Global Investigations Review

The Guide to Sanctions

Editors
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Publisher's Note

The Guide to Sanctions is published by Global Investigations Review – the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing.

We live, it seems, in a new era for sanctions: more and more countries are using them, with greater creativity and (sometimes) selfishness.

And little wonder. They are powerful tools. They reach people who are otherwise beyond our jurisdiction; they can be imposed or changed at a stroke, without legislative scrutiny; and they are cheap! Others do all the heavy lifting once they are in place.

That heavy lifting is where this book comes in. The pullulation of sanctions has resulted in more and more day-to-day issues for business and their advisers.

Hitherto, no book has addressed this complicated picture in a structured way. The *Guide to Sanctions* corrects that by breaking down the main sanctions regimes and some of the practical problems they create in different spheres of activity.

For newcomers, it will provide an accessible introduction to the territory. For experienced practitioners, it will help them stress-test their own approach. And for those charged with running compliance programmes, it will help them do so better. Whoever you are, we are confident you will learn something new.

The guide is part of the GIR technical library, which has developed around the fabulous *Practitioner's Guide to Global Investigations* (now in its fifth edition). *The Practitioner's Guide* tracks the life cycle of any internal investigation, from discovery of a potential problem to its resolution, telling the reader what to think about at every stage, You should have both books in your library, as well as the other volumes in GIR's growing library – particularly our *Guide to Monitorships*.

We supply copies of all our guides to GIR subscribers, gratis, as part of their subscription. Non-subscribers can read an e-version at www.globalinvestigationsreview.com.

I would like to thank the editors of the *Guide to Sanctions* for shaping our vision (in particular Paul Feldberg, who suggested the idea), and the authors and my colleagues for the elan with which it has been brought to life.

We hope you find the book enjoyable and useful. And we welcome all suggestions on how to make it better. Please write to us at insight@globalinvestigationsreview.com.

David Samuels
Publisher, GIR
June 2021

Contents

Foreword

I am pleased to welcome you to the Global Investigations Review guide to economic sanctions. In the following pages, you will read in detail about sanctions programmes, best practices for sanctions compliance, enforcement cases, and the unique challenges created in corporate transactions and litigation by sanctions laws. This volume will be a helpful and important resource for anyone striving to maintain compliance and understand the consequences of economic sanctions.

The compliance work conducted by the private sector is critically important to stopping the flow of funds to weapons proliferators such as North Korea and Iran, terrorist organisations like ISIS and Hezbollah, countering Russia's continued aggressive behaviour, targeting human rights violators and corrupt actors, and disrupting drug traffickers such as the Sinaloa Cartel. I strongly believe that we are much more effective in protecting our financial system when government works collaboratively with the private sector.

Accordingly, as Under Secretary of the US Department of the Treasury's Office of Terrorism and Financial Intelligence from 2017 to 2019, one of my top priorities was to provide the private sector with the tools and information necessary to maintain compliance with sanctions and AML laws and to play its role in the fight against illicit finance. The Treasury has provided increasingly detailed guidance on compliance in the form of advisories, hundreds of FAQs, press releases announcing actions that detail typologies, and the Office of Foreign Assets Control (OFAC) framework to guide companies on the design of their sanctions compliance programmes. Advisories range from detailed guidance from OFAC and our interagency partners for the maritime, energy and insurance sectors, to sanctions press releases that provide greater detail on the means that illicit actors use to try to exploit the financial system, to Financial Crimes Enforcement Network (FinCEN) advisories providing typologies relating to a wide range of illicit activity.

Whether it was for the Iran, North Korea or Venezuela programmes, or in connection with human rights abuses and corrupt actors around the globe, the US Treasury has been dedicated to educating the private sector so that they in turn can further protect themselves.

The objective is not only to disrupt illicit activity but also to provide greater confidence in the integrity of the financial system, so we can open up new opportunities and access to financial services across the globe. That guidance is particularly important today with the increased use of sanctions and other economic measures across a broader spectrum of jurisdictions and programmes.

As you read this publication, I encourage you to notice the array of guidance, authorities and other materials provided by the US Treasury and other authorities cited and discussed by the authors. This material, provided first-hand from those charged with writing and enforcing sanctions laws, gives us a critical understanding of these laws and how the private sector should respond to them. By understanding and using that guidance, private companies can help to protect US and global financial systems against nefarious actors, as well as avoid unwanted enforcement actions.

Thank you for your interest in these subjects, your dedication to understanding this important area of the law, and your efforts to protect the financial system from abuse.

Sigal Mandelker
Former Under Secretary of the Treasury for Terrorism and Financial Intelligence
June 2021

Part III

Sanctions in Practice

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Key Sanctions Issues in Civil Litigation and Arbitration

Claire A DeLelle and Nicole Erb[1]

Economic sanctions issues can create added complexities for parties who wish to engage in litigation or arbitration or who find themselves defendants or respondents in such proceedings. This chapter explores the legal representation of parties subject to sanctions, the judicial challenges available to parties who become sanctioned, how economic sanctions issues arise more broadly in litigation and arbitration, and issues that parties should be aware of to minimise their risks of becoming embroiled in sanctions-related adversarial proceedings.

While this chapter focuses primarily on the role of US economic sanctions in litigation and arbitration, the sanctions regimes of many other jurisdictions and international bodies, such as the European Union and its Member States, the United Kingdom, Australia, Canada and the United Nations, may also pose unique issues in disputes, and merit careful consideration where implicated.

Key sanctions issues in litigation

Can I represent a sanctioned party in a US litigation?

Authorisations for provision of legal services

All current US sanctions programmes authorise the legal representation of sanctioned parties as plaintiffs or defendants in US litigation (as well as US administrative proceedings) by 'general licences'.[2] General licences, published on the website of the US Department of the

1 Claire A DeLelle and Nicole Erb are partners at White & Case LLP. The authors wish to thank Genevra Forwood, Reuben J Sequeira, Alana Toabe, Kyle Levenberg, Matthias Vangenechten, John Hannon, and Robert Golan-Vilella for their valuable contributions to this chapter.

2 Arguably, OFAC would violate the Due Process clause of the Fifth Amendment of the US Constitution if designated parties named as defendants in US litigation were prohibited from obtaining counsel due to US sanctions prohibitions. See, e.g., *American Airways Charters Inc. v. Regan*, 746 F.2d 865, 867, 875 (D.C. Cir. 1984) (finding that OFAC lacked constitutional authority to terminate the sanctioned defendants attorney–client relationship under sanctions law).

Treasury's Office of Foreign Assets Control (OFAC) or in sanctions regulations, authorise certain dealings that are otherwise prohibited under the applicable sanctions.[3] General licences authorising legal representation of sanctioned parties in US litigation typically do not authorise all types of dealings that might arise in the course of authorised legal representation.[4] For example, a specific licence is ordinarily required to execute a settlement agreement or enforce any lien, judgment, arbitral award, decree or other order that would transfer or otherwise alter or affect blocked property or interests in property.[5] Additionally, many general licences, particularly those involving payments for authorised legal services, require submission of initial and periodic reports to OFAC.[6]

Legal services not expressly covered by a general licence can only proceed through a specific licence. OFAC has discretion to issue specific licences authorising an otherwise prohibited dealing. Importantly, a specific licence should be secured before entering into any engagement or fee agreement for legal representation that is not otherwise authorised, as OFAC may deem agreements concluded prior to authorisation as sanctions violations. If there are arguments that the legal representation is covered by a general licence but there is doubt in that regard, the party wishing to engage in the representation can request interpretive guidance from OFAC that no specific licence is required or, if the representation is prohibited, that OFAC issue a specific licence.

Payment of legal fees by sanctioned parties

A separate licence may be required for receipt of payment of legal fees if the client is blocked or otherwise subject to sanctions affecting its assets and debt obligations. Many sanctions programmes offer general licences for payment of legal fees for authorised representation from non-blocked funds located outside the United States,[7] whereas other programmes require a specific licence for the receipt of payment of legal fees.[8] A specific licence is generally required if the payment will originate from blocked funds and the payment involves a US person or other US nexus.[9] OFAC will consider issuing a specific licence, case by case, for payment of

3 See 31 C.F.R. § 501.801 (Licensing).

4 See, e.g., 31 C.F.R. § 515.512 (Cuban Assets Control Regulations); 31 C.F.R. § 544.507 (Weapons of Mass Destruction (WMD) Proliferators Sanctions Regulations); 31 C.F.R. § 560.525 (Iranian Transactions and Sanctions Regulations).

5 See, e.g., 31 C.F.R. § 510.507(d) (North Korea Sanctions Regulations). OFAC has offered additional guidance with respect to legal actions involving Venezuela that may require a specific license; see Frequently Asked Question 808, OFAC (Dec. 9, 2019), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/808; Frequently Asked Question 809, OFAC, (Dec. 9, 2019), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/809.

6 See, e.g., 31 C.F.R. § 541.508(c) (Zimbabwe Sanctions Regulations) (requiring an initial submission of a letter of engagement and explanatory letter prior to receipt of payment for authorised legal services, and additional quarterly reports).

7 See, e.g., 31 C.F.R. § 542.508 (Syrian Sanctions Regulations); 31 C.F.R. § 594.517 (Global Terrorism Sanctions Regulations); 31 C.F.R. § 597.513 (Foreign Terrorist Organizations Sanctions Regulations).

