



April 14, 2022

Richard K. Delmar  
Acting Inspector General  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Room 4436  
Washington, DC 20220

Diana Shaw  
Acting Inspector General  
U.S. Department of State  
1700 North Moore Street  
Arlington, VA 22209

Dear Mr. Delmar and Ms. Shaw:

Our organizations promote accountability and fight corruption, including through the use of targeted sanctions tools such as the U.S. government's Global Magnitsky sanctions program. We are writing, based on public reports, to ask that you investigate the Treasury Department's January 15, 2021 decision to issue a license effectively lifting the financial sanctions it had imposed on Mr. Dan Gertler in December 2017. The public record and related news reports indicate that the issuance of the license was procedurally irregular and may have lacked a credible, rational justification consistent with the purpose of the Global Magnitsky program and the public interest. While some members of Congress have publicly called for the Treasury Department itself to investigate the decision,<sup>1</sup> we are not aware that it has done so.

Since the Treasury Department first imposed sanctions against Mr. Gertler in 2017, it has described his alleged corruption and its impacts in stark terms. He had "amassed his fortune through hundreds of millions of dollars' worth of opaque and corrupt mining and oil deals" in the Democratic Republic of the Congo (2017); "profit[ed] from corruption and misconduct" (2018); and "secure[d] grossly underpriced mining contracts, depriving the Congolese people of more than a billion dollars in lost revenue" (2019).<sup>2</sup> Mr. Gertler apparently presented such an emblematic case that the Treasury Department cited him as the first example of financial facilitation methods in a 2018 "advisory on human rights abuses enabled by corrupt senior foreign political figures and their financial facilitators."<sup>3</sup> The Treasury Department reinforced its initial sanctions with an additional round targeting companies under Mr. Gertler's control in 2018 and touted the significance of these sanctions in 2019. Against this backdrop, granting Mr. Gertler sanctions relief without any explanation represented a stunning reversal of policy.

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<sup>1</sup> Cory A. Booker, Richard Durbin, and Benjamin L. Cardin, Letter to Secretary of the Treasury Janet Yellen, [February 1, 2021](#); and Gregory W. Meeks, Karen Bass, and Jim Himes, Letter to Secretary of the Treasury Janet Yellen, [February 3, 2021](#) (calling the decision to issue the license "arbitrary and capricious").

<sup>2</sup> U.S. Department of the Treasury, "United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe," [December 21, 2017](#); Treasury Department, "Treasury Sanctions Fourteen Entities Affiliated with Corrupt Businessman Dan Gertler Under Global Magnitsky," [June 15, 2018](#); Under Secretary Sigal Mandelker, "Speech on Impact of Sanctions at Center for Strategic and International Studies (CSIS)," [July 31, 2019](#).

<sup>3</sup> Financial Crimes Enforcement Network (FinCEN), "Advisory on Human Rights Abuses Enabled by Corrupt Senior Foreign Political Figures and their Financial Facilitators," FIN-2018-A003, [June 12, 2018](#).

One year after Mr. Gertler's license was issued, very little is known about it. The U.S. government has released virtually no official information regarding the license or the decision to issue it. The Department of State's March 8, 2021 statement announcing that the Treasury Department had revoked the license appears to be one of the only official descriptions of it. In that statement, the State Department stressed that the license had been "inconsistent with America's strong foreign policy interests in combatting corruption around the world," citing in particular "U.S. efforts to counter corruption and promote stability in the Democratic Republic of the Congo (DRC)." The following day, a State spokesperson added that the license had "undermined the integrity and effectiveness of the Global Magnitsky sanctions program."<sup>4</sup>

Criticism of one administration by its successor is not in itself an indicator of potential wrongdoing, but several former senior officials of the previous administration itself also offered scathing criticism of Mr. Gertler's license. The assistant secretary of the Treasury for terrorist financing from June 2017 to January 2021 called the license "truly appalling,"<sup>5</sup> while the director of the Treasury Department's Office of Foreign Assets Control (OFAC) from January 2017 to May 2018 told *The New York Times* that the license "appears to be an abuse of the process" and was "the most shocking license I have ever seen in a few decades of working on economic sanctions."<sup>6</sup> Other senior officials who had advocated for a strong anti-corruption policy in the DRC questioned the logic of the decision as well.<sup>7</sup>

