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The Global Magnitsky Human Rights Accountability Act

The Global Magnitsky Human Rights Accountability Act (Global Magnitsky Act, Title XII, Subtitle F of P.L. 114-328; 22 U.S.C. §2656 note) authorizes the President to impose economic sanctions and deny entry into the United States to any foreign person identified as engaging in human rights abuse or corruption.

Origins

The Global Magnitsky Act takes the terms of a prior Russia-focused law, the Sergei Magnitsky Rule of Law Accountability Act of 2012 (title IV of P.L. 112-208; 22 U.S.C. §5811 note), to the global stage. Sergei Magnitsky, a tax lawyer and auditor in Russia, documented rampant tax fraud and other corruption by individuals associated with the Russian government. Magnitsky was arrested in November 2008, reportedly for tax evasion, and denied medical care, family visits, and due legal process. While in custody, he was reportedly beaten and possibly tortured. He died in prison in November 2009. Congress passed the Sergei Magnitsky Act to require the President to identify the person(s) involved in the detention, abuse, or death of Magnitsky, and the ensuing cover-up, or those responsible for gross human rights violations against persons in Russia. Identified individuals are subject to blocking of assets under U.S. jurisdiction, prohibited from U.S. transactions, and denied entry into the United States.

Going Global

The Global Magnitsky Act effectively globalizes the authorities of the 2012 law by authorizing the President to deny entry into the United States, revoke any already-issued visa, and block property under U.S. jurisdiction of, and prohibit U.S. persons from entering into transactions with, any foreign person (individual or entity) that the President determines

- is “responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights,” as defined at 22 U.S.C. §2304(d)(1), against those working (1) to expose illegal activities of government officials or (2) to obtain, exercise, defend, or promote human rights and freedoms, including rights to a fair trial and democratic elections; or
- is a foreign government official responsible for acts of significant corruption, a senior associate of such an official, or a facilitator of such acts, which include the expropriation of private or public assets for personal gain, corruption in government contracts or natural resource extraction, bribery, or the offshore sheltering of ill-gotten gains.

The act authorizes the President to terminate the application of sanctions if the President determines that the designee did not engage in the activity for which sanctions were imposed; has been prosecuted for the offense; or has changed his or her behavior, “paid an appropriate

consequence,” and is committed to not engaging in future sanctionable activity. The President may also terminate the imposition of sanctions if he finds it in the U.S. national security interests to do so.

Implementing the Act

On December 20, 2017, President Trump issued Executive Order (E.O.) 13818, finding that “the prevalence and severity of human rights abuse and corruption ... have reached such scope and gravity that they threaten the stability of international political and economic systems” and “constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States,” invoking the Global Magnitsky Act and emergency authorities stated in the National Emergencies Act (NEA; P.L. 94-412; 50 U.S.C. §§1601 et seq.) and International Emergency Economic Powers Act (IEEPA; P.L. 95-223; 50 U.S.C. §§1701 et seq.).

E.O. 13818, which the Treasury Department describes as building upon and implementing the Global Magnitsky Act, includes differences in language that expand the scope beyond that stated in the law. The E.O. broadens the standard of behavior for potentially sanctionable targets from those responsible for statutorily defined “gross violations of internationally recognized human rights” against certain individuals (as described above), to those determined “to be responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse.” The E.O. does not define “serious human rights abuse.” Similarly, the E.O. refers simply to “corruption,” rather than law’s “acts of significant corruption.” The E.O. additionally specifies additional categories of persons as potential sanction targets, including, for example, any person determined “to be or have been a leader or official of” an entity “that has engaged in, or whose members have engaged in” serious human rights abuse or corruption.

The E.O. delegates sanctions determinations to the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General. As is the case with sanctions regimes generally, the Department of the Treasury’s Office of Foreign Assets Control (OFAC) administers the economic sanctions, while the State Department implements visa sanctions. The Global Magnitsky Act sunsets on December 23, 2022. Because the President invoked national emergency authorities to target human rights abusers, sanctions could continue beyond the expiration of the Global Magnitsky Act. The President has annually renewed the national emergency under E.O. 13818, most recently in December 2019.

