New U.S. Sanctions Regime Targeting Nicaragua

December 4, 2018

Key Points

- On November 27, 2018, the Trump administration issued an executive order establishing a new sanctions regime against Nicaragua.
- This occurs as the Trump Administration has articulated an approach to Latin America in which it has grouped together and labeled Nicaragua, Venezuela and Cuba as a "Troika of Tyranny."
- Initial sanctions are limited to SDN designations of two key state officials: Nicaraguan Vice President and First Lady Rosario Maria Murillo De Ortega, and National Security Advisor Nestor Moncada Lau, including blocking of property and interests in property that they own or control.
- Companies with assets and interests in the region should utilize robust screening and diligence safeguards to ensure against inadvertent transactions involving blocked assets affected by these actions, or potential further sanctions that could be imposed under this new sanctions regime targeting Nicaragua in the future.

On November 27, 2018, the Trump administration announced a new sanctions regime targeting Nicaragua as it declared a national emergency with respect to the government of Nicaragua and issued new sanctions pursuant to Executive Order (E.O.) 13851.[1] This E.O. authorizes the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) to add persons to the Specially Designated Nationals and Blocked Persons List ("SDN List") for, among other things, engaging in "malign activities" in Nicaragua, such as acts of corruption, dismantling of democratic institutions, human rights abuses or for having served as an official of the government of Nicaragua at any time on or after January 10, 2007.

OFAC used this new authority to designate Nicaraguan Vice President and First Lady Rosario Maria Murillo De Ortega, as well as Nicaraguan National Security Advisor, Nestor Moncada Lau. As of November 27, 2018, U.S. persons are required to block "[a]ll property and interests in property that are in the United States, that hereafter

Contact

Wynn H. Segall
Partner
wsegall@akingump.com
+1 202.887.4573
Washington, D.C.

Melissa J. Schwartz
Partner
mjschwartz@akingump.com
+1 202.887.4539
Washington, D.C.

Nicole M. D'Avanzo
Senior Counsel
ndavanzo@akingump.com
Washington, D.C.
+1 202.887.4557

Nnedinma C. Ifudu Nweke
Senior Counsel
nifudu@akingump.com
Washington, D.C.
+1 202.887.4013

Johann Strauss
Associate
jstrauss@akingump.com
Dubai
+971 4.317.3040

[1] Executive Order 13851, "Blocking Property of Certain Persons Contributing to the Situation in Nicaragua" (Nov. 27, 2018), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/nicaragua_eo.pdf.

come within the United States, or that are or hereafter come within the possession or control of any United States person" of persons blocked pursuant to E.O. 13851, including persons determined "to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any" designated person.[2] U.S. persons subject to these restrictions must also report blocked property to OFAC.

This action comes in the context of the Trump administration's recent articulation of a broader policy toward Latin America in which Nicaragua has been identified as part of a "Troika of Tyranny" group of countries together with Venezuela and Cuba,[3] and it expands the sanctions targeting Nicaragua beyond the Magnitsky sanctions designations by the United States earlier this year. The Trump administration has stated that it is "committed to pressuring the regime of Nicaraguan President Daniel Ortega to restore democracy and rule of law in the country" and "is calling for free, fair, and early elections in Nicaragua."

In light of this recent action, this client alert provides a brief review of events leading up to this development, and the initial effects and implications of this new sanctions regime targeting Nicaragua.

Political Background

Nicaragua has been governed since 2006 by a leftist government, led by Daniel Ortega, a former Sandinista rebel well known for past hostility to, and suspicion of, the United States. Over the past decade, Nicaragua has prospered economically, in large part, thanks to oil-based economic aid from Venezuela, which has helped finance an array of popular social welfare programs. These programs facilitated Ortega's reelection over the course of three consecutive terms, culminating in the highest approval rating of all Latin American presidents as late as January 2018.[4]

The political winds turned last spring when, in the face of dwindling aid from Venezuela, the Ortega administration announced cuts to long-standing social programs. The announcement triggered protests in April 2018 that turned thousands of demonstrators to the streets demanding Ortega's resignation. The government's response to crack down on the protests over the course of the last several months turned violent, resulting in death and injury at the hands of police officers and progovernment forces. These events have since drawn condemnation from human rights groups, the United Nations and the U.S. government.[5] In this context, the Trump administration has called for "[f]ree, fair, and early elections" and a restoration of democracy, absent which Nicaragua "will feel the full weight of America's robust sanctions regime."[6]

---

[2] *Id*. § 1(a).

