

**BIDEN-HARRIS ADMINISTRATION LEGISLATIVE PROPOSALS  
TO STRENGTHEN U.S. ANTI-CORRUPTION  
LAW ENFORCEMENT AND VISA AUTHORITIES  
(DECEMBER 8, 2023)**

1. Proposal to guard against money laundering of foreign crimes by making a foreign crime a predicate for money laundering if the same conduct is already a domestic predicate for money laundering
2. Proposal to preserve proceeds of foreign kleptocracy in support of foreign investigations
3. Proposal to authorize the United States to use forfeited property to remediate the harms of kleptocracy, human rights violations and abuses, war crimes, and armed aggression in asset recovery actions
4. Proposal to preserve assets located abroad for recovery by clarifying authority for seizure warrants
5. Proposal to add certain criminal offenses involving corruption, human rights violations and abuses, war crimes, sanctions and export control violations, and illicit foreign election contributions as “racketeering activities” under the Racketeer Influenced and Corrupt Organizations (RICO) Act and as predicates for Title III interception of wire and oral communications
6. Proposal to leverage foreign partners’ ability to recover proceeds of kleptocracy
7. Proposal to add enablers of corruption as a category for visa ineligibility

**PROPOSAL TO GUARD AGAINST MONEY LAUNDERING OF FOREIGN CRIMES  
BY MAKING A FOREIGN CRIME A PREDICATE FOR MONEY LAUNDERING  
IF THE SAME CONDUCT IS ALREADY A DOMESTIC PREDICATE  
FOR MONEY LAUNDERING**

**PROPOSED LEGISLATIVE LANGUAGE:**

Section One. Section 1956 of Title 18, United States Code (Laundering of monetary instruments), is amended in subsection (c)(7)(B) as follows –

(1) in subparagraph (vi), by striking the word “or” immediately after the semicolon at the end;

(2) in subparagraph (vii), by adding the word “or” immediately after the semicolon at the end;

(3) by adding after subparagraph (vii) the following:

“(viii) any act or activity that would constitute specified unlawful activity under this section if the act or activity had occurred within the jurisdiction of the United States;”

**SECTION-BY-SECTION ANALYSIS:**

This proposal would close the gap between foreign and domestic criminal predicates for money laundering by amending 18 U.S.C. § 1956(c)(7) to make any act or activity in violation of foreign law, a “specified unlawful activity” for purposes of the federal money laundering statutes, if the conduct would have been a “specified unlawful activity” had it occurred within the jurisdiction of the United States. Currently, the United States has authority to investigate and prosecute money laundering transactions that promote or launder the proceeds of over 200 domestic predicate offenses. In contrast, if a foreign offender launders the proceeds of his crimes into the United States or through U.S. financial markets, such conduct would only give rise to money laundering if it fits within seven categories of foreign offenses enumerated in 18 U.S.C. § 1956(c)(7)(B). As a result, for example, while the United States has ample authority to investigate and prosecute money laundering offenses involving predicate offenses of fraud and corruption perpetrated by U.S. offenders, it lacks parallel authority to investigate and prosecute those who launder a foreign fraudster’s proceeds into the United States, unless it involves foreign bank fraud.

With the stability of U.S. financial, commercial, and real estate markets, and with the ease of conducting U.S. financial transactions due to the global dominance of the U.S. dollar, foreign offenders and their money launderers routinely seek to launder the proceeds of their criminal activities, including kleptocracy, fraud, cybercrimes, and other offenses, into or through the United States. This amendment would empower the United States to more effectively guard against foreign money laundering by ensuring that money laundering transactions can be investigated and prosecuted on equal footing, whether the underlying crime occurs in the United

States or abroad. The proposed amendment will be particularly relevant in cases, such as those involving foreign kleptocracy, where foreign corrupt actors and their associates may be involved in a series of significant criminal activities that might be most closely analogous to a domestic fraud or another crime for which there is a U.S. analogue, but which is not enumerated as a foreign predicate for money laundering.

#### **PROPOSAL HISTORY:**

In 2022, the Administration supported a similar proposal to expand foreign predicates for money laundering, as part of a larger proposal to expand the statute of limitations for money laundering based upon foreign crimes. Congress extended the statute of limitations, but did not include additional foreign predicate offenses at that time.

#### **LINE IN/LINE OUT COMPARISON TO CURRENT LAW:**

##### **18 U.S.C. § 1956**

(c) As used in this section--

(1) the term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term “financial transaction” means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term “financial institution” includes--

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1<sup>1</sup> of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term “specified unlawful activity” means--

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving--

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));<sup>2</sup>

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving--

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; ~~or~~

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;  
or

(viii) any act or activity that would constitute specified unlawful activity under this section if the act or activity had occurred within the jurisdiction of the United States;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152

(relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 555 (relating to border tunnels), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(l) (relating to the unlawful importation of firearms), section 924(n), 932, or 933 (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006<sup>3</sup> (relating to fraudulent Federal credit institution entries), 1007<sup>3</sup> (relating to Federal Deposit Insurance transactions), 1014<sup>3</sup> (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032<sup>3</sup> (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act

(relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, section 807 (relating to penalties) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. section 1906), any felony violation of section 15 of the Food and Nutrition Act of 2008 (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons), or section 104(a) of the North Korea Sanctions Enforcement Act of 2016 (relating to prohibited activities with respect to North Korea);

### **ENVIRONMENTAL CRIMES**

**(E)** a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.);

**(F)** any act or activity constituting an offense involving a Federal health care offense; or

**(G)** any act that is a criminal violation of subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1) of section 9(a) of the Endangered Species Act of 1973 (16 U.S.C. 1538(a)(1)), section 2203 of the African Elephant Conservation Act (16 U.S.C. 4223), or section 7(a) of the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5305a(a)), if the endangered or threatened species of fish or wildlife, products, items, or substances involved in the violation and relevant conduct, as applicable, have a total value of more than \$10,000;

**(8)** the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

**(9)** the term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

**(d)** Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

**(e)** Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall

be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

**(f)** There is extraterritorial jurisdiction over the conduct prohibited by this section if--

**(1)** the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

**(2)** the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

**(g) Notice of conviction of financial institutions.**--If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

**(h)** Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

**(i) Venue.**--**(1)** Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in--

**(A)** any district in which the financial or monetary transaction is conducted; or

**(B)** any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

**(2)** A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

**(3)** For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

**(j) Seven-year limitation.**--Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for a violation of this section or section 1957 if the specified unlawful activity constituting the violation is the activity defined in subsection (c)(7)(B) of this section, unless the indictment is found or the information is instituted not later than 7 years after the date on which the offense was committed.