8 See, e.g., 31 C.F.R. § 551.506 (Somalia Sanctions Regulations).

9 A US nexus generally exists when an activity involves a US person or touches US jurisdiction. For example, a US nexus could be established through the involvement of a US attorney or law firm, payment through a US financial institution or in US dollars, or trade of US-origin goods or services.

fees from blocked funds if those fees relate to challenging the client's designation.[10] If OFAC authorises this use of blocked funds, it may nonetheless limit the amount of blocked funds that may be used for those fees.[11]

Many general licences authorising receipt of payment of legal fees for authorised legal services state that US persons receiving the payment do not need to obtain separate, specific authorisation to contract for services or receive payment for services that are ordinarily incident to the authorised payment or services, such as contracts for expert witnesses and private investigators.[12]

EU licensing requirements

EU sanctions do not impose a formal requirement for attorneys to obtain a licence or other authorisation to represent sanctioned parties. However, the receipt of payment requires a licence for clients subject to an EU asset freeze. EU asset freeze sanctions typically provide licensing grounds for Member State authorities to consider applications for exemption that would authorise payment for legal representation and other related fees. Moreover, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right to counsel and the right to a determination of one's rights and obligations before a neutral tribunal to all legal and natural persons.[13]

Can sanctions designations be challenged in US courts?

Challenging a party's designation or sanctions law or regulations

Persons subject to sanctions restrictions and other interested parties can seek to overturn designations, asset freezes or sanctions provisions through litigation. Cases challenging OFAC actions, in particular, can be difficult to win because US courts are extremely deferential to OFAC given that OFAC operates 'in an area at the intersection of national security, foreign policy, and administrative law'.[14] Although they are rarely successful, plaintiffs can challenge OFAC action by asserting many claims, including that:

10 See Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings, OFAC (Jul. 23, 2010), at https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20100722_33; see also Note 1 to 31 C.F.R. § 510.507 (North Korea Sanctions Regulations); Note to 31 C.F.R. § 591.506 (Venezuela Sanctions Regulations).

11 See OFAC, *supra* n.10.

12 See, e.g., 31 C.F.R. § 510.507(c) (North Korea Sanctions Regulations); Note 1 to 31 C.F.R. § 515.512 (Cuban Assets Control Regulations); Note 1 to 31 C.F.R. § 542.508 (Syrian Sanctions Regulations); Note to 31 C.F.R. § 558.507 (South Sudan Sanctions Regulations). But see 31 C.F.R. § 536.506 (Narcotics Trafficking Sanctions Regulations) and, (ordinarily incidental services not authorised); see also 31 C.F.R. § 544.507 (WMD Proliferations Sanctions Regulations).

13 Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Article 6, 213 U.N.T.S 221.

14 See *Empresa Cubana Exportadora de Alimentos y Productos Varios v. United States Dep't of Treasury*, 606 F. Supp. 2d 59, 68 (D.D.C. 2009) (quoting *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 734 (D.C. Cir. 2007)) (regarding deference under the Administrative Procedure Act); see also *Holder v. Humanitarian Law Project*, 561 U.S. 1, 5, 33-35 (2010) [*HLP*] (evaluations by Congress and the Executive related to distinguishing material support for a foreign terrorist group's violent activities are entitled to deference).

- designation to the List of Specially Designated Nationals and Blocked Persons (the SDN List) violates the Fifth Amendment Due Process Clause;[15]
- comprehensive country sanctions violate the Fifth Amendment right to travel;[16]
- asset freezes are unreasonable Fourth Amendment seizures[17] or Fifth Amendment takings;[18]
- the designation authority for provision of material support violates the First Amendment;[19]
- OFAC's authorising statute or rules and regulations are unconstitutionally vague;[20] or
- designations or asset freezes are arbitrary and capricious.[21]

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15 See, e.g., *Al-Haramain Islamic Found., Inc. v. United States Dep't of the Treasury*, 686 F.3d 965, 984-90 (9th Cir. 2012) [*AHIF III*] (holding that OFAC's violation of plaintiff's due process rights in failing to provide an adequate reason for its designation investigation and failure to pursue potential mitigation measures were harmless); *Zevallos v. Obama*, 793 F.3d 106, 116 (D.C. Cir. 2015) (finding that the 'specially designated narcotics trafficking kingpin' plaintiff's procedural and substantive due process assertions regarding his designation were 'wrong on all counts'). In two recent cases, courts rejected Due Process claims raised by foreign, non-citizen plaintiffs for failure to demonstrate entitlement to Fifth Amendment protections. See *Rakhimov v. Gacki,* No. 1:19-2554, 2020 U.S. Dist. LEXIS 68764 at *12-14 (D.D.C. Apr. 20, 2020); *Bazzi v. Gacki*, 484 F. Supp. 3d 70, 76-78 (D.D.C. 2020). In a third case, the court could not determine if a foreign non-citizen plaintiff was entitled to Fifth Amendment protections based on the record before it, but determined that OFAC had provided all process due in any event. See *Olenga v. Gacki*, No. 1:19-cv-1135, 2020 U.S. Dist. LEXIS 225084 at *23-38 (D.D.C. Nov. 30, 2020).

16 See, e.g., *Regan v. Wald*, 468 U.S. 222, 243 (1984) [Regan] (holding that the travel-related restrictions under the Trading With the Enemy Act 1917 did not violate the respondents' right to travel protected by the Due Process Clause of the Fifth Amendment); *Clancy v. Geithner*, 559 F.3d 595, 604-05 (7th Cir. 2009) (applying *Regan*, holding OFAC sanctions regulations prohibiting travel to Iraq did not violate the plaintiff's Fifth Amendment rights).

17 See, e.g., *AHIF III*, 686 F.3d at 990-95 (holding that OFAC was required to obtain a warrant before issuing a blocking order under the International Emergency Economic Powers Act [IEEPA] to freeze, pending an investigation, the assets of the US non-profit entity located within the United States); *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner*, 710 F. Supp. 2d 637, 646, 652 (N.D. Ohio 2010) [*KindHearts II*] (finding that OFAC may remedy an unconstitutional seizure post hoc by showing if 'at the time of the original seizure, it had probable cause – that is, a reasonable ground – to believe that [the blocked party], specifically, was subject to designation under [an OFAC authority]'); *KindHearts for Charitable Human. Dev. v. Geithner*, 647 F. Supp. 2d 857, 882-84 (N.D. Ohio 2009) [*KindHearts I*] (holding that an OFAC blocking pending investigation does not meet the special needs exception to the Fourth Amendment's warrant and probable cause requirements).

18 See, e.g., holdings that OFAC asset freezes are not takings under the Fifth Amendment because frozen assets do not vest in the government in *Tran Qui Than v. Regan*, 658 F.2d 1296, 1304 (9th Cir. 1981), *cert. denied sub nom*., *Tran Qui Than v. Regan*, 459 U.S. 1069 (1982) (relating to the plaintiff's application for a licence to unblock funds owed to a sanctioned country bank); *D.C. Precision, Inc. v. United States*, 73 F. Supp. 2d 338, 343 n.1 (S.D.N.Y. 1999) (relating to plaintiff US entity's assets frozen at a blocked bank); *Hoang Ngoc Can v. United States*, 820 F. Supp. 106, 109 (S.D.N.Y. 1993) (relating to the plaintiff's claim to blocked assets of the former Republic of South Vietnam as alleged successor-in-interest).

19 See, e.g., *HLP*, 561 U.S. at 37-39 (holding no free speech violation due to potential for the designated terrorist PKK to misuse plaintiff's proposed services to further terrorism); *AHIF III*, 686 F.3d at 995, 1001.

20 See, e.g., *KindHearts I*, 647 F. Supp. 2d at 893-97, 893 n.15 (dismissing various claims that IEEPA and Executive Order 13224 both as applied and facially are vague, but noting that as applied, OFAC's failure to follow the Fourth Amendment in blocking *KindHearts* pending investigation made OFAC's authority under IEEPA and the executive order unconstitutionally vague).

