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

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SUMMARY

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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 upon declaration of a state of emergency.

Over the course of the twentieth century, Congress delegated increasing amounts of emergency power to the President by statute. The Trading with the Enemy Act 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 a critically important 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 annually assess and extend, if appropriate, the 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 immigration 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 individuals, groups, and non-state actors such as terrorists and persons who engage in malicious cyber-enabled activities.

As of March 1, 2019, Presidents had declared 54 national emergencies invoking IEEPA, 29 of which are still ongoing. Typically, national emergencies invoking IEEPA 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, may soon enter its fifth decade.

IEEPA grants sweeping powers to the President to control economic transactions. Despite these broad powers, Congress has 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' 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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Introduction

The issue of executive discretion has been at the center of constitutional debates in liberal democracies throughout the twentieth century. How to balance a commitment to the rule of law with the exigencies of modern political and economic crises has engaged legislators and scholars in the United States and around the world.[1]

The United States Constitution is silent on questions of emergency power. As such, over the past two centuries, Congress and the President have answered those questions 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 to either ratify the President's actions 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 created statutory bases permitting the President to declare a state of emergency and make use of extraordinary delegated powers.[4] The expanding delegation of emergency powers to the executive and the increase of governing via emergency power by the executive has been a common trajectory among twentieth-century liberal democracies.[5] As innovation has quickened the pace of social change and global crises, some legislatures have felt compelled to delegate to the executive, who traditional political theorists assumed could operate with greater "dispatch" than deliberate, 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 (Aug. 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 (Jan. 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); 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 extensive debate.[7]

The International Emergency Economic Powers Act (IEEPA) is one such example of a twentieth-century delegation of emergency authority.[8] One of 123 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 emergency. Congress enacted IEEPA in 1977 to rein in the expansive emergency economic powers that it had been 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] Others, however, argue that Presidents often use IEEPA to implement the will of Congress either as directed by law or as encouraged by congressional activity.[11]

Until recently, there has been little congressional discussion of modifying either IEEPA or its umbrella statute, the NEA. Recent presidential actions, however, have drawn attention to presidential emergency powers under the NEA of which IEEPA is the most frequently used. Should Congress consider changing IEEPA, there are two issues that Congress may wish to address. The first pertains to how Congress has delegated its authority under IEEPA and its umbrella statute, the NEA. The second pertains to choices made in the Export Control Reform Act of 2018.

Origins

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

The First World War (1914-1918) saw an unprecedented degree of economic mobilization. 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 position relative to its allies in Europe. Separated by an ocean from Germany and Austria-

[6] Scheuerman, *Liberal Democracy and the Social Acceleration of Time*, ch. 2; 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 an argument 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] P.L. 95-223 (October 28, 1977), 91 Stat. 1626, codified as amended at 50 U.S.C. § 1701 *et seq.* (2018) ("IEEPA").

[9] P.L. 94-412 (September 14, 1976), 90 Stat. 1255, codified as amended at 50 U.S.C. § 1601 *et seq.* (2018) ("NEA"). This number was produced by the Brenan Center for Justice at New York University's School of Law. An overview of their research on emergency powers is available at: https://www.brennancenter.org/analysis/emergency-powers.

[10] See, e.g., Patrick Thronson, "Toward Comprehensive Reform of America's Emergency Law Regime," Michigan Journal of Law Reform 46, no. 2 (2013), pp. 757-759.

[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.").

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 waiting for congressional ratification, President Wilson sought explicit pre-authorization for expansive new powers to meet the global crisis.[12] 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. 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.[13]

TWEA was one of those 22 statutes.[14] It granted to the executive an extraordinary degree of control over international trade, investment, migration, and communications between the United States and its enemies. 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 ...."[15] The first four sections of the act granted the President extensive powers to limit trading or communication with, or transporting enemies (or their allies) of the United States.[16] These sections also empowered the President to censor foreign communications and place extensive restrictions on enemy insurance or reinsurance companies.[17]

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.[18]

The statute gave the President exceptional control over private international economic transactions in times of war.[19] While Congress terminated many of the war powers in 1921,

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

[13] 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; Rossiter, *Constitutional Dictatorship*, p. 243; David M. Kennedy, *Over Here: The First World War and American Society* (Oxford: Oxford University Press, 2004), ch. 2.

[14] 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, *Modern American History* 1, no. 2 (2018).

[15] P.L. 65-91 (October 6, 1917) § 2, 40 Stat. 411, codified as amended at 50 U.S.C. § 4305 (2018) ("TWEA").

[16] Ibid. § 3.

[17] Ibid. § 4.

[18] Ibid. § 5b.

[19] Ibid. § 2.

TWEA was specifically exempted because the U.S. Government had yet to dispose of a large amount of alien property in its custody.[20]

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 deal with the complexities presented by the crisis, nearly all such democracies began delegating discretionary authority to their executives to a degree that had only previously been done in times of war.[21] 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 possible by analogizing economic crises to war. In public speeches about the crisis, President Franklin D. Roosevelt asserted that the Depression was to be "attacked," "fought against," "mobilized for," and "combatted" by "great arm[ies] of people."[22] 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"[23] and declared to be "an emergency more serious than war"[24] 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.[25]

As the Depression entered its third year, the newly-elected President Roosevelt sought from Congress "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."[26] 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.[27] In his proclamation, Roosevelt claimed to have authority to declare the holiday under Section 5(b) of TWEA.[28] 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.[29]

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[20] 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.

[21] William E. Scheuerman, "The Economic State of Emergency," *Cardozo Law Review* 21 (2000), p. 1872.

[22] 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.

[23] Franklin D. Roosevelt's Inaugural Address of 1933.

[24] New State Ice Co. v. Liebmann, 285 U.S. 262, 306 (1932) (J. Brandeis, dissenting).

[25] Scheuerman, "The Economic State of Emergency," p. 1878.

[26] Franklin D. Roosevelt's Inaugural Address of 1933.

[27] Pres. Proc. No. 2039 (Mar. 6, 1933).

[28] 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." Pres. Proc. No. 2039 (Mar. 6, 1933).

[29] 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 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.

Despite the tenuous legality, Congress ratified Roosevelt's actions by passing the Emergency Banking Relief Act three days after his proclamation.[30] 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....[31]

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 "Every transaction in foreign exchange, transfer of credit between any banking institution within the United States and any banking institution outside of the United States."[32]

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. 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.[33]

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.[34] Over the next several decades, Presidents declared four national emergencies under Section 5(b) of TWEA and assumed expansive authority over economic transactions in the postwar period.

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. In 1950, President Harry S. Truman declared a national emergency, citing TWEA, to impose economic sanctions on North Korea and China.[35] Subsequent Presidents referenced that national emergency as authority for imposing sanctions on Vietnam, Cuba, and Cambodia.[36] Truman

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[30] P.L. 73-1 (Mar. 9, 1933), 48 Stat. 1. 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. *A Brief History of Emergency Powers in the United States*, p. 57.

[31] Ibid. Italics show the language added by the Emergency Banking Relief Act.

[32] Exec. Order No. 6560 (Jan. 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), ch. 9.

[33] P.L. 77-354 (Dec. 18, 1941), 55 Stat. 838.

[34] 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).

[35] Pres. Proc. No. 2914 (Dec. 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.

[36] 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,

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.[37] Presidents Richard M. Nixon and Gerald R. Ford invoked TWEA to continue export controls established under the Export Administration Act when the act expired.[38]

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.[39] 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.[40] In 1971, after President Nixon ended the convertibility of the U.S. dollar to gold, effectively ending the postwar monetary order, 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.[41]

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.

Pushing Back Against Executive Discretion

By the mid-1970s, in the wake of 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 reevaluate the expansive delegations of emergency authority to the President.[42] 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.[43] The report also

1975), p. 2; 31 C.F.R. 500.101-500.808 (1975).

[37] Exec. Order No. 10348 (Apr. 26, 1952).

[38] Exec. Order No. 11677 (Aug. 1, 1972); Exec. Order No. 11683 (Aug. 29, 1972); Exec. Order No. 11796 (Jul 30, 1974); Exec. Order No. 11798 (Aug. 14, 1974); Exec. Order No. 11810 (Sept. 30, 1974); Exec. Order No. 11818 (Nov. 5, 1974); Exec. Order No. 11940 (Sept. 30, 1976).

[39] Exec. Order No. 10896 (Nov. 29, 1960); Exec. Order No. 11037 (July 20, 1962).

[40] Exec. Order No. 11387 (Jan. 1, 1968).

[41] Pres. Proc. No. 4074 (Jan. 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).

[42] 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., Nov. 1976 (Washington, DC: GPO, 1976), p. iii.

[43] *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

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."[44]

In the course of its investigations, Senator Mathias, 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."[45]

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."[46] 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";
>
> (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.[47]

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

1970 and 1971.

[44] *A Brief History of Emergency Powers in the United States*, p. v.

[45] Qtd. in *Trading with the Enemy: Legislative and Executive Documents*, p. iii.

[46] 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 (Oct. 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." Ibid. p. 7.

[47] House, *Trading with the Enemy Act Reform Legislation*, p. 2.

international economic arena, without congressional review."[48] 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.[49]

In testimony before the House Committee on International Relations, Professor Harold G. Maier 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…"[50]

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.[51] 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 immediately transmit to Congress 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.[52]

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[48] Ibid.

[49] Ibid., p. 9.

[50] Ibid., p. 9.

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

[52] 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 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 (Dec. 28, 1977) § 101(b). The grandfathered powers, however, would require a declaration or renewal. See, e.g., Memorandum of Sept. 8, 1978, 45 Fed. Reg. 40,695; Memorandum of Sept. 12, 1979; Presidential Determination of Sept. 8, 1980, 45 Fed. Reg. 59,549; Memorandum of Sept. 10, 1981, 46 Fed. Reg. 45,321; Memorandum of Sept. 8, 1982, 47 Fed. Reg. 39,797; Memorandum of Sept. 7, 1983, 48 Fed. Reg. 40,695; Memorandum of Sept. 11, 1984, 49 Fed. Reg. 35,927.

Second, Congress tackled the thornier 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.[53] The exclusion of Section 5(b) reflected congressional interest in preserving existing regulations regarding foreign assets, foreign funds, and exports of strategic goods.[54] Similarly, establishing a means to continue existing uses of TWEA reflected congressional interest in "improving future use rather than remedying past abuses."[55]

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.[56] 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."[57] Second, Congress expanded the Export Administration Act to include powers that previously were authorized by reference to Section 5(b) of TWEA.[58] 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]."[59]

The Report of the House Committee on International Relations summed up the nature of an "emergency" in their "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 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.[60]

[53] House, *Trading with the Enemy Act Reform Legislation*, pp. 6-7.

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

[55] House, *Trading with the Enemy Act Reform Legislation*, 10.

[56] *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., Nov. 1976, committee print (Washington, DC: GPO, 1976).

[57] P.L. 95-223 (Dec. 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.

[58] 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.").

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

[60] House, *Trading with the Enemy Act Reform Legislation*, p. 11.

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.[61]

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."[62] 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*.[63] The President must also specify the provisions of law that he or she intends to use.[64]

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 instance" before exercising any of the authorities granted under IEEPA.[65] Once the President declares a national emergency invoking IEEPA, he or she must immediately transmit a report to Congress specifying:

[61] 50 U.S.C. § 1702.

[62] Ibid. § 1701.

[63] Ibid. § 1621.

[64] Ibid. § 1631.

[65] Ibid. § 1703(a).