Designations

To date, OFAC has publicly designated 107 individuals under E.O. 13818, with 105 currently active designations following two removals. In 2017, 15 individuals were designated, followed by 28 in 2018, 52 in 2019, and 12 in

2020 to date (see **Table 1** below). Among active designations, 60 individuals are designated primarily for human rights abuse, 42 are designated primarily for corruption, and 3 are designated for both human rights abuse and corruption. Also currently designated are 105 entities—many due to their being owned or controlled by a designated individual. Countries with five or more individuals designated include Saudi Arabia (17 individuals), Uganda (11), Serbia (10), Burma (9), Iraq (8), South Sudan (8), China (7), and Cambodia (6). In some instances, the executive branch has designated numerous individuals in relation to one case of human right abuse or corruption (for example, see “Section 1263(d) and Jamal Khashoggi” at right).

The Global Magnitsky Act requires the President to report to Congress annually, by December 10, on designations made over the previous year. According to the December 2019 report, the United States prioritizes actions “that are expected to produce a tangible and significant impact on the sanctioned person and their affiliates, to prompt changes in behavior or disrupt the activities of malign actors.”

Table 1. Designations in 2020 to Date

Date	Description
1/8	First Vice President of South Sudan <i>Taban Deng Gai</i> sanctioned for reportedly arranging and directing the disappearance and deaths of a human rights lawyer and opposition figure.
7/9/1, 7/30	Six current or former Chinese government officials, including Communist Party Secretary of the Uyghur Autonomous Region (XUAR) <i>Chen Quanguo</i> , designated for serious human rights abuse against ethnic minorities in XUAR. Also designated were the Xinjiang Public Security Bureau and the Xinjiang Production and Construction Corps.
8/17	Two Ugandan judges, a Ugandan lawyer, and the lawyer’s husband sanctioned for participating in a corrupt adoption scheme involving Ugandan children being taken from their families under false promises of overseas education.
9/15	A Chinese state-owned entity, <i>Union Development Group Co., Ltd.</i> , designated for “seizure and demolition of local Cambodians’ land” for the construction of a development project in Cambodia. The company was designated for acting for or behalf of a previously sanctioned Cambodian general, Kun Kim.
9/15	Former First Lady of The Gambia , <i>Zineb Souma Yahya Jammeh</i> , for having assisted, sponsored, or provided support to her husband, Yayha Jammeh, who was previously designated for human rights abuse and corruption.
9/15	<i>Nabah Ltd.</i> , sanctioned due to being owned or controlled by Ashraf Seed Ahmed Al-Cardinal, a Sudanese national previously designated for corruption.

Source: Department of the Treasury press releases.

Congressional Input on Designations

In making sanctions determinations, the law requires the President to consider information provided jointly by the chairperson and ranking member of certain committees—Senate Banking and Foreign Relations, and House Financial Services and Foreign Affairs—as well as credible information obtained by foreign countries and nongovernmental human rights organizations. A separate provision, Section 1263(d), requires the President to respond within 120 days to requests from the aforementioned committee leadership to determine whether a foreign person has engaged in sanctionable activity under the law and whether or not the President intends to impose sanctions. When signing the bill into law, however, President Barack Obama singled out this latter requirement as a challenge to constitutional separation of powers and indicated that he would “maintain [his] discretion to decline to act on such requests when appropriate.”

SECTION 1263(D) AND JAMAL KHASHOGGI

In October 2018, the then-chairman and ranking member of the Senate Foreign Relations Committee, joined by other Senators, pursuant to Section 1263(d) requested a determination from the President concerning Global Magnitsky sanctions with respect to “any foreign person responsible” for gross human rights violations against Saudi journalist Jamal Khashoggi. In November 2018, the Trump Administration announced Global Magnitsky sanctions against 17 Saudi officials “for having a role” in Khashoggi’s killing. The Administration ultimately declined, however, to provide a determination in response to the congressional request, prompting criticism from some Members of Congress.

Other Sanctions Authorities

Congress has enacted other broad sanctions authorities to target human rights abusers or individuals involved in other nefarious activities, as well as country-specific laws that aim to impose sanctions for these reasons. In addition, the President has used emergency authorities in the NEA and IEEPA to impose economic sanctions on individuals in certain countries. Section 212 of the Immigration and Nationality Act similarly provides the Secretary of State with broad authority to impose entry denials. A recurring provision, Section 7031(c), in annual foreign operations appropriations requires the Secretary of State to deny visas to enter the United States to foreign officials and their immediate family members about whom the Secretary has credible information that the individual is “involved in significant corruption ... or a gross violation of human rights.” In some cases, the executive branch has publicly sanctioned individuals both pursuant to this appropriations provision as well as under E.O. 13818 or other economic sanctions programs.

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