowly tailored to serve a compelling governmental interest." *Twitter, Inc. v. Sessions*, 263 F. Supp. 3d 803, 810 (N.D. Cal. 2017) (citing *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 571 (1979); *Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 130 (1992); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

³³¹ *U.S. WeChat Users Alliance*, 488 F. Supp. 3d at 927 (citing *Ward*, 491 U.S. at 791; *Pac. Coast Horseshoeing Sch., Inc. v. Kirchmeyer*, 961 F.3d 1062, 1068 (9th Cir. 2020)).

³³² *U.S. WeChat Users Alliance*, 488 F. Supp. 3d at 927.

³³³ *Ibid.*, 928 (citing *Ward*, 491 U.S. at 791).

³³⁴ *Ibid.*, 929.

³³⁵ *Ibid.* (citing *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018)).

³³⁶ *Ibid.* (citing *Am. Beverage Ass'n v. City & Cty. of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019)).

³³⁷ *Ibid.*

³³⁸ *Ibid.*

³³⁹ *Ibid.*, 930.

All three courts adjudicating these disputes issued preliminary injunctions, and the government appealed each decision.³⁴⁰ The Biden Administration initially sought to pause the litigation while it reviewed U.S.-China policy and the effective social media platform bans.³⁴¹ President Biden subsequently issued an executive order rescinding the relevant executive orders and the Commerce Department’s implementing memorandums,³⁴² making the litigation moot.³⁴³ The original underlying executive order related to the information and communications technology and services supply chain,³⁴⁴ however, remains intact with elaborations set forth in Executive Order 14034. Consequently, should the Biden Administration decide to institute new restrictions on the platforms, the First Amendment issue and the interpretation of IEEPA’s exception for informational materials and personal communications may arise again in litigation.

Use of IEEPA to Continue Enforcing the Export Administration Act (EAA)

Until the enactment of the Export Control Reform Act of 2018,³⁴⁵ export of dual use goods and services was regulated pursuant to the authority of the Export Administration Act (EAA),³⁴⁶ which was subject to periodic expiry and reauthorization. President Reagan was the first President to use IEEPA as a vehicle for continuing the enforcement of the EAA’s export controls.³⁴⁷

After Congress did not extend the expired EAA, President Reagan issued Executive Order 12444 in 1983, finding that “unrestricted access of foreign parties to United States commercial goods, technology, and technical data and the existence of certain boycott practices of foreign nations constitute, in light of the expiration of the Export Administration Act of 1979, an unusual and extraordinary threat to the national security.”³⁴⁸ Although the EAA had been reauthorized for short periods since its initial expiration in 1983, every subsequent President utilized the authorities granted under IEEPA to maintain the existing system of export controls during periods of lapse.

In the latest iteration, President George W. Bush issued Executive Order 13222 in 2001, finding the existence of a national emergency with respect to the expiration of the EAA and directing—pursuant to the authorities allocated under IEEPA—that “the provisions for administration of the [EAA] shall be carried out under this order so as to continue in full force and effect ... the export

³⁴⁰ *Marland v. Trump*, No. 20-3322 (3d Cir. filed November 11, 2020); *TikTok, Inc. v. Trump*, No. 20-5381 (D.C. Cir. filed December 29, 2020); *U.S. WeChat Users Alliance v. Trump*, No. 20-16908 (9th Cir. filed October 2, 2020).

³⁴¹ Jeanne Whalen, *Biden asks for pause in Trump’s effort to ban WeChat*, WASH. POST, February 11, 2021, <https://www.washingtonpost.com/technology/2021/02/11/wechat-trump-biden-pause/>.

³⁴² E.O. 14034 of June 9, 2021, “Protecting Americans’ Sensitive Data From Foreign Adversaries,” 86 *Federal Register* 31,423 (June 11, 2021).

³⁴³ *Marland v. Trump*, No. 20-3322, 2021 WL 5346749, at *1 (3d Cir. July 14, 2021) (dismissing appeal pursuant to agreement between parties); *TikTok Inc. v. Biden*, No. 20-5381, 2021 WL 3082803, at *1 (D.C. Cir. July 14, 2021) (dismissing appeal at government’s request); *WeChat Users Alliance v. Trump*, No. 20-16908, 2021 WL 4692706, at *1 (9th Cir. August 9, 2021) (same).

³⁴⁴ E.O. 13873 of May 15, 2019, “Securing the Information and Communications Technology and Services Supply Chain,” 84 *Federal Register* 22,689 (May 17, 2019).

³⁴⁵ In 2018, Congress passed the Export Control Reform Act of 2018 (ECRA), P.L. 115-232 to repeal the Export Administration Act of 1979 and provide new statutory authority for the continuation of EAR. However, three sections were not repealed and Congress directed their continued application through the exercise of IEEPA. See “

The Export Control Reform Act of 2018” section below.

³⁴⁶ P.L. 96-72, §2, 93 Stat. 503 (1979), codified as amended at 50 U.S.C. §§4601-4623 (2018).

³⁴⁷ E.O. 12444, 48 *Federal Register* 48,215 (October 18, 1983).

³⁴⁸ *Ibid.*

control system heretofore maintained.”³⁴⁹ Presidents Obama and Trump annually extended the 2001 executive order.³⁵⁰

Courts have generally treated this arrangement as authorized by Congress,³⁵¹ although certain provisions of the EAA in effect under IEEPA have led to challenges. The determining factor appears to be whether IEEPA itself provides the President the authority to carry out the challenged action. In one case, the U.S. Court of Appeals for the Fifth Circuit upheld a conviction for an attempt to violate the regulations even though the EAA had expired and did not expressly criminalize such attempts.³⁵² The circuit court rejected the defendants’ argument that the President had exceeded his delegated authority under the EEA by “enlarging” the crimes punishable under the regulations.³⁵³

Nevertheless, a district court held that the conspiracy provisions of the EAA regulations were rendered inoperative by the lapse of the EAA and “could not be repromulgated by executive order under the general powers that IEEPA vests in the President.”³⁵⁴ The district court found that, even if Congress intended to preserve the operation of the EAA through IEEPA, that intent was limited by the scope of the statutes’ substantive coverage at the time of IEEPA’s enactment, when no conspiracy provision existed in either statute.³⁵⁵

The U.S. Court of Appeals for the D.C. Circuit upheld the application of the EAA as a statute permitting the government to withhold information under exemption 3 of the Freedom of Information Act (FOIA),³⁵⁶ which exempts from disclosure information exempted from disclosure by statute, even though the EAA had expired.³⁵⁷ Referring to legislative history it interpreted as congressional approval of the use of IEEPA to continue the EAA provisions during periods of lapse, the court stated

Although the legislative history does not refer to the EAA’s confidentiality provision, it does evince Congress’s intent to authorize the President to preserve the operation of the export regulations promulgated under the EAA. Moreover, it is significant for purposes of determining legislative intent that Congress acted with the knowledge that the EAA’s export regulations had long provided for confidentiality and that the President’s ongoing practice of extending the EAA by executive order had always included these confidentiality protections.³⁵⁸

The D.C. Circuit distinguished this holding in a later case involving appellate jurisdiction over a decision by the Department of Commerce to apply sanctions for a company’s violation of the EAA regulations.³⁵⁹ Pursuant to the regulations and under the direction of the Commerce

³⁴⁹ E.O. 13222, 66 *Federal Register* 44,025 (August 17, 2001).

³⁵⁰ See, e.g., Continuation of Emergency Regarding Export Control Regulations, 82 *Federal Register* 39,005 (August 15, 2017).

³⁵¹ *Owens v. Republic of Sudan*, 374 F. Supp. 2d 1, 22 (D.D.C. 2005) (“Courts uniformly have read [the executive order preserving the EAA regulations under IEEPA] to mean that the statute remained in full effect during the periods of lapse.”). In this case, Sudan challenged its designation as a state sponsor of terrorism pursuant to a provision of the EAA because the statute had expired.

³⁵² *United States v. Mechanic*, 809 F.2d 1111, 1112-13 (5th Cir. 1987).

³⁵³ *Ibid.*, 1113-14 (emphasizing the foreign affairs connection served by the EAA).

³⁵⁴ *United States v. Quinn*, 401 F. Supp. 2d 80, 93 (D.D.C. 2005).

³⁵⁵ *Ibid.*, 95.

³⁵⁶ 5 U.S.C. §552(b)(3) (2018).

³⁵⁷ *Wisconsin Project on Nuclear Arms Control v. U.S. Dep’t of Commerce*, 317 F.3d 275, 282 (D.C. Cir. 2003).

³⁵⁸ *Ibid.*

³⁵⁹ *Micei Int’l v. Dep’t of Commerce*, 613 F.3d 1147, 1150 (D.C. Cir. 2010).

Department, the company sought judicial review directly in the D.C. Circuit.³⁶⁰ The D.C. Circuit, however, concluded that it lacked jurisdiction:

This court would have jurisdiction pursuant to the President’s order only if the President has the authority to confer jurisdiction—an authority that, if it exists, must derive from either the Executive’s inherent power under the Constitution or a permissible delegation of power from Congress. The former is unavailing, as the Constitution vests the power to confer jurisdiction in Congress alone. Whether the executive order can provide the basis of our jurisdiction, then, turns on whether the President can confer jurisdiction on this court under the auspices of IEEPA.... We conclude that the President lacks that power. Nothing in the text of IEEPA delegates to the President the authority to grant jurisdiction to any federal court.³⁶¹

Consequently, the appeal of the agency decision was determined to belong in the district court according to the default rule under the APA.³⁶²

Issues and Options for Congress

Congress may address a number of issues with respect to IEEPA; three are addressed here. The first pertains to how Congress has delegated its authority under IEEPA and its umbrella statute, the NEA. The second pertains to the termination of national emergencies invoking IEEPA. The third pertains to choices made in the Export Control Reform Act of 2018.

Delegation of Authority under IEEPA

Although the stated aim of the drafters of the NEA and IEEPA was to restrain the use of emergency powers, the use of such powers has expanded by several measures. Presidents declare national emergencies and renew them for years or even decades. The limitation of IEEPA to transactions involving some foreign interest was intended to limit IEEPA’s domestic application. However, globalization has eroded that limit, as few transactions today do not involve some foreign interest. Many of the other criticisms of TWEA that IEEPA was supposed to address—consultation, time limits, congressional review, scope of power, and logical relationship to the emergency declared—are criticisms that scholars levy against IEEPA today.³⁶³ TWEA came under criticism because the first national emergency declared pursuant to its authority had been ongoing for 41 years.³⁶⁴ In November 2023, the first emergency declared pursuant to authority under IEEPA, the emergency with Iran declared in November 1979, entered its forty-fourth year.

In general, four criticisms are levied by scholars with respect to the structure of the NEA and IEEPA that may be of interest to Congress. First, the NEA and IEEPA do not define the phrases “national emergency” and “unusual and extraordinary threat” and Presidents have interpreted these terms broadly. Second, the scope of presidential authority under IEEPA has become less constrained in a highly globalized era. Third, owing to rulings by the Supreme Court and amendments to the NEA, Congress must have a two-thirds majority rather than a simple majority to terminate a national emergency without Presidential consent. Fourth, the structure of the U.S.

³⁶⁰ *Ibid.*, 1151.

³⁶¹ *Ibid.*, 1153 (internal citations omitted).

³⁶² *Ibid.*, 1152 (citing 5 U.S.C. §704 (2009)).

³⁶³ See, e.g., Jason Luong, “Forcing Constraint”; Jules Lobel, “Emergency Power and the Decline of Liberalism.”

³⁶⁴ See, e.g., “After 41 Years The Depression Finally Ending,” *New York Times*, October 13, 1974; “Senate Votes to Conclude 4 National Emergencies,” *New York Times*, October 8, 1974; U.S. Congress, *A Brief History of Emergency Powers in the United States*, p. v.

sanctions regime and its reliance on IEEPA has created emergencies that do not end. Despite these criticisms, Congress has never terminated an emergency declaration invoking IEEPA.³⁶⁵ This absence of any explicit statement of disapproval, coupled with explicit statements of approval in some instances, may indicate congressional approval of presidential use of IEEPA thus far. Arguably, then, IEEPA could be seen as an effective tool for carrying out the will of Congress.