## **PROPOSAL TO PRESERVE PROCEEDS OF FOREIGN KLEPTOCRACY IN SUPPORT OF FOREIGN INVESTIGATIONS**

### **PROPOSED LEGISLATIVE LANGUAGE:**

Section One. Section 981 of Title 18, United States Code (Civil forfeiture), is amended in subsection (b) as follows –

(1) in subparagraph (4)(A), by inserting “ or under foreign law” after “Controlled Substances Act”, and by striking the number “30” and inserting in its place “90”; and

(2) in subparagraph (4)(B), by inserting the following after the word “subsection”:

“or to receive an order or evidence in support of an application to preserve property or to enforce a judgment under section 2467 of title 28, United States Code”

### **SECTION-BY-SECTION ANALYSIS:**

This proposed amendment would significantly enhance the ability of the United States to render timely mutual legal assistance and prevent the dissipation of criminal proceeds after a person has been arrested or charged in connection with a foreign criminal investigation. Under existing law, federal courts can restrain property based upon a foreign arrest or charge for a period of 30 days, in order to preserve assets while the foreign government provides evidence for the United States to initiate an independent domestic U.S. investigation and civil forfeiture action. However, no clear corresponding authority exists to allow the United States to preserve property for the purposes of a foreign forfeiture proceeding where the foreign government has gathered sufficient evidence to arrest or charge a defendant, but has not yet been able to submit a mutual legal assistance request due to case exigencies, legal or procedural requirements, or other necessities, such as translation. This amendment would close this gap by providing parallel authority for U.S. courts to order the temporary restraint of assets following a foreign arrest or charge to permit the foreign government to prepare, translate, and submit a mutual legal assistance request and for the Attorney General to apply for an order under 28 U.S.C. § 2467 to preserve assets for adjudication in foreign forfeiture proceedings.

In complex criminal investigations, such as those involving high-level public corruption, elaborate financial frauds, and other financial crimes, it is often more efficient for a foreign criminal investigation and foreign court to adjudicate forfeiture than for the United States to initiate separate U.S. forfeiture proceedings based upon foreign crimes and foreign evidence. Especially where the primary offense conduct occurred wholly abroad, a foreign court often has more access to facts and witnesses and is often in a better position to adjudicate the facts and law leading to the foreign arrest or charge. Under 28 U.S.C. § 2467, the United States can enforce foreign restraint and forfeiture orders in connection with foreign investigations and forfeiture proceedings. However, the location of assets may not be known at the time of an arrest or charge, or an arrest may be timed to mitigate a defendant’s flight risk, before restraint proceedings can be started. This amendment would temporarily prevent dissipation of assets

while a request to restrain property in connection with foreign proceedings is made and determined under 28 U.S.C. § 2467.

Providing effective mutual legal assistance in support of foreign investigations is a key obligation of numerous bilateral and multilateral treaties to which the United States is a party, including the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime, and various bilateral instruments, among others. International cooperation in forfeiture cases is particularly complex due to differences in legal systems and the high risk of dissipation of assets, particularly after a criminal defendant has been arrested or notified of criminal charges. Accordingly, the proposal would also expand the duration of a temporary restraint from 30 to 90 days to enable the foreign authorities to obtain appropriate legal process under foreign law, assemble supporting evidence and declarations, prepare a mutual legal assistance request, and obtain translations for transmission to the United States, as well as to permit the Attorney General to consider the sufficiency of a request, seek further information, and, if appropriate, seek judicial authorization to further preserve property during the pendency of foreign proceedings. Because 30 days is also insufficient time to receive and translate foreign evidence, conduct an investigation, and initiate a civil forfeiture action, the expansion of duration of the restraint is also necessary for circumstances in which opening an independent U.S. civil forfeiture proceeding is appropriate.

#### **LINE IN/LINE OUT COMPARISON TO CURRENT LAW:**

#### **18 U.S.C. § 981**

**(b)(1)** Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

**(2)** Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if--

**(A)** a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

**(B)** there is probable cause to believe that the property is subject to forfeiture and--

**(i)** the seizure is made pursuant to a lawful arrest or search; or

**(ii)** another exception to the Fourth Amendment warrant requirement would apply; or

**(C)** the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

**(3)** Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

**(4)(A)** If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act **or under foreign law**, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than ~~30~~**90** days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

**(B)** The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection **or to receive an order or evidence in support of an application to preserve property or to enforce a judgment under section 2467 of title 28, United States Code.**

**PROPOSAL TO AUTHORIZE THE UNITED STATES TO USE FORFEITED  
PROPERTY TO REMEDIATE THE HARMS OF KLEPTOCRACY, HUMAN RIGHTS  
VIOLATIONS AND ABUSES, WAR CRIMES, AND ARMED AGGRESSION  
IN ASSET RECOVERY ACTIONS**

**PROPOSED LEGISLATIVE LANGUAGE:**

Section One. Section 981 of Title 18, United States Code, is amended in subsection (e) as follows –

- (1) in subsection (6), by striking the word “or” immediately after the semicolon at the end;
- (2) in subsection (7) by striking the period after “. . . (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act)”, and by inserting in its place “; or”;
- (3) by adding after subsection (7) the following:

“(8) at the discretion of the Attorney General, in consultation with the Secretary of State and the Secretary of the Treasury, for use or transfer pursuant to paragraph (1) for remediation of foreign public corruption, human rights violations or abuses, war crimes, or armed aggression, where conduct giving rise to the forfeiture involved --

(A) foreign public corruption, fraud, or other related conduct by, on behalf of, or for the benefit of a foreign public official or affecting a foreign government, such as bribery, extortion, or the misappropriation, theft, or embezzlement of public funds;

(B) human rights violations or abuses, or war crimes;

(C) acts constituting bank fraud by, on behalf of, or for the benefit of a current or former foreign public official or an associate of such person, or a violation of the Prohibition on Concealment of the Source of Assets in Monetary Transactions (31 U.S.C. § 5335);

(D) a violation of the Arms Export Control Act (22 U.S.C. § 2751 et seq.), the Export Control Reform Act of 2018 (50 U.S.C. § 4801 et seq.), or any license, order, regulation, or prohibition issued under such acts;

(E) a person or property that is the target of a prohibition issued pursuant to the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.) in connection with corruption, human rights violations or abuses, war crimes, or armed aggression;” or

(F) money laundering related to (A) through (E).”; and

- (4) by inserting at the end after the words “paragraph (3), (4), or (5) of this subsection.” the following:

“Any funds transferred pursuant to this subsection to the Department of State or the United States Agency for International Development may be considered foreign assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) for purposes of making available the administrative authorities contained in that Act.”

Section Two: Section 853 of Title 21, United States Code, is amended in subsection (i) as follows –

- (1) in subsection (4) by striking the word “and”;
- (2) in subsection (5) by striking the period at the end and inserting “; and” after “pending its disposition”; and
- (3) by adding after subsection (5) the following:

“(6) use or transfer such property as remediation, as set forth in section 981(e)(8) of Title 18.”

Section Three: Section 881 of Title 21, United States Code, is amended in subsection (e)(1) as follows –

- (1) in subsection (D) by striking the word “or” immediately after the semicolon at the end;
- (2) in subsection (E)(iii) by striking the period at the end and inserting “; or” after “under section 2291j(b) of Title 22”; and
- (3) by adding after subsection (E)(iii) the following:

“(F) use or transfer such property as remediation, as set forth in section 981(e)(8) of Title 18.”

Section Four: Section 524 of Title 28, United States Code, is amended in subsection (c)(1)(E) as follows –

- (1) in subsection (i) by deleting the word “and” immediately after the semicolon at the end;
- (2) in subsection (ii)(II), by inserting “ and” after “in such case;” and
- (3) by adding after subsection (ii)(II) the following:

“(iii) for payments, expenditures, or disbursements as remediation of foreign public corruption, human rights violations or abuses, war crimes, or armed aggression at the discretion of the Attorney General, as set forth in section 981(e)(8) of Title 18;”.

Section Five: Section 9705 of Title 31, United States Code, is amended in subsection (a)(1) by adding after subsection (J) the following:

“(K) Payment of amounts authorized by law as remediation pursuant to section 981(e)(8) of Title 18.”