The manner in which the Treasury Department provided the sanctions relief and the process by which that decision appears to have been made were unusually opaque. When lifting a sanctions designation, the Treasury or State Department will often provide an explanation of why that action is appropriate, and at a minimum will make public note of the action.<sup>8</sup> Former Treasury officials have noted that the use of a private specific license to achieve the effect of a public delisting was an extraordinary deviation from the department's practice.<sup>9</sup> Given Mr. Gertler's alleged success in corrupting the Congolese government through secretive channels, the U.S. government's decision to provide him with sanctions relief through a process that operated outside the public eye was deeply alarming. One U.S. senator said, "To the international community, [it looks like] there was a corrupt process that led to Mr. Gertler receiving relief from the sanctions."<sup>10</sup>

Equally concerning were reports that the license emerged from an internal policymaking process that excluded not only relevant career officials but even the administration's own senior political appointees. Sanctions actions are typically reviewed in a coordination process that gives officials at relevant agencies an opportunity to advise on the issue.<sup>11</sup> One press report cited sources who claimed that "an interagency process was conducted" in the run-up to the issuance of the license,<sup>12</sup> but other reports made clear that the assistant secretary of state for African affairs, the ambassador to the DRC, and a variety of career

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<sup>4</sup> Ned Price, Department of State Spokesperson, "Revocation of License Granted for Dan Gertler," [March 8, 2021](#); Ned Price, Department of State Spokesperson, "Department Press Briefing," [March 9, 2021](#).

<sup>5</sup> Ethan Bronner, "Israel Pushed Trump Officials to Lift Sanctions on Dan Gertler," *Bloomberg*, [March 19, 2021](#).

<sup>6</sup> Eric Lipton, "Tough Sanctions, Then a Mysterious Last-Minute Turnabout," *The New York Times*, [February 21, 2021](#).

<sup>7</sup> *Ibid.*

<sup>8</sup> See, e.g., Antony J. Blinken, "Revocation of the Terrorist Designations of Ansarallah," [February 12, 2021](#); and U.S. Department of the Treasury, "Iraq-related Designation Removal," [April 30, 2021](#).

<sup>9</sup> Lipton, *New York Times*, [February 21, 2021](#); and The Sentry, [January 24, 2021](#).

<sup>10</sup> Sophie Neiman, "The U.S. vs. Dan Gertler," *World Politics Review*, [April 27, 2021](#). Bracketed text as in original.

<sup>11</sup> Brian O'Toole and Samantha Sultoon, "Sanctions explained: How a foreign policy problem becomes a sanctions program," Atlantic Council, [September 22, 2019](#); and Lipton, *New York Times*, [February 21, 2021](#).

<sup>12</sup> Nick Wadhams, Saleha Mohsin, and Michael J Kavanagh, "U.S. Likely to Undo Israeli Billionaire's Sanctions Reprieve," *Bloomberg*, [February 3, 2021](#).

Treasury officials were unaware of the decision until it was leaked to the press.<sup>13</sup> One report specifically stressed that the decision to issue a license allowed officials “to truncate formal inter-agency consultation, which would have met with protest from policy makers at Treasury and State.”<sup>14</sup>

The Treasury Department’s substantive justification for issuing the license, which for several weeks unblocked previously frozen assets belonging to Mr. Gertler and other licensees, remains entirely unclear. Since the license was kept secret until a press report on January 24, 2021, the previous administration faced no questions about it while still in office. A purported leaked copy of the license itself also offers no rationale, simply stating without explanation that the sanctions relief it provides is “[b]ased upon, *inter alia*, the information dated December 3, 2020, submitted on behalf of Mr. Dan Gertler...”<sup>15</sup> That “information” is presumably contained in other documents that also are not publicly available.

In some circumstances, U.S. sanctions tools are meant to be tightened and loosened in a manner that rewards behavior change, but we are aware of no evidence that Mr. Gertler had changed his behavior. Indeed, investigative reporting by watchdog organizations in mid-2020 indicated that he had “seemingly used an international money laundering network...to evade U.S. sanctions.”<sup>16</sup> Most of the other potential rationales that have been advanced for the license are unpersuasive as well. We know of no reason to believe that the allegations of Mr. Gertler’s corruption had come into doubt since the Treasury Department repeatedly and publicly made those allegations. Mr. Gertler’s spokesperson indicated that he had accepted arrangements to have his finances monitored in connection with the license;<sup>17</sup> no information is available, though, about the nature or rigor of those arrangements, which would have had to be extraordinarily intrusive to be a credible impediment to the kind of misconduct in which Mr. Gertler has allegedly engaged.