Definition of “National Emergency” and “Unusual and Extraordinary Threat”

Neither the NEA nor IEEPA define what constitutes a “national emergency.” IEEPA conditions its invocation in a declaration on its necessity for dealing with an “unusual and extraordinary threat ... to the national security, foreign policy, or economy of the United States.”³⁶⁶ In the markup of IEEPA in the House, Fred Bergsten, then-Assistant Secretary for International Affairs in the Department of the Treasury, praised the requirement that a national emergency for the purposes of IEEPA be “based on an unusual and extraordinary threat” because such language “emphasizes that such powers should be available only in true emergencies.”³⁶⁷ Because “unusual” and “extraordinary” are also undefined, the usual and ordinary invocation of the statute seems to conflict with those statutory conditions.

If Congress wanted to refine the meaning of “national emergency” or “unusual and extraordinary threat,” it could do so through statute. Additionally, Congress could consider requiring some sort of factual finding by a court prior to, or shortly after, the exercise of any authority, such as under the First Militia Act of 1792³⁶⁸ or the Foreign Intelligence Surveillance Act.³⁶⁹ Alternatively, Congress may consider that the ambiguity in the existing statute provides the executive with the flexibility necessary to address national emergencies with the requisite dispatch.

Scope of the Authority

While IEEPA nominally applies only to foreign transactions, the breadth of the phrase, “any interest of any foreign country or a national thereof” leaves a great deal of room for executive discretion. The interconnectedness of the modern global economy has left few major transactions in which a foreign interest is not involved.³⁷⁰ As a result, at least one scholar has concluded, “the exemption of purely domestic transactions from the President’s transaction controls seems to be a limitation without substance.”³⁷¹

Presidents have used IEEPA since the 1980s to control exports by maintaining the dual-use export control system, enshrined in the Export Administration Regulations (EAR) in times when its

³⁶⁵ Congress has only successfully terminated via joint resolution one national emergency declared under the NEA. That national emergency, which related to the Novel Coronavirus Disease 2019 (COVID 19) pandemic, did not invoke IEEPA. See **Table A-2**.

³⁶⁶ 50 U.S.C. §1701.

³⁶⁷ *House Markup*, p. 12.

³⁶⁸ Using the judiciary to determine whether an emergency authority can be exercised by the executive has been common. The First Militia Act of 1792, for example, required that either an associate justice of the Supreme Court or a district judge confirm that an insurrection “too powerful to be suppressed by the ordinary course of judicial proceedings” existed. Act of May 2, 1792, ch. 28, 1 Stat. 264. Using a court to determine whether an emergency existed and whether an action was necessary was also the method favored by the German-American jurist, advisor to President Abraham Lincoln, and founder of American political science, Francis Lieber, who argued that the acts of officials in states of emergency should be adjudged in court “to be necessary in the judgment of a moderate and reasonable man.” Qtd. in Witt, “A Lost Theory of American Emergency Constitutionalism,” p. 588.

³⁶⁹ 50 U.S.C. §§1803-1805.

³⁷⁰ “The International Emergency Economic Powers Act,” *Harvard Law Review*, p. 1111 n. 49.

³⁷¹ *Ibid.*; See also Thronson, “Toward Comprehensive Reform of America’s Emergency Law Regime,” pp. 757-758.

underlying authorization, the Export Administration Act (EAA), periodically expired. During those times when Congress did not reauthorize the EAA, Presidents have declared emergencies to maintain the dual-use export control system.³⁷² The current emergency has been ongoing since 2001.³⁷³

While Presidents have used IEEPA to implement trade restrictions against adversaries, it has not been used as a general way to impose tariffs. However, as noted above, President Nixon used TWEA to impose a 10% ad valorem tariff on goods entering the United States to avoid a balance of payments crisis after he ended the convertibility of the U.S. dollar to gold. Although the use of TWEA in this instance was criticized at the time,³⁷⁴ the U.S. Court of Customs and Patent Appeals upheld President Nixon's actions³⁷⁵ and Congress maintained the language that President Nixon relied upon in nearly identical form in the subsequent reforms resulting in the enactment of IEEPA.³⁷⁶ In the 116th, 117th, and 118th Congresses, bills were introduced that would limit the President's authority to use IEEPA to impose tariffs.³⁷⁷

The scope of powers over individual targets is also extensive. Under IEEPA, the President has the power to prohibit all financial transactions with individuals designated by executive order. Such power allows the President to block all the assets of a U.S. citizen or permanent resident.³⁷⁸

³⁷² In 2018, Congress passed the Export Control Reform Act of 2018, Title XVII, Subtitle B of P.L. 115-232, 132 Stat. 2208, codified at 50 U.S.C. §§4801 et seq. to provide new statutory authority for the continuation of EAR. However, three sections were not repealed and Congress directed their continued application through the exercise of IEEPA. See "The Export Control Reform Act of 2018" below.

³⁷³ Ibid.

³⁷⁴ See, e.g., the testimony of Andreas F. Lowenfeld before the House Subcommittee on International Economic Policy and Trade. U.S. Congress, House, *Hearings Before the Subcommittee on International Economic Policy and Trade of the Committee on International Relations and Markup of the Trading with the Enemy Reform Legislation*, 95th Cong., 1st sess. (Washington, DC: GPO, 1977), pp. 8-9.

³⁷⁵ *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 573 (C.C.P.A. 1975) ("Congress, in enacting s 5(b) of the TWEA, authorized the President, during an emergency, to [...] 'regulate importation,' by imposing an import duty surcharge or by other means appropriately and reasonably related [...] to the particular nature of the emergency declared.")

³⁷⁶ TWEA, codified as amended in 1971 at §5(b), provided that during a period of national emergency, the President may "investigate, regulate, direct and compel, nullify, void, prevent, or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest." IEEPA, as passed in 1977 at §203(a)(1)(B), provided that during a period of national emergency, the President may "investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest."

While he did not ultimately end up doing so, President Trump announced his intention to use IEEPA to impose and gradually increase a five percent tariff on all goods imported from Mexico. Statement from the President Regarding Emergency Measures to Address the Border Crisis, May 30, 2019, available at <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-emergency-measures-address-border-crisis/>. See also CRS Insight IN11129, *The International Emergency Economic Powers Act (IEEPA) and Tariffs: Historical Background and Key Issues*, by Christopher A. Casey.

³⁷⁷ E.g., Global Trade Accountability Act, S. 1060 (Lee), 118th Cong., 1st sess., March 29, 2023; Protecting Our Democracy Act, S. 2921 (Klobuchar), 117th Cong., 1st sess., September 30, 2021; Global Trade Accountability Act of 2021, H.R. 2618 (Davidson), 117th Cong., 1st sess., April 16, 2021; Global Trade Accountability Act, S. 691 (Lee), 117th Cong., 1st sess., March 10, 2021; Global Trade Accountability Act, H.R. 723 (Davidson), 116th Cong., 1st sess., January 23, 2019; Reclaiming Congressional Trade Authority Act of 2019, S. 899 (Kaine), 116th Cong., 1st sess., March 27, 2019.

³⁷⁸ Thronson, "Toward Comprehensive Reform of America's Emergency Law Regime," p. 759.

Such uses of IEEPA may reflect the will of Congress or they may represent a grant of authority that may have gone beyond what Congress originally intended.

Amending the NEA to Require Joint Resolutions of Approval

The heart of the curtailment of presidential power by the NEA and IEEPA was the provision that Congress could terminate a state of emergency declared pursuant to the NEA with a concurrent resolution. When the “legislative veto” was struck down by the Supreme Court (see above), it left Congress with a steeper climb—presumably requiring passage of a veto-proof joint resolution—to terminate a national emergency declared under the NEA.³⁷⁹ To date, no national emergency declared under the NEA has been terminated without Presidential consent.

Since 2019, Members of Congress have introduced several bills that would amend the NEA to place new limits on the exercise of emergency authorities. The most common strategy has been to require a joint resolution of approval. In the 116th, 117th, and 118th Congresses, bills were introduced to require a joint resolution of approval for an emergency to extend beyond a certain number of days.³⁸⁰ The National Security Powers Act of 2021, for example, would have required that Congress pass a joint resolution approving of a national emergency within 30 days.³⁸¹

The NEA, IEEPA, and “Never Ending Emergencies”

Some Members of Congress, scholars, and civil society organizations have criticized the NEA for producing “never ending emergencies.”³⁸² The average length of an emergency declared under the NEA is more than nine years, with one emergency well into its fifth decade. However, excluding emergencies declared to impose sanctions drops that average to three years. Of the nine emergencies declared under the NEA that do not cite IEEPA, six were terminated or expired after fewer than three years. The remaining emergencies relate to Cuba, the September 11, 2001 terrorist attacks, and restrictions on Russian-affiliated vessels put in place after Russia’s further invasion of Ukraine in 2022.

It is the emergencies citing IEEPA that frequently last decades. The reason for this may be structural. Should the President terminate an emergency, the authority to continue freezing assets would, in many cases, also terminate.³⁸³ Congress could provide non-emergency authority to maintain blocks on transactions and freezes on assets made during a national emergency, otherwise Presidents will likely consider the continuation of national emergencies to be necessary to prevent assets frozen under IEEPA from becoming accessible.

³⁷⁹ Congress amended NEA in 1985 to require a joint resolution, which is subject to the President’s veto, to terminate an emergency. P.L. 99-93 (August 16, 1985), 99 Stat. 405.

³⁸⁰ E.g., ARTICLE ONE Act, S. 1912 (Lee), 118th Cong., 1st sess., June 8, 2023; Protecting Our Democracy Act, S. 2921 (Klobuchar), 117th Cong., 1st sess., September 30, 2021; National Emergencies Reform Act, H.R. 9041 (Amash), 116th Cong., 2nd sess., December 22, 2020.

³⁸¹ National Security Powers Act of 2021, S. 2391 (Murphy), 117th Cong., 1st sess., July 20, 2021. For additional examples during the 116th Congress, see Global Trade Accountability Act of 2019, H.R. 723 (Davidson), 116th Cong., 1st sess., January 23, 2019; Reclaiming Congressional Trade Authority Act of 2019, S. 899 (Kaine), 116th Cong., 1st sess., March 27, 2019.

³⁸² U.S. Congress, House Committee on Transportation and Infrastructure, “Never Ending Emergencies – An Examination of the National Emergencies Act,” 118th Cong., 1st sess., hearing, May 24, 2023; Catherine Padhi, “Emergencies Without End: A Primer on Federal States of Emergency,” *Lawfare*, December 8, 2017.

³⁸³ See “Implications of Terminating National Emergencies Invoking IEEPA”

The Status Quo

In testimony before the House Committee on International Relations in 1977, Professor Harold G. Maier summed up the main criticisms of TWEA:

Section 5(b)'s effect is no longer confined to "emergency situations" in the sense of existing imminent danger. The continuing retroactive approval, either explicit or implicit, by Congress of broad executive interpretations of the scope of powers which it confers has converted the section into a general grant of legislative authority to the President."³⁸⁴

Like TWEA before it, IEEPA sits at the center of the modern U.S. sanction regime. Like TWEA before it, Congress has often approved explicitly of the President's use of IEEPA. In several circumstances, Congress has directed the President to impose a variety of sanctions under IEEPA and waived the requirement of an emergency declaration. Even when Congress has not given explicit approval, until 2023, no Member of Congress had ever introduced a resolution to terminate a national emergency citing IEEPA.³⁸⁵ The NEA requires that both houses of Congress meet every six months to consider a vote on a joint resolution on terminating an emergency.³⁸⁶ Neither house has ever met to do so with respect to an emergency citing IEEPA. In response to concerns over the scale and scope of the emergency economic powers granted by IEEPA, supporters of the status quo would argue that Congress has implicitly and explicitly expressed approval of the statute and its use. Indeed, several bills proposing a limit on the length of national emergencies declared under the NEA explicitly exclude IEEPA.³⁸⁷

Implications of Terminating National Emergencies Invoking IEEPA

Beginning in the late 2010s, some Members of Congress and civil society organizations began to express concern with the NEA and IEEPA. Whereas one resolution to terminate a national emergency declared under the NEA was introduced between 1976 and 2018,³⁸⁸ 15 were introduced between 2019 and January 15, 2024 (**Table A-2**).³⁸⁹ In 2019, both houses of Congress

³⁸⁴ House, *Trading with the Enemy Act Reform Legislation*, p. 9.

