



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

December 16, 2022

The Hon. Richard K. Delmar
Acting Inspector General & Deputy Inspector General
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Hon. Diana R. Shaw
Acting Inspector General
U.S. Department of State
Office of Inspector General
SA-39, 1700 North Moore Street
Arlington, VA 22209

Re: Request for Investigation into Specific Licenses Issued to Dan Gertler Due to Possible Violations of the Global Magnitsky Act, Executive Order No. 13818 and Executive Branch Ethics Regulations

Dear Acting Inspectors General Delmar and Shaw:

Citizens for Responsibility & Ethics in Washington (“CREW”) respectfully requests that the U.S. Department of Treasury’s Office of the Inspector General (“Treasury OIG”) and U.S. Department of State’s Office of the Inspector General (“State OIG”) investigate whether former Secretary of the Treasury Steven T. Mnuchin and former Secretary of State Michael R. Pompeo violated, or caused other government officials, to violate the Global Magnitsky Human Rights Accountability Act (“Global Magnitsky Act”) and executive branch ethics regulations in connection with Treasury’s covert issuance of two specific licenses that lifted sanctions imposed on international businessman and billionaire Dan Gertler (“Gertler”).¹ To determine the full extent of any harm done to the Global Magnitsky sanctions program, CREW additionally requests that the Treasury OIG and State OIG investigate and account for the transactions that resulted from these licenses, including the extent to which “unblocked” assets are no longer under U.S. jurisdiction.

¹ *Press Release: United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe*, U.S. DEP’T OF TREASURY (Dec. 21, 2017), <https://home.treasury.gov/news/press-releases/sm0243> [hereinafter “Treasury Magnitsky Program & Gertler Sanctions Announcement”].

CREW seeks to amplify and expand upon calls from civil society² and Congress³ for an investigation into the licenses, based upon insights gleaned from internal State Department memoranda and emails obtained in response to CREW Freedom of Information Act (“FOIA”) requests (attached as Appendices 1 – 5), which are being processed on a rolling basis.⁴

Newly-released internal State Department memoranda and other records show that Secretaries Pompeo and Mnuchin were directly involved in not one, but *two* controversial and procedurally irregular licensing decisions that undermined U.S. foreign policy interests by allowing a notoriously corrupt actor to access the U.S. financial system and millions of dollars of blocked and unblocked assets. Overall, the released communications confirm that career officials at the State Department believed that the two licenses issued to Gertler caused significant damage to U.S. interests—allowing Gertler “significant opportunities to exert malign influence in the DRC in a way that undermine[s] U.S. interests”; causing “U.S. credibility” and “the credibility of the Global Magnitsky sanctions program” to be “significantly damaged”; and “jeopardiz[ing] cooperation with the DRC, Congress and our close partners in civil society.”⁵

² Human Rights First, Transparency International & Sentry Letter to State and Treasury OIGs Requesting Investigation of Specific License Issued to Gertler (Apr. 14, 2022), <https://www.humanrightsfirst.org/sites/default/files/Final%20Gertler%20letter%20for%20Treasury%20and%20State%20OIGs.pdf> [hereinafter “Civil Society Letter Calling for Investigation”].

³ Letter from Senators Booker, Cardin, and Durbin to Secretary Yellen Requesting Investigation into January 2021 Specific License Issued to Gertler, (Feb. 1, 2021), <https://thesentry.org/wp-content/uploads/2021/02/Letter-to-Treasury-re-Dan-Gertler.pdf>; Letter from House Oversight and Reform Committee Chairwoman Maloney and Senate Finance Committee Chairman Wyden to Secretary Yellen (Oct. 27, 2022) <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-10-27.CBM%20Wyden%20to%20Yellen-Treasury%20re%20Mnuchin%20Gulf%20Conflicts.pdf> (requesting documents related to Treasury’s issuance of the Gertler license as part of a broad investigation into whether Secretary Mnuchin improperly used his cabinet position to benefit his personal financial interests).

