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The Global Magnitsky Human Rights Accountability Act

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SUMMARY

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The Global Magnitsky Human Rights Accountability Act

The Global Magnitsky Human Rights Accountability Act, enacted in December 2016, authorizes the President to impose economic sanctions on, and deny entry into the United States to, foreign individuals or entities identified as engaging in human rights violations or corruption. The act is based, in part, on a prior 2012 law focused on Russia, the Sergei Magnitsky Rule of Law Accountability Act, which was enacted in response to the detention and death in Russia of Sergei Magnitsky after he exposed Russian government corruption. The executive branch has implemented the Global Magnitsky Act through Executive Order (E.O.) 13818 of December 20, 2017. E.O. 13818, utilizing other presidential authorities, expands the scope of sanctionable targets as compared to the Global Magnitsky Act, including broader networks of individuals and entities associated with perpetrators of human rights abuse or corruption. As of December 3, 2021, a total of 148 individuals and 189 entities are subject to economic sanctions under E.O. 13818.

The Global Magnitsky Act provides the executive branch with standing, global authority to impose targeted sanctions against specific persons, including in countries with which the United States otherwise shares important bilateral relations. The law's global remit may avoid some challenges associated with country-specific sanctions regimes, the creation of which can sometimes be diplomatically or politically challenging. Another notable aspect of the Global Magnistky Act are its provisions providing for congressional and nongovernmental input into possible sanctions targets, which some observers have viewed as providing a unique means by which Congress and civil society actors can encourage and assist the executive branch to implement the law. At the same time, the Global Magnitsky sanctions tool may suffer some disadvantages relative to country-specific regimes, which allow the United States to tailor sanctionable criteria to context-specific behaviors and categories of persons.

Some Members of Congress and the executive branch have professed numerous goals for Global Magnitsky sanctions, including disrupting or deterring serious human rights abuse or corruption; promoting accountability in environments of impunity; and advancing international human rights and anticorruption norms, among other goals. Numerous other governments in recent years have put in place sanctions regimes similar to Global Magnitsky, including Canada, the United Kingdom (UK), and the European Union (EU). The United States has begun to pursue coordinated Global Magnitsky sanctions with foreign partners.

The Global Magnitsky Act is set to expire on December 23, 2022, although sanctions under E.O. 13818 could continue beyond this date. Some Members of the 117th Congress have introduced legislation that would authorize the law permanently and/or modify some aspects of the law. Congress may consider a number of issues as it examines the implementation of Global Magnitsky Act to date and weighs whether, and in what manner, to reauthorize its provisions and/or to authorize or appropriate funds for its implementation. These include

- varying and possibly conflicting goals for Global Magnistky sanctions, with possible implications for prioritizing targets and measuring effectiveness (including efforts to assess whether sanctions are contributing to behavior or policy change);
- the possible impact of other U.S. foreign policy considerations on the executive branch's implementation of the Global Magnitsky Act and criticisms of selective application of Global Magnitsky sanctions;
- the possible advantages and disadvantages of maintaining a broad versus narrow scope of possible sanctions targets; and
- whether executive branch resources are sufficient to implement the act in the manner intended by Congress.

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Overview

The Global Magnitsky Human Rights Accountability Act (hereafter, the Global Magnitsky Act),[1] enacted on December 23, 2016, authorizes the President to impose economic sanctions on, and deny entry into the United States to, foreign individuals or entities identified as engaging in human rights violations or corruption. The White House has used Executive Order (E.O.) 13818, issued on December 20, 2017, as the framework for implementing the act, including the delegation of specific tasks to relevant executive branch actors.[2] As of December 3, 2021, a total of 148 individuals and 189 entities are subject to economic sanctions under E.O. 13818. The Global Magnitsky Act expires on December 23, 2022. Because E.O. 13818 additionally invokes national emergency authorities, sanctions could continue beyond the expiration of the act. Some Members of the 117th Congress have introduced legislation that would authorize the law permanently and/or modify some aspects of the law (see "Pending Reauthorization Bills").

This report describes the origins, scope, and implementation of the Global Magnitsky Act to date. The report additionally contextualizes the Global Magnitsky sanctions tool among other similar U.S.-targeted sanctions authorities and discusses U.S. efforts to coordinate Global Magnitsky sanctions with other governments. Finally, the report describes possible considerations for Congress as it examines the implementation of Global Magnitsky Act and weighs whether and in what manner to reauthorize its provisions and/or authorize or appropriate relevant federal resources.

Origins

The Global Magnitsky Act is based, in part, on a 2012 law that focuses on Russia, the Sergei Magnitsky Rule of Law Accountability Act (hereafter, the Sergei Magnitsky Act).[3] Sergei Magnitsky, a tax lawyer and auditor in Russia, documented the expropriation of the assets of Hermitage Capital—once the largest foreign investment brokerage in Russia—through rampant Russian government corruption. Russian authorities arrested Magnitsky in November 2008, reportedly for tax evasion, and denied him medical care, family visits, and legal due process. Magnitsky was reportedly beaten while in detention, and ultimately died in prison in November 2009. William Browder, Chief Executive Officer of Hermitage Capital, brought congressional attention to Sergei Magnitsky's treatment and eventual death in Russia. (An August 2019 judgement by the European Court of Human Rights ultimately found that the conditions of Magnitsky's detention and his ill-treatment constituted multiple violations of the European Convention on Human Rights, including its prohibition against torture or inhuman or degrading treatment or punishment.)[4]

In 2012, Congress passed the Sergei Magnitsky Act to require the President to identify and impose sanctions on any person determined to have been involved in the detention, abuse, or death of Magnitsky; the ensuing cover-up; or the alleged criminal conspiracy that Magnitsky had

[1] Title XII, Subtitle F of P.L. 114-328 (National Defense Authorization Act for Fiscal Year 2017); 22 U.S.C. §2656 note.

[2] According to the Department of the Treasury, E.O. 13818 "implements the provisions of the Global Magnitsky Human Rights Accountability Act." See Office of Foreign Assets Control (OFAC), "FAQ: Global Magnitsky Sanctions," December 21, 2017.

[3] Title IV of P.L. 112-208; 22 U.S.C. §5811 note.

[4] European Court of Human Rights, "Case of Magnitskiy and Others v. Russia," August 27, 2019, accessed at https://hudoc.echr.coe.int/eng?i=001-195527.

uncovered. More broadly, the law requires the President to identify any person determined to be responsible for gross violations of human rights against individuals either seeking to (1) expose illegal activity by officials of the Russian government or (2) to "obtain, exercise, defend, or promote internationally recognized human rights and freedoms" within Russia. Also required to be identified is any person who acted as an agent of or on behalf of persons in matters relating to such violations of human rights.[5]

Although the 2012 law, as enacted, focuses on Russia, some versions of the legislation that had been under consideration would have provided authority to sanction persons globally, and some Members of Congress expressed a hope that future legislation would create such a global authority.[6] The law's findings retain language arguing for the importance of upholding respect for human rights globally, including in order to "maintain the stability of the international order," and draws connections between corruption and erosions in democratic governance, the rule of law, and respect for human rights.[7] In subsequent congresses, some Members of Congress introduced "Global Magnitsky" legislation, ultimately culminating with passage of the Global Magnitsky Act as part of the National Defense Authorization Act for 2017. Notably, the global law expanded the scope of sanctionable activity beyond human rights to also include acts of significant corruption.

Numerous Members described the Sergei Magnitsky Act and the later Global Magnitsky Act as providing the United States with tools to impose some measure of accountability against foreign perpetrators, particularly when relevant foreign governments are unable or unwilling to do so.[8] Some Members and policy experts have described the targeted nature of the authorized sanctions, as well as the Global Magnitsky Act's global remit, as providing the executive branch with a tool to impose sanctions against specific persons in countries with which the United States shares important bilateral relations without necessarily provoking a broader rupture to these relations.

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[5] See CRS In Focus IF10779, *U.S. Sanctions on Russia: An Overview*, by Dianne E. Rennack and Cory Welt.

[6] See remarks by Senators during consideration of the House-passed Sergei Magnitsky Rule of Law Accountability Act of 2012. Senator Ben Cardin, for example, stated that "it would have been much better if we would have incorporated the international standards and global provisions.... But there is a clear message here: This bill is our standard. We will be holding countries to this standard.... We will look for other opportunities to reinstitute the global application of the Magnitsky standards." *Congressional Record*, daily edition, vol. 158 (December 5, 2012), pp. S7429-S7445.

[7] From the law: "Human rights are an integral part of international law, and lie at the foundation of the international order. The protection of human rights, therefore, particularly in the case of a country that has incurred obligations to protect human rights under an international agreement to which it is a party, is not left exclusively to the internal affairs of that country." Also, "systemic corruption erodes trust and confidence in democratic institutions, the rule of law, and human rights protections. This is the case when public officials are allowed to abuse their authority with impunity for political or financial gains in collusion with private entities."

[8] For example, during Senate consideration of the 2012 law, Senator John McCain stated, "If citizens and civil society groups in Russia do not have a path to justice in Russia, then the international community has a responsibility to show these people that there can still be accountability, that there can still be consequences.... The Magnitsky Act does not require the Russian government or Russian citizens to do anything they do not wish to do. It cannot force human rights abusers in Russia to stop what they are doing. But if they continue, what this legislation does do is tell those individuals that they cannot bank their money in the United States ... that they cannot visit this country, and that they will have no access to the U.S. financial system." In remarks as part of a 2015 briefing discussing the potential global law, Representative James McGovern stated, "This legislation is not a substitute for strengthening rule of law in the countries where these kinds of abuses are occurring. But it would allow us to ensure that people responsible for abuses do not benefit from being able to come to our country and do business here. It is the least we can do on behalf of victims like Sergei ... and to help prevent others from suffering a similar fate." In later March 2021 remarks, Representative Christopher Smith stated that the intention of the global law was "to disrupt the impunity and comfort that far too many international human rights violators currently enjoy and keep their tainted money out of our financial systems." See ibid.; Tom Lantos Human Rights Commission (TLHRC), "Global Magnitsky 101," briefing, April 28, 2015; TLHRC, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*, hearing, 117th Cong., 1st sess., March 24, 2021.

The Global Magnitsky Act contrasts with some other provisions in law that contemplate broader restrictions on relations with foreign governments on the basis of human rights violations.[9] It also differs from country-specific targeted sanctions regimes, the creation of which can be time consuming and diplomatically challenging or disadvantageous (see "Comparison with Other Targeted Sanctions Authorities"). In addition, some observers have viewed the Global Magnitsky Act's provisions for congressional and nongovernmental input into possible sanctions targets as providing a unique means by which both Congress and civil society advocates can encourage and assist the executive branch to implement the law.

Overview of the Law and Executive Order

The Global Magnitsky Act was enacted on December 23, 2016. The executive branch has used Executive Order 13818, issued on December 20, 2017, to implement and build on the act's provisions. When issuing E.O. 13818, the President additionally invoked emergency authorities set out in the National Emergencies Act (NEA) and International Emergency Economic Powers Act (IEEPA), as well as authority under the Immigration and Nationality Act (INA).[10] The President determined that serious human rights abuse and corruption "constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States," declaring that they "undermine the values that form an essential foundation of stable, secure, and functioning societies; have devastating impacts on individuals; weaken democratic institutions; degrade the rule of law; perpetuate violent conflicts; facilitate the activities of dangerous persons; and undermine economic markets."

This section presents an overview of the Global Magnitsky Act, while noting key differences between the act and its implementation through E.O. 13818.

Type of Sanctions

The Global Magnitsky Act authorizes, but does not require, the President to impose targeted sanctions on certain "foreign persons"—defined to include both individuals and entities (as discussed below, E.O. 13818 expands this to "any person" in some cases).[11] The law authorizes two types of restrictions:

- **Economic sanctions (asset blocking and prohibitions on transactions):** Freezing any property held within U.S. jurisdiction and prohibiting U.S. individuals or entities from entering into transactions with the designated person.
- **Visa restrictions:** Denying entry into the United States and revoking any already-issued visas.

