



# HELSINKI COMMISSION

May 24, 2018

## HOW-TO GUIDE

### Sanctioning Human Rights Abusers and Kleptocrats under the Global Magnitsky Act

The Global Magnitsky Act enables the United States to sanction the world's worst human rights abusers and most corrupt oligarchs and foreign officials, freezing their U.S. assets and preventing them from traveling to the United States. Sanctioned individuals become financial pariahs and the international financial system wants nothing to do with them.

Before proceeding, ask yourself: is Global Magnitsky right for my case? The language of the Global Magnitsky Act as passed by Congress was expanded by Executive Order 13818, which is now the implementing authority for Global Magnitsky sanctions. EO 13818 stipulates that sanctions may be considered for individuals who are engaging or have engaged in "serious human rights abuse"<sup>1</sup> against any person, or are engaging or have engaged in "corruption."<sup>2</sup> Individuals who, by virtue of their rank, have ordered others to engage or have facilitated these acts also are liable to be sanctioned.

Keep in mind that prior to the EO's expansion of the language, human rights sanctions were limited to "gross violations of internationally recognized human rights" as codified in 22 USC § 2304(d)(1).<sup>3</sup> The original language also stipulates that any victim must be working "to expose illegal activity carried out by government officials" or to "obtain, exercise, defend, or promote internationally recognized human rights and freedoms." As for sanctions for corruption, it identifies "acts of significant corruption" as sanctionable offenses. This is generally thought to be a stricter standard than the EO's

term "corruption." It may be worthwhile to aim for this higher standard to make the tightest case possible for sanctions.

As a rule, reach out to other NGOs and individuals working in the human rights and anti-corruption field, especially those who are advocating for their own Global Magnitsky sanctions. Doing so at the beginning of the process will enable you to build strong relationships, develop a robust network, and speak with a stronger voice.

#### **Identify the Target**

The first step to getting a target sanctioned is to identify the individual(s) who most warrants sanctioning.

Here are a few considerations in selecting an individual to target:

- Should the individual be sanctioned for serious human rights abuse or for corruption?
- Is this individual already sanctioned or facing a legal process for serious human rights abuse or corruption? Sanctions often are most appropriate when the potential designee is enjoying impunity in his or her country of residence.
- How would the interest of the United States be served by sanctioning this individual? Successful sanctions referrals always make a persuasive case that targeting the individual will serve the national security interests of the United States or advance critical human rights, democracy, and transparency interests. It is important to understand U.S. foreign policy toward a

given country in order to build a compelling case (see more under Section 4: Build Political Will).

- The most visible human rights abuser or corrupt official in a country may not be the correct one to target with the Global Magnitsky Act. It is often helpful to look for the “best-kept secrets” or those individuals who symbolize a larger problem in the country and may be working in the shadows.

### **Collect and Submit Credible Information**

OFAC<sup>4</sup> is flexible with regard to the sources of information it can use, so do not hesitate to provide a wide range of evidence. Open source information, NGO reports, news articles, independent journalism, court documents, medical reports, financial transaction receipts, personal testimonies, and more may all be used in your evidentiary memorandum. OFAC must be able to verify the credibility of every piece of information.

### **Identifying Information**

Providing as much identifying information on an individual as possible—including full name, date of birth, place of birth, passport numbers, ID numbers, nationality, and gender—is vital. Without identifying information for your target, sanctions cannot be imposed. For entities, identifying information includes addresses, registration license numbers, and other relevant documentation.

### **Derogatory Information**

Derogatory information is the information on the basis of which you are recommending sanctions. This information should include specific acts with as much detail as possible. Describe the individual’s role in the serious human rights abuse or corruption, whether personal engagement, giving orders, or facilitation. Evidence could include government documents or independent investigations. OFAC protects all sensitive information it receives.

### **Exculpatory Information**

If there are discrepancies in your case, it is important that you flag these for OFAC. Ignoring discrepancies could lead OFAC to question the credibility of the information you have provided. The best thing you can do to help OFAC understand the

case is to be as transparent as possible. Explain instances that may not add up and explain why the target is still worth sanctioning. This is especially important if your evidence includes personal accounts, since the credibility of the individuals providing information will be key.