> (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.[66]

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.[67] 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.[68]

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 *INS v. Chadha*, 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 (1985)). * 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)
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)

[66] Ibid. § 1703(b).

[67] Ibid. § 1703(c).

[68] Ibid. § 1622.

Date	Action
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, based on United States Code, annotated.

The Berman Amendment and Informational Materials

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.[69] 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.

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 acted.[70] In 2001, at the request of George W. Bush Administration, Congress

[69] The amendment was introduced by Rep. Howard Berman (D-CA). See, "Sleeping with the Enemy? OFAC Rules and First Amendment Freedoms," *Perspectives on History* (May 2004).

[70] 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.").

amended IEEPA as part of the USA PATRIOT Act[71] to return to the President the authority to vest frozen assets, but only under certain circumstances:

> ... the 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.[72]

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. 13224[73]] 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.[74]

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 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.

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[71] 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.

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

[73] Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 24, 2001).

[74] *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).

> 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.[75]

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.[76]

The first, and to date, apparently only, use of this power under IEEPA occurred on March 20, 2003. 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."[77] 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 § 201 of the Terrorism Risk Insurance Act[78] (which reportedly totaled about $300 million)[79].

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."[80] 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 Provision Authority (CPA) for reconstruction projects and ministry operations.[81]

The USA PATRIOT Act made three other amendments to Section 203 of IEEPA.[82] After the power to investigate, it added the power to block assets during the pendency of an investigation.[83] 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."[84] It also added subsection (c), which provides:

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[75] 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.

[76] 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).

[77] Exec. Order No. 13290, 68 Fed. Reg. 14,307 (Mar. 24, 2003).

[78] P.L. 107-297, 116 Stat. 2322 (2002).

[79] *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.

[80] Exec. Order No. 13315, 68 Fed. Reg. 52,315 (September 3, 2003).

[81] 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. at 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.

[82] P.L. 107-56 §106, 115 Stat. 277 (2001).

[83] Ibid., codified at 50 U.S.C. § 1702(a)(1)(B) (2018).

[84] Ibid., codified at 50 U.S.C. § 1702(a) (2018).

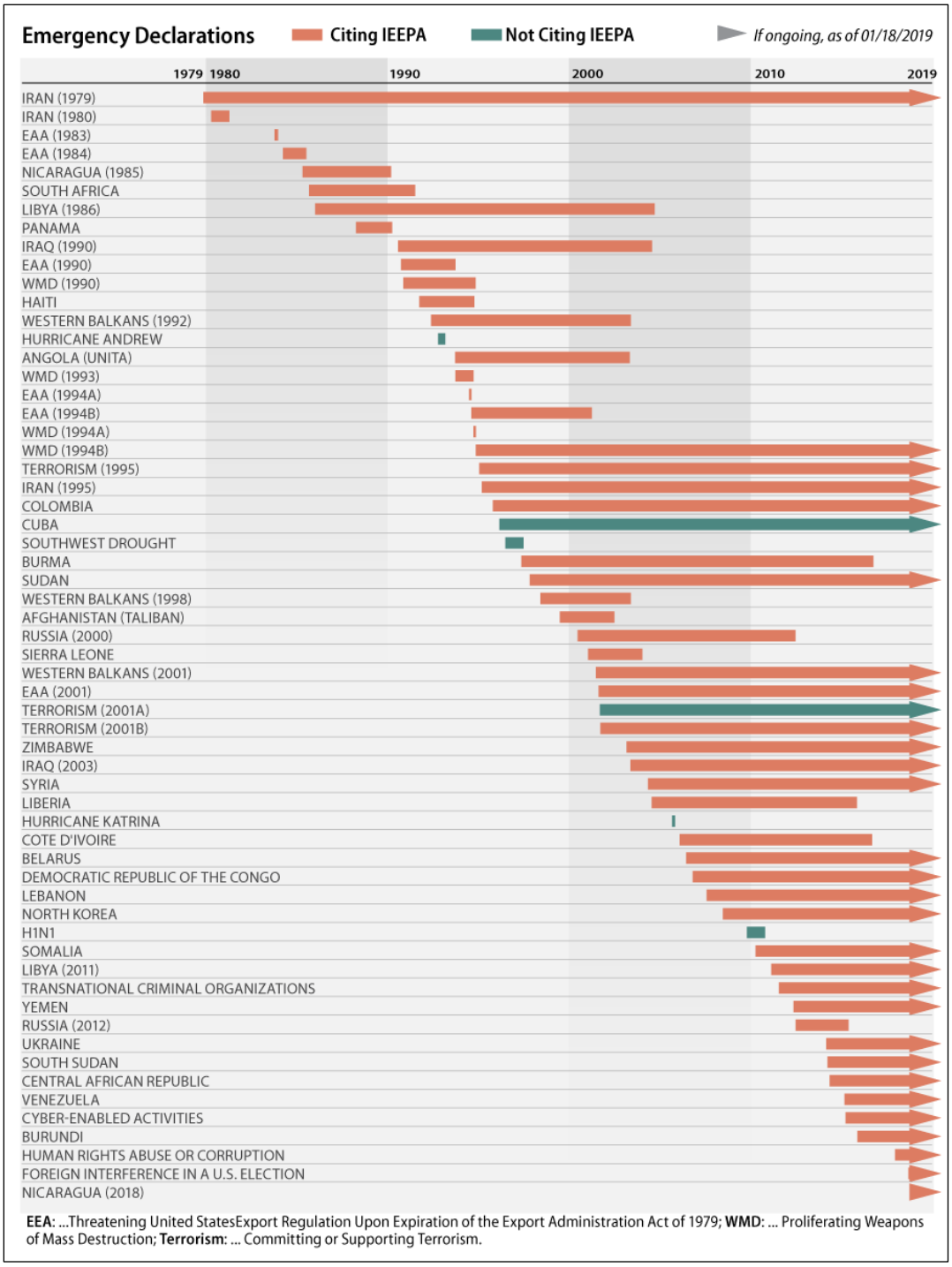
> In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.[85]

As described in the House Judiciary Committee report, these provisions were meant to clarify and codify existing practices.[86]

[85] Ibid., 115 Stat. at 278, codified at 50 U.S.C. § 1702(c) (2018).

[86] House, *Report of the Committee on the Judiciary to Accompany H.R. 2975*, 62.

Figure 1. Timeline of NEA and IEEPA Use



Source: CRS.

Notes: Emergencies not citing IEEPA invoke one of the other 123 emergency powers under the umbrella of the NEA. Graphic does not include the most recent declaration of a national emergency with respect to the southern border.

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 and national security objectives. While initially enacted to rein in presidential emergency authority,[87] 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."[88] National emergencies invoking IEEPA, however, have increased in frequency and length since its enactment.

Since 1977, Presidents have invoked IEEPA in 54 declarations of national emergency. On average, these emergencies last nearly a decade. 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. 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.[89] While Presidents usually make use of IEEPA as an emergency power, Congress has also directed the use of IEEPA or expressed its approval of presidential emergency use in several statutes.[90]

Presidential Emergency Use[91]

IEEPA is the most frequently cited emergency authority when the President invokes NEA authorities to declare a national emergency. (**Figure 1**). 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 54 of the 61 declarations of

[87] House, *Trading with the Enemy Act Reform Legislation*, pp. 2-9.

[88] Ibid, p. 11.

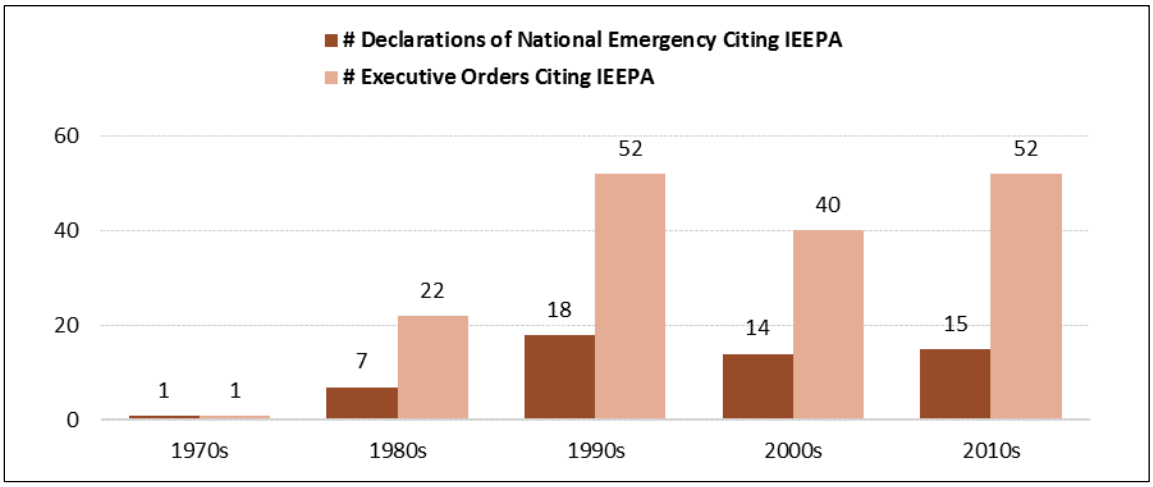
[89] See "Presidential Emergency Use."

[90] See "Congressional Nonemergency Use and Retroactive Approval."

[91] 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., Exec. Order No. 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); Exec. Order No. 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).

national emergency issued under the National Emergencies Act.[92] As of March 1, 2019, there were 32 ongoing national emergencies; all but three involved IEEPA.[93]

Figure 2. Declarations and Executive Orders Citing IEEPA



Source: CRS, 2010s current to March 1, 2019.

Each year since 1990, Presidents have issued roughly 4.5 executive orders citing IEEPA and declared 1.5 new national emergencies citing IEEPA.[94] (**Figure 2**).

On average, emergencies invoking IEEPA last nearly a decade.[95] 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.[96] Six successive Presidents have renewed that emergency annually for nearly forty years.

[92] The seven declarations of emergency under the NEA that did not involve IEEPA as of March 1, 2019 were all made by presidential proclamation. See Proc. 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); Proc. 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); Proc. 6907, Declaration of a State of Emergency and Release of Feed Grain From the Disaster Reserve (July 1, 1996); Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks (September 14, 2001); Proc. 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); Proc. 8443, Declaration of a National Emergency With Respect to the 2009 H1N1 Influenza Pandemic (October 23, 2009); Proc. 9844, Declaration of a National Emergency Concerning the Southern Border of the United States (February 15, 2019).

[93] The three ongoing emergencies not involving IEEPA as of March 1, 2019 were declared in: Proc. 6867, Proc. 7463, Proc. 9844. The first two of these national emergencies 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. Exec. Order No. 13224, Blocking Property and Prohibiting Transaction with Persons who Commit, Threaten to Commit, or Support Terrorism (September 23, 2001).

[94] 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 EO 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.

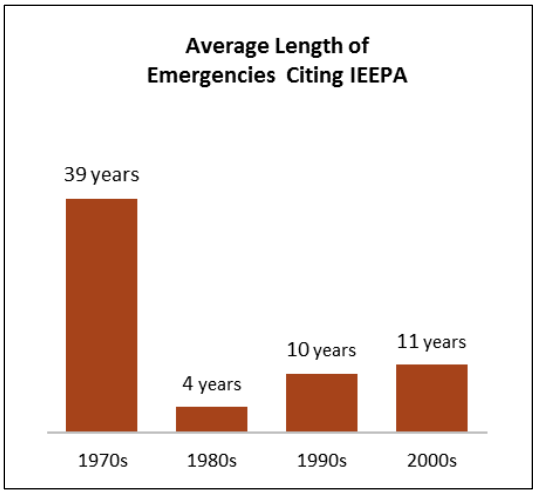
[95] The mean duration of national emergencies is 9.2 years, the median is 6.5 years.

