

“[e]xpediently implementing similar agreements with the European Union and other allies. . . .”⁴⁶ British officials also voiced strong support for the CLOUD Act, with Prime Minister Theresa May stressing the “great importance of the legislation” to President Trump,⁴⁷ and U.K. Deputy National Security Advisor Paddy McGuinness testifying in support of the legislation in committee hearings in both the House of Representatives and the Senate.⁴⁸

Despite this public support and the Act’s passage, a draft of the U.S.–U.K. agreement had not been released as of May 31, 2018, and the attorney general had not submitted the necessary written certification to Congress.

Trump Administration Expels Russian Diplomats and Imposes Russia-Related Sanctions
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During the spring of 2018, the Trump administration expelled sixty Russian intelligence officers and diplomats and also imposed sanctions against various Russian individuals and companies.¹ These actions responded to a range of actions attributed to Russia, including a poisoning on U.K. soil, its efforts to destabilize Ukraine, its support of the Assad regime in Syria, and various cyber activities.

On March 4, 2018, a military-grade nerve agent was used against a former Russian double agent, now a British citizen, and his daughter in the U.K. city of Salisbury.² British Prime Minister Theresa May attributed this act to Russia, calling it an “unlawful use of

⁴⁶ Office of Sen. Orrin Hatch Press Release, Hatch Previews CLOUD Act: Legislation to Solve the Problem of Cross-Border Data Requests (Feb. 5, 2018), at <https://www.hatch.senate.gov/public/index.cfm/2018/2/hatch-previews-cloud-act-legislation-to-solve-the-problem-of-cross-border-data-requests> [<https://perma.cc/CEK2-PKBN>].

⁴⁷ British Prime Minister’s Off. Press Release, PM Call with President Trump: 6 February 2018 (Feb. 6, 2018), at <https://www.gov.uk/government/news/pm-call-with-president-trump-6-february-2018> [<https://perma.cc/R83W-HUFR>].

⁴⁸ See *Data Stored Abroad: Ensuring Lawful Access and Privacy Protection in the Digital Era: Hearing Before the H. Comm. on the Judiciary*, 115th Cong. 15 (June 15, 2017) (statement of Paddy McGuinness, U.K. Deputy National Security Advisor); *Law Enforcement Access to Data Stored Across Borders: Facilitating Cooperation and Protecting Rights Before S. Comm. on the Judiciary*, 115th Cong. (May 24, 2017, rescheduled from May 10, 2017) (statement of Paddy McGuinness, U.K. Deputy National Security Advisor).

¹ U.S. Dep’t of State Press Release, Holding Russia Accountable for Its Destabilizing Behavior (Mar. 26, 2018), at <https://www.state.gov/r/pa/prs/ps/2018/03/279552.htm> [<https://perma.cc/2LQF-ZY6R>] [hereinafter Mar. 26 State Press Release]; U.S. Dep’t of Treasury Press Release, Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity (Apr. 6, 2018), at <https://home.treasury.gov/news/featured-stories/treasury-designates-russian-oligarchs-officials-and-entities-in-response-to> [<https://perma.cc/42Q7-ZG2B>] [hereinafter Apr. 6 Treasury Press Release]. For an account of prior responses by the administration to Russian behavior, including other sanctions imposed earlier in the spring, see Jean Galbraith, *Contemporary Practice of the United States*, 113 AJIL 296 (2018).