21 See, e.g., *Fulmen Co. v. Office of Foreign Assets Control*, No. 1:18-cv-2949, 2020 U.S. Dist. LEXIS 58308, *12-25, (D.D.C. Mar. 31, 2020) (holding that OFAC's rejection of the SDN plaintiff's delisting request was not arbitrary and capricious, given the substantial record and the 'extreme deference' owed OFAC given national security

Designations contested in court may originate with other agencies besides OFAC. In the recent case *Xiaomi Corp. v. Department of Defense*,[22] the plaintiffs successfully contested the designation by the Department of Defense (DoD) of Xiaomi Corp. (Xiaomi) under Section 1237 of the National Defense Authorization Act for Fiscal Year 1999, as amended (Section 1237).[23] The court found the plaintiffs showed a high likelihood of success in their claims based on the Administrative Procedure Act (APA), and so granted a preliminary injunction against enforcement of the designation and resulting prohibitions.[24] Specifically, the court found that the DoD decision memo explaining the basis of the designation failed to explain why Xiaomi met the statutory criteria of Section 1237, and so the designation qualified as 'arbitrary and capricious';[25] that Xiaomi did not, in fact, meet the statutory criteria for designation under Section 1237;[26] and that the designation did not rest on 'substantial evidence' as required by the APA.[27] The DoD did not appeal the decision, and the court issued a final order vacating the designation as an improper agency action under the APA.[28] In a subsequent case, *Luokung Tech. Corp. v. DOD*,[29] the court relied heavily on the analysis in Xiaomi in issuing a preliminary injunction against the Section 1237 designation of another Chinese technology company.[30]

Challenging OFAC blocking orders

In *Al Haramain Islamic Foundation Inc v. United States Dep't of the Treasury*, a US non-profit entity designated to the SDN List successfully argued that OFAC needed a warrant to block its assets pending investigation (pre-designation) under Executive Order 13224 and could not rely on the 'special needs' exception or 'general reasonableness' test of the Fourth Amendment.[31] The Ninth Circuit reasoned that OFAC's national security aims were not rendered impracticable by a warrant requirement prior to blocking the plaintiff's assets, given

concerns. Of note, the plaintiff succeeded in securing delisting in the European Union); *Rakhimov*, 2020 U.S. Dist. LEXIS 68764, at *14-18 (OFAC's designation of the plaintiff was based on a wide range of materials, including substantial non-classified material, and was not arbitrary and capricious); *Olenga*, 2020 U.S. Dist. LEXIS 225084, at *41-51 (OFAC's designation of the plaintiff, even based on unclassified administrative record alone, was neither arbitrary nor capricious).

22 No. 1:21-cv-280, 2021 U.S. Dist. LEXIS 46496 (D.D.C. Mar. 12, 2021).

23 Section 1237 directs the Secretary of Defense, with the input of the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, to identify 'Chinese Communist Military Companies' (CCMCs) that operate 'directly or indirectly in the United States or any of its territories or possessions.' Id. at *2-4. Executive Order 13959, as amended by Executive Order 13974, prohibits United States persons from engaging in select investment activities with CCMCs. Id. at *6-8.

24 id. at *11-24, 37.

25 id. at *13-15.

26 id. at *15-19.

27 id. at *19-23.

28 See Joint Status Report, Xiaomi., No. 1:21-cv-280 (D.D.C. May 11, 2021); Joint Proposed Order, Xiaomi., No. 1:21-cv-280 (D.D.C. May 20, 2021); Final Order, Xiaomi., No. 1:21-cv-280 (D.D.C. May 25, 2021).

29 No. 21-cv-583, 2021 U.S. Dist. LEXIS 86378 (D.D.C. May 5, 2021).

30 id. at *16-34, 45-46.

31 See generally *AHIF III*, 686 F.3d 965.

the domestic plaintiff's strong interest in freedom from a blocking order's broad seizure.[32] The court did 'not address the requirements under the Fourth Amendment for other situations [beyond blocking a US person's assets pending investigation] including, for example, designations of [non-US] entities or designations [of domestic entities] by executive order.'[33] But on remand, the lower court ruled the violation was harmless.[34]

In *Zarmach Oil Services v. United States Dep't of the Treasury*, the District Court for the District of Columbia dismissed the plaintiff's claim that OFAC's refusal to release blocked funds was arbitrary and capricious and in excess of its statutory jurisdiction.[35] Even though the sanctioned party only had an indirect future or contingent interest in the relevant funds[36] – which the plaintiff argued was extinguished when a third party satisfied the contract under which the funds were originally owed to the sanctioned party – the Court deferred to OFAC's determination that unblocking would be inconsistent with OFAC policy.[37]

First Amendment challenges to provision of 'material support' to designated persons

Interested persons can raise free speech and association challenges regarding the prohibitions on non-designated party dealings with designated parties. A seminal US Supreme Court case on this topic is *Holder v. Humanitarian Law Project* (*HLP*).[38] *HLP* involved a free speech and association challenge to the Anti-Terrorism Act's criminal prohibition on the provision of material support to designated terrorists.[39] The Court held that the prohibition, as applied to the plaintiff's activities, did not violate the plaintiff's First Amendment rights, because the government adequately substantiated its determination that prohibition of the plaintiff's activities was necessary to serve the government's urgent objective of preventing terrorism.[40] The specific planned training and services bore a real risk of furthering terrorism, even though the supporters meant to promote only the group's non-violent ends.[41] While criticised as overly broad and unsupported,[42] the Court did limit its ruling, stating that (1) future

32 See *AHIF III*, 686 F.3d at 992-93 (commenting, however, that OFAC may seize/block assets 'initially pursuant to an emergency exception to the warrant requirement . . . or pursuant to a carefully circumscribed warrant') (citation omitted).

33 See id. at 995 n.18.

34 See *Al Haramain Islamic Found., Inc. v. United States Dep't of the Treasury*, No. 3:07-CV-01155, 2012 U.S. Dist. LEXIS 175759, at *18 (D. Or. Dec. 12, 2012) [AHIF IV].

35 *Zarmach Oil Servs., Inc. v. United States Dep't of the Treasury*, 750 F. Supp. 2d 150, 155-59 (D.D.C. 2010).

36 On contingent interests, see also *Calderon-Cardona v. BNY Mellon*, 770 F.3d 993, 1002 (2d Cir. 2014) ('In the context of a blocked transaction, . . . the only entity with a property interest in [a stopped Electronic Funds Transfer (ETF)] is the entity that passed the EFT on to the bank where it presently rests'.).

37 See *Zarmach Oil Servs., Inc*, 750 F. Supp. 2d at 156, 158-59.

38 561 U.S. 1 (2010).

39 Plaintiffs in *HLP* proposed to provide legal training and assistance on international humanitarian law to designated terrorist Kurdistan Workers Party, but feared they could not do so for fear of prosecution under 18 U.S.C. § 2339B. See 561 US at 10.

40 See *HLP*, 561 U.S. at 30, 33-36.

41 id.

42 See Majorie Heins, The Supreme Court and Political Speech in the 21st Century: The Implications of *Holder v. Humanitarian Law Project*, 76 *Alb. L. Rev.* 561, 596 (2013) ('Applying this "more demanding standard," Chief Justice Roberts did not, however, make any real effort to determine whether banning the challenged aspects

targeting of speech or advocacy as material support may not survive First Amendment scrutiny, and (2) the holding does not suggest that 'Congress could extend the same prohibition on material support at issue here to domestic organizations'.[43]

In *Al Haramain Islamic Foundation, Inc. v. US Department of the Treasury*, a US non-profit entity, the Multicultural Association of Southern Oregon (MCASO), successfully argued that OFAC's prohibition on providing services to AHIF-Oregon – an OFAC-designated terrorist organisation – violated MCASO's First Amendment rights.[44] MCASO's proposed activities concerned a blocked domestic branch of an international organisation, rather than a non-US terrorist organisation as in HLP, and there was little evidence that the 'pure-speech activities proposed by MCASO' (activities such as co-sponsoring events in the United States) would aid the terrorist purposes of the international parent organisation.[45]

In *Open Society Justice Initiative v. Trump* (*OSJI*),[46] the plaintiffs sought relief against a prohibition on making 'any contribution or provision of funds, goods, or services' to any person designated under Executive Order 13928, which had provided for sanctions directed at the International Criminal Court (ICC) over certain investigations of US military forces.[47] The plaintiffs had worked with ICC officials sanctioned under Executive Order 13928 on matters besides those ICC investigations at issue in Executive Order 13928, and wished to continue doing so but for the prohibition.[48] The plaintiffs alleged, among other claims, a violation of their First Amendment rights. The court, finding that the 'restrictions prohibit or chill significantly more speech than . . . is necessary to achieve their end', and that the plaintiffs were likely to succeed on their First Amendment claim, issued a preliminary injunction.[49]

Challenging other economic restrictions under US law

Recent litigation has tested the limits of Executive Branch authority to restrict certain economic activity under the International Emergency Economic Powers Act (IEEPA).[50] On 6 August 2020, then-President Trump issued a pair of Executive Orders requiring the Secretary of Commerce to 'identify' prohibitions on certain transactions involving two Chinese-owned mobile applications (apps) – specifically, the video app TikTok, and the communications

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of "material support" would in fact accomplish the government's undisputed and urgent interest in fighting terrorism, no less that it was a narrowly tailored means of doing so' (citing HLP, 561 US at 45-49 (Breyer, J dissenting)).

43 See *HLP*, 561 U.S. at 39.

44 See *AHIF III*, 686 F.3d 965, 1001 (9th Cir. 2012). Notably, the court in *AHIF III* read *HLP* to require strict scrutiny for the purposes of First Amendment analysis of the Executive Order at issue. Id. at 997–998.

45 See id. at 1001.

46 No. 1:20-cv-8121, 2021 U.S. Dist. LEXIS 405 (S.D.N.Y. Jan. 4, 2021).

47 See id. at 1-2, 15-16.

48 See Exec. Order 13,928, 85 Fed. Reg. 36139 (Jun. 15, 2020); *OSJI*, 2021 U.S. Dist. LEXIS 405 at *2, *10-15.

49 *OSJI*, 2021 U.S. Dist. LEXIS 405 at *41. The order only enjoined enforcement of Executive Order 13928 against 'conduct specifically addressed in [the] complaint and [the opinion]', i.e., conduct not related to the investigations forming the basis of Executive Order 13928. See id.

