

**The Global Magnitsky Act  
Frequently Asked Questions  
April 2019**

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**i. When was the law enacted? Where can I find it?**

The “Global Magnitsky Human Rights Accountability Act” was signed into law on December 23, 2016 as Sections 1261-1265, Subtitle F, Public Law 114-328, of the [FY17 National Defense Authorization Act](#).

**ii. What does the Global Magnitsky Act do?**

In its original form (not expanded by EO 13818) the Global Magnitsky Act allows (but does not require) the President to block or revoke U.S. visas and to block all US-based property and interests in property of foreign persons (both individuals and entities) who:

a) have engaged in extrajudicial killings, torture, or other gross violations of human rights against individuals who either seek “to expose illegal activity carried out by government officials” or “to 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 a fair trial and democratic elections;” or

b) government officials or senior associates of such officials who are engaged in or responsible for acts of significant corruption. Individuals who have acted as agents of or on behalf of human rights abusers or who have materially assisted corrupt officials can also be sanctioned.

**iii. When was the Executive Order issued? Where can I find it?**

Executive Order 13818 was issued December 20, 2017. It is titled “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,” and is available at [Exec. Order No. 13818, 82 Fed. Reg. 60839](#).

**iv. What does Executive Order 13818 do?**

EO 13818 significantly broadens the scope of the Global Magnitsky Act:

**Expansion of the activities actionable under the law.** The EO changes the requirement of “*gross violations of internationally recognized human rights*,” codified in 22 USC §2304(d)(1), to “*serious human rights abuse*”; it changes “*significant acts of corruption*” to “*corruption*,” and it eliminates the requirement that “*the facilitation or transfer of the proceeds of corruption*” only apply to transfers to foreign jurisdictions.

**What does this mean?** In practice, this change allows the USG greater latitude in making designations. The “serious human rights abuse” standard established in the EO includes both

governmental and non-governmental actors, is singular, and is generally understood to capture a broader range of crimes than the law’s “gross violations” standard (see the response to question vi below). The previous standard was limited to crimes perpetrated under the ‘color of law’ and was plural, requiring multiple incidents. Now non-governmental actors (e.g. terrorist groups and organized crime) may be sanctioned in addition to governmental actors, and there is no requirement for petitioners to show multiple incidents of abuse. The omission of the “significant” and “foreign jurisdiction” requirements expand the types of corrupt behavior that may qualify as actionable.

**Elimination of the law’s victim requirements.** Victims of a serious human rights abuse no longer have to be individuals specifically working to “expose illegal activity carried out by government officials” or to “obtain, exercise, defend, or promote internationally recognized human rights and freedoms.”

**What does this mean?** The elimination of the victim requirement allows Global Magnitsky sanctions to be implemented in response to a serious human rights abuse against any person, regardless of their status.

**Authorization of sanctions targeting a broader range of persons.** The EO authorizes sanctions targeting a broader range of persons associated with serious human rights abuse, corruption or the transfer of the proceeds of corruption. This includes:

- Foreign leaders or officials within entities that engage or attempt to engage in these types of activities;
- Any persons (including non-foreign persons) that do or attempt to materially assist, sponsor or provide financial, material, or technological support for, or goods or services to or in support of these activities;

**What does this mean?** The most significant change is the replacement of the law’s *de facto* “command responsibility” standard with a “status-based responsibility” standard. Under this “status-based responsibility” standard, it is possible for an individual to be sanctioned simply for his or her status as an official or leader in an entity that is engaged in serious human rights abuse, corruption, or the transfer of the proceeds of corruption.