[9] For example, restrictions on U.S. assistance to foreign governments pursuant to Section 116 (22 U.S.C. 2151n) or Section 502B (22 U.S.C. 2304) of the Foreign Assistance Act of 1961. These provisions aim to withhold development and security assistance from countries with human rights violating governments and were enacted in the 1970s, a formative period for human rights-related legislation as Congress sought to enshrine human rights as a priority in U.S. foreign policy.

[10] E.O. 13818, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," 82 *Federal Register* 60839, December 20, 2017. For further information on national emergency authorities, see CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, coordinated by Christopher A. Casey.

[11] "Foreign person" for the purposes of the law is as defined at 31 C.F.R. §595.304.

The economic sanctions authorized by the Global Magnitsky Act and E.O. 13818 accord with IEEPA authorities and are similar to other targeted sanctions programs implemented primarily by the Department of the Treasury's Office of Foreign Assets Control (OFAC).[12]

As with executive orders establishing other targeted sanctions programs, and drawing on INA authorities, E.O. 13818 states that the entry into the United States of aliens determined to meet one or more of the order's sanctionable criteria "would be detrimental to the interests of the United States," and suspends their entry. It states that such persons shall be treated as persons denied entry under Presidential Proclamation 8693, which in part prohibits entry into the United States of aliens subject to economic sanctions pursuant to IEEPA authorities.[13]

Exceptions to Visa Restrictions. The Global Magnitsky Act states that visa restrictions "shall not apply to an individual if admitting the individual into the United States would further important law enforcement objectives" or is necessary for the United States to comply with the U.N. headquarters agreement "or other applicable international obligations of the United States." Executive branch reporting has indicated that persons designated pursuant to E.O. 13818 are subject to visa restrictions "unless an exception applies."[14]

Scope of Sanctionable Behavior and Targets

The scope of sanctionable behavior and range of possible targets differs between the Global Magnitsky Act and E.O. 13818, with the latter containing language that broadens the potential scope of application.

The Global Magnitsky Act

With regard to *human rights*, the Global Magnitsky Act authorizes the President to impose sanctions on any foreign person that the President identifies as "responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights" against an individual in any foreign country who seeks to

- "expose illegal activity carried out by government officials," or
- "obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to fair trial and democratic elections."[15]

[12] OFAC describes E.O. 13818's economic sanctions as follows: "As a result of designations pursuant to the E.O., all of the property and interests in property within U.S. jurisdiction of the designated individuals and entities are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Persons whose property and interests in property are blocked pursuant to the E.O. are considered to have an interest in all property and interests in property of an entity in which such blocked persons own, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest. Consequently, any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person. The property and interests in property of such an entity are blocked regardless of whether the entity itself is listed in the annex to the E.O. or otherwise placed on OFAC's list of Specially Designated Nationals ('SDNs'). Accordingly, a U.S. person generally may not engage in any transactions with such an entity, unless authorized by OFAC." See OFAC, "FAQ: Global Magnitsky Sanctions," December 21, 2017.

[13] Proclamation 8693, "Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions," 76 *Federal Register* 44751, July 27, 2011.

[14] U.S. State Department, "Global Magnitsky Human Rights Accountability Act Annual Report," 86 *Federal Register* 174, December 23, 2020.

[15] Section 1263(a)(1) of P.L. 114-328; 22 U.S.C. 2656 note.

The act refers to "gross violations of internationally recognized human rights" as it is statutorily defined in Section 502B(d)(1) of the Foreign Assistance Act (FAA) of 1961, to include "torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of these persons, and other flagrant denial of the right to life, liberty, or the security of person."[16] Any foreign person who has "acted as an agent of or on behalf of" a perpetrator of such acts against the above categories of persons can also be subject to sanctions.

With regard to *corruption*, the President may impose sanctions on any foreign government official, or any senior associate of such official, that the President determines is "responsible for, or complicit in, ordering, controlling, or otherwise directing, acts of significant corruption, including the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions."[17] In addition, the President may designate any foreign person who has "materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of" such acts.[18]

Executive Order 13818

E.O. 13818 appears to widen the scope of potentially sanctionable targets from foreign persons responsible for gross human rights violations against certain categories of 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. Unlike the Global Magnitsky Act's reference to the statutorily defined "gross violations of internationally recognized human rights," the executive order does not define the term "serious human rights abuse."

Regarding corruption, the executive order refers to "corruption," rather than the act's reference to "acts of significant corruption," though the order enumerates the same examples of corrupt acts. It additionally broadens the scope of relevant possible targets from foreign government officials or their senior associates to "current or former officials or a person acting on their behalf."

E.O. 13818 also allows for the sanctioning of persons determined to have *attempted* to engage in serious human rights abuse or corruption. It further lays out additional categories of potential sanctions targets, including broader networks of associated individuals or entities. Additional or expanded categories of potential targets include the following:

1. Any foreign person determined to be or to have been a leader or official of an entity that has engaged in serious human rights abuse or corruption or whose property or interests in property are blocked under the executive order.
2. Any person determined to have "materially assisted, sponsored, or provided financial, material, or technology support for, or goods or services to or in support of" (a) serious human rights abuse or corruption, (b) a person whose property or interests in property are blocked under the executive order, or (c) any entity that has engaged in, or whose members have engaged in, serious human rights abuse or corruption.

[16] 22 U.S.C. §2304(d)(1). See prior footnote's discussion of Section 502B and Section 116 of the FAA.

[17] Section 1263(a)(3).

[18] Section 1263(a)(4).

3. Any person determined to be "owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly" any person whose property and interests in property are blocked under the executive order.
4. Any person determined to have *attempted* (emphasis added) to engage in relevant activities described in items 2 or 3 above.

In its broadest interpretation, the "materially assisted" criteria could leave individuals and entities vulnerable to so-called "secondary sanctions," whereby third parties engaged in activities with a primary sanctions target are themselves subject to sanctions.[19] In addition, while the Global Magnitsky Act authorizes sanctions against *foreign* persons, the executive order, as illustrated above, in some cases refers more broadly to *any* person. (For a discussion of congressional considerations regarding the scope of sanctionable targets in the context of a potential Global Magnitsky Act reauthorization, see "Scope of Possible Sanction Targets" below.)

Annual Reporting and Public Disclosure Requirements

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. The Global Magnitsky Act additionally requires the President (who delegated the responsibility to the Secretary of State in E.O. 13818) to report to certain congressional committees annually, by December 10 (International Human Rights Day), on designations made over the previous year.[20] In addition to including information on persons sanctioned and the type of sanctions imposed with respect to each person (including the reasons for imposing sanctions), the report is to include information on any terminated sanctions, as well as efforts by the President "to encourage the governments of other countries to impose sanctions" similar to those authorized by the Global Magnitsky Act.

The annual report is unclassified but may include a classified annex. The unclassified portion is published in the *Federal Register*, and the Global Magnitsky Act states that the list of foreign persons sanctioned can be publicized without regard to the requirements of Section 222(f) of the INA, which protects the confidentiality of records pertaining to the issuance or refusal of visas or permits. However, the names of such persons may be submitted via a classified annex if the President

- determines that doing so is vital to the national security interests of the United States;
- "uses the annex in a matter consistent with congressional intent" and the purposes of the relevant subtitle; and
- at least 15 days before submitting the name in a classified annex, provides to the appropriate congressional committees "notice of, and a justification for, including the name in the classified annex despite any publicly available credible information indicating that the person engaged" in sanctionable activity.[21]

[19] As noted above, the Global Magnitsky Act itself includes similar language for sanctioning foreign persons determined to have "materially assisted" acts of significant corruption, but the executive order's language expands the scope in a number of ways, including by extending it also to cases of serious human rights abuse.

[20] These committees are the Senate Committees on Appropriations, Banking, Housing, and Urban Affairs, Foreign Relations, and on the Judiciary; and the House Committees on Appropriations, Financial Services, Foreign Affairs, and on the Judiciary.

[21] Section 1264(c)(2).

Although the economic sanctions authorized by the Global Magnitsky Act necessitate public disclosure in order to have effect, this authority to report names via a classified annex appears to allow for nonpublic visa restrictions pursuant to the act.

Congressional, Nongovernmental Organization (NGO), and Foreign Government Roles

In making sanctions determinations, Section 1263(c) of the Global Magnitsky Act requires that the President consider "information provided jointly by the chairperson and ranking member of each of the appropriate congressional 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 by nongovernmental human rights organizations.

Section 1263(d) separately requires the President to respond within 120 days to any request from specified committee leadership to determine whether a foreign person has engaged in sanctionable activity under the law. The President must submit a report to the leadership of the requesting committee(s) stating whether the President has imposed or intends to impose sanctions, and, if so, describing those 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.

Section 1263(d) and Separation of Powers

The executive branch has raised constitutional separation of powers concerns about Section 1263(d). When signing the bill into law, President Barack Obama stated that the provision:

> purports to require me to determine whether a foreign person has committed a sanctionable human rights violation when I receive a request to do so from certain members of Congress. Consistent with the constitutional separation of powers, which limit the Congress's ability to dictate how the executive branch executes the law, I will maintain my discretion to decline to act on such requests when appropriate.[22]

Congressional use of this provision has encountered apparent pushback from the executive branch on these grounds in at least one case. In October 2018, the then-chair and ranking member of the Senate Foreign Relations Committee, joined by other Senators, pursuant to Section 1263(d) requested a determination from President Donald Trump concerning potential Global Magnitsky sanctions with respect to "any foreign person responsible" for gross human rights violations related to Saudi journalist Jamal Khashoggi.[23] Against the backdrop of reports over the possible role of the Saudi Crown Prince Mohammed bin Salman (MBS) in Khashoggi's killing, the letter stated the committee's expectation that "in making your determination you will consider any relevant information, including with respect to the highest ranking officials in the Government of Saudi Arabia." The following month, the Trump Administration announced Global Magnitsky sanctions against numerous Saudi officials "for having a role" in Khashoggi's killing.[24] The designation list did not include the Crown Prince, and the Trump Administration ultimately declined to provide a determination in response to the congressional request, reportedly stating, "Consistent with the previous administration's position and the constitutional separation of powers, the President maintains his discretion to decline to act on congressional committee requests when appropriate."[25] The decision

[22] The White House, "Statement by the President on Signing the National Defense Authorization Act for Fiscal Year 2017," December 23, 2016.

[23] Senate Foreign Relations Committee, "Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi," October 10, 2018.

[24] U.S. Department of the Treasury, "Treasury Sanctions 17 Individuals for Their Roles in the Killing of Jamal Khashoggi," November 15, 2018.

[25] Rebecca Morin, "White House Refuses to Meet Senate Deadline on Khashoggi Killing," *Politico*, February 8, 2019.

prompted criticism from some Members of Congress.[26] A later executive branch report released in February 2021 pursuant to Section 1277 and Section 5714 of the National Defense Authorization Act for 2020 (P.L. 116-92) stated that the Crown Prince "approved an operation in Istanbul, Turkey to capture or kill" Khashoggi."[27] In February 2021, the Biden Administration designated an additional Saudi individual and entity pursuant to Section 1263(d), but did not designate the Crown Prince. The Biden Administration has not clarified publicly its view of the President's discretion with regard to congressional committee requests pursuant to Section 1263(d).

Sanctions Termination Criteria

The act authorizes the President to terminate sanctions if the President determines and reports to certain congressional committees that "credible information exists" that[28]

- the designee did not engage in the activity for which sanctions were imposed;
- the designee "has been prosecuted appropriately" for the activity;
- the designee has significantly changed his or her behavior, "paid an appropriate consequence," and credibly committed not to engage in future sanctionable activity; or
- the termination is in the interest of U.S. national security.

