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Elena Chachko is an SJD candidate and Lecturer on Law at Harvard Law School (Fall 2019). She is also an International Security Program Fellow at the Harvard Kennedy School's Belfer Center, and a graduate student associate at the Harvard Weatherhead Center for International Affairs. Her research focuses on the intersection of administrative law, foreign relations law, national security law, public international law, and empirical approaches to public law. Her work has been published in the *Yale Journal of International Law* and the online companion of the *American Journal of International Law*, and she regularly contributes analysis to *Lawfare* blog. Elena previously clerked for Chief Justice Asher Grunis on the Supreme Court of Israel, and worked at the Israeli Foreign Ministry as well as the United Nations Office of Counterterrorism. She earned an LL.B in Law and International Relations from the Hebrew University of Jerusalem, and completed the LLM program at Harvard Law School as a Fulbright scholar.

## *Administrative Foreign and Security Policy*

A growing number of U.S. foreign and security measures in the past two decades has directly targeted individuals—natural or legal persons. These individualized measures have largely been designed and carried out by administrative agencies. Widespread application of individual economic sanctions; security watchlists and no fly lists; detentions; targeted killings; and action against hackers responsible for cyber attacks have all become significant currencies of U.S. foreign and security policy.

This paper examines this phenomenon with two main aims. First, it documents what I call “administrative foreign and security policy”: the growing individualization of U.S. foreign and security policy, the administrative mechanisms that have facilitated this trend, and the judicial response to these mechanisms. Administrative foreign and security policy encompasses several types of individualized measures that agencies now apply on a routine, indefinite basis through the exercise of considerable discretion within a broad framework established by Congress or the President.

Second, the paper examines how administrative foreign and security policy integrates with the President and the courts. Accounting for administrative foreign and security policy illuminates the President’s constitutional role as chief executive and commander-in-chief, and the applicability of Elena Kagan’s influential concept of Presidential Administration in the foreign and security realm. It also challenges deep-rooted doctrines underlying foreign relations and national security law, including the portrayal of the President as the “sole organ” in international relations. The paper then considers how administrative foreign and security policy informs our understanding of the role of courts in this context. I argue that it renders more foreign and security action reviewable in principle under the APA, and provides a justification for the exercise of robust judicial power in those areas.