



## Deterring The Wagner Group

Testimony of Jason D. Wright, Esq. before the Commission on Security and Cooperation in Europe

Rayburn House Office Building, Room 225

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## **Deterring The Wagner Group**

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Testimony before the Commission on Security and Cooperation in Europe

Hearing on Countering Russia's Terroristic Mercenaries  
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Rayburn House Office Building, Room 2255

Chairman Wilson, Chairman Cardin, and members of the Commission, thank you for providing me with the opportunity to testify before the Helsinki Commission, to share how designating The Wagner Group as a Foreign Terrorist Organization can unlock prosecutorial tools, resources and other enforcement capacities across various agencies of the Executive Branch.

I am a partner at the international law firm Curtis, Mallet-Prevost, Colt & Mosle LLP. I chair Curtis' Economic Sanctions and Export Controls Committee and its Committee on National Security Law. I am also a judge advocate (JAG) in the U.S. Army Reserve assigned to the U.S. Military Academy at West Point where I teach constitutional law, military law, national security law, and international law.

Between 2005 and 2014, I served on active-duty as a JAG with tours in Europe, Guantánamo Bay, and Iraq. During a fifteen-month Surge deployment to Iraq with the First Armored Division Headquarters from 2007 through 2008, I was the embedded legal advisor to the plans and targeting cells where I advised the division staff on all plans and operations involving our combat operations against the designated Foreign Terrorist Organization (FTO) Al-Qaeda. In the last half of the deployment, I served as the *aide-de-camp* to the commanding general, then-MG Mark P. Hertling. I have taught as an adjunct professor of law at Georgetown University Law Center and the Washington and Lee University School of Law on international criminal law, international criminal procedure, terrorism, and the laws of war. Based on my current status as an Army Reserve officer, I am obliged to state that the views I express here today are my own and do not necessarily represent the views of the U.S. Department of Defense or its components.<sup>1</sup>

In my testimony today, I will summarize the current designations of The Wagner Group under the International Emergency Economic Powers Act (IEEPA) and explain the processes and

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<sup>1</sup> 5 U.S.C. § 3601.108.

limitations of criminal prosecutions for violations of IEEPA. Then, I will explain how designation as a Foreign Terrorist Organization unlocks a range of tools across United States government agencies. I will end with a brief discussion of certain ramifications of an FTO designation that provide an opportunity to improve international cooperation against The Wagner Group.

First, let me start by explaining that The Wagner Group has been sanctioned under IEEPA since 2017. Its founder, Yevgeny Prigozhin, has been sanctioned under IEEPA since 2016. Yet a *Financial Times* investigation published last month found that Prigozhin had generated revenues of more than a quarter of a billion dollars between 2018 to 2021, *while under IEEPA sanctions*.<sup>2</sup> It's safe to say that Prigozhin has mastered sanctions evasion.<sup>3</sup> During this time, the United States requested Interpol to issue an international red notice for Prigozhin and Interpol rejected that request, despite the fact that Prigozhin was sanctioned under IEEPA and had been indicted for federal crimes.<sup>4</sup> That indictment has been dismissed.<sup>5</sup>

## 1. The Current Designations

To date, The Wagner Group has been designated pursuant to two statutes: IEEPA, as just mentioned, and the Frank R. Wolf International Religious Freedom Act of 2016 (Wolf Act).

The Wolf Act does not carry criminal penalties. It targets non-state actors that have engaged in particularly severe violations of religious freedom, and imposes only the suggestion that “[t]he President should take specific actions, when practicable, to address severe violations of religious freedom” by designated non-state actors.<sup>6</sup>

The International Emergency Economic Powers Act is the more significant designation authority. IEEPA allows the President to regulate a broad variety of economic transactions following a declaration of national emergency. It is the center of the U.S. sanctions regime, as administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC). The Wagner Group has been designated under three different sanctions programs, each declared on the basis of a different national emergency, but all issued pursuant to IEEPA. Sanctions under

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<sup>2</sup> Miles Johnson, *Wagner leader generated \$250mn from sanctioned empire*, FINANCIAL TIMES (Feb. 21, 2023), <https://www.ft.com/content/98e478b5-c0d4-48a3-bcf7-e334a4ea0aca>.