[96] Exec. Order No. 12170, Blocking Iranian Government Property (November 14, 1979).

As of March 1, 2019, that emergency is still in effect, largely to provide a legal basis for resolving matters of ownership of the Shah's disputed assets.[97] 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 10 years for emergencies declared in the 1990s and 11 years for emergencies declared in the 2000s (**Figure 3**).[98] As such, the number of ongoing national emergencies has grown nearly continuously since the enactment of IEEPA and the NEA (**Figure 4**). Between January 1, 1979, and January 1, 2019, there were on average 14 ongoing national emergencies each year, 13 of which invoked IEEPA.

In most cases, the declared emergencies citing IEEPA have been geographically specific (**Figure 5**). 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 [...]."[99] 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.[100] A further order expanded the coverage to block imports to the United States from Iran.[101] 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.[102]

Figure 3. Average Length of Emergencies Citing IEEPA



Source: CRS.

Notes: A single emergency was declared in the 1970s (Iran) and that has lasted 39 years. 2010s do not have sufficient data to create an average length.

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.[103] Executive Order 12532 prohibited various

[97] Continuation of the National Emergency With Respect to Iran, 83 Fed. Reg. 56,251 (November 8, 2018).

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

[99] Exec. Order No. 12170.

[100] Exec. Order No. 12205, Economic Sanctions Against Iran (Apr. 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."

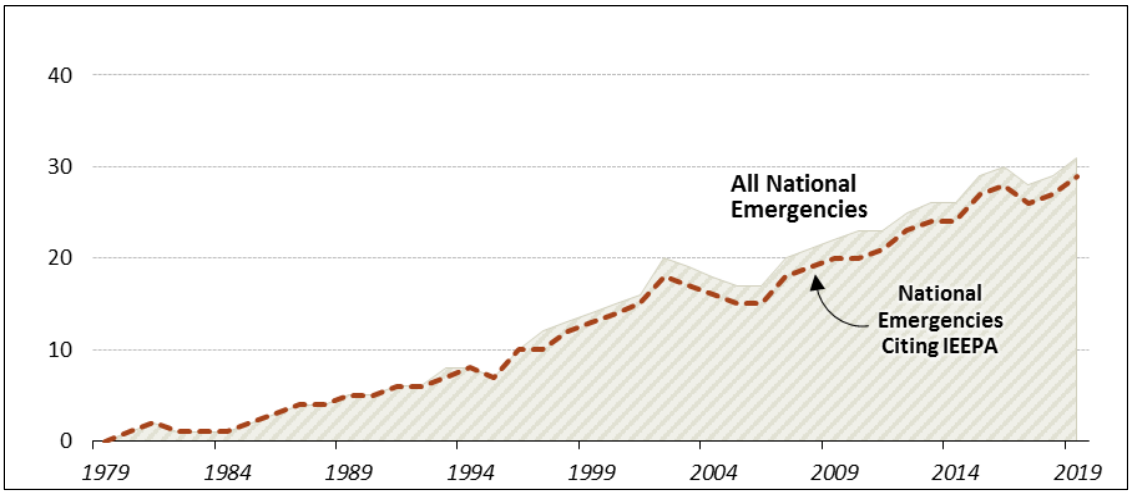
[101] Exec. Order No. 12211, Economic Sanctions Against Iran (April 17, 1980).

[102] Exceptions were made for family remittances.

[103] Exec. Order No. 12513, Prohibiting Trade and Certain Other Transactions Involving Nicaragua (May 1, 1985).

transactions with the "Government of South Africa or to entities owned or controlled by that Government."[104]

Figure 4. Cumulative Number of Ongoing National Emergencies by Year



Source: CRS.

While the majority (38) of national emergencies invoking IEEPA have been geographically specific, ten have lacked explicit geographic limitations.[105] 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.[106] 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."[107] President Barack Obama declared emergencies to respond to the threats of "transnational criminal organizations" and "persons engaging in malicious cyber-enabled activities." Without explicit geographic limitations, these orders have included provisions that are global in scope. These geographically nonspecific emergencies have increased in frequency over the past 40 years—three of the ten have been declared since 2015.[108]

[104] Exec. Order No. 12532, Prohibiting Trade and Certain Other Transactions Involving South Africa (September 9, 1985).

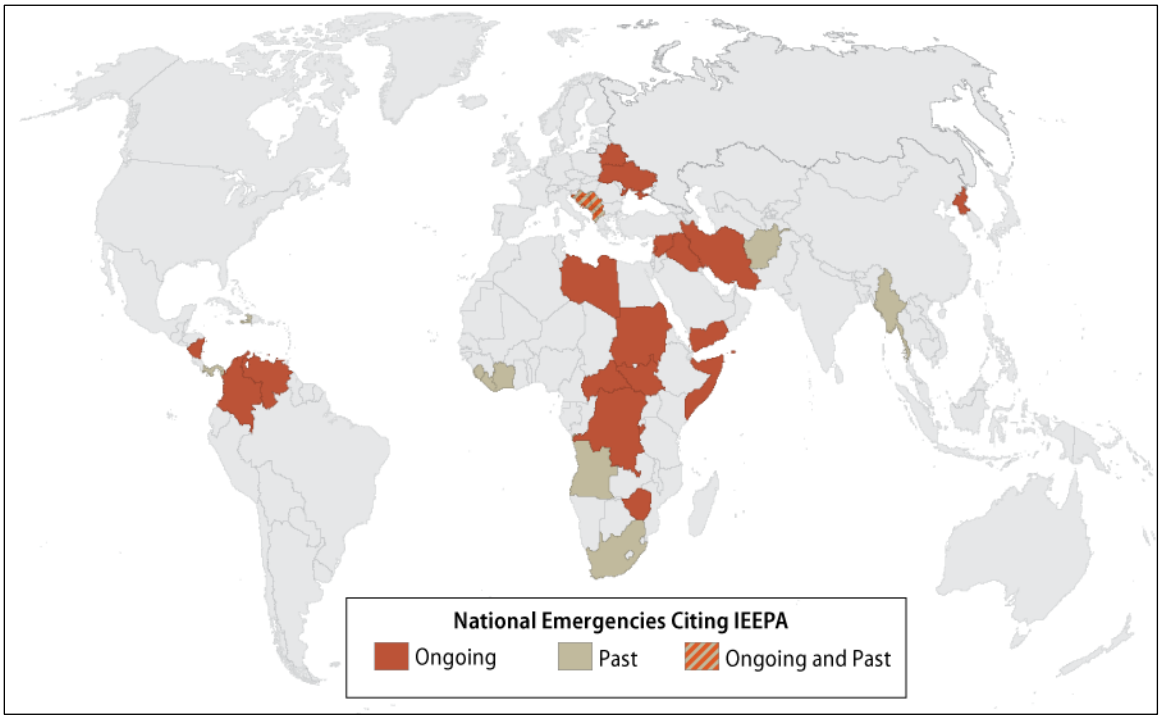
[105] This number excludes those emergencies declared to extend the Export Administration Act of 1979.

[106] Exec. Order No. 12735, Chemical and Biological Weapons Proliferation (November 16, 1990).

[107] Exec. Order No. 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (September 23, 2001).

[108] Exec. Order No. 13694, Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities (April 1, 2015); Exec. Order No. 13818, Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption (December 20, 2017); Exec. Order No. 13848, Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election (September 12, 2018). 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.

Figure 5. Geographically Defined Emergencies Citing IEEPA



Source: 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,"[109] or the "policies and actions of the Government of Nicaragua,"[110] constituted "unusual and extraordinary threat[s] to the national security and foreign policy of the United States" and would therefore declare a national emergency.[111]

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

Examples 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

[109] Exec. Order No. 12170.

[110] Exec. Order No. 12513.

[111] Ibid.

human and civil rights abuses,[112] slavery,[113] denial of religious freedom,[114] political repression,[115] public corruption,[116] and the undermining of democratic processes.[117] While the first reference to human rights violations as a rationale for a declaration of national emergency came in 1985,[118] most of such references have come in the past twenty years. **Table A-2**.

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."[119] Use of IEEPA quickly expanded to target geographically defined regions.[120] Nevertheless, Presidents have also increasingly targeted groups, such as political parties or terrorist organizations, and individuals, such as supporters of terrorism or suspected narcotics traffickers.[121]

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.[122] 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

[112] Exec. Order No. 12532; Exec. Order No. 13396, Blocking Property of Certain Persons Contributing to the Conflict in Cote d'Ivoire (February 7, 2006); Exec. Order No. 13067, Blocking Sudanese Government Property and Prohibiting Transactions With Sudan (November 3, 1997); Exec. Order No. 13692, Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela (March 8, 2015).

[113] Exec. Order No. 13067.

[114] Exec. Order No. 13067.

[115] Exec. Order No. 13405, Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus (Jun. 16, 2006).

[116] Ibid.

[117] Ibid.

[118] Exec. Order No. 12532.

[119] Exec. Order No. 12170.

[120] See, e.g., Exec. Order No. 12513.

[121] See, e.g., Exec. Order No. 12865 (prohibiting transactions with the National Union for the Total Independence of Angola (UNITA), the second largest political party in Angola); Exec. Order No. 13129 (prohibiting transactions with the Taliban); Exec. Order No. 13224 (prohibiting transactions with persons who commit, threaten to commit, or support terrorism); Exec. Order No. 12978 (prohibiting transactions with certain narcotics traffickers).

[122] Exec. Order No. 12978, Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers (October 21, 1995).

> (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.[123]

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.[124] 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
>
> (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...[125]

Several subsequent invocations of IEEPA have similarly not been limited to foreign targets.[126]

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 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, the most recent 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]."[127] Penalties for violations by a

[123] Ibid. Emphasis added.

[124] See, e.g., the facts of Aaran Money Wire Serv., Inc. v. United States, No. 02CV789JMR/FLN, 2003 WL 22143735, at *3 (D. Minn. Aug. 21, 2003).

[125] Exec. Order No. 13219, Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans (June 26, 2001). Emphasis added.

[126] See, e.g., Exec. Order No. 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (September 23, 2001); Exec. Order No. 13396, Blocking Property of Certain Persons Contributing to the Conflict in Côte d'Ivoire (February 7, 2006).

[127] P.L. 115-335 (Dec. 20, 2018), 132 Stat. 5019.

person of a measure imposed by the President under the Act would be, likewise, determined by reference to IEEPA.[128]

The 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][129]

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

Subsequent legislation has followed this general pattern, with slight variations in language and specificity.[130] The following is an example of current legislative language that has appeared in several recent statutes:

> (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)

[128] Ibid.

[129] P.L. 99-529 (October 24, 1986), 100 Stat. 3010.

[130] 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 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.

> 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.[131]

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."[132]

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 and economy of the United States," declared a national emergency and limited transactions with South Africa.[133] The President declared the emergency despite the fact that legislation limiting transactions with South Africa was quickly making its way through Congress.[134] 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."[135] Nevertheless, members of the press at the time[136] (and at least one scholar since)[137] noted that the limitations imposed by the Executive Order and the provisions in legislation then winding its way through Congress were "substantially similar."[138]

Current Uses of IEEPA

In general, IEEPA has served as an integral part of the postwar international sanctions regime.[139] 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

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[131] 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 [...].").