50 IEEPA, codified at 50 USC § 1701 et seq., empowers the President to regulate a variety of economic transactions following a declaration of national emergency. The President may delegate this authority to department or agency heads under 3 U.S.C. § 301. While sanctions authority is often delegated to the Secretary of Treasury, and in turn to OFAC, the President may delegate IEEPA authority to other agencies, such as the Department of Commerce.

app WeChat.[51] The prohibitions eventually identified by the Commerce Department were designed to 'eliminate access' to the apps and 'significantly reduc[e] their functionality'.[52]

Plaintiffs challenged the WeChat prohibitions in one case, and the TikTok prohibitions in two separate cases.[53] All plaintiffs sought preliminary injunctions, alleging that the prohibitions violated the plaintiffs' constitutional rights, violated the APA and exceeded Executive Branch authority under IEEPA.[54] In the *WeChat* case, the district court granted a preliminary injunction based on the plaintiffs' likelihood of success in showing a First Amendment violation – namely, that the prohibitions 'are the equivalent of censorship of speech or a prior restraint on it'.[55] In the two *TikTok* cases, both district courts issued a preliminary injunction based on the plaintiffs' likelihood of success in showing that the prohibitions violate IEEPA's 'Berman Amendment', which expressly 'exempt[s] the regulation of informational materials from the Executive's congeries of powers'.[56] One court further found that the plaintiffs were likely to succeed in showing violations of IEEPA's prohibition on the regulation of personal communications,[57] as well as in showing that the prohibitions were

51 Previously, President Trump had declared a national emergency to exist with respect to the threat of foreign adversaries creating and exploiting vulnerabilities in information and communications technology and services. See Exec. Order No. 13,873, 3 C.F.R. 13873 (2020). In Executive Order No. 13,942, President Trump prohibited 'any transaction by any person, or with respect to any property, subject to the jurisdiction of the United States, with [TikTok owner ByteDance Ltd.], or its subsidiaries, in which any such company has any interest, as identified by the Secretary of Commerce . . . .' 85 Fed. Reg. 48,637 (Aug. 6, 2020). In Executive Order No. 13,943, President Trump prohibited 'any transaction that is related to WeChat by any person, or with respect to any property, subject to the jurisdiction of the United States, with [WeChat owner Tencent Holdings Ltd.] or any subsidiary of that entity, as identified by the Secretary of Commerce . . . .' 85 Fed. Reg. 48,641 (Aug. 6, 2020).

52 *Commerce Department Prohibits WeChat and TikTok Transactions to Protect the National Security of the United States* (Sept. 18, 2020), US Dep't Com., https://2017-2021.commerce.gov/news/press-releases/2020/09/commerce-department-prohibits-wechat-and-tiktok-transactions-protect.html; see also Identification of Prohibited Transactions To Implement Executive Order 13942 and Address the Threat Posed by TikTok, 85 Fed. Reg. 73,191 (Sept. 24, 2020); Identification of Prohibited Transactions to Implement Executive Order 13943 and Address the Threat Posed by WeChat (Sept. 21, 2020), US Dep't Com., https://www.commerce.gov/sites/default/files/2020-11/WeChatFR_IdentificationofProhibitedTransactionsUpdatedInjunctionOGC.pdf.

53 The WeChat prohibitions were challenged by a non-profit and individual and business users of the app. See *US WeChat Users All. v. Trump*, 2020 U.S. Dist. LEXIS 172816 at *2 (N.D. Cal. Sept. 19, 2020). The TikTok prohibitions were challenged in separate litigation by (1) ByteDance and its US subsidiary TikTok Inc., see Complaint for Injunctive and Declaratory Relief at 6, *TikTok v. Trump*, No. 1:20-cv-02658 (D.D.C. Sept. 18, 2020); and (2) individual users of the TikTok app, see Complaint for Injunctive and Declaratory Relief at 1-2, *Marland v. Trump*, No. 2:20-cv-04597 (E.D. Penn. Sept. 18, 2020).

54 See *Tiktok v. Trump*, 2020 U.S. Dist. LEXIS 232977 at *14 (D.D.C. Dec. 7, 2020); *Marland v. Trump*, 2020 U.S. Dist. LEXIS 202572 at *13-15 (E.D. Penn. Oct. 30, 2020); *US WeChat Users All.*, 2020 U.S. Dist. LEXIS 172816 at *3. The WeChat plaintiffs also included a claim under the Religious Freedom Restoration Act. *US WeChat Users All.*, 2020 U.S. Dist. LEXIS 172816 at *3.

55 *US WeChat Users All.*, 2020 U.S. Dist. LEXIS 172816 at *3. The court reasoned that the government had not shown that 'its effective ban of WeChat for all US users addresses [national security concerns]', or why it had not adopted any 'obvious alternatives to a complete ban'. Id. The court held that the remaining claims were either not ripe, or that it could not conclude that the plaintiffs were likely to succeed in their claims based on the record before the court. Id. at 24–31.

56 *Marland*, 2020 U.S. Dist. LEXIS 202572 at *19-30; *Tiktok*, 2020 U.S. Dist. LEXIS 232977 at *34–38.

57 *Tiktok*, 2020 U.S. Dist. LEXIS 232977 at *30–34.

arbitrary and capricious under the APA.[58] In both *TikTok* cases, the courts declined to reach the plaintiffs' constitutional arguments, but noted that constitutional issues were present.[59] The Trump Administration appealed all three preliminary injunctions, but as of the time of writing the government has successfully petitioned to hold the appeals in abeyance as the Biden Administration 'conducts an evaluation of the underlying record justifying these prohibitions'.[60]

EU challenges to designations

Much like US court challenges to OFAC action and regulations, the Court of Justice of the European Union (CJEU) has heard a number of cases challenging EU sanctions designations. In particular, the *Kadi* cases have proven instrumental in shaping the EU sanctions framework by increasing the judicial scrutiny on EU Council decisions imposing asset freezes. Following the *Kadi* precedent, the Council must provide 'individual, specific and concrete' grounds to justify each asset freeze. In addition, a 'sufficiently solid factual basis' must exist to substantiate the grounds for listing.[61] However, actions for asset freeze annulment have not necessarily provided substantial assistance to sanctioned plaintiffs, as the Council regularly relists those plaintiffs even if annulment is granted by the Court, by simply providing additional grounds for their relisting. This risk of redesignation, coupled with the lengthy CJEU procedures to obtain initial annulment, may have a chilling effect on sanctioned parties challenging EU designations.

What types of cases are filed in US courts against sanctioned parties or that involve sanctions issues?

Enforcement of arbitral awards

Sanctioned party defendants face many typical causes of action in US litigation, such as breach of contract claims. But one overarching claim is for the enforcement of awards or judgments against the blocked assets of sanctioned parties.[62] Recent US litigation involving Venezuela and its national oil company illustrates how sanctions may affect arbitral award enforcement proceedings. In the *Crystallex* case, the judgment holder sought to attach shares of the US subsidiary of Venezuela's state-owned oil company Petróleos de Venezuela, SA (PdVSA).[63] The shares in question were the subject of Executive Orders restricting transfer

58 id. at 38–44.

59 id. at 45 n.6; *Marland*, 2020 U.S. Dist. LEXIS 202572 at *24 n.6.

60 See Unopposed Motion to Hold Appeal in Abeyance at 2, *Marland v. Biden*, No. 20-3222 (3rd Cir. Feb. 10, 2021); see also Unopposed Motion to Hold Appeal in Abeyance, *TikTok v. Biden*, No. 20-5381 (D.C. Cir. Feb. 10, 2021); Defendants-Appellants' Unopposed Motion for Abeyance, *US WeChat Users Alliance v. Biden*, No. 20-16908 (9th Cir. Feb. 11, 2021).

61 See Judgment of the Court (Grand Chamber) of 18 July 2013, *Kadi II*, Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518.

62 See, e.g., *Calderon-Cardona*, 770 F.3d at 995 (2d Cir. 2014) (plaintiffs petitioning to attach blocked funds allegedly belonging to the government of North Korea in satisfaction of a judgment under the Terrorism Risk Insurance Act of 2002).

63 See *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.* (*In re Petroleos de Venezuela, S.A.*), 932 F.3d 127 (3d Cir. 2019), *cert. denied sub nom. Bolivarian Republic of Venez. v. Crystallex Int'l Corp.*, No. 19-1049, 2020 U.S. LEXIS 2681 (U.S. May 18, 2020).

of Venezuelan or PdVSA-controlled assets in the United States.[64] Although the Third Circuit held that the judgment holder could attach the subsidiary's shares in satisfaction of its arbitral award against Venezuela, the Third Circuit also held that, in keeping with OFAC guidance, any attachment and execution of the shares would 'likely need to be authorised by [OFAC]'.[65] After various proceedings on remand, the district court ordered that procedures for the sale of the shares could be established and followed to 'the maximum extent that can be accomplished without a specific license from OFAC'.[66]

Enforcement of terrorism-related judgments

Plaintiffs who obtain terrorism-related judgments against designated state sponsors of terrorism (typically default judgments where the state does not appear to defend) may seek to enforce their judgments against certain assets of the state held in the United States by the state, its agencies or instrumentalities, or third parties. Such plaintiffs may invoke the Terrorism Risk Insurance Act[67] to seek attachment or execution of any blocked assets of the state or its agencies or instrumentalities. Iran has appeared in several such actions to defend its interests.[68]

Challenges to OFAC's enforcement authority

Parties subject to OFAC enforcement actions for alleged sanctions violations may choose to challenge that enforcement on US constitutional or APA grounds. For example, in *Exxon Mobil Corp v. Mnuchin*, Exxon challenged a US$2 million civil penalty for allegedly violating

64 id. at 135. Exec. Order No. 13,850, 83 Fed. Reg. 55243 (Nov. 1, 2018) blocks all property and interests in property of PdVSA and entities owned 50 per cent or greater by PdVSA and other blocked persons. This prohibition captured the US subsidiary at issue, which was wholly owned by PdVSA. Note that Exec. Order No. 13,884, 3 C.F.R. § 13884 (Aug. 5, 2019), blocking all property and interests in property of the 'Government of Venezuela' (defined to include subsidiaries such as the US subsidiary at issue), was issued after the Third Circuit's July 2019 decision.

