IX. The Patriot Act and Foreign Banking: Section III's Role in Foreign Policy

A. Introduction

On August 6, 2019, the D.C. Circuit Court upheld contempt judgments of $50,000-a-day against three Chinese banks for failing to provide records subpoenaed under the USA PATRIOT Act (Patriot Act).[1] On April 4, 2017, the D.C. Circuit Court upheld a special measure designation against a Tanzanian bank made under the Patriot Act, which would cut off the bank's access to U.S. dollars, effectively paving the way for the bank to go under.[2] In June of 2019, the Financial Action Task Force (FATF) issued a statement warning Iran that it would be subject to the Financial Crimes Enforcement Network's (FinCEN) special measures under the Patriot Act if it did not conform to new money laundering and anti-terrorism guidelines.[3]

These moves and rulings embody the ever-aggressive push by the U.S. government to utilize the full strength of the Patriot Act as well as the ever-expansive interpretations federal courts have taken in construing the Patriot Act. Will these rulings embolden the United States to commit the use of the Patriot Act in the realm of foreign policy? With the Trump Administration's escalating trade war with

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[1] *In re* Sealed Case, 932 F.3d 915, 940 (D.C. Cir. 2019); *see* Jon Hill, *DC Circ. Won't Let 3 Chinese Banks Duck US Subpoenas*, LAW360 (Aug. 6, 2019, 9:30 PM), https://www-law360-com.ezproxy.bu.edu/articles/1185604/dc-circ-won-t-let-3-chinese-banks-duck-us-subpoenas (discussing the recent case where the DC Circuit upheld subpoenas and contempt orders against three Chinese banks).

[2] FBME Bank Ltd. v. Mnuchin, 249 F.Supp.3d 215, 229 (D.D.C. April 14, 2017); Jon Hill, *DC Circ. Won't Revive Suit Over Tanzanian Bank's Sanctions*, LAW360 (Oct. 31, 2017, 10:03 PM), https://www-law360-com.ezproxy.bu.edu/articles/980368/dc-circ-won-t-revive-suit-over-tanzanian-bank-s-sanctions (discussing the DC Circuit's decision to uphold the fifth special measure against a Tanzanian bank).

[3] Jeremy Paner, *Next US Move Against Iran Could Block Humanitarian Aid*, LAW360 (Aug. 15, 2019, 3:36 PM), https://www-law360-com.ezproxy.bu.edu/articles/1189077/next-us-move-against-iran-could-block-humanitarian-aid (reporting on FinCEN's warning to designate Iran as a jurisdiction of primary money laundering concern, subsequently opening it up to the Patriot Act's special measure powers).

China,[4] the possibility exists to utilize the Patriot Act strategically in this, as well as other foreign policy decisions.[5]

This article will explore the use of Title III of the Patriot Act in the context of foreign policy in the recent past and will look towards the possibility of an expansive use going forward. First, Part B will cover the background of the financial tools provided under the Patriot Act and go over the recently implemented mechanisms of Title III that will be most useful in terms of foreign policy. Next, Part C will summarize a few recent cases and the federal courts' interpretations of the limits of those mechanisms. Then, Part D will examine the possible use of these mechanisms in the context of foreign policy and the potential ramifications stemming from such use. Lastly, Part E will briefly conclude the topics analyzed in this article.

B. Brief History and Notable Mechanisms

Shortly after the September 11th terrorist attacks, the United States passed into law the Patriot Act.[6] After Congress found that "money laundering, and the defects in financial transparency on which money launderers rely, are critical to the financing of global terrorism and the provision of funds for terrorist attacks,"[7] Title III was included in the Patriot Act and greatly expanded the power of the Treasury Department and the tools available to combat money laundering.[8] The

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[4] Roughly $290 billion in tariffs have been imposed on China since March of 2018. *See* Jenny Leonard & Mark Niquette, *Trump Heaps More Tariffs on China, Still No Deal in Sight*, BLOOMBERG (Sept. 1, 2019, 10:44 PM) https://www.bloomberg.com/news/articles/2019-09-01/u-s-tariffs-against-china-due-to-take-effect-sunday?utm_medium=social&utm_campaign=socialfloworganic&utm_source=facebook&utm_content=business&cmpid=socialflow-facebook-business (highlighting the ongoing and escalating trade war between the United States and China).