[3] White House, "Remarks by National Security Advisor Ambassador John R. Bolton on the Administration's Policies in Latin America" (Nov. 2, 2018), https://www.whitehouse.gov/briefings-statements/remarks-national-security-advisor-ambassador-john-r-bolton-administrations-policies-latin-america/.

[4] Hispantv, "Daniel Ortega, Presidente Mejor Evaluado de Latinoamérica" (Feb. 13, 2018), https://www.hispantv.com/noticias/nicaragua/368452/daniel-ortega-popularidad-presidente-latinoamericano.

[5] Rocia Cara Labrador, "Nicaragua in Crisis: What to Know?" Council on Foreign Relations (Nov. 26, 2018), https://www.cfr.org/article/nicaragua-crisis-what-know.

[6] *Id.*

U.S. Sanctions on Nicaragua – How Do They Work?

Nicaragua was formerly the target of a comprehensive embargo during the Reagan administration similar to that of Cuba. That program was lifted, however, in 1992 by the Bush administration. Importantly, the action taken by the Trump administration does not apply the level of sanctions that existed 30 years ago. Instead, the action taken by the Trump administration via E.O. 13851 authorizes new "list-based sanctions" targeting Nicaragua. Similar measures targeting Nicaragua have not been taken by the European Union.

This list-based sanctions program authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate on the SDN List specific individuals or entities that it determines:

- are responsible for, or complicit in, or have directly or indirectly engaged or attempted to engage in, any of the following: serious human rights abuses in Nicaragua; actions or policies that undermine democratic processes or institutions in Nicaragua; actions or policies that threaten the peace, security or stability of Nicaragua; or any transaction or series of transactions involving deceptive practices or corruption by, or on behalf of, or otherwise related to the government of Nicaragua or a current or former official of the Government of Nicaragua, such as the misappropriation of public assets or expropriation of private assets for personal gain or political purposes, corruption related to government contracts or bribery
- to be a leader or official of an entity that has, or whose members have, engaged in any activity described in the previous bullet point, or of an entity sanctioned pursuant to E.O. 13851;
- to be an official of the government of Nicaragua or to have served as an official of the government of Nicaragua at any time on or after January 10, 2007
- to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services in support of, activities described in the first bullet point, or of any person sanctioned pursuant to E.O. 13851
- to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person sanctioned pursuant to E.O. 13851.[7]

Importantly, consistent with other OFAC SDN programs, the E.O. does not grandfather any existing contracts entered into, or any licenses or permits granted, prior to November 27, 2018, the date of E.O. 13851. Accordingly, business with individuals or entities that are blocked pursuant to this authority may be exposed to penalties under U.S. law, notwithstanding that the contractual arrangements may have been in place before this date, absent authorization from OFAC.

To date, the U.S. government has designated two individuals pursuant to this authority: Rosario Maria Murillo De Ortega, Vice President and First Lady, for being an official of the government of Nicaragua on or after January 10, 2007, and Nestor Moncada Lau, National Security Advisor, for acting for, or on behalf of, Vice President

[7] E.O. 13851 § 1(a).

