

KINGPIN DESIGNATION IMPROVEMENT ACT OF 2016

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MAY 10, 2016.—Ordered to be printed  
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Mr. GOODLATTE, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 4985]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4985) to amend the Foreign Narcotics Kingpin Designation Act to protect classified information in Federal court challenges, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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**Purpose and Summary**

H.R. 4985 amends Section 804 of the Foreign Narcotics Kingpin Designation Act (the “Kingpin Act”)<sup>1</sup> to include language, which is identical to the language currently in a related Federal statute, to

<sup>1</sup> 21 U.S.C. § 1903.

protect classified information from disclosure during a Federal court challenge by an individual who has been designated pursuant to the Kingpin Act. The amendment will allow the government to submit classified information *ex parte* and *in camera* in U.S. district court.

### Background and Need for the Legislation

In December 1999, after the Treasury Department's Office of Foreign Assets Control (OFAC) had successfully used its authorities under the International Emergency Economic Powers Act (IEEPA)<sup>2</sup> to target and apply sanctions to several international narcotics traffickers and their organizations that were operating in Colombia,<sup>3</sup> Congress decided that similar authorities should be used worldwide. Congress passed the Kingpin Act,<sup>4</sup> which today is the principal mechanism by which OFAC sanctions foreign persons tied to global narcotics trafficking.

Since June 2000, OFAC has designated more than 1,800 persons under the Kingpin Act, all of whom are non-U.S. persons. The list of designated individuals is a public list.<sup>5</sup> Whenever OFAC makes a designation, the list is updated and distributed in various forms to banks and financial institutions. OFAC designation under the Kingpin Act generally precludes a listed individual from using the U.S. financial system.<sup>6</sup> Listed individuals are permitted to seek removal of the OFAC sanctions via a "de-listing" process and challenge adverse findings in Federal court.<sup>7</sup>

OFAC's designations, under both IEEPA and the Kingpin Act, are often based upon classified information.<sup>8</sup> Under IEEPA, OFAC is permitted to submit such information *ex parte* and *in camera* to a court.<sup>9</sup> However, the Kingpin Act does not contain such a mechanism to protect classified information from release during a "de-listing" process. That means OFAC may lose the opportunity to designate a high-level drug kingpin because it cannot risk the disclosure of classified information.

H.R. 4895 would address this issue by making it clear that OFAC can submit classified information to defend its designations *ex parte* and *in camera* in the relevant U.S. district court, thereby harmonizing the Kingpin Act with the OFAC authorities under IEEPA and protecting classified information from disclosure. Such protections are critical to defend Kingpin Act designations based upon classified information.

### Hearings

The Committee on the Judiciary held no hearings on H.R. 4895.

<sup>2</sup> 50 U.S.C. § 1701 et seq.

<sup>3</sup> See <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/drugs.TXT>.

<sup>4</sup> 21 U.S.C. §§ 1901–1908, 8 U.S.C. § 1182.

<sup>5</sup> See [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/narco\\_designations\\_kingpin.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/narco_designations_kingpin.pdf).

<sup>6</sup> 21 U.S.C. § 1904.

<sup>7</sup> 31 C.F.R. § 501.807.

<sup>8</sup> 18 U.S.C. app. § 1(a) (1980) ("Classified information", as used in this Act, means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).").

<sup>9</sup> 50 U.S.C. § 1702(c).

### **Committee Consideration**

On April 20, 2016, the Committee met in open session and ordered the bill H.R. 4985 favorably reported, without amendment, by voice vote, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 4985.

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### **New Budget Authority and Tax Expenditures**

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

### **Congressional Budget Office Cost Estimate**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4985, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 6, 2016.*

Hon. BOB GOODLATTE, CHAIRMAN,  
*Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4985, the "Kingpin Designation Improvement Act of 2016."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marin Burnett, who can be reached at 226-2860.

Sincerely,

KEITH HALL,  
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

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**H.R. 4985—Kingpin Designation Improvement Act of 2016.**

As ordered reported by the House Committee on the Judiciary  
on April 20, 2016.