### **Investigative Techniques**

In countries with a developed bureaucracy, much information may be obtained through relevant agencies and other such entities. In countries that lack a developed bureaucracy, you will be more dependent on personal accounts. This is also the case if your goal is corruption sanctions, since documentation may not be available due to the opaque nature of the activity.

For personal accounts, it is unnecessary to provide the name of the source to OFAC. Rather, OFAC needs to know how this person obtained their information, why this person is credible, and why any documents they may provide are credible. The question from OFAC’s lawyers is always, “How do we know this is genuine?” If OFAC cannot understand where your information comes from, it will not use it in the determination of sanctions.

### **Important Note: Be Careful**

Governments and oligarchs often will go to great lengths to shield themselves from accountability, including retaliation against individuals and organizations that seek to reveal their malfeasance. If foreign governments and oligarchs discover such investigations, the whistleblowers, NGOs, and independent researchers involved may put themselves at great personal, legal, or financial risk. Investigators must exercise extreme care, prudence, and discretion throughout their investigation to protect themselves, their human sources, and the relatives of the individuals involved. Less experienced individuals and groups are strongly advised to consult professional NGOs or investigators to assess possible risks involved in their investigation and consider their ability to provide adequate protections.

Sanctioned individuals and entities have recourse to an administrative appeal process and—once the appeal process is exhausted—to legal suits against

the United States to remove their names or organizations from the U.S. sanctions list. OFAC will protect sensitive sources during these administrative and legal proceedings if OFAC clearly understands the harm that disclosure of the source information could cause. Be explicit to OFAC about the sensitivity of your sources. Consider contacting OFAC via the email address below to address source protection concerns prior to submitting your documentation package.

### **Submission of Information**

Once you have collected ample credible information, you are ready for your initial submission. You can provide your information to OFAC by emailing it to [glomag@treasury.gov](mailto:glomag@treasury.gov) and to the Department of State by emailing it to [globalmagnitsky@state.gov](mailto:globalmagnitsky@state.gov). You may or may not receive an acknowledgement of your submission, and the Treasury and State Departments may or may not follow up for additional information. You will not know whether your information was used or not in the determination of sanctions. You may submit as much credible information as you deem necessary. You also can request a personal meeting with U.S. government personnel via these email addresses.

### **Build Political Will**

Global Magnitsky's sanctioning mechanism reads "may," not "shall." The President therefore is authorized to impose sanctions, but is under no legal obligation to do so. Making the case that sanctioning your individual is in line with U.S. interests is an essential step of getting them on the Specially Designated Nationals list.

Be prepared to counter arguments that the bilateral relationship of the United States and the target's country is more important to U.S. interests than sanctioning your individual and angering your individual's government. To apply sanctions, the Department of State must determine that the potential damage to bilateral relations is outweighed by the value of addressing human rights abuses and corruption through sanctions.

One central tenet for building political will is that the long-term security interests of the United States

are served when the rule of law, human rights, and democracy thrive across the world, but you may need to think creatively about how sanctioning a particular individual will serve U.S. interests.

For example, sanctions could:

- Send a targeted message to a government, a faction of government, or a specific military or security service unit while minimizing damage to the bilateral relationship
- Isolate an individual spoiler who is preventing reforms that would lead to fewer human rights abuses and greater rule of law
- Improve a regional security situation if they disable a dangerous element
- Provide added leverage in a diplomatic discussion

You will be most successful if you think of sanctions as just one part of a larger package of policies, such as diplomatic engagement, rule of law promotion, foreign aid, international organization accession, etc. The more comprehensive the policy package, the greater the opportunity to build the political will necessary to get your individual on the SDN list.

Finally, prepare for political blowback. Accusations of "external meddling" from the sanctioned individual's or organization's government may follow the imposition of sanctions. Be ready to talk about this eventuality when you are building political will, argue why it should be acceptable for the United States, and provide suggestions to minimize blowback.

### **An Additional Note on Corruption Sanctions**

Due to the opaque nature of corruption and its less precisely defined form, building political will for corruption sanctions may be more difficult than for serious human rights abuse. Be prepared to explain why corruption matters, how it works in your individual's country, and how it impacts the national security of the United States.

### **Go Public ... or Not**

Those who pursue Global Magnitsky sanctions debate whether to go public with their target or not. There are pros and cons to both approaches.