<sup>3</sup> Candace Rondeaux, *Chasing the Wagner Group*, NEW AMERICA, last updated Feb. 13, 2023, <https://www.newamerica.org/future-frontlines/reports/wagner-group-putin-ghost-army/> (“Above all, the Wagner Group is essential to keep funds flowing to Russia’s state coffers as it contends with crippling sanctions.”).

<sup>4</sup> Request concerning Yevgeniy Viktorovich Prigozhin, Decision of the Commission for Control of INTERPOL’s Files, Ref. CCF/113/R698A.19, June 2020, <https://www.documentcloud.org/documents/23300326-interpol-reversal-of-yevgeny-prigozhin-red-notice>.

<sup>5</sup> *United States of America v. Concord Management and Consulting LLC and Concord Catering*, Case 1:18-cr00032-DLF, Docket Number 381, filed March 16, 2020.

<sup>6</sup> 22 U.S.C. § 6442a(c).



IEEPA only prohibit trade and financial transactions, such as giving and receiving goods or services.

Once the President declares a national emergency, the President can use the authority in Section 203 of IEEPA to prohibit economic transactions in which a person or entity has an interest. This involves freezing assets, blocking property and interests in property, prohibiting U.S. persons from entering into transactions related to frozen assets and blocked property, and in some instances denying entry into the United States.<sup>7</sup>

U.S. presidents have declared national emergencies on the basis of Russia's invasion of Crimea and Russia's efforts to undermine the conduct of free and fair democratic elections and democratic institutions in the United States and its allies and partners. The Wagner Group has been designated pursuant to both those emergencies, and its founder Yevgeny Prigozhin has been designated for election interference.

There have also been declarations of national emergency on the basis of the situation in the Central African Republic and on the basis that the activities of significant transnational criminal organizations have reached such scope and gravity that they threaten the stability of international political and economic systems. The Wagner Group has been designated pursuant to both those emergencies.

In the most recent designation, OFAC designated The Wagner Group as a significant transnational criminal organization based on The Wagner Group's pattern of serious criminal behavior. This conduct includes violent harassment of journalists, aid workers, and members of minority groups, and harassment, obstruction, and intimidation of UN peacekeepers in the Central African Republic, as well as rape and killings in Mali.<sup>8</sup>

Other entities designated as significant transnational criminal organizations include the Yazuka, MS-13 leadership, Brothers' Circle, Khanani Money Laundering Organization, Thieves-in-Law, Zhao WEI, Barakat Human Smuggling Network, Abid Ali Khan Human Smuggling Network and Kinahan Organized Crime Group.

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<sup>7</sup> 50 U.S.C. § 1702.

<sup>8</sup> U.S. Department of State, *Countering the Wagner Group and Degrading Russia's War Efforts in Ukraine*, Press Release, Jan. 26, 2023, <https://www.state.gov/countering-the-wagner-group-and-degrading-russias-war-efforts-in-ukraine/>.

## 2. Additional Tools Granted by the FTO Designation

Despite all these designations – and the ones I have just mentioned all fall under IEEPA – The Wagner Group continues to function, to recruit,<sup>9</sup> to torture and to murder civilians.<sup>10</sup>

Why? First, the scope of enforcement under IEEPA is limited. IEEPA sanctions target economic transactions with designated entities.<sup>11</sup> The vast majority of enforcement actions taken pursuant to IEEPA have involved blocking transactions and freezing assets, followed by civil enforcement and fines.<sup>12</sup> Only a minority of sanctions violations result in criminal prosecution. IEEPA provides for a criminal penalty of up to 20 years' imprisonment and a fine of up to \$1,000,000.

IEEPA is administered by OFAC. Typically, suspected sanctions violations are referred by OFAC to the Department of Justice (DOJ) for prosecution, although the DOJ may choose to pursue cases on its own initiative. OFAC is currently administering sanctions on over 1000 individuals and 1000 entities under the Russia-related sanctions programs alone.

Second, IEEPA prosecutions are difficult. IEEPA criminalizes willful violations of U.S. sanctions laws, which is a high standard of *mens rea*, or criminal intent. There are limitations on prosecutors proceeding under IEEPA because IEEPA sanctions primarily target activity by U.S. persons or involving conduct in the U.S.