³⁸⁵ Since the enactment of the NEA, two resolutions to terminate a national emergency have been introduced. The first was to terminate the national emergency declared in response to Hurricane Katrina, but the declaration of emergency in that case did not invoke IEEPA. H.J.Res. 69 (Miller), 109th Congress, 1st session, September 8, 2005. The second was to terminate the national emergency declared February 15, 2019 with respect to the Southern Border of the United States. H.J.Res. 46 (Castro), 116th Cong., 1st sess., February 22, 2019; S.J.Res. 10 (Udall), 116th Cong., 1st sess., February 28, 2019. However, neither of the declarations of national emergency at issue invoked IEEPA.

³⁸⁶ 50 U.S.C. §1622(b).

³⁸⁷ E.g., Reforming Emergency Powers to Uphold the Balances and Limitations Inherent in the Constitution Act or the REPUBLIC Act, S. 463 (Paul), 117th Cong., 1st sess., February 25, 2021; Assuring that Robust, Thorough, and Informed Congressional Leadership is Exercised Over National Emergencies Act or the ARTICLE One Act, S. 764 (Lee), 116th Cong., 1st sess., March 12, 2019, as reported to the Senate November 19, 2019.

³⁸⁸ In 2005, Rep. George Miller (CA) introduced a resolution to terminate the declaration of a national emergency as a result of Hurricane Katrina. It was not considered. H.J.Res. 69 (Miller), 109th Cong., 1st sess., September 8, 2005. While this resolution cited to the NEA, the declaration of national emergency that it sought to terminate (Proclamation 7924, 70 *Federal Register* 54227) did not.

³⁸⁹ Relating to a national emergency declared by the President on February 15, 2019, H.J.Res. 46 (Castro), 116th Cong., 1st sess., February 22, 2019; A joint resolution relating to a national emergency declared by the President on February 15, 2019, S.J.Res. 10 (Udall), 116th Cong., 1st sess., February 28, 2019; A joint resolution relating to a national emergency declared by the President on February 15, 2019, S.J.Res. 54 (Udall), 116th Cong., 1st sess., September 10, 2019; Relating to a national emergency declared by the President on February 15, 2019, H.J.Res. 75 (Castro), 116th Cong., 1st sess., September 19, 2019; Relating to a national emergency declared by the President on February 15, 2019, H.J.Res. 85 (Castro), 116th Cong., 2nd sess., February 14, 2020; Relating to a national emergency declared by the President on March 13, 2020, H.J.Res. 46 (Gosar), 117th Cong., 2nd sess., May 20, 2021; Relating to a national (continued...)

passed, for the first time, a resolution to terminate a national emergency.³⁹⁰ President Donald J. Trump vetoed that resolution and the House did not override the veto.³⁹¹ In 2023, after several attempts, Congress voted to terminate the national emergency concerning the Novel Coronavirus Disease (COVID-19) outbreak.³⁹² President Joe Biden signed the resolution, terminating the national emergency.³⁹³ In 2023, several Members of Congress introduced five bills seeking to terminate, for the first time, national emergencies invoking IEEPA; all five failed to pass the House.³⁹⁴

IEEPA sits at the center of the modern U.S. sanction regime. Were Congress to terminate a national emergency invoking IEEPA, sanctions put into place under the authority of that emergency, including the blocking of assets, would terminate³⁹⁵ unless such sanctions could be kept in place under a different authority, such as the United Nations Participation Act.³⁹⁶

emergency declared by the President on March 13, 2020, H.J.Res. 52 (Gosar), 117th Cong., 2nd sess., June 16, 2021; A joint resolution relating to a national emergency declared by the President on March 13, 2020, S.J.Res. 38 (Marshall), 117th Cong., 2nd sess., February 14, 2022; A joint resolution relating to a national emergency declared by the President on March 13, 2020, S.J.Res. 63 (Marshall), 117th Cong., 2nd sess., September 22, 2022; Relating to a national emergency declared by the President on March 13, 2020, H.J.Res. 7 (Gosar), 118th Cong., 1st sess., January 9, 2023; Relating to a national emergency declared by the President on October 27, 2006, H.J.Res. 68 (Boebert), 118th Cong., 1st sess., June 12, 2023; Relating to a national emergency declared by the President on February 25, 2011, H.J.Res. 70 (Gosar), 118th Cong., 1st sess., June 12, 2023; Relating to a national emergency declared by the President on May 22, 2003, H.J.Res. 71 (Crane), 118th Cong., 1st sess., June 14, 2023; Relating to a national emergency declared by the President on May 16, 2012, H.J.Res. 74 (Gosar), 118th Cong., 1st sess., June 15, 2023; Relating to a national emergency declared by the President on May 11, 2004, H.J.Res. 79 (Gaetz), 118th Cong., 1st sess., July 6, 2023.

³⁹⁰ In 2019, Rep. Castro and Sen. Udall introduced resolutions to terminate the declaration of a national emergency with respect to the Southern Border of the United States. H.J.Res. 46 (Castro), 116th Cong., 1st sess., February 22, 2019; S.J.Res. 10 (Udall), 116th Cong., 1st sess., February 28, 2019.

³⁹¹ *Ibid.*

³⁹² Act of April 10, 2023, P.L. 118-3, 137 Stat. 6.

³⁹³ *Ibid.*

³⁹⁴ Relating to a national emergency declared by the President on October 27, 2006, H.J.Res. 68 (Boebert), 118th Cong., 1st sess., June 12, 2023; Relating to a national emergency declared by the President on February 25, 2011, H.J.Res. 70 (Gosar), 118th Cong., 1st sess., June 12, 2023; Relating to a national emergency declared by the President on May 22, 2003, H.J.Res. 71 (Crane), 118th Cong., 1st sess., June 14, 2023; Relating to a national emergency declared by the President on May 16, 2012, H.J.Res. 74 (Gosar), 118th Cong., 1st sess., June 15, 2023; Relating to a national emergency declared by the President on May 11, 2004, H.J.Res. 79 (Gaetz), 118th Cong., 1st sess., July 6, 2023.

³⁹⁵ 50 U.S.C. §1622(a) provides that:

[A]ny powers or authorities exercised by reason of [the terminated] emergency shall cease to be exercised after [the date of termination], except that such termination shall not affect-

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

³⁹⁶ United Nations Participation Act, P.L. 79-264, §5, 59 Stat. 620 (1945), codified as amended at 22 U.S.C. §287c. The extent to which the UNPA would permit the blocking of property by placing individuals or entities on the Specially Designated Nationals and Blocked Persons List is uncertain. The UNPA gives the President the authority to implement U.N. sanctions and authorizes him to enforce such measures by issuing “such orders, rules, and regulations as may be prescribed by him,” thereby allowing him to “investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.” *Ibid.* IEEPA authority includes the authority for the President to “investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.” 50 U.S.C. §1702(a)(1)(B).

IEEPA also contains a savings provision in the event a national emergency invoking IEEPA is terminated, permitting the President to continue to block property if “the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals,” unless Congress provides otherwise in a resolution terminating the emergency.³⁹⁷ The legislative history suggests that Congress may have considered the continued blocking of assets that could be used for presidential settlements of claims by American citizens against foreign countries.³⁹⁸ In at least one case, however, the President invoked the savings provision to continue to block property pending claims among successor states.³⁹⁹

The full scope of the savings provision with regard to the extent of prohibitions that may be maintained following termination is unclear. “Property in which a foreign country or national thereof has any interest” has been interpreted broadly by the courts, defining “interest” to mean “an interest of any nature whatsoever, direct or indirect.”⁴⁰⁰ In other words, the sanctioned entity need not own the property at issue in order to have an interest in it.⁴⁰¹ The reference in the savings provision to “that property [deemed] necessary [for purpose of resolving] claims involving such country or its nationals”⁴⁰² arguably refers only to blocked property owned by the sanctioned entity liable for claims. Under this interpretation, the full range of prohibitions under the relevant sanctions regulations could no longer be enforced in the event the underlying national emergency is terminated, even if outstanding claims exist.

The Export Control Reform Act of 2018

In 2018, Congress passed the Export Control Reform Act (ECRA).⁴⁰³ The legislation repealed the expired Export Administration Act of 1979,⁴⁰⁴ the regulations of which had been continued by reference to IEEPA since 2001.⁴⁰⁵ ECRA became the new statutory authority for Export Administration Regulations. Nevertheless, several export controls addressed in the Export Administration Act of 1979 were not updated in the Export Control Reform Act of 2018;⁴⁰⁶ instead, Congress chose to require the President to continue to use IEEPA to continue to implement the three sections of the Export Administration Act of 1979 that were not repealed.⁴⁰⁷

³⁹⁷ 50 U.S.C. §1706(a)(1).

³⁹⁸ S. Rep. No. 95-466, at 6 (1977) (noting that “blocked assets may continue to be blocked by the President despite termination of a state of emergency, the National Emergencies Act notwithstanding, unless Congress specifies otherwise” and that “[n]othing in this act is intended by the committee to interfere with the authority of the President to continue blocking assets which are presently blocked, or to impede the settlement of claims of U.S. citizens against foreign countries”).

³⁹⁹ E.O. 13304, Termination of Emergencies With Respect to Yugoslavia and Modification of Executive Order 13219 of June 26, 2001, 68 *Federal Register* 32315 (May 29, 2003).

⁴⁰⁰ See, e.g., *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 67 (D.D.C. 2002), *aff’d*, 333 F.3d 156 (D.C. Cir. 2003).

⁴⁰¹ See *Glob. Relief Found., Inc. v. O’Neill*, 315 F.3d 748, 753 (7th Cir. 2002) (holding that covered “interest” need not be a *legal* interest “in the way that a trustee is legal owner of the corpus even if someone else enjoys the beneficial interest”).

⁴⁰² 50 U.S.C. §1706(a)(1) (emphasis added).

⁴⁰³ Export Control Reform Act of 2018 (ECRA), P.L. 115-232.

⁴⁰⁴ *Ibid.* §1766(a).

⁴⁰⁵ E.O. 13222.

⁴⁰⁶ ECRA §1766(a). Sections 11A, 11B, and 11C of the Export Administration Act of 1979, codified at 50 U.S.C. §§4611, 4612, 4613, were not repealed.

⁴⁰⁷ ECRA §1766(b) (“The President shall implement [Sections 11A, 11B, and 11C of the Export Administration Act of 1979] by exercising the authorities of the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).”).

Going forward, Congress may revisit these provisions, which all relate to deterring the proliferation of weapons of mass destruction.

Appendix A. NEA and IEEPA Use

Table A-I. National Emergencies Declared Pursuant to the NEA as of January 15, 2024

*Greyed lines indicate emergencies declared pursuant to the NEA but that did not invoke IEEPA.

