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115th CONGRESS
2nd Session

Printed for the use 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

**Briefing of the
Commission on Security and Cooperation in Europe**

Washington: 2018

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ABOUT THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe [OSCE]. The membership of the OSCE has expanded to 56 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <www.csce.gov>.

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How to Get Human Rights Abusers and Kleptocrats Sanctioned Under the Global Magnitsky Act

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March 13, 2018

Commission on Security and Cooperation in Europe
Washington, DC

The briefing was held at 3:05 p.m. in Room SVC 212-10, Capitol Visitor Center, Washington, DC, Kyle Parker, Chief of Staff, Commission on Security and Cooperation in Europe, presiding.

Panelists present: Kyle Parker, Chief of Staff, Commission on Security and Cooperation in Europe; Paul Massaro, Policy Advisor, Commission on Security and Cooperation in Europe; Bill Browder, Founder and Director, Global Magnitsky Justice Campaign; Rob Berschinski, Senior Vice President, Human Rights First, and former Deputy Assistant Secretary of State; Mark Dubowitz, CEO, Foundation for Defense of Democracies; Josh White, Director of Policy and Analysis, The Sentry, formerly with the Department of Treasury; Adam Smith, Partner, Gibson, Dunn & Crutcher, formerly with the National Security Council and Department of Treasury; and Brad Brooks-Rubin, Managing Director, The Sentry, formerly with the Departments of State and Treasury.

Mr. PARKER. We have an ambitious agenda, so we'll go ahead and begin. Good afternoon. My name is Kyle Parker, and on behalf of the Helsinki Commission's bipartisan, bicameral leadership, I welcome you all to today's public briefing.

Our proceeds are being livestreamed, and we'll produce a formal U.S. Government transcript that will be published in hardcopy and posted on our website. We also intend to produce a condensed version of these proceedings highlighting specific points made by our panel in hopes that congressional staff and civil society will act on their expert advice, and thereby assist the U.S. Government in rigorously implementing the new sanctions authorities provided under the Global Magnitsky Act.

The panel we have assembled here includes the leading intellectual architects of the Magnitsky sanctions, as well as many of our Iran sanctions programs. These people succeeded in creating unlikely and durable coalitions in and out of government, and accomplished what many had previously thought impossible. We're also honored to have a slate of former senior officials who recently served in the National Security Council, Department of State, and Department of Treasury, all of which are key to coordinating and implementing U.S. sanctions. These panelists all have direct experience implementing

Magnitsky sanctions, and I'm sure will help all of us to have a more realistic understanding of what Global Magnitsky can and can't be used for, and most importantly how to use it effectively.

In December 2017, the Trump administration imposed the first sanctions under the Global Magnitsky Act. As some of you may know, Global Magnitsky, unlike Russia Magnitsky, is a permissive authority, meaning that the administration could easily have chosen to ignore it. That it did not—that it came out with what was widely regarded as a robust first list, and that we continue to hear from executive branch colleagues that the administration intends to impose Global Magnitsky sanctions on a regular basis, even quarterly—is a strong signal of what many of us hope will be regular and rigorous implementation of this new law, and powerful confirmation of what can be accomplished when public interest and pressure influences government to use its significant powers.

Finally, before turning the microphone over to my colleague Paul Massaro, who will moderate our discussion, let me say a few words about the Helsinki Commission's specific interest in this topic.

First, the Magnitsky sanctions began at the Helsinki Commission in a room like this just around the corner in the Capitol Visitors Center in 2009, when we first heard the story of Sergei Magnitsky, who at the time was being held under increasingly torturous conditions in one of Russia's infamous pretrial detention centers.

Second, the commission has a mandate to monitor the compliance of the OSCE's rich body of human rights commitments across the expanse of the OSCE's 57 participating States. And the participating States all agree to the abstract notion that they should keep their word, but it's only when we raise specific cases that consensus starts to break down and things begin to get interesting. Compliance with human commitments always and only happens in the individual case. And the Global Magnitsky Act places the United States on the side of the individual victim whose rights have been curtailed or even denied, just as it acts to protect our country from becoming a haven for murderers, torturers, and corrupt officials.

Thank you. And with that, I turn it over to Paul.

Mr. MASSARO. Thank you very much, Kyle, for those powerful opening remarks.

My name is Paul Massaro. I advise on international economic policy and anti-corruption at the commission, which means I have the privilege of working on the Global Magnitsky Act implementation here.

Today's event will proceed a little bit differently than our normal briefings. We have these wonderful panelists, and after everyone's presentation we will immediately open up with a Q&A segment. That means we're going to have a lot more Q&A today than we generally do so as to fulfill what we envision more of as a workshop or a roundtable than our standard briefing format.

So when you ask a question, the first presenter or the presenter that did the presentation you're asking on will provide an answer, after which I encourage any panelist to drop in with thoughts on that topic. But let's make a concerted effort sort of not to jump to the next presentation and stay on topic.

And also in your folders you'll find a variety of materials and op-eds from today's panelists, and also a few items that we've put together to help you navigate both the Global Magnitsky Act and the executive order from the administration that sort of loos-

ened the standard under which sanctions can be applied. But we'll get into that more with our great panelists today.

So, with that, I'll hand it over to Bill Browder. You'll start us off.

Thank you.

Mr. BROWDER. Well, welcome, everybody. Kyle, thank you for organizing this, and I'm looking forward to hearing all my colleagues speaking about this.

Kyle mentioned that the whole process started in a room like this. It actually started with me in a room like this presenting the story of Sergei Magnitsky to the Helsinki Commission. And we spent I guess what could be described as—or should I say the process moved in lightning speed by the definition of Washington, from an initial concept to a law named the Magnitsky Act of 2012. But it went from basically a piece of legislation introduced in October 2010 to a piece of legislation passed in December 2012.

The moment that it was passed, we realized that we had only gotten part of the way there, because having a law in place doesn't mean anything unless you can actually implement the law. And then a struggle—or a learning curve, depending on how you want to describe it—then began about how to get the U.S. Government to enforce the Magnitsky Act.

And so I'm here today to share with you a little bit about how we succeeded in getting some of the people who were responsible for the false arrest, torture, and murder of Sergei Magnitsky onto the Magnitsky list. And hopefully, in the process of giving you a little bit of background on what we did and how we did it, it will give you ideas on how to present information about other people to get them on the list.

And so let's see if we could just go to the first slide. [1]

Let me just briefly take you though a very abbreviated version of the story so you can understand what we're trying to do. The Magnitsky story all originated with a raid on my office in Moscow where the police seized a bunch of documents in the office—and you can see a bunch of vans and boxes in this chart in back of me.

And then, if we go to the next slide.

The documents were then used to steal $230 million of taxes that my firm paid to the Russian Government.

And if we go to the next slide.

And so Sergei Magnitsky testified against the police officers who committed this crime.

And if we go to the next slide.

And then those same police officers arrested Sergei Magnitsky.

And go to the next slide.

They put him in prison. They tortured him for 358 days.

Next slide.

And then they killed him on November 16th, 2009. So this was the crime that we first reported to the Helsinki Commission—to Senator Cardin, to Kyle Parker—and this was the crime that eventually led to the passage of the Magnitsky Act.

If you go to the next slide.

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[1] Slides are pictured in the Appendix portion of this briefing.

So the Magnitsky Act—and I'm speaking now about the Russia Magnitsky Act, which I have more familiarity with—but in terms of the takeaways from my presentation, the same thing could be applied toward the Global Magnitsky Act. But the Russian Magnitsky Act basically defined in very clear terms who was eligible for being sanctioned. And I'll just read it out to you. It said that—there's two categories. There's Magnitsky-related, and then there's other human rights related.

So, on the Magnitsky-related, basically, the law said anyone who's "responsible for the detention, abuse, or death of Sergei Magnitsky, participated in the efforts to conceal the legal liability for the detention, abuse, or death, benefited financially from the detention, abuse, or death, or was involved in the criminal conspiracy." So this was the Magnitsky-related wording in the Act.

And then the other wording, which applies to everybody else, "is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals," which is the relevant paragraph for everybody other than the people in my situation.

So we then looked—we had a mountain of documentary evidence, and we looked at the documentary evidence. We said, how does our documentary evidence fall into A, B, C, or D? And we ended up coming up with a list of 282 people that fall into one of those categories.

And then the information we provided—and this is probably the most important slide, make sure we have it there—is the name of the human rights abuser—you have to know who actually did it. Interestingly, the second thing, the date of birth—this may look sort of strange and simplistic and obvious to you, but in places where we didn't have dates of birth people didn't get sanctioned. And so this is a real how-to: If you want to get someone sanctioned, make sure you know their date of birth. In the case of our situation, almost everybody was in government, and so what their position was in government. And then the category of the violation under the law—was it A, B, C, or D? What role they played. The specific details of the human rights abuse. And then, most importantly, what was the documentary evidence that we could show that they did what they did?

And so, if you go to the next slide.

This is—there's no way I can explain this to you looking at it because the print is too small, but this is what we actually submitted to the State Department and Treasury Department. And I believe that this presentation should be in your package, and if it's not then certainly the Helsinki Commission will put it in their briefing afterwards. But this is a pretty good template of what you can use to submit—to make submissions to the U.S. Government on this—on your cases.

And I will just share with you, just to give you an example of one person that we did this to, just to give you an idea of what was included, if you go to the next slide.

So one of the people who was a real bad guy in our story was a guy named Artem Kuznetsov. He was a police officer, and he was the guy who fabricated a criminal case against Sergei and arrested him. And so what do we have here? We actually submitted a document here showing his involvement in the crime by showing the seals of Hermitage companies that were seized and his signature on it.

Next page.

We have, on the next page, a document which shows that he was appointed to investigate Sergei Magnitsky after Sergei testified against him.

On the next page, we have a document—and it's the one that's circled—where he was ordered to arrest Sergei Magnitsky.

And as a result of these documents—if we go to the next page, on page 14—you'll see that his name is now the one that's circled in red.

I should point out that a lot of people mistakenly think that if you have friends in Washington you can just come and denounce people you don't like in whatever countries and they'll be sanctioned, and I can tell you that there's nothing further from the truth. In my case, after having a law named after Sergei Magnitsky, after producing this type of evidence, the U.S. Government then had to go out and try to find an independent source to verify whether this information was correct. And so every single thing that we provided to the U.S. Government had to be independently checked. And that's why, at the moment, there's only about 39 people on the Russian Magnitsky list out of 282 people, because there's still a very long and arduous verification exercise that people have to go through in the government before they put people on the Magnitsky list.

So I would say that it's an extremely powerful tool, and it's a tool that's hard to implement. It's taken us a number of years to get those 39 people on the list. It requires absolute clarity of what the role and crime that the person did, and evidence that the person did it. And it's sparingly used, so if you want to get somebody sanctioned, you should expect to spend a lot of time trying to get them sanctioned. It's not going to happen easily. I'm hoping that as time goes on it becomes a more pedestrian exercise and there's more resources allocated to doing it, but it's still early days and hard to do. And so one's expectations shouldn't be high entering into this process.

I would also say—and this is important—that just the public discussion about the intention to sanction somebody is also a valuable tool in a human rights fight. You don't necessarily have to expect on day one for them to be sanctioned, but if one can publicize the roles that these people that have committed human rights abuses have done, if you then can get people interested in Washington—Members of Congress—in repeating and ventilating those stories and calling on the State Department and the Treasury Department to do something, just the uncertainty of the target person sometimes has the same effect of actually sanctioning them.

So that's my prepared remarks. I'm happy to give anyone any advice, questions, anything.

Mr. MASSARO. Thanks so much, Bill, for that detailed presentation. Could I just ask the first question here, and then we'll open it up to the floor? We have about 10 minutes for questions with Bill here.

I couldn't agree with you more that the public discussion is a very, very powerful tool in and of itself. But is that not also dangerous? Does that also open you up to lawfare-style attacks? And, if so, you know, what can one to do protect themselves from something like that? I understand you've faced stuff like this before yourself.

Mr. BROWDER. Indeed. And, in fact, other people on the panel have faced attacks by well-funded Russians or Ukrainian Russians who are doing this kind of stuff.

We have been sued. I was sued by Pavel Karpov, who was an officer in the Interior Ministry who was earning a few hundred dollars a month, who hired Andrew Caldecott QC, the top lawyer in libel in London, for a thousand pounds an hour to sue me, and they spent millions of pounds suing me. We won, but it wasn't pleasant and it cost a lot of money.

I would argue that it is a difficult issue. When people are well funded, they can try to shut you up. I would say in the United States it's harder to sue for libel and there's more of a freedom of speech than there is in the U.K., where I live.

I would also tell you that there is one place where you're protected absolutely, which is in congressional hearings. If you ventilate these issues in congressional hearings, there is an exemption from libel. It's called legal privilege, where you can't be sued for what you say in a congressional hearing. So that is one way to get around that particular issue.

But there's no doubt that when you're fighting evil, evil fights back, and particularly well-funded evil. And I've always told people that it's much easier to go through life trying to do good than it is to try to fight evil because of evil fighting back, but actually fighting evil probably generates a hundred times the amount of better outcome than just trying to do good.

Mr. MASSARO. Thank you so much, Bill.

Do we have any questions from the audience? Okay, well—oh, right there. Please.

QUESTIONER. My name is Rosie Berman. I'm with the Tom Lantos Human Rights Commission.

My question is about compiling this evidence. I know sometimes when you're looking for documentation in another country, particularly a country like Russia, have you ever had trouble acquiring the documents you need?

Thank you.

Mr. BROWDER. Well, I think every case is different. Certain countries are more bureaucratic than others. In Russia, there is an incredible, incredible bureaucracy in the law enforcement, and as a result of that bureaucracy one can gather lots of documents because there's all these procedures you can go through. But in other sort of lesser-developed countries than Russia, sometimes there's no documents at all.

There's been some terrible atrocities where nothing is documented. I don't know how one would gather documents of the Rohingya situation and things like that, where people are just fleeing burning villages and so on; or the mass rape of Yazidi women. There's a lot of terrible things that are hard to document, and the government does require documentation or credible witness testimony. And so it's not easy.

But it's not easy to prosecute any crime. And it's important, to the extent that one can think about it, when you're getting upset about whatever it is that's upsetting you, whatever atrocity you're witnessing, it's always important to think about, how am I going to document this, what evidence will I be able to present, because just the outrage about what happened is not enough to get anybody to do anything. That has to be independently and credibly verifiable.

Mr. MASSARO. Rob would like to jump in on this.

Mr. BERSCHINSKI. Yes. Just to follow Bill's point on evidence for a second, on the human rights side you mentioned the case of atrocities against the Rohingya, for instance. There are going to be some instances in which there's much less of a paper trail than, for instance, much of what Bill's put together in the Russia context over the years. In cases, as with the Rohingya or violations against the Yazidis, a lot of what the government is going to be looking for relate, for instance, to personal testimonies from victims. So we've had organizations that have supplied information that have been gathered after numerous structured interviews with victims—sometimes medical reports for those vic-

tims that have been able to seek medical attention, and corroborated evidence that points to specific abusers and people higher up in the chains of command of those abusers.

So the job of non-governmental organizations (NGOs) who want to turn over information to the government is to combine those firsthand accounts with a solid understanding of essentially the chain of command, so that the government theoretically can go after not only the person wielding the baton or the Kalashnikov, but also the person that ordered the crime from above. And again, just to reiterate what Bill mentioned, the U.S. Government is always looking for multiple corroborating sources. So for those that are, again, using the case of the Rohingya, doing interviews and bringing forward victim testimonies, to the extent of what your organization is doing, can be combined with, say, the work of U.N. special rapporteurs or other objective, credible authorities—putting that basket of information is what's going to make for the most compelling case.

Mr. MASSARO. Thanks, Rob. And if anyone would like to jump in on anyone's question, please just lean back and give me a little signal. Thanks.

Do we have other questions for Bill? Oh, wow. Okay, right there, please.

QUESTIONER. I'm Dr. Toac Mending Taout [ph], Boat People SOS.

First, thank you, Bill, for introducing me to Marcus Kolga in Canada. We worked together to get a similar bill passed in Canada. The question is, how can you take advantage of similar laws in other countries, now that you already have documented cases for use in the U.S. Government?

Mr. BROWDER. I'm not sure I understand. How do I take advantage of——

QUESTIONER. Of the law, similar laws, such as the Magnitsky law in Canada——

Mr. BROWDER. Right, right.

QUESTIONER.——a similar law in U.K. and Estonia and Lithuania.

Mr. BROWDER. Okay, good question. First of all, just to summarize for those of you who don't know this, there are Magnitsky laws now that exist in seven countries. The United States was the first with Russian Magnitsky. It then went to Global Magnitsky in 2016. On the same day, the Estonian Government passed an Estonian Magnitsky Act. Five months later, the British Government passed a Magnitsky amendment to their criminal finance bill. Canada in October last year, Magnitsky. Lithuania, Latvia, and then most recently and totally unexpectedly Gibraltar.

So I would argue—and we're now, trying to roll it out in Australia, France. We have hearings in the Swedish Parliament next week, in the Dutch Parliament. And so my hope is that this becomes a global standard, and it's done globally by all countries. Having said that, these are early days. It's very much of a guerilla war exercise. There's no consistency between the Magnitsky acts from country to country.