Notwithstanding the USG’s ability to sanction an individual based on status within an entity alone, it is still advised to demonstrate command responsibility whenever possible. In general, command responsibility requires proving:

1. **Effective Control:** *The individuals who committed the relevant acts were subordinates of the superior person, either as a matter of fact or law.*
2. **Actual or constructive knowledge:** *The superior knew or should have known that subordinates were about to commit, were committing, or had committed relevant acts, given the circumstances at the time.*

3. ***Failure to prevent, halt, or investigate:*** *The superior failed to take necessary and reasonable measures to prevent or halt the acts or to investigate the acts in a genuine effort to punish the perpetrators.*
  
- v. **What are the requirements for obtaining sanctions for serious human rights abuse? What are the requirements for obtaining sanctions for corruption?**

EO 13818 allows the U.S. government to sanction any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General:

1. To be responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse.
  
2. To be a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in:
  - (i) corruption, including 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
  - (ii) the transfer or the facilitation of the transfer of the proceeds of corruption.
  
3. To be or have been a leader or official of:
  - (i) an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse, corruption, or the facilitation of the transfer of the proceeds of corruption relating to the leader's or official's tenure; or
  - (ii) an entity whose property and interests in property are blocked pursuant to this order as a result of activities related to the leader's or official's tenure;
  
4. To have attempted to engage in any of the activities described in the sections (1) or (2)

EO 13818 also allows the U.S. government to sanction any person (not required to be foreign) determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General:

1. To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any activity described in sections (1) or (2) that is conducted by a foreign person;

- (i) any person whose property and interests are blocked pursuant to this order; or
  - (ii) any entity including any government entity, that has engaged in, or whose members have engaged in, any of the activities described in sections (1) or (2) where the activity is conducted by a foreign person;
2. 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 pursuant to this order; or \*
3. to have attempted to engage in any of the activities described in sections (1) or (2).

*\* Under existing OFAC guidance, the property and interests in property of entities directly or indirectly owned 50 percent or more in the aggregate by one or more blocked persons are considered blocked regardless of whether such entities appear on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) or the annex to an Executive order.*

**vi. What constitutes a serious human rights abuse?**

The term “serious human rights abuse” is not codified in US law. At a minimum, it includes “gross violations of internationally recognized human rights,” as codified in 22 USC § 2304(d)(1):

*“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 the person.”*

In general, under the Magnitsky Act, the USG limits action to the crimes of extrajudicial killing, rape, torture, or enforced disappearance, and may act on cases of politically motivated imprisonment.

***Torture***<sup>1</sup>

Torture is an act that intentionally inflicts severe mental or physical pain or suffering for such purposes as obtaining information or a confession, as punishment, to intimidate or coerce, or for any reason based upon discrimination of any kind, when inflicted by, at the instigation of, or with the consent of a public official or other person acting in an official capacity, or where such a person has prior awareness of the activity constituting torture and breaches a legal responsibility to intervene to prevent it. Torture can only be committed against individuals in the offender’s custody or physical control.

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<sup>1</sup> This definition of torture is from Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the United States and 157 other countries are part. The language of the Article is simplified slightly here for ease of application.

“Severe mental pain or suffering” means prolonged mental harm caused by or resulting from:

- (1) The intentional infliction or threatened infliction of severe physical pain or suffering;
- (2) The administration, or threatened administration, of mind altering substance or other procedures calculated to disrupt profoundly the senses or the personality;
- (3) The threat of imminent death; or
- (4) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality. This threat may be directed against family, friends, or other loved ones.

A breach of applicable legal procedure standards does not automatically constitute torture. Additionally, pain or suffering arising from a lawful sanction does not generally constitute torture. For example, use of lawful and appropriate force during a lawful arrest would generally not be considered torture.

It is an open question whether or not the EO would expand the definition of torture to include acts perpetrated by non-state actors.

### ***Extrajudicial Killing***<sup>2</sup>

An extrajudicial killing (EJK) is deliberate killing of an individual and not authorized by a previous judgment pronounced by a regularly constituted court after a trial affording all requisite fair trial and appeal guarantees.

### ***Enforced Disappearance***<sup>3</sup>

An enforced disappearance (colloquially referred to as a “forced disappearance”) is when government officials, or groups acting on behalf of the government, or with the government’s direct or indirect support, consent, or acquiescence (meaning where a government official has prior awareness of the following activity and breaches a legal responsibility to intervene to prevent it): (a) arrest, detain, or abduct a person, or otherwise deprive a person of liberty, and (b) subsequently refuse to disclose that person’s fate, whereabouts, or deprivation of liberty, (c) thereby placing the person outside the protection of the law.