	Title of E.O. or Procl. Declaring National Emergency Pursuant to NEA	Date of Declaration	Date of Revocation	Originating E.O./Procl.	Revoking E.O./Procl.
1	Blocking Iranian Government Property	11/14/1979	Ongoing	12170	
2	Sanctions Against Iran	4/17/1980	4/17/1981	12211	Expired
3	Continuation of Export Control Regulations	10/14/1983	12/20/1983	12444	12451
4	Continuation of Export Control Regulations	3/30/1984	7/12/1985	12470	12525
5	Prohibiting Trade and Certain Other Transactions Involving Nicaragua	5/1/1985	3/13/1990	12513	12707
6	Prohibiting Trade and Certain Other Transactions Involving South Africa	9/9/1985	7/10/1991	12532	12769
7	Prohibiting Trade and Certain Transactions Involving Libya	1/7/1986	9/20/2004	12543	13357
8	Prohibiting Certain Transactions With Respect to Panama	4/8/1988	4/5/1990	12635	12710
9	Blocking Iraqi Government Property and Prohibiting Transactions with Iraq	8/2/1990	7/29/2004	12722	13350
10	Continuation of Export Control Regulations	9/30/1990	9/30/1993	12730	12867
11	Chemical and Biological Weapons Proliferation	11/16/1990	11/11/1994	12735	12938
12	Prohibiting Certain Transactions with Respect to Haiti	10/4/1991	10/14/1994	12775	12932
13	Blocking "Yugoslav Government" Property and Property of the Governments of Serbia and Montenegro	5/30/1992	5/28/2003	12808	13304
14	To Suspend the Davis-Bacon Act of March 3, 1931, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Andrew ^a	10/14/1992	3/6/1993	6491	6534
15	Prohibiting Certain Transactions Involving UNITA	9/26/1993	5/6/2003	12865	24857
16	Measures To Restrict The Participation By United States Persons In Weapons Proliferation Activities	9/30/1993	9/29/1994	12868	12930
17	Continuation of Export Control Regulations	6/30/1994	8/19/1994	12923	12924
18	Continuation of Export Control Regulations	8/19/1994	4/4/2001	12924	13206

	Title of E.O. or Procl. Declaring National Emergency Pursuant to NEA	Date of Declaration	Date of Revocation	Originating E.O./Procl.	Revoking E.O./Procl.
19	Measures To Restrict The Participation By United States Persons In Weapons Proliferation Activities	9/29/1994	11/14/1994	12930	12938
20	Proliferation of Weapons of Mass Destruction	11/14/1994	Ongoing	12938	
21	Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process	1/23/1995	09/09/2019	12947	12947
22	Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources	3/15/1995	Ongoing	12957	
23	Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers	10/21/1995	Ongoing	12978	
24	Regulation of the Anchorage and Movement of Vessels with Respect to Cuba	3/1/1996	Ongoing	6867	
25	Declaration of a State of Emergency and Release of Feed Grain from the Disaster Reserve	7/1/1996	07/01/1997	6907	Expired
26	Prohibiting New Investment in Burma	5/20/1997	10/7/2016	13047	13742
27	Blocking Sudanese Government Property and Prohibiting Transactions With Sudan	11/3/1997	Ongoing	13067	
28	Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting New Investment in the Republic of Serbia in Response to the Situation in Kosovo	6/9/1998	5/28/2003	13088	13304
29	Blocking Property and Prohibiting Transactions With the Taliban	7/4/1999	7/2/2002	13129	13268
30	Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted From Nuclear Weapons	6/21/2000	6/21/2012	13159	Expired
31	Prohibiting the Importation of Rough Diamonds From Sierra Leone	1/18/2001	1/15/2004	13194	13324
32	Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans	6/26/2001	Ongoing	13219	
33	Continuation of Export Control Regulations	8/17/2001	Ongoing	13222	
34	Declaration of National Emergency by Reason of Certain Terrorist Attacks	9/14/2001	Ongoing	7463	
35	Blocking Property and Prohibiting Transactions With Persons Who Commit,	9/23/2001	Ongoing	13224	

	Title of E.O. or Procl. Declaring National Emergency Pursuant to NEA	Date of Declaration	Date of Revocation	Originating E.O./Procl.	Revoking E.O./Procl.
	Threaten To Commit, or Support Terrorism				
36	Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe	3/6/2003	Ongoing	13288	
37	Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest	5/22/2003	Ongoing	13303	
38	Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria	5/11/2004	Ongoing	13338	
39	Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods From Liberia	7/22/2004	11/12/2015	13348	13710
40	To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina ^b	9/8/2005	11/3/2005	7924	7959
41	Blocking Property of Certain Persons Contributing to the Conflict in Cote d'Ivoire	2/7/2006	9/14/2016	13396	13739
42	Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus	6/16/2006	Ongoing	13405	
43	Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo	10/27/2006	Ongoing	13413	
44	Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions	8/1/2007	Ongoing	13441	
45	Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals	6/26/2008	Ongoing	13466	
46	Declaration of a National Emergency With Respect to the 2009 H1N1 Influenza Pandemic	10/23/2009	10/22/2010	8443	Expired
47	Blocking Property of Certain Persons Contributing to the Conflict in Somalia	4/12/2010	Ongoing	13536	
48	Blocking Property and Prohibiting Certain Transactions Related to Libya	2/25/2011	Ongoing	13566	
49	Blocking Property of Transnational Criminal Organizations	7/24/2011	Ongoing	13581	
50	Blocking Property of Persons Threatening the Peace, Security, or Stability of Yemen	5/16/2012	Ongoing	13611	

	Title of E.O. or Procl. Declaring National Emergency Pursuant to NEA	Date of Declaration	Date of Revocation	Originating E.O./Procl.	Revoking E.O./Procl.
51	Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted From Nuclear Weapons	6/25/2012	5/26/2015	13617	13695
52	Blocking Property of Certain Persons Contributing to the Situation in Ukraine	3/6/2014	Ongoing	13660	
53	Blocking Property of Certain Persons With Respect to South Sudan	4/3/2014	Ongoing	13664	
54	Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic	5/12/2014	Ongoing	13667	
55	Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela	3/8/2015	Ongoing	13692	
56	Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities	4/1/2015	Ongoing	13694	
57	Blocking Property of Certain Persons Contributing to the Situation in Burundi	11/22/2015	11/18/2021	13712	14059
58	Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption	12/20/2017	Ongoing	13818	
59	Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election	9/12/2018	Ongoing	13848	
60	Blocking Property of Certain Persons Contributing to the Situation in Nicaragua	11/27/2018	Ongoing	13851	
61	Declaring a National Emergency Concerning the Southern Border of the United States	2/15/2019	1/20/2021	9844	10142
62	Securing the Information and Communications Technology and Services Supply Chain	5/15/2019	Ongoing	13873	
63	Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Mali	07/26/2019	Ongoing	13882	
64	Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria	10/17/2019	Ongoing	13894	
65	Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak	03/13/2020	Ongoing	9994	
66	Securing the United States Bulk-Power System	05/01/2020	05/01/2021	13920	Expired
67	Blocking Property of Certain Persons Associated With the International Criminal Court	06/11/2020	04/01/2021	13928	14022

	Title of E.O. or Procl. Declaring National Emergency Pursuant to NEA	Date of Declaration	Date of Revocation	Originating E.O./Procl.	Revoking E.O./Procl.
68	Hong Kong Normalization	07/14/2020	Ongoing	13936	
69	Critical Minerals	09/30/2020	09/30/2021	13953	Expired
70	Investments that Finance Chinese Military Companies	11/12/2020	Ongoing	13959	
71	Blocking Property With Respect to the Situation in Burma	02/10/2021	Ongoing	14014	
72	Blocking Property With Respect to Specified Harmful Foreign Activities of the Russian Federation	04/15/2021	Ongoing	14024	
73	Imposing Sanctions on Certain Persons With Respect to the Humanitarian and Human Rights Crisis in Ethiopia	09/17/2021	Ongoing	14046	
74	Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade	12/15/2021	Ongoing	14059	
75	Protecting Certain Property of Da Afghanistan Bank for the Benefit of the People of Afghanistan	02/11/2022	Ongoing	14064	
76	Declaration of National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Russian-Affiliated Vessels to United States Ports	04/21/2022	Ongoing	10371	
77	Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules From Southeast Asia ^c	06/06/2022	Ongoing	10414	
78	Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home	07/19/2022	Ongoing	14078	
79	Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern	08/09/2023	Ongoing	14105	

Source: CRS, as of January 15, 2024.

Notes: Greyed lines indicate emergencies declared pursuant to the NEA that did not invoke IEEPA. This table tracks emergencies that have been declared and their ultimate disposition. It does not include expansions or amendments to those emergencies. For example, Executive Order 14024, which declared a national emergency with respect to specified harmful activities of the Russian Federation in April of 2021, has been the basis of certain actions taken under IEEPA against the Russian Federation since it invaded Ukraine in February 2022. See, e.g., E.O. 14065 of February 21, 2022, “Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine,” 87 *Federal Register* 10293, February 23, 2022; E.O. 14066 of March 8, 2022, “Prohibiting Certain Imports and New Investments with Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine,” 87 *Federal Register* 13625, March 10, 2022; E.O. 14068 of March 11, 2022, “Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression,” 87 *Federal Register* 14381, March 15, 2022.

- a. Although the President did not explicitly use that phrase “declare a national emergency,” the Davis-Bacon act, as amended at the date of the proclamation, and as noted in the proclamation, provided for the suspension of the act’s provisions “in the event of a national emergency.”
- b. Similar to the suspension of the Davis-Bacon act in 1992, this proclamation was somewhat anomalous. The proclamation did not cite to the NEA when declaring a national emergency for the purposes of suspending the act. However, the revoking proclamation did cite the NEA. Moreover, Rep. George Miller (CA) introduced a resolution to terminate the declaration of a national emergency pursuant to the NEA. H.J.Res. 69 (Miller), 109th Cong., 1st sess., September 8, 2005.
- c. On June 6, 2022, President Biden declared an “an emergency to exist with respect to the threats to the availability of sufficient electricity generation capacity to meet expected customer demand.” Although the President did not cite the NEA, the statute he invoked may fall under the NEA. U.S. Congress, Senate Special Committee on the Termination of the National Emergency, *Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency*, committee print, 93rd Cong., 1st sess., September 1973 (Washington, DC: GPO, 1973), pp. xi, 32, 243; U.S. Congress, House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, *National Emergencies Act*, hearing on H.R. 3884, 94th Cong., 1st sess., March 6, 18, 19, and April 9, 1975 (Washington, DC: GPO, 1975), p. 117: “American importers have relied extensively on the practice of warehousing merchandise in Customs bonded warehouses for periods in excess of the initial statutory periods afforded by sections 491, 557, and 550 of the Tariff Act of 1930. Such extensions have been made possible by Customs regulations authorized by Proclamation 2048 which President Truman Issued under the authority of section 318 of the Tariff Act of 1930 (10 U.S.C. §1318), an emergency statute. Due to the extensive reliance on these Customs regulations in the past, a statutory replacement for the existing authority conferred on this Department by Proclamation 2948 will be recommended.” Although the letter was written in 1974 in response to other bills, it was included in hearings on H.R. 3884, which was the bill that ultimately became the NEA. Commerce argued in subsequent regulations that the agency “[did] not agree that Proclamation 10414 fails to conform with the requirements of the [NEA].” International Trade Administration, “Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414,” 87 *Federal Register* 56868, September 16, 2022.