I would say the two most similar ones are the United States and Canada. Canada has a very strong replica and even improvement in some areas on the U.S. Magnitsky Act. In both countries it applies visa sanctions and assets freezes. In Britain, they just do asset freezes and no visa bans at the moment. In Latvia, Lithuania, and Estonia they just do visa bans and no asset freezes. In Gibraltar it's just asset freezes. We currently have a piece of legislation going through the British Parliament that should upgrade the Magnitsky law to a full U.S.-Canada version.

There is no process in Canada, yet, as far as I'm aware. I was pleased to see that the Canadian budget allocated $21 million to the Canadian Office of Sanctions, which means they can hire people and actually do this. But as far as I'm aware, there is no

process. And in fact, there's no process here at America. I mean, this is the first attempt at creating some process, by creating some discussion which hopefully will lead to something more concrete.

So the answer is, I don't know how to get anyone sanctioned in Canada. But hopefully we'll all figure it out together.

Mr. MASSARO. Thank you so much. We can take maybe two more questions, but then we have to move on. Any remaining time will be put into a general Q&A at the end. So if you have a burning question and you can hold it till the end, that's great. I know Kyle had a short question.

Mr. PARKER. I had a quick question. Kyle Parker, Helsinki Commission.

Bill, you've had incredible success around the world in getting other parliaments to adopt this. I was wondering if you could just very quickly tell us your experience in pressing these questions in foreign parliaments versus in foreign ministries, as well if you could talk a little bit about how sort of getting these things out into the open, into the press, and on the record has made a decisive effect on the success of this campaign you are now a leader on.

Mr. BROWDER. Good question. Let me just tell everybody here who has been victimized or represents victims of human rights abuses, don't expect any serious outcome just going to foreign ministries or state departments and saying: We've been victimized. We're really unhappy. It's not in the mandate of a foreign ministry of a government to do anything about human rights abuses. It all has to happen using pressure from the outside. And the pressure from the outside is what I've discovered is parliamentary pressure.

So the job of a foreign minister or the secretary of state is to have diplomatic relations with all countries, whether they're good or bad. But it's not necessarily the job of an elected politician. And so it's very easy to tell a story of an atrocity to an elected politician, and then having them put pressure on the government. And so—and this comes back to designations as well—if you want to get somebody on the Global Magnitsky list, it helps a lot not just to go to the State Department, but to go to the press and to go to whatever politician you think cares about your issue, and get them to bring it, them to ventilate it, and them to regularly call on the government to see what they're doing about it.

Because just by itself, going to the government I think will not have any impact, unless it's the most egregious case which has already been sort of accepted by the government as being something they want to do something about.

Mr. MASSARO. Well, that's actually a fantastic segue into our next presentation, from Rob Berschinski, on looking at sanctions in the context of a bilateral relationship and what you should be thinking about when you look to get someone sanctioned.

Thanks.

Mr. BERSCHINSKI. Great, thanks. And Kyle, Paul, thank you so much. Thanks to the Helsinki Commission for bringing us all together today.

I'm going to build on what Bill just spoke about, and move the conversation away from evidence for a moment and talk about building political will. I and some of the other panelists are working with what's now roughly 70 NGOs, working globally to collaborate around providing evidentiary packages to the U.S. Government in the hope that it will make designations in countries around the world. But bringing together the sorts of evidence that Bill mentioned is only half of the equation.

As he said, getting designations under Russia Magnitsky is very hard work. Well, it's doubly hard under Global Magnitsky. Because, as Kyle mentioned in his opening remarks, not only do you have to meet that evidentiary threshold, but you also have to convince the U.S. Government to take the action of making the sanctions designations, because the global law is elective while the Russia version of the law is mandatory. So before I dive into that topic, I'd be remiss if I didn't take the opportunity to say a few words about the alternative universe we'd be operating in if Global Magnitsky actually mirrored Russia Magnitsky in terms of being mandatory—given that we're seated in the one building on Earth that could actually do something about that difference. To do so, I just want to quote the executive order (EO) that President Trump signed back in December on Global Magnitsky, which affirms the following.

Quote, "Human rights abuses and corruption undermine the values that form an essential foundation of stable, secure, and functioning societies and have devastating impacts on individuals, weaken democratic institutions, degrade the rule of law, perpetuate violent conflicts, facilitate the activities of dangerous people, and undermine economic markets." The EO went on to say that, "Therefore, the United States seeks to impose tangible and significant consequences on those who commit serious human rights abuses or engage in corruption, as well as to protect the financial system of the United States from abuse." And it then goes on to say that the president makes the determination that, quote, "The serious human rights abuses and corruption around the world constitute an unusual extraordinary threat to the national security, foreign policy, and economy of the United States, triggering a national emergency which authorizes IEEPA (International Emergency Economic Powers Act)-based sanctions to deal with that threat."

So I just want to pause for a second and reflect on the power of those words that were issued by the administration a few months ago. What they say is that human rights violations and corruption undermine stable and secure societies, as well as economic markets, to such a degree that the appropriate response in a national emergency declaration that brings to bear extremely powerful and coercive economic tools. And my colleagues will speak about this in more depth momentarily. That's really strong stuff. And if the analysis is true—and I tend to think it's true, and an overwhelming body of evidence from Syria to Russia to North Korea indicates that it's true—it should be a no-brainer that a tool like Global Magnitsky should be used frequently, if not actually made mandatory like the Russian version of the law.

So while I'm here, I would urge those working at this end of Pennsylvania Avenue to think about ways in which they can strengthen the Global Magnitsky Act moving forward, in line with this logic. For today, Global Magnitsky is still elective which means, again, that the U.S. Government must be convinced not only that the evidentiary threshold has been met on a particular case, but that it's also in the U.S. national interest to sanction an individual or an entity. This, in turn, means that in order to maximize the changes that the U.S. Government takes action on a particular recommendation, NGOs, like mine, working to assemble evidentiary dossiers need to spend just as much care thinking about how to make the U.S. interest argument to the U.S. Government as they do making the evidentiary case. And that means showing impact from the perspective of the U.S. Government.

Impact can be measured in a number of different ways. The most straightforward way is simply calculated in terms of the amount of assets frozen under the asset freeze portion of the law. The most compelling arguments toward the U.S. Government likely

to also go beyond both assets frozen and simply making the point that the U.S. Government should act, because it says it stands against human rights violations and corruption. More sophisticated arguments can include why sanctioning a particular individual or entity can send a targeted message to a government, a faction of a government, or a particular military unit or a security service under a government, or isolate an individual spoiler or subcomponent or a government, or improve a regional security situation, or to provide leverage in a diplomatic discussion or a negotiation.

Making the case in each of these scenarios requires the submitter to be cognizant of both geopolitical dynamics and the internal political dynamics within the country in which they're working. So if, for example, in a theoretical country, and hypothetical, it can be shown that anticorruption reformers, working from within and outside a given government, are genuinely working toward change, but are being stymied by an entrenched, corrupt old guard, a case can conceivably be made that by using Global Magnitsky to target certain individuals you can have an outsized effect beyond the immediate effect both on those individuals and the larger deterrent effect. Yet, even in this sort of hypothetical, the most sophisticated sorts of arguments are also going to need to account for the potential blowback inherent in what would inevitably be described by those targeting as external meddling.

So in this hypothetical, the submitter might also want to say a few words about how a designation or designations could be structured to minimize the potential for such blowback, so as to empower reformers and civil society, and not necessarily hardliners or the old guard within a country. The same goes for a slightly different hypothetical, in which it's well understood that, say, commanders of an internal security service of a U.S. ally are consistently using torture or engaging in extrajudicial killings. One could make a case that a handful of Magnitsky designations, perhaps made only after diplomatic—quiet diplomatic outreach and other warnings from the U.S. Government—could sideline the worst offenders and open up space for a new approach.

In this hypothetical, designations could be accompanied by a pledge from the United States that would accompany the designations of, for instance, additional security sector assistance, right? So you're marrying up the stick and the carrot, and telling that government that the action of the designations is not necessarily an aggressive step on behalf of the U.S. Government, not punitive, but is an attempt to bolster the country's security and stability in the long run. And, again, that's very sophisticated, tricky diplomatic activity. But it's the way this tool should be used in plenty of instances. And it's the way in which we could apply this tool to allies and friends of the United States, and not just those that are in an adversarial relationship with the United States.

And then last, just to mention something Bill said earlier, in addition to making smart arguments toward U.S. Governments, advocates working in this space need to be sure to, of course, employ all the other tools in their toolbox. So that's letter writing, that's bringing on champions on the Hill and/or other noteworthy voices—anything that can be done to grow political will because, just as Bill said, at the end of the day the job of most U.S. diplomats is to maintain the bilateral relationship. And it's going to be exceedingly difficult to—not impossible, as we saw through the designations that were released in December—but difficult to make this case. So public pressure is really also the key.

Thanks.

Mr. MASSARO. Thank you so much, Rob.

Let me ask about those designations made in December. I know that you led a coalition of NGOs and sort of offering some credible information. You guys were sort of the first wave of what we hope is many, many waves in this. Could you speak to your experience thinking about these sorts of issues while assembling that package and leading that coalition of NGOs?

Mr. BERSCHINSKI. Yes, thanks. So in December the Trump administration, at roughly the 1-year point of the passage of the law, designated 52 individuals and entities. There were 13 primary designations on individuals, another 2 secondary individuals were designated, and then I think 37 related entities were also designated. As Kyle mentioned, I think most of those of us working on the outside felt like this was a successful first outcome. What we've seen over the course of the five or so years that the Russian version of the law has been in effect is that each year the U.S. Government has gotten, at least in my analysis, a little better at doing this, at setting up its process. And as you can imagine, the growth in complexity, from a law that looks at just one country to a law that conceivably can look at the 190-some-odd countries in the world, is exponentially more complicated.

And so what we're facing, among other things, at the State Department and the Treasury Department, apart from political will narrowly defined, is also a bandwidth issue. There should be no doubt about it. This is very hard work. It's very labor intensive. I think what's in today's headlines should only underscore the fact that our friends at State, and to a lesser extent Treasury, are laboring under really difficult conditions right now. And there just aren't enough people to do a lot of this work, irrespective of some of the great information that's coming in from the outside. So if I could just make a plug on that point too. To those that are thinking about how to strengthen the law moving forward and what the Congress can be doing, language that earmarks, for instance, certain funds to make sure that this tool is used in the future would probably be money well-spent.

In terms of what the groups that several of us coordinated over the course of the last year did, is we feel like it's better for human rights and anti-corruption NGOs to be working together to provide recommendations to the U.S. Government, than kind of inundating it with submissions from all over that are uncoordinated. So we're running a voluntary process in which groups agree to come together, bring these evidentiary packages, brainstorm how to make the most compelling case along the lines of what I just described, and hand over to the U.S. Government what we have. The government is under absolutely no obligation to take what we're giving them, but we're hopeful that what we can do is help them along the way in terms of doing some of the report that, as Bill mentioned, the U.S. Government then needs to corroborate.

What we saw out of, say, those 13-odd individuals sanctioned in the last round is that, depending on how you count, roughly half of them were, I think it's safe to say, impacted by either Members of Congress or members of civil society, either directly or indirectly. So that's not to say that what NGOs did resulted in six or seven designations, but between what this group and others did, I think we can notch up a few wins.

Mr. MASSARO. Okay. Thanks so much, Rob. Could we open it to questions once again, for Rob? Please, right there. If you could please state your name and affiliation. Thank you.

QUESTIONER. Yes. Woody Barnett from [CCP?] in Pittsburgh.

I was just wondering, what does the Helsinki Commission do to hold its member states accountable for the human rights abuses? The first speaker talked about some of the smaller states don't have the bureaucratic paper trails and all that. But what is the commission doing to address that?

Mr. PARKER. Holding events like this.

Mr. MASSARO. Yes. [Laughter.] Well, the Helsinki Commission, first of all, does not have member states. The Helsinki Commission is a U.S. agency mandated to monitor compliance with commitments that were made under the Organization for Security and Cooperation in Europe framework. And in order to do that, we hold all sorts of things. We hold events. We write letters. We interface with members. We bring in meetings. All sort of things like that. So, you know, that's what we're doing. We have both regional and thematic advisors. I'm a thematic advisor. I work on international economic policy. I think we have a lot of our regional advisors here today, actually, work on a number of regions. And all the countries of the OSCE region are covered. Does that answer your question?

Mr. PARKER. Paul, I think Mark has——

Mr. MASSARO. Oh, yes. Mark, please.

Mr. DUBOWITZ. Paul, can I? Just something Rob said—I mean, I think we all share this, having either worked inside the U.S. Government, trying to convince Treasury and State to do these kinds of designations. I'm wondering—is the Helsinki Commission positioned, for example, to host on its website a Global Magnitsky human rights and corruption watch list? And so the idea would be both your commission and outside groups could feed into you open source evidence of individuals and entities who otherwise could be sanctionable under Global Magnitsky, have not yet been sanctioned for whatever reason—mostly a resource issue inside USG. But you actually could have a watch list. And we're actually watching these individuals and entities.

That would be very useful from a naming and shaming perspective, which is often why these designations are important—I mean, the visa bans and the asset freezes are useful to the extent that there are assets within the U.S. jurisdiction and travel bans that we can enforce. But what's most useful is a naming and shaming component, sending a message out to the international financial community that these are people that you should stay away from, because we have deep concerns over their human rights abuses and corruption. And by merely having that watch list, you're not subject to the same designation thresholds that U.S. Treasury Department or State Department would be.

Is that within your mandate? Is there any reason why—I mean, I'd ask any of the panelists here—maybe Adam, others—why you couldn't do that or shouldn't do that? But it certainly seems like we could get a lot more of these sort of notional designations out there if we could do it through a watch list, as opposed to strict designations.

Mr. WHITE. Well——

Mr. DUBOWITZ. Tell me, Josh, why we can't do it.

Mr. WHITE. Sure. Can everyone hear me? So I think the argument against that is also the same argument against why we wouldn't want to share the names of possible targets with the media, and publicize it broadly, which is that it undermines the efficacy of the sanctions, right? If people know that they are on the radar for sanctions, they are going to prepare. They're going to start squirreling away their assets, setting up front companies. They are going to know that they're being scrutinized and they're going to get nervous.

And so when we look for impact as the Treasury office responsible for kind of determining which targets move forward and building those packages, what we look for are the people who are kind of the best-kept secrets, right? And so the people who perhaps are on the front page or people are associating with sanctions, but those who would have just as much impact may not be on everyone's radar. No one—you know, not everyone has heard of, but are just as vitally important to those who are committing human rights abuses and engaging in corruption.

I think that if you give people a heads up, not only does it give them time to prepare, but also for those of you who are overseas gathering information, collecting documents, doing source interviews—if your organization is associated with kind of doing the U.S. Government's bidding, you know, serving as sort of de-facto investigators for my former team at the Office of Foreign Assets Control (OFAC) or my colleagues elsewhere in government, there are serious kind of implications for safety and security. And so I think, one, there's an impact concern.

You—I know for a fact—and in the last round, we shied away from doing targets that were highly publicized because, you know, in terms of financial impact, we thought the jig was up and the cat was out of the bag. Now, with visa bans, that's a little bit different because there's very little someone can do to prepare for having their visa revoked. But in terms of hiding their assets, you know, once people are under suspicion, they take precautions to protect themselves.

Mr. DUBOWITZ. Can I just quickly respond to that? Because I actually think it's tremendously useful.

So, I agree—the best-kept secrets deserve to kept secret. And that seems to me a role for the U.S. Government to go after the best-kept secrets and to keep those people off any kind of watch lists. Then there are the worst-kept secrets, right? Those are the people that are so obvious in the public domain, are committing gross human rights violations and corruption. And there is, it seems to me, an opportunity to put those people on a quasi-governmental watch list, protected to libel suits, that has the name and shame impact I think we would all be looking before. And somewhere between the best-kept secrets and the worst-kept secrets is going to be a judgment call, right, about whether this particular entity or this particular individual should be publicized.

But it would seem to me that there is at least—would you agree that there are a certain number of entities and individuals who are the worst-kept secrets who already are out there. They've probably already structured their finances because they know they're on some kind of hit list at some point. Let's get that on a Helsinki Commission human rights and corruption watch list, a formal list that then I would guess—Adam, you would know this better than I do. Would that list be picked up by financial institutions, for example, when they are investigating whether to green light a financial transaction? I mean, it's a formal or quasi-formal government list. And those——

Mr. SMITH. It would be fed into the analysis.

Mr. DUBOWITZ. Right. So it would be fed into the analysis. You would actually get—to a certain degree, you would start to isolate these people from the financial system, even without doing a specific specially designated national (SDN) designation. And then we'd leave the best—or would leave the best-kept secrets to your former colleagues on OFAC.

Mr. MASSARO. So Bill would like to jump in on this real quick. Thanks, Bill.

Mr. BROWDER. I just wanted to point out that this has been a big learning process for me and for my team, seeing how the whole rollout of sanctions works, and who it affects, and what the implications are. And we started out—and I should say that it was effectively our idea, this—when Magnitsky was killed to do visa bans and asset freezes. But we discovered that actually there was a far better consequence to this than those two consequences that come from this. Which is that whether or not people know they're going to be on the sanctions list—and pretty much everybody who's, like, really a bad guy knows that that is coming down their way, and so they're probably already prepared even if they're best- or worst-kept secrets.

But the real value of putting somebody on the Magnitsky list is that they go on to something called the OFAC sanctions list. And when you're on the OFAC sanctions list, you're on the same list as ISIS and al-Qaeda terrorists and Mexican and Colombian drug barons. And every bank in the world subscribes to one of several data bases—one of them is called World-Check. There's other ones. And those data bases cross reference your accounts, who you hold accounts for, with people who are on the OFAC sanctions list. And if anyone is on that OFAC sanctions list, that bank will close your account the next day.