[132] 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); Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," 70 Fed. Reg. 38,567.

[133] Exec. Order No. 12532.

[134] 99 H.R. 1460; See also P.L. 99-440 (October 2, 1986).

[135] Economic Sanctions Against South Africa, Remarks and a Question-and-Answer-Session with Reporters on Signing Executive Order 12532, September 9, 1985, 21 *Weekly Comp. Pres. Doc*. 1048, 1050.

[136] See, e.g., questions by Helen Thomas, United Press International, *Ibid*, 1050.

[137] Carter, *International Economic Sanctions*, p. 201.

[138] Ibid.

[139] Ibid., ch. 9.

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;"
- 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,[140] and in furtherance of efforts to deter the weapons programs of specific countries (i.e., Iran, North Korea);
- prohibited transactions 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 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 transactions with foreign nationals of specific countries those designated as engaged in activities that constitute an extraordinary threat.

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

[140] 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 (Aug. 13, 2018), as the Export Control Reform Act of 2018, Title XVII(B).

could happen.[141] 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.[142]

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

While a President could 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.[143] 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 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.[144] 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 a more 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.[145]

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 made use of 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.[146] On January 19, 1981, the United States and Iran entered into a series of executive agreements brokered by

[141] President Nixon, in effect, used TWEA to place a 10% ad valorem tariff on all imports to the U.S. Pres. Proc. No. 4074 (Jan. 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.

[142] "The International Emergency Economic Powers Act," p. 1111; Patrick A. Thronson, "Toward Comprehensive Reform of America's Emergency Law Regime," *University of Michigan Journal of Law Reform* 46, no. 2 (2013), pp. 757-758.

[143] 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)).

[144] 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.

[145] Procl. 9704, 83 Fed. Reg. 11,619 (March 15, 2019); Procl. 9705, 83 Fed. Reg. 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.

[146] Exec. Order No. 12170, 44 Fed. Reg. 65729 (Nov. 14, 1979).

Algeria under which the hostages were freed,[147] a portion of the blocked assets ($5.1 billion) was used to repay outstanding U.S. bank loans to Iran, another part ($2.8 billion) was returned directly to Iran, another $1 billion was 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 an additional $2 billion remained blocked pending further agreement with Iran or decision of the Tribunal. The United States also undertook to freeze 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.[148]

Presidents have also been able to channel 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.[149] The Department of State advised U.S. banks not to disburse funds to the Noriega regime, and Delvalle was able to obtain court orders permitting him access to the funds.[150] President Reagan issued Executive Order 12635, which blocked all property and interests in payments of the government of Panama,[151] and the Department of the Treasury issued regulations requiring companies who owed money to Panama to pay those funds into an escrow account established at the Federal Reserve Bank of New York, which also held payments owed by the United States for the operation of the Panama Canal Commission.[152] Some of the funds in the escrow account were used to pay the operating expenses of the Delvalle government.[153] After the U.S. invasion of Panama, President George H.W. Bush lifted economic sanctions[154] and used some of the frozen funds to repay debts owed by Panama to foreign creditors, with remaining funds returned to the successor government.[155]

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[147] The Algiers Accords comprise the following five documents: The Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 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 and the Government of the Islamic Republic of Iran, Jan. 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 Jan. 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, the Federal Reserve Bank of New York (as fiscal agent of the United States), Bank Markazi Iran, and the Banque Centrale d'Algerie (escrow agent) Jan. 20, 1981, 81 Dep't St. Bull., No. 2047, at 6, reprinted in 1 Iran-U.S. Cl. Trib. Rep. 16; and the 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, Jan. 20, 1981, 81 Dep't St. Bull., No. 2047, at 14, reprinted in 1 Iran-U.S. Cl. Trib. Rep. 20. ("Algiers Accords").

[148] Iran-U.S. Claims Tribunal Decision on Shah's Assets, 94 Am. J. Int'l L. 703, 704 (2000) (explaining that all of Iran's lawsuits in U.S. courts to recover the Shah's assets were eventually dismissed, principally on grounds of forum non conveniens).

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

[150] Ibid. at 5.

[151] Exec. Order No. 12635, 53 Fed. Reg. 12,134 (Apr. 8, 1988).

[152] GAO Report, *supra* note 149, at 5.

[153] Ibid.

[154] Exec. Order No. 12710, 55 Fed. Reg. 13,099 (Apr. 5, 1990).

[155] See 1989 Congressional Quarterly Almanac 607 (reporting that the Department of the Treasury had concluded the

In a similar more recent case, the Trump Administration's recognition of Venezuelan opposition leader Juan Guaidó as Venezuela's interim president[156] permitted Guaidó access to Venezuelan government assets held at the United States Federal Reserve and other insured United States financial institutions.[157] President Barrack Obama initially froze Venezuelan government assets in 2015, pursuant to IEEPA and the Venezuela Defense of Human Rights and Civil Society Act of 2014.[158] After official recognition of Guaidó, the Trump Administration imposed new sanctions under IEEPA to freeze the assets of the main Venezuelan state-owned oil company, Petróleos de Venezuela (Pdvsa),[159] which could both significantly reduce funds available to the regime of Nicolas Maduro and channel them to Guaidó.[160]

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 be transferred to a holding account in the Federal Reserve Bank of New York to fulfill "the rights and obligations of the United States under U.N. Security Council Resolution No. 778."[161] The President cited a section of the United Nations Participation Act (UNPA),[162] as well as IEEPA, as authority to take the action.[163] The transferred funds were used to provide humanitarian relief and to finance the United Nations Compensation Commission,[164] which was established to adjudicate claims against Iraq arising from the invasion.[165] Other Iraqi assets remained frozen and accumulated interest until they were vested in 2003 (see below).

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net amount still due to Panama after these offsets was about $200 million).

[156] For background of situation in Venezuela, see CRS Insight IN11024, *Venezuela: U.S. Recognizes Interim Government*, by Clare Ribando Seelke.

[157] White House Fact Sheet, President Donald J. Trump Supports the Venezuelan People's Efforts to Restore Democracy in Their Country, Jan. 29, 2019, https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-supports-venezuelan-peoples-efforts-restore-democracy-country/; Edward Wong, "Venezuelan Opposition Leader Guaidó Controls U.S. Bank Accounts, State Dept. Says," *New York Times*, Jan. 29, 2019, https://www.nytimes.com/2019/01/29/us/politics/venezuela-bank-accounts-guaido-pompeo.html.

[158] Exec. Order No. 13692, 80 Fed. Reg. 12,747 (Mar. 8, 2015). For information about current sanctions against Venezuela, see CRS In Focus IF10715, *Venezuela: Overview of U.S. Sanctions*, by Mark P. Sullivan; P.L. 113-278.

[159] Exec. Order No. 13857, 84 Fed. Reg. 509 (Jan. 25, 2019).

[160] Wong, "Venezuelan Opposition."

[161] Transfer of Certain Iraqi Government Assets Held by Domestic Banks, Exec. Order No. 12817, 3 C.F.R. § 317 (1992). Iraqi assets under U.S. jurisdiction had been frozen pursuant to IEEPA in response to Iraq's invasion and occupation of Kuwait. Exec. Order No. 12722, 55 Fed. Reg. 31,803 (Aug. 2, 1990).

[162] 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 mention the confiscation of assets.

[163] Exec. Order No. 12817, 57 Fed. Reg. 48,433 (Oct. 23, 1992).

[164] 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.

[165] U.N.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). U.N.S.C. Res. 706 and 712 (1991) established an escrow account administered by the UN Secretary General to fund the costs of the UNCC and other activities. U.N.S.C. Res. 778 (1992) directed 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.

In some cases, the United States has ended sanctions and returned frozen assets to successor governments. In the case of the former Yugoslavia, for example, in 2003, $237.6 million in frozen funds belonging to the Central Bank of the Socialist Federal Republic of Yugoslavia were transferred to the central banks of the successor states.[166] In the case of Afghanistan, $217 million in frozen funds belonging to the Taliban were released to the Afghan Interim Authority in January 2002.[167]

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.[168] Congress has overcome such resistance in the case of foreign governments that have been designated as "State Supporters of Terrorism."[169] 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.[170]

To facilitate the payment of judgments under the exception, Congress passed Section 117 of the Treasury and General Government Appropriations Act, 1999,[171] 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.[172]

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 §2002 of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA)[173] 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.

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[166] GAO-04-1006 Foreign Regimes' Assets 11 (Sept. 2004), *available at* http://www.gao.gov/new.items/d041006.pdf.

[167] Ibid. at 12.

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

[169] Current states designated as sponsors of terrorism are Iran, Sudan, North Korea and Syria. *See* U.S. Department of State, State Sponsors of Terrorism, https://www.state.gov/j/ct/list/c14151.htm.

[170] 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.

[171] 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).

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

[173] 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.

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 the1996 downing of two unarmed U.S. civilian airplanes by the Cuban air force.[174] 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.[175]

As unpaid judgments against designated state sponsors of terrorism continued to mount, Congress enacted the Terrorism Risk Insurance Act (TRIA).[176] 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 1605(a)(7) 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.[177]

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 2008[178] 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.[179]

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

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[174] 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.

[175] 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).

[176] P.L. 107-297, 116 Stat. 2322 (2002).

[177] 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.

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

[179] 28 U.S.C. § 1610(g) (2018). It is unclear whether "regulated" property and "blocked asset" are meant to be synonymous.

creditors.[180] 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.[181] 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.[182] Half of all civil penalties and forfeitures relating to the same offenses are also deposited into the fund.[183]

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 congressionally delegated authority and assertions of violations of constitutional rights. As demonstrated below, most of these challenges have failed. 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*.[184] 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.[185] 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.[186]

Dames and Moore had sued Iran for breach of contract to recover compensation for work performed.[187] The district court had entered summary judgment in favor of Dames and Moore and

[180] *See* the Justice for United States Victims of State Sponsored Terrorism Act, P.L. 114-113, div. O, title IV (2015), 129 Stat. 3007, codified at 34 U.S.C. § 20144 (2018).

[181] 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.

[182] 34 U.S.C. § 20144(e) (2018).

[183] Ibid.

[184] 453 U.S. 654 (1981).

[185] 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").

[186] Exec. Order No. 12170, 44 Fed. Reg. 65,729 (Nov. 14, 1979); Exec. Order No. 12279, 46 Fed. Reg. 7,919 (Jan. 19, 1981).

[187] *Dames & Moore*, 453 U.S. at 644.

issued an order attaching certain Iranian assets for satisfaction of any judgment that might result,[188] but stayed the case pending appeal.[189] 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 and Moore sued the government. The plaintiffs claimed that the President and the Secretary of the Treasury exceeded their statutory and constitutional powers to the extent they adversely affected Dames and Moore's judgment against Iran, the execution of that judgment, the prejudgment attachments, and the plaintiff's ability to continue to litigate against the Iranian banks.[190]

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.[191]

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.[192] For support, the Court cited to Justice Frankfurter's concurrence in *Youngstown Sheet and Tube Co. v. Sawyer*[193] stating 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."[194] 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.

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[188] Ibid.

[189] Ibid. at 666.

[190] Ibid. at 666-67.

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

[192] Ibid. at 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)).

[193] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 610-11 (1952).

[194] *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.[195] These challenges have generally failed.[196] 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.[197] Even if the standards are higher for delegations of authority to define criminal offenses, the court held, IEEPA provides sufficient guidance.[198] 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.[199]

The Second Circuit found it significant that "IEEPA relates to foreign affairs—an area in which the President has greater discretion,"[200] bolstering its view that IEEPA does not violate the non-delegation doctrine.