[5] Harry Dixon, *What's Next for North Korea Sanctions*, LAW360 (Sept. 20, 2017, 2:47 PM), https://www-law360-com.ezproxy.bu.edu/aerospace/articles/965955/what-s-next-for-north-korea-sanctions (exploring the possibility of using Section 311 of the Patriot Act to enact pressure on North Korea's main business partner—China).

[6] *See* Eric J. Gouvin, *Bringing Out the Big Guns: The USA Patriot Act, Money Laundering and the War on Terrorism*, 55 BAYLOR L. REV. 955, 961 (2003) (emphasizing that the massive 342 page Patriot Act was passed through both houses of Congress with little debate and in less than six weeks).

[7] USA PATRIOT Act § 302(a)(2) (2001).

[8] Paul Schott Stevens & Thomas C. Bogle, *Patriotic Acts: Financial Institutions, Money Laundering and the War Against Terrorism*, 21 ANN. REV.

mechanisms with the largest potential impact are the special measures powers given to the Secretary of the Treasury under Section 311[9] and the forfeiture powers under Section 319.[10]

Section 311 allows the Secretary of the Treasury to designate a foreign financial institution, a class of international transactions, one or more classes of accounts, or an entire foreign jurisdiction to be of "primary money laundering concern."[11] Once an institution, account, or region has been designated, all domestic financial institutions with respect to said designated entity can then be subjected to five remedial special measures.[12] Briefly, the measures could require domestic institutions to:

> (1) maintain additional records or make additional reports in connection with specific transactions; (2) identify the foreign beneficial owners of certain accounts; (3) identify the customers of a foreign bank who use interbank "payable-through" accounts; (4) identify the customers of foreign banks who use interbank correspondent accounts; and (5) restrict or prohibit the opening or maintaining of certain inter-bank "payable-through" or correspondent accounts.[13]

The most far-reaching and widely publicized of these actions is the fifth special measure, which authorizes the Treasury Department to prohibit or condition the maintenance of correspondent or interbank accounts.[14] This special measure has been used sparingly, but is a potent weapon to exert pressures on institutions and governments.[15]

BANKING L. 261, 261–62 (2002) ("The USA PATRIOT Act sets forth a blueprint of the government's highly ambitious plan to respond to this ongoing threat by bolstering the Treasury Department's power to combat money laundering, and strengthening the Bank Secrecy Act's ("BSA") reporting and recordkeeping requirements.").

[9] 31 U.S.C. § 5318 (2018).

[10] 18 U.S.C. § 981(k) (2018).

[11] 31 U.S.C. § 5318A(a)(1) (2018); *see* Stevens & Bogle, *supra* note 8, at 267.

[12] 31 U.S.C. § 5318A(a)(1) (2018).

[13] Gouvin, *supra* note 6, at 268–71; for an in-depth summary of each of the five actions, see Stevens & Bogle, *supra* note 8, 268–71.

[14] 31 U.S.C. § 5318A(b)(5) (2018).

[15] *See* Joshua P. Zoffer, *The Dollar And The United States' Exorbitant Power to Sanction*, 113 AM. J. INT'L L. 152, 154 (2019) (discussing two prior uses of

The fifth special measure has been referred to by targeted institutions as a "death penalty,"[16] and the mere threat of implementation has led to banks going under.[17]

The effectiveness of the measure is directly tied to the prominence of the U.S. dollar in the worldwide financial economy and the structure of access to U.S. dollars.[18] Foreign financial institutions can usually only gain access to the dollar through maintaining a correspondent account with a U.S. bank.[19] A correspondent account is an agreement between banks, whereby one bank (U.S. bank) agrees to "receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution."[20] For a foreign bank, the lack of a correspondent account means that they will have no means of acquiring dollars or conducting dollar payment services.[21]

Another potential mechanism for exerting pressure on foreign jurisdictions is contained in Section 319, which governs the seizures of funds suspected of "criminal acts" in the interbank accounts of foreign banks.[22] Section 319 greatly expands upon pre-existing forfeiture powers of the U.S. government in three major ways. First, it allows the seizure from the interbank or correspondent accounts of suspected funds.[23] What this means is if money suspected of supporting terrorism

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the fifth special measure and serious damage that resulted to those institutions).

[16] *See* Jon Hill, *DC Circ. Won't Revive Suit over Tanzanian Bank's Sanctions*, LAW360 (Oct. 31, 2017, 10:03 PM), https://www-law360-com.ezproxy.bu.edu/articles/980368/dc-circ-won-t-revive-suit-over-tanzanian-bank-s-sanctions.