Table A-2. Resolutions to Terminate National Emergencies

Resolution	Cong.	Targeted Declaration of National Emergency	Disposition of Resolution	IEEPA or Other
H.J.Res. 69	109	Proclamation 7924 of September 8, 2005, “To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina”	Introduced	Other
H.J.Res. 46	116	Proclamation 9844 of February 15, 2019, “Declaring a National Emergency Concerning the Southern Border of the United States.”	Failed to pass over veto	Other

Resolution	Cong.	Targeted Declaration of National Emergency	Disposition of Resolution	IEEPA or Other
S.J.Res. 10	116	Proclamation 9844 of February 15, 2019, "Declaring a National Emergency Concerning the Southern Border of the United States."	Introduced	Other
S.J.Res. 54	116	Proclamation 9844 of February 15, 2019, "Declaring a National Emergency Concerning the Southern Border of the United States."	Failed to pass over veto	Other
H.J.Res. 75	116	Proclamation 9844 of February 15, 2019, "Declaring a National Emergency Concerning the Southern Border of the United States."	Introduced	Other
H.J.Res. 85	116	Proclamation 9844 of February 15, 2019, "Declaring a National Emergency Concerning the Southern Border of the United States."	Introduced	Other
H.J.Res. 46	117	Proclamation 9994 of March 13, 2020, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak."	Introduced	Other

Resolution	Cong.	Targeted Declaration of National Emergency	Disposition of Resolution	IEEPA or Other
H.J.Res. 52	117	Proclamation 9994 of March 13, 2020, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak."	Introduced	Other
S.J.Res. 38	117	Proclamation 9994 of March 13, 2020, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak."	Passed Senate	Other
S.J.Res. 63	117	Proclamation 9994 of March 13, 2020, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak."	Passed Senate	Other
H.J.Res. 7	118	Proclamation 9994 of March 13, 2020, "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak."	Became Law	Other
H.J.Res. 68	118	Executive Order 13413 of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo."	Failed House	IEEPA

Resolution	Cong.	Targeted Declaration of National Emergency	Disposition of Resolution	IEEPA or Other
H.J.Res. 70	118	Executive Order 13566 of February 25, 2011, "Blocking Property and Prohibiting Certain Transactions Related to Libya."	Failed House	IEEPA
H.J.Res. 71	118	Executive Order 13303 of May 22, 2003, "Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest."	Failed House	IEEPA
H.J.Res. 74	118	Executive Order 13611 of May 16, 2012, "Blocking Property of Persons Threatening the Peace, Security, or Stability of Yemen."	Failed House	IEEPA
H.J.Res. 79	118	Executive Order 13338 of May 11, 2004, "Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria."	Failed House	IEEPA

Source: CRS as of January 15, 2024.

Notes: Greyed lines indicate emergencies declared pursuant to the NEA that did not invoke IEEPA.