It is an open question whether or not the EO would expand the definition of enforced disappearance to include acts perpetrated by non-state actors.

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<sup>2</sup> This definition of extrajudicial killing is derived from the Torture Victim Protection Act of 1991 (28 USC 1350).

<sup>3</sup> This definition of enforced disappearance is derived from the Declaration on the Protection of All Persons from Enforced Disappearance, proclaimed by the U.N. General Assembly as a body of principles for all states in resolution.

**vii. What constitutes corruption?**

“Corruption” is broadly constructed, affording the USG flexibility. The EO stipulates, but does not limit, corruption to include the following acts: “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.” The EO omits a restriction in the law that the “transfer or facilitation of the transfer” must be to a foreign jurisdiction.

**viii. Who can be sanctioned under Global Magnitsky? Can American citizens be sanctioned? Can dual citizens be sanctioned?**

The Act only allows for the sanctioning of “foreign persons,” whereas EO 13818 expanded this scope to include “foreign persons,” as well as “any person” determined to have “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” otherwise sanctionable persons and offenses; or “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 pursuant to this order.”

In both the Act and EO 13818, the two sanctioning powers of asset freezing and visa revocation are predicated on the Presidential powers contained in the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) and the Immigration and Nationality Act (8 U.S.C. 1201(i)) respectively. IEEPA asset freezes can be applied to any person, regardless of nationality, whereas INA visa revocation is limited to enforcement against “any alien”.

**What about dual citizens?** Dual citizens (i.e. persons with both American and some other citizenship) can be sanctioned under both the Act and EO 13818. This is in accordance with the legal definition of “foreign persons” specifically invoked in the Act: section 595.304 of title 31, Code of Federal Regulation. This law states in full: “The term *foreign person* means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.” However, although dual citizens are “foreign nationals”, they are not “aliens” under the US legal definition,<sup>4</sup> which means that although they can be sanctioned and have their assets frozen under the IEEPA, they cannot have their American visas revoked under the INA (see above paragraph).

**ix. How recently must a crime have been committed for the USG to consider a designation?**

Generally, the USG won’t consider designating someone for a crime committed beyond five years from the date of the public announcement of the designation determination. The USG

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<sup>4</sup> “The term “alien” means any person not a citizen or national of the United States.” This definition can be found at 8 USC § 1101(a)(3).

considers sanctions to be a tool used to encourage policy or behavior modification, rather than as a punitive instrument. Under this logic, sanctions need to be administered relatively close in time to the sanctioned activity in order to have the desired effect, rather than to be seen merely as punishment for a past act. Furthermore, there is a preference for sanctions against targets engaged in ongoing or systemic violations, rather than in isolated behavior.

**x. What's the evidentiary threshold in practice? How do I build a case?**

The Act itself doesn't specify a burden of proof and/or evidentiary standard. The type of information or evidence that can be considered need not meet the formalities required in a court of law for admissible evidence. However, because the USG must be able to defend potential legal challenges to designations in U.S. courts, in practice the executive mandates an evidentiary threshold akin to requiring a "reason to believe" "based on credible information." As a matter of practice, the USG tries to exceed this level of proof in almost all cases.

To establish a "reasonable basis" of belief that an entity has engaged in the behaviors described by the EO each piece of evidence must be corroborated by multiple, preferably independent sources.

**Serious Human Rights Abuse Checklist:**

1. Was the victim subjected to a serious human rights abuse (i.e. killed, raped, tortured, or disappeared)?
2. Can the perpetrator (individual or entity) be tied directly or indirectly to the serious human rights abuse? Did the perpetrator *attempt* to engage in a serious human rights abuse?
3. For cases of "status-based responsibility," can it be shown that the individual was a leader or an official of an entity, including a governmental entity, engaged in, or whose members were engaged in, serious human rights abuse relating to the official's tenure? Or an entity whose property and interests in property are blocked pursuant to a GMA sanction as a result of activities related to the leader's or official's tenure?
4. Did the perpetrator either attempt or in fact materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of a serious human rights abuse? To a person whose property and interests in property are blocked pursuant to a GMA sanction? To an entity, including any governmental entity, that has engaged in, or whose members have engaged in serious human rights abuse?
5. Is the perpetrator 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 pursuant to this order?
6. Are the perpetrator's personal identifiers known (at a minimum, full legal name and date of birth)?