Press reports suggest that a variety of foreign policy interests unrelated to fighting corruption were raised by Mr. Gertler’s champions and may also have been considered in the policymaking process. These include the ostensible intelligence value of Mr. Gertler’s “ear to the ground” in central Africa; a sense of obligation for the role Mr. Gertler had played as an intermediary between U.S. officials and the then-president of the DRC some 17 years earlier; the philanthropic value of Mr. Gertler’s charitable activities; and requests from officials of the government of Mr. Gertler’s home country.<sup>18</sup> It is not clear which, if any, of these considerations underpinned the decision to issue the license, but none have to do with addressing the threat that corruption poses to U.S. interests. Some would seem have no rational place at all in the U.S. policymaking process.

Based on the above information, we request that you investigate the circumstances surrounding the issuance of Mr. Gertler’s license and the justification for it. The Treasury Department’s Office of Inspector General is authorized to investigate and conduct initiatives to detect and prevent fraud, waste,

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<sup>13</sup> Lipton, *New York Times*, [February 21, 2021](#).

<sup>14</sup> Bronner, *Bloomberg*, [March 19, 2021](#).

<sup>15</sup> *New York Times* copy of U.S. Department of the Treasury, “Global Magnitsky Sanctions Regulations, License No. GLOMAG-2021-371648-1,” [January 15, 2021](#).

<sup>16</sup> Global Witness and Platform to Protect Whistleblowers in Africa, “Undermining Sanctions,” [July 2, 2020](#). More recently, while Mr. Gertler entered into a deal with the Congolese government in February 2022 that would see him return oil and mining assets that he obtained under dubious circumstances, the terms of that deal and the extent to which it benefits the Congolese people remain opaque. Joël Té-Léssia Assoko and Stanis Bujakera Tshiamala, “DRC: The grey areas of the Dan Gertler deal,” *The Africa Report*, [March 7, 2022](#).

<sup>17</sup> Michael Kavanagh, “Trump Gave Israeli Billionaire Dan Gertler Sanctions Reprieve,” *BloombergQuint*, [January 25, 2021](#).

<sup>18</sup> Bronner, *Bloomberg*, [March 19, 2021](#); and Lipton, *New York Times*, [February 21, 2021](#).

and abuse in programs and operations within its jurisdictional boundaries.<sup>19</sup> Because of the unusual circumstances and procedural irregularities surrounding the issuance of the license, it is vitally important that your office investigate whether OFAC’s licensing authority was improperly used to unblock the assets of Mr. Gertler and other licensees in a manner that undermined U.S. foreign policy and national security interests. Such an investigation will protect the integrity of OFAC’s licensing authority and prevent it from being abused in the future in a manner that undermines those interests. We are also addressing our request to the State Department inspector general, given the Treasury Department’s practice of seeking foreign policy guidance from the State Department on sanctions decisions and given reports that senior State officials advocated for Mr. Gertler’s license.<sup>20</sup>

If you do investigate this matter, we urge you to publicly report as much of your findings and conclusions as possible. Corrupt or abusive individuals whom the U.S. government may target under this sanctions program in the future can be expected to seek unmerited relief from the scrutiny and pressure it imposes. Shedding light on Mr. Gertler’s license will be essential to making clear whether reform or further oversight are needed to preserve the integrity of the Global Magnitsky program and discourage others from following a similar playbook. While the Treasury Department’s December 2021 sanctions against another individual and associated companies in Mr. Gertler’s network were a welcome step, they send a muddled signal given that the reversals that preceded them remain unexplained.

Congress and the executive branch have taken increasingly serious steps to pursue the fight against corruption, which the current administration has identified as “a core national interest.” The impact and credibility of those steps will be diminished if no measure of transparency and accountability ensues from a high-profile incident in which the U.S. government fell dramatically short of upholding that interest.

Sincerely,



Adam Keith  
Director, Accountability  
Human Rights First



Justyna Gudowska  
Director, Illicit Finance Policy  
The Sentry



Gary Kalman  
Director, U.S. Office  
Transparency International

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<sup>19</sup> Office of Inspector General, Department of the Treasury, “Semiannual Report to Congress: April 1, 2021 – September 30, 2021,” [September 2021](#), OIG-CA-22-004, p. 2.

<sup>20</sup> Lipton, *New York Times*, [February 21, 2021](#).