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.[201]

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[195] 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).

[196] 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. Jan. 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. Mar. 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. Jan. 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).

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

[198] Ibid. at 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").

[199] *Dhafir*, 461 F.3d at 216-17 (internal citations omitted).

[200] Ibid. at 217 (citing *Dames & Moore*, 453 U.S. at 675).

[201] 50 U.S.C. § 1706(b) (2018).

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*,[202] 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.[203] The Eleventh Circuit nevertheless upheld the defendants' convictions for violations of IEEPA regulations,[204] holding that the legislative veto provision was severable from the rest of the statute.[205]

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, without just compensation."[206] 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.[207]

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.[208] 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

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

[203] *Chadha*, 462 U.S. at 954–55.

[204] *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.").

[205] Ibid., 196 (finding that the balance of IEEPA is capable of functioning independently and noting Congress's inclusion of a severability clause).

[206] U.S. Const. Amdt. V.

[207] *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).

[208] *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).

> property. Neither the purpose the statute was enacted to serve nor its plain language supports such a result.[209]

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.[210] 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.[211] 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 imagined this was taking private property without compensation or without due process of law?[212]

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.[213] 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.[214] This conclusion is apparently so even if the blocking of assets necessitates the closing altogether of a business enterprise.[215] In some circumstances, however, a court may analyze at least the initial blocking of assets under a Fourth Amendment standard for seizure.[216] One court found a blocking to be unreasonable under

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[209] Ibid. at 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.").

[210] 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.'").

[211] *Paradissiotis*, 49 Fed. Cl. at 21.

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

[213] 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).

[214] 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).

[215] 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).

[216] KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner, 647 F. Supp. 2d 857, 872 (N.D. Ohio 2009); Al–

a Fourth Amendment standard where there was no reason that OFAC could not have first obtained a judicial warrant.[217]

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.[218] 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.[219] 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.[220] 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 financing.[221] 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.[222]

In *Al Haramain Islamic Foundation v. U.S. Department of 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.[223] The court applied the balancing test set forth by the Supreme Court in its landmark administrative law case *Mathews v. Eldridge*[224] to resolve these questions.[225] 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."[226]

Haramain Islamic Foundation, Inc. v. U.S. Dept. of Treasury, 585 F. Supp.2d 1233, 1263 (D. Or. 2008).

[217] *KindHearts*, 647 F. Supp. 2d at 883.

[218] U.S. Const. Amdt V.

[219] *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)).

[220] *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).

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

[222] Ibid.

[223] 686 F.3d 965, 979 (9th Cir. 2012).

[224] 424 U.S. 319 (1976).

[225] *Al Haramain*, 686 F.3d at 979.

[226] Ibid. (citing *Mathews*, 424 U.S. at 334–35).

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 shutters 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.[227]

Nevertheless, the court found "the government's interest in national security [could not] be understated."[228] 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."[229] 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 unconstitutional,[230] the court found that the presumption had been overcome in this case.[231] 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.[232] 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,[233] the court deemed the error harmless because it would not likely have affected the outcome of the case.[234]

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.[235] 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.[236] 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 the redesignation of the organization as a specially

[227] Ibid. at 979–80 (internal citations omitted).

[228] Ibid. at 980.

[229] Ibid.

[230] *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)).

[231] Ibid. at 982 "[T]the use of classified information in the fight against terrorism, during a presidentially declared "national emergency," qualifies as sufficiently "extraordinary" to overcome the presumption.").

[232] Ibid. at 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)).

[233] Ibid. at 984 ("OFAC's failure to pursue potential mitigation measures violated AHIF–Oregon's due process rights.").

[234] Ibid. at 990.

[235] Ibid. at 984.

[236] Ibid. at 984-85.

designated global terrorist (SDGT), the court agreed that the organization had been deprived of due process rights.[237] However, the court found that this error too was harmless.[238]

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.[239] Courts have held that there is no First Amendment right to support terrorists.[240] 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.[241] 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 applies to political contributions.[242]

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."[243] 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

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

[238] 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.").

[239] *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.").

[240] 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)).

[241] *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.").

[242] 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).

[243] *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.[244]

The court found the government's actions to fall 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.[245]

However, 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.[246] Accordingly, the court rejected the government's reliance on the Supreme Court's decision in *Holder v. Humanitarian Law Project*[247] to find that the regulation impermissibly implicated the organization's right to free speech.[248] 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.

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

Until the recent enactment of the Export Control Reform Act of 2018,[249] export of dual use goods and services was regulated pursuant to the authority of the Export Administration Act (EAA),[250] 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.[251]

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."[252] 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. **Figure 1**.

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[244] Ibid. (citing *O'Brien*, 391 U.S. at 376-77).

[245] Ibid.

[246] *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").

[247] 561 U.S. 1, 38 (2010) (upholding the prohibition on material support of terrorist organizations, 18 U.S.C. § 2339B, against First Amendment challenge).

[248] *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).

[249] P.L. 115-232, Title XVIII(B). In 2018, Congress passed the Export Control Reform Act 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" below.

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

[251] Exec. Order No. 12444, 48 Fed. Reg. 48,215 (Oct. 18, 1983).

[252] Ibid.

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 control system heretofore maintained."[253] Presidents Obama and Trump annually extended the 2001 executive order.[254]

Courts have generally treated this arrangement as authorized by Congress,[255] 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.[256] 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.[257]

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."[258] 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.[259]

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),[260] which exempts from disclosure information exempted from disclosure by statute, even though the EAA had expired.[261] 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.[262]

[253] Exec. Order No. 13222, 66 Fed. Reg. 44,025 (Aug. 17, 2001).

[254] See, e.g., Continuation of Emergency Regarding Export Control Regulations, 82 Fed. Reg. 39,005 (Aug. 15, 2017).

[255] 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.

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

[257] Ibid. at 1113-14 (emphasizing the foreign affairs connection served by the EAA).

[258] United States v. Quinn, 401 F. Supp. 2d 80, 93 (D.D.C. 2005).

[259] Ibid. at 95.

[260] 5 U.S.C. § 552(b)(3) (2018).

[261] Wisconsin Project on Nuclear Arms Control v. U.S. Dep't of Commerce, 317 F.3d 275, 282 (D.C. Cir. 2003).

[262] Ibid.

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.[263] Pursuant to the regulations and under the direction of the Commerce Department, the company sought judicial review directly in the D.C. Circuit.[264] 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.[265]

Consequently, the appeal of the agency decision was determined to belong in the district court according to the default rule under the Administrative Procedure Act (APA).[266]

Issues and Options for Congress

Congress may wish to address a number of issues with respect to IEEPA; two 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 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.[267]

In general, three common 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 would likely have to have a two-thirds majority rather than a simple majority to terminate a national emergency. Despite these criticisms, Congress has not acted to terminate or otherwise express displeasure with an emergency declaration invoking IEEPA. 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

[263] Micei Int'l v. Dep't of Commerce, 613 F.3d 1147, 1150 (D.C. Cir. 2010).

[264] Ibid. at 1151.

[265] Ibid. at 1153 (internal citations omitted).

[266] Ibid. at 1152 (citing 5 U.S.C. § 704 (2009)).

[267] See, e.g., Jason Luong, "Forcing Constraint"; Jules Lobel, "Emergency Power and the Decline of Liberalism."

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."[268] 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."[269] 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 1792[270] or the Foreign Intelligence Surveillance Act.[271] However, 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" has left 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.[272] 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."[273]

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 underlying authorization, the Export Administration Act (EAA), periodically expired. During those times when Congress did not reauthorize the EAA, Presidents have declared emergencies to

[268] 50 U.S.C. § 1701.

[269] *House Markup*, p. 12.

[270] 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 of 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.

[271] 50 U.S.C. §§ 1803-1805.

[272] "The International Emergency Economic Powers Act: A Congressional Attempt to Control Presidential Emergency Power," *Harvard Law Review* 96, no. 5 (Mar., 1983), p. 1111 n49.

[273] Ibid.; See also Thronson, "Toward Comprehensive Reform of America's Emergency Law Regime," pp. 757-758.

maintain the dual-use export control system.[274] The current emergency has been ongoing since 2001.[275]

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, it does not appear that the subsequent reforms resulting in the enactment of IEEPA would prevent the President from imposing tariffs or other restrictions on trade. However, the availability of diverse other authorities for addressing trade, including for national security purposes, makes the use of IEEPA for this purpose unlikely.[276]

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.[277]

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.

Terminating National Emergencies or IEEPA Authorities

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.[278] Two such resolutions have ever been introduced and neither declarations of emergency involved IEEPA.[279] The lack of congressional action here could be the result of the necessity of obtaining a veto-proof majority or it could be that the use of IEEPA has so far reflected the will of Congress.

If Congress wanted to assert more authority over the use of IEEPA, it could amend the NEA or IEEPA to include a "sunset provision," terminating any national emergency after a certain number of days. At least one scholar has recommended such an amendment. [280] Alternatively, Congress could amend IEEPA to provide for a review mechanism that would give Congress an active role. In the Senate during the 115th Congress, for example, Senator Mike Lee introduced the Global

[274] In 2018, Congress passed the Export Control Reform Act 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.

[275] Ibid.

[276] See, e.g., 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)); CRS In Focus IF10667, *Section 232 of the Trade Expansion Act of 1962*, by Rachel F. Fefer and Vivian C. Jones.

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

[278] 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 (Aug. 16, 1985), 99 Stat. 405.

[279] 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. 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., Feb. 22, 2019; S.J.Res. 10 (Udall), 116th Cong., 1st sess., February 28, 2019. Neither emergency had invoked IEEPA authorities.

[280] Luong, "Forcing Constraint," p. 1181.

Trade Accountability Act of 2017 required the President to report to Congress on any proposed trade action (including the use of IEEPA), including a description of the proposal together with a list of items to be affected, an economic impact study of the proposal including potential retaliation. Congress, using expedited procedures, would need to approve the President's action through a joint resolution within a 60-day period. The legislation would have provided for a temporary one-time unilateral trade action for a 90-day period.[281] Similarly, in the 116th Congress, Senator Lee introduced S. 764, a bill to provide for congressional approval of national emergency declarations, and for other purposes, which would amend the NEA to require an act of Congress within 30 days to allow a national emergency to continue.[282]

Another approach would establish a means for Congress to pass a resolution of disapproval if IEEPA authorities are invoked. An example of this approach is the Trade Authority Protection Act (H.R. 5760).[283] After the submission of similar reporting requirement to S. 177 (above), Congress could, under Congressional Review Act (CRA)-style procedures,[284] pass a joint resolution of disapproval. Congress does have the authority to pass a joint resolution under IEEPA, as noted above, but the use of CRA procedures would allow for certain expedited consideration.

Alternatively, Congress could use any of these mechanisms to amend the current disapproval resolution process in IEEPA or the NEA itself.

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…"[285]

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, no Member of Congress has ever introduced a resolution to terminate a national emergency citing IEEPA.[286] The NEA requires that both houses of Congress meet every six months to consider a vote on a joint resolution on terminating an emergency.[287] Neither house has ever met to do so. In response to concerns over the scale and scope of the emergency economic

[281] Global Trade and Accountability Act, S. 177 (Lee), 115th Cong., 1st Sess., January 20, 2017.

[282] Article I Act, S. 764 (Lee), 116th Cong., 1st sess., March 12, 2019.

[283] Trade Authority Protection Act, H.R. 5760 (Kind), 115th Cong., 2nd Sess., May 10, 2018.