² Guy Faulconbridge & Michael Holden, *Explainer: The Poisoning of Former Russian Double Agent Sergei Skripal*, REUTERS (Mar. 13, 2018), at <https://www.reuters.com/article/us-britain-russia-explainer/explainer-the-poisoning-of-former-russian-double-agent-sergei-skripal-idUSKCN1GP2CH>.

force by the Russian state against the United Kingdom.”³ The United States joined Britain, France, and various other countries in condemning Russia’s actions.⁴ On March 26, 2018, the Trump administration ordered the expulsion of twelve Russian intelligence officers and forty-eight other Russian officials, as well as the closure of the Russian consulate in Seattle.⁵ The White House press secretary Sarah Huckabee Sanders stated, “The United States takes this action in conjunction with our NATO allies and partners around the world in response to Russia’s use of a military-grade chemical weapon on the soil of the United Kingdom, the latest in its ongoing pattern of destabilizing activities around the world.”⁶

In response, Russia denied responsibility for the use of the nerve agent, expelled sixty American diplomats and a number of diplomats from other countries, and ordered the closure of the U.S. consulate in St. Petersburg.⁷ Sanders denounced this response:

Russia’s action today to expel American diplomats marks a further deterioration in the United States-Russia relationship. The expulsion of undeclared Russian intelligence officers by the United States and more than two dozen partner nations and NATO allies earlier this week was an appropriate response to the Russian attack on the soil of the United Kingdom. Russia’s response was not unanticipated, and the United States will deal with it.⁸

Separately, on April 6, 2018, the U.S. Department of the Treasury imposed sanctions on seven Russian oligarchs and several of the companies they own or control, seventeen Russian government officials, and a Russian weapons trading company and its subsidiary.⁹ These sanctions were implemented pursuant to Executive Orders 13661 and 13662, “Blocking Property of Additional Persons Contributing to the Situation in Ukraine,” orders codified and amended by §§ 222 and 223 of the Countering America’s Adversaries

³ Prime Minister Theresa May, Statement to the House of Commons Following the Salisbury Incident (Mar. 14, 2018), at <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incident-response-14-march-2018>; see also Ashley Deeks, *Prime Minister May’s Use-of-Force Claim: Clarifying the Law That Governs the U.K.’s Options*, LAWFARE (Mar. 13, 2018), <https://lawfareblog.com/prime-minister-mays-use-of-force-claim-clarifying-law-governs-uks-options> (discussing the international legal implications of this determination).

⁴ Katie Rogers & Eileen Sullivan, *Trump and Western Allies Expel Scores of Russians in Sweeping Rebuke Over U.K. Poisoning*, N.Y. TIMES (Mar. 26, 2018), at <https://www.nytimes.com/2018/03/26/world/europe/trump-russia-diplomats-expulsion.html>.

⁵ Mar. 26 State Press Release, *supra* note 1.

⁶ White House Press Release, Statement from the Press Secretary on the Expulsion of Russian Intelligence Officers (Mar. 26, 2018), at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-expulsion-russian-intelligence-officers> [<https://perma.cc/8VPQ-5YHU>].

⁷ UN Security Council Press Release, Full Investigation Must Swiftly Identify, Apprehend Perpetrators, Security Council Hears During Heated Discussion on Salisbury Chemical Attack, UN Press Release SC/13279 (Apr. 5, 2018), at <https://www.un.org/press/en/2018/sc13279.doc.htm> [<https://perma.cc/5ZZ8-6NPF>]; Andrew Higgins, *Expelling Diplomats, a Furious Kremlin Escalates a Crisis*, N.Y. TIMES (Mar. 29, 2018), at <https://www.nytimes.com/2018/03/29/world/europe/russia-expels-diplomats.html>.

⁸ White House Press Release, Statement from the Press Secretary Regarding Russia’s Expulsion of American Diplomats (Mar. 29, 2018), at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-russias-expulsion-american-diplomats> [<https://perma.cc/Z5LK-NGAF>].

