



Updated June 15, 2018

The Global Magnitsky Human Rights Accountability Act

The Global Magnitsky Human Rights Accountability Act, enacted at the close of the 114th Congress as part of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017; P.L. 114-328; enacted December 23, 2016), authorizes the President to impose economic sanctions and deny entry into the United States to any foreign person he identifies as engaging in human rights abuse or corruption. Versions of the act had circulated in Congress since 2014.

Who Was Magnitsky?

Sergei Magnitsky's death in Russia came to the attention of Congress in early 2008 when the Commission on Security and Cooperation in Europe invited William Browder, Chief Executive Officer of Hermitage Capital, to testify on the economic, social, and political climate in Russia under newly elected President Dmitri Medvedev. (Putin reassumed the presidency in 2012.) Browder recounted the violent expropriation of the assets of Hermitage—once the largest foreign investment brokerage in Russia—by rampant Russian government corruption, bribery, fraud, forgery, cronyism, and “outright theft.” Magnitsky, a legal and accounting adviser, documented Hermitage's losses and other illicit financial dealings, including the draining of \$230 million from the Russian treasury by tax fraud. Magnitsky was arrested in November 2008, reportedly for tax evasion, and denied medical care, family visits, or due legal process while in custody, as well as beaten and possibly tortured. He died in prison in November 2009, at the age of 37.

Congress enacted the Sergei Magnitsky Rule of Law Accountability Act of 2012 (title IV of P.L. 112-208; 22 U.S.C. 5811 note) to require the President to identify the person(s) involved in the detention, abuse, or death of Magnitsky, and the ensuing cover-up, or “responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights.” Designated individuals are subject to sanctions—blocking of assets under U.S. jurisdiction, prohibited from U.S. transactions, and denied entry into the United States. To date, the Department of the Treasury's Office of Foreign Assets Control (OFAC) has designated 49 Russians who are subject to Magnitsky sanctions. OFAC also published regulations to define the responsibilities of persons under U.S. jurisdiction who might consider engaging with the Magnitsky designees (31 C.F.R. Part 584).

Going Global

Congress took the terms of the Russia-focused Magnitsky Act to the global stage with the Global Magnitsky Human Rights Accountability Act (P.L. 114-328, subtitle F, title XII; 22 U.S.C. 2656 note). The act authorizes the President to deny entry into the United States, revoke a visa, block property under U.S. jurisdiction of, and prohibit U.S.

persons from entering into transactions with, any foreign person he identifies as:

- “responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights” (or an agent of such a foreign person) and targeting those working (1) to expose illegal activities of government officials; and (2) to defend or exercise human rights and freedoms, including rights to a fair trial and democratic elections; or
- a foreign government official, senior associate or facilitator of such an official, responsible for acts of significant corruption, including the expropriation of private or public assets for personal gain, corruption in government contracts or natural resource extraction, bribery, or the offshore sheltering of ill-gotten gains.

Congress required the President to consider information provided in writing jointly by majority and ranking leadership of the congressional committees under whose jurisdictions the use of sanctions in foreign policy and national security policy generally resides—Senate Banking and Foreign Relations, and House Financial Services and Foreign Affairs. When signing the bill into law, however, the President singled out this requirement as a challenge to constitutional separation of powers (see text box).

SIGNING STATEMENT

On signing the NDAA FY2017 into law on December 23, 2016, President Barack Obama issued a signing statement to clarify his intentions to implement the various provisions. Its closing observation provided:

“Several other provisions in the bill also raise constitutional concerns....

“Finally, section 1263(d) 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.” (emphasis added)

In addition, Congress created a means for foreign governments or nongovernmental organizations to weigh in with “credible information” on possible designees.

The act authorizes the President to delist an individual if he determines that (1) the offense did not occur; (2) the person has been prosecuted for the offense; (3) the person has

changed his or her behavior, “paid an appropriate consequence,” and is committed to acceptable future behavior; or (4) it is in the national security interests of the United States to terminate the designation.