[284] CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis.

[285] House, *Trading with the Enemy Act Reform Legislation*, p. 9.

[286] 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., Feb. 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.

[287] 50 U.S.C. § 1622(b).

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.

The Export Control Reform Act of 2018

In 2018, Congress passed the Export Control Reform Act (ECRA).[288] The legislation repealed the expired Export Administration Act of 1979,[289] the regulations of which had been continued by reference to IEEPA since 2001.[290] The 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;[291] 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.[292] Going forward, Congress may wish to revisit these provisions, which all relate to deterring the proliferation of weapons of mass destruction.

[288] P.L. 115-232 (Aug. 13, 2018), Title XVII(B).

[289] Ibid. § 1766(a).

[290] Exec. Order No. 13222.

[291] Ibid. § 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.

[292] Ibid. § 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.).").

Appendix A. NEA and IEEPA Use

Table A-1. National Emergencies Declared Pursuant to the NEA

*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.
Blocking Iranian Government Property	11/14/1979	Ongoing	12170	
Sanctions Against Iran	4/17/1980	4/17/1981	12211	
Continuation of Export Control Regulations	10/14/1983	12/20/1983	12444	12451
Continuation of Export Control Regulations	3/30/1984	7/12/1985	12470	12525
Prohibiting Trade and Certain Other Transactions Involving Nicaragua	5/1/1985	3/13/1990	12513	12707
Prohibiting Trade and Certain Other Transactions Involving South Africa	9/9/1985	7/10/1991	12532	12769
Prohibiting Trade and Certain Transactions Involving Libya	1/7/1986	9/20/2004	12543	13357
Prohibiting Certain Transactions With Respect to Panama	4/8/1988	4/5/1990	12635	12710
Blocking Iraqi Government Property and Prohibiting Transactions with Iraq	8/2/1990	7/29/2004	12722	13350
Continuation of Export Control Regulations	9/30/1990	9/30/1993	12730	12867
Chemical and Biological Weapons Proliferation	11/16/1990	11/11/1994	12735	12938
Prohibiting Certain Transactions with Respect to Haiti	10/4/1991	10/14/1994	12775	12932
Blocking "Yugoslav Government" Property and Property of the Governments of Serbia and Montenegro	5/30/1992	5/28/2003	12808	13304
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	10/14/1992	3/6/1993	6491	6534
Prohibiting Certain Transactions Involving UNITA	9/26/1993	5/6/2003	12865	24857
Measures To Restrict The Participation By United States Persons In Weapons Proliferation Activities	9/30/1993	9/29/1994	12868	12930
Continuation of Export Control Regulations	6/30/1994	8/19/1994	12923	12924
Continuation of Export Control Regulations	8/19/1994	4/4/2001	12924	13206
Measures To Restrict The Participation By United States Persons In Weapons Proliferation Activities	9/29/1994	11/14/1994	12930	12938
Proliferation of Weapons of Mass Destruction	11/14/1994	Ongoing	12938	

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.
Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process	1/23/1995	Ongoing	12947	
Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources	3/15/1995	Ongoing	12957	
Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers	10/21/1995	Ongoing	12978	
Regulation of the Anchorage and Movement of Vessels with Respect to Cuba	3/1/1996	Ongoing	6867	
Declaration of a State of Emergency and Release of Feed Grain from the Disaster Reserve	7/1/1996	6/30/1997	6907	
Prohibiting New Investment in Burma	5/20/1997	10/7/2016	13047	13742
Blocking Sudanese Government Property and Prohibiting Transactions With Sudan	11/3/1997	Ongoing	13067	
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
Blocking Property and Prohibiting Transactions With the Taliban	7/4/1999	7/2/2002	13129	13268
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	
Prohibiting the Importation of Rough Diamonds From Sierra Leone	1/18/2001	1/15/2004	13194	13324
Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans	6/26/2001	Ongoing	13219	
Continuation of Export Control Regulations	8/17/2001	Ongoing	13222	
Declaration of National Emergency by Reason of Certain Terrorist Attacks	9/14/2001	Ongoing	7463	
Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism	9/23/2001	Ongoing	13224	
Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe	3/6/2003	Ongoing	13288	
Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest	5/22/2003	Ongoing	13303	

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.
Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria	5/11/2004	Ongoing	13338	
Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods From Liberia	7/22/2004	11/12/2015	13348	13710
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	9/8/2005	11/3/2005	7924	7959
Blocking Property of Certain Persons Contributing to the Conflict in Cote d'Ivoire	2/7/2006	9/14/2016	13396	13739
Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus	6/16/2006	Ongoing	13405	
Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo	10/27/2006	Ongoing	13413	
Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions	8/1/2007	Ongoing	13441	
Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals	6/26/2008	Ongoing	13466	
Declaration of a National Emergency With Respect to the 2009 H1N1 Influenza Pandemic	10/23/2009	10/22/2010	8443	
Blocking Property of Certain Persons Contributing to the Conflict in Somalia	4/12/2010	Ongoing	13536	
Blocking Property and Prohibiting Certain Transactions Related to Libya	2/25/2011	Ongoing	13566	
Blocking Property of Transnational Criminal Organizations	7/24/2011	Ongoing	13581	
Blocking Property of Persons Threatening the Peace, Security, or Stability of Yemen	5/16/2012	Ongoing	13611	
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
Blocking Property of Certain Persons Contributing to the Situation in Ukraine	3/6/2014	Ongoing	13660	
Blocking Property of Certain Persons With Respect to South Sudan	4/3/2014	Ongoing	13664	
Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic	5/12/2014	Ongoing	13667	

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.
Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela	3/8/2015	Ongoing	13692	
Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities	4/1/2015	Ongoing	13694	
Blocking Property of Certain Persons Contributing to the Situation in Burundi	11/22/2015	Ongoing	13712	
Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption	12/20/2017	Ongoing	13818	
Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election	9/12/2018	Ongoing	13848	
Blocking Property of Certain Persons Contributing to the Situation in Nicaragua	11/27/2018	Ongoing	13851	
Declaring a National Emergency Concerning the Southern Border of the United States	2/15/2019	Ongoing	9844	

Source: CRS

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

Table A-2. IEEPA National Emergency Use by Executive Order

In chronological order, from first use (1979) to present day (January 2019)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
Administration of President Jimmy Carter (1977-1981)			
12170 (Nov. 14. 1979; 44 FR 65729)	Iran (hostage taking)	Declares national emergency; blocks Iran government property	Revoked and replaced, Exec. Order No. 13599 (2012)
12205 (Apr. 7, 1980; 45 FR 24099)	Iran (hostage taking)	Prohibits certain transactions	Revoked in part by Exec. Order No. 12282 (1981)
12211 (Apr. 17, 1980; 45 FR 26685)	Iran (hostage taking)	Prohibits transactions	Revoked in part by Exec. Order No. 12282 (1981)
12276 (Jan. 19, 1981; 46 FR 7913)	Iran (hostage taking—resolution)	Establishes escrow accounts	Ratified by Exec. Order No. 12294 (1981)
12277 (Jan, 19, 1981; 46 FR 7915)	Iran (hostage taking—resolution)	Transfers Iran government funds	Ratified by Exec. Order No. 12294 (1981)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12278 (Jan. 19, 1981; 46 FR 7917)	Iran (hostage taking—resolution)	Transfers Iran government assets overseas	Ratified by Exec. Order No. 12294 (1981)
12279 (Jan. 19, 1981; 46 FR 7917)	Iran (hostage taking—resolution)	Transfers Iran government assets held in U.S. banks	Ratified by Exec. Order No. 12294 (1981)
12280 (Jan. 19, 1981; 46 FR 7921)	Iran (hostage taking—resolution)	Transfers Iran government financial assets held by non-banks	Ratified by Exec. Order No. 12294 (1981)
12281 (Jan. 19, 1981; 46 FR 7923)	Iran (hostage taking—resolution)	Transfers other Iran government assets	Ratified by Exec. Order No. 12294 (1981)
12282 (Jan. 19, 1981; 46 FR 7925)	Iran (hostage taking—resolution)	Revokes prohibitions against transactions involving Iran	Ratified by Exec. Order No. 12294 (1981)
12283 (Jan. 19, 1981; 46 FR 7927)	Iran (hostage taking—resolution)	Non-prosecution of claims of Iran hostages	Ratified by Exec. Order No. 12294 (1981)
12284 (Jan. 19, 1981; 46 FR 7929)	Iran (hostage taking—resolution)	Restricts transfer of property of the Shah	Ratified by Exec. Order No. 12294 (1981)
12285 (Jan. 19, 1981; 46 FR 7931)	Iran (hostage taking--resolution	Establishes Commission on Hostage Compensation	Revoked by Exec. Order No. 12379 (1982)
Administration of President Ronald Reagan (1981-1989)			
12294 (Feb. 24, 1981; 46 FR 14111)	Iran (hostage taking—resolution)	Suspends claims and litigation against Iran	Amended by Exec. Order No. 12379 (1982)
12444 (Oct. 14, 1983; 48 FR 48215)	Expiration of Export Administration Act of 1979 (EAA)	Continues Export Administration Regulations (EAR)	Revoked by Exec. Order No. 12451 (1983) (EAA reauthorized)
12470 (Mar. 30, 1984; 49 FR 13099)	Expiration of EAA	Continues EAR	Revoked by Exec. Order No. 12525 (1985) (EAA reauthorized)
12513 (May 1, 1985; 50 FR 18629)	Nicaragua (civil war)	Declares national emergency; prohibits imports, exports, air traffic, use of U.S. ports	Revoked by Exec. Order No. 12707 (1990)
12532 (Sept. 9, 1985; 50 FR 36861)	South Africa (apartheid, to meet requirements of U.N. Security Council (UNSC) Resolution)	Declares national emergency; prohibits loans to government, crime control exports, nuclear-related exports, military-related imports; supports Sullivan Principles	Revoked by Exec. Order No. 12769 (1991)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12535 (Oct. 1, 1985; 50 FR 40325)	South Africa (apartheid, to meet requirements of UNSC Resolution)	Prohibits import of krugerrands	Revoked by Exec. Order No. 12769 (1991)
12543 (Jan. 1, 1986; 51FR875)	Libya (terrorism, regional unrest)	Declares national emergency; 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 Exec. Order No. 13357 (2004)
12544 (Jan. 8, 1986; 51 FR 1235)	Libya (terrorism, regional unrest)	Blocks Libyan Government assets in United States	Revoked by Exec. Order No. 13357 (2004)
12635 (Apr. 8, 1988; 53 FR 12134)	Panama (finding government of Noriega and Palma a threat)	Declares national emergency; blocks Panama assets in United States	Revoked by Exec. Order No. 12710 (1990)
Administration of President George H.W. Bush (1989-1993)			
12722 (Aug. 2, 1990; 55 FR 31803)	Iraq (invasion of Kuwait; to meet requirements of UNSC Resolution)	Declares national emergency; blocks Iraq Government assets in U.S.; prohibits most export and import; restricts transactions related to travel; prohibits loans	Revoked by Exec. Order No. 13350 (2004)
12723 (Aug. 2, 1990; 55 FR 31805)	Kuwait (after Iraq's invasion; to meet requirements of UNSC Resolution)	Declares national emergency; blocks Kuwait Government assets in U.S.	Revoked by Exec. Order No. 12725 (1990)
12724 (Aug. 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 Exec. Order No. 13350 (2004)
12725 (Aug. 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 Exec. Order No. 12771 (1991)
12730 (Sept. 30, 1990; 55 FR 40373)	Expiration of EAA	Continues EAR	Revoked by Exec. Order No. 12867 (1993)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12735 (Nov. 16, 1990; 55 FR 48587)	Chemical and biological weapons proliferation	Declares national emergency; prohibits transactions	Revoked and replaced by Exec. Order No. 12938 (1994)
12775 (Oct. 4, 1991; 56 FR 50641)	Haiti (military coup)	Declares national emergency; blocks Haiti Government assets in U.S.; prohibits transactions	Revoked by Exec. Order No. 12932 (1994)
12779 (Oct. 28, 1991; 56 FR 55975)	Haiti (military coup)	Blocks Haiti Government assets in U.S.; prohibits export and import, transactions	Revoked by Exec. Order No. 12932 (1994)
12801 (Apr. 15, 1992; 57 FR 14319)	Libya (to meet requirements of UNSC Resolution)	Bars overflight, takeoff and landing planes traveling to/from Libya	Revoked by Exec. Order No. 13357 (2004)
12808 (May 30, 1992; 57 FR 23299)	Yugoslavia (Serbia and Montenegro) (regional conflict; to meet requirements of UNSC Resolution)	Declares national emergency; blocks Yugoslav Government assets in United States	Revoked by Exec. Order No. 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 Exec. Order No. 13304 (2003)
12817 Oct. 21, 1992; 57 FR 48433)	Iraq (postwar; to meet requirements of UNSC Resolution)	Blocks assets	Revoked by Exec. Order No. 13350 (2004)
12831 (Jan. 15, 1993; 58 FR 5253)	Yugoslavia (Serbia and Montenegro) (regional conflict)	Prohibits transshipment	Revoked by Exec. Order No. 13304 (2003)
Administration of President William Clinton (1993-2001)			
12846 (Apr. 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 Exec. Order No. 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 Exec. Order No. 12932 (1994)
12865 (Sept. 26, 1993; 58 FR 51005)	UNITA (Angola) (to meet requirements of UNSC Resolution)	Declares national emergency; prohibits sales to UNITA and UNITA-controlled regions	Revoked by Exec. Order No. 13298 (2003)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12868 (Sept. 30, 1993; 58 FR 51749)	Weapons proliferation	Declares national emergency; controls exports; prohibits transactions with those found not in compliance with controls	Revoked and replaced by Exec. Order No. 12930 (1994)
12872 (Oct. 18, 1993; 58 FR 54029)	Haiti (military coup)	Blocks assets of those impeding democratization process	Revoked by Exec. Order No. 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 Exec. Order No. 12932 (1994)
12917 (May 21, 1994; 59 FR 26925)	Haiti (military coup)	Prohibits imports	Revoked by Exec. Order No. 12932 (1994)
12920 (June 10, 1994; 59 FR 30501)	Haiti (military coup)	Prohibits certain financial transactions, exports	Revoked by Exec. Order No. 12932 (1994)
12922 (June 21, 1994; 59 FR 32645)	Haiti (military coup)	Blocks assets of certain individuals	Revoked by Exec. Order No. 12932 (1994)
12923 (June 30, 1994; 59 FR 34551)	Expiration of EAA	Continues EAR	Revoked and replaced by Exec. Order No. 12924 (1994)
12924 (August 19, 1994; 59 FR 34551)	Expiration of EAA	Continues EAR	Amended by Exec. Order No. 12981 (1995)
12930 (Sept. 29, 1994; 59 FR 50475)	Proliferation of weapons of mass destruction	Declares national emergency; controls exports; prohibits transactions with those found not in compliance with controls	Revoked and replaced by Exec. Order No. 12938 (1994)
12934 (Oct. 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 Exec. Order No. 13304 (2003)
12938 (Nov. 19, 1994; 59 FR 59099)	Proliferation of weapons of mass destruction	Declares national emergency; controls exports; prohibits transactions with those found not in compliance with controls	Amended by Exec. Order No. 13099 (1998)
12947 (Jan. 23, 1995; 60 FR 5079)	Terrorists who disrupt Middle East peace process	Declares national emergency; blocks assets; prohibits transactions	Renewed annually