And I'm not just talking about U.S. banks. It can be a Venezuelan bank, or even a Dubai bank, or a Hong Kong bank. And the reason is because no bank wants to be in violation of U.S. Treasury sanctions. And the reason why they don't want to be in violation of U.S. Treasury sanctions is a very simple risk-reward. And that is that if a person who's on the sanctions list is transferring $1 million, the bank gets paid $125 to do that wire transfer. And if they get caught transferring money for that person who's on the OFAC sanctions list, they have to pay three times the amount of money that was transferred, or $3 million. So the risk is $3 million downside for $125 upside. And so every bank in the world will close your account.

And so actually the real value—and I'm not saying it's not valuable to ban visas and it's not valuable to freeze assets—of course, that's valuable. But the real value, the devastating value, the thing that absolutely impacts these people and makes them crazy, is the fact that they become financial pariahs once they get put on that list. And so I would argue against any secrecy about all this thing. Just get on with it, put those names out there, and make these people think that either they're on the list, or think there's a good chance they're going to get on that list. And then they become financial pariahs.

Mr. DUBOWITZ. Well, actually, Bill, that's exactly the reason—I think we're in agreement here—that's exactly the reason. The World-Check system is not going to only pull in—I think, and Adam will correct me on this—is not going to only pull in the SDN List. It's going to pull in lots of different information, including credible news reports from credible news sources. And here is the opportunity. If the Helsinki Commission had a list, right? A quasi-governmental list—well-vetted, open-source information, credible—that would be pulled in by World-Check.

Now, if you're a financial institution and a compliance officer making a decision about whether to greenlight a transaction, you check the SDN List, the individual's not on it. But the individual is on the Helsinki list. And you say to yourself, hmm, I bet you that anybody on the Helsinki list may one day appear on the OFAC list. I'm not going to greenlight this transaction for $125 wire transfer fee and find my bank in trouble today or in the future. And it seems to me, this is a way to significantly expedite the number of individuals and entities that we can actually get into a World-Check system, without waiting for OFAC which by its very constraints and resources is just not going to be able

to do, at the pace that we want, the number of designations that I think probably everybody in this room would desire.

Mr. MASSARO. Kyle, do you have something to say to this?

Mr. PARKER. Yes, Kyle Parker, Helsinki Commission.

Sorry to have a comment and not a question. But, one, just to confirm your point, Mark, in—I think it was April 26, 2010, Senator Cardin, then chair of the Helsinki Commission, released his own list of 60 high-level Russian officials that he believed warranted a second look by the executive branch, particularly citing, I think it was, Proclamation 7750, which was an executive order authority that could have been used to ban their visas and block their travel. I can't remember exactly how many months went by, but long before the law picked up steam and was headed for passage, they were already in World-Check. I think World-Check picked them up in a matter of months, as soon as the thing really got heated in the press. So there's that.

You know, I also think one of the problems, as someone who was involved in writing this original authority, one of the things we were very concerned about is how do we force the Department of State to ban a visa and say they've banned a visa for this individual? Because, of course, the Department of State claims to us that their hands are tied by the Immigration and Nationality Act (INA) prohibition on the confidentiality of State Department records. I think that's arguable whether what we were asking would have fallen under that. But the way we get the publicity is the SDN List, which has to be public by the nature of how it works.

And so, you know, I've often wondered, had we had it to do over again and we were living in a vacuum in an ideal world, we might have gone back to the Immigration and Nationality Act and waived the confidentiality requirements or made it permissible or whatever, for a specific category of undesirables, which are already mentioned in the INA, certain human rights abuses and corruption and things. If you said that in those cases—and I still—I think that's a legislative avenue that might be worth pursuing just because it leads the government in this direction of saying: If you were to go into the INA and make that section permissive, and not tell the State Department it has to, but say you are no longer able to essentially say INA 222(f)17—I think that's the section—precludes us from naming these individuals.

Because I used to read Iran sanctions lists, and it would say, okay, today secretary designated 50 individuals—scientists, government officials, blah, blah, blah, of Iran. But pursuant to the Immigration and Nationality Act, can't say who it is. And one of the things we found in the Magnitsky case, that it was the impact of knowing the name was just so much more powerful. If you didn't know the name, and, oh, maybe there were a million people on a classified list, who really cared? It was like a tree falling in the woods that no one heard.

And again, looking at I think some of Congress's intent here is not always to even freeze any money. Sometimes—you know, it's to block. It's also to say: You're not going to have any money in this system, even if you had any. And it's also that cost effective way to afford moral solidarity with those who suffer the abuse in the foreign country and say, look, the U.S. Government will not be an unwitting—you know, witting or unwilling legitimator of your tormentors. They are blocked from our system. Anyway, I know we need to move on, but——

Mr. MASSARO. Yes. Thanks so much, Kyle. And thanks for that idea.

I know there are more questions out there, especially on this idea, but we are going to move on. Try to keep it focused on implementation of the Global Magnitsky Act. And we're going to move to Adam Smith now, who's going to talk about the Treasury Department perspective, tell us, I guess, why the SDN List is important.

Mr. SMITH. Thanks so much, it's great to be here.

I was formerly senior advisor to the director of OFAC and sat on the National Security Council staff under President Obama. So I had an interesting view of both a front row seat in the implementation agency, as well as the interagency, which tried to, of course, leverage sanctions. As Rob and I were colleagues at the NSC and he knows full well that this was a matter very near and dear to my heart, as I know it was Rob's as well. And I'm very heartened to see that it's in real life and we're now talking about implementation, which is very exciting.

And when Treasury receives sort of an executive order like this—they don't really receive it, I mean, as much as they were a part of the process. But let's just sort of assume that they receive it in a mailbox and they need to implement. What do they do? Well, there are two issues that we need to focus on. One, I think, my colleague Josh is actually going to speak more about, that's the actual process. When you look at an executive order, how do you move the words into action, into SDNs, into sort of sanctions? The other is the strategic question of how Treasury is actually going to use this tool in a way that actually meets our foreign policy interests. And that's a much more nuanced question, and I'm going to focus most of my time there.

But first, I am going to talk a little bit about the process. And I'm going to let Josh fill in some of the holes after I sort of get through this. But generally, when—the beauty of an executive order that is under the IEEPA authority is that Treasury's done this before, right? These are professionals. And OFAC is a 100 percent professionalized agency. There are no political appointees there. So my former colleagues, Josh's former colleagues, most of them are still there. I left a few years ago, Josh much more recently. And so they've done this before. You see an executive order. You start with the prongs, which are the bases for the sanctions. Of course, here you've got incredibly broad prongs. In other words, human rights abuses and corruption can be almost anything you want them to be, because they're not defined.

And of course, even though OFAC as a rule has not favored designations on these bases—and we can talk about that; I think that's probably a fair statement—human rights and corruption have appeared in some other executive orders. You know, human rights have appeared in a Venezuela piece fairly recently and corruption in Zimbabwe and a few others. But it is still sort of a fairly new concept, in a way. OFAC as a rule would much prefer sort of strict behavior based, much more discrete actions to sanction folks. So there's been a bit of a challenge there in getting an internal definition worked up that's comfortable.

Then, of course, they'll think about numerous targets, think about foreign policy priorities, sort of what Josh was saying, who are the best sort of folks that we should be thinking about.

And then, of course, information collection. And we've talked about this a little bit, but I think it's important to stop here and really emphasize that OFAC is incredibly flexible with respect to the information it can get. It can use—unlike many other sanctions authorities globally, it can use intel, open source, NGOs, press reports—anything.

And especially for things like human rights and corruption, the role of open source and NGOs is absolutely critical, primarily because government-derived information from the intel side is often a lot more difficult, due to prioritization of collection assets, which are often not in places where some of these horrific things happen.

Again, OFAC does require collaboration. I mean, that's the key thing to remember here: A single source activity, a single source claim is not going to get you where you need to go. And then, of course, once you are on the SDN List—just to emphasize this, this is a death sentence in the financial world. I mean, to give you a sense of this, in Colombia they call being on the sanctions list, which they call Lista Clinton, which I think is interesting historically, they call it muerte civil. They call it civil death, being on the sanctions list. And it really is, because banks all over the world, even those entirely outside the U.S. jurisdiction, look at someone on the list and they just don't want anything to do with that person, that thing, that entity, that corporation. And they move far, far away.

And of course, the nice part of this evidence issue, just real quick, is that the evidence requirements are actually fairly modest, because this is not a judicial action. So whereas in a court of law you'd be beyond a reasonable doubt or a preponderance of the evidence, here, because it's an administrative action, you actually need a fairly modest level of reasonable basis to believe, which sounds like it's a pretty minimal standard. And it is, right? It's not anywhere near a judicial standard. That being said, and Josh can speak to this more than I can, OFAC is very, very serious about what it means to be an SDN. They take that very seriously.

They very often more than meet that standard. But as a general rule, you can actually get it at a fairly modest level.

So the process issue, which I think is fairly standard, of how they would work this—the questions then really become strategy. And when you think about the strategy of implementing a sanctions tool like this, there are a couple of questions that I'm going to pose as binary, but they're not really binary. But there are these choices as to how think about these sanctions tools that, frankly, are pretty hard to both do at the same time. And you'll see what I mean.

For instance, the first question I had when I was looking at this tool was, are we aiming for messaging or for impact, right? So the quintessential example for this is Joseph Kony. Joseph Kony, awful, awful warlord in Central African Republic, Uganda. He has been on the SDN List for a decade. Does he deserve to be on the SDN List? Of course, he deserves it. If anybody does, he does. He deserves more than that, but he's on the SDN List. However, there is a question about whether or not his ability to commit atrocities over the past decade has actually been implicated by the fact that he's on the SDN List.

He doesn't have a bank account, as far as we know, doesn't go to the ATM machine. And so the question is, is that messaging tool important enough, or do you need to have—you need to only have sanctions on people who actually need the international financial system, which of course is the modus operandi for how these sanctions actually work. So messaging versus impact.

One-off or network, is the next one. Will the tool be used for one-off sort of hit jobs, essentially, finding individual bad actors? Or are we going to look at the way we approach counter-terrorism and maybe counter-narcotics sanctions and look at the network where you sort of have a serial sanctioning of a network with the goal of disrupting and even dismantling entire groups of bad actors. So you've seen this in the terrorism context, very

effective in the narcotics context where you're looking at a cartel and trying to figure out which nodes are most important, and you go after not just one person or even two people, but whole groups of people at the same time, or over a period of time.

Third, and perhaps most importantly there, is unilateral or multilateral. So is the goal here going to be imposing just from the United States or are we going to use it—like the Global Magnitsky, these seven or eight countries that have Magnitsky—are we going to look at the U.K. or EU to hopefully follow us? Because the reality is that even though it's certainly true that the U.S. sanctions are uniquely powerful, the reality is—and we've seen this very clearly in the context of Russia sanctions especially—is that for some targets having parallel measures enacted by authorities other than the U.S. can be the difference between an annoyance as being on the sanctions list, and one that's really material. And that's an important distinction.

Now, if multilateralization is the goal, the strategic issue becomes even more complicated, because then Treasury needs to be very concerned about the kinds of intelligence it can share with its foreign counterparts, and what sort of evidence can be declassified. Now, we know this in the European context, and we've learned the hard lesson, because European courts have often delisted people—that is, removed them from sanctions lists, who have been sanctioned by the EU because the European courts have found a lack of due process resulting from a lack, in part, of an inability to share with European courts or those who are sanctioned U.S.-derived intelligence, right?

So much of the information that we gave to the Europeans—please sanction this al-Qa'ida person, this Taliban person—these people ended up being sanctioned. They then challenged those in European courts, and European courts let them out because we could not share that information with them, couldn't share the information with the courts. So we're very careful about that. In that context, I really think we can learn a lot from the counter-narcotics program, which I think is one of OFAC's jewels that is really sort of underappreciated.

Now, there are several reasons for its success, but one of them is its ability to multilateralize sanctions. And it does it in really interesting ways. They can share intelligence very quickly with foreign counterparties. And one of the reasons they can do it in ways that, frankly, the terrorism folks cannot, is that much of the information in those programs rely upon information that is, quote, "law enforcement sensitive." That's the level of classification, and not higher than that. So it's much easier to share that.

They're also very good at targeting individuals without targeting the countries in which they reside, which means that many of the people who have been sanctioned on the narco programs are actually close allies of the United States. So the two countries who have the most number of sanctioned parties in the whole U.S. Government are Colombia and Mexico, two very close allies of the United States. Yet, we've managed to do that without impugning the entire jurisdiction in which they're from. And of course, that really makes it a real important model, I think, for sort of this executive order going forward.

Two more sort of strategic choices. Again, I set them as binary, but they don't have to be binary. One here that's very important to remember is, is there an interagency approach we need to be concerned about? Another way to think about it, is this a pile-on exercise or is this a new-target exercise? So uniquely for this executive order, because of what it focuses on, the question is what is the strategy going to be with respect to other agencies in the U.S. Government?

So it's a strategy to pile onto other agency's efforts, like the Department of Justice's (DOJ's) Foreign Corrupt Practices Act prosecutions? Or are we going to target individuals or entities that other agencies can't pursue because of their particular operational or legal requirements of their authorities, right?

It's usually far easier to place someone on the SDN List than it is to build an FCPA case. That's not to say it's easy. It's not easy. But if you think about the level of proof you need, right, at the very least because the proof is so much more modest for an SDN listing, you need to ask yourself: Are you actually just building on a case that's already been made? And I say that what's interesting is that some of the cases, the initial Global Magnitsky designations, actually had FCPA or anti-money laundering case connections already. So the question is, was that a useful use of these very limited resources that OFAC has? Or should we be looking at cases that, frankly, cannot be made by other agencies because the evidence, frankly, is not strong enough? We can take advantage of the fact that evidence doesn't need to be as strong as a legal matter when we're working on the executive order IEEPA sort of front, as opposed to the legal front of DOJ.

Last—and I think it's related a little bit to the discussion that Mark and others have been having up here—is the goal, I call it, outreach or shock and awe? What I mean by that, is the goal here to actually impose sanctions, or to deter and change behavior? Because if the latter is the goal—in other words, if we're really trying to deter human rights violations, deter corruption, we need to structure an outreach strategy, right, to governments and private sector actors to warn them about the risks and, if relevant, to inform them what they need to do to avoid falling afoul of the EO or, in some contexts, getting off the EO list as well, right, sort of as an off ramp.

Now, this strategy, as Mark I know knows perhaps better than anybody, certainly outside of government, was incredibly effective in many contexts in the Iran context, right? When I was in government, one of my first jobs was to help implement secondary sanctions on Iran, focusing on countries that were still trading with Iran after we, frankly, asked them very politely not to. And they didn't listen, so we ended up having these secondary sanctions authorities.

But the reality is that very few entities ended up actually being listed. It wasn't because very few entities didn't need to be listed or couldn't be listed. But, rather, after people like me, with smiling faces, sort of sat down with them in terrible countries around the world—very sort of far, far, far flung—they decided it was not worth their while to continue engaging with Iran. It was much more reasonable for them to basically come in from out of the cold and not engage. And so the result of these sanctions, and I think the success of these sanctions, was that they no longer decided to engage with Iran. So I would argue the sanctions were incredibly successful, even though the secondary sanctions list was very, very small.

And so the question is, is that the model here? Or is the measure of success going to be the size of the list or is it going to be the change in behavior? And I recognize fully, especially from the NGO sort of community, it's very hard to sort of get a good bang for the buck for something that doesn't happen, right? If a human rights violation does not occur, it's hard to sort of demonstrate what the cause is, the effectiveness, and frankly the benefit of our advocacy that led to that outcome, because obviously it's going to be multivariant.

But the reality is, I think we can all agree, we'd much rather that be the outcome, right? We'd much rather have a tool like this prevent bad activities, rather than coming

on the back end of some horrific action and just sort of mop up in, frankly, a way that will never be sufficient, right? Because it's all fine and good to put people on the Magnitsky list, but I'd much rather people are not slaughtering the Rohingya. I'd much rather people are not sort of engaging in activities that cause them to be on this list.

With that, I think I will stop. And I'm happy to take questions now or in the broader question period.

Mr. MASSARO. Thank you very much, Adam. Very, very fascinating presentation.

Just a really quick sort of factual question, and that on is on the authority underpinning the narco. That's sort of the example that you talked about. What was the goal of that? Was that to, like, just knock these organizations out rather than deter organizations? Because, you know, with the Global Magnitsky authorities, they're so new we really are thinking about it. And I think deterrence is usually the capacity we see it in. And then, also, was there an avenue for NGO participation in the anti-narco wave?

Mr. SMITH. So to answer the second question, yes. I mean, absolutely. We often received inputs in much the same way from the narcotics side. The reality is that ownership structures are very opaque everywhere—[laughs]—even in the United States. But in the narcotics context, perhaps especially. And so we often did get a lot of inputs from outside the government in that regard that I'm aware of.

The authorities are slightly different. The legal authority is a different law. It's not IEEPA. It's the Kingpin Act, as a general rule. But I think we're losing the forest for the trees if we focus on that issue. The reality is that it's the same basic idea, right? You put someone on the sanctions list, and you are outside of sort of polite financial society, is sort of what the outcome is. It's muerte civil. To avoid that, he will do whatever he needs to do in order to avoid that.