Human Rights and Corruption

Concern for human rights—as both a moral and pragmatic matter—has long been an element of U.S. foreign policy. In 1976, Congress established the position of Coordinator for Human Rights and Humanitarian Affairs in the State Department. Today, the position is elevated to Assistant Secretary of State for Democracy, Human Rights, and Labor. The Assistant Secretary oversees the department’s decision-making related to “the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of person” (22 U.S.C. 2151n), exploitation of children, international religious freedom, trafficking in persons, and U.S. obligations under relevant international agreements and treaties.

Human rights violations can be grounds for the United States to curtail foreign aid and security assistance under the Foreign Assistance Act of 1961, various supporting laws that target certain forms of egregious behavior (e.g., religious persecution, or trafficking in persons), and laws that target particular foreign governments (most notably those of Iran, North Korea, Russia, Sudan, Syria, and Venezuela). Annual foreign operations appropriations, in addition, have for several years required the Secretary of State to deny visas to enter the United States to officials of foreign governments and their immediate family members about whom the Secretary has credible information that the individual is “involved in significant corruption, including corruption related to the extraction of natural resources, or a gross violation of human rights” (most recently in P.L. 115-141 at §7031(c); 8 U.S.C. 1182 note).

The President has, on occasion, used emergency authorities granted his office in the National Emergencies Act (NEA; P.L. 94-412; 50 U.S.C. 1601 et seq.) and International Emergency Economic Powers Act (IEEPA; P.L. 95-223; 50 U.S.C. 1701 et seq.) to restrict transactions with persons and entities he designates as involved in nefarious activities—including, but not solely, human rights abuses (e.g., individuals—primarily government officials—in Belarus, Burundi, Central African Republic, Democratic Republic of the Congo, Iran, Libya, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Western Balkans, Venezuela, and Zimbabwe, and associates of Hezbollah).

Nonetheless, imposing economic penalty in an attempt to achieve human rights standards is a challenge for policymakers, who have to take into account political dynamics—the role of alliances, the extent of U.S. leverage, and weighing human rights goals against other concerns such as deterring terrorism or weapons proliferation.

Implementing the Act

On December 20, 2017, President Trump issued Executive Order 13818, finding that “the prevalence and severity of human rights abuse and corruption ... have reached such scope and gravity that they threaten the stability of international political and economic systems” and “constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States,” invoking the act and emergency authorities stated in the NEA and IEEPA. The President made the first designations under Global Magnitsky, identifying 13 individuals for their engagement in human rights abuse and corruption, among them a former president and high-ranking government officials; cronies who plunder natural resources, expropriate businesses for personal gain, and administer extortion rackets; arms dealers; military and police officers implicated in mass atrocities, wrongful detentions, and denying medical treatment to the detained; and a “surgeon specializing in kidney transplants” who is suspected of “kidnapping, wrongful confinement, and the removal of and trafficking in human organs.”

OFAC identified two additional individuals another and 37 entities associated with the 15 individual designees overall, bringing the 2017 designations to 52.

DESIGNATIONS OF JUNE 2018

On June 12, 2018, OFAC announced seven new designations—two individuals and five entities—for Global Magnitsky sanctions, including: **General Hing Bun Hieng**, of Cambodia, for human rights abuses; and **Senator Felix Ramon Bautista Rosario**, of the Dominican Republic, cited for corruption—money laundering, embezzlement, and bribery—related to earthquake reconstruction efforts in Haiti. OFAC also designated five entities owned or controlled by Bautista.

On June 15, 2018, OFAC designated 14 entities associated with **Dan Gertler**, a businessperson involved in the **Democratic Republic of the Congo’s** oil and mining industries who was named in 2017 as part of the original designation group.

In sanctions regimes, generally, the State Department, with input from the Department of Justice, administers visas, and the Treasury’s OFAC administers restrictions on transactions and U.S.-based assets. Going forward, the President, and those to whom he delegated responsibilities in the act, may make additional designations at any time.

Annually, on December 10, the President is required to report to Congress on designations made over the previous year. *On December 23, 2022, the legislative authorities end.* Because the President invoked IEEPA, however, the authority to target human rights abusers could continue beyond that date.

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