#### **SECTION-BY-SECTION ANALYSIS:**

Generally, forfeited funds are used to compensate victims of the crimes underlying the forfeitures, and for other law enforcement purposes. In some cases, it is easy to identify victims and the amounts of their losses. Current authorities allow the government to compensate, for example, fraud victims who are cheated out of money the government can trace and forfeit. However, certain crimes may cause a range of harms across a population, in addition to any pecuniary harm to a particular individual. Moreover, under existing law, the United States generally cannot return forfeited funds to a foreign government of a nation harmed by corruption unless the nation assisted in the recovery or can show a direct pecuniary loss. In corruption cases, the forfeiture or the concealment of the loss may, for example, have occurred during a period while a prior government was influenced or controlled by corrupt officials. Human rights violations, war crimes, or acts of armed aggression, such as those stemming from Russia’s further invasion of Ukraine in 2022, or acts of officials or mercenaries involved in recent coups, may likewise cause a range of harms and atrocities across a population or class of people. Thus, although sanctions may have been imposed because of severe consequences to a civilian population, the United States may not be able use or transfer forfeited funds to remedy the effects of that underlying conduct because the offense giving rise to the forfeiture – a sanctions violation – did not cause a direct, calculable, pecuniary loss to specific individuals that would be compensable under existing U.S. law.

This proposal, particularly when considered in conjunction with the separate proposed changes to 18 U.S.C. § 1961(1) to expand money laundering prosecution and forfeiture authorities for certain war crimes and human rights violations, would allow forfeited funds to be used to remediate the effects of foreign public corruption, human rights violations or abuses, war crimes, and armed aggression. This authority would also enable the United States to more closely adhere to the principles of the United Nations Convention against Corruption and better guard against re-corruption of recovered funds where foreign corrupt actors may retain influence. Because criminal and civil forfeiture authority resides in several statutes, conforming amendments are necessary to multiple statutes governing the use of forfeited funds.

Section One would amend 18 U.S.C. § 981, a civil forfeiture statute, to: (1) define a specific class of cases for which the new authority could be used, and (2) set forth the parameters under which the Attorney General, in consultation with the Departments of State and of the Treasury, may authorize the use of the forfeited funds for remediation.

The class of cases would reach conduct or related money laundering arising from offenses investigated in foreign public corruption, fraud, or other related conduct by, on behalf of, or for the benefit of a foreign public official or affecting a foreign government, such as bribery, extortion, or the misappropriation, theft, or embezzlement of public funds; human rights violations or abuses; war crimes; armed aggression; certain bank fraud violations or violations of the Prohibition on Concealment of the Source of Assets in Monetary Transactions (31 U.S.C. § 5335); or a violation of the Arms Export Control Act (22 U.S.C. § 2751 et seq.) or the Export Control Reform Act of 2018 (50 U.S.C. § 4801 et seq.), or any license, order, regulation, or prohibition issued under such acts. The provision would also include cases in which the conduct or money laundering involved a person or property that is the target of a prohibition issued pursuant to the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.) in connection with corruption, human rights violations or abuses, war crimes, or armed aggression.

The proposal would authorize the Attorney General, in consultation with the Departments of State and of the Treasury, to use or transfer the forfeited funds to another federal agency in order to remediate foreign public corruption, human rights violations or abuses, war crimes, or armed aggression. Where funds are transferred to the State Department or the United States Agency for International Development, the proposal makes clear that the funds could be implemented using administrative authorities under the Foreign Assistance Act.

Section Two would amend 21 U.S.C. § 853, a criminal forfeiture statute in the drug laws whose procedures apply to many other unrelated federal offenses, including those involving money laundering based on foreign corruption. It would adopt the definition of the class of cases in the proposed amendment to 18 U.S.C. § 981, and provide similar authority for the Attorney General, in consultation with the Departments of State and of the Treasury, to use or transfer the forfeited funds as remediation.

Section Three would amend 21 U.S.C. § 881, a civil forfeiture statute, to adopt the definition of the class of cases in the proposed amendment to 18 U.S.C. § 981, and provide similar authority for the Attorney General, in consultation with the Departments of State and of the Treasury, to use or transfer the forfeited funds as remediation.

Section Four would amend 28 U.S.C. § 524(c), the statute that governs the Department of Justice Assets Forfeiture Fund, to adopt the definition of the class of cases in the proposed amendment to 18 U.S.C. § 981 and provide congruent authority for disbursements, expenditures, or payments in accordance with an Attorney General determination, made in consultation with the Departments of State and of the Treasury, to use or transfer the forfeited funds as remediation.

Section Five would amend 31 U.S.C. § 9705, the statute that governs the Department of the Treasury Forfeiture Fund, to adopt the definition of the class of cases in the proposed amendment to 18 U.S.C. § 981, and provide congruent authority for the Secretary of the Treasury to transfer funds in accordance with an Attorney General determination, made in consultation with the Departments of State and of the Treasury, to use the forfeited funds as remediation.

## **PROPOSAL HISTORY:**

In 2022, the Administration proposed legislation to permit the Attorney General to provide forfeited assets recovered in Russian sanctions violations cases to the State Department for use to remediate the harm of Russian aggression against Ukraine. In April 19, 2023, testimony before the Senate Judiciary Committee, Deputy Attorney General Lisa O. Monaco urged expansion of such authority to include additional offenses and to permit the U.S. government to use funds to remediate harms in other kleptocracy and human rights cases.

#### LINE IN/LINE OUT COMPARISON TO CURRENT LAW:

#### 18 U.S.C. § 981(e):

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine--

(1) to any other Federal agency;

(2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;

(3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency--

(A) to reimburse the agency for payments to claimants or creditors of the institution; and

(B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; ~~or~~

(7) In<sup>3</sup> the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act); ~~or~~

**(8) at the discretion of the Attorney General, in consultation with the Secretary of State and the**

Secretary of the Treasury, for use or transfer pursuant to paragraph (1) for remediation of foreign public corruption, human rights violations or abuses, war crimes, or armed aggression, where conduct giving rise to the forfeiture involved --

(A) foreign public corruption, fraud, or other related conduct by, on behalf of, or for the benefit of a public official or affecting a foreign government, such as bribery, extortion, or the misappropriation, theft, or embezzlement of public funds;

(B) human rights violations or abuses or war crimes;

(C) acts constituting bank fraud by, on behalf of, or for the benefit of a current or former foreign public official or an associate of such person, or a violation of the Prohibition on Concealment of the Source of Assets in Monetary Transactions (31 U.S.C. § 5335);

(D) a violation of the Arms Export Control Act (22 U.S.C. § 2751 et seq.) or the Export Control Reform Act of 2018 (50 U.S.C. § 4801 et seq.), or any license, order, regulation, or prohibition issued under such acts;

(E) a person or property that is the target of a prohibition issued pursuant to the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.) in connection with corruption, human rights violations or abuses, war crimes, or armed aggression; or

(F) money laundering related to (A) through (E).

The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection. Any funds transferred pursuant to this subsection to the Department of State or the United States Agency for International Development may be considered foreign assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) for purposes of making available

the administrative authorities contained in that Act.

**21 U.S.C. § 853(i):**

**(i) Authority of the Attorney General**

With respect to property ordered forfeited under this section, the Attorney General is authorized to--

- (1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;
- (2) compromise claims arising under this section;
- (3) award compensation to persons providing information resulting in a forfeiture under this section;
- (4) direct the disposition by the United States, in accordance with the provisions of section 881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; ~~and~~
- (5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition-; ~~and~~
- (6) use or transfer such property as remediation, as set forth in section 981(e)(8) of Title 18.

