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Human Rights and Anti-Corruption Sanctions: 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, as amended; 22 U.S.C. §§10101 et seq.) authorizes the President to impose economic sanctions and deny entry into the United States to foreign persons identified as engaging in human rights violations or corruption. Enacted in December 2016, the law’s authority to impose sanctions was originally scheduled to terminate six years after enactment, and was then permanently reauthorized in April 2022 (Section 6 of P.L. 117-110). The executive branch has used Executive Order (E.O.) 13818 of December 2017 as the framework for implementing the Global Magnitsky Act.

Origins

The Global Magnitsky Act was inspired by a Russia-focused law, the Sergei Magnitsky Rule of Law Accountability Act of 2012 (Sergei Magnitsky Act; Title IV of P.L. 112-208; 22 U.S.C. §5811 note). Sergei Magnitsky, a tax lawyer and auditor in Russia, documented rampant tax fraud and other corruption by individuals associated with the Russian government. Russian authorities arrested Magnitsky in November 2008. Magnitsky was subject to torture and other human rights violations while in detention and ultimately died in prison in November 2009. Congress passed the Sergei Magnitsky Act to require the President to identify and sanction person(s) involved in the alleged crimes uncovered by Magnitsky or responsible for his detention, abuse, death, or the ensuing cover-up, or, more broadly, responsible for human rights violations against individuals seeking to expose the illegal activity of Russian officials or to exercise or defend human rights and freedoms in Russia.

Going Global

The Global Magnitsky Act effectively globalizes the 2012 law by authorizing the President to make inadmissible to the United States, revoke any already-issued visa, and block property under U.S. jurisdiction of, and prohibit U.S. persons from engaging in transactions with, any foreign 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 individuals in foreign countries 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, and the offshore sheltering of ill-gotten gains.

Under the law, the President may terminate sanctions based on certain criteria, including, if the designee has changed their behavior, “paid an appropriate consequence,” and committed to not engaging in future sanctionable activity.

Implementing the Act

On December 20, 2017, President Donald Trump issued 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 International Emergency Economic Powers Act (IEEPA) and National Emergencies Act (NEA), as well as authority under the Immigration and Nationality Act (INA).

The scope of sanctionable behavior and range of possible targets differs between the Global Magnitsky Act and E.O. 13818, with the latter containing broader language. For instance, E.O. 13818 expands the standard of behavior for 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,” without reference to the status of the victim. The E.O. does not define “serious human rights abuse.” The E.O. also specifies additional categories of persons as potential sanction targets, including broader networks of associated individuals or entities.

The E.O. delegates sanctions determinations to the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General. The Department of the Treasury’s Office of Foreign Assets Control (OFAC) administers E.O. 13818’s economic sanctions, while the State Department implements visa sanctions. The President has annually renewed the national emergency under E.O. 13818, most recently in December 2023.

Sanctions Designations

As of November 7, 2024, 245 individuals were publicly designated for sanction under E.O. 13818 in connection with serious human rights abuse, corruption, or both. Also sanctioned were 310 entities—many due to their being owned or controlled by a sanctioned individual. (Additionally, 157 People’s Republic of China [PRC] fishing vessels were sanctioned in connection with human rights abuses.) Individuals and entities from more than 50

countries spanning every region of the globe have been sanctioned under E.O. 13818.

The executive branch announces sanctions designations under E.O. 13818 periodically throughout the year, with larger tranches of designations often announced annually on International Anti-Corruption Day (December 9) and Human Rights Day (December 10). The Treasury Department generally issues a press release noting each new economic sanctions designation pursuant to E.O. 13818 that includes a description of the reason for the designation. Examples of designations in 2024 to date include those against Georgian government officials and private citizens connected to the violent suppression of free speech or peaceful assembly, individuals and entities connected to forced labor in online scam centers in Cambodia, and individuals and entities involved in corruption related to Guyana's gold industry.