[17] Zoffer, *supra* note 15, at 154–55 (referencing the downfall of Banco Delta Asia and ABLV Bank).

[18] *See id.* at 152–53 ("Canonically, a key currency performs three interlocking roles in the global economy, each corresponding to one of the three functions of money. . . . Today, that currency is unequivocally the dollar.").

[19] *See id.* at 153 ("Foreign banks seeking access to a steady supply of dollars usually do so by opening a "correspondent account" with a U.S. bank.").

[20] 31 U.S.C. § 5318A(e)(1)(b).

[21] Zoffer, *supra* note 15, at 153 ("any business or bank worldwide that wants to regularly acquire dollars or provide dollar payment services (which clients of transnational or global scale will require) must at least maintain a commercial relationship with a bank subject to U.S. domestic banking law or a foreign bank that has such a relationship with a U.S. bank.").

[22] 18 U.S.C. § 981(k) (2012).

[23] 18 U.S.C. § 981(k)(1)(A) (2012).

is deposited in a bank in a foreign country, and that bank has an interbank or correspondent account with a U.S. bank, then that money is deemed to have been deposited into the interbank account between the foreign bank and the U.S. bank, making it subject to seizure.[24] Second, Section 319 not only allows for the seizure of funds related to terrorism, but of any funds used to "facilitate an offense," which is defined as: (1) any offense punishable by one year or more imprisonment under the laws of the United States, provided it occurred in the jurisdiction of the United States; or (2) any offense punishable by one year or more imprisonment under the laws of a foreign nation, provided it occurred in the jurisdiction of the foreign nation.[25] Third, Section 319 restricts who may contest the forfeiture.[26] It allows only the party that deposited the funds, and not the foreign financial institutions from whom the funds were seized, to contest such forfeitures.[27]

Essentially, Section 319 is so expansive that it allows for the U.S. government to seize money connected to crimes done abroad, not only crimes in the United States.[28] It allows for the seizure of foreign bank funds so that they are indebted to the original owner.[29] Lastly, it

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[24] *Id.*; *see* FLETCHER N. BALDWIN, *Chapter 44: The Regulation of the Financing of Terrorism*, RESEARCH HANDBOOK ON INTERNATIONAL FINANCIAL CRIME 545 (Barry Rider ed. 2015); Michael Gurson, *The U.S. Jurisdiction over Transfers of U.S. Dollars Between Foreigners and over Ownership of U.S. Dollar Accounts in Foreign Banks*, 2004 COLUM. BUS. L. REV. 721, 746–48 (2004) ("The Patriot Act now provides that if tainted funds are deposited into an account at a foreign bank that has an interbank or correspondent account in the United States with a covered financial institution, the funds so deposited "shall be deemed [for purposes of a forfeiture under 18 U.S.C. § 981(a)] to have been deposited into an interbank account in the United States.").

[25] 18 U.S.C. § 981(a)(1)(B).

[26] 18 U.S.C. § 981(k)(3).

[27] *See* Gurson, *supra* note 24, at 749–54 (explaining two exceptions exist to the general principle that foreign banks have no standing to challenge a forfeiture: (1) if the forfeiture is based off the wrongdoing of the bank, itself; (2) if the bank can show through a preponderance of the evidence that it had discharged its obligation to the fund's original depositor before the seizure); Baldwin, *supra* note 244, at 546–47.

[28] *See* sources cited *supra* note 24.

[29] *See* sources cited *supra* note 24.

leaves foreign banks with no standing to challenge the validity or legality of those seizures.[30]

C. Recent Case Law: Limits of Section 311 and 319

When the sections of Title III were passed into law, there was abundant discussion and scholarship regarding the possible impacts and limits of the tools, but the case law regarding such effects has not developed until recently.[31] Three recent cases have shown how federal courts will interpret the limits of the tools discussed in Part B and warrant further discussion.