**21 U.S.C. § 881(e)(1):**

**(e) Disposition of forfeited property**

(1) Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may--

- (A) retain the property for official use or, in the manner provided with respect to transfers under section 1616a of Title 19, transfer the property to any Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;
- (B) except as provided in paragraph (4), sell, by public sale or any other commercially feasible means, any forfeited property which is not required to be destroyed by law and which is not harmful to the public;
- (C) require that the General Services Administration take custody of the property and dispose of it in accordance with law;
- (D) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General); ~~or~~

**(E)** transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer--

**(i)** has been agreed to by the Secretary of State;

**(ii)** is authorized in an international agreement between the United States and the foreign country; and

**(iii)** is made to a country which, if applicable, has been certified under section 2291j(b) of Title 22-; or

**(F)** use or transfer such property as remediation, as set forth in section 981(e)(8) of Title 18.

### **28 U.S.C. § 524(c)(1):**

**(E)(i)** for disbursements authorized in connection with remission or mitigation procedures relating to property forfeited under any law enforced or administered by the Department of Justice; ~~and~~

**(ii)** for payment for--

**(I)** costs incurred by or on behalf of the Department of Justice in connection with the removal, for purposes of Federal forfeiture and disposition, of any hazardous substance or pollutant or contaminant associated with the illegal manufacture of amphetamine or methamphetamine; and

**(II)** costs incurred by or on behalf of a State or local government in connection with such removal in any case in which such State or local government has assisted in a Federal prosecution relating to amphetamine or methamphetamine, to the extent such costs exceed equitable sharing payments made to such State or local government in such case; ~~and~~

**(iii)** for payments, expenditures, or disbursements as remediation of foreign public corruption, human rights violations or abuses, war crimes, or armed aggression at the discretion of the Attorney General, as set forth in section 981(e)(8) of Title 18;

### **31 U.S.C. § 9705(a)(1):**

**(a)** In general.--There is established in the Treasury of the United States a fund to be known as the "Department of the Treasury Forfeiture Fund" (referred to in this section as the "Fund"). The Fund shall be available to the Secretary, without fiscal year limitation, with respect to seizures and forfeitures made pursuant to any law (other than section 7301 or 7302 of the Internal Revenue Code of 1986) enforced or administered by the Department of the Treasury or the United States Coast Guard for the following law enforcement purposes:

**(1)(A)** Payment of all proper expenses of seizure (including investigative costs incurred by a Department of the Treasury law enforcement organization leading to seizure) or the proceedings of forfeiture and sale, including the expenses of detention, inventory, security, maintenance, advertisement, or disposal of the property, and if condemned by a court and a bond for such costs was not given, the costs as taxed by the court.

**(B)** Payment for--

**(i)** contract services;

**(ii)** the employment of outside contractors to operate and manage properties or to provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

**(iii)** reimbursing any Federal, State, or local agency for any expenditures made to perform the functions described in this subparagraph.

**(C)** Awards of compensation to informers under section 619 of the Tariff Act of 1930 (19 U.S.C. 1619).

**(D)** Satisfaction of--

**(i)** liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate Customs officer according to law; and

**(ii)** subject to the discretion of the Secretary, other valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by a Department of the Treasury law enforcement organization. To determine the validity of any such lien or mortgage, the amount of payment to be made, and to carry out the functions described in this subparagraph, the Secretary may employ and compensate attorneys and other personnel skilled in State real estate law.

**(E)** Payment of amounts authorized by law with respect to remission and mitigation.

**(F)** Payment of claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), in the amounts applicable to such claims at the time of seizure.

**(G)** Equitable sharing payments made to other Federal agencies, State and local law enforcement agencies, and foreign countries pursuant to section 616(c) of the Tariff Act of 1930 (19 U.S.C. 1616a(c)), section 981 of title 18, or subsection (h) of this section, and all costs related thereto.

**(H)** Payment for services of experts and consultants needed by a Department of the Treasury law enforcement organization to carry out the organization's duties relating to seizure and forfeiture.

**(I)** Payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State or local law enforcement officers that are incurred in joint law enforcement operations with a Department of the Treasury law enforcement organization.

**(J)** Payment made pursuant to guidelines promulgated by the Secretary, if such payment is necessary and directly related to seizure and forfeiture program expenses for--

**(i)** the purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program);

**(ii)** training;

**(iii)** printing; and

**(iv)** contracting for services directly related to--

**(I)** the identification of forfeitable assets;

**(II)** the processing of and accounting for forfeitures; and

**(III)** the storage, maintenance, protection, and destruction of controlled substances.

**(K)** Payment of amounts authorized by law as remediation pursuant to section 981(e)(8) of Title 18.

## **PROPOSAL TO PRESERVE ASSETS LOCATED ABROAD FOR RECOVERY BY CLARIFYING AUTHORITY FOR SEIZURE WARRANTS**

### **PROPOSED LEGISLATIVE LANGUAGE:**

Section One: Section 853 of Title 21, United States Code (Criminal Forfeitures), is amended in subsection (f) by –

Inserting the following after “as provided for a search warrant.”:

“Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued for property subject to forfeiture that may be located outside of the United States and may be transmitted to the central authority or other competent authority of a foreign country for service in accordance with any treaty or international agreement or in accordance with foreign law.”

Section Two: Section 981 of Title 18, United States Code (Criminal Forfeitures), is amended in subsection (b)(3) by –

striking the word “is” between the words “property” and “found”, and inserting in its place “may be”; inserting “or other competent authority” immediately after the words “central authority”; striking the word “any” between the words “of” and “foreign” and inserting in its place “a”; striking the word “state” immediately after the word “foreign” and inserting in its place “country”; and inserting “or in accordance with foreign law” immediately after the words “international agreement”.

### **SECTION-BY-SECTION ANALYSIS:**

This amendment to 21 U.S.C. § 853(f) would clarify a federal district court’s authority to issue a seizure warrant in criminal cases for property located abroad, and make technical corrections to existing authority under 18 U.S.C. § 981(b)(3) for the court to issue a seizure warrant to secure property located abroad that is subject to civil forfeiture. Under current law, 18 U.S.C. § 981(b)(3) provides express authority for the court to issue civil seizure warrants for service through mutual legal assistance. However, 21 U.S.C. § 853(f) does not contain such clear authorization for seizure warrants in criminal cases and instead refers to procedures for obtaining a search warrant. Foreign kleptocrats, their entities and associates, as well as other criminals, often maintain significant assets abroad. Ambiguity in the authority for the court to issue a seizure warrant for assets in a criminal case risks dissipation of assets and may necessitate the filing of multiple criminal and civil proceedings.

Section One would amend 21 U.S.C. § 853(f) to clarify authority for law enforcement to seek a judicial determination of probable cause and for the court to issue a seizure warrant in criminal cases to seize property located abroad through mutual legal assistance, consistent with the procedures currently applicable in civil forfeiture actions. Section Two of this proposal would make a conforming change to 18 U.S.C. § 981(b)(3) to more accurately reflect the practice of foreign governments in execution of U.S. requests, which may be made to a central authority of

one or more foreign countries where assets may be found for service under an international agreement or in accordance with domestic law of the foreign country.