⁹ Apr. 6 Treasury Press Release, *supra* note 1. The Department of the Treasury’s press release did not specifically reference the Salisbury poisoning in announcing the sanctions. See *id.*

Through Sanctions Act (CAATSA).¹⁰ The sanctions freeze any assets under U.S. jurisdiction of the designated individuals and entities and prohibit U.S. individuals and entities from dealing with them.¹¹ Some of these individuals had been previously included on a list of oligarchs issued in January by the Department of Treasury pursuant to an obligation imposed by CAATSA.¹²

In announcing the sanctions, Secretary of the Treasury Steven Mnuchin explained:

“The Russian government operates for the disproportionate benefit of oligarchs and government elites. . . . The Russian government engages in a range of malign activity around the globe, including continuing to occupy Crimea and instigate violence in eastern Ukraine, supplying the Assad regime with material and weaponry as they bomb their own civilians, attempting to subvert Western democracies, and malicious cyber activities. Russian oligarchs and elites who profit from this corrupt system will no longer be insulated from the consequences of their government’s destabilizing activities.”¹³

The expulsion and sanctions have been accompanied by some mixed messages from the Trump administration regarding its approach to Russia. In March, President Trump congratulated President Putin on his reelection,¹⁴ prompting Senator John McCain to respond that “[a]n American president does not lead the Free World by congratulating dictators on winning sham elections.”¹⁵ In April, U.S. Ambassador to the United Nations Nikki Haley announced that additional sanctions would be imposed against Russian companies that helped facilitate Syria’s use of chemical weapons.¹⁶ Although the Trump administration had condemned Russia’s role in relation to Syria’s use of chemical weapons,¹⁷ it backed away from Haley’s announcement.¹⁸ More generally, shadowing the Trump administration’s relationship with Russia are concerns about Russian interference in the 2016 presidential

¹⁰ *Id.* (also referencing Executive Order 13582 as an authority); see also Countering America’s Adversaries Through Sanctions Act, Pub. L. No. 115-44, §§ 222, 223, 131 Stat. 886, 906-08 (2017).

¹¹ Apr. 6 Treasury Press Release, *supra* note 1 (further providing a wind-down period).

¹² *Id.*; see also Galbraith, *supra* note 1, at 301–03 (describing this list and the CAATSA provision giving rise to it).

¹³ Apr. 6 Treasury Press Release, *supra* note 1.

¹⁴ White House Press Release, Readout of President Donald J. Trump’s Call With President Vladimir Putin of Russia (Mar. 20, 2018), at <https://www.whitehouse.gov/briefings-statements/readout-president-donald-j-trumps-call-president-vladimir-putin-russia-3> [<https://perma.cc/SDV3-PSYA>].

¹⁵ Office of Senator John McCain Press Release, Statement by SASC Chairman John McCain on President Trump Congratulating Vladimir Putin (Mar. 20, 2018), at <https://www.mccain.senate.gov/public/index.cfm/press-releases?ID=61F7FD60-671F-4364-8297-1AB43F099405>.

¹⁶ *Transcript: U.N. Ambassador Nikki Haley on “Face the Nation,” April 15, 2018*, CBS NEWS (Apr. 15, 2018), at <https://www.cbsnews.com/news/transcript-u-n-ambassador-nikki-haley-on-face-the-nation-april-15-2018>.

¹⁷ White House Press Release, United States Government Assessment of the Assad Regime’s Chemical Weapons Use (Apr. 13, 2018), at <https://www.whitehouse.gov/briefings-statements/united-states-government-assessment-assad-regimes-chemical-weapons-use> [<https://perma.cc/553G-RJDC>]. Trump, in subsequent tweets, declared Putin and Russia responsible and promised there would be a “[b]ig price” to pay. See Donald J. Trump (@realDonaldTrump), TWITTER (Apr. 8, 2018, 6:00 AM), at <https://twitter.com/realDonaldTrump/status/982966315467116544>; Donald J. Trump (@realDonaldTrump), TWITTER (Apr. 8, 2018, 6:04 AM), at <https://twitter.com/realDonaldTrump/status/982967389028569088>.