Now, I'm not also—and the other thing which is fascinating here, and why I think it's very relevant to talk about narco, is that one of the reasons it's also successful is the type of person who is a narcotics trafficker. A narcotics trafficker is uniquely situated in a world in which they usually want to be in one part of the world—they want to be in the illegal world, namely make a lot of money from the cartels. And in the other part of the world, they want to be in the legal world. They want be an accountant, have a house in the United States, send their kids to college in the U.S., et cetera. There is this need. And so they are uniquely vulnerable, right? If you say that you are on the SDN List, you can no longer have your house in the United States or send your kid to college here, they will almost immediately sort of move off. And so the success here is based on that sort of vulnerability.

People who commit corruption in many contexts, especially global corruption, are in exactly the same circumstance, right? Because they need to have access to London, to New York, to Tokyo, to Hong Kong in order to, frankly, make their world. And so if you deny them that ability, much like the narcotics context, I think you can really sort of—not just hit them off, right, sort of make sure they can't do it. You can actually stop their behavior. And the most success in my mind, for the narcotics sanctions programming, is not just sort of the destination of the cartels, which I think many of them have been in part because of the sanctions, but frankly the delistings. People who get delisted—the most active sanctions program in the U.S., with respect to both putting people on the list and taking them off the list is narcotics, right? It's because they've stopped that behavior which, again, is what we're after.

Mr. MASSARO. Very, very interesting. Thank you. We have time for one or two questions. Ilya, please. Could we get Ilya a microphone, please?

QUESTIONER. Ilya Zaslavskiy, Free Russia Foundation.

I have a question about—you mentioned these people need access to capital. I have Rotenberg brothers in mind. So they're already on Ukrainian sanctions. But experts who follow them say that they very successfully avoid or circumvent sanctions, at least in Europe, at least in terms of their assets. And now their relatives and their associates are getting some of that. So my question, do you think it's valuable and necessary for NGOs to try to add them to, say, Global Magnitsky Act? Is it wise to put the same people on different sanctions?

A second question, pretty much related to this—do you have any moves about Countering America's Adversaries Through Sanctions Act (CAATSA) and more sanctions related to that? Because there has been some news about it. But so far only Kremlin report has come out, which is just a name list without any visible consequences for these people.

Thank you.

Mr. SMITH. Right. So, it's an interesting question. Because if you do look at the SDN List, what you see for many entities is that they're sanctioned under more than one authority. But I think that that is—if I was an NGO on the outside looking in, I would not focus on that. I mean, the Rotenbergs are already SDNs. Many of them are, right, father and the two sons, if I'm not mistaken. They're also on the EU list. I mean, but there's another part of this, of course, which is the enforcement component, right? And that's, I think, another effective sort of way to sort of shine the light.

If there is a situation in which you're seeing that the Rotenbergs or whoever are still profiting in a way that suggests that they're not actually being sanctioned because they're still living the life that they used to live—in the U.S., in Europe, or what have you—I think that's another useful tool with respect to sort of what an NGO can do. Not just putting people on the list, but saying, wait a second, these people are on the list, however, they're still sort of engaging. Because the other component of sanctions, at least from a U.S. perspective, is that what you could then be focusing on is something called material support, right?

So if someone is on the sanctions list, and then they are being provided support to by someone else, that someone else could theoretically get in trouble as well for providing material support to that person. That could either be an enforcement action, if they're a U.S. person or an EU person, or they could become SDNs themselves depending on the circumstance.

On CAATSA, I'm no longer in the government, so I have—your guess is frankly as good as—better than mine, to be perfectly honest. I think we were all very intrigued by the combination of the Forbes list and the Kremlin phonebook that came out at the end of January, and we'll see what happens. I've heard the same rumors. It's not clear to me whether or not the new sanctions are in line with the 241 list, which is what those lists are, or whether it's some other components of CAATSA, but we'll see.

Mr. MASSARO. Thanks very much, Adam. And material support and facilitation is in the Global Magnitsky Act as well.

Mr. SMITH. Exactly, because those are IEEPA concepts.

QUESTIONER. Thank you. My name is Ulrich Mans. I work for the European Union here as a political advisor on human rights.

Question for Adam and also to Rob. Earlier on, Adam, you mentioned that it can be very difficult to get the information that you have here in the U.S. to actually get, for example, across the Atlantic. Does it also work the other way around? For example, when submissions are being made here in the U.S. by entities that are from outside the U.S. are there particular barriers, particular restrictions, particular corroboration methodologies that apply that are different from, let's say, the average U.S. NGO? Sort of reaching out to Rob's comment about the coordinated effort, how difficult is that with NGOs that are based elsewhere, whether it's Myanmar or Ukraine or elsewhere?

Thank you.

Mr. SMITH. The reason it's difficult is not because the information—leaving aside sort of information security, personal information, whether it can be shipped out of Europe and all the rest. The reason it's difficult is because of the legal deference that's provided the listings. In the United States historically we provide significant deference. In other words—which means if OFAC puts someone on the list it is a difficult job—not an impossible job—but a difficult job to challenge that in a court of law. In the European context, for various reasons, it's become a lot easier. Still not a cakewalk by any means, but there is now a pretty healthy body of jurisprudence and, frankly, a pretty healthy bar of lawyers—primarily in London, but elsewhere as well—who help people get off the list.

And the way they do that—one of the primary ways they do that is by looking at the evidence that they have and saying this is not sufficient. The public evidence is insufficient as a matter of due process to keep my client on this list. And the courts in Europe, if they have access to no other information, which they often don't, can't do it. They agree. In other words, they say, you're right, this is not from a due process perspective. In a court in the United States the court can review classified information, can reviewed unclassified—can basically have the entire body of evidence, the entire package that Josh and his former team put together can be reviewed by a U.S. court. The same cannot be reviewed by Europe.

The structural issues here are actually interesting, to give you an example of one of them. So, in the United States context, very sensitive information has to be reviewed in what's called an SCIF, a secure compartmentalized information facility, with only cleared people, right? So the judge would be cleared, the clerk would be cleared, and they would review this evidence. In the European court, the European Court of Justice, which is the highest court that deals with this in Europe, that's in Luxembourg. And in Luxembourg itself, which is where the court is, there is one SCIF in the entire country. Do you have any guess where it is? It's not in the court. It's in the American embassy, right?

And so the court itself is not even structurally set up in order to have information that would be shared with it by those in the United States, who are often the ones who derived the information, so they could look at it even if they were cleared, and even if some of the other sort of concerns were sort of met. So it's a real challenge here. It's a much, much easier thing to sort of bring evidence over here, and have it be used in a system that leads to a designation, than the other way around, especially when you're dealing with government-derived information.

Mr. MASSARO. Rob.

Mr. BERSCHINSKI. The answer on my end is much simpler. We are already being engaged basically through word of mouth as what we're trying to do grows through events like today, by organizations all over the world, who want to turn the reporting that they're doing on the ground into some sort of demonstrable impact. What started out last year as a couple of dozen—mainly the large international human rights NGOs are growing, somewhat exponentially, to kind of country-level NGOs, who have a much better sense of what's going on within the four corners of their borders, and often are going to have access to information that others don't. And so it's just a matter of bringing structure to all the information that's out there. And that's what we're trying to do.

Mr. MASSARO. Well, thank you very much. We're now going to move on to our next set of speakers this time around, Brad and Josh. We've heard the strategic perspective of the Treasury Department, and now we're going to get down a little bit more into process. Specifically, also looking at the construction of a corruption targeting package, which is a bit confusing. So please, Josh and Brad.

Mr. BROOKS-RUBIN. Thank you. And thanks to the Helsinki Commission for having us. In all the sanctions strategy we're talking about here, I guess I'm an example of panel speaking strategy, which is when you get invited to a panel hire somebody who is a real expert on the subject and bring them along. That's what I've done with Josh, and so I'm going to really let Josh focus on this, because he was really in the weeds on this. The panel speaking "don't" is don't speak after a bunch of other really smart people who have taken all your points, so I'm going to just try to highlight a couple of very specific strategic issues, and then let Josh get more into the process weeds.

Corruption is—as has been mentioned a couple of times—corruption as a prong is actually relatively—has not been a significant part of a lot of executive orders. Partially because evidence can be hard. The definition of corruption can be, you know, debatable. And it's been one of these political footballs within the government when thinking about designations in the past. So now that we have a clear authority on it, there's some education you need to do with the government about why corruption matters in your countries. We at the center work on just a few countries in east and central Africa. And we know these cases very well. But it takes a lot to get actors within the U.S. Government, even if they follow these issues, to see that corruption is actually the way into the objectives that they are trying to reach.

So you know your case very well, whatever country it is that you may work on, but you have to put together a dossier and a set of evidence that tells a story about why that person and that network matters, and why corruption is the right tool to achieve the objectives that you're talking about. And you can't just tell that story once. You can't put together a really good dossier, deliver it, and then sort of wait for the press release to come out. It takes repetition. It takes a lot of engagement, follow-up. You know, the coalition that Rob and others have led has been a very effective way to do that. But build your own relationships with the U.S. Government and continue to tell the story over and over again so that you can get the right people on the list.

I think two other very quick points I want to make is, be strategic also in who the choice is. The most corrupt actor in a society may not be the right target. Rob gave a lot of very good examples of the strategic objectives we try to achieve with sanctions, and Adam mentioned a few more, especially on the network side. So for example, one of the South Sudanese individuals designated under Global Magnitsky, Benjamin Bol Mel, not a household name necessary, unless you follow South Sudan closely, but someone upon

whom a series of network designations can be built, and who embodies the system of corruption in South Sudan. That was sort of the goal in choosing that target as opposed to say, maybe, the targets that have been much more in the headlines. Which then sort of picks up on Adam's very important point about sort of the network and really what's the impact. How are we going to be able to really ensure that this civil death is achieved in a really strategic way that can change the dynamics on the ground?

The last sort of strategic point I want to make is sort of my chance to cite one of my favorite musicians. Chance the Rapper has a line, "Sometimes the truth don't rhyme." And advocates have a very hard time sometimes acknowledging nuance, or acknowledging gray area, or not overdoing their cases. And I think it's very important in my—in a previous life, I was in OFAC counsel's office, where the job is often to be difficult on these cases and ensure that when the government gets sued that we'll have a case to present.

And so there will be a lot of questions. No matter how good your evidence is, a lot of questions. Help the folks at Treasury and State identify, hey, this doesn't exactly add up or we don't have all the evidence here. Here's our explanation about why. Really direct people through, and explain why maybe sometimes the truth don't rhyme, but we can still get to a point where we can meet the standards of evidence as Adam described them.

And then finally, I think it's very important—where are there other tools that may be used? And Adam made this point, it's great that we're doing this. It's great that we had this first round of designations. We could quickly get to Global Magnitsky fatigue very soon, and if it starts to be the answer for everything. And I think, again, thinking about strategy, thinking about what other sanctions authorities or other legal tools apply is very critical, because you're going to answer the question, why this as opposed to why something else.

So having given you hopefully some more thinking about where corruption fits in this, I'm going to turn it over to Josh, who was in really the thick of it in Treasury, putting these together.

Mr. WHITE. Thanks, Brad. I'm going to talk a little bit about the mechanics of the targeting and designation process, which is kind of broadly the case for human rights and corruption targeting, but then talk a little bit about the nuances of targeting corruption.

What I would say with respect to Global Magnitsky, one thing important to keep in mind is I think it's reasonable to expect that the Executive Order, which is EO 13818, is going to be the authority that's almost certainly going to be used moving forward. So while the Global Magnitsky Act kind of built the foundation and kind of set the precedent for the EO to be implemented, when you're looking at the criteria that Treasury, that the targeters are going to use in order to build their cases which is actually going to be included in the administrative record, I would look to the EO because that lays out kind of what activity, what criteria is sanctionable. And so the same people who are looking at the abundance of information in order to build the packages are going to be looking at that same set of criteria.

For corruption, it would be Section B. And as others have alluded to, it's pretty broad, and it was intentionally written so. Corruption has been very challenging for targeters to build for a number of reasons: the availability of information, the recency of information—oftentimes, cases of corruption aren't discovered until years later. And some other executive orders, such as Venezuela or Syria, are written in a way where you have to show that the activity is ongoing.

So when we looked at what we would like to do with the Global Magnitsky authority, the new kind of implementing EO, luckily they were able to give us, the targeters, an opportunity to kind of pull the best language, the most solid and foundational language, from other executive orders. That really gave us broad flexibility in order to target really the most egregious targets that we thought warranted designation.

So how do you build a case? Start with target identification, and there are lots of ways that Treasury and the interagency partners it works with—there are lots of ways that they do that. Obviously, working with NGOs such as Rob's coalition. But I would be remiss if I didn't say there's also email addresses for tips. So, for Treasury, it's glomag@treasury.gov. [Laughter.] And for State—it would have been great if we had synced this up—but it's globalmagnitsky@state.gov. And that's an opportunity for the public, whether you're an NGO or just an informant, someone who knows something, to write in. You might get an acknowledgement. You definitely won't hear back about whether your information was used. But perhaps, you know, in instances they might follow up with additional questions. So there are lots of ways to kind of put a target on the radar of those who are looking at the universe of what's possible.

I will say when it comes to targeting corruption and human rights abuses, we view it as a target-rich environment. There were no shortage of names when we kind of were assessing the first tranche of options. And so really then it comes to kind of where do we have the strongest information, where are we going to have the biggest impact, as well as considerations like how do we have a geographically diverse target set, and one that kind of balances both corruption and human rights.

The team at OFAC works with their counterparts at State, elsewhere in the interagency, but also foreign governments, law enforcement, and elsewhere to kind of get leads and tips about kind of who might be appropriate for sanctions. And I think some folks have covered a little bit about that. But I think what we look for first is where there is the most kind of abundance of information.

So what the targeters will do is draft a legal memorandum, which we call an evidentiary, and this evidentiary puts forward the case for why someone should be sanctioned. And the criteria that they're using is from the relevant executive order, in this case EO 13818. The evidentiary puts forward a number of pieces of information, but what each kind of individual example must show is that the individual or entity meets the specific criteria in the prongs.

What I would say is, when you're thinking about what information is helpful to provide investigators, don't self-center. Something might seem important to you or it may not seem important to you, but could be the last missing piece that the targeters need in order to corroborate something that might already be on the radar through other channels.

Identifying information is critical, as my colleagues have said, but think creatively. So not just full name, date of birth, place of birth. Passport numbers are gold. We love having ID numbers, passport numbers. But also things like nationality, which sometimes surprisingly can be difficult to demonstrate. I think a lot of people assume or assess that someone happens to be a citizen or a national of one country, but we actually have to show a piece of evidence. We have to cite to an exhibit that demonstrates that. Even things like gender are helpful to provide. And then, of course, for entities, you know, not just the address, but registration license numbers, things that show up on documents that are sector-specific for ID codes.

If you don't have identifiers, you're not going to get your targets put on the SDN List.

It's absolutely critical, the more the better, because the OFAC Compliance and OFAC Licensing Divisions have to screen every time that there is a possible hit. Every time there's a false hit you'll have licensing requests. You'll have inquiries to the compliance hotline. So we want to make sure that banks are actually blocking the funds for the people who we're intending to go after.

The next kind of body of information we need, which is really the core of these evidentiary memorandums, is the basis for determination. And this is really the guts of the evidentiary, the derogatory information that shows specific examples of acts that have been taken that meet the criteria of the executive order. We need to be able to use multiple sources to corroborate each example, and ideally those corroborating sources all know about the same kind of activity but gain the information in different ways.

Recent information: GLOMAG is interesting in that the language in the criteria is written in such a way that the activity could have taken place in the past, and we don't need to demonstrate that it's ongoing, although that's ideal. Sanctions are meant to elicit a change of behavior, is kind of the policy consideration behind it. And so what we want to do is show that there's recent information, ideally within the past 5 years—in an ideal world that would be within the past year—to show that this person or this entity is engaged in the activity of concern, that they are kind of still up to malign activities or illicit activities. More historical information is still useful to demonstrate a pattern of behavior, but certainly the more recent the better.

What I would say is often a challenge for NGOs is not narrating or providing your own assessment. The further away that the investigators get from the primary source of the information, the harder it is for us to use or for them to use the information.

So, for example, if you can share—names of the sources are not necessary, so if it's from a person, or if it's from a contact, probably not necessary. But how that person would have known the information, how the person got the information, and why the person would be credible, or why the documents would be credible. Oftentimes, you know, attorneys will ask how do we know this is a genuine, legitimate document, and we have to be able to have a good answer for that in order to actually use that information.

OFAC has ways of protecting that information. There's protections for sources and methods, and so there are ways to keep that information protected from release. But if they can't understand where the information came from, the targeters are not going to use it. Understanding kind of how the source knew.

And then, finally, exculpatory information. If there's information that you know to be exculpatory, it's better for you to flag it for the NGO that you're going through or for the tip line or for the person you're interacting with in the U.S. Government ahead of time because, really, if it comes about later in the process, I think it stands to undermine the credibility of the source. So being kind of transparent about what might negate the story that you're trying to tell, or might kind of contradict the facts. It doesn't mean your information won't get used, it just means that we're seeing the full picture.

And finally, just specific to building corruption cases, what I would say is that using the flexibility in the EO, I think oftentimes it's difficult to have kind of those solid primary sources because, by nature of corruption and money laundering, those kinds of activities are in the shadows and are hidden from all but a few trusted sources. And so what it's become is important to go out to the field. Having the targeters or people

throughout the U.S. Government and in the private sector meeting with those who might be aware of something; or, you know, obtaining documents from a whistleblower so that they can provide that information that might not otherwise be available to the U.S. Government.