**LINE IN/LINE OUT COMPARISON TO CURRENT LAW:**

**21 U.S.C. § 853(f)**

**(f) Warrant of seizure.** The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. **Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued for property subject to forfeiture that may be located outside of the United States and may be transmitted to the central authority or other competent authority of a foreign country for service in accordance with any treaty or international agreement or in accordance with foreign law.** If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

**18 U.S.C. § 981(b)(3)**

**(3)** Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property ~~is~~**may be** found, or transmitted to the central authority **or other competent authority** of ~~any~~ a foreign ~~state~~ **country** for service in accordance with any treaty or other international agreement **or in accordance with foreign law.** Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

**PROPOSAL TO ADD CERTAIN CRIMINAL OFFENSES INVOLVING  
CORRUPTION, HUMAN RIGHTS VIOLATIONS AND ABUSES, WAR CRIMES,  
SANCTIONS AND EXPORT CONTROL VIOLATIONS, AND ILLICIT FOREIGN  
ELECTION CONTRIBUTIONS AS “RACKETEERING ACTIVITIES” UNDER THE  
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO) ACT AND  
AS PREDICATES FOR TITLE III INTERCEPTION OF WIRE AND ORAL  
COMMUNICATIONS**

**PROPOSED LEGISLATIVE LANGUAGE:**

Section One. Section 1961 of Title 18, United States Code (Definitions), is amended in subsection (1), by –

inserting “section 641 (relating to theft of government money, records, or property), if the act indictable under Section 641 is felonious,” before “section 659 (relating to theft from interstate shipment)”, inserting “section 666 (relating to theft or bribery concerning programs receiving federal funds),” before “sections 891-894 (relating to extortiate credit transactions)”, inserting “section 1028A (relating to aggravated identity theft),” before “section 1029 (relating to fraud and related activity in connection with access devices)”, inserting “section 1091 (relating to acts of genocide),” before “section 1341 (relating to mail fraud)”, inserting “section 2441 (relating to war crimes), section 2442 (relating to use and recruitment of child soldiers),” before “sections 175-178 (relating to biological weapons)”, striking the word “or” before “(G) any act that is indictable under any provision listed in section 2332b(g)(5)(B)”, and by inserting “, (H) any act that is indictable under title 50, United States Code, section 1705 (relating to criminal violations of the International Emergency Economic Powers Act) or section 4819 (relating to criminal violations of the Export Control Reform Act), (I) any act that is indictable under title 22, United States Code, section 2778 (relating to criminal violations of the Arms Export Control Act), or (J) any act that is indictable under title 52, United States Code, section 30121 (relating to unlawful campaign contributions and donations by foreign nationals) or section 30122 (relating to unlawful campaign contributions in the name of another person) if the act indictable under section 30121 or section 30122 is felonious pursuant to title 52, United States Code, section 30109(d)(1)(A)(i)” before the semicolon at the end.

Section Two. Section 2516(1) of Title 18, United States Code (Authorization for interception of wire, oral, or electronic communications), is amended –

(1) in subsection (c), by inserting “section 1091 (relating to acts of genocide),” before “section 1114 (relating to officers and employees of the United States)”, inserting “a felony violation of section 641 (relating to theft of government money, records, or property)” before “section 659 (theft from interstate shipment)”, inserting “section 666 (relating to theft or bribery concerning programs receiving federal funds),” before “section 1343 (fraud by wire, radio, or television)”, and inserting “section 2441 (relating to war crimes), section 2442 (relating to use and recruitment of child soldiers),” before “section 1203 (relating to hostage taking)”;

(2) in subsection (t), by striking the word “or” immediately after the semicolon at the end;

(3) by re-designating subparagraph (u) as subparagraph (w);

(4) by adding after subparagraph (t) the following:

"(u) any violation of section 30121 (relating to unlawful campaign contributions and donations by foreign nationals) or 30122 (relating to unlawful campaign contributions in the name of another person) of title 52, if that violation is a felony under section 30109(d)(1)(A)(i) of title 52, United States Code;"

(5) by adding after subparagraph (u) the following:

"(v) any criminal violation of section 1705 of title 50 (relating to violations of the International Emergency Economic Powers Act); or"

#### **SECTION-BY-SECTION ANALYSIS:**

To assist the United States in the investigation and prosecution of transnational and domestic offenses involving corruption, human rights violations, war crimes violations, sanctions and export control violations, and illicit foreign election contributions, this proposal would add certain criminal offenses to the definition of “racketeering activity” under the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1961, et seq., and to the list of predicates for Title III interception of wire and oral communications under 18 U.S.C. § 2516.

*Section One* would add theft of government money, records, or property (18 U.S.C. § 641) (if the act indictable under section 641 is felonious), theft or bribery concerning programs receiving federal funds (18 U.S.C. § 666), aggravated identity theft (18 U.S.C. § 1028A), acts of genocide (18 U.S.C. § 1091), war crimes (18 U.S.C. § 2441), use and recruitment of child soldiers (18 U.S.C. § 2442), violations of the International Emergency Economic Powers Act (50 U.S.C. § 1705), violations of the Export Control Reform Act (50 U.S.C. § 4819), violations of the Arms Export Control Act (AECA) (22 U.S.C. § 2778), and prohibited contributions to U.S. elections by foreign nationals (52 U.S.C. § 30121) and by conduits (52 U.S.C. § 30122) (if the act is felonious under 52 U.S.C. § 30109(d)(1)(A)(i)), as racketeering activities under RICO, 18 U.S.C. § 1961(1).

The United States generally adopts an “enterprise theory” in investigations of sanctions evasion, under which impactful prosecutions are built by identifying a common criminal network with overlapping interests, actors, and assets, and working to dismantle the network in a single prosecution that speaks to the full scope of criminal activity. However, in the sanctions area, prosecutors are currently unable to use sanctions evasion as a central element to a comprehensive, and powerful, charge. Adding references to 50 U.S.C. § 1705, ECRA and ACEA in the list of predicate racketeering acts set out in 18 U.S.C. § 1961(1) would address this gap and provide an important tool in such cases. Inclusion of section 1705, ECRA, AECA would allow for sanctions evasion or evasion of export or arms control laws to be charged along with evidence of fraud, money laundering, extortion, and other predicate acts that often surround sanctions evasion schemes, but currently must be charged separately. This change would also

provide a basis for extending the life of criminal activity under applicable statutes of limitations, for example, by allowing a charge for older extortion and expropriation of property where a recent sanction evasion exists (a fact pattern that is particularly common with respect to the current Russian sanctions effort).

Inclusion of acts of genocide (18 U.S.C. § 1091), war crimes (18 U.S.C. § 2441), and use and recruitment of child soldiers (18 U.S.C. § 2442), as racketeering activities under RICO would enable the United States to also use an enterprise theory to investigate and prosecute some of the most egregious violations of human rights when committed by a U.S. resident or otherwise within the jurisdiction of U.S. courts. An enterprise approach would facilitate investigations and prosecutions of these grave violations, which are often transnational in nature and involve a series of related criminal actions by different members of a criminal organization. Importantly, because offenses enumerated in 18 U.S.C. § 1961(1) are predicate offenses for money laundering under 18 U.S.C. § 1956(c)(7)(A), addition of these offenses as racketeering activities would aid U.S. efforts to disrupt this illicit conduct through the investigation and prosecution of persons who conduct financial transactions in or through the United States that would promote such crimes or launder related criminal proceeds. Under existing law, these offenses are not predicates for money laundering or forfeiture, and the United States lacks these powerful law enforcement tools to combat this type of serious crime where perpetrators and facilitators abuse the U.S. financial system to enable their criminal acts.