Executive Branch Implementation[29]

Designation Processes and Relevant Implementation Units

Decisionmaking processes around possible designation under Global Magnitsky involve interagency deliberations that include multiple federal departments and agencies. According to E.O. 13818, the Secretary of the Treasury makes sanctions determinations in consultation with the Secretary of State and the Attorney General. In addition to the Office of Foreign Assets Control, other Department of the Treasury offices, such as the Office of International Affairs (IA), also sometimes play a role in the targeting process.[30] For the State Department, the recently established Office of Sanctions Coordination may be a principal participant going forward.[31]

[26] Andrew Desiderio and Burgess Everett, "GOP Livid with Trump Over Ignored Khashoggi Report," *Politico*, February 11, 2019; Andrew Desiderio, "Jim Risch Tries to Calm Republicans Furious with Trump," *Politico*, February 22, 2019.

[27] Office of the Director of National Intelligence, "Assessing the Saudi Government's Role in the Killing of Jamal Khashoggi," February 25, 2021.

[28] These committees are the Senate Committees on Foreign Relations, and on Banking, Housing, and Urban Affairs; and the House Committees on Foreign Affairs, and Financial Services.

[29] As noted in the "Acknowledgements" below, Edward Collins-Chase, Analyst in Foreign Policy, contributed to this section and created the graphics contained therein.

[30] Both offices are housed within Treasury's Office of Terrorism and Financial Intelligence (TFI). According to a Government Accountability Office (GAO) report, IA's Office of African Nations "regularly participates in OFAC's Human Rights Targeting meetings." See GAO, "Economic Sanctions: Treasury and State Have Received Increased Resources for Sanctions Implementation but Face Hiring Challenges," GAO-20-324, March 2020.

[31] This office was established by Division FF, Title III, Subtitle G of P.L. 116-260 (22 U.S.C. 2651a note). The law states that the Head of the Office of Sanctions Coordination will "serve as the lead representative of the Department in interagency discussions with respect to the development and implementation of sanctions policy," among other duties. The law also includes a sense of Congress provision "that the President should appoint a coordinator for sanctions and national economic security issues within the framework of the National Security Council." For background, see, for example, Daniel Fried and Edward Fishman, "The rebirth of the State Department's Office of Sanctions Coordination:

Internally within the State Department, the Global Magnitsky Act authorizes the Assistant Secretary of State for Democracy, Human Rights, and Labor (DRL), in consultation with the Assistant Secretary of State for Consular Affairs (CA) and other State Department bureaus, to submit to the Secretary of State the names of potentially sanctionable foreign persons. In practice, State's Bureau of International Narcotics and Law Enforcement Affairs (INL) is also involved with regard to corruption-related sanctions, as well as relevant regional bureaus and other offices. Relevant offices within the Department of Justice include the Criminal Division's Human Rights and Special Prosecutions Section,[32] while units within other departments and agencies also sometimes contribute to interagency deliberations on possible sanctions targets.[33]

Various sources of information may inform discussions over possible targets and help form the basis for a sanctions determination. Such sources can include State Department diplomatic and consular posts overseas, intelligence community entities, nongovernmental organizations (NGOs), and Congress (see textbox below). OFAC has responsibility for developing evidentiary memoranda for sanctions targets that use multiple sources of corroborated information to provide reason to believe that the target meets one or more of the designation criteria under E.O. 13818.[34] Following sanctions designation determinations, the Department of the Treasury is responsible for taking actions to effect the economic sanctions, such as adding the sanctioned person's name to the Special Designated Nationals (SDN) list, while the State Department is responsible for implementing visa restrictions.

Target Prioritization. In considering possible sanctions targets, the executive branch has focused on goals of disrupting or deterring serious human rights abuse or corruption, promoting accountability in environments of impunity, and advancing international norms (for more about Global Magnitsky sanctions goals, see "Varying Sanctions Goals and Implications for Prioritizing Targets, Measuring Effectiveness"). According to executive branch officials, additional considerations that guide decisions on what persons to target include a desire to strive for geographic diversity of sanctions targets, as well as a rough balance between targets designated for human rights abuse and targets designated for corruption.[35]

Civil Society and Congressional Input

Civil society organizations have actively used the law's requirement that the executive branch consider information on possible sanctions targets provided by NGOs. According to the nongovernmental advocacy organization Human Rights First (HRF), HRF has, together with Freedom House, organized "a global network of more than 250 human rights and anti-corruption NGOs ... working to bring information about sanctionable acts to the U.S. government."[36] This has included the creation of unofficial literature outlining frequently asked questions (FAQs) about the law, submission templates, and other materials to assist organizations in submitting

Guidelines for success," Atlantic Council, February 12, 2021.

[32] GAO, "Economic Sanctions: Treasury and State Have Received Increased Resources for Sanctions Implementation but Face Hiring Challenges."

[33] For example, the Human Rights Violators and War Crimes Unit within U.S. Immigrations and Customs Enforcement (ICE) includes a "Global Magnitsky investigative support team" that "researches, identifies, and nominates targets" for Global Magnitsky sanctions. Ibid.

[34] U.S. Helsinki Commission, "HOW-TO GUIDE: Sanctioning Human Rights Abusers and Kleptocrats under the Global Magnitsky Act," May 24, 2018.

[35] Remarks by Erik Woodhouse, Deputy Assistant Secretary of State for Counter Threat Finance and Sanctions, at Human Rights First-hosted conference on "Multilateralizing Global Magnitsky Sanctions," October 1, 2021, at https://info.supporthumanrightsfirst.org/event/global-magnitsky-conference-recordings/e356174.

[36] See testimony of Michael Breen for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*, March 24, 2021.

information.[37] According to HRF, as of October 2021, approximately one-third of Global Magnitsky sanctions designations "have had a basis in recommendations" from members of this NGO coalition.[38] OFAC does not appear to track the extent to which specific designations are made in whole or in part based on information originally submitted by NGOs, but executive branch officials have spoken in general terms about the value of information submitted by civil society, and experts have noted that Global Magnitsky designations often rely on unclassified "open source" information.[39] Some nongovernmental advocates have argued for an expanded NGO role in Global Magnitsky sanctions, such as a capacity to provide input into U.S. government efforts to assess the effectiveness of sanctions;[40] the extent to which government analysts would have the bandwidth to make full use of such information is unclear.

Congress has similarly used the Global Magnitsky Act's provision that provides for congressional input to the executive branch on possible targets, and the provision requiring the executive branch respond to congressional requests regarding possible targets (as noted above, however, the executive branch has raised separation of powers concerns about the latter provision).[41] Separately, some Members have corresponded with executive branch officials to suggest specific targets, and some have introduced legislation that would require the executive branch to consider sanctioning certain persons or certain categories of persons.[42]

Designations to Date

As of December 3, 2021, a total of 148 individuals and 189 entities are subject to economic sanctions pursuant to Global Magnitsky authorities through E.O. 13818.[43] The majority of sanctioned entities are "derivative" targets, in that they are sanctioned because they are owned or controlled by a sanctioned individual. According to a CRS calculation, among the individuals sanctioned, 89 are designated primarily for human rights abuses, 56 are designated primarily for corruption, and 3 are designated in relation to both human rights abuses and corruption.[44] Two sanctioned individuals have later been delisted.[45] **Figure 1** illustrates the diversity of nationalities of individuals designated for economic sanctions under E.O. 13818.

[37] Available at https://www.humanrightsfirst.org/topics/global-magnitsky/resources.

[38] Testimony of Michael Breen for U.S. Commission on International Religious Freedom hearing on "Targeted Sanctions - Implications for International Religious Freedom," October 27, 2021.

[39] Remarks by executive branch officials at a Human Rights First-hosted conference on "Multilateralizing Global Magnitsky Sanctions," October 1, 2021; Briefing of the Commission on Security and Cooperation in Europe, "How to Get Human Rights Abusers and Kleptocrats Sanctioned Under the Global Magnitsky Act," 115th Congress, 2nd session, March 13, 2018.

[40] See testimony of John Hughes for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*.

[41] Remarks by Senator Ben Cardin at Human Rights First-hosted conference on "Multilateralizing Global Magnitsky Sanctions," September 2, 2021, at https://info.supporthumanrightsfirst.org/event/global-magnitsky-conference-recordings/e356174.

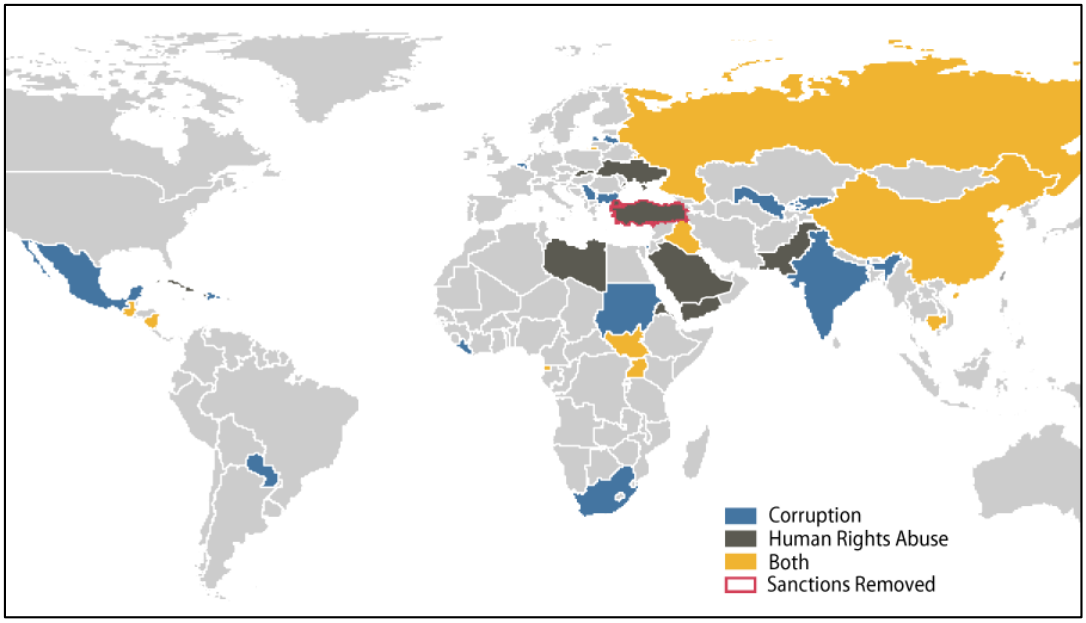
[42] For example, legislation introduced in the Senate (S. 2986) and a provision in the House-passed National Defense Authorization Act for 2022 (H.R. 4350) would require a determination from the executive branch whether 35 specific Russian persons meet the criteria for the imposition of Global Magnitsky sanctions. For background, see https://www.cardin.senate.gov/newsroom/press/release/cardin-wicker-introduce-bill-to-sanction-navalny-35.

[43] For a complete current list, search the "GLOMAG" program at https://sanctionssearch.ofac.treas.gov/.

[44] The three individuals designated in relation to both human rights abuses and corruption are Yahya Jammeh, former President of the Gambia, and his wife, Zineb Souma Yahya Jammeh; and Kale Kayihura, former Inspector General of Police of the Ugandan Police Force. See U.S. Department of the Treasury, "United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe," December 17, 2017; U.S. Department of the Treasury, "Treasury Targets Support to Designated Corrupt Actors," September 15, 2020; U.S. Department of the Treasury, "Treasury Sanctions Former Ugandan Inspector General of Police for Role in Serious Human Rights Abuse and Corruption," September 13, 2019.

[45] AP News, "US, Turkey Lift Sanctions Imposed in Case of Detained Pastor," November 2, 2018. See also relevant discussion under "Relationship with Other U.S. Foreign Policy Goals and Criticisms of Selectivity."