¹⁸ Peter Baker, Julie Davis & Maggie Haberman, *Sanctions Flap Erupts Into Open Conflict Between Haley and White House*, N.Y. TIMES (Apr. 17, 2018), at <https://www.nytimes.com/2018/04/17/world/europe/trump-nikki-haley-russia-sanctions.html> (describing a back-and-forth in which a White House official characterized Haley as experiencing “momentary confusion” with respect to her announcement of additional sanctions and Haley responded that “I don’t get confused”).

election, in addition to ongoing investigations and litigation regarding any connections between the Trump campaign and Russia.¹⁹

STATE JURISDICTION AND IMMUNITY

U.S. Supreme Court Holds that a Provision of the Foreign Sovereign Immunities Act Does Not Lift Immunity from Attachment of Iranian Artifacts

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The U.S. Supreme Court recently held unanimously that § 1610(g) of the Foreign Sovereign Immunities Act (FSIA) does not lift the immunity from attachment of certain artifacts belonging to Iran.¹ The case, *Rubin v. Islamic Republic of Iran*, stemmed from the petitioners' attempt to satisfy a prior judgment against Iran for injuries sustained in Hamas suicide bombings in Jerusalem in 1997.²

Subject to exceptions, the FSIA “grants foreign states and their agencies and instrumentalities immunity from suit in the United States (called jurisdictional immunity) and grants their property immunity from attachment and execution in satisfaction of judgments against them.”³ In *Rubin*, the petitioners sought to attach Iranian property in order to satisfy a judgment they had previously received under § 1605A of the FSIA, which provides an exception to jurisdictional immunity for acts of terrorism attributable in specified ways to state sponsors of terrorism. Specifically, the petitioners sought to seize Iranian artifacts known as the Persepolis Collection in the University of Chicago's possession.⁴ The collection, which consists of approximately 30,000 ancient clay tablets and fragments with writings, was loaned to the University of Chicago by Iran in 1937.⁵

¹⁹ U.S. Special Counsel Robert S. Mueller was appointed in May 2017 to investigate possible Russian interference and links to the Trump campaign. Rod J. Rosenstein, Acting Attorney General, Order. No. 3915-2017 re Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters (May 17, 2017), available at <https://www.justice.gov/opa/press-release/file/967231/download> [<https://perma.cc/6M9E-T4ZV>]. On February 16, 2018, thirteen Russian nationals and three companies were indicted. Indictment, United States v. Internet Research Agency LLC, No. 1:18-cr-00032-DLF, 2018 WL 914777 (D.D.C. filed Feb. 16, 2018), available at <https://assets.documentcloud.org/documents/4380504/The-Special-Counsel-s-Indictment-of-the-Internet.pdf> [<https://perma.cc/V6J6-GH7M>]. On April 20, 2018, the Democratic National Committee (DNC) filed a lawsuit against, among other persons and entities, the Russian government and the Trump campaign, alleging, among other things, that the campaign conspired with Russia in relation to hacked DNC emails. Complaint, Democratic Nat'l Comm. v. Russ. Fed'n, No. 1-18-cv-03501, 2018 WL 1885868 (S.D.N.Y. filed Apr. 20, 2018).

¹ *Rubin v. Islamic Republic of Iran*, 538 U.S. ___, 138 S. Ct. 816, 827 (2018). Justice Kagan did not participate in the decision. *Id.* at 827.

² *Id.* at 820–21. In 2003, a federal district court granted a default judgment against Iran under the prior state-sponsored terrorism exception to the FSIA's establishment of jurisdictional immunity. *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 260, 269–70 (D.D.C. 2003). The court subsequently granted the petitioners' motion to convert the judgment to one under 28 U.S.C. § 1605A, a more expansive exception to immunity for state-sponsored terrorism passed by Congress in 2008. 563 F. Supp. 2d 38, 39 n.3 (D.D.C. 2008). As part of their lengthy attempt to satisfy the judgment, petitioners sought to attach the artifacts at issue in this case. *See Rubin v. Islamic Republic of Islam*, 830 F.3d 470, 474–75 (7th Cir. 2016) (describing the procedural history).

³ *Rubin*, 138 S. Ct. at 820–21 (citing 28 U.S.C. §§ 1604, 1609).

⁴ *Id.* at 819–21.

⁵ *Id.* at 821.