In addition, while the United States can charge some domestic corruption or foreign campaign financing violations as elements of a racketeering enterprise, it may not be possible to include all related conduct because certain offenses are not listed as racketeering activities. Addition of theft of government money, records, or property (18 U.S.C. § 641) (if the act indictable under section 641 is felonious), theft or bribery concerning programs receiving federal funds (18 U.S.C. § 666), and prohibited contributions to U.S. elections by foreign nationals (52 U.S.C. § 30121) and by conduits (52 U.S.C. § 30122) (if the act is felonious under 52 U.S.C. § 30109(d)(1)(A)(i)) as racketeering activities would harmonize domestic corruption and foreign election interference offenses with other offenses already incorporated into RICO. Consequently, an enterprise theory could be employed against all members of a racketeering enterprise, including, for example, those involved in both domestic bribery offenses under 18 U.S.C. § 201 and those involved in theft of government property under 18 U.S.C. § 641 (if the act indictable under section 641 is felonious), or, similarly, those involved in illicit foreign influence efforts that include felony prohibitions on foreign contributions to U.S. elections under 52 U.S.C. § 30121.

Finally, the Department proposes a further amendment to the definition of racketeering activity to include aggravated identity theft. Ordinary identity theft (18 U.S.C. § 1028) is already defined as “racketeering activity” under 18 U.S.C. § 1961(1). There is no reason to omit the more severe violation of aggravated identity theft.

In addition to expanding the predicates for certain money laundering and forfeiture offenses, this proposal would also extend a powerful forfeiture tool against racketeering enterprises engaged in

sanctions evasion and these additional enumerated offenses. For example, whereas current forfeitures for violations of section 1705 are limited to the proceeds of that crime (or, potentially to certain property “involved in” the conduct if assets are used to launder the proceeds of sanctions violations), RICO forfeitures may extend to the assets of the enterprise that reach beyond specific funds and into, for example, the assets of entities or properties used to promote the enterprise’s success or status.

*Section Two* would make corresponding additions to include as Title III predicates for interception of wire or oral communications theft of government money, records, or property (18 U.S.C. § 641), theft or bribery concerning programs receiving federal funds (18 U.S.C. § 666), acts of genocide (18 U.S.C. § 1091), war crimes (18 U.S.C. § 2441), use and recruitment of child soldiers (18 U.S.C. § 2442), violations of the International Emergency Economic Powers Act (50 U.S.C. § 1705), and prohibited contributions to U.S. elections by foreign nationals (52 U.S.C. § 30121) and by conduits (52 U.S.C. § 30122) (if the act is felonious under 52 U.S.C. § 30109(d)(1)(A)(i)). Certain offenses added as racketeering activities in Section One, including violations of the Export Control Reform Act (50 U.S.C. § 4819), violations of the Arms Export Control Act (AECA) (22 U.S.C. § 2778), and aggravated identity theft (18 U.S.C. § 1028A), are not incorporated into Section Two because they are already predicates for Title III intercepts. Given the complexity and severity of these offenses, as well as the often transnational nature of many of these investigations, judicially authorized interception of wire or oral communications would enhance the investigation and prosecution of these serious crimes.

#### **PROPOSAL HISTORY:**

In 2022, the Administration proposed modernizing the definition of racketeering activity under RICO to incorporate three of the offenses enumerated in this proposal, including criminal violations of the International Emergency Economic Powers Act (IEEPA), the Export Control Reform Act (ECRA), and the Arms Export Control Act (AECA).

#### **LINE IN/LINE OUT COMPARISON TO CURRENT LAW:**

##### **18 U.S.C. § 1961. Definitions**

As used in this chapter—

(1) “racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), **section 641 (relating to theft of government money, records, or property), if the act indictable under Section 641 is felonious**, section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), **section 666 (relating to theft or bribery**

concerning programs receiving federal funds), sections 891-894 (relating to extortionate credit transactions), section 932 (relating to straw purchasing), section 933 (relating to trafficking in firearms), section 1028 (relating to fraud and related activity in connection with identification documents), **section 1028A (relating to aggravated identity theft)**, section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), **section 1091 (relating to acts of genocide)**, section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or naturalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons),<sup>1</sup> sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), **section 2441 (relating to war crimes)**, **section 2442 (relating to use and recruitment of child soldiers)**, sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable

under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, ~~or~~ (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B), (H) any act that is indictable under title 50, United States Code, section 1705 (relating to criminal violations of the International Emergency Economic Powers Act) or section 4819 (relating to criminal violations of the Export Control Reform Act), (I) any act that is indictable under title 22, United States Code, section 2778 (relating to criminal violations of the Arms Export Control Act), or (J) any act that is indictable under title 52, United States Code, section 30121 (relating to unlawful campaign contributions and donations by foreign nationals) or section 30122 (relating to unlawful campaign contributions in the name of another person) if the act indictable under section 30121 or section 30122 is felonious pursuant to title 52, United States Code, section 30109(d)(1)(A)(i);

(2) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) “person” includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) “pattern of racketeering activity” requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) “unlawful debt” means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) “racketeering investigator” means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) “racketeering investigation” means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) “documentary material” includes any book, paper, document, record, recording, or other material; and

**(10)** “Attorney General” includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

### **18 U.S.C. § 2516. Authorization for interception of wire, oral, or electronic communications**

**(1)** The Attorney General, Deputy Attorney General, Associate Attorney General,<sup>1</sup> or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of--

**(a)** any offense punishable by death or by imprisonment for more than one year under sections 2122 and 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 10 (relating to biological weapons), chapter 37 (relating to espionage), chapter 55 (relating to kidnapping), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

**(b)** a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

**(c)** any offense which is punishable under the following sections of this title: section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction), section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1014 (relating to loans and credit applications generally; renewals and discounts), **section 1091 (relating to acts of genocide),**

section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1581 (peonage), section 1582 (vessels for slave trade), section 1583 (enticement into slavery), section 1584 (involuntary servitude), section 1585 (seizure, detention, transportation or sale of slaves), section 1586 (service on vessels in slave trade), section 1587 (possession of slaves aboard vessel), section 1588 (transportation of slaves from United States), section 1589 (forced labor), section 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), **a felony violation of section 641 (relating to theft of government money, records, or property)**, section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), **section 666 (relating to theft or bribery concerning programs receiving federal funds)**, section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), section 1992 (relating to terrorist attacks against mass transportation), sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 2340A (relating to torture), **section 2441 (relating to war crimes)**, **section 2442 (relating to use and recruitment of child soldiers)**, section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus), section 956 (conspiracy to harm persons or property overseas), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or

citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), section 1546 (relating to fraud and misuse of visas, permits, and other documents), or section 555 (relating to construction or use of international border tunnels);

**(d)** any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

**(e)** any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

**(f)** any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

**(g)** a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions), or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited);

**(h)** any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

**(i)** any felony violation of chapter 71 (relating to obscenity) of this title;

**(j)** any violation of section 60123(b) (relating to destruction of a natural gas pipeline), section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft) of title 49;

**(k)** any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

**(l)** the location of any fugitive from justice from an offense described in this section;

**(m)** a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);

**(n)** any felony violation of section 922, 924, 932, or 933 of title 18, United States Code (relating to firearms);

**(o)** any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);

**(p)** a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents), section 1028A (relating to aggravated identity theft) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or<sup>2</sup>

**(q)** any criminal violation of section 229 (relating to chemical weapons) or section 2332, 2332a, 2332b, 2332d, 2332f, 2332g, 2332h<sup>3</sup> 2339, 2339A, 2339B, 2339C, or 2339D of this title (relating to terrorism);

**(r)** any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3);

**(s)** any violation of section 670 (relating to theft of medical products);

**(t)** any violation of the Export Control Reform Act of 2018; ~~or~~

**(u)** any violation of section 30121 (relating to unlawful campaign contributions and donations by foreign nationals) or 30122 (relating to unlawful campaign contributions in the name of another person) of title 52, if that violation is a felony under section 30109(d)(1)(A)(i) of title 52, United States Code;

**(v)** any criminal violation of section 1705 of title 50 (relating to violations of the International Emergency Economic Powers Act); or

~~**(u)**~~**(w)** any conspiracy to commit any offense described in any subparagraph of this paragraph.

