## C. Statutory Emergency Powers

### Proclamation No. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks 66 Fed. Reg. 48,199 (Sept. 14, 2001)

#### What is the legal purpose of this declaration?

#### What was the effect on the military and reserves?

#### What was the Feed and Forage Act of 1861 intended to authorize?

#### How did Nixon use the Feed and Forage Act of 1861?

#### When was the national emergency he relied on for contingent authority declared?

#### What does the National Emergencies Act require?

### Notes

#### Why does Congress require a formal declaration of emergency with an recitation of contingent authority for the president to use his emergency powers to suspend statutes and regulations?

#### Would it matter legally if he did not make the declaration consistent with congressional requirements?

#### Remember the International Emergency Economic Power Act (IEEPA) from the Iran hostages case?

#### How are the requirements like the National Emergencies Act?

#### Does it set a standard for declaring a national emergency?

#### What did plaintiffs challenge when Regan’s declared an emergency ending trade with Nicaragua?

#### What did the court find?

#### Who declares a state emergency?

#### Does this make you confident?

#### Why do governors like to declare emergencies?

#### In Milena Ship Mgmt. Co. v. Newcomb, 804 F. Supp. 846, 850 (E.D. La. 1992), aff’d, 995 F.2d 620 (5th Cir. 1993) the court said it could review the president’s orders, but then said everything he wanted to do was fine. Is this different from finding it non-judiciable?

#### If the declaration of an emergency is non-judiciable, what do Congressional restrictions on the declaration mean?

#### Could congress prevent a declaration of emergency?

#### What could congress do with the National Emergency Powers if it is concerned about Presidential authority?

#### Why is this unlikely?

#### Does the Constitutional protection of the right to travel trump the president’s power to limit travel for foreign affairs or national security purposes?

#### Takings in emergencies - note 5 – 114

##### Are these regulatory takings? Can someone sue the government for compensation when he/she cannot get paid or complete a business deal because of changes in policy in dealing with a foreign country?

#### Is this the same as if the government actually took the property for direct use?

#### Would Truman have had to pay for the costs related to the steel seizure if it had been successful?

#### What about price-gouging laws during emergencies?