**Corruption Checklist:**

1. Is the perpetrator a current or former government official, or a person (individual or entity) acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in corruption? Did the perpetrator *attempt* to engage in corruption?
2. For cases of “status-based responsibility,” can it be shown that the individual was a leader or an official of an entity, including a governmental entity, engaged in, or whose members were engaged in corruption relating to the official’s tenure? Or an entity whose property and interests in property are blocked pursuant to a GMA sanction as a result of activities related to the leader’s or official’s tenure?
3. Did the perpetrator either attempt or in fact materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of corruption? To a person whose property and interests in property are blocked pursuant to a GMA sanction? To an entity, including any governmental entity, that has engaged in, or whose members have engaged in corruption?
4. Is the perpetrator 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 pursuant to this order?
5. Are the perpetrator’s personal identifiers known (at a minimum, full legal name and date of birth)?

In making determinations on the credibility of information, the USG tends to place weight on the credibility of the individual and/or organization making the claim. For example, for torture claims, reports from the CAT and CPT are afforded significant credibility. The credibility of unaffiliated individuals making claims is generally assessed using criteria such as whether the individual has a criminal record and/or can reasonably be assumed to be objective. Affidavits have rarely, if ever, been used to establish credibility. In cases of torture in a detention facility, whether other activists are known to have been tortured in the facility carries weight. In cases of command responsibility, and now status-based responsibility, the evidentiary threshold has been established by referencing an administrator's official job description as a means to demonstrate that s/he was supposed to know that violations were occurring and did nothing to stop such behavior.

**xi. Who can submit information on persons to be sanctioned?**

1. Congress
  - a. The President (now delegated to the Secretary of Treasury, in consultation with the Secretary of State and the Attorney General) shall consider information provided jointly by the chairperson and ranking member of each of the appropriate congressional committees (House Foreign Affairs; House Financial Services; Senate Foreign Relations; and Senate Banking, Housing, and Urban Affairs.) (NOTE: The President’s [signing statement](#) on the FY17 NDAA asserts executive privilege to decline to act on the Act’s requirement that the Executive determine within 120 days whether or not to designate a foreign person requested by the chairperson and ranking member of an appropriate committee.

In practice, this means that nominations jointly conveyed by a chair/ranking carry no additional requirements for Executive action, though as a general matter, the Executive tends to be responsive when any member of Congress submits a recommendation.)

2. Assistant Secretaries of State
  - a. “The Assistant Secretary of State for Democracy, Human Rights, and Labor, in consultation with the Assistant Secretary of State for Consular Affairs and other bureaus of the Department of State, as appropriate, is authorized to submit to the Secretary of State, for review and consideration, the names of foreign persons who may meet the criteria described in subsection (a).”
3. Foreign Governments
  - a. The President (now delegated to the Secretary of Treasury, in consultation with the Secretary of State and the Attorney General) shall consider credible information obtained by other countries.
4. Non-Governmental Organizations
  - a. The President (now delegated to the Secretary of Treasury, in consultation with the Secretary of State and the Attorney General) shall consider, “credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights.”

**xii. What forms of personal identifier information are essential to submit? What kinds are helpful?**

When making an SDN designation, the USG endeavors to supply banks with as much personal identifier information on sanctioned entities as possible. At a minimum, this generally includes a designee’s full name and date of birth. Other useful personal identifiers include the individual’s nationality, picture, address(es), and passport number or national identification number.