⁴ On March 11, 2021, CREW submitted separate FOIA requests to the State Department (F-2021-03846/FL-2021-00512) and Treasury (2022-FOIA-00432) for “any and all records and communications from December 20, 2017 to the present referring or relating to Office of Foreign Assets Control (“OFAC”) License No. GLOMAG-2021-371648, which was issued to Arnold & Porter Kaye Scholer LLP, on January 15, 2021, including information submitted to the State Department on behalf of Dan Gertler or the designated persons or entities listed in Appendix A, and any other records or communications relating to lifting sanctions against Mr. Gertler or the designated persons and entities listed in Attachment A.” CREW submitted a related FOIA request to Treasury on March 11, 2021 (2021-FOIA—00431) for “any and all records or communications from December 20, 2017 to the present related to the blocked property and interests in property of Daniel Gertler or any designated persons or entities listed in Appendix A, including any reports of blocked property, reports releasing property from blocked status, or reports required to be submitted to the Office of Foreign Assets Control (“OFAC”) for activities undertaken pursuant to License No. GLOMAG-2021-371648, which was issued to Arnold & Porter Kaye Scholer LLP, on January 15, 2021, by OFAC Director Andrea Gacki” and “any and all records and communications related to the designations of Daniel Gertler, and the designated persons listed in Appendix A, including any designations packages, whether classified or unclassified, prepared in support of their designations.” These FOIA requests are the subject of pending litigation. *Citizens for Responsibility and Ethics in Washington v. U.S. Department of the Treasury, et al.*, No. 21-1246 (CKK) (D.D.C., filed May 6, 2021).

⁵ Appendix 1, Memo to Secretary Antony Blinken from EB (Peter Haas), AF (Robert F. Godec) and INL (James A. Walsh), Jan. 29, 2021 [hereinafter “January 29, 2021 Revocation Memo”].

Treasury's issuances of the licenses appear to violate the Global Magnitsky Act due to the absence of congressional notice and a legitimate statutory basis.⁶ Numerous procedural irregularities surrounding the issuances raise the real possibility that Secretaries Mnuchin and Pompeo circumvented the standard processes in place for inter-agency consultation under Executive Order No. 13818 and undermined U.S. foreign policy efforts for the purpose of promoting the private interests of Gertler and others in likely violation of executive branch ethics rules.

The former head of Treasury's Office of Foreign Assets Control ("OFAC"), which is responsible for implementation of U.S. sanctions, was so "astounded" by Gertler's "unique, one-of-a-kind" license, that he claimed it to be "the most shocking license I have ever seen in a few decades of working on economic sanctions."⁷ To prevent similar abuses of authority from arising in the future, a full investigation by your offices is merited into the circumstances that gave rise to issuance of the Gertler licenses, and in particular, to determine the roles played by Secretary Mnuchin and Secretary Pompeo in their issuances and to assess the damage that may have resulted from unblocking Gertler's assets in the final days of the outgoing administration.

I. BACKGROUND: TREASURY'S DESIGNATION OF GERTLER, THE LICENSES ISSUED TO GERTLER & THE IRREPARABLE DAMAGE CAUSED BY THE LICENSES

Gertler had been sanctioned in December 2017 under the Global Magnitsky Act, a statute designed to address human rights abuses and significant acts of corruption, including the "expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdiction."⁸ By issuing specific licenses that granted Gertler access to the U.S. financial system and his previously blocked assets to the detriment of U.S. interests, Secretaries Mnuchin and Pompeo appear to have allowed Gertler to introduce an element of foreign corruption into the very sanctions program that was designed to combat it.

December 2017 - Gertler Sanctioned Under the Global Magnitsky Act

On December 20, 2017, President Donald J. Trump implemented the Global Magnitsky Act by issuing Executive Order No. 13818 to address the "unusual and extraordinary threat" that human rights abusers and corrupt foreign actors present to our "national security, foreign policy and economy."⁹ As part of its launch, President Trump sanctioned Gertler by designating him and several other foreign actors whose "prevalence and severity of human rights abuse and corruption" have "reached such

⁶ The Global Magnitsky Human Rights Accountability Act of 2016, Subtitle F of Pub. L. No. 114-328 (codified at 22 U.S.C. § 10101 et seq.).

⁷ Eric Lipton, *Tough Sanctions, Then a Mysterious Last-Minute Turnabout*, N.Y. TIMES (Feb. 21, 2021), <https://www.nytimes.com/2021/02/21/us/politics/dan-gertler-sanctions.html>.

