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What is the Global Magnitsky Act, and why are U.S. senators invoking this on Saudi Arabia?

By Jordan Tama

Saudi dissident Jamal Khashoggi has not been seen since he entered a Saudi Arabian consulate in Turkey on Oct. 2, prompting widespread rumors that the Saudi government is behind his disappearance. A bipartisan group of 11 Democratic and 11 Republican senators sent a letter to President Trump this week, calling for an investigation and a determination of whether to impose sanctions on foreign government officials because of Khashoggi's reported disappearance, "including with respect to the highest ranking officials in the Government of Saudi Arabia."

The letter, signed by all but one member of the Senate Foreign Relations Committee, was drafted pursuant to a 2016 law — the [Global Magnitsky Human Rights Accountability Act](#) — that requires the president to decide within 120 days whether to impose the requested sanctions.

And that creates a problem for Trump: He may be in the awkward position of having to choose explicitly between sanctioning a favorite foreign partner — the Saudi royal family — and flouting the bipartisan will of Congress. Here's what you need to know:

1. What is the Global Magnitsky Act?

The Global Magnitsky Act is the second in a series of two laws named after a Russian whistleblower, Sergei Magnitsky, who died while in detention in Russia after being beaten and denied medical care.

The first of the two laws — formally the Sergei Magnitsky Rule of Law Accountability Act but commonly known simply as the Magnitsky Act — was enacted in 2012. This initial law mandated that the State and Treasury departments **restrict the travel and freeze the assets of any individuals who have committed gross violations of human rights in Russia.** The executive branch has imposed these sanctions on 49 individuals, but the law received its greatest share of news coverage following reports that Donald Trump Jr. and Russian lobbyist Natalia Veselnitskaya discussed the possibility of repealing it during a 2016 meeting.

The Global Magnitsky Act extends the sanctions stipulated by the original Magnitsky Act to human rights violators outside of Russia. **Unlike the first law, this second law does not require the president to impose any sanctions. Instead, the global version gives the president the legal authority to institute a travel ban and asset freeze on human rights violators in any country, while leaving the president with the discretion to determine whether to do so.**

But to make it more difficult for the president to ignore the law, Congress included in the Global Magnitsky Act a requirement that the **president respond within four months** to requests from the heads of certain congressional committees for the executive branch to **determine whether particular individuals engaged in human rights violations.** This week's letter, initiated by Senate Foreign Relations Committee leaders Bob Corker (R-Tenn.) and Robert Menendez (D-N.J.), triggers this requirement for the president to respond.

Sen. Lindsey Graham (R-S.C.) said if Saudi Arabia is responsible of the death of Washington Post contributor Jamal Khashoggi, it would be "unacceptable." (Reuters)

2. Why are senators invoking this law?

Corker, Menendez and their Senate colleagues surely invoked the Global Magnitsky Act in their letter to Trump because they know there will now be greater pressure on Trump to launch a U.S. investigation, and eventually apply a travel ban and asset freeze on Saudi officials. Their letter refers specifically to the Saudi government's highest-ranking officials — this also raises the prospect of U.S. sanctions being imposed on the Saudi Crown Prince

Mohammed bin Salman, who reportedly ordered an operation to detain Khashoggi, according to recordings of U.S. intelligence intercepts.

It is difficult to imagine the Trump administration freezing the assets or denying a visa to bin Salman or other senior Saudi officials, given the strong ties between the U.S. and Saudi governments. Moreover, Jared Kushner, Trump's son-in-law, reportedly has a close personal relationship with bin Salman.

But it will also be difficult for Trump to explain to U.S. lawmakers and the American public why he is refusing to impose sanctions, if there is strong evidence that certain Saudi officials ordered or carried out the kidnapping and/or killing of an independent journalist, and a U.S. resident, outside of Saudi Arabia. Republican Sen. Lindsay Graham predicted on Wednesday that there will be a "bipartisan tsunami" of action if the evidence demonstrates Saudi responsibility for Khashoggi's death, suggesting that sweeping the issue under the rug may come with a substantial domestic political cost for Trump.

3. Does the letter signify a return of congressional bipartisanship?

The bipartisan congressional pressure on the president in this case may seem anomalous in two ways. First, today's Congress is severely polarized along partisan lines. Second, Trump has faced rather weak congressional resistance to a number of his key foreign policy initiatives, such as placing hefty tariffs on other countries and withdrawing from the Paris climate accord, Trans-Pacific Partnership and Iran nuclear deal.

Yet Congress has challenged Trump in a bipartisan manner on other foreign policy issues — for instance, in rejecting Trump's proposal to slash the State Department's budget by one-third, mandating the placement of sanctions on Russia in response to its interference in the 2016 election, and affirming U.S. support for NATO and the U.S. troop presence in South Korea.

In a precursor to this week’s letter, a coalition of Democratic and Republican lawmakers has also been pressing to restrict U.S. military aid to Saudi Arabia because of the high levels of civilian casualties associated with Saudi intervention in Yemen. These cases illustrate that congressional bipartisanship and activism on foreign policy remain more prevalent than one may think.

Moreover, Congress has a long history of assertiveness on sanctions. The Magnitsky Acts were themselves advanced by a set of Democratic and Republican lawmakers that included Reps. Jim McGovern (D-Mass.) and Christopher H. Smith (R-N.J.) and Sens. Benjamin L. Cardin (D-Md.) and John McCain (R-Ariz.). Many other sanctions laws in recent decades — targeting countries ranging from Iran to apartheid-era South Africa — also gained approval through strong bipartisan support in Congress, in spite of presidential concerns.

In short, this week’s challenge to Trump from many of the Senate’s leading voices on international matters is no anomaly, but rather the continuation of a pattern of lawmakers working across the aisle in certain areas of foreign policy. Congress’s track record of bipartisan activism on sanctions further suggests that the upcoming retirement from the Senate of Corker, one of the initiators of the letter to Trump, is unlikely to result in a dramatic lessening of congressional pressure on the issue in the new year.