1. FBME Bank LTD. v. Mnuchin[32]

In this case, the U.S. government utilized the fifth special measure of Section 311 against a Tanzanian bank, prohibiting U.S. financial institutions from opening or maintaining correspondent accounts with the bank.[33] The fifth special measure was initiated against FBME back in 2015, but was twice enjoined for deficiencies, and in this third attempt, the Court held that FinCEN had addressed all the deficiencies and allowed the fifth special measure designation to go through.[34]

The deficiencies related to the substantive proof that FinCEN needed to back up its decision to designate FBME. A few of the notable deficiencies were that: (1) FBME's reliance on Special Activity Reports (SARs) was misleading as they relied on the absolute number of SARs instead of proportional SAR data; and (2) that the Cypriot financial crisis of 2012 was responsible for the uptick in SARs.[35]

FinCEN argued that an absolute metric was better than a proportional metric because the interest of the United States was to keep out high amounts of terrorist and criminal funding, regardless of

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[30] *See* sources cited *supra* note 24.
[31] *See* Gurson, *supra* note 24, at 752–56 (interpreting how Section 319 seizures would be initiated and decided under the statutory framework); Stevens & Bogle, *supra* note 8, at 289–90.
[32] 249 F. Supp. 3d 215 (D.D.C. April 14, 2017).
[33] *Id*. at 219.
[34] *Id.* at 218.
[35] *Id.* at 224–27.

proportionality.[36] The Court accepted this argument over the objections of FBME, stating "FinCEN may identify a bank as a financial institution of primary money laundering concern . . . even if [the institution] has extensive legitimate activities."[37] FinCEN also argued that while the Cypriot financial crisis of 2012 may have inflated SARs, it was not material because they relied on SAR data spanning from 2006–2014.[38] The Court noted that in the period from 2006–2014, $875 million in wire transfers were conducted by FBME to the United States and that $375 million occurred all in the one-year period of 2013–2014, yet still found that FinCEN properly addressed FBME's concerns.[39]

2. In re Sealed Case[40]

This case stems from the U.S. government's use of Section 319's summons and subpoena powers over foreign banks.[41] To aid in the U.S. government's investigation that a Chinese front company was in violation of North Korean sanctions, the U.S. government subpoenaed financial records from three Chinese banks, utilizing the powers under Section 319 to get subpoenas from one of the banks.[42] The Chinese banks could not comply because they would be violating Chinese laws by providing those records to the United States, yet the District Court held them in contempt for not complying and fined them $50,000 per day.[43] On appeal, the Court of appeals addressed some of the concerns of the Chinese banks, notably, the arguments that the

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[36] *Id.* at 224.
[37] *Id.*
[38] *Id.* at 225 ("[FinCEN] considered "shell company activities accounting for hundreds of millions of dollars between 2006 [and] 2014," a stretch of time "not limited to the period of the Cypriot financial crisis.").
[39] *Id.* at 225-26 (declaring that while "the Court agrees with FBME that the $387 million figure cited by FinCEN in the NOF was a significant detail. . . it is now clear that FinCEN's conclusions did not turn on the 2013-14 period of concern to FBME.").
[40] 932 F.3d 915 (D.C. Cir. 2019).
[41] 31 U.S.C. § 5318(k)(3)(A)(i).
[42] *See In re* Sealed Case, 932 F.3d 915, 919 (D.C. Cir. 2019) ("The government therefore procured subpoenas for those records, obtaining two from a grand jury (for the two banks with U.S. branches) and one from the Attorney General under the Patriot Act (for the bank that has no U.S. branch).").
[43] *Id.*

Section 319 subpoena exceeded the government's statutory powers and that compelling the banks to violate Chinese law would run afoul of principles of comity.[44]

In addressing the argument that subpoenaing records from foreign banks regarding foreign transactions exceeded the statutory powers granted under the Patriot Act, the Court reviewed the statutory language and congressional intent.[45] The bank's main argument was that the statute, in granting the Attorney General and Treasury Secretary power to issue "subpoena[s] to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account[s] . . ." was limited to records directly related to correspondent American accounts.[46] The Court found that Congress was specifically targeting foreign correspondent accounts when they enacted the statute.[47] Further, the Court adopted the government's broad interpretation of "related to" over the narrow approach requested by the banks.[48] The Court held that so long as a bank has a correspondent account with the United States, any deposit in that foreign bank is "related to" the correspondent account, regardless of whether the money will ever go through that account.[49]

In a unique argument, the three Chinese banks brought up the issue of international comity and the Court of Appeals affirmed the District Court's findings regarding this issue, based on an abuse of discretion standard.[50] The District Court agreed with the Chinese banks that a conflict of laws did exist, as complying with U.S. laws