**xiii. Can assets blocked pursuant to a designation be forfeited (seized) by the U.S. government?**

Global Magnitsky blocks, in accordance with the International Emergency Economic Powers Act (IEEPA) all transactions in all property and interests in property of a foreign person if such property and interests in property are in the United States, come within the United States, or are or come with the possession or control of a United States person. In order to seize such property, the USG would generally have to bring a separate legal action based on certain predicate offenses, such as bribery, embezzlement or mail fraud. While DOJ has stated that forfeiture is possible under IEEPA, courts have generally found that IEEPA seizures have been upheld on the grounds that they were temporary (though indefinite). Human rights groups have at times expressed concern about a lack of due process protections associated with IEEPA procedures.

**xiv. How long does it generally take the USG to make a designation? How often will the USG make designations?**

Due to the complexity of the designation process, the average time for the USG to move from fact-finding to a designation is around ~6-9 months. In its inaugural year, the USG only released one tranche of sanctions. The number of tranches is likely to increase in future years.

**xv. What are the Global Magnitsky Act's reporting requirements?**

The act required an initial report to be filed with the Congress 120 days after enactment. The White House submitted this report, which did not include any designations, on April 20, 2017. Annual reports are required each December 10 (Human Rights Day).

Each report is supposed to include 1) a list of foreign persons sanctioned each year, 2) a description of the type of sanctions imposed, 3) the number of foreign persons sanctioned and on whom sanctions have been terminated, 4) the dates on which sanctions were imposed or terminated, 5) the reasons for imposing or terminating sanctions, and 6) a description of the efforts of the President to encourage the governments of other countries to impose sanctions that are similar to the US Global Magnitsky sanctions.

Reports may include a classified annex. NOTE: individuals listed in the classified annex are subject to visa restrictions, but not subject to asset freezes, as the latter action requires public notice. The unclassified portion of each reported is to be published in the Federal Record.

**xvi. Are the materials provided to the USG confidential? Can they be publicly divulged through FOIA or another means?**

The safety and security of people and groups working to build and submit case files to the USG is a primary concern. The State and Treasury departments have been clear that they treat the information shared with them by NGOs as confidential and there are no known cases of leaks of sensitive information related to the sanctions process. Still, it is unclear how much of the information sent by NGOs could potentially be exposed through Freedom of Information Act (FOIA) requests, a lawsuit by the sanctioned perpetrator, or some other process. NGOs submitting casefiles with sensitive material—especially information that could lead to the identification of at-risk sources—are counseled to mark the documents as “protected from public disclosure under FOIA Exemptions 4 and 6” or other language to that effect. Even though the USG is sure to make an effort to protect/redact sensitive information if ever requested, there is still no guarantee that no compromising information will be discovered.

For these reasons, as a general rule, no NGOs should submit any identifying information that they believe could lead to the increased endangerment of a person or organization if that information were to be later discovered by the sanctioned party, their affiliates, or their government. If there are concerns about specific victims or people who are identified in the evidence in the case, NGOs are counseled to anonymize that information in the submission (e.g.

use pseudonyms) and then offer to discuss any anonymized details with State and Treasury in person if the USG has any concerns or questions.

**xvii. Does the Act sunset?**

Yes, the Act sunsets 6 years after enactment, which would be December 23, 2022. No new sanctions can be imposed after this date if the Act is not reauthorized, but existing sanctions would remain in effect unless terminated.

**xviii. How are sanctions terminated? Is there any appeals process for persons added to the Specially Designated Nationals and Blocked Persons List (SDN)?**

Either the President or the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, may decide to terminate sanctions. Sanctions may be terminated for the following reasons: (1) credible information exists that the person did not engage in the activity for which sanctions were imposed; (2) the person has been prosecuted appropriately for the activity for which sanctions were imposed; (3) the person has credibly demonstrated a significant change in behavior, has paid an appropriate consequence for the activity for which sanctions were imposed, and has credibly committed to not engage in serious human rights abuse and corruption in the future; or (4) the termination of the sanctions is in the national security interests of the United States.

OFAC engages in a robust administrative appeals process for persons to contest their addition to the SDN list, which includes no cap on the number of appeals that individuals are permitted to file. For more information on OFAC's appeals process, see the [OFAC Resource Center page](#) on the topic.