I think that was pretty well done in our first major tranche. And I think what you'll see now is a standardization of the process, where obviously this evidentiary memorandum, after it's kind of constructed and it goes to review, it's signed by the director of OFAC, that's how someone gets on the sanctions list. But really, the bulk of the work, the biggest challenge, is getting to sufficiency so that the targeter can have sign-off from the lawyers, and that they can ultimately put it up for the director of OFAC's consideration.

Mr. MASSARO. Thank you very much, Brad and Josh.

A really quick follow-up question from me. And that is, the Global Magnitsky Act has a provision that specific Members of Congress can write letters requesting that particular information or particular individuals be reviewed to be put on the sanctions list. At what point in the process are you guys looking at this sort of a thing? And how does that impact your decision?

Mr. WHITE. I think it's an ongoing conversation between the NGO community, quite frankly, the Hill, and the folks at State and at OFAC who are considering the different targets. I would say that there are oftentimes a large amount of overlap between the targets that are considered or put forward by the Hill and that are ultimately considered by OFAC.

One point that I do want to stress, which I think has often been a misperception, is just because a target hasn't gone out kind of in the first tranche, or it's the next tranche, doesn't mean that ultimately that person or that entity won't be sanctioned. And I think that's something that we've tried to underscore, is that sometimes there's legal sufficiency reasons for why we don't move out with the target. We simply don't have enough information at the time. Other times, there might be engagement or other considerations. Or we kind of look to the kinds of strategies that Adam was articulating earlier in kind of trying to decide what the right fit is.

So it's an ongoing conversation. The challenge for the targeters, and I think the frustration of those outside of kind of the group of those within the U.S. Government that works on these issues, is that we can't tell people—even our legislative branch—we can't tell people who we're considering for sanctions. We can't reveal who we're working on because of a number of reasons, but largely due to impact, largely due to considerations for what we're hoping to accomplish by putting them on the list of specially designated nationals. So it's a one-way street in terms of the information. Congress provides us with the targets. They certainly ask about them when we brief them later on. But it's an ongoing kind of conversation that we're always happy to take targets from or OFAC is always happy to take targets from whomever might have someone to suggest.

Mr. MASSARO. Thank you.

We're running dangerously low on time here. We're going to move on to Mark, after which we will have time for additional questions. And I hope we're able to get a few more in, but I do want to be cognizant of our panelists' time.

So, Mark, if you'd like to—we're looking at potential targets now under the Global Magnitsky Act, and in specific, Iran.

Mr. DUBOWITZ. Okay, great. Well, first of all, thank you very much for having me. And certainly as Brad brought Josh, I brought my colleague Saeed Ghasseminejad.

Saeed, if you could just stand up, raise your hand. He does phenomenal work investigating corruption in Iran, the Islamic Revolutionary Guard Corps (IRGC) control of the Iranian economy, and human rights, and has done really terrific work.

So I've just a few minutes, and I think Rob was smart to save me for last, hoping that many of you would have left by then. Since you're still here: Saeed and I have been doing a lot of work on Iran, on the corruption prong, and we've been looking in particular at the supreme leader's $200 billion corporate conglomerates. I want to say just a few words about that, and then we can jump to Q&A very quickly.

Many of you know December/January there were protests in Iran. There were hundreds of thousands of Iranians on the streets. Most of them were what I would call sort of middle-class poor. These are people who by education, by ambition, by sort of social media activity, who should be considered middle class, but they're poor. They're living in shanty towns as a result of the lack of opportunity in Iran. And unlike the 2009 revolution where millions of sort of middle class north Tehranis were in the street yelling "where's my vote," in the wake of a fraudulent election in Iran, these were Iranians who were saying effectively "where is my paycheck." Their complaints were certainly about political oppression, certainly about overseas adventurism, but more so about why is the regime stealing our money and spending it on its own patronage networks, on its own corruption, and also to fund its own malign activities.

So what we started to do is take a much deeper look at something that the U.S. Treasury Department in 2013 had designated, which was the supreme leader's corporate holding company, which is called the Execution of Imam Khomeini's Order—it's a great name, I love that name—or IKO, or Setade, in Farsi. We looked at Setade, which Reuters had actually appraised as being worth at the time, a few years ago, about $95 billion. We looked at the Mostazafan Foundation and we looked at the Astan Quds Razavi, and these two foundations and this corporate conglomerate are worth, according to our assessment, conservatively, very conservatively, about $200 billion.

Now the key about this is that the supreme leader's supporters like to brag about his modest lifestyle. He's a very modest cleric, but, clearly, he's a very wealthy one as well. And the key thing to note about how he's accumulated this money is that much of the money has been accumulated as a result of the illegal expropriation of Iranian private property, which is one of the reasons why Iranians who are on the street are very unhappy, because the regime has effectively stolen their property, post-facto kind of legally authorized that, and then taken this money and built up this incredible wealth to fund their patronage networks and their malign activity.

Now, obviously they don't pay taxes. Only the supreme leader's office can audit these companies. And many of them are in control of sort of key sectors of Iran's economy. So to give you one example, the Astan Quds Razavi Foundation owns very tight control of about three southern provinces of Iran, with a real estate portfolio of about $20 billion, including in Mashhad, where many of these protests actually first began. The U.S. Treasury Department I said in 2013 had designated IKO and 37 of its subsidiaries for sanctions-busting and for generating and controlling massive offshore or off-the-books investments, quote/unquote, "shielded from the view of the Iranian people and international regulators." Now, unfortunately—and my bias will show here—but as part of the nuclear deal, for some reason the Obama Administration decided to de-designate IKO and

these subsidiaries, even though it had nothing to do with nuclear sanctions or anything to do with the nuclear deal. I'll say a few more words about that in a second.

Since the deal was signed itself, there have been about 110 business and investment deals signed with Iranian companies. I think that number greatly understates that, but that's according to Reuters. And 90 percent of those are entities that are owned or controlled by the state, including IKO and Mostazafan Foundation and Reza Foundation.

So these entities are certainly far from transparent. Saeed and his team have identified 146 Khomeini-owned companies and 144 executives and board members associated with these companies. And clearly, as an NGO, we've been in touch with the administration and Congress advocating for the redesignation of IKO, these foundations and the hundreds of subsidiaries and executives that control it.

I'll say just one last thing, which is not only the supreme leader and his $200 billion conglomerate, but many of you know the Revolutionary Guards in Iran, the IRGC, maintain significant control over the strategic sectors of Iran's economy, and this is energy and auto and construction and mining and engineering and telecommunications and shipbuilding. They operate through three major entities—the Khatam al-Anbya Construction Headquarters, the IRGC Cooperative Foundation, and the Basij Cooperative Foundation. And they own directly, or in combination with military entities, about 20 percent of the Tehran stock exchange, and they're generating billions of dollars again in illicit funds that are funding these corruption networks and they're also being used to fund their other malign activities. So it's sort of just a brief glimpse. It's a case study. We're obviously highly focused on this. But Iran and the supreme leader's entire conglomerate provides a very interesting insight into opportunities for Global Magnitsky.

For those of you who are asking how can we go re-designate it once it has already been de-designated under the Joint Comprehensive Plan of Action (JCPOA), the answer, from my perspective, is, the JCPOA was never meant to grant blanket immunity to any entity to continue malign activities in the future, right?

That was never the intention. If there was an Iranian bank that we find tomorrow funding the Quds Force or funding a missile program, even if that had been de-designated as part of the JCPOA—I don't think the Obama Administration ever intended and explicitly actually said this—we're not going to grant blanket immunity to these entities to continue their nefarious activities in the future. So if evidence can substantiate that IKO and Mostazafan Foundation and some of these other foundations continue after 2015 and more recently in the past year continue to meet the prongs in this executive order, then our view is that the JCPOA should not grant blanket immunity to the individuals and entities involved in those malign activities.

I'll stop there.

Mr. MASSARO. Thank you very much, Mark.

And I want to make a note for everyone that in your packets that were handed out at the beginning, you'll find Mark's op-ed in The Wall Street Journal on this very subject. In addition to Rob's op-ed on the rollout of the Global Magnitsky Act's designation last December.

So with that, let's take some more questions. Please, Obie [ph].

QUESTIONER. Thank you, Paul, very much.

Mr. MASSARO. You've got a mic there. Yes, thanks.

QUESTIONER. [Comes on mic.] Thank you for the panelists for this very timely discussion about an increasingly foreign policy issue that I'm very enthusiastic about, and to talk about implementation was I think the right thing to do. My question——

Mr. MASSARO. Obie [ph], real quick, could you just say your name and affiliation?

QUESTIONER. Yes, sorry. Obie Moore. I'm in private law practice, focusing on criminal defense matters in Central and Eastern Europe, particularly Romania, Serbia, Hungary, these days.

Rob made mention about when dealing with allies and friends that perhaps it doesn't have to be such an onerous result. You want to bring the attention of the problem when you're putting together an evidentiary case. My question is about when it is institutional corruption, that that still exists, particularly after 28 years of this transition from communism in Central and Eastern Europe, how you can best go about that.

I mean, I'm interested in getting the results. The things that I see are that, for example, in the anticorruption fight, yes, there are backlashes to that, and as Bill said, that there are costs. People retaliate when you go after them and do things. How do you go about that, particularly given the standard of the Magnitsky Act? I suppose that applies to institutional matters as well, gross violations of internationally recognized human rights.

If that's the standard that you have to pose when you're engaging in an anticorruption fight and the political forces that be then start to countermand that institutionally because you're going after some of their politicians—or the other side of that is that the anticorruption fight in these countries are still strongly aligned with the security services, who then start to antagonize the independence of the judiciary and influence judges to not act independently and not respect separation of powers but do what the security services tell them to do. Are any of those types of institutional matters with—under the, you know, remit of the Global Magnitsky Act?

Mr. BERSCHINSKI. So the Global Magnitsky Act is, at the end of the day, a tool for use to advance U.S. national interests, right? So if you—in the context of Central and Eastern Europe, I think there are examples of countries, some of which you mentioned, where there is pretty entrenched structural corruption. I could foresee a way in which the U.S. Government would want to express its displeasure with some of those activities, and Global Magnitsky would be one tool among many that it could use. It wouldn't necessarily be the first tool. It would be a very powerful tool. And in my former hat as a State Department official, I would probably be advocating for discussions with close allies first before using this tool.

But I think to a point that was made—a very salient point that Adam made earlier—ultimately, at the end of the day, we're interested in the impact, right? And so to those of us on the outside, we may see a certain circumstance as the dog that doesn't bark. We may not know, in the absence of a sanction designation, that some positive change was made, but our diplomats will know.

There is one future in which our diplomats have a very nuanced and tough conversation, say, with governments that are engaged in corrupt practices in the region you're talking about and certain behaviors change and Global Magnitsky is never used, and that's a great outcome as far as I'm concerned. There's a different scenario in which that conversation is had, behaviors don't change, and then I, for one, am a proponent of using

a tool like this. And I think you have to be tactically smart about where to apply it and what diplomatic message you send in where to apply it.

So you mentioned that in some countries, in many countries these issues are systemic. Well, you could designate one or two people and the diplomatic message that accompanies those designations is, we recognize that the behavior goes well beyond these two people. We hold the potential to designate more moving forward. So if you would like for that not to happen in the future—we don't want that to happen—here are ways in which we can work together to strengthen your law enforcement and judicial systems, and so on and so forth.

Mr. MASSARO. Thank you, Rob.

In the back here.

QUESTIONER. My name's Alex. I cover Azerbaijan.

Just to follow up Obie's previous question and Rob's answer, this is the best way to address these human rights violations. But imagine a country like Azerbaijan, where human rights violators actually are getting promoted. So what if we come up with the list of those names and then we don't name the main troublemaker, you know, who's the president—like in Russia, Putin—so they actually greenlight—you know, they promote those violators? It will become a disappointment that they can't live with. So this is one question.

The second, can the panelists give us an idea, a timeframe? From day one we hear about very compelling, very—these undeniable human rights violations, and they say torture in Azerbaijani prison, and that their names pop up in that list. So just to address this—[inaudible].

Thank you very much.

Mr. WHITE. Sure. So in terms of the timeline for designation, the answer is not a great one, and that answer is that it depends. It depends on a number of factors. It depends on the sufficiency of the information, the abundance of the information that's available. Do the targeters have to work to get corroboration, is the information readily available? Further to Adam's earlier point, is there going to be engagement? Are there going to be efforts to try to incentivize a change in behavior before sanctions ultimately come about? But it's kind of a continuous process where, you know, we say the designation timeframe can—if it's straightforward and if it's a priority can be a matter of weeks or it can be a matter of months.

That being said, every case is different. So, unfortunately, it's hard to give a standard timeframe. But what I would say is that, to my earlier point, if you don't see an individual sanctioned that you had really hoped for in the months following your proposal, it doesn't mean that it's not going to happen. I think there's targets that folks have had on their minds for years that—you know, well before there was a Global Magnitsky Act, they now see a tool available to them. And so, yes, I think patience is critical, but also providing as much information as possible will help speed up the process.

Mr. DUBOWITZ. If I could just add to that, I didn't work at OFAC even though I'm a total OFAC groupie and have huge admiration for OFAC and Terrorism and Financial Intelligence (TFI). I'm an impatient sort of think tank NGO-er. And 15 years kind of working these issues, just a couple of strategies if you're impatient like me. The first is, obviously Congress has a very important role not only in passing Global Magnitsky—and thanks to the great work of some of the folks up here—but actually putting in legislation

required determinations—and we've seen this in the past—where you effectively give OFAC 90 days to make determinations on a list of targets.

Now, obviously, if you like OFAC and you're friends with OFAC and you want to be helpful to OFAC, it's really useful if, before Congress passes that legislation giving these guys 90 days to make those determinations, you've been working with them behind the scenes for months and months, providing them with a lot of open source information to give them a head start. Otherwise, they may not return your calls anymore. But that's one useful strategy if you're impatient, right? Work with Congress to try and get these determinations.

Now, of course, if you're impatient, working with Congress is also a contradiction in terms. So there have got to be other strategies about how you can actually publicize the names of these individuals, and we had that sort of conversation about, can you create a Helsinki watch list, right? So that would be perhaps one way to do it.

Look at other organizations, governmental, quasi-governmental NGOs, and get that information out in the public. Speak to reporters, right? Again, a credible story from The New York Times, Washington Post, some Wall Street Journal, credible publications—that information is again going to feed into the Wolchecks of the world. Those people, those entities are going to find a way into systems that are going to really complicate the lives of kleptocrats and human rights abusers. So never underestimate the extent to which a public name and shame campaign can be highly effective—maybe not as effective as an SDN designation or a legislative determination, but sure as hell faster.

Mr. MASSARO. Thank you so much.

So we're going to take two final questions. We started at 3:05, we'll end at 5:05.

QUESTIONER. Thank you. I'll be really quick. Layof Begovic [ph]. I am a former Bosnian minister of energy.

I actually have a comment, quick comment. I think that the impact actually of what you guys are talking about is, in my view, most important from the perspective of the victims, because the victims' families will feel extremely, extremely happy, even if the person who is a perpetrator or is somehow related to a perpetrator is put under sanctions. I don't know if you know about the Lautenberg sanction. I'm sure some people here know that those were the sanctions that U.S. used to get the Bosnian Serbs to cooperate with the International Criminal Tribunal for the Former Yugoslavia. So, I mean, I think it's much broader than just changing future behaviors.

Otherwise, thank you very much. Excellent panel.

Mr. MASSARO. Thank you.

Right here.

Sorry, Ilya. [Laughs.]

QUESTIONER. Thank you. I'm Geeta [sp] with Voice of America Persian Service.

I don't know—maybe Mark is the person to answer this question. Are you suggesting that your new list of entities and people that you are considering for corruption cases in Iran be based on the Global Magnitsky Act because—is it better? Or what's the difference? Does this act facilitate designations any better than other executive orders, would you say?

Mr. DUBOWITZ. This may be for some of the folks at the table as well, particularly the attorneys. From an Iran context, I mean, there are other Iran executive orders that

relate to human rights that have been used in the past and remain certainly on the books. I think when it comes to corruption specifically, I think the Global Magnitsky and the corresponding executive order are—if they're not the only game in town, they're the most powerful game in town for the specific corruption-related sanctions.

There were, in legislation, corruption-related sanctions that related to the corrupt diversion of humanitarian goods. That was actually put in, I think, the Iran Threat Reduction Act, if I recall. But when it comes to broader corruption, if you're going to go after the supreme leaders, corporate conglomerate, this executive order under Global Magnitsky seems to me the most powerful authorities that we have.

Adam, do you——

Mr. SMITH. Well, there's also an issue here, the benefit of Global Magnitsky that Rob knows, when we were still talking about this when we were still in government. The benefit of Global Magnitsky is that it doesn't actually implicate the country. It's a target on individuals and on entities. And it's intriguing, I think, if you look at the initial list of Global Magnitsky targets, it included, frankly, people in jurisdictions that we probably couldn't have a targeted sanctions program on that jurisdiction because of other equities. So we've got people who are from Israel, people who are from China, people from the Dominican Republic, right; so close allies or important economies that we couldn't have an executive order and declare emergency with respect to those countries.