**(2)** The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, human trafficking, child sexual exploitation, child pornography production, prostitution, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marijuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

**(3)** Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

**PROPOSAL TO LEVERAGE FOREIGN PARTNERS' ABILITY  
TO RECOVER PROCEEDS OF KLEPTOCRACY**

**PROPOSED LEGISLATIVE LANGUAGE:**

Section One: Section 2467 of Title 28, United States Code, is amended as follows:

(1) By deleting:

(a) in subsection (c)(1), “on behalf of a foreign nation”;

(b) subsection (c)(2)(C) in its entirety, and replacing it with the text below;

(c) in subsection (d)(1), “on behalf”;

(2) By renaming existing subsection (d)(3)(C), Limit on grounds for objection.--, “(d)(3)(D)”;

(3) By inserting:

(a) in subsection (c)(2)(C), the following:

“the district court shall have personal jurisdiction over a person or entity who has filed a response to an application by the Government under this section or a person or entity residing outside of the United States if the person or entity has been served with process in accordance with rule 4 of the Federal Rules of Civil Procedure.”;

(b) after subsection (c)(2)(C), the following:

“(D) the United States shall provide notice of an action to enforce a foreign forfeiture judgment in accordance with the procedures set forth in Rule G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions to the extent that the provisions therein are not inconsistent with this section, which notice shall contain a deadline for filing a response at least 35 days after the notice is sent;

(E) any person or entity claiming an interest in property that is the subject of an application brought under this section may file a response to the application of the United States, except that such response must be filed by the date stated in a direct notice of the application or, as applicable, not later than 35 days after the date of final publication of notice of the filing of the application. Such response shall,

(i) identify the specific property being claimed;

(ii) identify the respondent;

(iii) set forth the nature and extent of the respondent's interest in the property, the time and circumstances of the respondent's acquisition of the right, title, or interest in the property;

(iv) set forth with specificity the basis upon which the respondent asserts that the foreign forfeiture judgment should not be enforced in accordance with subsection (d)(1);

(v) be signed by the respondent under the penalty of perjury; and

(vi) be served on the government attorney who filed the application under this section;

- (F) at any time, the United States may move to strike a response or any portion of a response for failing to comply with subsection (c)(2)(E) or because the respondent lacks standing. Any such motion,
- (i) must be decided before any motion by the respondent to dismiss the action or dissolve any order to preserve property under this section; and
  - (ii) may be presented as a motion for judgment on the pleadings or as a motion to determine after a hearing or by summary judgment whether the respondent can carry the burden to establish standing by a preponderance of the evidence;
- (c) in subsection (d)(3)(B)(ii), after “by a court of competent jurisdiction in the foreign country”, “, or by such judicial officer as may be authorized under foreign law,”
- (d) in new subsection (d)(3)(C), “Preservation, Prevention of Criminal Use, and Sale – In addition to any other action authorized under this section, the court, on motion of the Government, may order the preservation, prevention of criminal use, or interlocutory sale of property subject to civil or criminal forfeiture under foreign law in accordance with the provisions of Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.”
- (e) in subsection (d)(3)(D), after “No person may object to a restraining order under subparagraph (A),” “or an order for interlocutory sale under subparagraph (C)”
- (f) in subsection (d), after subsection (d)(3), the following:

“(4) Effect. -- All right, title and interest in property subject to an order to enforce a forfeiture or confiscation judgment under this section shall be forfeited to the United States and shall vest in the United States upon commission of the act giving rise to the forfeiture or confiscation judgment. The Attorney General shall dispose

of the forfeited property, or the proceeds of its sale, in accordance with the provisions of section 853(i) of title 21 or as otherwise provided by law.”

(g) after subsection (f), the following:

“(g) Protection from Liability for Acting at Foreign Request – Notwithstanding any other provision of Federal Law, no person shall have any right of action at law or equity against the United States, its officers, employees or any other person acting on behalf of, or at the direction of, the United States that arises from any action taken pursuant to this section, or the return or release of property restrained, seized or forfeited pursuant to this section, including, but not limited to, actions for damages, costs, interest or attorneys’ fees.”

(h) in subsection (d)(2), after “Process to enforce a judgment under” “subsection (a)(2)(A) of”.

#### **SECTION-BY-SECTION ANALYSIS:**

This proposal would improve the United States’ ability to assist international partners in their efforts to recover foreign corruption proceeds consistent with U.S. treaty obligations, such as the United Nations Convention against Corruption. As kleptocrats and other criminals commit crimes and launder money in multiple jurisdictions and across national boundaries, the United States frequently receives requests from foreign governments to assist in the recovery of proceeds and property involved in foreign corruption offenses that are the subject of foreign investigations. Under 28 U.S.C. § 2467, U.S. courts currently are authorized to provide assistance in foreign asset recovery proceedings by ordering the restraint of assets or by enforcing foreign forfeiture judgments rendered by foreign courts. However, Section 2467 contains few procedural provisions, unnecessarily complicating enforcement proceedings for both the courts and parties, as well as for disposition of recovered assets. This proposal would clarify existing U.S. law to facilitate enforcement of foreign restraint and forfeiture orders for criminal property. Because the United States routinely seeks assistance from foreign authorities in its investigations when criminal assets are located abroad, this proposal would not just facilitate foreign proceedings, but would also strengthen U.S. relationships with foreign partners responsible for executing corresponding U.S. requests for assistance.

This proposal would amend 28 U.S.C. § 2467 in several ways, including by (1) establishing notice, standing, and default procedures; (2) authorizing the Attorney General, with the concurrence of the Secretary of the Treasury and the Secretary of State, to enforce restraint orders from certain civil law jurisdictions; (3) authorizing interlocutory sale of property to

safeguard the value of assets for all parties to foreign proceedings; and (4) clarifying that recovered property is forfeited to the United States and subject to authority for disposition of forfeited assets as in domestic forfeiture cases. Because U.S. enforcement proceedings are dependent upon the actions and determinations of foreign authorities and courts, the proposal also clarifies protection against attorneys' fees and costs petitions, which would be more appropriately brought under foreign law in foreign proceedings. This proposal would also make additional technical amendments.

#### PROPOSAL HISTORY:

In 2022, these proposed amendments to 28 U.S.C. § 2467 were included in an Administration proposal to strengthen tools to hold Russian oligarchs and elites accountable following Russia's further invasion of Ukraine.

#### LINE IN/LINE OUT COMPARISON TO CURRENT LAW:

##### 28 U.S.C. § 2467

...