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
12957 (Mar. 15, 1995; 60 FR 14615)	Iran (weapons proliferation)	Declares national emergency; prohibits investment in oil development	Revoked in part, and restated in Exec. Order No. 12959 (1995)
12959 (May 6, 1995; 60 FR 24757)	Iran (weapons proliferation)	Prohibits investment in oil development	Revoked in part by Exec. Order No. 13059 (1997)
12978 (Oct. 21, 1995; 60 FR 54579)	Significant narcotics traffickers (initially Colombia)	Declares national emergency; blocks assets; prohibits transactions	Renewed annually
12981 (Dec. 5, 1995)	EAA	Amends the administration of export controls.	Amended by Exec. Order No. 13020 (1996)
13020 (Oct. 12, 1996)	EAA	Further amends the administration of export controls.	Amended by Exec. Order No. 13026 (1996)
13026 (Nov. 15, 1996)	EAA	Further amends the administration of export controls. Adds rules for encryption products.	Revoked by Exec. Order No. 13206 (2001)
13047 (May 22, 1997; 62 FR 28301)	Burma (military government; to implement Sec. 570 of P.L. 104-208)	Declares national emergency; blocks new investment	Revoked by Exec. Order No. 13742 (2016)
13059 (Aug. 19, 1997; 62 FR 44531)	Iran (weapons proliferation, terrorism, regional stability)	Blocks imports, exports	Amended by Exec. Order No. 13716 (2016)
13067 (Nov. 3, 1997; 62 FR 59989)	Sudan (conflict)	Declares national emergency; blocks Sudan Government assets; prohibits exports, imports, other transactions	Revoked in part by Exec. Order No. 13761 (2017)
13069 (Dec. 12, 1997; 62 FR 65989)	UNITA (Angola) (war)	Prohibits certain transaction	Revoked by Exec. Order No. 13298 (2003)
13088 (June 9, 1998; 63 FR 32109)	Yugoslavia (Serbia and Montenegro) (war)	Declares national emergency; blocks Yugoslav Government assets; prohibits transactions	Revoked by Exec. Order No. 13304 (2003)
13094 (July 28, 1998; 63 FR 40803)	Proliferation of weapons of mass destruction	Prohibits some transactions, assistance, imports	Amended by Exec. Order No. 13128 (1999)
13098 (Aug. 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 Exec. Order No. 13298 (2003)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13099 (Aug. 20, 1998; 63 FR 45167)	Terrorists who disrupt the Middle East peace process	Adds Usama bin Laden and others to the terrorist list	Amends Exec. Order No. 12947 (1995); see above
13121 (Apr. 30, 1999; 64 FR 24021)	Yugoslavia (Serbia and Montenegro) (war)	Blocks Yugoslav Government assets; prohibits transactions	Revoked by Exec. Order No. 13304 (2003)
13128 (Jun. 25, 1999)	Proliferation of weapons of mass destruction	Implements the Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act.	Renewed Annually.
13129 (July 4, 1999; 64 FR 36759)	Taliban (terrorism)	Declares national emergency; blocks property	National emergency terminated by Exec. Order No. 13268 (2002); see, however, Exec. Order No. 13224 (2001)
Exec. Order No. 13159 (June 21, 2000; 65 FR 39279)	Russia for misuse of highly enriched uranium extractions	Declares national emergency; blocks property	Superseded by Exec. Order No. 13617 (2012)
13192 (Jan. 17, 2001; 66 FR 7379)	Yugoslavia (Serbia and Montenegro) (war)	Substantially expands sanctions in Exec. Order No. 13088 (1998) to apply to humanitarian crisis in Kosovo	Revoked by Exec. Order No. 13304 (2003)
13194 (Jan. 18, 2001; 66 FR 7389)	Sierra Leone (diamond trade)	Declares national emergency; prohibits diamond imports	Revoked by Exec. Order No. 13324 2004)
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 Exec. Order No. 13324 2004)
13219 (June 26, 2001; 66 FR 34775)	Western Balkans (destabilization postwar)	Declares national emergency; blocks property	Renewed annually
13222 (Aug. 17, 2001; 66 FR 44025)	Expiration of EAA	Continues EAR	Renewed annually
13224 (Sept. 23, 2001; 66 FR 49079	Terrorism	Declares national emergency; blocks property; prohibits transactions	Renewed annually
13268 (July 2, 2002; 67 FR 44751)	Taliban and Terrorism	Terminates Exec. Order No. 13129 (1999); amends Exec. Order No. 13224 (2001)	Expanded by Exec. Order No. 13371 (2005)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13288 (Mar. 6, 2003; 68 FR 11457)	Zimbabwe (undermining democratic processes)	Declares national emergency; blocks property	Renewed annually, superseded in part by Exec. Order No. 13391 (2005)
13290 Mar. 20, 2003; 68 FR 14307)	Iraq (war)	Authorizes the confiscation and vesting of property	Modified by Exec. Order No. 13350 (2004)
13298 (May 6, 2003; 68 FR 24857)	UNITA (Angola)	Terminates earlier emergency	Revokes earlier orders
13303 (May 22, 2003; 68 FR 31931)	Iraq (war)	Declares national emergency; Protects certain property, revokes earlier orders.	Amends earlier order
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 Exec. Order No. 13742 (2016)
13312 (Jul. 3, 2003)	Sierra Leone and Liberia (conflict)	Implements the Clean Diamond Trade Act	Revoked by Exec. Order No. 13324 (2004)
13315 (Aug. 28, 2003; 68 FR 52315)	Iraq (former regime)	Blocks property	Superseded by Exec. Order No. 13350 (2004)
13324 (Jan. 15, 2004)	Sierra Leone and Liberia (conflict)	Terminates earlier emergency	Revokes earlier order
13338 (May 11, 2004; 69 FR 26751)	Syria (civil conflict)	Declares national emergency; blocks property of those who export certain goods to Syria	Modified by Exec. Order No. 13460 (2008); renewed annually
13348 (July 22, 2004; 69 FR 44885)	Liberia (corruption, to meet requirements of UNSC resolution)	Declares national emergency; blocks property; prohibits imports	Revoked by Exec. Order No. 13710 (2015)
13350 (July 29, 2004; 69 FR 46055)	Iraq (postwar)	Ends emergency from 1990 Kuwait invasion	Amended by Exec. Order No. 13364 (2004)
13357 (Sept. 20, 2004; 69 FR 56665)	Libya (terrorism)	Terminates earlier emergency	Revokes earlier orders
13364 (Nov. 29, 2004)	Iraq (postwar)	Amends transaction controls and regulations on the Development fund for Iraq	Amended by Exec. Order No. 13668 (2014)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13372 (Feb. 16, 2005; 70 FR 8499)	Terrorism	Clarifies use of sanctions	Amends Exec. Order No. 12947, Exec. Order No. 13224
13382 (June 28, 2005; 70 FR 38567)	Weapons proliferation	Expands on earlier orders; blocks property	Amends Exec. Order No. 12938 (1994) and 13094 (1998), see above
13391 (Nov. 22, 2005; 70 FR 71201)	Zimbabwe (undermining democratic processes)	Blocks property	Amends and supersedes, in part, Exec. Order No. 13288 (2003)
13396 (Feb. 7, 2006; 71 FR 7389)	Cote d'Ivoire (conflict)	Declares national emergency; blocks property	Revoked by Exec. Order No. 13739 (2016)
13399 (Apr. 25, 2006; 71 FR 25059)	Syria (civil war)	Expands Exec. Order No. 13338 (2004); blocks property	Amends earlier order
13400 (Apr. 26, 2006; 71 FR 25483)	Sudan (Darfur)	Expands Exec. Order No. 13067 (1997); blocks property	Amends earlier order
13405 (June 16, 2006; 71 FR 35485)	Belarus (undermining democracy)	Declares national emergency; blocks property	Renewed annually
13412 (Oct. 13, 2006; 71 FR 61369)	Sudan (Darfur, regional stability)	Expands Exec. Order No. 13067 (1997; blocks property and transactions	Revoked by Exec. Order No. 13761 (2017)
13413 (Oct. 27, 2006; 71 FR 64105)	Democratic Republic of the Congo (regional stability)	Declares national emergency; blocks property	Renewed annually; amended by Exec. Order No. 13671 (2014)
13438 (July 17, 2007; 72 FR 39719)	Those who threaten stabilization efforts in Iraq	Expands Exec. Order No. 13303 (2003); blocks property	Expands other orders
13441 (Aug. 1, 2007; 72 FR 43499)	Those who threaten the sovereignty of Lebanon (primarily Syria)	Declares national emergency; blocks property	Renewed annually
13448 Oct. 18, 2007; 72 FR 60223)	Burma (military government)	Declares national emergency; blocks property and transactions	Revoked by Exec. Order No. 13742 (2016)
13460 (Feb. 13, 2008; 73 FR 8991)	Syria (civil conflict)	Blocks property of those who support certain activities in Syria	Amends Exec. Order No. 13338 (2004)
13464 Apr. 30, 2008; 72 FR 24491)	Burma (military government)	Blocks property and transactions	Revoked by Exec. Order No. 13742 (2016)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13466 (June 26, 2008; 73 FR 36787)	North Korea (weapons proliferation, to meet requirements of UNSC resolution)	Declares national emergency; blocks property and transactions	Renewed annually
13469 (July 25, 2008; 73 FR 43841)	Zimbabwe (undermining democracy)	Blocks property	Expands Exec. Order No. 13288 (2003) and 13391 (2005)
Administration of President Barack Obama (2009-2017)			
13536 (Apr. 12, 2010; 75 FR 19869)	Somalia (conflict)	Declares national emergency; blocks property	Amended by Exec. Order No. 13620 (2012); renewed annually
13551 (Aug. 30, 2010; 75 FR 53837)	North Korea (weapons proliferation, to meet requirements of UNSC resolution)	Declares national emergency; Blocks property	Renewed annually
13553 (Sept, 28, 2010; 75 FR 60567)	Iran (human rights)	Blocks property including that of Iranian officials	Expands Exec. Order No. 12957 (1995)
13566 (Feb. 25, 2011; 76 FR 11315)	Libya (stability)	Declares national emergency; blocks property and transactions	Modified by Exec. Order No. 13726 (2016); renewed annually
13570 (Apr. 18, 2011; 76 FR 22291)	North Korea (weapons proliferation, to meet requirements of UNSC resolution)	Blocks transactions	Expands Exec. Order No. 13466 (2008), 13551 (2010); amended by Exec. Order No. 13687 (2015)
13572 (Apr. 29, 2011; 76 FR 24787)	Syria (human rights)	Blocks property of human rights violators	Expands Exec. Order No. 13338 (2004), 13399 (2006), and 13460 (2008)
13573 (May 18, 2011; 76 FR 29143)	Syria (war)	Blocks property of senior government officials	Expands Exec. Order No. 13338 (2004), 13399 (2006), 13460 (2008), and 13572 (2011); amended by Exec. Order No. 13582 (2011)
13574 (May 23, 2011; 76 FR 30505)	Iran (weapons proliferation)	Implements new sanctions in Iran Sanctions Act of 1996	Revoked by Exec. Order No. 13716 (2016)
13581 (July 24, 2011; 76 FR 44757)	Transnational Criminal Organizations	Declares national emergency; blocks property	Renewed annually
13582 (Aug. 17, 2011; 76 FR 52209)	Syria (war)	Blocks property of Government of Syria and transactions	Expands Exec. Order No. 13338 (2004), 13399 (2006), 13460 (2008), 13572 (2011), and Exec. Order No. 13573 (2011)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13590 (Nov. 20, 2011; 76 FR 72609)	Iran (weapons proliferation)	Prohibits transactions related to Iran's energy and petrochemical sectors	Revoked by Exec. Order No. 13716 (2016)
13599 (Feb. 5, 2012; 77 FR 6659)	Iran (weapons proliferation)	Blocks property of government and financial institutions	Expands Exec. Order No. 12957 (1995)
13606 (Apr. 22, 2012; 77 FR 24571)	Iran and Syria (human rights)	Blocks property and denies visas	Expands Exec. Order No. 12957 (1995) and 13338 (2004)
13608 (May 1, 2012; 77 FR 26409)	Iran and Syria (sanctions evasion)	Blocks transactions and denies visas	Expands Exec. Order No. 12938 (1994), 12957 (1995), 13224 (2001), and 13338 (2004)
13611 (May 16, 2012; 77 FR 29533)	Yemen (stability)	Declares national emergency; blocks property	Renewed annually
13617 (June 25, 2012; 77 FR 38459)	Russia (misuse of highly enriched uranium extractions	Blocks property	Revoked by Exec. Order No. 13695 (2015)
13619 (July 11, 2012; 77 FR 41243)	Burma (military government)	Blocks property	Revoked by Exec. Order No. 13742 (2016)
13620 July 20, 2012; 77 FR 43483)	Somalia (conflict)	Expands targets to include misappropriations, corruption, impeding humanitarian aid	Amends Exec. Order No. 13536 (2010)
13622 (July 30, 2012; 77 FR 45897)	Iran (weapons proliferation)	Additional sanctions	Revoked by Exec. Order No. 13716 (Jan. 16, 2016; 81 FR 3693)
13628 (Oct. 9, 2012; 77 FR 62139)	Iran (weapons proliferation, human rights, sanctions evasion)	Implements Iran Threat Reduction Act	Amended by Exec. Order No. 13716 (2016)
13637 (Mar. 8, 2013)	EAA	Amends EAR	Renewed annually
13645 (June 3, 2013; 78 FR 33945)	Iran (weapons proliferation, human rights)	Implements Iran Freedom and Counter-Proliferation Act of 2012	Revoked by Exec. Order No. 13716 (Jan. 16, 2016; 81 FR 3693)
13651 (Aug. 6, 2013; 78 FR 48793)	Burma	Prohibits import of jadeite and rubies	Expands Exec. Order No. 13047 (1997) and subsequent orders
13660 (Mar. 6, 2014; 79 FR 13493)	Ukraine (stability)	Declares national emergency; blocks property	Renewed annually