Murillo. Both individuals were identified by OFAC as complicit in human rights abuses and acts of corruption that have contributed to the current crisis.[8]

Once a person or entity is included on the SDN List, U.S. persons[9] must block that person's property and interests in property that are in the U.S. person's possession or control, unless an exception applies or the activities are otherwise authorized by OFAC, and report the blocked property to OFAC. Entities that are owned, directly or indirectly, 50 percent or more by persons on the SDN List must also be blocked by U.S. persons.[10] Additionally, non-U.S. persons may themselves become designated if the U.S. government deems that they have provided "material assistance to," are "controlled by" or "act for or on behalf of" persons designated by the U.S. government.[11] OFAC has broad discretionary authority to interpret and apply these sanctions as it deems appropriate, including with respect to how it may interpret and apply the term "control" in specific contexts. As a result, assets associated with the individuals named, or parties associated with them, could raise concerns even if such interests are less than 50 percent, depending on how U.S. officials approach specific scenarios. For this reason, caution is generally advised in such scenarios absent OFAC guidance.

Why Are These Actions Significant?

With these actions, the Trump administration is taking a bold step forward in instituting a new sanctions regime targeting Nicaragua. Furthermore, the scope of the E.O. is broadly written. For instance, the administration has included as potential sanctions targets officials who have served since the beginning of the Ortega presidency, going back to 2007, and uses expansive terminology to include as blocked persons entities that the U.S. government determines to have provided material support, to be controlled by, or have acted on behalf persons sanctioned pursuant to this executive order.

As a result of the specific sanctions designations on November 27, U.S. persons are now prohibited in all dealings with either Ms. Ortega or Mr. Lau, as well as their property and/or interests in property, which extends to any entity that they own or control. Notably, it is reported that the Ortega family owns numerous private enterprises throughout Nicaragua.[12] Accordingly, there is a risk that these designations may result in wider economic disruptions, as we have seen with other high-profile designations in Latin America and elsewhere (for an example of this, see our client alert on the May 2016 designation of Waked Money Laundering Organization in Panama here). As a result of these actions, Nicaragua should be

---

[8] OFAC, Press Release, "Treasury Targets Nicaraguan Vice President and Key Advisor over Violent Response to Protests" (Nov. 27, 2018), https://home.treasury.gov/news/press-releases/sm554.

[9] Defined to include U.S. citizens, legal permanent residents, entities organized under the laws of the United States or a U.S. jurisdiction (including foreign branch offices), and anyone located in the United States. E.O. 13851 § 6(c).

[10] OFAC, "Revised Guidance on Entities Owned by Persons Whose Property and Interest in Property are Blocked" (Aug. 13, 2014), https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf.

[11] E.O. 13851 § 1(a), (iv)-(v).

[12] Benjamin Waddell, "Venezuelan Oil Fueled the Rise and Fall of Nicaragua's Ortega Regime" (Aug. 21, 2018), The Conversation, https://theconversation.com/venezuelan-oil-fueled-the-rise-and-fall-of-nicaraguas-ortega-regime-100507.

viewed as a higher-risk jurisdiction, and, as emphasized by recent enforcement actions by OFAC, companies doing business in or with Nicaragua should therefore engage in heightened sanctions due diligence.

It remains to be seen whether the United States will impose additional designations or broaden its sanctions on Nicaragua in the near term, and how Nicaragua will respond to these measures. The other two prongs of the "Troika of Tyranny" are currently subject to more significant restrictions than this program imposes, but Cuba and Venezuela each raise unique policy considerations, given their historical relationships and economic ties with the United States. While it is possible that these measures may be understood by the Nicaraguan government as a sign that a course correction is needed to forestall the reputational stigma that has befallen Cuba and Venezuela, it is also possible that the Nicaraguan government may seek to cast unilateral sanctions measures by the U.S. government as an effort of the Trump administration to unfairly intervene in its domestic affairs, which could worsen relations with the United States.

Lastly, this action is significant because it reflects a bold step by the Trump administration to assert its influence in Latin America through the use of economic sanctions. The rhetoric used by the White House indicates that the Trump administration intends to use sanctions to bring about regime change in Cuba, Venezuela and now, Nicaragua. Whether, and to what extent, this policy will be effective is unclear.