Figure 1. Nationalities of Individuals Designated for Economic Sanctions Under E.O. 13818

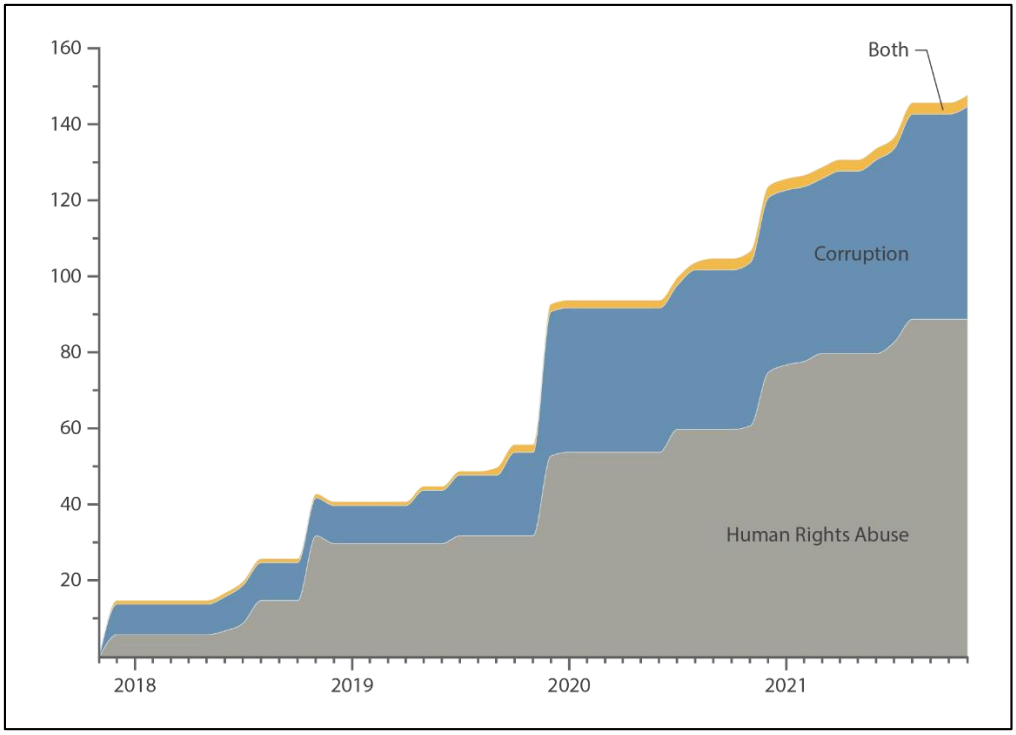


Source: CRS graphic based on data from the Office of Foreign Assets Control (OFAC).

Notes: Does not include designated entities. The nationality of a designated individual does not always correspond with the country in which the sanctionable activity took place.

The first 13 persons sanctioned under Global Magnitsky authority were listed in the annex of E.O. 13818 when it was issued on December 20, 2017. Subsequent designations under Global Magnitsky authority have been announced periodically, with sometimes relatively large numbers of designations being announced annually on International Anti-Corruption Day (December 9) and Human Rights Day (December 10). See **Figure 2** below.

Figure 2. Individuals Designated for Economic Sanctions Over Time Based on Human Rights Abuses, Corruption, or Both



Source: CRS graphic based on data from the Office of Foreign Assets Control (OFAC).

Notes: Does not include designated entities.

Illustrative Examples of Designated Individuals and Entities

Reflecting the broad scope of sanctionable targets under E.O. 13818, the rank, status, and relationship to instances of human rights abuse or corruption of individuals targeted to date have varied widely (see "Scope of Sanctionable Behavior and Targets"). For instance, a selection of sanctioned individuals to date includes the following:[46]

- In relation to a "a significant corruption network in **South Africa** that leveraged overpayments on government contracts, bribery, and other corrupt acts to fund political contributions and influence government actions," **Ajay Gupta**, a businessperson, was designated in October 2019 "for being the leader of an entity that has engaged in, or whose members have engaged in, corruption."[47]
- In relation to the "brutal security operation that began in August 2017 in [**Burma's**] Rakhine State," **Min Aung Hlaing** was designated in December 2019 "for his role as the Commander-in-Chief of the Burmese military forces, an entity

[46] Examples are included to demonstrate the diversity of sanctions targets under E.O. 13818; their inclusion does not constitute a CRS judgement as to the relative importance or noteworthiness of these sanctions actions.

[47] Also designated were two family members of Gupta and an additional individual. U.S. Department of the Treasury, "Treasury Sanctions Members of a Significant Corruption Network in South Africa," October 10, 2019.

that has engaged in or whose members have engaged in serious human rights abuse under his command."[48]

- In relation to "serious rights abuses against ethnic minorities" in **China's** Xinjiang Uyghur Autonomous Region (XUAR), **Chen Quanguo**, the Party Secretary of XUAR, was designated in July 2020 for "being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in serious human rights abuse relating to the leader's or official's tenure."[49]
- **Satish Seemar**, a horse trainer for Ramzan Kadyrov—the head of **Russia's** Chechen Republic designated in relation to the murder of Boris Nemtsov—was designated in December 2020 for having "materially assisted, sponsored, or provided financial material, or technological support for, or goods and services to or in support of" Kadyrov, as was **Daniil Vasilievich Martynov**, "a personal security advisor for Kadyrov," among others.[50]
- **Vassil Kroumov Bojkov**, a **Bulgarian** "businessman and oligarch" described as having "bribed government officials on several occasions," including the former Chairman of Bulgaria's "now-abolished State Commission on Gambling," was designated in June 2021 "for being a person who has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of corruption."[51]

Designated entities may similarly range from entities used to facilitate the transfer or sheltering of ill-gotten assets (shell companies) to entire government ministries or bureaus. As noted above, most entities have been designated in a derivative fashion due to their association with a designated individual. In a small number of cases, however, the executive branch has sanctioned entities as primary targets for engaging in human rights abuse or corruption. For example:

- **China's Xinjiang Public Security Bureau (XPSB)** was designated in July 2020 "for being a foreign person responsible for, or complicit in, or that has directly or indirectly engaged in, serious human rights abuse" in relation to mass detentions and surveillance in XUAR; in addition, two officials were individually designated as XPSB leaders or officials "of an entity whose property and interests in property are blocked" under E.O. 13818.[52]

[48] U.S. Department of the Treasury, "Treasury Sanctions Individuals for Roles in Atrocities and Other Abuses," December 10, 2019. A number of other individuals and entities have also been designated in relation to human rights abuse in Burma, including through separate designation announcements.

[49] U.S. Department of the Treasury, "Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Accountability Act," July 9, 2020. A number of other individuals and entities have also been designated in relation to human rights abuse in Xinjiang, including through separate designation announcements.

[50] Numerous other individuals and entities were also designated in relation to Kadyrov. U.S. Department of the Treasury, "Treasury Sanctions Serious Human Rights Abusers on International Human Rights Day," December 10, 2020.

[51] A total of 58 entities associated with Bojkov were also designated. U.S. Department of the Treasury, "Treasury Sanctions Influential Bulgarian Individuals and Their Expansive Networks for Engaging in Corruption," June 2, 2021.

[52] U.S. Department of the Treasury, "Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Accountability Act," July 9, 2020.

- **Cuba's Ministry of the Interior (MININT)** was designated in January 2021 in relation to serious human rights abuse, and an individual was designated "for being a foreign person who is the leader or official of MININT."[53]

The executive branch has sometimes designated large numbers of individuals or entities associated with a single "case" of human rights abuse or corruption or for their mutual association in a single network. For example:

- A total of **33 entities and an individual** have been designated in connection with **Dan Gertler** (in addition to Gertler himself), an Israeli businessman designated for "opaque and corrupt mining and oil deals in the Democratic Republic of the Congo (DRC)" and leveraging his relationship with now former DRC President Joseph Kabila to require "some multinational companies to go through Gertler to do business with the Congolese state."[54] (Near the end of the Trump Administration, the Treasury Department issued a license authorizing transactions involving Gertler and the other sanctioned persons that was later revoked by the Biden Administration.[55])
- A total of **18 Saudi Arabian nationals and one entity** have been designated for their role in the 2018 murder of Saudi journalist Jamal Khashoggi.[56]
- A total of **nine Serbian nationals** have been designated because they "acted or purported to act for or on behalf of" Serbian arms dealer Slobodan Tesic, whom the Treasury Department has designated for corruption. A **total of 13 entities** also have been designated either for being owned or controlled by Tesic or by one of his nine designated associates.[57]

Designation Factors That May Increase the Likelihood of Deterring or Disrupting Human Rights Abuse or Corruption[58]

The extent to which Global Magnitsky designations are achieving goals of helping to deter or disrupt human rights abuse or corruption is difficult to assess (see "Global Magnitsky Sanctions and Behavior Change?" below). Nonetheless, experts and advocates of Global Magnitsky sanctions have identified a number of factors that may

[53] U.S. Department of the Treasury, "Treasury Sanctions the Cuban Ministry of the Interior and Its Leader for Serious Human Rights Abuse," January 15, 2021.

[54] U.S. Department of the Treasury, "United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe," December 17, 2017; U.S. Department of the Treasury, "Treasury Sanctions Fourteen Entities Affiliated with Corrupt Businessman Dan Gertler Under Global Magnitsky," June 15, 2018.

[55] The Treasury Department's January 2021 license authorized any transactions and activities involving Gertler or related sanctioned persons, conditional on the submission of detailed reports every 90 days on any activities carried out under the license. Some observers criticized the decision to grant the license and the process by which it was granted. In March 2021, the Biden Administration revoked the license, stating that it was "inconsistent with America's strong foreign policy interests in combatting corruption around the world" and in the DRC. See Aaron Ross, "Trump administration quietly eased sanctions against Israeli mining magnate Gertler," *Reuters*, January 25, 2021; Eric Lipton, "Tough Sanctions, Then a Mysterious Last-Minute Turnabout," *New York Times*; February 21, 2021; U.S. Department of State, "Revocation of License Granted for Dan Gertler," March 8, 2021.

[56] U.S. Department of the Treasury, "Treasury Sanctions 17 Individuals for Their Roles in the Killing of Jamal Khashoggi," November 15, 2018; U.S. Department of the Treasury, "Treasury Sanctions the Saudi Rapid Intervention Force and Former Deputy Head of Saudi Arabia's General Intelligence Presidency for Roles in the Murder of Journalist Jamal Khashoggi," February 26, 2021.

[57] U.S. Department of the Treasury, "United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe"; U.S. Department of the Treasury, "Treasury Sanctions Corruption and Material Support Networks," December 9, 2019.

[58] See also "Varying Sanctions Goals and Implications for Prioritizing Targets, Measuring Effectiveness."

increase the likelihood that Global Magnitsky actions contribute to these goals. A selection of these factors is discussed below. Notably, the Treasury Department's October 2021 sanctions review emphasizes attention to many of these factors within its proposed framework for "modernizing" sanctions, although the document does not provide implementation details.[59]

Integration within Broader Strategies. Global Magnitsky sanctions may have more impact when they are employed as one tool within the context of broader U.S. government strategies for advancing human rights and combating corruption in particular contexts. These strategies may clearly articulate the human rights and corruption challenges to be addressed and how Global Magnitsky sanctions can contribute to desired outcomes, as well as whether and how the effect of Global Magnitsky sanctions could be enhanced if deployed in concert with other tools such as diplomatic actions, assistance to civil society organizations, export controls, and others.[60]

Multilateral Coordination. The United States coordinating with foreign governments to impose sanctions broadens the number of jurisdictions with relevant financial and/or travel restrictions on a given sanctions target. In some cases, this may significantly heighten the material impact of Global Magnitsky sanctions and may thus have a greater likelihood of affecting targets' behavior. At the same time, various challenges may inhibit multilateral sanctions coordination in some cases (see "Coordinating Sanctions with Other Governments").