Although most executive orders issued under IEEPA contain a provision prohibiting any person from providing material assistance to a designated person, the consequence of a violation is most likely to be the designation of the violator, not criminal prosecution. I am not aware of any criminal prosecution in which the Department of Justice pursued material assistance charges against a non-U.S. person where no entity designated as a Foreign Terrorist Organization or a Specially Designated Global Terrorist was involved.<sup>13</sup>

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<sup>9</sup> The Wagner Group reportedly opened at least three new recruitment centers at Russian sports clubs between March 2 and 4, 2023. Karolina Hird, Riley Bailey, Angela Howard, Nicole Wolkov, George Barros, and Frederick W. Kagan, *Russian Offensive Campaign Assessment*, INSTITUTE OF THE STUDY OF WAR, March 4, 2023, <https://www.understandingwar.org/backgrounder/russian-offensive-campaign-assessment-march-4-2023>.

<sup>10</sup> Candace Rondeaux, *Chasing the Wagner Group*, New America, last updated Feb. 13, 2023, <https://www.newamerica.org/future-frontlines/reports/wagner-group-putin-ghost-army/> (“The Wagner Group is essential to keep funds flowing to Russia’s state coffers as it contends with crippling sanctions... The shadowy financial intermediaries, digital currency exchanges, and shady trading houses that make it possible for Prigozhin to recruit, equip, and pay the salaries and death benefits for Wagner fighters remain, despite the sanctions, virtually untouched.”).

<sup>11</sup> 50 U.S.C. § 1702.

<sup>12</sup> Christopher A. Casey, Ian F. Fergusson, Dianne E. Rennack, Jennifer K. Elsea, CONG. RESEARCH SERV., R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* (2020).

<sup>13</sup> Not accounting for sealed indictments.

Third, prosecutors face time limitations when bringing prosecutions. The statute of limitations for IEEPA violations is generally five years,<sup>14</sup> and prosecutors cannot reach transactions that took place before the date of designation.

In comparison with IEEPA, the Foreign Terrorist Organization designation authority available under the Antiterrorism and Effective Death Penalty Act of 1996 is an easier lift for prosecutors, and targets a much wider scope of activities than economic transactions.

While a designation under IEEPA activates the Treasury Department, an FTO designation brings in the Treasury Department, to block the assets of FTOs, as well as the whole alphabet soup of government agencies with competencies in counterterrorism: the National Security Council Counterterrorism Staff, the Department of Homeland Security, the Department of Defense, the intelligence community including the CIA, NSA and National Counterterrorism Center, the FBI and the DOJ National Security Division, the State Department Bureau of Counterterrorism and regional bureaus, to name a few.

The FTO legislation empowers the Secretary of State to designate a group as a “foreign terrorist organization”<sup>15</sup> and makes it a crime for anyone to knowingly provide or attempt to provide “material support or resources” to an FTO or an organization engaged in terrorist activity.<sup>16</sup> The material support statute, codified at Section 2339B, has become one of the U.S. government’s most powerful counterterrorism tools.<sup>17</sup> Since 9/11, the material support statute has been the most utilized statute in terrorism prosecutions, with more than half of criminal defendants in such prosecutions facing material support charges. Using it, prosecutors may charge an individual with providing support for terrorism for virtually any assistance to a designated organization. In October 2022, for the first time, the Department of Justice prosecuted a corporation for violating the material support provision.<sup>18</sup>

The provision creates broad criminal liability for those who have provided material support to designated terrorist groups. The statute barely limits the term “material support,” which can be

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<sup>14</sup> 18 U.S.C. § 3282(a).

<sup>15</sup> 8 U.S.C. § 1189(a)(1)(A)-(C).

<sup>16</sup> 18 U.S.C. § 2339B.

<sup>17</sup> U.S. Department of Justice, Counterterrorism White Paper (2006), <http://trac.syr.edu/tracreports/terrorism/169/include/terrorism.whitepaper.pdf>; Charles Doyle, Cong. Research Serv., R41333, Terrorist Material Support: An Overview of 18 U.S.C. 2339A and 2339B, 1 & FN1 (2016) (citing Congressional testimony of counterterrorism experts); Patrick J. Keenan, *The Changing Face of Terrorism and the Designation of Foreign Terrorist Organizations*, IND. L.J., Vol. 95, Issue 3 (2020), <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=11378&context=ilj>.

<sup>18</sup> U.S. Department of Justice, *Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations*, Press Release, Oct. 18 2022, <https://www.justice.gov/opa/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations>.

