

Legal Authority for Sending Seized Ammunition to Ukraine

October 13, 2023

On October 4, 2023, the Administration [announced](#) that it had sent to Ukraine over one million rounds of ammunition, seized from a flagless vessel on its way from Iran to Yemen. The announcement did not specifically identify the legal authority for the transfer, but the announcement and a court [document](#) filed in conjunction with the confiscation of the ammunition suggest a possible answer. The ammunition may have been transferred to the Department of Defense to reflect the Navy’s contributions in the case, and the Department could then have sent it to Ukraine as excess property under the authority of the Foreign Assistance Act or the Ukraine Sanctions Assistance Initiative, as amended.

The Department of Justice’s [announcement](#) of the transfer stated that the United States had sent roughly 1.1 million 7.62mm rounds to the Ukrainian armed forces. The ammunition, originally shipped from Iran and destined for a rebel faction in Yemen, had been intercepted by U.S. naval forces in the Arabian Sea.

Following the interception, the Department of Justice filed a [complaint](#) in federal court announcing the intent to seek civil forfeiture of the ammunition and asking the court to invite anyone with an interest in the property to [file](#) a claim. The complaint alleged that the property was subject to confiscation by operation of [18 U.S.C. § 981\(a\)\(1\)\(G\)\(i\)](#) as the assets of the Islamic Revolutionary Guard Corps, a [designated foreign terrorist organization](#) that the complaint describes as having engaged in planning or perpetrating federal crimes of terrorism, among other things. The civil forfeiture statute in [§ 981\(d\)](#) incorporates provisions in the customs laws to fill in the gaps in its procedures. That process is initially governed by the Rules of Civil Procedure Supplemental Rules of Admiralty or Maritime Claims and Asset Forfeiture Actions, under which those with an interest in the seized property were invited to file [claims](#). Absent a valid claim, U.S. customs laws allow the government to forfeit certain [classes](#) of property [administratively](#).

At that point, under the civil forfeiture [statute](#) (18 U.S.C. § 981(e)) the ammunition could be transferred to “any other Federal agency,” including the Department of Defense. The Department of Defense could then have transferred the ammunition to Ukraine under the Foreign Assistance Act, which authorizes the President to [transfer](#) excess [defense](#) articles, [here](#) and [here](#), or under the Ukraine Security Assistance Initiative, as [amended](#), which authorizes the Secretary of Defense to make weapons and other defense articles available to Ukraine.

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Ultimately, the weave of statutory authority enabling the Department of Defense to transfer seized ammunition to a foreign government is entirely of Congress's making. Within constitutional bounds, Congress is free to amend or repeal any of the weave's statutory threads.

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