Proactive and Transparent Messaging. Proactive outreach to government and private sector actors about the risks of Global Magnitsky sanctions may help deter acts of human rights abuse or corruption and reduce support for such acts (particularly in light of the possibility of so-called "secondary" sanctions under E.O. 13818).[61] Relatedly, OFAC has argued that the ability of persons to seek removal from the SDN list can contribute to achieving behavior change goals.[62] In that vein and as described earlier in this report, Congress specified certain sanctions removal criteria for designations, including on the basis of the designee having significantly changed his or her behavior, "paid an appropriate consequence," and credibly committed not to engage in future sanctionable activity. However, some observers have noted that Global Magnitsky sanctions designation announcements have rarely indicated what actions particular sanctions targets might take to potentially result in their removal from the sanctions list, and have argued that doing so, where possible, could provide a sanctioned individual with "a clear framework within which to consider modifications to his or her behavior."[63] On the other hand, publicly articulating a sanctions "off-ramp" may not be desirable or feasible in some cases (e.g., with regard to individuals responsible for mass atrocities or other egregious violations of human rights).[64]

"Network Sanctions" and Follow-Up Designations. Global Magnitsky designations that target broad support networks of individuals and entities associated with human rights abuse or corruption—in addition to those actors that are principally responsible for these activities—may be more likely to disrupt or deter their continuance.[65] Some human rights advocates and Members of Congress have argued for using Global Magnitsky authorities to designate enablers who materially assist perpetrators of serious human rights abuse or corruption, such as accountants, lawyers, and others.[66] Relatedly, designations that build on prior designations by targeting

[59] U.S. Department of the Treasury, *The Treasury 2021 Sanctions Review*, October 2021.

[60] Testimony of Brad Brooks-Rubin and John Hughes for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*.

[61] Briefing of the Commission on Security and Cooperation in Europe, "How to Get Human Rights Abusers and Kleptocrats Sanctioned Under the Global Magnitsky Act," March 13, 2018.

[62] U.S. Department of the Treasury, "Sanctions 101, Part II of II; Enforcement and Effects," June 2, 2014.

[63] Human Rights First, *Walking the Talk: 2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy*, "Chapter 1: Holding Human Rights Abusers and Corrupt Actors Accountable Through Global Magnitsky and Other Targeted Sanctions," October 2020; Testimony of Beth Van Schaack for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*.

[64] In the view of one expert, "Although these sanctions regimes are primarily designed as behavioral modification tools, the work that goes into a sanctions designation could also be repurposed to support accountability efforts in foreign courts, U.S. courts, or international tribunals ... these tools are not mutually exclusive, and there may be sanctioned individuals who could also be prosecuted criminally under international crimes statutes." Testimony of Beth Van Schaack for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*.

[65] For example, see Justyna Gudzowska for testimony for U.S. Commission on International Religious Freedom hearing on "Targeted Sanctions - Implications for International Religious Freedom," October 27, 2021.

[66] Testimony of Senator Benjamin Cardin for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*. See also Tutu Alicante, "Combating Transnational Authoritarian Kleptocracy: Cracking Down on Western Professional Enablers," *Just Security*, April 19, 2021.

additional individuals or entities associated with the same case of human rights abuse or corruption may communicate U.S. resolve to continue to combat the activity in the eyes of targets, foreign governments, and financial institutions. However, resource limitations may impair the ability of the United States to pursue numerous persons associated with the same case, and doing so arguably may involve trade-offs in terms of the capacity to pursue action against a broader set of instances of sanctionable behavior.

Comparison with Other Targeted Sanctions Authorities

Sanctions authorized by the Global Magnitsky Act share similarities with some other U.S. sanctions regimes that address human rights or corruption. In some cases, the executive branch has publicly designated individuals pursuant to both Global Magnitsky and other authorities.

Visa Sanctions Authorities, Including Section 7031(c) of Department of State, Foreign Operations, and Related Programs Appropriations Acts

Most similar to Global Magnitsky is a recurring provision in the Department of State, Foreign Operations, and Related Programs Appropriations Acts (SFOPS), Section 7031(c), which 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 of State has credible information that the individual "involved in significant corruption … or a gross violation of human rights."[67] Unlike Global Magnitsky sanctions, SFOPS Section 7031(c) designations do not entail economic sanctions. **Table 1** summarizes selected differences between Global Magnitsky sanctions as they are being implemented under E.O. 13818 and those authorized under SFOPS Section 7031(c).

Table 1. Selected Differences Between E.O. 13818 (Global Magnitsky) and Section 7031(c) of Department of State, Foreign Operations, and Related Programs Appropriations Acts

	E.O. 13818 (Global Magnitsky)	SFOPS Section 7031(c)
Sanction Type	economic & visa	visa
Standard of Targeted Behavior	serious human rights abuse or corruption	a gross violation of human rights or significant corruption
Range of Possible Targets	varies by specific sanctions criteria to include current or former officials or persons acting on their behalf (for corruption), foreign persons (for human rights and some corruption criteria), and, under certain circumstances, "any person," including broader networks of associated persons	foreign officials and their immediate family members

[67] See also CRS In Focus IF10905, *FY2020 Foreign Operations Appropriations: Targeting Foreign Corruption and Human Rights Violations*, by Liana W. Rosen and Michael A. Weber, and CRS Report R46362, *Foreign Officials Publicly Designated by the U.S. Department of State on Corruption or Human Rights Grounds: A Chronology*, by Liana W. Rosen and Michael A. Weber.

	E.O. 13818 (Global Magnitsky)	SFOPS Section 7031(c)
Discretionary Language	Global Magnitsky Act: "the President **may** impose…"	Officials about whom the Secretary of State has credible information "**shall** be ineligible for entry…" (Secretary of State has waiver authority)
Public/Private Designations	public (economic sanctions)	public or private
Primary Implementing Agencies	Department of the Treasury (economic sanctions) and Department of State (visa sanctions)	Department of State

Source: CRS.

Notes: Some aspects are abbreviated or simplified for purposes of brevity.

Other related global authorities include Section 212 of the INA (8 U.S.C. 1182), which provides the Secretary of State with broad authority to impose denial of entry into the United States on the basis of U.S. interests or the avoidance adverse impacts on U.S. foreign policy. It also includes specific activities as grounds for denial of entry, including participation in genocide, commission of acts of torture or extrajudicial killings, responsibility for particularly severe violations of religious freedom while serving as a foreign government official, and conviction of a crime involving moral turpitude, among others. The executive branch has used INA authority to suspend the entry of foreign public officials engaged in corruption (through Presidential Proclamation 7750 of January 12, 2004), and of aliens implicated in human rights and humanitarian law violations (through Presidential Proclamation 8697 of August 4, 2011). Pursuant to Section 222(f) of the INA, records pertaining to the denial of entry are to be kept confidential.

Country-Specific Sanctions Regimes

Congress has also enacted country-specific laws that aim to impose sanctions on the basis of human rights or corruption, and the President has used authorities under NEA, IEEPA, and INA to establish country-specific sanctions regimes, citing, in part, human rights abuses and corruption as rationales for the restrictions. Promoting human rights or democracy and/or combating corruption are explicitly cited as motivations, at least in part, in a large number of the more than 30 economic sanctions regimes currently maintained by the United States, including with regard to Belarus, Burma, Central African Republic, Cuba, Democratic Republic of the Congo, Ethiopia, Hong Kong (People's Republic of China), Iran, Lebanon, Libya, Mali, Nicaragua, North Korea, Russia, Somalia, South Sudan, Syria, Venezuela, Western Balkans, Yemen, and Zimbabwe.[68]

Global Magnitsky's global remit may avoid some challenges associated with country-specific sanctions regimes. Experts note that creating a country-specific regime can be laborious and can sometimes complicate diplomatic relations and/or have unintended ramifications. Pursuant to IEEPA, doing so requires a national emergency declaration due to "an unusual and extraordinary threat … to the national security, foreign policy, or economy of the United States."[69] In 2015 testimony to Congress, an executive branch official (now a Member of Congress) noted that the

[68] See OFAC, "Sanctions Programs and Country Information," at https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information.

[69] Testimony of Beth Van Schaack for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*.

use of IEEPA-mandated language in a national emergency declaration allowing for sanctions against individuals in Venezuela, for example, generated "blowback … from the region, including from some of our allies and partners in the region, and from the Government of Venezuela itself." According to the official, the national emergency language can be "exploited to suggest that the United States is, in effect, going to war against that country," and Venezuela's government "pointed to some of that language and said … 'You see, the Americans are coming after us,' when, in fact, all we were doing was holding accountable a number of individuals for abuses of human rights and for corruption."[70]

Global Magnitsky's standing global authority may also allow the United States to sanction human rights abusers or persons engaged in corruption who are nationals of countries with which the United States has important bilateral relationships and for which it may be reluctant to establish a country-specific sanctions regime that more broadly indicts an entire country or implies failings of its government. Notably, the United States has used Global Magnitsky authorities to designate nationals of some democratic allies and/or countries with which it has generally positive bilateral relations, such as Bulgaria, Israel, Latvia, and South Africa. The global authority also provides flexibility to address human rights or corruption matters that are of a transnational nature.

Conversely, a possible advantage of country-specific sanctions regimes is that they can allow the United States to tailor the sanctionable criteria to context-specific behaviors and categories of persons it hopes to target. For example, following the February 2021 military coup in Burma, President Biden's E.O. 14014 of February 10, 2021, authorizes sanctions on any foreign person found to operate in Burma's defense sector, among other sanctionable criteria.[71] Similarly, after initially using Global Magnitsky to target serious human rights abuse in relation to the conflict in Ethiopia's Tigray region, the Administration subsequently created a new Ethiopia-specific sanctions regime with sanctionable criteria that is specifically tailored to developments there.[72] Executive branch officials have stated that they do not see Global Magnitsky sanctions as a substitute for country-specific sanctions regimes, but rather they see the tools as complementary and mutually reinforcing.[73] At the same time, the existence of multiple, sometimes overlapping, sanctions regimes may arguably increase compliance burdens for private sector actors.[74]

Coordinating Sanctions with Other Governments

Numerous governments in recent years have put in place sanctions regimes that are similar to Global Magnitsky, including Canada, the United Kingdom (UK), the European Union (EU), and, most recently, Australia, among others.[75] Japan is among the additional jurisdictions considering

[70] See Tomasz P. Malinowski remarks, U.S. Congress, Senate Foreign Relations Committee, *Corruption, Global Magnitsky, and Modern Slavery: A Review of Human Rights Around the World*, hearing, 114th Cong., 1st sess., July 16, 2015, S. HRG. 114–796 (Washington, DC: GPO, 2019).

[71] E.O. 14014, "Blocking Property With Respect to the Situation in Burma," 86 *Federal Register* 9429, February 10, 2021.

[72] U.S. Department of the Treasury, "Treasury Sanctions Eritrean Military Leader in Connection with Serious Human Rights Abuse in Tigray," August 23, 2021; The White House, "Executive Order on Imposing Sanctions on Certain Persons With Respect to the Humanitarian and Human Rights Crisis in Ethiopia," September 17, 2021.

[73] Remarks by Erik Woodhouse, Deputy Assistant Secretary of State for Counter Threat Finance and Sanctions, at Human Rights First-hosted conference on "Multilateralizing Global Magnitsky Sanctions," October 1, 2021.

[74] See, for example, Michael Imeson, "Sanctions Wave Intensifies Compliance Headaches," *The Banker*, June 5, 2021; Elizabeth G. Silver et al., "International Coalition Takes Shape to Coordinate Economic Sanctions on Human Rights Violators," *The National Law Review*, October 28, 2021.