The process of getting an individual or organization sanctioned can be as important as the outcome. Part of the deterrent effect of Global Magnitsky is the very threat of sanctions, and going public may create the desired impact without even requiring your target to be included on the Global Magnitsky sanctions list. You might then build a campaign around the individual(s) or organization(s) that can accompany other, more traditional, forms of human rights and anti-corruption advocacy.

However, going public also makes it much more likely that your target may try to retaliate against you. By publicly naming and shaming, you are putting yourself in harm's way; be prepared for legal challenges and threats.

### **Engage and Follow Up**

Understand that only a handful of cases result in sanctions. The bar for sanctioning is high and the process is rigorous. Expect to spend a lot of time working to get your individual or organization sanctioned.

Do not get discouraged if your individual is not included in a particular tranche of sanctions—just because they did not appear in the most recent tranche does not mean that they are not being considered. Keep collecting and providing credible information and building political will. The cases with the most evidence and most articulate story have the highest chance to result in sanctions.

Members of Congress may also write letters to the executive branch requesting that information on a particular individual be reviewed. This could both expedite the process and be part of a public campaign if you have elected to go public.

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## **About the Helsinki Commission**

The Commission on Security and Cooperation in Europe, also known as the U.S. Helsinki Commission, is an independent agency of the Federal Government charged with monitoring compliance with the Helsinki Accords and advancing comprehensive security through promotion of human rights, democracy, and economic, environmental and military cooperation in 57 countries. The Commission consists of nine members from the U.S. Senate, nine from the House of Representatives, and one member each from the Departments of State, Defense, and Commerce.

Learn more at [www.csce.gov](http://www.csce.gov).

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<sup>1</sup> The Executive Order does not define “serious human rights abuses,” nor is the term defined elsewhere in U.S. law. It at least includes “gross violations of internationally recognized human rights,” codified as “torture or cruel,

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inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of the person.”

<sup>2</sup> The Executive Order states that “corruption” includes “the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery; or the transfer or the facilitation of the transfer of the proceeds of corruption.”

<sup>3</sup> “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 those persons, and other flagrant denial of the right to life, liberty, or the security of person.”

<sup>4</sup> The Office of Foreign Assets Control (OFAC) is the central office within the U.S. Department of the Treasury responsible for designating individuals and entities for sanctions. They construct the evidentiary memorandum that can, ultimately, lead to an individual being added to the Specially Designated Nationals (SDN) list.

# Global Magnitsky Human Rights Accountability Act

## Process for designating those engaged in human rights abuses and corruption

1. The President declared that the global “prevalence and severity of human rights abuse and corruption” constitutes a national emergency (Executive Order 13818, 12/20/17) and delegated implementation of Global Magnitsky to the Secretary of the Treasury (blocking assets), in consultation with the Secretary of State and Attorney General (denying entry into the United States).

2. The U.S. interagency identifies potential targets.

2a. State Department supplements U.S. interagency efforts by engaging all regional bureaus, embassies, and relevant bureaus to identify potential targets.

3. State, in conjunction with OFAC and other U.S. interagency partners, compiles draft lists of sanction designees.

2b. Treasury’s Office of Foreign Assets Control (OFAC) and State identify and prioritize potential targets based on U.S. interagency policy guidance, legislative timelines, and resources identified in the Act, including the intelligence community, U.S. missions abroad, non-governmental organizations, and Congress.

4. State sends names of potential designees to OFAC to be disseminated throughout the U.S. interagency.

4a. OFAC consults throughout the U.S. interagency on possible operational conflicts.

5. OFAC and Treasury’s Office of the General Counsel review target packages.

4b. OFAC develops target packages using multiple sources of corroborated information, including drafting an evidentiary memorandum with exhibits that provide reason to believe that the target meets one or more of the designation criterion set forth in the Act or EO 13818.

5. OFAC sends target packages to State for the Secretary’s concurrence, and to Justice for a litigation risk review.

6. Once list of new designations is finalized:

6a. Treasury prepares press documents and circulates them throughout the U.S. interagency for review.