But rather what this tool lets you do, kind of like the narcotics context or the counterterrorism context, is focus like a laser on the behavior of the people and leave out the jurisdiction in which they're in. And that's a real benefit here, to make it clear that it's the behavior we're after. It's not the jurisdiction, not the innocent people in the jurisdiction who could otherwise be sort of caught up in a broader national emergency declared with respect to a jurisdiction or a sort of larger sort of geographic entity.

QUESTIONER. Actually, I had a question for you as well. You spoke about the goal being deterrence or changing behavior. You mentioned the narco trade, you've seen success. What about in human rights issues? Iran has a huge issue with human rights. It's a human rights violator. And the present administration wants to target Iranians in that specific area. Is there any rate, any chance of success, sanctioning people for human rights?

Mr. SMITH. I mean, in my mind—and this is very personal, based on work I've done in places like the Balkans and other places—I think human rights are a really hard thing to sanction people for, not just from an evidentiary perspective but from a behavior-change perspective, because very often people who are committing human rights violations are doing it in the name of what they think of as a broader ideal. You have—you know, that their people have been somehow aggrieved, and therefore they're acting in a way to remove other people, forcible repatriation of people; the Rohingya issue, what happened during the Yugoslav wars in the 1990s. That's a much harder thing, I think, to move people on.

Corruption is so much more venal. It's so much more sort of obvious, in a way, that I think in some respects it's the Kony question. Does Joseph Kony deserve to be sanctioned? Absolutely. Do we think that will actually change his behavior? I think we need to be honest about that. The beauty of corruption is that it actually is—it links with the nature of the tool, right? The nature of a sanctions tool is, it limits people's ability to move money. And what is corruption but money, right? It's the ability to get assets. And so it

really links, whereas human rights is often a lot more involved to it. So it's a lot more challenging. That doesn't mean you shouldn't do it. I just think that we can—I think that the impact might be less in one versus the other.

Mr. DUBOWITZ. Can I say something really quickly about that? I think one of the mistakes that certainly we made over the past 15 years in focusing on Iran and focusing on the human rights issues was not doing enough to persuade the U.S. Government to link the human rights abuse, the malign conduct, to an economic penalty, because I think Adam's exactly right. I mean, when you name and shame Sadeq Larijani, which I thought was a very important political sanction that the U.S. Government just did recently, something that previous administrations had also considered, I think there's political potency and there's symbolic potency.

But, boy, wouldn't it be useful if we could attach that designation to an economic impact that would really actually inflict economic harm on the regime that he is part of? And we can talk about how to design the appropriate economic penalties. But it's not enough just to name and shame. It's got to have economic pain attached to it. And I don't believe our human rights sanctions—and I may be wrong—and other sanctions programs, but I don't believe they actually have that nexus, an economic nexus. I personally think they should.

Mr. MASSARO. Ilya, please.

QUESTIONER. Very quickly. Ilya Zaslavskiy, Free Russia Foundation.

Does the panel have any suggestions why so far any sanctions list or any public shaming of propaganda journalists who cover specifically corruption and do disinformation on corruption and Global Magnitsky Act, like Nemtsov list, like other lists. Just some of these cases are egregious. Vladimir Solovyov, one of the main propaganda people, apparently has a green card. Recently, a troll-farm family apparently got hired by Facebook and got visa. So should we have a shaming list for them? Should we put them under sanctions? And how can we do that?

Mr. WHITE. From a targeted-financial-sanctions viewpoint, I think there is a hesitancy to sanction an individual for behavior or activity that would be constitutionally protected in the United States; so freedom of speech, just like it's problematic when people send in information about someone being associated with someone that is quote/unquote, "bad." I think it's difficult from kind of a sanctions perspective, purely based on speech.

Now, if there is accompanying activity—for example, if it's a communications or information minister of a country, in addition to saying heinous, inciteful things, he or she is also saying, by the way, here's where you go to pick up the gasoline to light these houses on fire, or in some way kind of demonstrating a proactive, you know, actually actively working to take action, that's a different story. But just based on kind of speech that is offensive to kind of the average person, it's quite difficult.

Mr. MASSARO. Brad, you wanted to say something?

Mr. BROOKS-RUBIN. Yes. I mean, just two quick words maybe on that. I think the OFAC counsel has done a good job with Josh on advising on that. I think it's hard. But there are examples. In the Cote d'Ivoire sanctions, for example, there were people who were designated. And among their act were these kinds of issues. But there is always the struggle with the First Amendment analysis and how we need to implement that here.

I wanted to come back a little bit on the last point, which is certainly on the countries we work on—South Sudan, Congo, Central African Republic, which are traditionally

looked at as human rights issues or through the human rights lens—I think what we've seen in our analysis over the years and why this became such an important tool for us is that the thought of them as human rights sanctions was simply because people weren't looking at the financial aspect of these. And when we're naming targets who don't have assets, I think it's fair to say those may not be the right targets.

But I think what we see and with the Global Magnitsky target list is there is an increasing intersection of those worlds. And in some ways the distinction between a human rights target and a corruption target may, in some ways, almost become a false distinction over time, that those are usually linked. And if they are not, then maybe this isn't the right tool.

And, you know, last, on the Azerbaijan question at some level—I mean, we work on countries all the time where the question is, do sanctions work, right? There are designations and, you know, the crisis continues. And I think it's a danger here and it's a danger in any sanctions program to say that sanctions change behavior.

My own personal view is sanctions don't change behavior. Sanctions can be leverage to processes that can change behavior. And I think the Iran example is—and the persistence and the need that there is for there to be continued effort year after year, no matter how impatient you are, to find new ways to engage is because sanctions themselves almost won't—it's hard to say it can never be a black-and-white straight line to a changed behavior, but they can create the leverage that allows processes to change behavior.

And where those processes don't exist, then that's—it's going to take a lot to get there. And I think it's—it can be trouble to say, well, because we haven't named the president or we haven't named this person at the top of the system, nothing will ever change. This is all part of a very long process and we'll need to be here in 5 and 10 years to really assess whether or not this is an effective tool.

Mr. MASSARO. Okay, thank you so much.

Kyle.

Mr. PARKER. Two final questions for Josh and Adam.

For Josh, I know that a visa ban doesn't equal an SDN designation. Does an SDN designation effectively equal a visa ban? And the other question is, can you give us any ballpark figures on the size of such an evidentiary memo? Is it five pages? Is it 100 pages, 25 pages? And some rough guidelines. Is most of it classified? Is it law enforcement sensitive? Is it—I'm sure highly—the answer is it depends on a lot. But any sort of ballpark figures would be interesting.

And for Adam—a little bit sort of off topic, but very much close to the heart of the Helsinki Commission's work. First of all, thank you and Ambassador Fried for keeping the ban together on Russia sanctions. I'd be very interested in your take on what the disappearance of that particular office at the Department of State means. It looks to me like it strengthens OFAC's hand in the process. I'm wondering your view.

And also, on Brexit and London, we've heard a lot that with Brexit that London has effectively been the EU's OFAC, if you will. What is—and we look at how there's only one skiff in Luxembourg. What does this mean for our broader programs?

Thank you very much.

Mr. WHITE. So on the visa-ban question, I think I can say generally yes. The State Department looks to OFAC sanctions to consider the merits of whether or not someone

should have their visa revoked. But it's a completely separate process. And, sorry, I don't think I can comment further on that process of theirs.

In terms of the length of an evidentiary, we want to build a robust case. So the standard is an administrative one. But we also want to have a very strong case where, if we were to be litigated, we would win without any problem. And so, while we try to typically have at least our attorneys for kind of ease of review often encourage the OFAC or my OFAC colleagues to keep it kind of as concise as possible, usually there's a multitude of sources. So, depending on how complex the case is, how complex the activity is, I think some of them are fairly sizable. And then, again, it depends on the target as to whether it's primarily classified information or open source.

I think what my experience has been with Global Magnitsky, it's just because of the nature of the information, a lot of what we've seen is actually unclassified, open-source information from a U.N. panel of experts, from NGOs, from news reporting. And that's why the work of NGOs is so critical to this effort, because, as Adam referred to earlier, there are not a tremendous amount of resources devoted to the issues of corruption and human rights when you think of kind of other national-security priorities.

Mr. PARKER. But it's not law enforcement sensitive.

Mr. WHITE. They can be.

Mr. PARKER. Oh, they can be. Okay.

Mr. WHITE. Yes. So, working with law enforcement, both foreign and domestic as well.

Mr. SMITH. To answer very quickly, so on the SDN versus visa ban, I think it actually works the opposite, because if you're an SDN and you don't have a visa ban, you can actually come to the United States because of something called the Berman Amendment, which is an exemption to IEEPA. Under IEEPA, which is the law that gives you the power to do SDN——

Mr. PARKER. [Inaudible]—academics?

Mr. SMITH. Well, no. It basically says that any travel-related transactions are exempted from sanctions.

Mr. PARKER. Okay. Okay.

Mr. SMITH. So an SDN can actually come to the United States, enjoy his or her life here, and then go about his or her merry way. There are some exceptions to that, but as a general rule, the Berman Amendment is very, very broad. So it actually—if you don't have a visa ban, there's a bit of an issue, I would argue.

Fried's office and the disappearance thereof is an interesting—I mean, it's hard to read much into it, to be perfectly honest, because what happened is there is a sanctions office that still exists. It hasn't moved. It's in the Bureau of Economic and Business Affairs, State Department. There's a deputy assistant secretary there that used to basically do that role, which—then Fried sort of took parts of it, essentially.

The idea behind Fried's office, as I read it, was a bureaucratic one, because what happened—what used to happen is that, at the deputies' committee meetings at the White House, you'd have a deputy from Treasury, someone like the undersecretary, usually the undersecretary for TFI, who basically spends his or her entire day thinking about sanctions. And in a bureaucratic sort of way, they would then be competing or arguing with his or her counterpart at the State Department, who was P, the political affairs director, who thought about everything other than sanctions. And so there was a bureaucratic sort

of—Treasury would always win those debates, because there just wasn't a senior-enough person on the State Department side who could sort of compete.

And so the idea—at least partly the idea—is to put someone like Dan Fried, who's a career ambassador, a very senior person, as sort of a counterpoint to someone who's also very, very senior in the Treasury Department. That was the idea behind it, at least one of the ideas. And so the removal of Fried's office—I think you're right—it does sort of embolden Treasury to the role it had prior to the eventuality of Fried's office. But I'm not sure it really changes anything. I mean, I have understood that Treasury—and you would know better than I, Josh—has sort of taken the mantle up, and because there's a bit of a—a lacuna, shall we say, has moved in in ways that perhaps they wouldn't have otherwise taken advantage of that.

Mr. WHITE. No comment.

Mr. SMITH. And I don't blame them at all. [Laughs.]

On the Brexit issue, very, very fascinating issue, because you're 100 percent right; not just that London was OFAC. And they have their own OFAC now, called the Office of Financial Sanctions Implementation (OFSI). London was our OFAC, right. So what we used to do, especially in developing multilateral measures, is we would talk to the Brits very, very honestly. They would often see our way. They would then carry our water, effectively, into discussions with the rest of the 27.

And so there's a real question that, even before March of next year, when the rest of the 27 are just angry at London, shall we say, the ability for the Brits to sort of carry our water, especially on sensitive issues—be it sort of the continuation of Russian sanctions, where there's a lot of, at least on the eastern flank of the EU, some questions, or other things; perhaps if the Iran deal sort of unravels, getting everyone on board in that regard—it's going to be very challenging.

And I think that with Brexit we will have a partner in London, there's no question. And if London remains sort of the financial center that it is, that's great, because having London and New York sort of offline for those who we sanction, that's great. But if London gives way and it becomes a Frankfurt situation or Tokyo or—[inaudible]—or Hong Kong or Beijing, and it sort of gives rise to multipolarity with respect to the way financial flows go, that's a bit of a disaster for our sanctions and then for the multilaterization effort as well.

Mr. MASSARO. Well, thank you all so very much. We're a little over 15 minutes over time here. Thank you all for sticking around for the event. Thank you so much to our great panel. And we'll see you all next time. [Applause.]

[Whereupon, at 5:17 p.m., the briefing ended.]

A P P E N D I X

TRUMP'S SURREPTITIOUS MOVE AGAINST FOREIGN HUMAN RIGHTS ABUSERS [1]

BY ROB BERSCHINSKI ON 1/10/18 AT 1:16 PM

In meetings I've had over the past year with the well meaning and generally beleaguered Trump administration officials responsible for aspects of the government's human rights policy, a frequent refrain is that this administration isn't receiving enough credit for the positive steps it has taken with respect to promoting human rights and the rule of law (and, to be fair, it has taken a few).

At a certain level—and I say this with no lack of empathy, given the situation in which these officials find themselves—their lament is difficult to countenance given the many ways in which their boss's manifest authoritarian tendencies, disdain for judicial independence and a free press, and attacks on women and religious and ethnic minorities are alienating allies and emboldening human rights abusers and kleptocrats around the world.

It therefore came as a surprise on multiple levels, when, in the week just before Christmas—a time generally reserved for burying news, not making it—an administration starved of positive stories to trumpet when it comes to America's reputation abroad inexplicably decided to roll out what is, safe to say, the most positive, broad-based human rights-related measure of its tenure.

That's a shame, because what the Trump administration did is a big deal. In a good way.

To briefly recap: with much of official Washington already checked out for the holidays, on Dec. 21, the Trump administration released its initial tranche of sanctions designations under a new executive order tied to the Global Magnitsky Human Rights Accountability Act.

The law, which Congress passed in 2016, provides the executive branch with authority to administer targeted financial and visa-related sanctions against foreign individuals and entities if they are found to have committed human rights violations or engaged in corrupt practices.

While news outlets, human rights organizations (including my own), and key congressional champions of the Global Magnitsky Act, and its Russia-specific predecessor, put out articles and Statements focused on the 15 individuals and 37 entities sanctioned by the U.S. Government, we all likely missed the real story, which centers not on the designations, but on the executive order that accompanied them.

[1] *This article first appeared on Just Security.*

That order (number 13818, for those keeping track at home), entitled "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," holds great potential as a tool to advance human rights policy.

But before delving into why it could prove to be quite powerful, it's worth spending some time on a few of the specific 52 sanctions designations, which provide insight into the Trump administration's policies and the inevitable bureaucratic battles that go on behind the scenes.

So, Who Was Sanctioned?

First, the fact that the Trump administration designated any human rights abusers and corrupt actors under an executive order tied to the Global Magnitsky Act—which, we should remember, is an elective authority—is a significant achievement.

I say this not because of President Donald Trump's clear disdain for nearly all of the precepts underpinning human rights as a concept, or because of the original Magnitsky Act's cameo role in events currently under investigation by Special Counsel Robert Mueller.

Instead, more prosaically, it's significant because it's likely that many of the sanctions designations unveiled in December were opposed by several of the State Department's regional bureaus, which tend to be skeptical of any actions that involve increasing friction in a bilateral diplomatic relationship, even when dealing with foreign governments with truly odious records.

In light of this perennial bureaucratic dynamic, it's worth highlighting that introducing 13 primary sanctions designations on individuals, and an additional 39 secondary designations (on two individuals and 37 entities), in the annex to the new executive order is a pretty big deal.

Officials within the State Department's bureaus of Economic and Business Affairs, Democracy, Human Rights and Labor, and International Narcotics and Law Enforcement each deserve credit for the action, as does the peculiarly named directorate for International Organizations and Alliances at the National Security Council, which coordinates multilateral and human rights policy.

The same goes for officials within the Treasury Department's Office of Foreign Assets Control (OFAC), and particularly for Treasury Under Secretary for Terrorism and Financial Intelligence (and acting Deputy Secretary) Sigal Mandelker, who appears to have led the charge on Global Magnitsky within the administration.

Raw numbers of individuals and entities designated, of course, are a poor metric for impact. That said, those that feel that the United States can—and should—walk and chew gum at the same time concerning our relations with repressive and/or corrupt foreign governments notched a few meaningful victories.

The administration's decision to sanction Russian Prosecutor General Yuri Chaika's son Artem, particularly when coupled with the announcement of sanctions levied against Chechen warlord Ramzan Kadyrov and a key lieutenant on Dec. 20 under the Russia-specific version of the Magnitsky law, sent a strong signal to the Kremlin that President Vladimir Putin's cronies no longer enjoy limitless impunity.

Other noteworthy designations under Global Magnitsky included Dan Gertler, an Israeli billionaire alleged to have used his relationship with Congolese president Joseph Kabila to net billions of dollars in extractives-related gains; Benjamin Bol Mel, a business magnate alleged to have profited from his ties to South Sudanese President Salva Kiir;

and Gao Yan, a Chinese security official allegedly linked to the death in custody of human rights activist Cao Shunli.

In terms of political and financial impact, each of these designations is likely to hit home with its intended target.

Perhaps most importantly, particularly when viewed from the perspective of the U.S. government's ability to employ the Global Magnitsky Act to counter human rights abuses in near-real time, was the government's decision to sanction Burmese military official Maung Maung Soe.

As the former chief of the Burmese Army's Western command, Soe is alleged to have served as a key overseer of the atrocities recently committed against Rakhine State's Rohingya population.

His designation reflects the use of Magnitsky sanctions at their most sophisticated, both in terms of responsiveness to real world events and in using the authority's scalpel-like precision to isolate individuals or factions within a larger governmental structure.

Last on the positive side of the ledger, the government's initial designations demonstrated an apparent, if also circumscribed, responsiveness to recommendations from NGO's and Members of Congress.