65 id. at 149-51. The decision noted that '[w]hether that [OFAC guidance] is legally binding, Crystallex has committed' to seeking a licence to cover an eventual execution sale. Id. In subsequent litigation, the parties further agreed at oral argument that 'the current sanctions regime does appear to block issuance of new writes of attachment on Venezuelan assets in the United States without an OFAC license.' *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, 17-mc-151, 2021 U.S. Dist. LEXIS 7793 at *23-24 (D. Del. Jan. 14, 2021).

66 *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, No. 17-mc-151-LPS, 2021 U.S. Dist. LEXIS 7793, at *50 (D. Del. Jan. 14, 2021)

67 See Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297 § 201, 116 Stat. 2322, 2337-40.

68 In one such case, Iran's central bank, Bank Markazi, challenged the constitutionality of new legislation that aided plaintiffs enforce their terrorism judgments. *Bank Markazi v. Peterson*, 136 S. Ct. 1310 (2016). During the pendency of enforcement proceedings in the lower courts, Congress issued legislation (22 U.S.C. § 8772) that made the specific assets at issue available to the *Peterson* plaintiffs to satisfy their default judgment against Iran. The Supreme Court rejected Bank Markazi's arguments, holding that the new legislation was a valid 'exercise of congressional authority regarding foreign affairs' and not a violation of separation of powers. Id. at 1317, 1328. Iran has brought a case against the United States under the 1955 Treaty of Amity before the International Court of Justice, challenging a number of measures, including the *Bank Markazi* decision. See United Nations Gen. Assembly, Report of the International Court of Justice 1 August 2018-31 July 2019, ¶¶166–75, U.N. Doc. A/74/4 (2019). In another case, *Rubin v. Islamic Republic of Iran*, the court found in Iran's favour, concluding that the plaintiffs had no right under the immunity provisions of the FSIA to enforce their default judgments against Iranian antiquities on loan to a US university. 138 S. Ct. 816, 821 (Feb. 21, 2018).

OFAC's Ukraine-related sanctions regulations.[69] OFAC had found that Exxon committed a sanctions violation by dealing with SDN Igor Sechin when he signed a contract with Exxon in his capacity as president of Rosneft OAO, a non-designated entity.[70] The district court vacated the penalty, ruling that public statements from the Executive Branch and guidance from OFAC did not provide fair notice that Exxon's conduct would be viewed as illegal, and hence the penalty violated Exxon's Fifth Amendment Due Process rights.[71]

Notably, the court considered Exxon's failure to seek OFAC's guidance a relevant factor, but not dispositive, because OFAC ultimately bears the burden of conveying its interpretation to the public.[72]

In another case, *Epsilon Elecs., Inc. v. United States Dep't of the Treasury*,[73] the plaintiff brought a successful APA claim against part of a civil penalty assessed by OFAC for alleged violations of the Iranian Transactions and Sanctions Regulations (ITSR). The court held that for five of 39 penalised transactions, OFAC violated the APA's arbitrary-and-capricious standard in determining that the plaintiff had reason to know that several shipments of its goods would violate the ITSR, despite the existence of countervailing evidence.[74]

Contract disputes

Both sanctioned parties and interested parties (e.g., contractual counterparties) face breach of contract disputes when the United States, the European Union or the United Kingdom imposes sanctions that prevent contract completion. Contract defendants may invoke force majeure defences (which sometimes expressly cover the imposition of sanctions), contract illegality, compliance with contract representations and frustration, among other things. For example, a California state appellate court held in *Kashani v. Tsann Kuen China Enterprise Co*. that the non-performance of contract requiring shipment of US-manufactured computers to Iran did not give rise to a claim, because the agreement was illegal under US sanctions and against public policy.[75] Additionally, the court rejected the plaintiffs' assertion that the potential availability of specific licences gave the contract legal effect, because the regulations indicated that a specific licence was a prerequisite to entering into a contract that would otherwise violate sanctions.[76] In *Lamesa Investments Ltd v Cynergy Bank Ltd*, the English High Court excused the defendant debtor from liability resulting from failure to pay its sanctioned party lender because its Facility Agreement contained a requirement that performance should

69 430 F. Supp. 3d 220, 225 (N.D. Tex. 2019).

70 id. at 226–28.

71 id. at 229, 237–43.

72 id. at 237.

73 857 F.3d 913 (D.C. Cir. 2017).

74 id. at 927–28. The court did not rule that OFAC could not have imposed liability for these five transactions, but held instead that OFAC failed to address at all the evidence presented by the plaintiff demonstrating that it did not have reason to know that the goods were specifically intended for reexport to Iran. The plaintiff and OFAC ultimately settled the case in 2018. See 'Epsilon Electronics, Inc. Settles Potential Civil Liability for Alleged Violations of the Iranian Transactions and Sanctions Regulations and Related Claims, 2018 Enforcement Information', OFAC (Sept. 13, 2018) (settling Epsilon's remanded penalty at US$1.5 million), https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information.

75 See *Kashani v. Tsann Kuen China Enterprise Co*., 118 Cal. App. 4th 531, 536–37 (Cal. Ct. App. 2004).

76 See id., at 550–52.

comply with 'mandatory provisions of law', which the Court interpreted to include compliance with the applicable US sanctions.[77]

The EU Blocking Regulation, which prohibits EU and UK[78] persons from complying with US sanctions on Iran and Cuba (akin to an anti-boycott rule), may pose challenges to successfully invoking US sanctions as a defence to breach of contract claims before courts in EU jurisdictions and the United Kingdom.[79] The Blocking Regulation affords EU and UK persons protection from enforcement of judgments relating to covered US sanctions in the European Union and the United Kingdom and provides the right to recover legal costs and damages caused by actions based on, or resulting from, such sanctions.[80]

Disputes involving the Blocking Regulation have increased in EU national courts. In one EU contract case, a Dutch national court considered whether a Dutch company could invoke force majeure to terminate a software distribution contract with Cuban state-owned entities after a US investment firm purchased the Dutch company, thereby subjecting it to the prohibitions of US sanctions against Cuba.[81] In the spirit of the Blocking Regulation, the court held that the termination was not fair and reasonable, and prevented the Dutch company from invoking a US sanctions claim of force majeure to avoid the contract, despite the risk of OFAC enforcement.[82]

Notably, the CJEU received a request in 2020 to issue a preliminary ruling in a German case addressing the Blocking Regulation and the effect of US secondary sanctions on a contract between a German telecommunications provider and the EU branch of an Iranian bank.[83] This pending EU Court ruling (which is expected sometime in 2021) is expected to have a significant effect on both EU law arbitrations and cases pending before national EU Member State courts, which are also considering how US secondary sanctions will be viewed under the Blocking Regulation.

US courts have yet to consider the conflict of law posed by the EU, UK and US regulations. At the time of writing, the authors are aware of only one reported US case substantively

77 [2019] EWHC 1877 (Comm); see also Charles Balmain, Raif Hassan, and Cecily Higham, 'Sanctioned default? The English High Court considers the effect of foreign illegality on English obligations', White & Case (7 October 2019), at https://www.whitecase.com/publications/alert/sanctioned-default-english-high-court-considers-effect-foreign-illegality.

78 Following the end of the 'Brexit' transition period on 31 December 2020, the EU Blocking Regulation is no longer directly applicable in the United Kingdom, but is part of retained EU law applying in the United Kingdom through the Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020. These laws, and other related UK laws, together form the UK's 'Protection of Trading Interests Legislation'.

79 See Council Regulation (EC) No. 2271/96 of 22 November 1996, Protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, Article 5 (EU persons referenced in Article 11 shall not comply with the sanctions, with limited exceptions), Annex, 1996 O.J. (L 309) 1. Note that Canada, Mexico and the United Kingdom (for the UK, see further details above) maintain similar laws.

80 See id., at Articles 4 and 6 and Annex.

81 Rb. Den Haag 25 June 2019, ECLI:NL:RBDHA:2019:6301 (*PAM International NV/Exact Software Nederland BV*).

82 id.