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[44] *Id.*
[45] *Id.* at 927–28.
[46] *Id.*
[47] *Id* ("In particular, Congress found that correspondent accounts held by foreign banks were "one of the banking mechanisms susceptible in some circumstances to manipulation by foreign banks to permit the laundering of funds."."").
[48] *Id.* at 928–29 ("[W]hen asked to interpret statutory language including the phrase 'relating to,' . . . th[e] [Supreme] Court has typically read the relevant text expansively.") (quoting Lamar, Archer & Cofrin, LLP v. Appling, 138 S.Ct. 1752, 1760 (2018)).
[49] *Id.* at 929–30 ("We therefore conclude that records "related to" a U.S. correspondent account include records of transactions that do not themselves pass through a correspondent account when those transactions are in service of an enterprise entirely dedicated to obtaining access to U.S. currency and markets using a U.S. correspondent account.").
[50] *Id.* at 931–40.

would necessarily require the banks to violate Chinese laws.[51] Next, the District Court engaged in a loose balancing of factors test, finding a multitude of factors favoring the Chinese banks, as well as some favoring the United States.[52] Ultimately, the Court afforded extra weight to the United States' national security interest and held that comity did not require the United States to withdraw its subpoenas.[53]

3. United States v. Sum of $70,990,605[54]

In this case, the District Court for the District of Columbia clarified when a foreign bank would have standing to challenge a forfeiture taken from its interbank accounts.[55] This case stems from the United States exercising its powers under Section 319 to seize funds that were deposited in accounts at Afghan International Bank (AIB) in Afghanistan.[56] The government contends, and the bank concedes, that those funds were the result of criminal activity to defraud the United States through fraudulent military contracts.[57] What AIB does contest, is that the AIB was the "owner" of the seized money under the language of Section 319, and thus has standing to contest the forfeiture.[58] The Court addressed and clarified the meaning of "owner"

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[51] *Id.* ("[T]he government concedes that complying with the respective subpoenas exposes each bank to legal penalties in China.").

[52] *Id.* ("Factors include "the importance to the litigation of the documents . . . requested," "the degree of specificity of the request," "whether the information originated in the United States," "the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located," and whether "alternative means of securing the information" exist.") (quoting Société Nationale Industrielle Aérospatiale v. U.S. District Court for the Southern District of Iowa, 482 U.S. 522, 544 (1987)).

[53] *Id.* (finding no abuse of discretion in the District Court "[a]ffording the most weight to the United States' unassailable interest in successfully investigating and, with any luck, frustrating North Korea's arms programs. . . .").

[54] 128 F. Supp. 3d 350 (D.D.C. Sept. 14, 2015).

[55] *Id.* at 355–56.

[56] *Id.* at 353.

[57] *Id.*

[58] *Id.* ("AIB contends that under these circumstances it "has an ownership and possessory interest in the remaining seized defendant property of $4,330,287.03," and on this ground filed a claim in this action.").

and further clarified when a party will have standing to contest forfeitures under Section 319.

First, the Court established that under Section 319, in order to have standing to contest a forfeiture, the party doing so must be the "owner" of the funds and bear the burden of proof to a preponderance standard.[59] The Court further stated that Congress intentionally made this a requirement so it could preclude foreign banks from contesting.[60] Then, the Court affirmed that Section 319's definition of "owner" only applies to the original depositor of the funds and not to the financial institution, unless the institution can assert an innocent owner defense by showing it had discharged part of or all of its obligations to the previous owner.[61] Here, the Court found AIB to have met the narrow exception of an innocent owner, although only for $147,938.59, and granted AIB standing to contest that seizure.[62]

D. Potential Uses and Ramifications

The United States has already begun to utilize some of these tools in the realm of foreign policy, with the Trump Administration pulling out of the Joint Comprehensive Plan of Action (Iran Deal), and threatening to label all of Iran as a jurisdiction of "primary money laundering concern."[63] While sanctions and the pressure of being cut off from U.S. dollars may have a serious and debilitating effect on smaller states like Iran, the same could not necessarily be said of