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H.R. 4985 would allow the Office of Foreign Assets Control (OFAC) in the Department of the Treasury to submit classified information in certain court cases involving narcotics trafficking in a manner that would protect it from disclosure.

Currently, OFAC has the authority to apply certain sanctions to persons found to have been involved with narcotics trafficking under both the International Emergency Economic Powers Act (IEEPA) and the Foreign Narcotics Kingpin Designation Act (the “Kingpin” Act.) In court proceedings involving persons sanctioned under IEEPA, OFAC is permitted to protect certain information from disclosure; for persons sanctioned under the Kingpin Act, OFAC is not permitted to do so.

H.R. 4985 would amend the Kingpin Act to allow OFAC to protect classified information in court proceedings, in the same manner such information is protected under IEEPA. CBO estimates that enacting the bill would have no significant effect on the Federal budget because it would have a negligible effect on the workload of the U.S. courts.

Because enacting H.R. 4985 would not affect direct spending or revenues, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 4985 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4985 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

The CBO staff contact for this estimate is Marin Burnett. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

### **Duplication of Federal Programs**

No provision of H.R. 4985 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

### **Disclosure of Directed Rule Makings**

The Committee estimates that H.R. 4985 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4985 amends the Foreign Narcotics Kingpin Designation Act to protect classified information in Federal court challenges.

### Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4985 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

### Section-by-Section Analysis

*Section 1. Short Title.* This section cites the short title of the bill as the “Kingpin Designation Improvement Act of 2016.”

*Section 2. Protection of Classified Information.* This section amends Section 804 of the Foreign Narcotics Kingpin Designation Act<sup>10</sup> to include language protecting classified information from disclosure during a Federal court challenge by a designee. The language, which is identical to the language currently in the International Emergency Economic Powers Act, will allow the government to submit classified information *ex parte* and *in camera* in U.S. district court.

### Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

## FOREIGN NARCOTICS KINGPIN DESIGNATION ACT

\* \* \* \* \*

## TITLE VIII—INTERNATIONAL NARCOTICS TRAFFICKING

\* \* \* \* \*

### SEC. 804. PUBLIC IDENTIFICATION OF SIGNIFICANT FOREIGN NARCOTICS TRAFFICKERS AND REQUIRED REPORTS.

(a) PROVISION OF INFORMATION TO THE PRESIDENT.—The Secretary of the Treasury, the Attorney General, the Secretary of Defense, the Secretary of State, and the Director of Central Intelligence shall consult among themselves and provide the appropriate and necessary information to enable the President to submit the report under subsection (b). This information shall also be provided to the Director of the Office of National Drug Control Policy.

(b) PUBLIC IDENTIFICATION AND SANCTIONING OF SIGNIFICANT FOREIGN NARCOTICS TRAFFICKERS.—Not later than June 1, 2000, and not later than June 1 of each year thereafter, the President shall submit a report to the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives; and to the Select Committee on Intelligence, and the

<sup>10</sup>21 U.S.C. § 1903.

Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate—

(1) identifying publicly the foreign persons that the President determines are appropriate for sanctions pursuant to this title; and

(2) detailing publicly the President's intent to impose sanctions upon these significant foreign narcotics traffickers pursuant to this title.

The report required in this subsection shall not include information on persons upon which United States sanctions imposed under this title, or otherwise on account of narcotics trafficking, are already in effect.

(c) UNCLASSIFIED REPORT REQUIRED.—The report required by subsection (b) shall be submitted in unclassified form and made available to the public.

(d) CLASSIFIED REPORT.—(1) Not later than July 1, 2000, and not later than July 1 of each year thereafter, the President shall provide the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate with a report in classified form describing in detail the status of the sanctions imposed under this title, including the personnel and resources directed towards the imposition of such sanctions during the preceding fiscal year, and providing background information with respect to newly-identified significant foreign narcotics traffickers and their activities.

(2) Such classified report shall describe actions the President intends to undertake or has undertaken with respect to such significant foreign narcotics traffickers.