83 Case C-124/20, *Bank Melli Iran v. Telekom Deutschland GmbH*, request for a preliminary ruling from the Hanseatisches Oberlandesgericht Hamburg, Germany (5 March 2020).

dealing with the Blocking Regulation and US sanctions. In *United States v. Brodie*, the Eastern District of Pennsylvania rejected a motion by EU, UK and Canadian criminal defendants to dismiss their sanctions-related indictment because EU, UK and Canadian blocking regulations compelled defendants' exports to Cuba in contravention of US sanctions.[84]

Helms-Burton private right of action

Title III of the Helms-Burton Act provides a new private right of action in the sanctions realm. Although it was enacted in 1996, the Act was partially suspended until 2019, when the Trump Administration lifted the suspension of the private right of action.[85] Title III enables US nationals to file suit in a US federal court against any third party they allege is 'trafficking' in their property confiscated by the Cuban government after the Cuban Revolution.[86] As Title III's definition of 'trafficking' is quite broad – and the Act makes provision for treble damages in some cases – an initial wave of plaintiffs rushed to file soon after the right of action became available on 2 May 2019. However, the law's complex requirements present significant hurdles for plaintiffs.[87]

For example, in *Gonzalez v. Amazon.com*, the plaintiff alleged he was the rightful owner of land that had been confiscated from his family in 1964, and that the defendants began selling charcoal produced on that land in 2017.[88] The court dismissed the claim in March 2020, without prejudice and with leave to amend, for failure to allege an actionable ownership interest and failure to allege that defendants knowingly and intentionally trafficked in the agricultural property.[89] The plaintiff filed an amended complaint containing additional information about the history of his family's property interest.[90] In May 2020, the court dismissed the claim again, but with prejudice, for failure to allege an actionable ownership interest.[91] The court held that the plaintiff failed to show, as Title III requires, that he had acquired the property before 12 March 1996. On appeal, the Eleventh Circuit affirmed the district court's decision in a brief, *per curiam*, unpublished opinion.[92] Although *Gonzalez* provides useful precedent for evaluating ownership claims under Title III, neither the district court nor the Eleventh Circuit provided guidance for addressing claims that a person 'traffics' in confiscated Cuban property.

84 174 F. Supp. 2d 294 (E.D. Pa. 2001).

85 Michael R. Pompeo, *Remarks to the Press*, US Dep't State (Apr. 17, 2019), https://2017-2021.state.gov/remarks-to-the-press-11/index.html.

86 Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. §§ 6021–91. The Helms-Burton Act is also known as the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996.

87 Nicole Erb, Claire DeLelle, et al., *US Lawsuits Commence against Non-US Persons for Confiscated Cuban Property, EU Raises Concerns*, White & Case LLP (May 7, 2019), https://www.whitecase.com/publications/alert/us-lawsuits-commence-against-non-us-persons-confiscated-cuban-property-eu-raises.

88 No. 1:19-cv-23988, 2020 U.S. Dist. LEXIS 41718, at *1-3 (S.D. Fla. Mar. 10, 2020), aff'd, 835 F. App'x 1011 (11th Cir. 2021).

89 id. at *3–7.

90 id. at *1–3.

91 *Gonzalez*, 2020 U.S. Dist. LEXIS 82296 at *4-7.

92 *Gonzalez v. Amazon.com, Inc.*, 835 F. App'x 1011 (11th Cir. 2021).

More than 30 lawsuits similar to *Gonzalez* have been filed under Title III,[93] most of them in the Southern District of Florida. These cases largely feature claims that US and EU defendants allegedly benefit in some way from commercial activities involving the plaintiffs' purported confiscated property. Defendants have sought dismissal on grounds including subject matter and personal jurisdiction, standing, and failure to satisfy Title III requirements. As in Gonzalez, district courts in some cases have granted motions to dismiss.[94] In at least three Title III cases involving the plaintiff Havana Docks Corporation, however, the court has allowed the cases to proceed.[95] Notably, Title III provides that the re-suspension of the right of action by the President shall not affect suits commenced before the date of such suspension.[96] Therefore, any reinvocation of the waiver by President Biden likely would not extinguish claims that have already been filed.

Even if future Title III claims are successful, plaintiffs may face difficulty in enforcing awards outside the United States. The European Union, United Kingdom and Canada have all expressed opposition to Title III suits against their nationals, which they consider to be extraterritorial applications of unilateral Cuba-related measures that are contrary to international law. Both Canada's and the EU's blocking regulations target the Helms-Burton Act, and may protect defendants from Title III award enforcement in those jurisdictions.

Terrorism claims premised on allegations that defendants provided 'material support' to state sponsors of terrorism, designated terrorists or terrorist organisations

The US and other sanctions regimes are often implicated in suits brought under US statutes creating private rights of action for terrorism-related claims.[97] Such claims are typically brought by victims of terrorism or their estates or survivors, and may involve allegations that the defendants caused terrorist acts or provided support for such acts. The defendants in such

93 Kimberly Zelnick et al., Eleventh Circuit Limits Some Claims Under Title III of the Helms-Burton Act, *Lexology* (Feb. 21, 2021), https://www.lexology.com/library/detail.aspx?g=db3e3308-b22c-49a9-9743-8459b952bdbc.

94 See, e.g., *Glen v. Am. Airlines, Inc*., No. 4:20-CV-482-A, 2020 U.S. Dist. LEXIS 138148 (N.D. Tex. Aug. 3, 2020) (dismissing case for lack of standing, failure to plead that the plaintiff acquired his claim to the properties before 12 March 1996, and failure to plead facts showing scienter), appeal docketed, No. 20-10903 (5th Cir. Sept. 2, 2020); *Iglesias v. Ricard*, No. 20-CV-20157-KMW, 2020 U.S. Dist. LEXIS 164117, at *42-43 (S.D. Fla. Aug. 17, 2020) (granting defendant's motion to dismiss in relevant part and dismissing case without prejudice for lack of personal jurisdiction).

95 *Havana Docks Corp. v. Carnival Corp*., No. 1:19-cv-21724, 2020 U.S. Dist. LEXIS 167216 (S.D. Fla. Sept. 14, 2020); *Havana Docks Corp. v. MSC Cruises SA Co.*, No. 1:19-cv-23588, 2020 U.S. Dist. LEXIS 163206 (S.D. Fla. Sept. 7, 2020); *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd*., 484 F. Supp. 3d 1215 (S.D. Fla. 2020).

96 Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 § 306(c)(3), 22 U.S. Code § 6085(c)(3).

97 See 18 USC § 2333 (providing civil cause of action to US nationals harmed by acts of international terrorism); 28 U.S.C. § 1605A(c) (providing civil cause of action against non-US sovereigns designated as state sponsors of terrorism). Initially this provision provided civil relief only against principals perpetrating 'acts of international terrorism'. A 2016 amendment expanded 18 USC § 2333 to create civil liability for any person who 'aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed' an act of international terrorism. 18 U.S.C. § 2333(d)(2); see also *Weiss v. Nat'l Westminster Bank PLC*, 381 F. Supp.3d 223, 230 (E.D.N.Y. 2019) (Weiss II). This expansion has spurred a new wave of aiding-and-abetting and conspiracy claims. See, e.g., *Siegel v. HSBC N. Am. Holdings, Inc*., 933 F.3d 217 (2d Cir. 2019); *Bartlett v. Société Générale de Banque au Liban Sal*, No. 1:19-cv-7, 2020 U.S. Dist. LEXIS 229921 (E.D.N.Y. Nov. 25, 2020).

actions may include private entities (particularly including financial institutions),[98] as well as sovereign states.[99]

The sanctions designation of an entity may satisfy a precondition for a terrorism-related actions,[100] or otherwise bear on questions of scienter, for example, whether a defendant knew it was providing material support to a terrorist organisation in violation of US law.[101] However, in the context of terrorism-related claims against financial institutions, courts have held that a counterparty's status as designated entity alone is not sufficient to establish scienter,[102] or to establish liability under an aiding-and-abetting or conspiracy theory.[103]

In suits where the designated entity itself is the defendant, courts have also held that designation is not sufficient in itself to establish that a designated entity purposefully engaged in misconduct for the purpose of furthering terrorist aims.[104]

In *Linde v. Arab Bank PLC*, the Second Circuit established a three-element test for determining aiding and abetting liability in the context of terrorism-related suits.[105] Some courts have since held that claims against financial institutions satisfy the *Linde* test,[106] while other

98 See, e.g., Weiss II, 381 F. Supp.3d at 226; *Fields v. Twitter, Inc*., 881 F.3d 739 (9th Cir. 2018).

99 See, e.g., Complaint, *Bowrosen v. Kingdom of Saudi Arabia*, No. 1:16-cv-8070 (S.D.N.Y. Oct. 16, 2016).

100 For example, providing material support to a foreign terrorist organisation with knowledge that such organisation is a 'designated terrorist organisation' is criminalised under 18 USC § 2339B(a)(1); conduct that would give rise to criminal liability under 18 USC § 2339B may in turn give rise to civil liability under 18 USC § 2333. See, e.g., *Boim v. Quranic Literacy Inst.*, 291 F.3d 1000, 1015 (7th Cir. 2004); *Boim v. Holy Land Found. for Relief & Dev*., 549 F.3d 685, 706-07 (7th Cir. 2008) (en banc) (Rovner, J., concurring in part and dissenting in part). But note that the 'designation' at issue in 18 USC § 2339B(a)(1) refers to designation as a FTO by the US Secretary of State and not by OFAC. See also *Weiss II*, 381 F. Supp.3d at 233.