In a clear signal that they wanted to involve actors beyond the executive branch in the process of researching would-be sanctions designations, Global Magnitsky's authors wrote into the law that "the President shall consider information provided jointly by the chairperson and ranking member of each of the appropriate congressional committees; and credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights."

To its credit, the Trump administration seems to have taken this instruction to heart. The sanctions applied against Soe, Chaika, Gertler, Gao, and Bol Mel, as well as Nicaraguan Supreme Electoral Council President Roberto Jose Rivas Reyes, each reflect either explicit recommendations or more general concerns raised by watchdog groups and/or Members of Congress.

This development is likely to strike an appropriate amount of fear into human rights violators and corrupt actors around the world, just as the Act's authors intended.

Glaring Omissions

To be sure, in many additional cases, the administration clearly chose not to act on information provided by outside groups and elected officials. Yet in so doing, it nevertheless seems to have left the door open to future action, as government officials have indicated that they continue to investigate information provided by external sources, and intend to use Global Magnitsky on a continuing basis.

To the degree that these goals are operationalized, they are likely to be applauded by the Act's champions, and leave criminals and human rights abusers on edge.

Notwithstanding these plaudits, the administration's initial list of sanctions designees still left much to be desired. While the number of designations mentioned earlier is sizable when compared to most initial EO annexes that derive their authority from the International Emergency Economic Powers Act (50 U.S.C 1701), they are clearly miniscule when viewed from the perspective of worldwide human rights violations and grand corruption.

In particular, the blanket non-inclusion of individuals and entities from the Middle East (Gertler aside) in the EO annex is glaring, given the massive scope of human rights violations and corruption endemic in the region. The Trump administration appears to have declined to act on credible information provided by outside groups concerning abuses in Saudi Arabia, Bahrain, and Egypt, among other countries.

This decision constituted a particularly significant letdown for human rights activists in Egypt. Notwithstanding Trump's belief that Egyptian President Abdel Fattah el-Sisi has "done a tremendous job under trying circumstance (sic)," Sisi's repressive counterterrorism tactics and attacks on civil society are leading to a well-documented cycle of radicalization and violence that implicate American security interests.

In an environment in which political imprisonment and torture are rife, and terror attacks are increasing, the fact that the U.S. Government elected to ignore credible information submitted by human rights NGO's—including first-hand testimony from torture survivors—can't help but be seen as a major missed opportunity.

That such a decision occurred shortly after the administration elected to withhold a significant portion of military aid earmarked for Egypt on human rights grounds makes the decision even more of a head-scratcher.

A similar critique can be levied against the government for its decision not to impose a single human rights-related designation in Central Asia, home to several of the most repressive governments on earth, and any number of U.S. security partners whose governments are engaged in large-scale human rights violations, from the Philippines to Turkey to Ethiopia.

While perhaps not entirely surprising, the decision not to impose sanctions against individuals from these countries leaves the U.S. Government open to credible charges that it is engaging in selective application of human rights standards.

This dynamic, if not arrested, is ultimately a grave threat to American legitimacy when speaking about human rights, and our (damaged, but still intact) reputation as a credible proponent of the notion that all States should adhere to the commitments we've made to protect fundamental freedoms.

One need only reopen one's dusty copy of Jeane Kirkpatrick's "Dictatorships and Double Standards" to recognize that the idea that the United States should view human rights policy as a cudgel with which to beat our enemies is nothing particularly new. Nevertheless, the concept seems to be experiencing something of an intellectual renaissance at present.

For all of its potential as a groundbreaking means to protect victims of horrific violence and administer some form of accountability for corruption, the Global Magnitsky Act contains the seeds of its own destruction if it is wielded in a manner that erodes its own credibility. On this front, it remains to be seen whether the tool evolves into what was envisioned by its proponents, or into something more cynical.

Which brings me to Executive Order 13818.

Loosening the Language—a Potential Game Changer?

Under the International Emergency Economic Powers Act (IEEPA), Congress authorized the president to exercise certain emergency powers if s/he declares a particular situation a national emergency due to an "unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States."

Making a national emergency declaration is thus a statutory requirement for the executive branch to announce most sanctions programs implemented by Treasury's OFAC.

At times, the legal requirement to declare a situation an "unusual and extraordinary threat to the national security of the United States" in order to levy sanctions on human rights grounds has provided human rights violators with ample opportunity to turn the United States' words against it.

The most striking example of this dynamic occurred in early 2015, when, in order to sanction seven Venezuelan government officials for human rights violations, the Obama Administration declared the country an "extraordinary threat to U.S. national security."

While any sanctions announcements were sure to elicit a furious response from the government of President Nicolás Maduro, Venezuela's leaders announced that the U.S. declaration signaled an intention to attack their country, and used it to further undercut Venezuela's political opposition and human rights community.

The hard-won lesson of this episode in part motivated Congress to grant new authorities under the Global Magnitsky Act. By granting global sanctions authority independent from IEEPA, the Global Magnitsky Act provides the executive branch with the ability to levy sanctions against certain individuals in any country for human rights violations or corruption without having to resort to establishing a country-wide national emergency declaration.

Executive Order 13818 takes this approach one step further, and draws upon the authority of both the Global Magnitsky Act and IEEPA, as well as the Immigration and Nationality Act of 1952, to establish an extremely flexible human rights and anti-corruption accountability tool with global reach.

The executive order's ambition is articulated in its preamble, in which the president finds 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."

The president goes on to say that he has therefore determined that "serious human rights abuse and corruption around the world constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States," and thereby constitute a national emergency.

Putting aside the absurdity that these Wilsonian-like words are supposed to reflect Trump's actual views, they're something to behold. They also seem clearly at odds with the administration's "America First" foreign policy, as recently articulated in its National Security Strategy (NSS), which the White House released 3 days prior to the EO.

Instead of reflecting his NSS, Trump's preamble seems to most closely resemble the text of President Barack Obama's August 4, 2011 directive on mass atrocities, which both mandated the creation of an interagency Atrocities Prevention Board and declared that "Preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States."

Obama-era proponents of a globe-spanning anti-atrocities sanctions regime labored unsuccessfully for several years to craft a universal sanctions authority similar to, and possibly less expansive than, this new Trump executive order.

In internal policy discussions, arguments made against such an executive order included that the tool would be used too frequently, thereby taxing internal resources,

and, somewhat contradictorily, that it might never be used at all, thereby disappointing the human rights community.

Whatever the concerns of decisionmakers within the last administration, they have clearly been laid aside by Treasury Secretary Steven Mnuchin and other senior Trump administration officials. These policymakers appear to have crafted EO 13818 in a manner that provides significant flexibility, which is lacking under the Global Magnitsky Act.

For example, the Global Magnitsky Act requires that the crime in question constitute a "gross violation of internationally recognized human rights," or a "GVHR." That term is codified at 22 USC § 2304(d)(1) as including:

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.

Given the exacting evidentiary requirements involved in meeting this standard, government lawyers have consistently appeared more inclined to approve sanctions cases dealing with instances of extra-judicial killing, torture, and rape than they have been when cases involve the denial of liberty inherent in a politically motivated prosecution and prison sentence.

When I'm approached by activists from a country whose government routinely imprisons journalists, members of the political opposition, or human rights defenders, they're frequently surprised to hear that the Global Magnitsky Act likely offers them no remedy.

Similarly, serious crimes otherwise deserving of U.S. scrutiny are frequently precluded for consideration by the Act's requirement that a victim be either a) someone working "to expose illegal activity carried out by government officials," or b) someone who seeks to "obtain, exercise, defend, or promote internationally recognized human rights and freedoms."

These "whistleblower" and "human rights activist" provisions have generally excluded cases that a casual observer might feel were otherwise ripe for sanctions.

Consider, for instance, the widespread extra-judicial killing of drug users by government security forces in the Philippines, or the grievous crimes perpetrated against Burma's Rohingya population. In the latter case, while one could argue that the Rohingya are targeted by Burmese security forces expressly because of their status as a religious and ethnic minority group, it would not strike me as far-fetched to hear a U.S. Government lawyer argue that the law lacked applicability, given that few, if any, of the individuals targeted were actively working to obtain or exercise their rights.

Executive Order 13818 addresses both of these limitations, among others. As stated in both its preamble and in section 1(ii)(A), the GVHR language of the Magnitsky Act has been replaced with a standard defined as "serious human rights abuse."

While it remains to be seen how the government's lawyers have or will interpret this standard, the language of the EO is clearly more permissive. Additionally, the change from "violation" to "abuse" appears to broaden the scope of permissible sanctions designations beyond state actors to conceivably anyone found to have committed a covered action.

The EO simply omits the Magnitsky Acts' human rights activist provision. Rather than needing to show that a covered crime was perpetrated against someone working to "obtain, exercise, defend, or promote" human rights, the order merely states that the U.S.

Government can sanction any foreign person found "to be responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse." This omission decidedly widens the regime's potential applicability. Rodrigo Duterte, you've been warned.

And that's not all. Similar to its loosening of language with respect to human rights abuses, EO 13818 substitutes "corruption" for the Global Magnitsky Act's "acts of significant corruption" when describing the second major category of offenses covered under its sanctions authority.

Here, too, one can reasonably expect that the change in language was intended to allow the government more room for maneuver in terms of its future designations.

Finally, a fourth change in EO 13818 from the Global Magnitsky Act appears to dramatically lower the standard under which an official can be held responsible for human rights abuses or acts of corruption that take place under his or her watch, but not necessarily with his or her direct participation.

Under the Global Magnitsky Act, if the U.S. Government wanted to designate, say, a senior foreign security service official for acts of torture that occurred in a jail he controlled under a theory of "command responsibility," it generally needed to satisfy three criteria.

These include that the designee maintained effective control over the subordinate individual(s) who directly committed the alleged acts of torture; that the designee had actual or constructive knowledge that his subordinates were about to commit, were committing, or had committed torture; and that the designee failed to take necessary and reasonable measures to prevent or halt the torture, or to investigate it in a meaningful effort to punish the perpetrators under his command.

Executive Order 13818 sidesteps many of these requirements by establishing a status-based relationship between officials and designated entities. Its section 1(ii)(C) notes that the U.S. Government can sanction any foreign person determined "to be or have been a leader or official of an entity that has engaged in, or whose members have engaged in" serious human rights abuse or corruption.

It also allows for the designation of a leader or official of "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."

The practical effect of this change could be quite significant. The example of Beijing Public Security Bureau official Gao Yan is illustrative. Under section 1(ii)(C), Gao's designation effectively opens all officials of the Beijing Public Security Bureau, or at least the Chaoyan Branch subcomponent in which he worked, to the potential of sanction, given that the U.S. Government has established a relationship between the bureau and the death in custody of Cao Shunli. The potential for secondary sanctions based on such status is seemingly vast.

To be sure, none of the provisions written into EO 13818 will automatically result in additional, sanctions on human rights abusers and corrupt actors in the future.

At the end of the day, as with the Global Magnitsky Act, the Trump administration's executive order provides the U.S. Government with a tool it can elect to use, or not, as it sees fit. How it does so is an important question moving forward.

A sanctions regime as broadly applicable as EO 13818 should be managed both effectively and appropriately, and used neither capriciously nor arbitrarily. On this point, time will tell.

In the meantime, what we can say with certainty is that an administration unlikely to be remembered for its positive impact on human rights promotion or the global fight against corruption—to say the least—just formalized a policy tool that supersedes and improves upon existing law dealing with these issues.

That it did so in a manner that resulted in minimal attention is puzzling. But we should take what we can get, and offer credit where it is due.

Rob Berschinski is Senior Vice President for Policy and Human Rights First and Former Deputy Assistant Secretary of State for Democracy, Human Rights, and Labor under the Obama Administration.

Hit Ayatollah Khamenei in His Pocketbook

Supporters brag about his modest lifestyle, but Iran's ruler runs a billion-dollar corporate conglomerate.

By Mark Dubowitz and Saeed Ghasseminejad

The Trump administration already has offered rhetorical support to Iran's antigovernment protesters. Now, nearly a month after the demonstrations began, how can the U.S. provide material help? Follow the money.

Supreme Leader Ayatollah Ali Khamenei's supporters brag about his modest lifestyle. They fail to mention that he runs a multibillion-dollar corporate conglomerate to fund his political patronage networks. His three most valuable possessions are the Execution of Imam Khomeini's Order, or EIKO; the Mostazafan Foundation; and the Astan Quds Razavi. These businesses have an interest in nearly every Iranian industry and are worth approximately $200 billion, according to our estimates.

The entities acquired a considerable share of their assets from the systematic confiscation of private property that followed the Islamic Revolution of 1979. They don't pay taxes, and only the supreme leader's office can audit them. They use their political connections to outmaneuver their rivals and to win lucrative government contracts. It is no wonder so many Iranians, deprived of basic necessities, resent their leaders.

A 2013 investigation by Reuters estimated that EIKO was worth around $95 billion, with more than half of its assets in real estate. Established in the late 1980s, its three main holdings are the Tadbir Group, Rey Group and Barkat Foundation. Dozens of subsidiaries and front companies make it hard to ascertain the full extent of the network.

Ayatollah Ruhollah Khomeini, Mr. Khamenei's predecessor, created the Mostazafan Foundation after the Islamic Revolution. Designed to seize and manage assets owned by the deposed royal family and its associates, the foundation now controls hundreds of companies. A few months ago it published annual financial statements that declared its assets to be around $16 billion—likely a deliberate understatement.

The third entity is Astan Quds Razavi, whose business arm is the Razavi Economic Organization. Astan has tight control over the economy of three southern provinces of Iran, where it owns companies in the lucrative energy and agriculture industries. Its real-estate portfolio is valued at $20 billion, according to BBC Persian, and it owns nearly half of the land in Mashhad, where the recent protests began.

The U.S. Treasury in 2013 enacted sanctions against EIKO and 37 subsidiaries. A Treasury press release said the entity's goal is "to generate and control massive, off-the-books investments, shielded from the view of the Iranian people and international regulators." The Obama administration lifted the sanctions as part of the 2015 nuclear deal. Never mind that their original designation had nothing to do with Iran's nuclear program.

Companies owned or controlled by the state, including the Khamenei conglomerate and foundations, were the biggest beneficiaries of the nuclear accord. Since the deal was struck in July 2015, nearly 110 business and investment deals have been signed with Iranian companies. According to Reuters, 90 of those entities are owned or controlled by the state.

A January 2017 investigation by Reuters found that companies controlled by EIKO signed at least five contracts with foreign firms. Those include a $10 billion agreement to build oil refineries with South Korea's Daewoo Engineering and Construction Co. and Hyundai Engineering and Construction. The Spanish and Danish pharmaceutical companies Chemo Group and Novo Nordisk have also signed deals to work with EIKO.

The Mostazafan Foundation and Astan Quds Razavi have contracts with foreign companies too. Bon Rail, owned by the Mostazafan Foundation, signed a memorandum of understanding with the German firm Deutsche Bahn, to improve its railroad services. The foundation is also involved in a $1.5 billion deal with Daewoo.

While these entities are far from transparent, the U.S. knows enough to target them with sanctions. The Foundation for Defense of Democracies has identified 146 Khamenei-owned companies and 144 executives and board members associated with these companies. The Trump administration can use the Global Magnitsky Human Rights Accountability Act of 2016 to isolate the Khamenei business empire, freeze its assets, and penalize international companies that enrich the Iranian regime.

With President Trump and the Iranian protesters on the same side against the supreme leader and his criminal regime, now is the time to strike.

Mr. Dubowitz is chief executive of the Foundation for Defense of Democracies, where Mr. Ghasseminejad is a research fellow.

This op-ed appeared in The Wall Street Journal*, January 23, 2018, print edition.*

How to prepare evidence for submission candidates for sanctions under US Sergei Magnitsky Act

Police Raid Hermitage's Offices in Moscow

On 4 June 2007, Lt. Col Artyom Kuznetsov and 25 Interior Ministry officers raided the Moscow offices of Hermitage Capital and seized all original corporate documents for the Hermitage Fund

Interior Ministry Officers Directing Raids



Lt Col Artyom Kuznetsov

Krechetov **Droganov** **Tolchinsky**

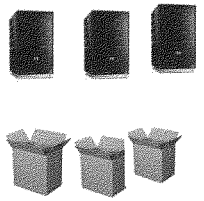


Raids on Hermitage and Law Firm in Moscow



Items Taken during Raids

All servers & computers



2 vans full of client documents were taken away





Magnitsky's Testimony:

"I was told that the office was searched, and the person in charge was Kuznetsov…Lawyer was not allowed in. [Instead of using a search warrant], police officers had a separate list of companies and they were seizing the documents for companies from that list."

Source: Complaint to Russian authorities by Hermitage Fund lawyer, 3 December 2007 - http://russian-untouchables.com/rus/docs/D50.pdf; Magnitsky's testimony to the Russian Investigative Committee, 5 June 2008 - http://russian-untouchables.com/rus/docs/D64.pdf

$230 Million of Taxes Paid by Hermitage Was Stolen from the Russian Treasury and paid to criminals

On 24 December 2007, Moscow Tax Authorities approved in one day and transferred $230 million of taxes paid by Hermitage Fund's companies to the accounts opened by criminals under the guise of an "overpaid tax refund"



Source: Approval of $230 Million Tax Refund by Moscow Tax Offices No 25 and No 28, 24 December 2007

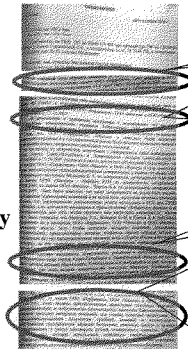
Sergei Magnitsky Testified Against The Russian Police Officers Who Seized The Documents used by criminals

On 7 October 2008, Sergei Magnitsky testified to the Russian State Investigative Committee about the involvement of Interior Ministry officers (Artyom Kuznetsov and Pavel Karpov), judges and criminals in the theft of Hermitage Fund companies and $230 million in taxes

Testimony to the Russian State Investigative Committee,
5 June and 7 October 2008



Sergei Magnitsky



"Seals of [Hermitage Fund companies] were seized by the Moscow Branch of the Interior Ministry on 4 June 2007."