“any property, tangible or intangible, or service.”<sup>19</sup> Volunteering to join an FTO is material support.<sup>20</sup> Using the internet to communicate, recruit and train personnel is material support. Translating materials and disseminating them online is material support.<sup>21</sup> Since 2001, there appear to have been have been nearly twice as many prosecutions under the material support laws as there have been for all sanctions violations under IEEPA.<sup>22</sup>

Winning a case is easier with an FTO designation. Prosecutors seeking to establish a material support violation only need to establish that the accused “knowingly” provided material support or resources to a designated FTO, as opposed to IEEPA designations which impose a more stringent “willful” *mens rea*.<sup>23</sup>

The statute allows prosecutors to target anyone, anywhere for providing material support to The Wagner Group. For example, news reports indicate that The Wagner Group may be recruiting mercenaries from the U.S.,<sup>24</sup> Turkey, Serbia,<sup>25</sup> Czechia, Poland, Hungary, Germany, Canada, Moldova and Latin American countries.<sup>26</sup> According to social media network analysis conducted by New America and Arizona State University, members of The Wagner Group’s network on VKontakte, the Russian version of Facebook, self-report their own locations all over the world.<sup>27</sup> Under the IEEPA designations, prosecutors can go after any U.S. recruits who transact with The Wagner Group. But they can only hold recruits from other countries accountable if those recruits engage in transactions with a U.S. nexus. With an FTO designation, any individual who has provided material support to The Wagner Group can be held accountable.<sup>28</sup>

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<sup>19</sup> 18 U.S.C. § 2339B(g)(4). Provision of medicine or religious materials is excluded.

<sup>20</sup> *U.S. v. Naji*, 254 F. Supp. 3d 548, 557 (W.D.N.Y. 2017).

<sup>21</sup> *United States v. Mehanna*, 735 F.3d 32 (1<sup>st</sup> Cir. 2013).

<sup>22</sup> THE INTERCEPT, TRIAL AND TERROR (Nov. 14, 2022), <https://trial-and-terror.theintercept.com/>; c.f. BJS’ FEDERAL JUSTICE STATISTICS PROGRAM, NUMBER OF DEFENDANTS IN CASES FILED UNDER 50 U.S.C. § 1705 (March 5, 2023), <https://www.bjs.gov/fjsr/>.

<sup>23</sup> 50 U.S.C. § 1705(c).

<sup>24</sup> Jeff Schogol, *Is Russia’s Wagner Group recruiting US veterans to fight in Ukraine?*, Task & Purpose, Feb. 1, 2023, <https://taskandpurpose.com/news/russia-wagner-group-recruiting-american-veterans/>.

<sup>25</sup> *Serbia asks Russia to end recruitment of its people for Ukraine war*, REUTERS (Jan. 17, 2023), <https://www.reuters.com/world/europe/serbia-asks-russia-end-recruitment-its-people-ukraine-war-2023-01-17/>.

<sup>26</sup> Levent Kemal, *Wagner Group lures foreign mercenaries with bumped-up salaries as Russia suffers losses*, MIDDLE EAST EYE (Oct. 6, 2022), <https://www.middleeasteye.net/news/wagner-group-russia-foreign-mercenaries-salaries-suffers-losses>.

<sup>27</sup> Candace Rondeaux, Ben Dalton, *Putin’s Stealth Mobilization*, New America, Table: Locations of Group Members, last updated Feb. 22, 2023, <https://www.newamerica.org/future-frontlines/reports/putin-mobilization-wagner-group/>.

<sup>28</sup> For a discussion of issues raised by extraterritorial application of U.S. criminal law, see Charles Doyle, Cong. Research Serv., R94-166, *Extraterritorial Application of American Criminal Law*, 5 (2016); for a discussion of the specific issues raised by extraterritorial application of § 2339b, see John De Pue, *Extraterritorial Jurisdiction and the Federal Material Support Statutes*, U.S. Attorney’s Bulletin Vol. 62, No. 5 (2014), <https://www.justice.gov/sites/default/files/usao/legacy/2014/09/23/usab6205.pdf>.