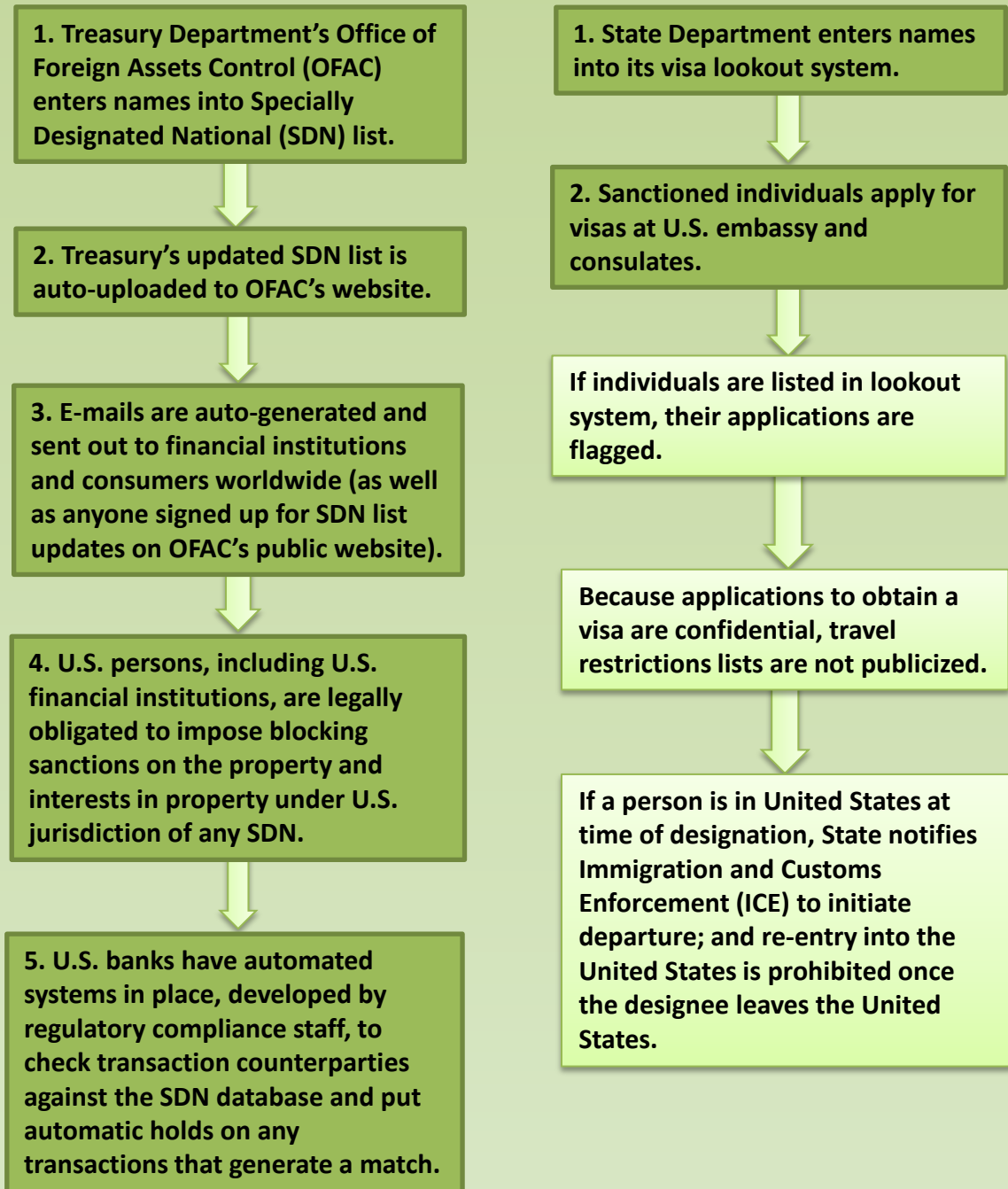
7. OFAC Director signs Blocking Memo; OFAC issues announcement; Treasury issues press release; OFAC transmits designation to the *Federal Register* for publication.

6b. OFAC begins technical preparations to update the Specially Designated Nationals (SDN) list and to notify consumers, especially financial institutions, worldwide.

8. State writes annual report to Congress on Global Magnitsky Act implementation (submitted December 10<sup>th</sup> each year).

# Global Magnitsky Human Rights Accountability Act

## Process for implementing visa restrictions and sanctions



*Source: Created by CRS using information from the Global Magnitsky Human Rights Accountability Act (Sec. 1263, P.L. 114-328; 22 U.S.C. 2656 note) and conversations with staff at Treasury and State, March-May 2018. Procedures may vary from year to year.*