Table A-3. IEEPA National Emergency Use by Executive Order

In chronological order, from first use (1979) to January 15, 2024

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
Administration of President Jimmy Carter (1977-1981)			
12170 (November 14, 1979; 44 FR 65729)	Iran (hostage taking)	Declares national emergency; blocks Iran government property	Emergency requires annual renewal; other parts revoked and replaced, E.O. 13599 (2012)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12205 (April 7, 1980; 45 FR 24099)	Iran (hostage taking)	Prohibits certain transactions	Revoked in part by E.O. 12282 (1981)
12211 (April 17, 1980; 45 FR 26685)	Iran (hostage taking)	Prohibits transactions	Revoked in part by E.O. 12282 (1981)
12276 (January 19, 1981; 46 FR 7913)	Iran (hostage taking—resolution)	Establishes escrow accounts	Ratified by E.O. 12294 (1981)
12277 (January 19, 1981; 46 FR 7915)	Iran (hostage taking—resolution)	Transfers Iran government funds	Ratified by E.O. 12294 (1981)
12278 (January 19, 1981; 46 FR 7917)	Iran (hostage taking—resolution)	Transfers Iran government assets overseas	Ratified by E.O. 12294 (1981)
12279 (January 19, 1981; 46 FR 7917)	Iran (hostage taking—resolution)	Transfers Iran government assets held in U.S. banks	Ratified by E.O. 12294 (1981)
12280 (January 19, 1981; 46 FR 7921)	Iran (hostage taking—resolution)	Transfers Iran government financial assets held by non-banks	Ratified by E.O. 12294 (1981)
12281 (January 19, 1981; 46 FR 7923)	Iran (hostage taking—resolution)	Transfers other Iran government assets	Ratified by E.O. 12294 (1981)
12282 (January 19, 1981; 46 FR 7925)	Iran (hostage taking—resolution)	Revokes prohibitions against transactions involving Iran	Ratified by E.O. 12294 (1981)
12283 (January 19, 1981; 46 FR 7927)	Iran (hostage taking—resolution)	Non-prosecution of claims of Iran hostages	Ratified by E.O. 12294 (1981)
12284 (January 19, 1981; 46 FR 7929)	Iran (hostage taking—resolution)	Restricts transfer of property of the Shah	Ratified by E.O. 12294 (1981)
12285 (January 19, 1981; 46 FR 7931)	Iran (hostage taking—resolution)	Establishes Commission on Hostage Compensation	Revoked by E.O. 12379 (1982)
Administration of President Ronald Reagan (1981-1989)			
12294 (February 24, 1981; 46 FR 14111)	Iran (hostage taking—resolution)	Suspends claims and litigation against Iran	Amended by E.O. 12379 (1982)
12444 (October 14, 1983; 48 FR 48215)	Expiration of Export Administration Act of 1979 (EAA)	Continues Export Administration Regulations (EAR)	Revoked by E.O. 12451 (1983) (EAA reauthorized)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12470 (March 30, 1984; 49 FR 13099)	Expiration of EAA	Continues EAR	Revoked by E.O. 12525 (1985) (EAA reauthorized)
12513 (May 1, 1985; 50 FR 18629)	Nicaragua (civil war)	<u>Declares national emergency</u> ; prohibits imports, exports, air traffic, use of U.S. ports	Revoked by E.O. 12707 (1990)
12532 (September 9, 1985; 50 FR 36861)	South Africa (apartheid, to meet requirements of U.N. Security Council (UNSC) Resolution)	<u>Declares national emergency</u> ; prohibits loans to government, crime control exports, nuclear-related exports, military-related imports; supports Sullivan Principles	Revoked by E.O. 12769 (1991)
12535 (October 1, 1985; 50 FR 40325)	South Africa (apartheid, to meet requirements of UNSC Resolution)	Prohibits import of krugerrands	Revoked by E.O. 12769 (1991)
12543 (January 1, 1986; 51 FR 875)	Libya (terrorism, regional unrest)	<u>Declares national emergency</u> ; prohibits most imports and exports, transactions relating to transportation to/from Libya, performance of contract obligations in support of Libyan projects, bank loans, financial transactions related to travel to Libya	Revoked by E.O. 13357 (2004)
12544 (January 8, 1986; 51 FR 1235)	Libya (terrorism, regional unrest)	Blocks Libyan Government assets in United States	Revoked by E.O. 13357 (2004)
12635 (April 8, 1988; 53 FR 12134)	Panama (finding government of Noriega and Palma a threat)	<u>Declares national emergency</u> ; blocks Panama assets in United States	Revoked by E.O. 12710 (1990)
Administration of President George H.W. Bush (1989-1993)			
12722 (August 2, 1990; 55 FR 31803)	Iraq (invasion of Kuwait; to meet requirements of UNSC Resolution)	<u>Declares national emergency</u> ; blocks Iraq Government assets in U.S.; prohibits most export and import; restricts transactions related to travel; prohibits loans	Revoked by E.O. 13350 (2004)
12723 (August 2, 1990; 55 FR 31805)	Kuwait (after Iraq's invasion; to meet requirements of UNSC Resolution)	<u>Declares national emergency</u> ; blocks Kuwait Government assets in U.S.	Revoked by E.O. 12725 (1990)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12724 (August 9, 1990; 55 FR 33089)	Iraq (invasion of Kuwait; to meet requirements of UNSC Resolution)	Blocks Iraq Government assets in U.S.; prohibits most export and import; restricts transactions related to travel; prohibits loans	Revoked by E.O. 13350 (2004)
12725 (August 9, 1990; 55 FR 33091)	Kuwait (after Iraq's invasion, to meet requirements of UNSC Resolution)	Blocks Kuwait Government assets in U.S.; prohibits most export and import; restricts transactions related to travel; prohibits loans	Revoked by E.O. 12771 (1991)
12730 (September 30, 1990; 55 FR 40373)	Expiration of EAA	Continues EAR	Revoked by E.O. 12867 (1993)
12735 (November 16, 1990; 55 FR 48587)	Chemical and biological weapons proliferation	<u>Declares national emergency</u> ; prohibits transactions	Revoked and replaced by E.O. 12938 (1994)
12775 (October 4, 1991; 56 FR 50641)	Haiti (military coup)	<u>Declares national emergency</u> ; blocks Haiti Government assets in U.S.; prohibits transactions	Revoked by E.O. 12932 (1994)
12779 (October 28, 1991; 56 FR 55975)	Haiti (military coup)	Blocks Haiti Government assets in U.S.; prohibits export and import, transactions	Revoked by E.O. 12932 (1994)
12801 (April 15, 1992; 57 FR 14319)	Libya (to meet requirements of UNSC Resolution)	Bars overflight, takeoff and landing planes traveling to/from Libya	Revoked by E.O. 13357 (2004)
12808 (May 30, 1992; 57 FR 23299)	Yugoslavia (Serbia and Montenegro) (regional conflict; to meet requirements of UNSC Resolution)	<u>Declares national emergency</u> ; blocks Yugoslav Government assets in United States	Revoked by E.O. 13304 (2003)
12810 (June 5, 1992; 57 FR 24347)	Yugoslavia (Serbia and Montenegro) (regional conflict; to meet requirements of UNSC Resolution)	Blocks Yugoslav Government assets in U.S.; prohibits import and export, transactions related to travel, air traffic, loans, completing contracts, sports participation, tech/cultural exchanges	Revoked by E.O. 13304 (2003)
12817 October 21, 1992; 57 FR 48433)	Iraq (postwar; to meet requirements of UNSC Resolution)	Blocks assets	Revoked by E.O. 13350 (2004)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12831 (January 15, 1993; 58 FR 5253)	Yugoslavia (Serbia and Montenegro) (regional conflict)	Prohibits transshipment	Revoked by E.O. 13304 (2003)
Administration of President William Clinton (1993-2001)			
12846 (April 25, 1993; 58 FR 25771)	Yugoslavia (Serbia and Montenegro) (regional conflict; to meet requirements of UNSC Resolution)	Tightens sanctions, especially those relating to maritime restrictions	Revoked by E.O. 13304 (2003)
12853 (June 30, 1993; 58 FR 35843)	Haiti (military coup)	Blocks assets of regime; prohibits export of petroleum, arms, and related materiel	Revoked by E.O. 12932 (1994)
12865 (September 26, 1993; 58 FR 51005)	UNITA (Angola) (to meet requirements of UNSC Resolution)	<u>Declares national emergency</u> ; prohibits sales to UNITA and UNITA-controlled regions	Revoked by E.O. 13298 (2003)
12868 (September 30, 1993; 58 FR 51749)	Weapons proliferation	<u>Declares national emergency</u> ; controls exports; prohibits transactions with those found not in compliance with controls	Revoked and replaced by E.O. 12930 (1994)
12872 (October 18, 1993; 58 FR 54029)	Haiti (military coup)	Blocks assets of those impeding democratization process	Revoked by E.O. 12932 (1994)
12914 (May 7, 1994; 59 FR 24339)	Haiti (military coup)	Blocks assets of military and participants in 1991 overthrow; prohibits air traffic	Revoked by E.O. 12932 (1994)
12917 (May 21, 1994; 59 FR 26925)	Haiti (military coup)	Prohibits imports	Revoked by E.O. 12932 (1994)
12920 (June 10, 1994; 59 FR 30501)	Haiti (military coup)	Prohibits certain financial transactions, exports	Revoked by E.O. 12932 (1994)
12922 (June 21, 1994; 59 FR 32645)	Haiti (military coup)	Blocks assets of certain individuals	Revoked by E.O. 12932 (1994)
12923 (June 30, 1994; 59 FR 34551)	Expiration of EAA	Continues EAR	Revoked and replaced by E.O. 12924 (1994)
12924 (August 19, 1994; 59 FR 34551)	Expiration of EAA	Continues EAR	Revoked by E.O. 13206 (2001); previously amended by E.O. 12981 (1995)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12930 (September 29, 1994; 59 FR 50475)	Proliferation of weapons of mass destruction	<u>Declares national emergency</u> ; controls exports; prohibits transactions with those found not in compliance with controls	Revoked and replaced by E.O. 12938 (1994)
12934 (October 25, 1994; 59 FR 54117)	Bosnian Serb-controlled areas of Bosnia and Herzegovina (to meet requirements of UNSC resolution)	Blocks assets; prohibits export, maritime access to certain ports	Revoked by E.O. 13304 (2003)
12938 (November 19, 1994; 59 FR 59099)	Proliferation of weapons of mass destruction	<u>Declares national emergency</u> ; controls exports; prohibits transactions with those found not in compliance with controls	Requires annual renewal; amended by E.O. 13094 (1998); E.O. 13128 (1999); E.O. 13382 (2005)
12947 (January 23, 1995; 60 FR 5079)	Terrorists who disrupt Middle East peace process	<u>Declares national emergency</u> ; blocks assets; prohibits transactions	Revoked by E.O. 13886 (2019)
12957 (March 15, 1995; 60 FR 14615)	Iran (weapons proliferation)	<u>Declares national emergency</u> ; prohibits investment in oil development	Requires annual renewal; other parts revoked and restated in E.O. 12959 (1995)
12959 (May 6, 1995; 60 FR 24757)	Iran (weapons proliferation)	Prohibits investment in oil development	Revoked in part by E.O. 13059 (1997)
12978 (October 21, 1995; 60 FR 54579)	Significant narcotics traffickers (initially Colombia)	<u>Declares national emergency</u> ; blocks assets; prohibits transactions	Requires annual renewal; technical amendments in E.O. 13286 (2003)
12981 (December 5, 1995; 60 FR 62981; 50 U.S.C. 4603 note)	EAA	Amends the administration of export controls.	Amended by E.O. 13020 (1996); E.O. 13206 (1996); E.O. 13117 (1999)
13020 (October 12, 1996; 61 FR 54079; 50 U.S.C. 4603 note)	EAA	Further amends the administration of export controls.	Amended by E.O. 13026 (1996)
13026 (November 15, 1996; 61 FR 58767; 50 U.S.C. 4603 note)	EAA	Further amends the administration of export controls. Adds rules for encryption products.	Exempted from authorities of E.O. 13206 (2001)
13047 (May 22, 1997; 62 FR 28301)	Burma (military government; to implement Sec. 570 of P.L. 104-208)	<u>Declares national emergency</u> ; blocks new investment	Revoked by E.O. 13742 (2016)
13059 (August 19, 1997; 62 FR 44531)	Iran (weapons proliferation, terrorism, regional stability)	Blocks imports, exports	Expands applicability of E.O. 12957 (1995), E.O. 12959 (1995)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13067 (November 3, 1997; 62 FR 59989)	Sudan (conflict)	<u>Declares national emergency</u> ; blocks Sudan Government assets; prohibits exports, imports, other transactions	Requires annual renewal; revoked in part by E.O. 13761 (2017)
13069 (December 12, 1997; 62 FR 65989)	UNITA (Angola) (war)	Prohibits certain transaction	Revoked by E.O. 13298 (2003)
13088 (June 9, 1998; 63 FR 32109)	Yugoslavia (Serbia and Montenegro) (war)	<u>Declares national emergency</u> ; blocks Yugoslav Government assets; prohibits transactions	Revoked by E.O. 13304 (2003); previously amended by E.O. 13121 (1999) and E.O. 13192 (2001)
13094 (July 28, 1998; 63 FR 40803)	Proliferation of weapons of mass destruction	Prohibits some transactions, assistance, imports	Amends E.O. 12938 (1994)
13098 (August 18, 1998; 63 FR 44771)	UNITA (Angola) (war; to meet requirements of UNSC resolution)	Blocks UNITA assets in U.S.; prohibits imports from and exports to UNITA-controlled or influences industries	Revoked by E.O. 13298 (2003)
13099 (August 20, 1998; 63 FR 45167)	Terrorists who disrupt the Middle East peace process	Adds Usama bin Laden and others to the terrorist list	Amends E.O. 12947 (1995); see above
13121 (April 30, 1999; 64 FR 24021)	Yugoslavia (Serbia and Montenegro) (war)	Blocks Yugoslav Government assets; prohibits transactions	Revoked by E.O. 13304 (2003)
13128 (June 25, 1999; 64 FR 34704)	Proliferation of weapons of mass destruction	Implements the Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act.	Related to E.O. 12938 (1994); see above
13129 (July 4, 1999; 64 FR 36759)	Taliban (terrorism)	<u>Declares national emergency</u> ; blocks property	National emergency terminated by E.O. 13268 (2002); see, however, E.O. 13224 (2001)
E.O. 13159 (June 21, 2000; 65 FR 39279)	Russia for misuse of highly enriched uranium extractions	<u>Declares national emergency</u> ; blocks property	Superseded by E.O. 13617 (2012)
13192 (January 17, 2001; 66 FR 7379)	Yugoslavia (Serbia and Montenegro) (war)	Substantially expands sanctions in E.O. 13088 (1998) to apply to humanitarian crisis in Kosovo	Revoked by E.O. 13304 (2003)
13194 (January 18, 2001; 66 FR 7389)	Sierra Leone (diamond trade)	<u>Declares national emergency</u> ; prohibits diamond imports	Revoked by E.O. 13324 (2004); previously amended by E.O. 13312 (2003)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
Administration of President George W. Bush (2001-2009)			
13213 (May 22, 2001; 66 FR 28829)	Sierra Leone (diamond trade)	Expands prohibitions on diamond trade	Revoked by E.O. 13324 (2004); previously amended by E.O. 13312 (2003)
13219 (June 26, 2001; 66 FR 34775)	Western Balkans (destabilization postwar)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal; amended by E.O. 13304 (2003); see also E.O. 14033 (2021)
13222 (August 17, 2001; 66 FR 44025)	Expiration of EAA	<u>Declares national emergency</u> with the expiration of the Export Administration Act of 1979 (EAA). Continues Export Administration Regulations (EAR) and three remaining statutory provisions in the EAA relating to weapons proliferation	Requires annual renewal; amended by E.O. 13637 (2013)
13224 (September 23, 2001; 66 FR 49079)	Terrorism	<u>Declares national emergency</u> ; blocks property; prohibits transactions	Requires annual renewal; amended by E.O. 13268 (2002), E.O. 13284 (2003), E.O. 13372 (2005), and E.O. 13886 (2019)
13268 (July 2, 2002; 67 FR 44751)	Taliban and Terrorism	Terminates E.O. 13129 (1999); adds “Taliban” and others to restricted list (2001)	Expanded by E.O. 13372 (2005); amended E.O. 13224 (2001)
13288 (March 6, 2003; 68 FR 11457)	Zimbabwe (undermining democratic processes)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal; superseded in part by E.O. 13391 (2005)
13290 March 20, 2003; 68 FR 14307; 50 U.S.C. 1702 note)	Iraq (war)	Authorizes the confiscation and vesting of property	Amended by E.O. 13350 (2004)
13298 (May 6, 2003; 68 FR 24857)	UNITA (Angola)	Terminates earlier emergency and related authorities	Revokes earlier orders
13303 (May 22, 2003; 68 FR 31931)	Iraq (war)	<u>Declares national emergency</u> ; Protects certain property	Requires annual renewal; amends E.O. 13290 (2003); amended by E.O. 13364 (2004); expanded on by E.O. 13315 (2003), E.O. 13350 (2004), E.O. 13438 (2007), and E.O. 13668 (2014)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13304 (May 28, 2003; 68 FR 32315)	Yugoslavia (regional war)	Terminates earlier emergency	Revokes and modifies earlier orders
13310 (July 28, 2003; 68 FR 44853)	Burma (military government)	Blocks property	Revoked by E.O. 13742 (2016)
13312 (July 3, 2003; 68 FR 45151))	Sierra Leone and Liberia (conflict)	Implements the Clean Diamond Trade Act	Revoked by E.O. 13324 (2004)
13315 (August 28, 2003; 68 FR 52315)	Iraq (former regime)	Blocks property	Superseded by E.O. 13350 (2004)
13324 (January 15, 2004; 69 FR 2823)	Sierra Leone and Liberia (conflict)	Terminates earlier emergency	Revokes E.O. 13194 (2001) and E.O. 13213 (2001)
13338 (May 11, 2004; 69 FR 26751)	Syria (civil conflict)	<u>Declares national emergency</u> ; blocks property of those who export certain goods to Syria	Requires annual renewal. Modified by E.O. 13460 (2008). See also E.O. 13399 (2006), E.O. 13572 (2011), E.O. 13573 (2011), E.O. 13582 (2011), E.O. 13606 (2012), and E.O. 13608 (2012)
13348 (July 22, 2004; 69 FR 44885)	Liberia (corruption, to meet requirements of UNSC resolution)	<u>Declares national emergency</u> ; blocks property; prohibits imports	Revoked by E.O. 13710 (2015)
13350 (July 29, 2004; 69 FR 46055)	Iraq (postwar)	Ends emergency from 1990 Kuwait invasion	Revokes several earlier E.O.
13357 (September 20, 2004; 69 FR 56665)	Libya (terrorism)	Terminates earlier emergency	Revokes earlier orders
13364 (November 29, 2004; 69 FR 70177)	Iraq (postwar)	Amends transaction controls and regulations on the Development fund for Iraq	Amends E.O. 13303 (2003)
13372 (February 16, 2005; 70 FR 8499)	Terrorism	Clarifies use of sanctions	Amends E.O. 12947 (1995), E.O. 13224 (2001)
13382 (June 28, 2005; 70 FR 38567)	Weapons proliferation	Expands earlier orders; blocks property	Amends E.O. 12938 (1994) and 13094 (1998)
13391 (November 22, 2005; 70 FR 71201)	Zimbabwe (undermining democratic processes)	Blocks property	Amends and supersedes part of E.O. 13288 (2003)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13396 (February 7, 2006; 71 FR 7389)	Cote d'Ivoire (conflict)	<u>Declares national emergency</u> ; blocks property	Revoked by E.O. 13739 (2016)
13399 (April 25, 2006; 71 FR 25059)	Syria (civil war)	Blocks additional property	Expands E.O. 13338 (2004)
13400 (April 26, 2006; 71 FR 25483)	Sudan (Darfur)	Blocks additional property	Expands E.O. 13067 (1997)
13405 (June 16, 2006; 71 FR 35485)	Belarus (undermining democracy)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal
13412 (October 13, 2006; 71 FR 61369)	Sudan (Darfur, regional stability)	Expands E.O. 13067 (1997); blocks property and transactions	Revoked by E.O. 13761 (2017)
13413 (October 27, 2006; 71 FR 64105)	Democratic Republic of the Congo (regional stability)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal; amended by E.O. 13671 (2014)
13438 (July 17, 2007; 72 FR 39719)	Those who threaten stabilization efforts in Iraq	Blocks additional property	Expands E.O. 13303 (2003)
13441 (August 1, 2007; 72 FR 43499)	Those who threaten the sovereignty of Lebanon (primarily Syria)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal
13448 October 18, 2007; 72 FR 60223)	Burma (military government)	<u>Declares national emergency</u> ; blocks property and transactions	Revoked by E.O. 13742 (2016)
13460 (February 13, 2008; 73 FR 8991)	Syria (civil conflict)	Blocks property of those who support certain activities in Syria	Amends E.O. 13338 (2004)
13464 April 30, 2008; 72 FR 24491)	Burma (military government)	Blocks property and transactions	Revoked by E.O. 13742 (2016)
13466 (June 26, 2008; 73 FR 36787)	North Korea (weapons proliferation, to meet requirements of UNSC resolution)	<u>Declares national emergency</u> ; blocks property and transactions	Requires annual renewal; see also E.O. 13551 (2010), E.O. 13570 (2011), E.O. 13687 (2015), E.O. 13722 (2016), and E.O. 13810 (2017)
13469 (July 25, 2008; 73 FR 43841)	Zimbabwe (undermining democracy)	Blocks property	Expands E.O. 13288 (2003) and 13391 (2005)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
Administration of President Barack Obama (2009-2017)			
13536 (April 12, 2010; 75 FR 19869)	Somalia (conflict, high seas piracy)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal; amended by E.O. 13620 (2012)
13551 (August 30, 2010; 75 FR 53837)	North Korea (weapons proliferation, to meet requirements of UNSC resolution)	Blocks property	Expands national emergency declared in E.O. 13466 (2008)
13553 (Sept, 28, 2010; 75 FR 60567)	Iran (human rights)	Blocks property including that of Iranian officials	Expands E.O. 12957 (1995)
13566 (February 25, 2011; 76 FR 11315)	Libya (stability)	<u>Declares national emergency</u> ; blocks property and transactions	Requires annual renewal; expanded by E.O. 13726 (2016)
13570 (April 18, 2011; 76 FR 22291)	North Korea (weapons proliferation, to meet requirements of UNSC resolution)	Blocks transactions	Expands E.O. 13466 (2008), 13551 (2010); expanded by E.O. 13687 (2015)
13572 (April 29, 2011; 76 FR 24787)	Syria (human rights)	Blocks property of human rights violators	Expands E.O. 13338 (2004), 13399 (2006), and 13460 (2008)
13573 (May 18, 2011; 76 FR 29143)	Syria (war)	Blocks property of senior government officials	Expands E.O. 13338 (2004), 13399 (2006), 13460 (2008), and 13572 (2011); amended by E.O. 13582 (2011)
13574 (May 23, 2011; 76 FR 30505)	Iran (weapons proliferation)	Implements new sanctions in Iran Sanctions Act of 1996	Revoked by E.O. 13716 (2016)
13581 (July 24, 2011; 76 FR 44757)	Transnational Criminal Organizations	<u>Declares national emergency</u> ; blocks property	Requires annual renewal; amended by E.O. 13863 (2019)
13582 (August 17, 2011; 76 FR 52209)	Syria (war)	Blocks property of Government of Syria and transactions, new investment, importation of petroleum and related products	Expands E.O. 13338 (2004), 13399 (2006), 13460 (2008), 13572 (2011), and E.O. 13573 (2011)
13590 (November 20, 2011; 76 FR 72609)	Iran (weapons proliferation)	Prohibits transactions related to Iran's energy and petrochemical sectors	Revoked by E.O. 13716 (2016)
13599 (February 5, 2012; 77 FR 6659)	Iran (weapons proliferation)	Blocks property of government and financial institutions	Expands E.O. 12957 (1995)
13606 (April 22, 2012; 77 FR 24571)	Iran and Syria (human rights)	Blocks property and denies visas	Expands E.O. 12957 (1995) and 13338 (2004)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13608 (May 1, 2012; 77 FR 26409)	Iran and Syria (sanctions evasion)	Blocks transactions and denies visas	Expands E.O. 12938 (1994), 12957 (1995), 13224 (2001), and 13338 (2004)
13611 (May 16, 2012; 77 FR 29533)	Yemen (stability)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal
13617 (June 25, 2012; 77 FR 38459)	Russia (misuse of highly enriched uranium extractions)	Blocks property	Revoked by E.O. 13695 (2015)
13619 (July 11, 2012; 77 FR 41243)	Burma (military government)	Blocks property	Revoked by E.O. 13742 (2016)
13620 July 20, 2012; 77 FR 43483)	Somalia (conflict)	Expands targets to include misappropriations, corruption, impeding humanitarian aid	Amends E.O. 13536 (2010)
13622 (July 30, 2012; 77 FR 45897)	Iran (weapons proliferation)	Additional sanctions	Revoked by E.O. 13716 (2016)
13628 (October 9, 2012; 77 FR 62139)	Iran (weapons proliferation, human rights, sanctions evasion)	Implements Iran Threat Reduction Act	Revoked by E.O. 13846 (2018); previously amended by E.O. 13716 (2016)
13637 (March 8, 2013; 78 FR 16131)	EAA	Delegates export authorities, coordinates responsibilities; amends E.O. 13222	Amends E.O. 13222 (2001)
13645 (June 3, 2013; 78 FR 33945)	Iran (weapons proliferation, human rights)	Implements Iran Freedom and Counter-Proliferation Act of 2012	Revoked by E.O. 13716 (2016)
13651 (August 6, 2013; 78 FR 48793)	Burma	Prohibits import of jadeite and rubies	Revoked by E.O. 13742 (2016)
13660 (March 6, 2014; 79 FR 13493)	Ukraine (stability)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal; expanded on by E.O. 13661 (2014); E.O. 13662 (2014); with additional actions in E.O. 13685 (2014); E.O. 13849 (2018); and E.O. 14065 (2022)
13661 (March 16, 2014; 79 FR 15535)	Russia (destabilization of Ukraine)	Blocks property	Expands E.O. 13660 (2014)
13662 (March 20, 2014; 79 FR 16169)	Russia (destabilization of Ukraine)	Blocks property	Expands E.O. 13660 (2014)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13664 (April 3, 2014; 79 FR 19283)	South Sudan (conflict)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal
13667 (May 12, 2014; 79 FR 28387)	Central African Republic (conflict)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal
13668 (May 27, 2014; 79 FR 31019)	Iraq (postwar)	Ends immunities granted to the Development Fund for Iraq	Expands E.O. 13303 (2003)
13671 (July 8, 2014; 79 FR 39949)	Democratic Republic of the Congo (regional stability)	Additional sanctions	Expands E.O. 13413 (2006)
13685 (December 19, 2014; 79 FR 77357)	Ukraine (destabilizing activities in Crimea)	Blocks property and transactions	Expands E.O. 13660 (2014)
13687 (January 2, 2015; 80 FR 819)	North Korea (weapons proliferation, to meet requirements of UNSC resolution)	Additional sanctions including on DPRK government officials and members of the Workers' Party of Korea	Expands E.O. 13466 (2008), 13551 (2010), 13570 (2011)
13692 (March 8, 2015; 80 FR 12747)	Venezuela (corruption, stability)	<u>Declares national emergency</u> ; blocks property and deny visas	Requires annual renewal; expanded on in E.O. 13808 (2017), E.O. 13827 (2018), E.O. 13835 (2018), E.O. 13850 (2018), E.O. 13857 (2019), and E.O. 13884 (2019)
13694 (April 1, 2015; 80 FR 18077)	Malicious Cyber-Enabled Activities	<u>Declares national emergency</u> ; blocks property	Requires annual renewal; amended by E.O. 13757 (2016), E.O. 13984 (2021)
13695 (May 26, 2015; 80 FR 30331)	Russia's misuse of highly enriched uranium extractions	Terminates emergency	Revokes E.O. 13617 (2012)
13710 (November 12, 2015; 80 FR 71679)	Liberia (corrupt government)	Terminates emergency	Revokes E.O. 13348 (2004)
13712 (November 22, 2015; 80 FR 73633)	Burundi (stability)	<u>Declares national emergency</u> ; blocks property	Terminated by E.O. 14054 (2021)
13716 (January 16, 2016; 81 FR 3693; 22 U.S.C. 8801 note)	Iran (nuclear weapons)	Implements U.S. obligations under the Joint Comprehensive Plan of Action	Revoked by E.O. 13846 (2018). Had revoked and modified earlier orders