⁸ *Id.*

⁹ Exec. Order No. 13818, *Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption*, 82 Fed. Reg. 60,839, § 8 (Dec. 20, 2017) (The Global Magnitsky sanctions program was established to combat the "unusual and extraordinary threat" that corrupt foreign actors "present to our national security, foreign policy and economy.")

scope and gravity” that “they threaten the stability of international political and economic systems.”¹⁰

Gertler’s sanctions arose from his “close friendship” with Democratic Republic of the Congo (“DRC”) President Joseph Kabila, which allowed him to amass a “fortune through hundreds of millions of dollars’ worth of opaque and corrupt mining and oil deals.”¹¹ As a “middleman,” Gertler’s corrupt activities resulted in the DRC losing “over \$1.36 billion in revenue” between 2010 and 2012 by “underpricing” mining assets that were “sold to offshore companies linked to Gertler.”¹² In 2013, Gertler sold back for \$150 million the same oil block rights he had earlier purchased from the DRC government for just \$500,000, resulting in a loss of \$149 million in potential revenue.”¹³

Gertler’s designation under Executive Order No. 13818 resulted in a “blocking” of all of Gertler’s property and interests in property in the United States or that later come into the United States.¹⁴ A blocking action is one of the most severe forms of sanctions since it prohibits all U.S. persons from engaging in any “transfers or dealings of any kind with regard to the property,”¹⁵ unless authorized by Treasury usually through a general or specific license issued by OFAC.¹⁶ OFAC administers sanctions against designated individuals and entities by placing them on its Specially Designated Nationals and Blocked Persons (“SDN”) list, which includes approximately 6,400 names, including the sanctions targets, and the companies and individuals associated with them.¹⁷ As a result, all U.S. persons are prohibited from dealing with SDNs wherever they are located and all SDN assets are blocked.¹⁸

November 2019 - Gertler Begins Lobbying U.S. Officials for Sanctions Relief

According to the *New York Times*, Gertler reportedly began lobbying the Trump Administration for sanctions relief in 2019 through lawyer Alan Dershowitz and former Federal Bureau of Investigation Director Louis Freeh, initially for a specific license that would allow him to distribute funds for alleged charitable purposes in the DRC and in the subsequent months to obtain more comprehensive sanctions relief.¹⁹

In fact, a State Department email recently released to CREW shows that Gertler’s lawyers sought support from the State Department for a *delisting action* in November 2019, which, if granted, would have removed him from OFAC’s SDN List. The State Department email was sent by then-Senior DRC Desk Officer Emily C. Shaffer to then-

¹⁰ Exec. Order No. 13818.

¹¹ Treasury Magnitsky Program & Gertler Sanctions Announcement.

¹² *Id.*

¹³ *Id.*

¹⁴ 22 U.S.C. § 10102(b)(2); Exec. Order No. 13818.

¹⁵ OFAC Website, *Basic Information on OFAC and Sanctions: Question 9. What do you mean by “blocking?”* (last visited Sept. 12, 2022), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/topic/1501>.

¹⁶ OFAC Website, *OFAC Licenses: Question 74. What is a license?* (last visited Sept. 12, 2022), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/topic/1506>.

¹⁷ OFAC Website, *Basic Information on OFAC and Sanctions: Question 10. What countries do I need to worry about in terms of U.S. sanctions?* (last visited Sept. 12, 2022), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/topic/1501>.

¹⁸ *Id.*

¹⁹ Lipton, N.Y. TIMES, Feb. 21, 2021.

Ambassador to the DRC Michael A. Hammer and then-Deputy Assistant Secretary of State for Central Africa and Public Diplomacy Elizabeth N. Fitzsimmons, copying seven other officials, on November 13, 2019.²⁰ Soon after, Shaffer forwarded the message to other State Department officials.²¹ In the email, Shaffer describes efforts by Dershowitz, Freeh, and lawyers Gary Apfel and Gregory Paw to obtain State's support for a delisting petition,²² which would have given comprehensive sanctions relief to Gertler by removing him from OFAC's SDN list.²³ Shaffer first identified Gertler to colleagues as the individual designated for his practice of "undervaluing mining concessions and then reselling for a huge profit which supported Kabila's continued oppressive regime."²⁴ Shaffer then conveyed the contents of a November 13, 2019 meeting between Gertler's aforementioned representatives and State officials, during which Gertler's representatives articulated their "main arguments" why Gertler should be delisted.²⁵