101 See, e.g., *Weiss v. Nat'l Westminster Bank PLC*, 768 F.3d 202, 211-12 (*Weiss I*); *Bartlett*, 2020 U.S. Dist. LEXIS 229921 at *52-61.

102 See, e.g., *Weiss II,* 381 F. Supp.3d at 235-36, 239 ('[e]vidence that Defendant knowingly provided banking services to a terrorist organization, without more, is insufficient to satisfy [the] scienter requirement [under 18 USC § 2333(d)(2)]'); see also *Honickman v. Blom Bank SAL*, 432 F. Supp.3d 253, 263-64 (E.D.N.Y. 2020).

103 See, e.g., *Siegel*, 933 F.3d at 224 (declining to find liability under an aiding-and-abetting theory); *Linde v. Arab Bank, PLC*, 882 F.3d 314, 329 (2d Cir. 2018) (remanding an aiding-and-abetting claim for retrial, and providing a test to determine liability); *Freeman v. HSBC Holdings PLC*, 413 F. Supp.3d 67, 97-98 (E.D.N.Y. 2019) (*Freeman I*) (declining to find liability under a conspiracy theory). Similarly, courts have declined to equate alleged conspiracy to violate sanctions with conspiracy to commit acts of terror. See *Shaffer v. Deutsche Bank AG*, No. 3:16-cr-497, 2017 U.S. Dist. LEXIS 220198 at *13, *aff'd sub nom. Kemper v. Deutsche Bank AG*, 911 F.3d 383, 394-95 (7th Cir. 2018) ('[A]t most, . . . Deutsche Bank joined a conspiracy to evade sanctions. . . . But no facts suggest that Deutsche Bank agreed to facilitate any wrongful conduct beyond this').

104 See *In re Terrorist Attacks on Sept. 11, 2001*, 718 F. Supp. 2d 456, 486 (S.D.N.Y. 2010) (holding designation shortly after attacks at issue 'is not alone sufficient' to establish intent and granting motion to dismiss for lack of personal jurisdiction), *aff'd in part, vacated in part on other grounds sub nom. O'Neill v. Asat Trust Reg*., 714 F.3d 659 (2d Cir. 2013); see also *In re Terrorist Attacks on Sept. 11, 2001*, 392 F. Supp. 2d 539, 561 (S.D.N.Y. 2005) (holding designation shortly after attacks at issue 'warrant[s] some deference' in determining whether a defendant 'purposefully directed its activities at the United States' in jurisdictional analysis).

105 882 F.3d at 329. The test requires showing '(1) the party whom the defendant aids [has] perform[ed] a wrongful act that cause[d] an injury, (2) the defendant [was] generally aware of [its] role as part of an overall illegal or tortious activity at the time that [it] provide[d] the assistance, and (3) the defendant . . . knowingly and substantially assist[ed] the principal violation.' Id. (citing *Halberstam v. Welch*, 705 F.2d 472, 487 (D.C. Cir. 1983)).

106 See, e.g., *Freeman v. HSBC Holdings PLC*, No. 1:18-cv-7359, 2021 U.S. Dist. LEXIS 3452, at *30-45 (E.D.N.Y. Jan. 7, 2021) (Freeman II); Bartlett, 2020 U.S. Dist. LEXIS 229921, at *61-72; *Estate of Henkin v. Kuveyt Türk*

courts have held that the banking activities of financial institutions failed to satisfy the *Linde* test.[107] The question of what level of publicly available information regarding activities of a terrorist counterparty may establish liability of a financial institution under an aiding-and-abetting theory has been certified for interlocutory appeal.[108]

Criminal prosecution for violation of sanctions

The US government may pursue individuals and entities for alleged wilful sanctions violations, including individuals and entities not targeted by sanctions.[109] These criminal proceedings typically involve charges including violating or conspiring to violate one or more of OFAC's authorising statutes (such as IEEPA), or additional financial crimes charges such as bank fraud and money laundering.

In *United States v. Huawei Technologies Co., Ltd.*,[110] the Chinese telecommunications company Huawei and co-defendants including company chief financial officer Meng Wanzhou face charges including alleged violations of US Iran-related sanctions in the early 2010s. The defendants potentially could face steep fines and incarceration on the sanctions charges alone. At the time of writing, Meng is living in Canada and challenging the request for her extradition to the United States in Canadian court.

The United States has also prosecuted numerous individuals and Turkish state-owned bank Halkbank for an alleged scheme to violate US Iran-related sanctions.[111] The district

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Katilim Bankasi A.Ş., No. 1:19-cv-5394, 2020 U.S. Dist. LEXIS 194217, at *35-36 (E.D.N.Y. Oct. 20, 2020) (*Henkin I*).

107 See *Weiss v. Nat'l Westminster Bank*, 993 F.3d 144, 2021 U.S. App. LEXIS 9979, at *46-47 (2d Cir. 2021) (*Weiss III*) (affirming denial of summary judgement); Siegel, 933 F.3d at 224 (affirming grant of motion to dismiss); *Kaplan v. Lebanese Canadian Bank, SAL,* 405 F. Supp. 3d 525, 534 (S.D.N.Y. 2019) (granting motion to dismiss); *O'Sullivan v. Deutsche Bank AG*, No. 17-cv-8709, 2019 U.S. Dist. LEXIS 53134, at *38-39 (S.D.N.Y. Mar. 28, 2019) (granting motion to dismiss).

108 See *Estate of Henkin v. Kuveyt Türk Katilim Bankasi A.Ş.,* No. 19-cv-5394, 2020 U.S. Dist. LEXIS 212723 (E.D.N.Y. Nov. 13, 2020) (*Henkin II*). The Second Circuit granted leave to appeal. Order, *Kuveyt Türk Katilim Bankasi A.Ş. v. Henkin*, No. 20-cv-03939 (2d Cir. Mar. 4, 2021).

109 See, e.g., Final Verdict Form, *United States v. Nejad*, No. 1:18-cr-224 (S.D.N.Y. Mar. 12, 2020) (finding the defendant guilty on five counts, including conspiracy to violate IEEPA); *United States v. Tepper*, No. 1:18-cr-75 (N.D.N.Y. Mar. 16, 2018) (the defendant pleaded guilty to conspiracy to violate IEEPA and Iran-related sanctions, and served 24 months in prison). But see *United States v. Nejad*, No. 1:18-cr-224, 2020 U.S. Dist. LEXIS 101749, at *1-2 (S.D.N.Y. June 9, 2020) (although the defendant was initially convicted, the government subsequently submitted a letter to the court indicating that it had determined 'that it would not be in the interests of justice to further prosecute th[e] case' based on the government's evidence disclosure failures).

110 No. 1:18-cr-00457 (E.D.N.Y. filed Aug. 22, 2018).

111 See Former Turkish Minister Of The Economy, Former General Manager Of Turkish Government-Owned Bank, And Two Other Individuals Charged With Conspiring To Evade US Sanctions Against Iran And Other Offenses, US Dep't Justice (Sept. 6, 2017), https://www.justice.gov/usao-sdny/pr/former-turkish-minister-economy-former-general-manager-turkish-government-owned-bank; Turkish Bank Charged in Manhattan Federal Court for Its Participation in a Multibillion-Dollar Iranian Sanctions Evasion Scheme, US Dep't Justice (Oct. 15, 2019), https://www.justice.gov/opa/pr/turkish-bank-charged-manhattan-federal-court-its-participation-multibillion-dollar-iranian. To date, one individual defendant has pled guilty, and another individual defendant has been convicted, with the Second Circuit affirming the conviction. See Decision and Order at 2, *United States v. Halkbank*, 15-cr-867 (S.D.N.Y. Oct. 1, 2020).

court hearing the case rejected Halkbank's argument that, as an instrumentality of a foreign state, it is immune from prosecution under the FSIA.[112] The case is currently on appeal.[113]

Where does arbitration's intersection with sanctions differ from litigation?

Can I represent a sanctioned party in arbitration?

In general, US sanctions programmes permit legal representation of a sanctioned party in a US arbitration, but typically not representation of a sanctioned party in an arbitration outside the United States.[114] Under the EU or UK sanctions regime, there is no formal requirement for legal counsel to obtain a licence to represent a sanctioned party in any arbitration, within or outside the European Union or the United Kingdom.

The Iranian Transactions and Sanctions Regulations contain a unique authorisation for the initiation and conduct of arbitral proceedings and proceedings before international tribunals, within or outside the United States, that are otherwise prohibited by the sanctions.[115] However, the arbitral proceedings must be either (1) to resolve disputes between the government of Iran or an Iranian national and the United States or a US national, or (2) 'contemplated under an international agreement', or (3) involve the enforcement of awards, decisions or orders resulting from point (1) or point (2).[116] OFAC does not provide formal guidance on the meaning of arbitral proceedings 'contemplated under an international agreement' in this general licence. The phrase could be construed to cover treaties that specifically contemplate the arbitration at issue (e.g., if two countries establish an arbitral venue for specific claims). It might also cover proceedings contemplated under multilateral treaties establishing arbitral bodies, such as the ICSID Convention, or disputes arising under bilateral investment treaties. Finally, there is also an argument that 'international agreement' extends to cover international commercial contracts with an arbitration clause.

May I serve as an arbitrator if arbitration participants are sanctioned parties?