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13722 (March 15, 2016; 81 FR 14943)	North Korea (weapons proliferation, to meet requirements of UNSC resolution)	Blocks property of North Korea government and central party; prohibits transactions	Expands E.O. 13466 (2008)
13726 (April 19, 2016; 81 FR 23559)	Libya (stability)	Additional sanctions	Expands E.O. 13566 (2011)
13739 (Sept. 14, 2016; 81 FR 63673)	Cote d'Ivoire (conflict)	Terminates emergency	Revokes E.O. 13396 (2006)
13742 (October 7, 2016; 81 FR 70593)	Burma	Terminates emergency	Revokes E.O. 13047 (1997), 13310 (2003), 13448 (2007), 13464 (2008), 13619 (2012), 13651 (2013)
13757 (December 28, 2016)	Malicious Cyber-Enabled Activities	Additional sanctions	Modifies E.O. 13694 (2015)
13761 (January 13, 2017; 82 FR 5331)	Sudan (war, human rights)	Recognizes "positive actions" by the Government of Sudan by removing some sanctions	Revokes in part E.O. 13067 (1997), in whole E.O. 13412 (2006); amended by E.O. 13804 (2017)
Administration of President Donald J. Trump (2017-2021)			
13804 (July 11, 2017; 82 FR 32611)	Sudan (war, human rights)	Extends deadlines in E.O. 13761 (2017)	Modifies E.O. 13761 (2017)
13808 (August 24, 2017; 82 FR 41155)	Venezuela (human rights, democracy, corruption)	Additional sanctions	Expands actions based on national emergency declared in E.O. 13692 (2015)
13810 (Sept. 20, 2017; 82 FR 44705)	North Korea (weapons proliferation, human rights)	Additional sanctions	Expands actions based on national emergency declared in E.O. 13466 (2008)
13818 (December 20, 2017; 82 FR 60839)	Global Magnitsky (human rights, corruption)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal
13827 (March 19, 2018; 83 FR 12469)	Venezuela (sanctions evasion)	Prohibits transactions, financing, trade in digital currency issued by or on behalf of the Government of Venezuela	Expands actions based on national emergency declared in E.O. 13692 (2015); amended by E.O. 13857 (2019)
13835 (May 21, 2018; 83 FR 24001)	Venezuela (economic mismanagement, public corruption, undermining democratic order, humanitarian and public health crisis)	Prohibits U.S. persons from purchasing debt owed the Government of Venezuela or trading in equity in which the Government holds at least a 50% stake	Expands actions based on national emergency declared in E.O. 13692 (2015); amended by E.O. 13857 (2019)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13846 (August 6, 2018; 83 FR 38939)	Iran	Reimposes sanctions lifted for U.S. meeting its obligations under the Joint Comprehensive Plan of Action of July 14, 2015 (JCPOA)	Revokes E.O. 13716 (2016); expands actions based on national emergency declared in E.O. 12957 (1995)
13848 (September 12, 2018; 83 FR 46843)	Foreign interference in U.S. elections	<u>Declares national emergency</u> ; establishes framework to assess possible interference by foreign persons or governments in any U.S. election; blocks property and interests in property of those designated for being complicit in interfering in an election	Requires annual renewal; complements actions taken under E.O. 13694 (2015), as amended
13849 (September 21, 2018; 83 FR 48195; 22 U.S.C. 9521 note)	Implements Russia-related sanctions adopted in the Countering Russian Influence in Europe and Eurasia Act of 2017 (Title II, P.L. 115-44; 22 U.S.C. 9501 et seq.)	Limits U.S. bank loans, prohibits foreign exchange, blocks property, prohibits Export-Import Bank programs, limits the issuing of specific licenses, requires “no” votes in the international financial institutions where a loan would benefit a person otherwise subject to sanctions, limits access to the U.S. banking system, prohibits procurement contracts with the USG, denies entry into the United States	Expands actions based on national emergencies declared in E.O. 13660 (2014) and related EO, and E.O. 13694 (2015), as amended
13851 (November 27, 2018; 83 FR 61505)	Nicaragua	<u>Declares national emergency</u> ; blocks property of certain persons contributing to the situation in Nicaragua; prohibits import, export, new investment, facilitation of transaction by a foreign person	Requires annual renewal; amended by E.O. 14088 (2022)
13857 (January 25, 2019; 84 FR 509)	Venezuela	Taking additional steps to address the national emergency with respect to Venezuela; redefines “the government of Venezuela”	Expands actions based on national emergency declared in E.O. 13692 (2015); modifies E.O.s 13692, 13808, 13827, 13850
13863 (March 15, 2019; 84 F.R. 10255)	Transnational Criminal Organizations	Defines “significant transnational criminal organization”	Expands and amends E.O. 13581 (2011)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13871 (May 8, 2019; 84 FR 20761)	Iran	Prohibits transactions related to Iran's iron, steel, aluminum, or copper sectors	Expands actions based on national emergency declared in E.O. 12957 (1995)
13873 (May 15, 2019, 84 FR 22689)	Information and communications technology and services supply chain	<u>Declares national emergency</u> ; prohibits unduly risky transactions involving information and communications technology or services designed, developed, manufactured, or supplied, by foreign adversaries	Requires annual renewal; see also E.O. 14034 (2021)
13876 (June 24, 2019; 84 FR 30573)	Iran	Prohibits transactions related to U.S.-based assets of the Supreme Leader of the Islamic Republic of Iran, Supreme Leader's Office (SLO), and anyone appointed to a state position in Iran	Expands actions based on national emergency declared in E.O. 12957 (1995)
13882 (July 26, 2019; 84 FR 37055)	Mali (terrorism, narcotics trafficking, trafficking in persons, human rights abuses, hostage-taking, and attacks against civilians and international security forces in Mali)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal
13883 (August 1, 2019; 84 FR 38113; 22 U.S.C. 5605 note)	Chemical and biological weapons proliferation or use; currently could be used against Syria, North Korea, and Russia, based on determinations made under Sec. 307 of P.L. 102-182 (22 U.S.C. 5605)	Requires the U.S. to oppose international financial institutions' programs to the targeted state; prohibits U.S. banks from providing loans or credits to the targeted government	Expands actions based on E.O. 12938 (1994); implements sanctions requirements of Sec. 307, P.L. 102-182; and amends Exec. Order 12851 (1993) to include CBW-related determinations
13884 (August 5, 2019; 84 FR 38843)	Venezuela	Blocks property of the government of Venezuela in the United States	Expands actions based on E.O. 13692 (2015)
13886 (September 9, 2019; 84 FR 48041)	Terrorism	Consolidates and enhances "sanctions to combat acts of terrorism and threats of terrorism by foreign terrorists"	Revokes E.O. 12947 (1995); amends E.O. 13224 (2001)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13894 (October 14, 2019; 84 FR 55851)	Turkey's incursion into Syria	<u>Declares a national emergency</u> relating to Turkey's military invasion of northeast Syria; blocks property and suspends entry into the United States of "certain persons contributing to the situation in Syria"	Requires annual renewal
13902 (January 10, 2020; 85 FR 2003)	Iran	Blocks property and prohibits transactions related to Iran's construction, mining, manufacturing, or textiles sectors, or any other sector to be determined by the Secretary of the Treasury	Expands actions based on E.O. 12957 (1995)
13920 (May 1, 2020; 85 FR 26595; 50 U.S.C. 1621 note)	U.S. Bulk-Power System	<u>Declares a national emergency</u> relating to bulk-power system equipment	Suspended by E.O. 13990 (2021; 42 U.S.C. 4321 note)
13928 (June 11, 2020; 85 FR 36139)	International Criminal Court (ICC)	<u>Declares national emergency</u> related to the ICC's intention to "investigate, arrest, detain, or prosecute any United States personnel without the consent of the United States"; blocks property and entry into the United States of any person found to be engaged in or facilitating ICC investigations	Revoked by E.O. 14022 (2021)
13936 (July 14, 2020; 85 FR 43413; 22 U.S.C. 5701 note)	Hong Kong (China's "normalization")	<u>Declares national emergency</u> related to China's crackdown, resulting in the Hong Kong Special Administrative Region (HKSAR) losing its political and economic autonomy	Requires annual renewal
13942 (August 6, 2020; 85 FR 48637)	Information & Communications Technology; Services Supply Chain	Expands emergency stated in EO 13873 (2019) to restrict transactions with TikTok and ByteDance—Chinese tech entities	Revoked by E.O. 14034 (2021)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13943 (August 6, 2020; 85 FR 48641)	Information & Communications Technology; Services Supply Chain	Expands emergency stated in E.O. 13873 (2019) to restrict transactions with WeChat—Chinese tech entity	Revoked by E.O. 14034 (2021)
13949 (September 21, 2020; 85 FR 60043)	Iran (regional stability)	Targets Iran's conventional arms trade for its destabilizing impact in the region	Expands actions based on E.O. 12957 (1995)
13953 (September 30, 2020; 85 FR 62539; U.S.C. 1601 note)	Threat to domestic supply chain from reliance on critical minerals from foreign adversaries	<u>Declares national emergency</u> ; requires whole-of-government assessment of U.S. critical materials	Requires annual renewal, but has been neither renewed nor revoked since its issuance. Builds on earlier non-emergency actions based primarily on Defense Production Act of 1950 (see also, however, E.O. 14017 (2021), not codified, which requires similar review without revoking the 2020 order.
13959 (November 12, 2020; 85 FR 73185)	China	<u>Declares national emergency</u> ; restricts trade, transactions, and investment in securities of “Communist Chinese military companies”	Requires annual renewal; amended by E.O. 13974 (2021); the remaining authorities are superseded in large part by E.O. 14032 (2021)
13971 (January 5, 2021; 86 FR 1249)	China	Expands national emergency declared in E.O. 13873 (2019) to prohibit transactions with several China-origin software applications	Revoked by E.O. 14034 (2021)
13974 (January 13, 2021; 86 FR 4875)	China	Clarifies definitions related to restrictions on transactions with China military entities initiated in E.O. 13959; establishes wind-down period for divestment	Revoked by E.O. 14032 (2021)
13984 (January 19, 2021; 86 FR 6837)	Cyber-enabled activities	Builds on emergency declared in E.O. 13694 (2015) to require Secretary of Commerce to investigate and identify foreign users of U.S. infrastructure as a services (IaaS), mainly software and storage services	Expands on and amends authorities stated in E.O. 13694 (2015)