[75] Mike Cherney, "Australia Adopts Magnitsky Sanctions Rules," *The Wall Street Journal*, December 2, 2021. A

enacting their own such regimes.[76] The establishment of similar regimes may create increasing opportunities for the United States to impose human rights- or corruption-related sanctions in an orchestrated multilateral fashion (though in a manner that is narrower in scope than multilateral United Nations Security Council sanctions). As noted above, the Treasury Department's October 2021 sanctions review document emphasizes pursuing multilateral sanctions to improve effectiveness and impact in furtherance of foreign policy.[77]

The tangible impact of sanctions on targeted individuals and entities is generally enhanced when multiple sanctioning governments put in place similar restrictions, thereby expanding the reach of travel and economic sanctions to multiple jurisdictions. Concurrent sanctions may also engender greater perceived international legitimacy. In addition, the capacity to act in concert may help bring about greater political will among some governments, and may distribute the risks of possible retaliatory measures. Certain obstacles to coordinating sanctions with other governments may exist, however, including varying foreign policy considerations and possible logistical and technical challenges, such as barriers to information sharing, differences in evidentiary standards, and varying resources for implementation. Variations between the standards and scope of sanctionable behavior can also preclude coordination; the EU's sanctions regime, for example, does not currently provide for targeting persons for corruption.[78]

As required by the Global Magnitsky Act, the executive branch's annual reports to Congress on Global Magnitsky implementation include information about U.S. efforts to encourage other governments to impose sanctions that are similar to those authorized under the act. The reports to date have included brief descriptions of State and Treasury Department efforts to assist governments to enact such regimes, and to share information and technical assistance in support of coordinated actions. For example, according to the most recent report, the State Department and the Treasury Department in February 2020 "formed a technical delegation to brief Australian partners at the invitation of Parliament, which initiated an inquiry into whether Australia should adopt a human rights-based sanctions regime."[79] Some outside observers have recommended that the United States work with like-minded partners to establish formal, routinized collective mechanisms and arrangements for information sharing toward the goal of improving coordination on human rights and anticorruption sanctions.[80]

Coordinated Actions to Date. Most non-U.S. sanctions regimes that are similar to Global Magnitsky are relatively new, and the number of persons sanctioned under the U.S. Global

number of additional countries and territories have enacted Magnitsky-like legislation, including Gibraltar, Jersey, Kosovo, Estonia, Lithuania, and Latvia.

[76] Ryo Nemoto, "China Sanctions Inspire Push for Japan's own Magnitsky Act," *Nikkei Asia*, March 25, 2021. See also regarding Georgia, Moldova, and Ukraine, Maria Shagina, "Magnitsky-style sanctions in the Eastern Partnership," European Council on Foreign Relations, April 26, 2019.

[77] U.S. Department of the Treasury, *The Treasury 2021 Sanctions Review*, October 2021.

[78] Conversely, some jurisdictions are considering adopting features not found in the U.S. law. Canada, for example, has announced plans to develop a framework "to transfer seized assets from those who commit grave human rights abuses to their victims, with appropriate judicial oversight." Some experts have recommended that the United States consider a similar framework. Global Affairs Canada, *Departmental Plan 2020-21*, July 2020; Testimony of Beth Van Schaack for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*.

[79] U.S. State Department, "Global Magnitsky Human Rights Accountability Act Annual Report," 86 *Federal Register* 174, December 23, 2020.

[80] Human Rights First, *Walking the Talk: 2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy*, "Chapter 1: Holding Human Rights Abusers and Corrupt Actors Accountable Through Global Magnitsky and Other Targeted Sanctions," October 2020; Amal Clooney, *Report on the Use of Targeted Sanctions to Protect Journalists*, International Bar Association Human Rights Institute, February 13, 2020.

Magnitsky Act greatly exceeds the number designated to date under other similar sanctions regimes.[81] The most notable broadly coordinated sanctions action to date was a March 22, 2021, action by the United States, Canada, the UK, and the EU to impose sanctions against People's Republic of China (PRC) officials and entities in connection with human rights abuses in Xinjiang, China. Canada, the UK, and the EU simultaneously imposed sanctions on four PRC officials and a PRC entity; the United States announced Global Magnitsky sanctions on two of the same officials, having already previously imposed sanctions on the others.[82] (Canada's sanctions actions were not taken pursuant to Canada's equivalent of the Global Magnitsky Act, but rather China-specific regulations under its Special Economic Measures Act).[83] Notably, news reports described the actions by the U.S. partners as the first human rights sanctions against China by these governments since their respective responses to the 1989 Tiananmen Square crackdown.[84] Some other PRC individuals and entities that had previously been designated by the United States under Global Magnitsky, including Xinjiang Communist Party Secretary Chen Quanguo, were not designated by the other governments.[85]

In another example, in April 2021, the United States imposed corruption-related Global Magnitsky sanctions on one current and one former Guatemalan official "in close coordination" with the UK, which simultaneously sanctioned the current official.[86] In some cases, foreign governments have used their sanctions authorities to name individuals who are already subject to U.S. restrictions.[87] For instance, Canada and the UK have separately followed the United States in sanctioning Saudi nationals in relation to the killing of journalist Jamal Khashoggi.[88]

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[81] For example, according to analysis by REDRESS, a London-based NGO, as of September 2021 approximately 24% of persons designated under the Global Magnitsky Act or the Sergei Magnitsky Act had also been designated under a UK sanctions regime. CRS correspondence with REDRESS analysts, September 17, 2021.

[82] U.S. Department of the Treasury, "Treasury Sanctions Chinese Government Officials in Connection with Serious Human Rights Abuse in Xinjiang," March 22, 2021; U.S. Department of State, "Joint Statement on Xinjiang," March 22, 2021; Global Affairs Canada, "China Sanctions," March 22, 2021; UK Foreign, Commonwealth & Development Office, "UK Sanctions Perpetrators of Gross Human Rights Violations in Xinjiang, Alongside EU, Canada and US," March 22, 2021; Council of the EU, Decision 2021/481, *Official Journal of the European Union Volume 64*, March 22, 2021.

[83] Global Affairs Canada, "Canada Joins International Partners in Imposing new Sanctions in Response to Human Rights Violations in Xinjiang," March 22, 2021; "Canadian Sanctions Related to People's Republic of China," at https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/china-chine.aspx?lang=eng.

[84] Jacob Fromer and Finbarr Bermingham, "US, EU, UK, Canada Launch Sanctions Blitz Against Chinese Officials; Beijing hits Back," *South China Morning Post*, March 22, 2021; Patrick Wintour, "US and Canada Follow EU and UK in Sanctioning Chinese Officials over Xinjiang," *The Guardian*, March 22, 2021; Jeremy Nuttall and Alex Ballingall, "As Diplomatic Crisis Deepens, Canada Slaps Sanctions on Four Chinese Officials over Human Rights Abuses," *Toronto Star*, March 22, 2021.

[85] For additional information about Global Magnitsky sanctions and other U.S. policy actions taken on the basis of human rights in China, see CRS Report R46750, *Human Rights in China and U.S. Policy: Issues for the 117th Congress*, by Thomas Lum and Michael A. Weber.

[86] U.S. Department of State, "The United States Sanctions Guatemalan Officials for Corruption," April 26, 2021; U.S. Department of the Treasury, "Treasury Sanctions Current and Former Guatemalan Officials for Engaging in Corrupt Activities," April 26, 2021; British Embassy Guatemala City, "UK sanctions Guatemalan Congressman under new global anti-corruption regime," April 26, 2021.

[87] U.S. Department of the Treasury, "Joint Statement by Secretary Janet L. Yellen and Secretary Antony J. Blinken Commending the United Kingdom's Anti-Corruption Sanctions," July 22, 2021; UK Foreign, Commonwealth & Development Office, "New UK sanctions Against Individuals Involved in Corruption Around the World," July 22, 2021.

[88] Global Affairs Canada, "Canada Imposes Sanctions on Individuals Linked to Murder of Jamal Khashoggi," November 29, 2018; UK Foreign & Commonwealth Office, UK Announces First Sanctions Under new Global Human

In addition and apart from Global Magnitsky, the United States has drawn on country-specific sanctions authorities to impose coordinated human rights sanctions in some cases; for example, the United States in June 2021 used its Belarus sanctions regime to impose sanctions in concert with Canada, the EU, and the UK.[89]

Global Human Rights Sanctions Authorities and the "Magnitsky" Name

The question of whether global human rights sanctions authorities should be named after Sergei Magnitsky has garnered differing opinions within the United States and in foreign jurisdictions. Some have argued that the symbolic importance of Magnitsky's case, associated as it is with the original 2012 law, is such that it warrants inclusion in the name of the regimes. Others have contended that doing so can unnecessarily antagonize Russia or create an inaccurate impression that the regimes target Russia specifically as opposed to being global in scope. Some foreign governments, like Canada's, have followed the U.S. lead in naming their regimes after Magnitsky. Others have chosen more general names—in the case of the EU, for example, the "EU Global Human Rights Sanctions Regime."[90] In May 2016, during House Foreign Affairs Committee consideration of the Global Magnitsky Act in the United States, a Member of Congress proposed an amendment that would have stricken Magnitsky's name from the title; the proposed amendment was defeated by voice vote.[91]

Pending Reauthorization Bills

The Global Magnitsky Act is authorized through December 23, 2022. Some pending bills in the 117th Congress would authorize the Global Magnitsky Act permanently and/or amend some aspects of the law. This includes the standalone Global Magnitsky Human Rights Accountability Reauthorization Act (S. 93). Introduced in the Senate in January 2021 and reported out of the Senate Foreign Relations Committee in June 2021, the legislation would

- permanently reauthorize the Global Magnitsky Act;
- broaden the scope of sanctionable targets under the act, using language similar to that found in the implementing executive order (such as "serious human rights abuse");
- authorize sanctions against the immediate family members of sanctioned individuals (similar to SFOPS Section 7031(c));
- require that the annual report to Congress on the act's implementation include information about other U.S. foreign policy actions taken "to address underlying causes of serious human rights abuse and corruption" in each country in which targeted foreign persons are located; and
- encourage the President to "establish and regularize information sharing and sanctions-related decision making with like-minded governments possessing human rights and anti-corruption sanctions programs" that are similar to Global Magnitsky.

Rights Regime," July 6, 2020.

[89] U.S. Department of State, "Joint Statement on Belarus," press statement, June 21, 2021.

[90] The Dutch government reportedly lobbied that the regime not bear Magnitsky's name so that Russia would not feel specifically targeted. See Daniel Boffey, "EU to use Magnitsky-style law to Impose Sanctions on Human Rights Abusers," *The Guardian*, November 27, 2020. See also Teri Schultz, "Who's Afraid of an EU 'Magnitsky Act'? Bill Browder says it's not Just the Targets," Atlantic Council, November 21, 2018.

[91] Jacqueline Toth, "Panel Moves Food Security and Human Rights Measures," *CQ Roll Call*, May 18, 2016.

Separately, the House-passed National Defense Authorization Act for 2022 (H.R. 4350) includes provisions that would reauthorize Global Magnitsky in a generally similar manner, though with some differences.[92] The House-passed language, for example, would not amend the law to authorize sanctions against immediate family members. In addition, a number of broad pending bills, including S. 1169, S. 1260, and H.R. 3524, contain provisions that would permanently reauthorize the Global Magnitsky Act without otherwise amending the law.

Considerations for Congress

Congress may consider a number of issues as it examines the implementation of the Global Magnitsky Act to date and weighs whether and in what manner to reauthorize its provisions and/or authorize or appropriate relevant federal resources. Discussions of a selection of possible topics of consideration are included below.

Varying Sanctions Goals and Implications for Prioritizing Targets, Measuring Effectiveness

Desired outcomes for Global Magnitsky sanctions actions are multiple and may vary in relative emphasis between different stakeholders. Included among the goals of Global Magnitsky Act sanctions that congressional and/or executive branch stakeholders have expressed are

- disrupting human rights abuse or corruption and/or deterring future such acts;
- promoting accountability for past acts of human rights abuse or corruption in environments of impunity;
- advancing international human rights and anticorruption norms alongside like-minded foreign governments;
- supporting or reinforcing foreign government efforts to pursue domestic accountability or undertake reforms to protect human rights or combat corruption;
- conveying moral solidarity with human rights defenders, whistleblowers, and victims of human rights abuse and corruption; and
- protecting the U.S. financial system from abuse by perpetrators of human rights abuse or corruption.

The Trump Administration in its annual reports on Global Magnitsky Act implementation emphasized the first, second, and third bullets above. The Trump Administration also stated that, when considering sanctions, 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."[93] Biden Administration officials have described similar prioritization among these goals.[94]

While the above goals may often be interrelated and mutually supportive, in some instances they may not align. For instance, sanctions against persons who do not participate in the international

[92] See Section 6470.

[93] U.S. State Department, "Global Magnitsky Human Rights Accountability Act Annual Report," 86 *Federal Register* 174, December 23, 2020.