Prosecutors can target extraterritorial conduct.<sup>29</sup> As a general rule, federal criminal law is territorial, unless Congress indicates otherwise. In the material support statute, Congress indicated otherwise. Section 2339B explicitly states “There is extraterritorial Federal jurisdiction over an offense under this section.” This clear statement of extraterritoriality decreases litigation risk and conserves prosecutorial resources. To compare with IEEPA, IEEPA contains no clear statement of extraterritorial application and the question of whether it has extraterritorial reach remains unsettled law.<sup>30</sup>

Penalties are harsher. Conviction for a violation of Section 2339B is punishable by imprisonment for not more than 20 years and/or a fine of not more than \$250,000 (or \$500,000 for an organizational defendant). This is the same as under IEEPA, but the Federal Sentencing Guidelines contain a terrorism enhancement that raises the sentencing range. If death results from the commission of the offense, there is no statutory maximum. Certain crimes, known as “federal crimes of terrorism,” incur harsh penalties and constitute predicate offenses under federal money laundering law and the Racketeer Influenced and Corrupt Organizations Act.

Prosecutors have more time to bring a case. Prosecutions of Section 2339B offenses are subject to an eight-year statute of limitations.<sup>31</sup> There is no statute of limitations on terrorism crimes that result in death or serious injury or create a foreseeable risk of death or serious injury.<sup>32</sup>

Prosecutors can also intervene early. The material support statute provides the investigative predicate which allows intervention at the earliest possible stage of planning to identify and arrest terrorist supporters before an attack occurs.<sup>33</sup> If a group is designated as an FTO, then its funding

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<sup>29</sup> Terrorist Financing, U.S. Attorney’s Bulletin Vol. 51, No. 4 (2003), <https://www.justice.gov/sites/default/files/usao/legacy/2006/02/14/usab5104.pdf> (“Non-United States persons, including persons who have never been in the United States, can and have been charged with § 2339B conspiracy, as long as overt acts of the conspiracy have occurred within the territory of the United States.”).

<sup>30</sup> See, e.g., *United States v. Zarrab*, No. 15 Cr 867 (RMB), 2016 U.S. Dist. LEXIS 153533 (S.D.N.Y. Oct. 17, 2016); *United States v. McKeeve*, 131 F.3d 1 (1st Cir. 1997); Michael Taxay, Larry Schneider, Katherine Didow, *What to Charge in a Terrorist Financing or Facilitation Case*, U.S. Attorney’s Bulletin Vol. 62, No. 5, 12 (2014), <https://www.justice.gov/sites/default/files/usao/legacy/2014/09/23/usab6205.pdf> (“Although IEEPA does have extraterritorial reach, it is limited in comparison to the reach of the material support statutes.”).

<sup>31</sup> 18 U.S.C. § 3286.

<sup>32</sup> 18 U.S.C. § 2332b(g)(5) defines a federal crime of terrorism as “an offense that – (A) is calculated to influence or affect the conduct of a government by intimidation or coercion, or to retaliate against government conduct; and (B) is a violation of” one of list of terrorism-associated offenses. The list of crimes which Section 3286(b) makes prosecutable at any time consists of those crimes listed in 18 U.S.C. § 2332b(g)(5)(B).

<sup>33</sup> Gary M. Bald, *Joining Terrorist Groups: An Examination of the Material Support Statute*, Testimony of Assistant Director of the Federal Bureau of Investigation before the United States Senate Committee on the Judiciary, May 5, 2004, <https://archives.fbi.gov/archives/news/testimony/joining-terrorist-groups-an-examination-of-the-material-support-statute>; U.S. Dep’t of Justice, Counterterrorism White Paper (2006), 15 <http://trac.syr.edu/tracreports/terrorism/169/include/terrorism.whitepaper.pdf> (“The use of these statutes has not only deterred the provision of money and other resources to terrorists, but has provided a way of intercepting individuals who



and its funders can be targeted without showing that the funding is connected to any particular terrorist plot. Individuals who assist the FTO can be prosecuted even in the absence of evidence of a specific terrorist plot.

FTO designation also has immigration consequences. Representatives and members of a designated FTO, if they are non-citizens, are inadmissible to<sup>34</sup> and, in certain circumstances, deportable from the United States.<sup>35</sup> The Departments of Homeland Security and Justice have, in the past, used affiliation with an FTO as grounds for deportation, though it may not be the preferred method.