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[59] *Id.* at 355 ("The foreign financial institution bears the burden of establishing ownership under this second exception by a preponderance of the evidence.").
[60] *Id.* ("If nonowners—and specifically foreign banks whose funds have been seized from interbank accounts—could still bring claims, § 981(k) would not achieve its intended purpose.").
[61] *Id.* at 359 ("Under that exception [innocent owner defense], the key inquiry is whether the "foreign financial institution . . . had discharged all or part of its obligation to the prior owner of the funds" "prior to the restraint.").
[62] *Id.* at 364 ("[T]he Court concludes based on the record before it that AIB is an "owner" of the funds it discharged from the two accounts into which the government has traced proceeds of allegedly criminal activity. . . .").
[63] *See* Paner, *supra* note 3 ("However, recent statements by the Financial Action Task Force, or FATF and the U.S. Secretary of State indicate that a renewed and final 311 designation will likely be announced in the coming weeks.").

larger, more established states like China and Russia.[64] Furthermore, even Section 311 sanctions against North Korea, which have been in place have yet to prove especially effective.[65] One possible strategy could be to target countries that conduct financial business with Section 311 regions by threatening them with Section 311 designations, themselves.[66] Yet, we know that Section 311 sanctions have been effective in the past, with Section 311 sanctions significantly helping curb Iran's nuclear program, pre-Iran Deal.[67]

The use of these mechanisms liberally by the United States may have severe unintended ramifications. One such consequence would be the reluctance of adversaries like Russia and China to do business in dollars, or with the United States altogether.[68] In fact, recently, even the United States' European Union (EU) allies have begun to grow concerned about the prominence of the U.S. dollar.[69] Both China and the EU have called for the development of other

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[64] *See* Joanna Diane Caytas, *Weaponizing Finance: U.S. and European Options, Tools, and Policies*, 23 COLUM. J. EUR. L. 441, 461–62 (2017) ("It may still be acceptable to coerce a major regional power like Iran multilaterally to forgo illicit nuclear proliferation ambitions, violations of human rights, and state sponsorship of terrorist organizations. But it is very different to unilaterally sanction a permanent member of the UN Security Council and global nuclear power over a dispute that does not even involve a U.S. ally.").

[65] *See* Dixon, *supra* note 5 ("As Professor Rozenshtein notes, Treasury has already been using section 311 designations against North Korea, and most of the international financial system has cut off business with it. Yet, as mentioned above, North Korean elites sometimes work outside of legitimate spheres and get revenue anyway.").

[66] *Id.*

[67] *Id.* ("Professor Alan Rozenshtein of Georgetown Law wrote for Lawfare that Treasury's years-long assault on Iran's financial system through section 311 designations likely caused Iran to back away from its nuclear ambitions.").

[68] *See* Zoffer, *supra* note 15 ("Since at least 2009, China has adopted a conscious policy of seeking to challenge the dollar's key currency role through various means, including the internationalization of the renminbi and the creation of alternative financial and payments infrastructure.").

[69] *See id.*; Caytas, *supra* note 64, at 462 ("Breaking the dollar's jurisdictional stranglehold over international payments and its preeminence as a reserve currency became a natural medium-term policy priority not only for BRICS nations and other geostrategic opponents of Pax Americana, but also for the Eurozone's skeptics of the professed quasi-fiduciary selflessness and morality of U.S. power projection and its decades of disregard for privacy, privilege and international due process.").

interbank systems outside of the Society for Worldwide Interbank Financial Telecommunication (SWIFT).[70] Efforts to displace the U.S. dollar as the international standard, while unlikely to succeed in the immediate future, will have grave effects on American power and prominence if they do take hold.[71]

All in all, a concerted effort to utilize Section 311's influence in the short-term would likely produce real results, and it may have undesirable consequences.[72] It will be interesting to see how the new court rulings of the seizure laws of Section 319 could be utilized. Furthermore, the recent U.S. decisions to allow subpoenas and contempt orders without regard for principles of comity could also open up a new, untapped tool for foreign policy.

E. Conclusion

With the recent Court decisions in regard to the use of Title III of the Patriot Act, it seems that the message being sent is that courts will bend over backwards to allow the fullest use of the law. The question remains as to whether the Trump Administration or any upcoming administration will take full advantage of these expansive readings and push Title III into the realm of foreign policy. While a feasible short-term solution to influence American foreign policy, the long-term effects could lead to a flurry of potential problems and unintended consequences. Yet, one thing seems certain, any drawbacks from the use of Title III in foreign policy will not be self-imposed by the courts of this country.

Kevin Tang[73]

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[70] *See* Zoffer, *supra* note 15.
[71] *See* Caytas, *supra* note 64, at 462.
[72] *See id.* at 466–67.
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