Yes. However, US persons serving as arbitrators may need a specific licence, depending on the specific restrictions applicable to the sanctioned party.[117] Although OFAC has not issued formal guidance on the subject, OFAC could reasonably view serving as an arbitrator as a prohibited provision of services to the sanctioned party, thereby requiring a licence. The general licences on the provision of legal services on their face do not extend to the provision

112 Decision and Order at 7-10, *United States v. Halkbank*, 1:15-cr-867 (S.D.N.Y. Oct. 1, 2020). The court held that FSIA does not grant immunity in criminal proceedings, and even if it did, FSIA's commercial activity exception would allow prosecution. See id.

113 See *United States v. Zarrab (Turkiye Halk Bankasi)*, No. 20-3499 (2d Cir. filed Oct. 9, 2020).

114 See, e.g., 31 C.F.R. §§ 583.506(a)(2)-(3) (Global Magnitsky Sanctions Regulations); 598.507(b)(2)-(3) (Foreign Narcotics Kingpin Sanctions Regulations).

115 See 31 C.F.R. § 560.525 (Iranian Transactions and Sanctions Regulations).

116 31 C.F.R. § 560.525(a)(5) (Iranian Transactions and Sanctions Regulations).

117 See *United Media Holdings, NV v. Forbes Media*, LLC, No. 16 Civ. 5926 (PKC), 2017 U.S. Dist. LEXIS 222249, at *10 (S.D.N.Y. Aug. 9, 2017) (citing a letter from OFAC to the defendant: 'OFAC confirmed that United Media Holding, NV was a "blocked person" under [Executive Order] 13660. Therefore, according to OFAC, the Arbitrator and counsel for petitioners [UMH] would require a license from OFAC in order to participate in the arbitration, or "otherwise deal in property in which [petitioners have] an interest"').

of arbitrator services. Note that both the sanctioned party's counsel and the arbitrators may need licences before agreeing to engage in arbitration involving a sanctioned party.

Under EU and UK sanctions, serving as an arbitrator does not require a licence, but payment of arbitrators' fees requires a licence when a paying party is subject to an EU or UK asset freeze. If an arbitrator is a sanctioned party, depending on the sanctions restrictions applicable to them, a US specific licence may be needed to appear before them for the arbitration, and EU, UK and US licences may be needed for the parties' payment of the sanctioned arbitrator's fees.

Can I participate in an arbitration with the arbitral seat in a sanctioned country?

Sanctions prohibitions may prevent participation in an arbitration that has a seat in a sanctioned country or region absent a licence to the extent that the participation requires engagement with individuals in, the sanctioned country or region. As at the time of writing, the United States maintains comprehensive sanctions against Cuba, Iran, North Korea, Syria and the Crimea Region of Ukraine. Comprehensive sanctions generally prohibit US persons from engaging in any commercial activity with or within comprehensively sanctioned jurisdictions. These activities can include, but are not limited to, the key elements of an international trip: travelling to or from these jurisdictions, dealings with government agents at the border, carrying laptops or other technology into the country, and paying for essentially anything in country, such as accommodation, taxis and food.[118]

Whereas the comprehensive sanctions in some countries and regions explicitly authorise (or do not prohibit) some of this activity, travel to a sanctioned country merits careful analysis to ensure that all intended activity would be exempted from or authorised under sanctions and would not implicate other legal restrictions. For example, although the North Korea Sanctions Regulations do not prohibit transactions ordinarily incident to travel to or from North Korea,[119] the US Department of State restricts the use of US passports to travel into, in or through North Korea absent special validation,[120] effectively prohibiting US persons from travelling to North Korea. Unlike the United States, the European Union and United Kingdom do not apply comprehensive sanctions on countries (or territories) and, therefore, sanctions issues concerning the seat of arbitration are unlikely when there is only an EU nexus.

Do arbitral awards involving sanctioned parties face challenges in US court?

US efforts to enforce arbitral awards both paid to and paid by sanctioned parties may face challenges under treaties and the Federal Arbitration Act – for example, the defence that enforcement would be 'contrary to [US] public policy'.[121] Sanctioned parties have successfully overcome this public policy defence, which applies only to awards that 'would violate

118 See, e.g., 31 C.F.R. §§ 510.206 (North Korea Sanctions Regulations), 542.207 (Syrian Sanctions Regulations).

119 31 C.F.R. § 510.213(d) (North Korea Sanctions Regulations).

120 See id, note 2; see also 22 C.F.R. § 51.63.

121 See, e.g., New York Convention on the Recognition and Enforcement of Arbitral Awards art. V(2)(b), June 10, 1958, 330 U.N.T.S. 3; United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985, with Amendments as Adopted in 2006* 21–22 (2008) (Article 36(1)(b)(ii)).

the forum state's most basic notions of morality and justice'.[122] For example, in *Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Defense Systems, Inc.*, an award in favour of the sanctioned creditor, Iranian Ministry of Defense, survived the public policy defence owing to the United States' strong public policy interest in recognising arbitral awards and the availability of a general licence for payment of the award (where the award would not frustrate sanctions).[123] Courts have also relied on OFAC's ability to prevent award payments,[124] or OFAC's licensing of legal proceedings or arbitral awards,[125] in declining to find that payment of an award would violate public policy.

Conclusion

The intersection of economic sanctions laws and dispute resolution poses unique challenges for parties and their attorneys. These challenges in litigation and arbitration may include procedural hurdles and complex legal frameworks, and parties may face sanctions barriers in dispute resolution or award enforcement. With careful consideration of sanctions regulations and relevant precedent, parties and their counsel may zealously and creatively engage in sanctions-related dispute resolution proceedings.

122 See *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1097 (9th Cir. 2011) (quoting *Parsons & Whittemore Overseas Co. v. Societe Generale de l'Industrie du Papier* (*RAKTA*), 508 F.2d 969, 974 (2d Cir. 1974)).

123 See id. at 1096–99 (reasoning, additionally, 'We should not refuse to confirm an arbitration award because payment is prohibited when payment may in fact be authorised by the government's issuance of a specific license').

124 See *Nat'l Oil Corp. v. Libyan Sun Oil Co.*, 733 F. Supp. 800, 820 (D. Del. 1990) (reasoning that the Executive could prevent payment of an award if it so chose).

125 See id. (given, inter alia, the specific permission from the Administration to Libya to litigate the current proceeding, the court could not find that confirming an award would violate the United States' 'most basic notions of morality and justice'); *United Media Holdings, NV*, 2017 U.S. Dist. LEXIS 222249, at *27, *34 (holding that OFAC's license for issuance of an award was a factor showing that enforcing the award would not violate public policy).

Appendix 2

About the Authors

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Claire DeLelle, partner at White & Case and a member of the firm's sanctions and export controls practice group, is a commercial litigator who focuses on litigation involving complex international issues. She represents foreign sovereigns, their agencies and instrumentalities, including central banking authorities, and multinational companies and financial institutions in complex litigations arising under a variety of laws, including US antitrust, US anti-terrorism and US economic sanctions laws. She has extensive US litigation experience in representing clients under the 'terrorism exception' to the Foreign Sovereign Immunities Act and the Anti-Terrorism Act. She has litigated these issues before US federal courts at all levels, including a recent win before the US Supreme Court on behalf of the Republic of the Sudan. She also leads global investigations in connection with voluntary self-disclosures to the US Department of Treasury's Office of Foreign Assets Control, subpoenas and requests for information. She has in-depth experience in conducting investigations and litigating matters for clients based in the Middle East and Africa, including Saudi Arabia, the United Arab Emirates, Bahrain, Jordan, Sudan and Libya.

Claire recently represented the Transitional Government of the Republic of the Sudan in terrorism litigation, including before the US Supreme Court, and brokered a bilateral claims settlement agreement between Sudan and the United States, resulting in Sudan's removal from the US State Sponsors of Terrorism List. She is currently representing Petróleos de Venezuela, SA (PDVSA), Venezuela's national oil company, through the Ad Hoc Board of Directors of PDVSA appointed by Venezuela's Interim President Juan Guaidó, in terrorism litigation under the Terrorism Risk Insurance Act.

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Nicole Erb co-leads the international sanctions and export controls practice at White & Case. She represents clients in complex transnational litigation matters, civil and criminal government investigations, voluntary self-disclosures, internal audits and investigations, compliance, licensing and other regulatory matters. Her clients comprise foreign states and their state-owned entities, international organisations, international financial institutions, multinational corporations and shipping companies in the Americas, Europe, the Middle East, Russia, Africa and Asia.

Clients benefit from Nicole's skill and experience in navigating complex, multi-jurisdictional disputes in federal and state courts at all levels. Her litigation matters typically involve questions under the Foreign Sovereign Immunities Act, International Organizations Immunities Act, Anti-Terrorism Act, Alien Tort Statute, Terrorism Risk Insurance Act, International Emergency Economic Powers Act, Trading With the Enemy, various US executive orders and sanctions authorities, and the act of state and political question doctrines.

Nicole routinely represents clients before the US Department of the Treasury's Office of Foreign Assets Control, Department of Justice and Department of State.

She advises clients on US sanctions relating to, among others, Crimea, Cuba, Iran, Nicaragua, North Korea, Russia, South Sudan, Syria and Venezuela.

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