An FTO designation unlocks funding across the government. The Department of Defense is authorized to expend up to \$100 million during any fiscal year to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating authorized ongoing military operations by United States special operations forces to combat terrorism.<sup>36</sup> The Departments of Justice, Treasury, and others have programs and budgets not only for international terrorism and counterterrorism but also for terrorist financing.<sup>37</sup>

And finally, an FTO designation provides lucidity in the complicated interagency process by creating a “central focal point” upon which the efforts converge.<sup>38</sup> The federal bureaucracy’s counterterrorism infrastructure – pillared by the DOJ (FBI and federal prosecutors), DHS and CIA – is unparalleled. There may be prosecutorial resources at the state level as well. Several states, for example Florida<sup>39</sup> and New Jersey,<sup>40</sup> adopt federal FTO designations into their state laws.

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would seek out and participate in terrorist training before they have the opportunity to use that training in a terrorist attack.”).

<sup>34</sup> 8 U.S.C. § 1182.

<sup>35</sup> 8 U.S.C. §§ 1182 (a)(3)(B)(i)(IV)-(V), 1227(a)(1)(A).

<sup>36</sup> 10 U.S.C. § 127(e).

<sup>37</sup> A bipartisan group of national security and budget experts estimated in 2018 that the United States has spent at least \$2.8 trillion on counterterrorism since 9/11, not including classified spending. Stimson Study Group on Counterterrorism Spending, The Stimson Center (2018), [https://www.stimson.org/wp-content/files/file-attachments/CT\\_Spending\\_Report\\_0.pdf](https://www.stimson.org/wp-content/files/file-attachments/CT_Spending_Report_0.pdf). The White House Office of Management and Budget stopped reporting on domestic homeland security spending across government agencies in 2018.

<sup>38</sup> Audrey Kurth Cronin, Cong. Research Serv., RL32120, The “FTO List” and Congress: Sanctioning Designated Foreign Terrorist Organizations (2003), <https://irp.fas.org/crs/RL32120.pdf>.

<sup>39</sup> S. 775.32(1)(b), F.S.

<sup>40</sup> NJ Section 2C:38-5.

### 3. **The Geopolitical Advantages to FTO Designation**

An FTO designation has important non-legal consequences too. Recently, the *New York Times* published findings that while the West’s core coalition has been remarkably solid in the past year, it has not convinced the rest of the world to isolate Russia.<sup>41</sup>

The United States’ influence in counterterrorism policy is much stronger. Academic research has found that groups that have been listed by the United States are especially likely to subsequently be named on other countries’ terrorist lists. In addition, there are substantial correlations among the U.S., U.K., and E.U. terrorism lists, which is attributable to a policy diffusion effect.<sup>42</sup>

In addition, clearly labeling what the United States government considers a foreign terrorist organization can be a powerful diplomatic tool.<sup>43</sup> Christopher Landberg, acting coordinator for counterterrorism at the State Department, stated before the House Subcommittee on the Middle East, North Africa and Global Counterterrorism, “We use designations, in particular, for foreign terrorist organizations, especially designated global terrorist organizations and individuals to help to block terrorist financing and [] we work with our partners for them to also designate and, obviously, work within the U.N. It’s been a successful area of cooperation internationally. We have had quite a bit of success.”<sup>44</sup> The designation could be especially productive for U.S. counterterrorism efforts in Africa.<sup>45</sup>

### 4. **Compensation for U.S. Victims**

An FTO designation unlocks avenues by which United States victims of terrorist groups can seek justice, accountability, and compensation. Existing legislation, such as the Justice Against Sponsors of Terrorism Act (“JASTA”), provides victims of FTOs the ability to recover for injuries

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<sup>41</sup> Anton Troianovski, Lauren Leatherby, Weiyi Cai and Josh Holder, *The West tried to isolate Russia. It didn’t work*, THE NEW YORK TIMES (Feb. 25, 2023), <https://www.nytimes.com/interactive/2023/02/23/world/russia-ukraine-geopolitics.html>.

<sup>42</sup> Mirna El Masri & Brian Phillips, *Threat Perception, Policy Diffusion, and the Logic of Terrorist Group Designation*, *Studies in Conflict & Terrorism* (2021), <https://www.tandfonline.com/doi/full/10.1080/1057610X.2021.2011711>.

<sup>43</sup> Audrey Kurth Cronin, Cong. Research Serv., RL32120, *The “FTO List” and Congress: Sanctioning Designated Foreign Terrorist Organizations* (2003), <https://irp.fas.org/crs/RL32120.pdf>.