"I confirm my testimony from 5 June 2008 ("Taxes paid by [Hermitage Fund companies] were very significant which caused an interest from the police officers.)"

"Powers of attorneys could not have been issued by Markelov, Khlebnikov and Kurochkin legitimately."

"The facts stated above show that the powers of attorneys issued by legitimate directors of [Hermitage Fund companies] ...were used to protect the interests of the companies... and to expose the theft of budget funds in the amount exceeding 5 (five) billion roubles [US$230 million], which was clearly committed by the same group of persons who used the illegal re-registration of OOO Parfenion, Mahaon and Rilend and claims against these companies as an instrument to perpetrate the theft of budget funds."



Interior Ministry officer Lt Col Artyom Kuznetsov



Interior Ministry Officer Major Pavel Karpov



Victor Markelov



Vyacheslav Khlebnikov



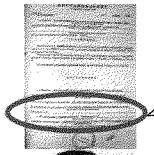
Valery Kurochkin

Source: Magnitsky Testimony, 7 October 2008- http://russian-untouchables.com/docs/D65.pdf

Sergei Magnitsky Was Then Arrested by the Same Officers He Testified Against

On 24 November 2008, Sergei Magnitsky was arrested by Lt Col Kuznetsov and three of his subordinates on orders from Investigator Silchenko of the Interior Ministry

Order to Arrest Sergei Magnitsky (24 Nov 2008)



"Hereby I order Lt Col Kuznetsov to arrest Magnitsky"

Signed: Investigator Oleg Silchenko



Lt Col Artyom Kuznetsov

Krechetov **Droganov** **Tolchinsky**



Magnitsky Arrested at His Home (24 Nov 2008)





Beginning of Magnitsky's 358-day detention

24 November 2008



"Present at home search: Droganov, Krechetov"

Source: Decree by Oleg Silchenko to Appoint Kuznetsov to arrest Magnitsky, 24 November 2008; http://russian-untouchables.com/rus/docs/D295.pdf; http://russian-untouchables.com/rus/docs/D296.pdf

Magnitsky Was Beaten With Rubber Batons

Upon arrival to Matrosskaya Tishina, instead of hospitalising him, a team of 8 riot troopers placed him in an isolation cell, handcuffed him to a bed and beat him with rubber batons

Magnitsky was beaten in an isolation cell on 16 November 2009



Report on Use of Handcuffs



Signed by: O.G. Kuznetsov

Sanctioned: F. Tagiev

Report on Use of Rubber Baton



Signed by: D.F. Markin [sic],

Witnesses: A.E. Larin, P.V. Borovkov

Sanctioned: F. Tagiev

Matrosskaya Tishina Detention Centre Officials Sanctioning, Administering and Witnessing Magnitsky's Beating:

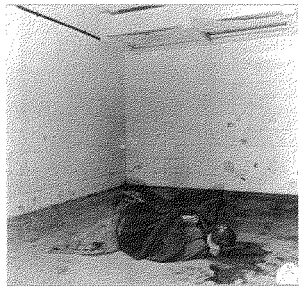
1. **Fikhret G. Tagiev, Head of Matrosskaya Tishina Detention Center**
2. **D.F. Markov, Aid on Duty to Head of Matrosskaya Tishina**
3. **O.G. Kuznetsov, Deputy Aid on Duty to Head of Matrosskaya Tishina**
4. **A.E. Larin, inspector**
5. **P.V. Borovkov, inspector**
6. **Not known, inspector**
7. **Not known, inspector**
8. **Not known, inspector**
9. **Not known, inspector**
10. **A.A. Semenov, paramedic at Matrosskaya Tishina**

Source: Reports on use of handcuffs and rubber baton, 16 November 2009, Moscow Public Oversight Commission Report

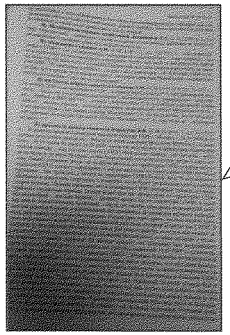
Civilian Doctors Found Sergei Magnitsky Dead on the Cell Floor

On 16 November 2009, at 9:15 pm, Dr Kornilov a civilian emergency doctor was finally let into the cell where Magnitsky was beaten after waiting for one hour and eighteen minutes to find Magnitsky dead on the floor in a pool of urine with bruises from handcuffs on his wrists, noting signs that death had occurred at least 15 minutes before their arrival.

Testimony by Dr Kornilov, Civilian Emergency Doctor (8 Dec 2009)



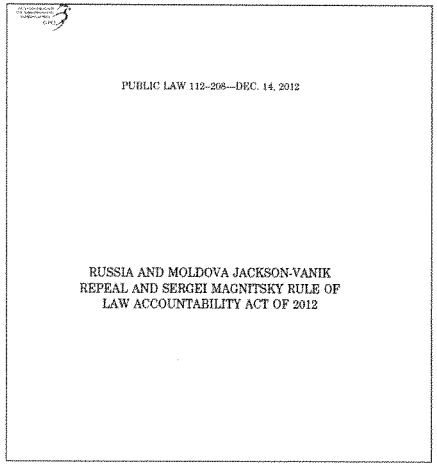




"I was shocked to find the patient not in a hospital room, but in a regular cell, on the floor dead"

Source: Report by the Moscow Public Oversight Commission, 28 December 2009 - http://onk-moskva.hrworld.ru/sites/default/files/otchet_magnitskii__1.doc. Medical review No 40-10 page 31

The Magnitsky Act was approved in Dec 2012. It envisaged following categories for people to be sanctioned:



PUBLIC LAW 112–208—DEC. 14, 2012

RUSSIA AND MOLDOVA JACKSON-VANIK REPEAL AND SERGEI MAGNITSKY RULE OF LAW ACCOUNTABILITY ACT OF 2012

Categories defined by the Sergei Magnitsky Rule of Law Accountability Act:

- **Magnitsky related:**
- **(A)** is responsible for the detention, abuse, or death of Sergei Magnitsky;
- **(B)** participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky;
- **(C)** benefitted financially from the detention, abuse, or death of Sergei Magnitsky;
- **(D)** was involved in the criminal conspiracy uncovered by Sergei Magnitsky

- **Other human rights abuses:**

- **(E)** is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals

Information on each person was presented by Hermitage in the following format:

- Name of the human rights abuser
- Date of birth
- Position in the government
- Category of violation under the law
- Role in a human rights abuse
- Specific details of a human rights abuse
- Documentary Evidence

Hermitage Submission to the State Department and US Treasury on police officer Artem Kuznetsov

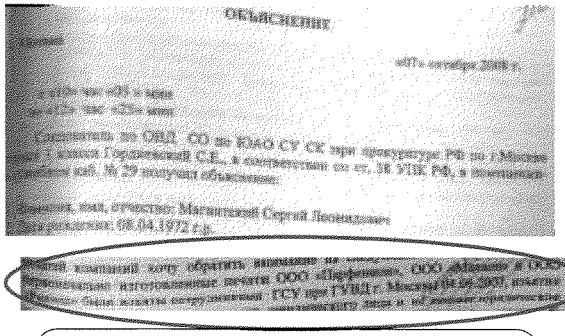
Artyom Konstantinovich Kuznetsov	28-Feb-75	Deputy head (previously senior operative) of the 6th unit of 2nd section of operations and search of the Tax Crimes Department of the Moscow Branch of the Interior Ministry, Lt Colonel	MVD	A, B, O	In his role as senior Interior Ministry operative, was a member of the two investigation groups, one that arrested and detained Mr Magnitsky, and another that was supposed to investigate the $230 m theft, in spite of his conflict of interest as participant in the June 2007 raids that had seized materials to perpetrate the $230 m theft	Mr Kuznetsov with other Interior Ministry officers took part in the 4 June 2007 raids on Hermitage office when documents for the criminal conspiracy uncovered by Mr Magnitsky had been seized and used to misappropriate the Hermitage Fund's companies and organise repressive criminal cases against Hermitage and Mr Magnitsky's associates	"Protocol of search....investigator of the 2nd unit of the investigative section of the Main Investigation Department of the Moscow Branch of the Interior Ministry, senior Lt of justice O.I. Nesterov...with participation of ...operative A.K. Kuznetsov, ...operative E.V. Starodubov, operative D.N. Golovin, operative G.V. Gorshunov, operative O.A. Droganov, D.M. Tolchinsky, A.Krechetov ...carried out a search in the building...in order to find and seize items and documents stated in the decree to conduct the search of 01.06.2007."	4-Jun-07	Protocol of search of Hermitage office in Moscow with Mr Kuznetsov present	D1242.pdf
						Mr Kuznetsov was formally appointed to the fabricated case used by the criminal conspiracy to misappropriate the Hermitage Fund's companies and $230 m of taxes they had paid	I.A. Glukhov: "Deputy head of Interior Ministry branch for Moscow - head of the Main Investigation Department of the Interior Ministry branch for Moscow, having considered the materials of the criminal case No 151231, have determined: The 2nd unit of the investigative section of the Main Investigation Department of the Interior Ministry branch for Moscow is investigating the criminal case No 151231 commenced on 28 May 2007 in relation to general director and chief accountant of Kameya I.S Cherkasov under Section 2 of Article 199.1 of the Criminal Code of RF...It is necessary to conduct a large number of investigative actions and operational and search activities, the investigation of the criminal case represents particular complexity and public resonance...rule: 1. Assign the proceeding under the criminal case No 151231 to the investigative group comprising: ...2. Appoint as head of the investigative group senior investigator of the unit of internal affairs of the 2nd unit of the investigative section of the Main Investigative Department of the Interior Ministry branch for Moscow major of justice P.A. Karpov. 3. Include in the work of the investigative group: - senior operative of internal affairs of the	14-Jun-07	Decree appointing Mr Kuznetsov to the investigation group	D1733.pdf
						Mr Kuznetsov was formally reappointed to the repressive case against Hermitage and Mr Magnitsky two weeks prior to Mr Magnitsky's arrest	"Head of the investigative body - deputy head of the Investigation Committee of the Interior Ministry, General Major of justice O.V. Logunov, having considered the materials of the criminal case No 153123...With the purposes of full and comprehensive investigation, taking into account the large scope of planned investigative actions, guided by Article 163 of the Criminal Procedural Code of the Russian Federation, rule: 1. Assign the proceeding under the criminal case No 153123 to the investigative group comprising: ... 2. Assign to work on the investigative group: - deputy head of 6th unit of 2 section of Tax Crime Department of the Moscow Branch of the Interior Ministry Lt Col of police A.K. Kuznetsov... 3. Appoint Major of justice O.F. Silchenko, investigator of especially important cases of the Investigation Committee of the Interior Ministry of Russia as head of the investigative group."	12-Nov-08	Decree to appoint Mr Kuznetsov to the investigation group that arrested Mr Magnitsky	D1244.pdf
						Mr Kuznetsov was formally assigned to bring Mr Magnitsky by force to the Interior Ministry in spite of his conflict of interest and having being named by Mr Magnitsky in earlier testimony	Decree to bring witness by force. Investigator...of the Investigation Committee of the Interior Ministry of Russia, Major of justice O.F. Silchenko "[I] rule to: 1. Bring by force witness Magnitsky Sergei Leonidovich...to investigator ...Major of Justice O.F. Silchenko. 2. Send the decree to bring the witness S.L. Magnitsky to deputy head of 6th unit of 2nd section of the Tax Crimes Department of the Moscow Branch of the Interior Ministry, Lt Colonel of police A.K. Kuznetsov for execution"	21-Nov-08	Decree assigning Mr Kuznetsov to bring Mr Magnitsky by force to the Interior Ministry	D1243.pdf

Evidence 1: Sergei Magnitsky testified against police officer Kuznetsov

Testimony to the Russian State Investigative Committee,
5 June and 7 October 2008



Sergei Magnitsky



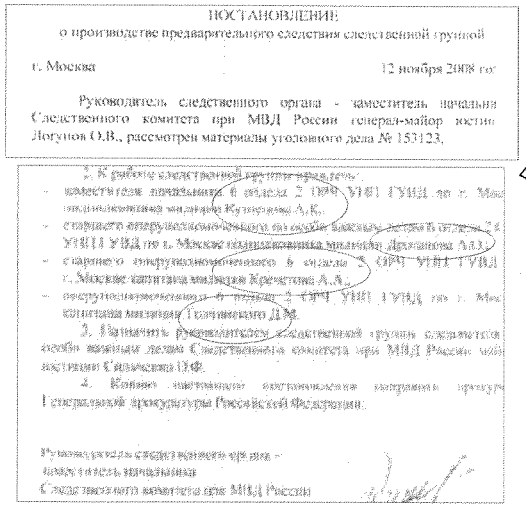


Interior Ministry officer
Lt Col Artyom Kuznetsov

"Seals of [Hermitage Fund companies] were seized by the Moscow Branch of the Interior Ministry on 4 June 2007."

Source: Magnitsky Testimony, 7 October 2008- http://russian-untouchables.com/docs/D65.pdf

Evidence 2: Police officer Artyom Kuznetsov appointed to investigate Magnitsky



ПОСТАНОВЛЕНИЕ
о производстве предварительного следствия следственной группой

г. Москва 12 ноября 2008 г.

Руководитель следственного органа - заместитель начальника Следственного комитета при МВД России генерал-майор юстиции Логунов О.В., рассмотрев материалы уголовного дела № 153123,

"Hereby I order to appoint Kuznetsov, Droganov, Krechetov, Tolchinsky to the investigative team on the case against Hermitage/ Magnitsky"

Signed: General Logunov

Evidence 3: Police officer Kuznetsov ordered to arrest Magnitsky

On 24 November 2008, Sergei Magnitsky was arrested by Lt Col Kuznetsov (whom he previously exposed) and three of his subordinates on orders from Investigator Silchenko of the Interior Ministry

Order to Arrest Sergei Magnitsky (24 Nov 2008)



"Hereby I order Lt Col Kuznetsov to arrest Magnitsky"

Signed: Investigator Oleg Silchenko



Lt Col Artyom Kuznetsov

Krechetov **Droganov** **Tolchinsky**

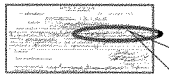






Beginning of Magnitsky's 358-day detention

24 November 2008

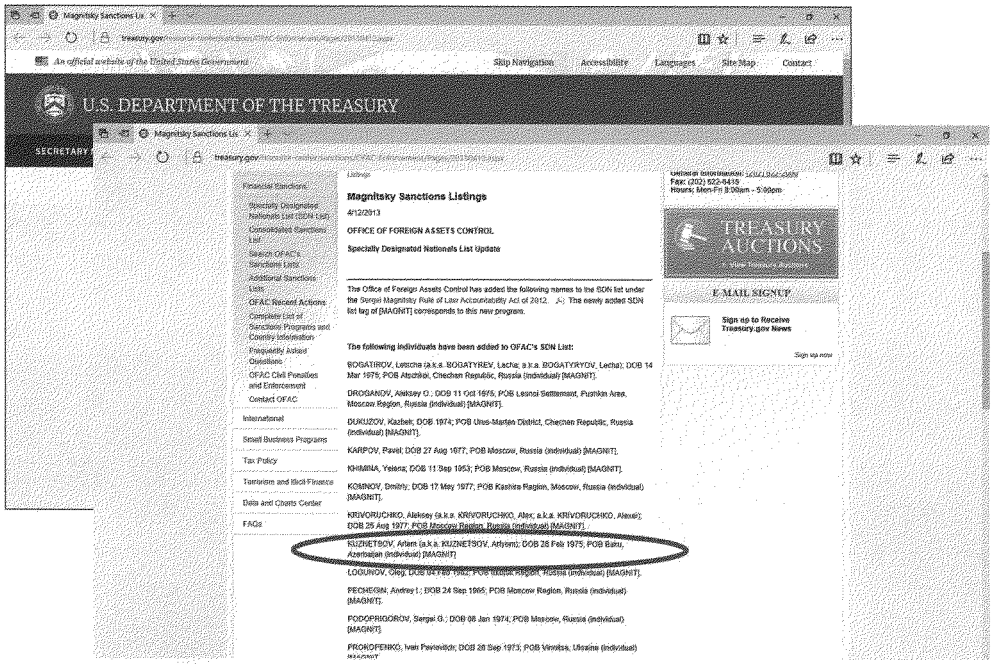


"Present at home search: Droganov, Krechetov"

13

Source: Decree by Oleg Silchenko to Appoint Kuznetsov to arrest Magnitsky, 24 November 2008; http://russian-untouchables.com/rus/docs/D295.pdf; http://russian-untouchables.com/rus/docs/D296.pdf

After The Investigation Kuznetsov was placed on the OFAC's SDN List:



Source: US Department of Treasury, Magnitsky Sanctions Listings, 4 December 2013 ; https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130412.aspx

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