[94] Remarks by Erik Woodhouse, Deputy Assistant Secretary of State for Counter Threat Finance and Sanctions, at Human Rights First-hosted conference on "Multilateralizing Global Magnitsky Sanctions," October 1, 2021.

financial system or travel to the United States may be unlikely to affect their behavior in a way that disrupts or deters human rights abuse or corruption. At the same time, the act of publicly announcing the individual and the basis for their designation can be seen as a "name and shame" tool in service of accountability and international norms, and as a means of expressing solidarity with human rights and democracy advocates in the relevant country and in the diaspora. For instance, July and August 2021 Global Magnitsky sanctions against Cuban government officials and entities were described in media reports as unlikely to have a significant substantive impact, but, reportedly according to Administration officials, were imposed with the goal of holding perpetrators accountable and expressing support for and solidarity with people in Cuba.[95] Similarly, Global Magnitsky sanctions imposed against People's Republic of China (PRC) officials in Xinjiang may be unlikely in isolation to affect the targets' behavior or broader PRC policy in the region, but may serve as a high profile expression of U.S. and international support for accountability for gross human rights violations that, in their totality, the United States contends amount to crimes against humanity and genocide.[96] Some analysts and Members of Congress have pointed to the strident opposition to Global Magnitsky sanctions by China's government and other governments with poor human rights and corruption records as an indicator of the sanctions' importance and public messaging power.[97]

The number of potentially sanctionable persons under Global Magnitsky criteria likely far outstrips U.S. government capacity and resources. As such, clarity about the precise goals that are of greatest importance for Global Magnitsky sanctions may help guide decisions on which sanctions targets to prioritize. Precision about priority goals and desired outcomes may also be a prerequisite to meaningfully evaluating the effectiveness of the tool, both generally and with regard to particular sanctions actions (see discussion in the below subsection). As it evaluates the executive branch's implementation of the Global Magnitsky Act to date, Congress may consider whether to direct or encourage the executive branch to place more or less priority on specific sanctions goals, or whether to maintain broad executive branch discretion and flexibility.

Global Magnitsky Sanctions and Behavior Change?

OFAC has generally conceived of sanctions as a behavior change tool. A 2014 OFAC "sanctions 101" document, for example, states that "[s]anctions are a means to an end; the ultimate goal of sanctions is behavioral change."[98] Reportedly, because of its prioritization of promoting behavior change, in considering possible targets for Global Magnitsky sanctions, the executive branch has

[95] Karen DeYoung and Anne Gearan, "Biden Administration Imposes a new Round of Sanctions on Cuban government, officials," *Washington Post, July* 30, 2021; Sabrina Rodriguez and Marc Caputo, "White House sticks with Hardline Approach to Cuba," *Politico,* August 19, 2021.

[96] U.S. Department of the Treasury, "Treasury Sanctions Chinese Government Officials in Connection with Serious Human Rights Abuse in Xinjiang," March 22, 2021; U.S. Department of State, "Promoting Accountability for Human Rights Abuse with Our Partners," March 22, 2021; U.S. Department of State, "Joint Statement on Xinjiang," March 22, 2021.

[97] For example, in the context of bilateral talks in July 2021, China's government publicly urged the United States to unconditionally revoke U.S. sanctions and visa restrictions against Communist Party of China members and their family members, among other demands. Some Members of Congress and others have also pointed to the Russian government's well-documented opposition to the 2012 Sergei Magnitsky law as an indication of the sanctions' effectiveness. See People's Republic of China Ministry of Foreign Affairs, "Foreign Ministry Spokesperson Zhao Lijian's Regular Press Conference," July 26, 2021; Laurel Zigerelli, "Is the Global Magnitsky Sanctions Program Working?" The Global Anticorruption Blog, December 21, 2020; Senator Cardin, "Magnitsky Act," remarks in the Senate, *Congressional Record,* daily edition, vol. 166 (November 18, 2020), pp. S7064-S7065; Julia Ioffe, "Why Does the Kremlin Care So Much About the Magnitsky Act?," *The Atlantic,* July 27, 2017.

[98] U.S. Department of the Treasury, "Sanctions 101, Part II of II; Enforcement and Effects," June 2, 2014.

generally sought to respond to activities that occurred within the previous five years.[99] This concept of behavior change as a goal can be interpreted to encompass the broader policy changes that sanctions may help effect.[100] Nonetheless, some analysts have criticized the executive branch's emphasis on behavior change as too narrow, arguing that it does not sufficiently capture the logic of using sanctions to disable networks of bad actors, or appropriately weight the value of other goals described in the above section, such as providing accountability for victims.[101]

The direct tangible impact of Global Magnitsky sanctions on targets may be significant in some cases. Corrupt actors who rely on access to the international financial system to transfer ill-gotten gains, for example, may find the financial restrictions imposed to be a substantial curb on their activities. According to OFAC, as a general matter, "[f]or those targets who seek to operate in the legitimate international financial system, [financial] sanctions can deliver a massive blow, as conscientious people and institutions will often shun them and their business."[102] In practice, this may extend to financial institutions outside U.S. jurisdiction that become wary of doing business with sanctioned persons. Travel restrictions—particularly those imposed in concert with other countries—may also be a burden on corrupt actors or human rights abusers who seek to travel to, and enjoy ill-gotten gains in, environments of relative security and the rule of law. In the words of one democracy activist, targeted sanctions can "provide personal accountability for those who break the rules of civilized society at home while enjoying its benefits abroad."[103]

Whether the financial or other impacts of sanctions on a given target contribute to a deterrence or a disruption of human rights abuse or corruption may often be difficult to assess. As one observer notes, "it's virtually impossible to measure, or even know about, corrupt acts that don't take place," and "targeted sanctions programs tend to focus on a relatively small set of potential offenders, making quantitative statistical analysis of changes in offense rates infeasible."[104] U.S. diplomatic messaging could potentially use the threat of Global Magnitsky sanctions in a manner that induces positive changes in behavior without the sanctions ever having been imposed.[105] Moreover, experts note that sanctions tend to be one tool employed as part of a broader strategy, further complicating the ability to isolate the impact of the sanctions themselves on the behavior of the target or other actors.[106] In addition, given entrenched conditions that Global Magnitsky sanctions may be seeking to change, some experts contend that relatively long evaluative time

[99] Briefing of the Commission on Security and Cooperation in Europe, "How to Get Human Rights Abusers and Kleptocrats Sanctioned Under the Global Magnitsky Act"; Human Rights First, "The Global Magnitsky Act: Frequently Asked Questions," April 2019.

[100] According to a Government Accountability Office (GAO) study that examined U.S. government economic sanctions generally, in response to targeted sanctions, "the targeted actors may in turn influence their government to change its behavior," although "our interpretation of studies of sanctions suggests that the targeted actors may use their influence with their government to extract concessions that compensate them for the impact of sanctions, which could limit the effectiveness of certain targeted sanctions." See GAO, "Economic Sanctions: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions' Effectiveness," GAO-20-145, October 2019.

[101] Paul Massaro and Casey Michel, "Biden Might Stop a Sanctions Revolution," Foreign Policy, August 24, 2021.

[102] U.S. Department of the Treasury, "Sanctions 101, Part II of II; Enforcement and Effects," June 2, 2014.

[103] Vladimir Kara-Murza, "Opinion: Washington is still shying away from punishing Putin's closest cronies. Why?" *Washington Post*, August 15, 2021.

[104] Laurel Zigerelli, "Is the Global Magnitsky Sanctions Program Working?" The Global Anticorruption Blog, December 21, 2020.

[105] See remarks by Rob Berschinksi in Briefing of the Commission on Security and Cooperation in Europe, "How to Get Human Rights Abusers and Kleptocrats Sanctioned Under the Global Magnitsky Act."

[106] Testimony of Michael Breen for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*; GAO, "Economic Sanctions: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions' Effectiveness."

horizons are necessary.[107] (For a discussion of designation factors that may contribute to Global Magnitsky sanctions effectiveness, see textbox at the end of the "Scope of Individuals and Entities Targeted" section.)

The extent and nature of executive branch efforts to evaluate whether Global Magnitsky sanctions are contributing to behavior change are unclear. According to a Government Accountability Office (GAO) report about agency efforts to assess sanctions programs generally, both the Treasury and State departments conduct assessments of the impacts of sanctions on sanctions targets, such as the how much of the targets' assets may be affected by economic sanctions. According to the report, these agencies do not assess how effective sanctions are in achieving broader U.S. policy goals, although their assessments of sanctions' impacts may contribute to interagency discussions that examine the effectiveness of sanctions in achieving policy goals.[108]

Outside observers, including some advocates of the Global Magnitsky Act, note that the capacity for sanctions alone to result in behavior change may be limited in many cases.[109] Nonetheless, some experts have pointed to instances in which they perceive Global Magnitsky sanctions as having possibly contributed to behavior change and/or broader positive developments from the perspective of democratic governance, the rule of law, and human rights. For example, according to one expert, Global Magnitsky sanctions

> played a significant role in convincing the then-President of the Democratic Republic of Congo, whose long rule was accompanied by human rights abuses and the looting of Congo's extensive natural resources, to stand down from running for an unconstitutional third term. In that instance, it was the repeated use of GloMag sanctions against Kabila's close friend and key financial enabler Dan Gertler, along with his network of associates and companies, that appears to have played a vital role in convincing Kabila to heed the call of the international community to step down.[110]

Some observers argue that Global Magnitsky sanctions also appear to have helped spur or reinforce domestic anticorruption or other reforms and/or efforts to ensure accountability for individual perpetrators, with examples cited from the Gambia, Latvia, Mexico, Serbia, and South Africa, among others.[111] At the same time, attributing positive developments, in whole or in part, to U.S. sanctions is challenging, and there are risks of overweighting the importance of U.S. actions relative to local factors.

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[107] Briefing of the Commission on Security and Cooperation in Europe, "How to Get Human Rights Abusers and Kleptocrats Sanctioned Under the Global Magnitsky Act."

[108] GAO, "Economic Sanctions: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions' Effectiveness."

[109] According to Michel Breen, President of Human Rights First, "While [the sanctions] can be a useful tool to build multilateral consensus and pressure human rights abusers, they should not be expected to end the abuses, or even necessarily to sideline those targeted within their own countries. For example, two years after being sanctioned for his role in the genocide against the Rohingya, Min Aung Hlaing led the overthrow of Myanmar's democratically elected government. In such cases, a broader diplomatic strategy will be required." See Michael Breen testimony at U.S. Commission on International Religious Freedom hearing on "Targeted Sanctions - Implications for International Religious Freedom," October 27, 2021.

[110] Justyna Gudzowska for testimony for U.S. Commission on International Religious Freedom hearing on "Targeted Sanctions - Implications for International Religious Freedom," October 27, 2021.

[111] Laurel Zigerelli, "Is the Global Magnitsky Sanctions Program Working?"; Testimony of Michael Breen for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*; Sarah Allis and Joy Hammer, "Global Magnitsky: Using Sanctions in Cooperation with National Authorities," Human Rights First, May 12, 2021.