<sup>44</sup> Christopher Landberg, *The FY22 Budget: State Department Counterterrorism Bureau*, Hearing before the Subcommittee on Middle East, North Africa, and Global Counterterrorism of the House of Representatives Committee of Foreign Affairs, 117<sup>th</sup> Congress, First Session, Nov. 17, 2021, <https://tinyurl.com/yc52akea>.

<sup>45</sup> Christine Abizaid, Director of the U.S. National Counterterrorism Center, *A Survey of the 2023 Terrorism Threat Landscape*, The Washington Institute for Near East Policy, Event Transcript, Jan. 10, 2023 <https://www.washingtoninstitute.org/media/6141> (“You know Wagner as a problematic actor in places where we need to make serious CT progress is a major concern of ours. You look at Mali, you look at the Sahel and I think you know what you see is like Wagner’s counterproductive presence there. It’s just problematic.”).



caused by acts of international terrorism committed by an FTO or anyone who provides an FTO with substantial assistance. At least six American citizens are known to have been killed in the war in Ukraine.<sup>46</sup> The FTO designation will provide an option for the families of those whose deaths are traceable to The Wagner Group to sue under JASTA. JASTA also creates secondary liability under the Anti-Terrorism Act when a crime is committed by an FTO. This will make it possible for victims to pursue claims against people or entities that have aided, abetted, or conspired to provide support to The Wagner Group.

Depending on the outcome of a pair of cases currently pending before the U.S. Supreme Court, these claims may be brought against digital platforms that host The Wagner Group's propaganda.<sup>47</sup>

In addition, 18 U.S.C. § 2333 authorizes civil suits for those injured in their person, property, or business by an "act of international terrorism." An FTO designation can strengthen civil cases brought under the RICO Act for Americans who have had their businesses or property harmed by The Wagner Group.

## 5. **Conclusion**

The current sanctions regime has failed to stop The Wagner Group from unleashing terror in Ukraine, Syria, and several African countries. Designating The Wagner Group as an FTO will significantly enhance the U.S. government's deterrence capabilities.

While current sanctions under IEEPA deter mainly U.S. persons from supporting The Wagner Group, an FTO designation seeks to deter the world from supporting The Wagner Group. While IEEPA resources the Treasury Department, an FTO designation provides for integrated deterrence throughout the U.S. Government and further facilitates coordination with our allies. An FTO designation further aligns with the current National Security Strategy's commitment for the United States to "work with our African and international partners to tackle the root causes of terrorism... and [] push back on the destabilizing impact of the Russia-backed Wagner Group."<sup>48</sup> The administration's National Cybersecurity Strategy, released last week, emphasizes the importance of defending against the cyber threat posed by Russia's harboring of transnational

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<sup>46</sup> *Ex-SEAL Dies in Ukraine; 6th Known American Killed in War*, Associated Press, Jan. 21, 2023, <https://www.voanews.com/a/ex-seal-dies-in-ukraine-6th-known-american-killed-in-war/6928428.html>.

<sup>47</sup> *Gonzalez v. Google LLC*, No. 21-1333 (U.S. argued Feb. 21, 2023); *Twitter, Inc. v. Taamneh*, No. 21-1496 (U.S. argued Feb 22, 2023); *see also* Cong. Research Serv., R44626, *The Advocacy of Terrorism on the Internet: Freedom of Speech Issues and the Material Support Statutes* (2016).

<sup>48</sup> Biden-Harris Administration National Security Strategy, October 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf>.



criminal actors.<sup>49</sup> And the 2022 National Defense Strategy embraced the concept of integrated deterrence, defined as “using every tool at the Department’s disposal, in close collaboration with our counterparts across the U.S. Government and with Allies and partners, to ensure that potential foes understand the folly of aggression.”<sup>50</sup>

Designating The Wagner Group as a Foreign Terrorist Organization will be a major step towards achieving these goals.<sup>51</sup>

Respectfully submitted,

A handwritten signature in blue ink that reads "Jason D. Wright".

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<sup>49</sup> Biden-Harris Administration National Cybersecurity Strategy, March 2023, 3, <https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf>.

<sup>50</sup> U.S. Department of Defense 2022 National Defense Strategy, October 2022, <https://media.defense.gov/2022/Oct/27/2003103845/-1/-1/1/2022-NATIONAL-DEFENSE-STRATEGY-NPR-MDR.PDF>.

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