

## Executive Order 14203 “Imposing Sanctions on the International Criminal Court” and Key Takeaways

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On February 6, 2025, President Trump issued Executive Order (EO) 14203, “Imposing Sanctions on the International Criminal Court,” blocking the property of the International Criminal Court’s (ICC) Chief Prosecutor and providing authority to designate any foreign persons that the Secretary of State (in consultation with the Secretary of the Treasury and the Attorney General) determines to have directly engaged in certain specified acts.

EO 14203 asserts that the ICC abused its power in asserting jurisdiction over and opening investigations into “personnel of the United States and its allies, including Israel” as nonparties to the Rome Statute. EO 14203 does not provide further details regarding such investigations, but it states that “the Rome Statute creates a risk that the President and other senior elected and appointed officials of the United States Government may be prosecuted by the [ICC].” Finding that the ICC’s efforts to investigate, detain, or prosecute “protected persons” (defined below) constitute “an unusual and extraordinary threat to the national security and foreign policy of the United States,” President Trump declared a national emergency via EO 14203.

This is not the first time President Trump has targeted an ICC prosecutor. In September 2020, he issued an EO authorizing sanctions on a different ICC prosecutor for investigating the United States’ alleged war crimes in Afghanistan, again on the basis that the ICC had no jurisdiction over the United States and certain of its allies as nonparties to the Rome Statute.<sup>[1]</sup>

### PERSONS SUBJECT TO SANCTIONS

Section 1 of the EO blocks the property and property interests of:

1. the person listed in the Annex to the EO (i.e., ICC Chief Prosecutor Karim Khan); and
2. any foreign person that the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, determines:
  1. to have directly engaged with the ICC to investigate, arrest, detain, or prosecute a “protected person”—which includes not only U.S. persons but citizens or lawful residents of U.S. allies (as defined in the EO) without consent of that person’s country or nationality;

2. to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity in subsection ii.A. above or any person blocked pursuant to the order; or
3. to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to the order.

Section 2 of the EO states that making donations of the types of articles to blocked persons that are specified in 203(b)(2) of the International Emergency Economic Powers Act (IEEPA)—which include things like food, clothing, and medicine—would “seriously impair [the President’s] ability to address the national emergency declared in [the] order,” and the order thereby “prohibit[s] such donations.” Notably, the section of IEEPA the President cites is actually an *exception* to the grant of his authority under IEEPA. Specifically, 50 U.S.C. § 1702(b)(2) states that the “authority granted to the President by this section **does not include the authority to regulate or prohibit, directly or indirectly**—making donations like food, clothing, and medicine intended to be used to relieve human suffering.” (Emphasis added.) However, when a president determines that such donations would “seriously impair” his ability to deal with any national emergency declared, he is permitted to prohibit them.<sup>[2]</sup>

Finally, like several other Trump EOs, EO 14203 calls on immigration authorities and contains immigration provisions to enforce the order, essentially prohibiting unrestricted entry of certain immigrants and nonimmigrants alike if certain criteria are met.

## SUMMING UP THE PROHIBITIONS AND AUTHORIZATIONS OF THE EO

The prohibitions and authorizations in the EO include:

- Blocking the property and interests in property of the ICC Chief Prosecutor.
- Blocking the property and interests in property of individuals who are determined by the Secretary of State in consultation with the Secretary of the Treasury and the Attorney General to be involved in certain ICC actions against “protected persons.”
- Prohibiting donations and contributions to persons sanctioned under Section 1.
- Permitting the Secretary of State to suspend the unrestricted entry into the U.S. of persons “determined to meet one or more of the criteria in Section 1” and their immediate family members, or “aliens determined by the Secretary of State” to be employed by or acting as agents of the ICC, with certain exceptions.
- Requiring the Secretary of State to submit a report to the President on additional persons who should be included in the scope of Section 1 within 60 days without prior notice to the individuals.
- Authorizing the Secretary of the Treasury, in consultation with the Secretary of State, to take necessary actions to implement the EO.
- Directing all executive departments and agencies to take appropriate measures to implement the EO.

On February 13, 2025, the Department of the Treasury’s Office of Foreign Assets Control (OFAC) added Karim Khan to its Specially Designated Nationals and Blocked Persons list (“SDN List”) pursuant to this EO.

## KEY TAKEAWAYS:

- As in the last Trump administration, Trump issued an EO that targets an ICC prosecutor and certain others for investigating the U.S. and allies that are not parties to the Rome Statute and have not consented to the Court’s jurisdiction.
- The EO does not sanction the ICC itself; rather, it imposes sanctions on the ICC chief prosecutor and provides the authority to impose sanctions on others who are deemed to be engaged in certain specified acts in connection with blocked persons or the ICC.
- It is possible that the EO will be challenged given the carveout in the presidential authority with respect to prohibiting donations of things such as food and clothing.

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[1]<https://www.federalregister.gov/documents/2020/06/15/2020-12953/blocking-property-of-certain-persons-associated-with-the-international-criminal-court>.

[2] It is unclear how, e.g., donating food to the ICC Prosecutor would seriously impair the President's ability to deal with a national emergency. The EO might be challenged on this basis.

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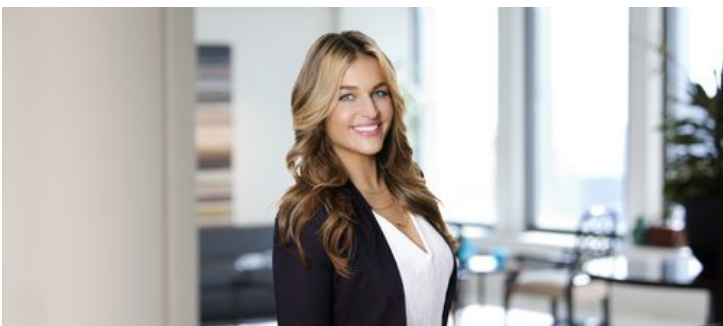
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