##### (c) Jurisdiction and venue.--

**(1) In general.**--If the Attorney General or the designee of the Attorney General certifies a request under subsection (b), the United States may file an application ~~on behalf of a foreign nation~~ in district court of the United States seeking to enforce the foreign forfeiture or confiscation judgment as if the judgment had been entered by a court in the United States.

**(2) Proceedings.**--In a proceeding filed under paragraph (1)--

**(A)** the United States shall be the applicant and the defendant or another person or entity affected by the forfeiture or confiscation judgment shall be the respondent;

**(B)** venue shall lie in the district court for the District of Columbia or in any other district in which the defendant or the property that may be the basis for satisfaction of a judgment under this section may be found; and

**(C)** the district court shall have personal jurisdiction over ~~a person or entity who has filed a response to an application by the Government under this section or a person or entity defendant~~ residing outside of the United States if the ~~defendant is~~ person or entity has been served with process in accordance with rule 4 of the Federal Rules of Civil Procedure.

**(D)** the United States shall provide notice of an action to enforce a foreign forfeiture judgment in accordance with the procedures set forth in Rule G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions to the extent that the

provisions therein are not inconsistent with this section, which notice shall contain a deadline for filing a response at least 35 days after the notice is sent;

**(E)** any person or entity claiming an interest in property that is the subject of an application brought under this section may file a response to the application of the United States, except that such response must be filed by the date stated in a direct notice of the application or, as applicable, not later than 35 days after the date of final publication of notice of the filing of the application. Such response shall,

- (i)** identify the specific property being claimed;
- (ii)** identify the respondent;
- (iii)** set forth the nature and extent of the respondent's interest in the property, the time and circumstances of the respondent's acquisition of the right, title, or interest in the property;
- (iv)** set forth with specificity the basis upon which the respondent asserts that the foreign forfeiture judgment should not be enforced in accordance with subsection (d)(1);
- (v)** be signed by the respondent under the penalty of perjury; and
- (vi)** be served on the government attorney who filed the application under this section;

**(F)** at any time, the United States may move to strike a response or any portion of a response for failing to comply with subsection (c)(2)(E) or because the respondent lacks standing. Any such motion,

- (i)** must be decided before any motion by the respondent to dismiss the action or dissolve any order to preserve property under this section; and
- (ii)** may be presented as a motion for judgment on the pleadings or as a motion to determine after a hearing or by summary judgment whether the respondent can carry the burden to establish standing by a preponderance of the evidence;

**(d) Entry and enforcement of judgment.--**

**(1) In general.--**The district court shall enter such orders as may be necessary to enforce the judgment ~~on behalf~~ of the foreign nation unless the court finds that--

...

**(2) Process.--**Process to enforce a judgment under **subsection (a)(2)(A)** of this section shall be in accordance with rule 69(a) of the Federal Rules of Civil Procedure.

**(3) Preservation of property.--**

...

**(B) Evidence.--**The court, in issuing a restraining order under subparagraph (A)--

- (i)** may rely on information set forth in an affidavit describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a

reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding; or

(ii) may register and enforce a restraining order that has been issued by a court of competent jurisdiction in the foreign country, or by such judicial officer as may be authorized under foreign law, and certified by the Attorney General pursuant to subsection (b)(2).

**(C) Preservation, Prevention of Criminal Use, and Sale** – In addition to any other action authorized under this section, the court, on motion of the Government, may order the preservation, prevention of criminal use, or interlocutory sale of property subject to civil or criminal forfeiture under foreign law in accordance with the provisions of Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

**(D) Limit on grounds for objection.**--No person may object to a restraining order under subparagraph (A) or an order for interlocutory sale under subparagraph (C) on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court.

**(4) Effect.** -- All right, title and interest in property subject to an order to enforce a forfeiture or confiscation judgment under this section shall be forfeited to the United States and shall vest in the United States upon commission of the act giving rise to the forfeiture or confiscation judgment. The Attorney General shall dispose of the forfeited property, or the proceeds of its sale, in accordance with the provisions of section 853(i) of title 21 or as otherwise provided by law.

...

**(f) Currency conversion.**--The rate of exchange in effect at the time the suit to enforce is filed by the foreign nation shall be used in calculating the amount stated in any forfeiture or confiscation judgment requiring the payment of a sum of money submitted for registration.

**(g) Protection from Liability for Acting at Foreign Request** – Notwithstanding any other provision of Federal Law, no person shall have any right of action at law or equity against the United States, its officers, employees or any other person acting on behalf of, or at the direction of, the United States that arises from any action taken pursuant to this section, or the return or release of property restrained, seized or forfeited pursuant to this section, including, but not limited to, actions for damages, costs, interest or attorneys' fees.

## **PROPOSAL TO ADD ENABLERS OF CORRUPTION AS A CATEGORY FOR VISA INELIGIBILITY**

*Note: The proposal below does not preclude the Administration from seeking other changes to Section 7031(c) in the future.*

### **(c) Anti-Kleptocracy and Human Rights.--**

#### **(1) Ineligibility.--**

(A) Officials of foreign governments and their immediate family members about whom the Secretary of State has credible information have been involved, directly or indirectly, in significant corruption, including corruption related to the extraction of natural resources, or a gross violation of human rights, including the wrongful detention of locally employed staff of a United States diplomatic mission or a United States citizen or national, shall be ineligible for entry into the United States.

(B) Concurrent with the application of subparagraph (A), the Secretary shall, as appropriate, refer the matter to the Office of Foreign Assets Control, Department of the Treasury, to determine whether to apply sanctions authorities in accordance with United States law to block the transfer of property and interests in property, and all financial transactions, in the United States involving any person described in such subparagraph.

(C) The Secretary shall also publicly or privately designate or identify the officials of foreign

governments and their immediate family members about whom the Secretary has such credible information without regard to whether the individual has applied for a visa.

(D) Other foreign persons and their immediate family members about whom the Secretary of State has credible information have enabled, facilitated, or otherwise been involved in significant corruption, including through the laundering of its proceeds, obstruction of judicial or investigative processes, or bribery, among other acts, may be deemed ineligible for entry into the United States.

(E) The Secretary may publicly or privately designate or identify the other foreign persons and their immediate family members about whom the Secretary of State has such credible information without regard to whether the individual has applied for a visa.

(2) Exception.--Individuals shall not be ineligible for entry into the United States pursuant to paragraph (1) if such entry would further important United States law enforcement objectives or is necessary to permit the United States to fulfill its obligations under the United Nations Headquarters Agreement: Provided, That nothing in paragraph (1) shall be construed to derogate from United States Government obligations under applicable international agreements.

(3) Waiver.--The Secretary may waive the application of paragraph (1) if the Secretary determines that the waiver would serve a compelling national interest or that the circumstances which caused the individual to be ineligible have changed sufficiently.

(4) Report.--Not later than 30 days after the date of

enactment of this Act, and every 90 days thereafter until September 30, 2024, the Secretary of State shall submit a report, including a classified annex if necessary, to the appropriate congressional committees and the Committees on the Judiciary describing the information related to corruption or violation of human rights concerning each of the individuals found ineligible in the previous 12 months pursuant to paragraph (1)(A) as well as the individuals who the Secretary designated or identified pursuant to paragraph (1)(B), or who would be ineligible but for the application of paragraph (2), a list of any waivers provided under paragraph (3), and the justification for each waiver.

(5) Posting of report.--Any unclassified portion of the report required under paragraph (4) shall be posted on the Department of State website.

(6) Clarification.--For purposes of paragraphs (1)(C), 1(E), (4), and (5), the records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall not be considered confidential.