



## **PANEL III: International Sanctions: A Discussion of Key Issues**

***Moderator:*** George Foote, Partner, Dorsey & Whitney

**Special guest speaker:**

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# U.S. Sanctions Enforcement

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**Eugene A. Tafoya**  
757 F.2d 1522 (5<sup>th</sup> Cir. 1985)



## Simple Concept Behind U.S. Sanctions:

- Obnoxious people and entities (terrorists, proliferators, transnational organized crime, etc.) are put on a public list.
- It is illegal for any US person to engage in any financial transactions with them.

## **18 U.S.C. § 2339B** **Providing Material Support to** **Terrorist Organizations**

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(a) Prohibited activities.--

(1) Unlawful conduct.--Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be [guilty of a felony].

## **U.S. Lists relevant to counterterrorism enforcement**

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### **(1) State Department designated “Foreign Terrorist Organizations” (FTOs)**

- **63 groups, including their aliases**
- **groups only, no individuals**
- **all are “foreign”**
- **§ 2339B crime**

## **Remarkable Trajectory of § 2339B Cases After 9/11**

- **Prior to 9/11, there were a handful of  
2339B prosecutions.**
- **After 9/11, there have been about twenty §  
2339B convictions per year.**
- **What accounts for the difference?**

## John Walker Lindh



### **Definition of “Material Support or Resources” (Prior)**

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**(b) Definition.--In this section, the term "material support or resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.**

## Definition of “Material Support or Resources” (Current)

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(b) Definition.-- the term "material support or resources" means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials;

## OFAC Lists

- The term “international sanctions” typically refers to lists maintained by the Treasury Department, which gives clear notice to American banks about who not to bank.
- Willful violations of these embargoes are prosecuted as violations of the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.)

## OFAC Sanctions Lists

- Each sanctions program is unique in its breadth/terms.
- For example, it is illegal for US persons to transact business with anyone located in the territory of Iran without an OFAC license.
- There are also certain types of goods and products that cannot be exported anywhere without a license (Department of Commerce violations)

## OFAC Enforcement History

- Several multinational banks have been implicated in OFAC sanctions violations.
- BNP Paribas precedent (US Victims of State Sponsors of Terrorism Fund)
- Prospectively, all sanctions settlements involving Iran go into the Fund, for compensating victims.

# Questions?

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