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13661 (Mar. 16, 2014; 79 FR 15535)	Russia (destabilization of Ukraine)	Blocks property	Expands Exec. Order No. 13660 (2014)
13662 (Mar. 20, 2014; 79 FR 16169)	Russia (destabilization of Ukraine)	Blocks property	Expands Exec. Order No. 13660 (2014)
13664 (Apr. 3, 2014; 79 FR 19283)	South Sudan (conflict)	Declares national emergency; blocks property	Renewed annually
13667 (May 12, 2014; 79 FR 28387)	Central African Republic (conflict)	Declares national emergency; blocks property	Renewed annually
13668 (May 27, 2014)	Iraq (postwar)	Ends immunities granted to the Development Fund for Iraq	Renewed annually
13671 (July 8, 2014; 79 FR 39949)	Democratic Republic of the Congo (regional stability)	Additional sanctions	Expands Exec. Order No. 13413 (2006)
13685 (Dec. 19, 2014; 79 FR 77357)	Ukraine (destabilizing activities in Crimea)	Blocks property and transactions	Expands Exec. Order No. 13660 (2014)
13687 (Jan. 2, 2015; 80 FR 819)	North Korea (weapons proliferation, to meet requirements of UNSC resolution)	Additional sanctions	Expands Exec. Order No. 13466 (2008), 13551 (2010), 13570 (2011)
13692 (Mar. 8, 2015; 80 FR 12747)	Venezuela (corruption, stability)	Declares national emergency; blocks property and deny visas	Renewed annually
13694 (Apr. 1, 2015; 80 FR 18077)	Malicious Cyber-Enabled Activities	Declares national emergency; blocks property	Renewed annually
13695 (May 26, 2015; 80 FR 30331)	Russia's misuse of highly enriched uranium extractions	Terminates emergency	Revokes Exec. Order No. 13617 (2012)
13710 (Nov. 12, 2015; 80 FR 71679)	Liberia (corrupt government)	Terminates emergency	Revokes Exec. Order No. 13348 (2004)
13712 (Nov. 22, 2015; 80 FR 73633)	Burundi (stability)	Declares national emergency; blocks property	Renewed annually
13716 (Jan. 16, 2016; 81 FR 3693)	Iran (nuclear weapons)	Implements U.S. obligations under the Joint Comprehensive Plan of Action	Revokes and modifies earlier orders

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13722 (Mar. 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 Exec. Order No. 13466 (2008)
13726 (Apr. 19, 2016; 81 FR 23559)	Libya (stability)	Additional sanctions	Expands Exec. Order No. 13566 (2011)
13739 (Sept, 14, 2016; 81 FR 63673)	Cote d'Ivoire (conflict)	Terminates emergency	Revokes Exec. Order No. 13396 (2006)
13742 (Oct. 7, 2016; 81 FR 70593)	Burma	Terminates emergency	Revokes Exec. Order No. 13047 (1997), 13310 (2003), 13448 (2007), 13464 (2008), 13619 (2012)
13757 (Dec. 28, 2016)	Malicious Cyber-Enabled Activities	Additional sanctions	Modifies Exec. Order No. 13694 (2015)
13761 (Jan. 13, 2017; 82 FR 5331)	Sudan (war, human rights)	Recognizes "positive actions" by the Government of Sudan by removing some sanctions	Revokes in part Exec. Order No. 13067 (1997), in whole Exec. Order No. 13412 (2006)
Administration of President Donald J. Trump (2017-)			
13804 (July 11, 2017; 82 FR 32611)	Sudan (war, human rights)	Extends deadlines in Exec. Order No. 13761	Modifies Exec. Order No. 13761 (2017)
13808 (Aug. 24, 2017; 82 FR 41155)	Venezuela (human rights, democracy, corruption)	Additional sanctions	Expands actions based on national emergency declared in Exec. Order No. 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 Exec. Order No. 13466 (2008)
13818 (Dec. 20, 2017; 82 FR 60839)	Global Magnitsky (human rights, corruption)	Declares national emergency; blocks property	Likely to be renewed annually (pending first anniversary)
13827 (Mar. 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 Exec. Order No. 13692 (2015)
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 Exec. Order No. 13692 (2015)

Executive Order	Country or Issue of Concern	Sanction/Remedy	Current Status
13846 (Aug. 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)	Expands actions based on national emergency declared in Exec. Order No. 12957 (1995)
13848 (Sept. 12; 83 FR 46843)	Foreign interference in U.S. elections	Declares national emergency relating to election interference. 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.	Complements actions taken under Exec. Order No. 13694, as amended.
13849 (Sept. 21, 2018; 83 FR 48195)	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 Exec. Order No. 13660 (2014) and related EO, and Exec. Order No. 13694 (2015), as amended.
13851 (Nov. 27, 2018; 83 FR 61505)	Nicaragua	Blocks property of certain persons contributing to the situation in Nicaragua.	
13857 (Jan. 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 Exec. Order No. 13692 (2015); modifies EOs 13692, 13808, 13827, 13850

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

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