(3) The report required under this subsection is in addition to the President's obligations to keep the intelligence committees of Congress fully and currently informed pursuant to the provisions of the National Security Act of 1947.

(e) EXCLUSION OF CERTAIN INFORMATION.—

(1) INTELLIGENCE.—Notwithstanding any other provision of this section, the reports described in subsections (b) and (d) shall not disclose the identity of any person, if the Director of Central Intelligence determines that such disclosure could compromise an intelligence operation, activity, source, or method of the United States.

(2) LAW ENFORCEMENT.—Notwithstanding any other provision of this section, the reports described in subsections (b) and (d) shall not disclose the name of any person if the Attorney General, in coordination as appropriate with the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, and the Secretary of the Treasury, determines that such disclosure could reasonably be expected to—

(A) compromise the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(B) jeopardize the integrity or success of an ongoing criminal investigation or prosecution;

(C) endanger the life or physical safety of any person; or

(D) cause substantial harm to physical property.

(f) NOTIFICATION REQUIRED.—(1) Whenever either the Director of Central Intelligence or the Attorney General makes a determination under subsection (e), the Director of Central Intelligence or the Attorney General shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and explain the reasons for such determination.

(2) The notification required under this subsection shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate not later than July 1, 2000, and on an annual basis thereafter.

(g) DETERMINATIONS NOT TO APPLY SANCTIONS.—(1) The President may waive the application to a significant foreign narcotics trafficker of any sanction authorized by this title if the President determines that the application of sanctions under this title would significantly harm the national security of the United States.

(2) When the President determines not to apply sanctions that are authorized by this title to any significant foreign narcotics trafficker, the President shall notify the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives, and the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate not later than 21 days after making such determination.

(h) CHANGES IN DETERMINATIONS TO IMPOSE SANCTIONS.—

(1) ADDITIONAL DETERMINATIONS.—(A) If at any time after the report required under subsection (b) the President finds that a foreign person is a significant foreign narcotics trafficker and such foreign person has not been publicly identified in a report required under subsection (b), the President shall submit an additional public report containing the information described in subsection (b) with respect to such foreign person to the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives, and the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate.

(B) The President may apply sanctions authorized under this title to the significant foreign narcotics trafficker identified in the report submitted under subparagraph (A) as if the trafficker were originally included in the report submitted pursuant to subsection (b) of this section.

(C) The President shall notify the Secretary of the Treasury of any determination made under this paragraph.

(2) REVOCATION OF DETERMINATION.—(A) Whenever the President finds that a foreign person that has been publicly identified as a significant foreign narcotics trafficker in the report required under subsection (b) or this subsection no longer engages in those activities for which sanctions under this title may be applied, the President shall issue public notice of such a finding.

(B) Not later than the date of the public notice issued pursuant to subparagraph (A), the President shall notify, in writing and in classified or unclassified form, the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives, and the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate of actions taken under this paragraph and a description of the basis for such actions.

*(i) PROTECTION OF CLASSIFIED INFORMATION IN FEDERAL COURT CHALLENGES RELATING TO DESIGNATIONS.—In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.*

\* \* \* \* \*

EDWARD R. ROYCE, CALIFORNIA  
CHAIRMAN

AMY PORTER  
CHIEF OF STAFF

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May 3, 2016

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for consulting with the Committee on Foreign Affairs on H.R. 4985, the Kingpin Designation Improvement Act of 2016. I agree that the Foreign Affairs Committee may be discharged from further action on this bill so that it may proceed expeditiously to the Floor, subject to the understanding that this waiver does not in any way diminish or alter the jurisdiction of the Foreign Affairs Committee, or prejudice its jurisdictional prerogatives on this bill or similar legislation in the future.

I will seek to place this letter into the Congressional Record during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with your committee as this measure moves through the legislative process.

Sincerely,

EDWARD R. ROYCE  
Chairman

cc: The Honorable Paul Ryan  
The Honorable Eliot L. Engel  
The Honorable John Conyers, Jr.  
Mr. Thomas J. Wickham, Jr., Parliamentarian