The Global Magnitsky Act requires the President (who delegated the responsibility to the Secretary of State in E.O. 13818) to report to Congress annually, by December 10, on designations made over the previous year. Unclassified portions of these reports are published in the *Federal Register*, most recently for 2023. Per these reports, in considering sanctions determinations, the executive branch has generally emphasized goals of (1) disrupting and deterring serious human rights abuse and corruption, (2) promoting accountability for perpetrators who otherwise are acting with impunity, and (3) upholding global norms and U.S. leadership on anti-corruption and human rights promotion. The executive branch “prioritizes actions that are expected to produce a tangible and significant impact on corrupt actors, serious human rights abusers, and their affiliates, and prompt changes in behavior or disrupt the activities of malign actors.”

Congressional and Nongovernmental Input on Sanctions Designations

In making sanctions determinations, the Global Magnitsky Act requires the President to consider information provided jointly by the chairperson and ranking member of certain committees—the Senate Committee on Banking, Housing, and Urban Affairs; the Senate Committee on Foreign Relations; the House Committee on Financial Services; and the House Committee on Foreign Affairs—as well as credible information obtained by foreign countries and nongovernmental human rights organizations. Some human rights organizations contend that a substantial portion of Global Magnitsky designations have been based, in part, on recommendations from civil society.

A separate provision, Section 1263(d) (22 U.S.C. §10102(d)), requires the President to respond within 120 days to requests from specified 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. Such requests related to human rights must be submitted jointly by the chairperson and ranking member of one of the committees listed in the previous paragraph, whereas requests related to corruption must be submitted jointly by the chairperson and ranking member of one of the listed Senate committees and

one of the listed House committees. When signing the bill into law, however, President Barack Obama singled out Section 1263(d) as a challenge to constitutional separation of powers and indicated he would “maintain [his] discretion to decline to act on such requests when appropriate.”

Congressional committee leadership has requested some sanctions determinations pursuant to Section 1263(d). The first instance was in October 2018, when the Senate Foreign Relations Committee requested a determination from the President concerning sanctions with respect to “any foreign person responsible” for a gross violation of human rights against Saudi journalist Jamal Khashoggi. The Donald Trump Administration, though it subsequently announced Global Magnitsky sanctions against a number of Saudi officials for having a role in Khashoggi’s killing, reportedly declined to provide a determination in response to the request by citing the prior Administration’s position regarding the constitutional separation of powers. The Joseph Biden Administration has not stated publicly its view of the President’s discretion with regard to congressional committee requests pursuant to Section 1263(d). Congress has requested relevant determinations on several occasions during the Administration (e.g., in February 2023, concerning a PRC technology company), and the Administration has reportedly provided a written response in at least some instances.

Related Sanctions Authorities

Sanctions authorized by the Global Magnitsky Act and implemented through E.O. 13818 share some similarities with other U.S. sanctions authorities. These include a recurring provision located at Section 7031(c) in annual Department of State, Foreign Operations, and Related Programs (SFOPS) appropriations bills that requires the Secretary of State to deny U.S. entry to foreign officials about whom the Secretary has credible information are “involved in significant corruption . . . or a gross violation of human rights,” as well as the officials’ immediate family members. Similarly, provisions of Section 212 of the INA (8 U.S.C. §1182) provide the executive branch with broad authority to restrict foreign nationals’ eligibility for U.S. visas and entry, and have been used to do so on the basis of human rights abuses, corruption, and related concerns. The INA also specifies certain activities as grounds for U.S. inadmissibility, including participation in genocide, commission of acts of torture or extrajudicial killings, and responsibility for particularly severe violations of religious freedom, among others.

Congress also has enacted country-specific laws that authorize sanctions in response to human rights abuse or corruption, and the President has used authorities under IEEPA, NEA, and INA to establish country-specific sanctions regimes, citing, in part, human rights- or corruption-related concerns. Many of the more than 40 economic sanctions regimes currently maintained by the United States include sanctionable criteria related to such issues.

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