Administration of President Joseph R. Biden (2021-)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
14014 (February 10 2021; 86 FR 9429)	Burma (antidemocratic or other destabilizing activities)	<u>Declares national emergency</u> ; blocks property of and transactions	Requires annual renewal
14022 (April 1, 2021; 86 FR 17895)	International Criminal Court	Revokes national emergency; ends travel and asset restrictions leveled against ICC staff	Revokes E.O. 13928 (2020)
14024 (April 15, 2021; 86 FR 20249)	Russia (election interference, malicious cyber attacks, corruption; or extraterritorial pursuit of Russia's adversaries)	<u>Declares national emergency</u> ; blocks property	Requires annual renewal; amended by E.O. 14114 (2023)
14032 (June 3, 2021; 86 FR 30145)	China	Prohibits U.S. persons from trading or investing in securities of those operating in or on behalf of China's defense and related materiel sector or the surveillance technology sector	Amends national emergency authority declared in E.O. 13959 (2020)
14033 (June 8, 2021; 86 FR 31079)	Western Balkans (regional destabilization, antidemocratic activities, human rights violations, corruption)	Expands national emergency declared in E.O. 13219 (2001); blocks property	Amends national emergency authority declared in E.O. 13219 (2001)
14034 (June 9, 2021; 86 FR 31423)	Sensitive data— protection from foreign adversaries	Initiates new whole-of-government review of U.S. sensitive dates and foreign adversaries who interfere with sensitive data and related technology	Expands on national emergency declared in E.O. 13873 (2020)
14038 (August 9, 2021; 86 FR 43905)	Belarus (activities related to threatening the peace, human rights violations, corruption, election fraud, sanctions evasion)	Blocks property of any leader or official	Expands on national emergency declared in E.O. 13405 (2006)
14039 (August 20, 2021; 86 FR 47205)	Russia (gas pipelines)	Targets any foreign person identified under Sec. 7503(a)(1)(B) of P.L. 116-92) for financial activities related to Russian gas pipeline to serve western Europe (Nord Stream 2)	Expands on national emergency declared in E.O. 14024 (2021)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
14046 (September 17, 2021; 86 FR 52389)	Ethiopia (threats to stability, corruption, disruption of delivery of humanitarian services, violence against civilians)	<u>Declares national emergency</u> ; authorizes blocking of property, investments, use of U.S. financial instruments, transactions in foreign exchange	Requires annual renewal
14054 (November 18, 2021; 86 FR 66149)	Burundi (civil strife, human rights, stability)	Terminates emergency	Revokes E.O. 13712 (2015)
14059 (December 15, 2021; 86 FR 71549)	Global illicit drug trade	<u>Declares national emergency</u> ; authorizes blocking of property, prohibits use of most U.S. financial instruments, denies entry into the United States to any foreign person engaged in illicit drug production and trade	Requires annual renewal
14064 (February 11, 2022; 87 FR 8391)	Afghanistan	<u>Declares national emergency</u> ; blocks Taliban (as government of Afghanistan) access to U.S.-based assets of Afghanistan's central bank	Requires annual renewal
14065 (February 21, 2022; 87 FR 10293) (2022)	Ukraine/Russia	Blocks investment in and trade with Donetsk and Luhansk regions of Ukraine	Expands national emergency in E.O. 13660 (2014)
14066 (March 8, 2022; 87 FR 13625)	Ukraine/Russia	Prohibits some imports from and energy-sector investments in Russia	Expands national emergency in E.O. 14024 (2021)
14068 (March 11, 2022; 87 FR 14381)	Ukraine/Russia	Prohibits additional imports, exports of luxury goods, and investment in Russia; amendments add restrictions on trade in seafood, diamonds, alcohol	Expands national emergency in E.O. 14024 (2021); amended by E.O. 14114 (2023)
14071 (April 6, 2022; 87 F.R. 20999)	Russia	Prohibits a U.S. person from engaging in new investment, export, reexport, sales and services, or facilitation of a foreign person's transaction	Expands national emergency in E.O. 14024 (2021)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
14088 (October 24, 2022; 87 F.R. 64685)	Nicaragua	Prohibits import, export, new investment, and facilitation of a foreign person's transactions	Amends national emergency in E.O. 13851 (2018)
14097 (April 27, 2023; 88 F.R. 26471; 10 U.S.C. 12302 note)	Global illicit drug trade	Authorizes the Secretary of Defense and Secretary of Homeland Security to order to active duty members of the Ready Reserve to address international drug trafficking	Expands authorities to address national emergency in E.O. 14059 (2021)
14098 (May 4, 2023; 88 F.R. 29529)	Sudan (threats to the peace, security, or stability of Sudan, including obstructing democratic processes, censorship, corruption, human rights abuses, targeting women, children, U.N. activities)	Authorizes blocking of property of any foreign person	Expands national emergency in E.O. 13067 (1997)
14105 (August 9, 2023; 88 F.R. 54867)	Sensitive technologies	<u>Declares national emergency</u> ; requires identifying "countries of concern" and related "notifiable transactions" associated with "covered national security technologies and products"	Requires annual renewal
14114 (December 22, 2023; 88 F.R. 89271)	Russia (harmful activities)	Targets foreign financial institutions operating in Russia's economy	Expands and amends national emergency in E.O. 14024 (2021)

Sources: CRS, based on National Archives: Executive Orders Disposition Tables; The American Presidency Project, University of California, Santa Barbara; and *Federal Register*, various dates.

Note: Unless otherwise noted in left-hand column, the declarations of national emergency are codified as notes to 50 U.S.C. §1701.

Some Executive Orders are codified as notes to 50 U.S.C. §4603, a provision in the Export Administration Act of 1979 (P.L. 96-72) that was repealed by the Export Control Act of 2018 (P.L. 115-232). Those authorities continue in force to the extent they might apply to the remaining three provision of the 1979 Act, related to weapons proliferation, or remaining designations or other executive actions taken under foreign policy or national security provisions in the 1979 Act.

Author Information

Christopher A. Casey, Coordinator
Analyst in International Trade and Finance

Jennifer K. Elsea
Legislative Attorney

Dianne E. Rennack
Specialist in Foreign Policy Legislation

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