Influence of Other U.S. Foreign Policy Goals and Criticisms of Selectivity

Some observers have argued that the executive branch's choice of sanctions targets can invite charges of selectivity and hypocrisy when the United States appears to decline to sanction individuals out of apparent deference to concerns over bilateral relations with a given country, potentially undermining the credibility of the sanctions tool.[112] Researchers from Freedom House, for instance, argue that it is "crucial" that the sanctions "be consistently applied whenever there are clear violations of rights, even when those violations are committed by individuals from ally or partner countries…. If sanctions are only applied on U.S. adversaries, the United States' stated commitment to the protections of rights appears hypocritical, and the sanctions appear as just another politicized tool."[113] Reflecting on the totality of sanctions actions by that point, an October 2020 Human Rights First report described executive branch implementation of the tool as "robust," but also charged the U.S. government with "inaction" for having not imposed sanctions against "the architects of kleptocratic systems and brutal repression in countries including Azerbaijan, Bahrain, Egypt, the Philippines, Tajikistan, the United Arab Emirates, and Uzbekistan, among others."[114]

An example of alleged selectivity regards the executive branch's response to the Saudi government's operation that killed journalist Jamal Khashoggi. Although the Trump and Biden Administrations have sanctioned numerous Saudi foreign persons in connection with the case, some observers and Members of Congress have criticized the executive branch for not designating Saudi Crown Prince Mohammed bin Salman (MBS) for his role in approving the operation.[115] The Biden Administration in February 2021 released a congressionally mandated report[116] that confirmed the intelligence community's view that MBS approved the operation (the release was delayed during the Trump Administration), but reportedly declined to sanction MBS in order to avoid upending relations with the Saudi government and potentially negatively affecting cooperation on a range of diplomatic and security matters.[117] Responding to criticism over the decision, the State Department stated in part that, "Saudi Arabia is a hugely influential country in the Arab world and beyond. What happens in Saudi Arabia will and has had profound implications well beyond Saudi Arabia's borders." The U.S. goal "is to be able to shape those

[112] As noted elsewhere in this report, the Global Magnitsky Act, focused as it is on individual perpetrators, has been viewed in part as a means for taking action on human rights and corruption in foreign countries without unduly damaging relations with the governments of these countries. In practice, however, the sanctions have the potential to heighten bilateral tensions nonetheless, particularly when they target current foreign government officials, policy, or practices.

[113] Nate Schenkkan, Annie Wilcox Boyajian, and Isabel Linzer, "The 'Khashoggi Ban': What It Does and Doesn't Mean," *Just Security*, March 3, 2021.

[114] Human Rights First, *Walking the Talk: 2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy*, "Chapter 1: Holding Human Rights Abusers and Corrupt Actors Accountable Through Global Magnitsky and Other Targeted Sanctions," October 2020.

[115] For example, see testimony of Senator Benjamin Cardin and Michael Breen for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*. See also Daniel Flatley, "Sanctions Advocate Browder Faults Biden Over Khashoggi Report," *Bloomberg News*, March 9, 2021.

[116] Pursuant to Section 1277 and Section 5714 of the National Defense Authorization Act for 2020 (P.L. 116-92).

[117] Vivian Salama, Alex Marquardt, and Kylie Atwood, "Biden administration never considered MBS sanctions a viable option in response to Khashoggi report," *CNN*, March 3, 2021; David E. Sanger, "Biden Won't Penalize Saudi Crown Prince Over Khashoggi's Killing, Fearing Relations Breach," *New York Times*, February 26, 2021.

choices going forward ... we have talked about this not as a rupture, but a recalibration, to ensure that we retain that influence in what we need for our own interests to be a partnership."[118]

Relatedly, analysts have argued that some decisions to impose Global Magnitsky sanctions appear to have been motivated by the pursuit of other U.S. geopolitical interests or other goals that may not align with the Global Magnitsky Act's statutory intent. For instance, some human rights advocates criticized the Trump Administration's use of Global Magnitsky sanctions against two senior Turkish officials in relation to the detention of Pastor Andrew Brunson. These critics argued that the sanctions did not directly address Turkey's widespread and broader human rights problems, and that the use of Global Magnitsky for purposes of securing the release of an American hostage undercut its international legitimacy as a human rights and anticorruption tool.[119] Other observers, however, drew connections between Brunson's plight and broader international religious freedom challenges in Turkey.[120] Brunson was released in October 2018, and the Global Magnitsky sanctions against the two officials were subsequently removed. In another example, an analyst criticized September 2020 corruption sanctions against a Chinese-owned business entity operating in Cambodia for allegedly selectively punishing a company with Chinese ties while ignoring many other companies engaged in corrupt acts in Cambodia, thereby fueling a "narrative that the sanctions are being used to blunt China's strategic gains in the region."[121]

Congress may consider the extent to which Global Magnitsky sanctions can or should suitably support or be constrained by other foreign policy goals, and what impact, if any, this may have on the credibility of the tool. Possible questions include the following:

- To what extent, if at all, should the United States consider possible impacts to other U.S. foreign policy objectives or to bilateral relations in making sanctions determinations? Should geostrategic considerations affect sanctions decisions?
- How, if at all, is the Global Magnitsky Act's capacity for promoting human rights and combating corruption affected if international observers perceive that the United States uses the tool as a means of pursuing other, narrower U.S. national interests?
- Do sanctions decisionmaking processes and the relative influence of different executive branch stakeholders in those processes reflect congressional intent for how the Global Magnitsky tool is used? (For example, the influence of functional State Department bureaus such as the Bureau of Democracy, Human Rights, and Labor relative to that of regional bureaus.)
- How has the Global Magnitsky Act's provisions for allowing congressional and NGO input affected the executive branch's sanctions decisions? What effect, if any, has the executive branch's maintaining of discretion to decline to act on congressional requests pursuant to the act had?

[118] U.S. Department of State, "Department Press Briefing," March 1, 2021.

[119] U.S. Department of the Treasury, "Treasury Sanctions Turkish officials with Leading Roles in Unjust Detention of U.S. Pastor Andrew Brunson," August 1, 2018; Rob Berschinksi, "From Brunson to Khashoggi, Global Magnitsky Sanctions Score a Mixed Record of Firsts," *Just Security*, November 9, 2018.

[120] U.S. Commission on International Religious Freedom, "Pastor Brunson Is Released," October 12, 2018.

[121] Camille Bismonte, "Cambodia and the Misuse of the Global Magnitsky Act," Center for Strategic and International Studies, November 30, 2020.

Scope of Possible Sanction Targets

The broader targeting scope of E.O. 13818 relative to that of the Global Magnitsky Act itself may carry distinct advantages, as well as some possible disadvantages. Executive branch officials reportedly sought the executive order's flexibility in part because of the difficulty, in some cases, of obtaining credible information on human rights abuse or corruption that is sufficient to meet the standard of the Global Magnitsky Act.[122] The executive order's broader scope may thus allow the United States to impose sanctions on perpetrators of human rights abuse and corruption that may otherwise be difficult to address. The order also allows the United States to impose sanctions more easily on broader networks of individuals and entities associated with perpetrators, potentially increasing the reach and tangible impact of the tool. Regarding sanctionable behavior for human rights, the order's lack of focus on defending whistleblowers and human rights defenders may arguably detract from the law's original aim; at the same time, human rights experts have generally expressed support for the order's added flexibility to impose sanctions for human rights abuses regardless of the status of the victim.[123] Some experts have argued for also expanding the scope of the tool to include the capacity to sanction the immediate family members of perpetrators of human rights abuse or corruption, similar to the provision under the visa restrictions authority in Section 7031(c) of SFOPS.[124]

Although many experts and nongovernmental organizations have argued in favor of Congress codifying much of E.O. 13818's broadened scope, some suggest that Congress consider modifications or clarifications, such as defining or providing illustrative examples of key terms like "serious human rights abuse."[125] According to one Member of Congress, the executive order's arguably vague standard, coupled with its reliance on national emergency authorities, undermines the perceived international legitimacy of the sanctions and "gives abusers an avenue to characterize our actions as arbitrary and outside the consensus of the global community."[126] Another possible critique of the executive order's broadened scope is that it may provide greater opportunity for presidential administrations to use the Global Magnitsky tool in ways not originally envisioned by Congress and that potentially undermine its legitimacy (see "Relationship with Other U.S. Foreign Policy Goals and Criticisms of Selectivity" above).

Executive Branch Resources for Implementation

Budgetary and staffing limitations may affect how robustly the executive branch is able to implement the Global Magnitsky Act sanctions tool. According to GAO, overall budgetary resources for sanctions implementation units in the Treasury and State departments have been on

[122] CRS discussion with former U.S. government official, November 24, 2020.

[123] See testimony of Beth Van Schaack and Brad Brooks-Rubin for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*.

[124] One nongovernmental advocate has argued that family members often "help perpetrators hide assets or benefit from ill-gotten gains," and that an expanded scope to target such persons would thereby "appropriately increase the effect of a sanctions designation and make it more difficult to shield the benefits of sanctionable acts." Testimony of Michael Breen for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*.

[125] Testimony of Ben Van Schaack for Tom Lantos Human Rights Commission, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*; Human Rights First, *Walking the Talk: 2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy*, "Chapter 1: Holding Human Rights Abusers and Corrupt Actors Accountable Through Global Magnitsky and Other Targeted Sanctions," October 2020.

[126] See Representative Christopher Smith remarks for TLHRC, *The Global Magnitsky Human Rights Accountability Act: Taking Stock*.

the rise, although these units have experienced challenges filling some positions due to factors such as competition from other agencies and the private sector and the time required for new hires to obtain security clearances.[127] Some experts and outside observers have described some of the specific units and offices that are charged with implementing Global Magnitsky Act sanctions as suffering from staffing and resource shortfalls, creating capacity constraints for pursuing new sanctions designations. According to one nongovernmental report, funding increases in recent years (discussed below) have led to notable increases in the capacity of these offices, although staffing constraints may remain.[128]

In recent years, Congress has directed resources to the Treasury and State departments specifically for purposes of Global Magnitsky implementation. This has included not less than $3 million annually in FY2020 and FY2021 for the Treasury's Office of Terrorism and Financial Intelligence (TFI), which houses OFAC, for the purpose of "addressing human rights violations and corruption, including activities authorized by the Global Magnitsky Human Rights Accountability Act."[129] The Biden Administration's budget request for FY2022 similarly requests not less than $3 million for this purpose, and this amount is reflected in a committee-passed FY2022 appropriations bill in the House (H.R. 4345).[130] Through joint explanatory statements accompanying Department of State, Foreign Operations, and Related Programs Appropriations (SFOPS), Congress has also specifically directed not less than $1,000,000 and 1,500,000 respectively in FY2020 and FY2021 for Global Magnitsky implementation by relevant State Department units.[131]

Congressional appropriators have also included some relevant directives for the Department of Justice (DOJ). House Appropriations Committee report language for FY2021 appropriations for DOJ (H.Rept. 116-455) "encourage[d] the Department to enhance efforts of the Criminal and Civil Divisions to assemble and vet the large number of case files of individuals and entities subject to sanctions under the Global Magnitsky Human Rights Accountability Act." The House Appropriations Committee report (H.Rept. 117-97) accompanying pending FY2022 appropriations would direct $1,000,000 for this purpose.

In considering whether and to what extent to continue to appropriate resources for Global Magnitsky Act implementation, Congress may weigh the goal of promoting robust implementation of the act against the opportunity costs of these resources amid various other funding priorities, including other sanctions programs.

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[127] GAO, "Economic Sanctions: Treasury and State Have Received Increased Resources for Sanctions Implementation but Face Hiring Challenges," GAO-20-324, March 2020.

[128] Human Rights First, *Walking the Talk: 2021 Blueprints for a Human Rights-Centered U.S. Foreign Policy*, "Chapter 1: Holding Human Rights Abusers and Corrupt Actors Accountable Through Global Magnitsky and Other Targeted Sanctions," October 2020; Joshua White, "Congress Should Staff Up the Office of Foreign Assets Control," *Lawfare*, March 11, 2019.

[129] P.L. 116-260; P.L. 116-93.

[130] U.S. Department of the Treasury, "FY 2022 Congressional Justification," at https://home.treasury.gov/about/budget-financial-reporting-planning-and-performance/budget-requestannual-performance-plan-and-reports/budget-documents-congressional-justification.

[131] The joint explanatory statement for 2020 SFOPS (Division G of P.L. 116-94) directed $500,000 from the Diplomatic Programs (DP) account to the Bureau of Democracy, Human Rights, and Labor, and $500,000 from the DP account to the Bureau of Economic and Business Affairs for Global Magnitsky Act implementation. The joint explanatory statement for 2021 SFOPS (Division K of P.L. 116-260) directed that these levels be maintained, while also directing not less than $500,000 above the FY2020 level for International Narcotics Control and Law Enforcement (INCLE) resources to be used for Global Magnitsky implementation. The House Committee on Appropriations report accompanying the act (H.Rept. 116-444) specified INCLE funds "for expenses incurred by the Bureau of International Narcotics and Law Enforcement Affairs for Global Magnitsky Act implementation."

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