

New Federal Initiatives Project

**Sanctions, Transnational Organized
Crime**

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On July 24, 2011, President Obama signed Executive Order 13581, “Blocking Property of Transnational Criminal Organizations.” In the Order, the President found that “the activities of significant transnational criminal organizations [TCOs] . . . have reached such a scope and gravity that they threaten the stability of international political and economic systems.” Those organizations, defined in the order as persons or groups that engage in “an ongoing pattern of serious criminal activity involving the jurisdictions of at least two foreign states; and that threatens the national security, foreign policy, or economy of the United States,” are determined to “constitute an unusual and extraordinary threat to the national security, foreign policy and economy of the United States,” making them subject to sanctions under the International Economic Emergency Powers Act (IEEPA).

IEEPA authorizes the President to declare a national emergency and regulate or seize “any property in which any foreign country or a national thereof has any interest” to counter “any unusual or 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.”¹ Passed in 1977, IEEPA powers have previously been invoked via Executive Order by President Carter to block Iranian assets during the hostage crisis there in 1979, by President Regan to block trade and travel with Libya in 1986, and President Clinton to block transactions to Middle East terrorists and the Taliban. President George W. Bush also invoked IEEPA shortly after the terrorist attacks of September 11, 2001, when he promulgated Executive Order 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism.”

The present Order purports to provide the U.S. government with “new tools to break the economic power of transnational organized crime and protect financial markets.” It blocks all property in the United States and interests in such property of designated groups, and prohibits making any contributions to, or receiving any contributions from such groups. The Executive Order calls upon the Secretary of the Treasury to determine what persons, groups, and supporters of those persons and groups are subject to the sanctions laid out in the Order, similarly to how the Secretary of State may designate Foreign Terrorist Organizations (FTOs) under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). The Order itself designates four such groups: the Brothers’ Circle in Eastern Europe and Asia, the Camorra in Italy, the Yakuza of Japan, and the Los Zetas drug cartel in Mexico. Los Zetas had already been designated as a sanctionable foreign narcotics trafficker by the Secretary of the Treasury under the Foreign Narcotics Kingpin Designation Act of 1999. Because of the parallels between FTO and TCO designations, and because IEEPA violations are criminally enforceable felonies, this EO has been compared to criminal statutes governing material support to terrorism, governed by laws such as sections 2339A, 2339B, and 2339C of Title 18 of the United States Code.

According to national security law scholar Professor Robert Chesney, “There are few topics more slippery—and more emblematic of the current age—than the intersection of transnational organized crime, narcotics, illicit arms, and violent non-state actors.” The National Intelligence Council determined in January 2010 that TCOs “are threatening U.S. interests by forging alliances with corrupt government officials, destabilizing political institutions in fragile

states, undermining competition in key world markets, perpetrating extensive cybercrimes and sophisticated frauds[, and] expanding their narco-trafficking and illicit smuggling networks,” and that “terrorists and insurgents use criminal networks for logistical support and funding.” The National Security Strategy issued in May 2010 also acknowledged the growing threats of transnational criminal networks. In that vein, the White House released a new national strategy document simultaneously with the Executive Order, as well as a proclamation suspending the entry into the United States of aliens subject to IEEPA sanctions and United Nations travel bans, under authorities granted by the Immigration and Nationality Act and other laws. The “Strategy to Combat Transnational Organized Crime: Addressing Converging Threats to National Security” seeks “to build, balance, and integrate the tools of American power to combat transnational organized crime and related threats to national security.”

The Strategy identifies several ways in which TCOs harm American interests and pose threats to national and international security. These include bribery and corruption of foreign officials, subverting legitimate markets, funding terrorism, drug trafficking, human smuggling, human trafficking, weapons trafficking, intellectual property theft, and cybercrime activity. To that end, the Strategy lays out five broad policy objectives: protecting Americans and others from the harms TCOs inflict, promoting transparency and combating corruption in governments abroad, breaking the economic power of TCOs, attacking TCOs’ infrastructures to prevent their facilitation of criminal and terrorist activities, and to build partnerships to defeat TCOs. Those policy goals are to be achieved by a collection of fifty-six specified actions, including initiatives to enhance intelligence and information sharing among U.S. government agencies and between federal, state, and local agencies; monitoring strategic and emerging markets for signs of criminal activity (including cybercrime and intellectual property theft); and leveraging law enforcement resources to investigate and prosecute persons involved with transnational organized crime activities.

A series of legislative proposals is also expected to follow the issuance of the Executive Order and Strategy to provide further statutory bases to combat TCOs.

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¹ 50 U.S.C. §§ 1701-1707.

Related Links:

Chesney, Robert, et al. “Category Archives: Transnational Criminal Organizations.” *Lawfare: Hard National Security Choices*. Available at <http://www.lawfareblog.com/category/transnational-criminal-organizations/> (Accessed August 15, 2011)

Exec. Order No. 13,581, 76 Fed. Reg. 44,757 (July 24, 2011). Text available at <http://www.whitehouse.gov/the-press-office/2011/07/25/executive-order-blocking-property-transnational-criminal-organizations>

Fact Sheet: New Executive Order Targets Significant Transnational Criminal Organizations. U.S. Department of the Treasury, July 25, 2011. Available at <http://www.treasury.gov/press-center/press-releases/Pages/tg1255.aspx>

National Intelligence Council. “The Threat to U.S. National Security Posed by Transnational Organized Crime.” Available at http://www.dni.gov/nic/NIC_toc.html (Accessed August 15, 2011)

Strategy to Combat Transnational Organized Crime: Addressing Converging Threats to National Security. The White House. July 2011. PDF available at http://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf