

Sanctioning “Serious Human Rights Abuse” under Global Magnitsky

In reauthorizing the Global Magnitsky Human Rights Accountability Act, Congress should not only repeal the sunset provision, but also codify the “**serious human rights abuse**” standard and other features of President Trump’s Executive Order 13818 that filled gaps in the law’s narrow framework.

Since 2017, **138 human rights abusers** have been sanctioned under the Executive Order’s standard – nearly **3 out of 4 of whom may not have been sanctionable under the Global Magnitsky Act’s standard**.

How does the original Global Magnitsky Act restrict sanctions related to human rights?

- **The Act’s standard restricted sanctionable abuses** to “extrajudicial killings, torture, or other gross violations of internationally recognized human rights.” The latter term includes “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 security of person.”¹ Even in those cases, the Act further limited the sanctions to individuals whose victims were whistleblowers or human rights defenders.
- **This standard left arbitrary gaps** through which perpetrators of heinous abuses could avoid accountability. Under the U.S. government’s interpretation of “violations,” sanctionable perpetrators would be limited to 1) state actors, 2) who acted under the color of law, 3) on their national territory. The statute also excludes perpetrators in a situation where only one violation was committed, however grave. The “gross violations” standard also does not clearly include rape, sexual violence, human trafficking, slavery, forced labor, and other serious abuses.

What constitutes a “serious human rights abuse”? What other abuses does it cover?

- The “serious human rights abuse” standard in the Executive Order encompasses and builds on the Global Magnitsky Act, and closes arbitrary gaps in the law.
- In practice, the “serious human rights abuse” standard has only been used in cases involving **physical violence against the person of the victim or arbitrary detention**. It can be applied, though, to 1) state and non-state actors, 2) single or multiple serious abuses, 3) extraterritorial acts, and 4) acts perpetrated *or not* perpetrated under the color of law. It also includes violent abuses not clearly covered by the Act, such as rape, sexual violence, human trafficking, slavery, forced labor, etc.
- Though it is not defined in law, **the “serious human rights abuse” standard has been in effect for four years**. It can be found in other sanctions statutes² and is **not unlimited** in scope. Nonviolent infringements on rights such as the freedom of expression and assembly are not sanctionable. The standard has never been used against someone solely for incitement or expressing opinions.

¹ Global Magnitsky Human Rights Accountability Act (P.L. 114-328), Section 1263(a)(1)(A)-(B).

² Belarus Democracy Act of 2004 (P.L. 108-347, as amended; 22 U.S.C. 588 note), Sec. 6; Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (P.L. 111-195), Sec. 105 (22 U.S.C. 8514); P.L. 112-158 - IRAN THREAT REDUCTION AND SYRIA HUMAN RIGHTS ACT OF 2012 (22 U.S.C. 8701ff; P.L. 114-122 (22 USC 9201) - North Korea Sanctions and Policy Enhancement Act of 2016; COUNTERING AMERICA’S ADVERSARIES THROUGH SANCTIONS ACT Public Law 115-44; P.L. 115-335 - Nicaragua Human Rights and Anticorruption Act of 2018; Uyghur Human Rights Policy Act of 2020 (P.L. 116-145, as amended; 22 U.S.C. 6901 note), Sec. 5.

What sanctions were only possible under the Executive Order's standard, and not the Act's?

Nearly 3 out of 4 perpetrators designated under the Executive Order likely would not have been eligible for sanctions under the Act's standard. These include:

- **Nonstate actors**, such as the Sandinista Youth in Nicaragua, Iraqi and Libyan militias, Allied Democratic Forces in Uganda and DR Congo, and Houthis in Yemen.
- **Single incidents**, such as the killing of Jamal Khashoggi, arbitrary Turkish detention of pastor Andrew Brunson, and death of Chinese human rights activist Cao Shunli.
- **Victims not targeted for their status as a whistleblower or human rights defender**, such as widespread abuses against civilian populations and ethnic and religious minorities (Uyghurs in Xinjiang, Rohingya in Burma, civilians in Tigray, etc.).

The GloMag sanctions for Brunson's detention and Khashoggi's killing have attracted praise, but they also illustrate the specific hurdles if the GloMag program were limited to the Act's standards.

- **Brunson.** It is possible he was a qualified victim under the Act, but his "unfair and unjust detention" was only a single violation.³ Additionally, the Turkish officials were sanctioned for their indirect role as leaders of an entity engaged in human rights abuses, not because they were "responsible" under the Act's standard.
- **Khashoggi.** While the extraterritorial nature of Khashoggi's murder may have been resolved by the fact it occurred in the Saudi consulate, his killing was a single violation. Of the 19 Saudis targeted, only a few could have been sanctioned under the Act's standard for being "responsible," and the majority of those indirectly engaged as accessories would not have been held accountable.⁴

What does it mean to be "indirectly engaged in" a serious human rights abuse?

- Executive Order 13818 allows foreign persons to be sanctioned for being "responsible for or complicit in, or to have directly or indirectly engaged in" serious human rights abuse. This phrase and similar formulations exist in many sanctions programs⁵ to describe their connection to abuses.
- Direct engagement is understood to refer to a principal individual who directly carries out an abuse, such as committing an extrajudicial killing. Indirect engagement is understood to refer to an individual who did not directly carry out the abuse, but who aided, abetted, or assisted in carrying out the abuse as an accessory, and likely played an integral role in the abuse.
- The 2018 killing of Jamal Khashoggi and the sanctions issued against the 19 Saudis involved help demonstrate the importance of the "indirectly engaged in" standard. All the men were sanctioned for being "responsible for or complicit in, or to have directly or indirectly engaged in" the killing.
 - "Directly engaged in" – would allow the U.S. to sanction those who directly participated in the violent acts that killed Khashoggi.
 - "Indirectly engaged in" – would allow the U.S. to sanction those who aided or abetted the killing, such as those who assisted in dismembering and disposing of his body.
- "Indirect engagement" does not include expressions of opinion or belief. Executive Order 13818 has never been used in any way to sanction someone for what would amount to free speech.

³ See <https://home.treasury.gov/news/press-releases/sm453>.

⁴ See <https://home.treasury.gov/news/press-releases/sm547>; <https://home.treasury.gov/news/press-releases/jy0038>.

⁵ See e.g. the Russia Program (E.O. 13660, E.O. 14024); Syria Program (E.O. 13894); Venezuela Program (E.O. 13692; E.O. 13850); Burma Program (E.O. 14014); Hong Kong Program (E.O. 13936); Nicaragua Program (E.O. 13851, NICA Act).

Could religious leaders be sanctioned for calling on governments or members of their faith community to outlaw or deny abortions? Would that be considered incitement?

No. It would not constitute a “serious human rights abuse,” because it is not an act of physical violence against the person of the victim or arbitrary detention.

- Even if a future administration differed in what it considered to be a “serious human rights abuse,” what’s described here is an expression of opinion or belief protected under international human rights law as part of the right to freedom of expression and amounting to protected speech under U.S. law.
- Moreover, under established U.S. law, such speech would not amount to incitement because it would be neither *intended nor likely* to incite or produce immediate violence or imminent lawless action.
- If the Treasury, State, and Justice Departments nonetheless decided to proceed with a sanctions action in such a case, they would have to defend it against administrative and legal challenge.