Gertler's representatives contended that a former senior State Department and National Security Council official believed "Gertler was very helpful in efforts to quell violence in Rwanda and the DRC during the 'African World War' during the early 2000s", for which, Dershowitz contended, Gertler never received "anything in return for 'helping America.'"²⁶ The representatives maintained further that Gertler "shares our democratic values," "was a major factor in persuading Kabila to hold elections," "is a very charitable person", but is currently incapable, due to sanctions, of helping "needy people", and "is ready to wield his influence in support of US interests in the DRC and against Russia and China," to "promot[e] US trade and investment."²⁷ The email does not further allude to the State Department's reaction to Gertler's arguments.²⁸

New York Times reporting from February 2021 shows that Freeh's law firm registered Dershowitz, Freeh, Apfel, and Paw as lobbyists for Gertler under the Lobbying Disclosure Act ("LDA").²⁹ A further search of the Senate LDA database shows that Freeh's law firm reported a total of \$100,000 in income related to these individuals' representation of Gertler before State and Treasury between 2019 and 2020.³⁰ Since

²⁰ Appendix 2, Email from Emily Shaffer to Amb. Michael A. Hammer, et al., Nov. 13, 2019 [hereinafter "November 13, 2019 Shaffer Email"].

²¹ *Id.*

²² *Id.*

²³ 31 C.F.R. § 501.807.

²⁴ Appendix 2, November 13, 2019 Shaffer Email.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* Pages 3 through 10 of the email were withheld from the release pursuant to FOIA exemptions 5 U.S.C. §§ 552(b)(1), (b)(5), which apply where information otherwise subject to release is, respectively, "specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy" or "part of the deliberative process."

²⁹ Lipton, N.Y. TIMES, Feb. 21, 2021; Senate LDA Database, <https://lda.senate.gov/filings/public/filing/search/> (The link embedded in the article is to an LDA report filed by Freeh, Sporkin & Sullivan, LLP for the 4th Quarter of 2020, listing Freeh, Dershowitz, Gary Apfel and Gregory Paw as lobbyists before Treasury and State to address OFAC sanctions involving Gertler.)

³⁰ See Senate LDA Database, <https://lda.senate.gov/filings/public/filing/search/> (Last searched on August 11, 2022) [Search of Senate LDA database was based on a review of LD-1 & LD-2 Reports that identify "Dan Gertler" as the "Client".] Beginning in 2020, Freeh's law firm filed numerous LDA reports on behalf of Freeh, Dershowitz, Apfel and Paw for lobbying activity related to OFAC sanctions involving Gertler, which reported a total of \$100,000 in income, including \$30,000 for the 4th Quarter of 2019; \$30,000 for the 1st

Gertler's representatives were registered as lobbyists, however, it is not clear that their services to, and payments from, Gertler were authorized in accordance with OFAC's general license applicable to legal services or if they were issued a separate specific license authorizing the provision of legal services to Gertler.³¹

The reporting also indicates that Gertler's lawyers in Israel contacted then-Ambassador to Israel David M. Friedman for sanctions relief.³² Friedman reportedly notified Secretaries Mnuchin and Pompeo that he supported sanctions relief for Gertler if the "Treasury Department could work it out."³³ Additional reporting indicates that senior Israeli officials, including Yossi Cohen, also played a role in requesting the sanctions relief.³⁴ A recent Congressional investigation notes that within a few months after sanctions were lifted, Cohen, the former director of Mossad, left the Israeli intelligence agency to join SoftBank to head its Israeli operations, and shortly thereafter, SoftBank announced its investment in Liberty Strategic Capital, a \$2.5 billion investment fund, which is headquartered in Israel and was founded by Secretary Mnuchin after leaving office.³⁵

January 15, 2021 – OFAC Issues Specific License to Gertler

Gertler's efforts were proven successful on January 15, 2021, when he was issued a comprehensive license by OFAC Director Andrea Gacki just five days before the end of the Trump presidency ("January 2021 license").³⁶ The January 2021 license lifted sanctions against Gertler permitting him and tens of designated entities affiliated with Gertler to access U.S.-based assets, transact with U.S. persons, utilize the U.S. financial system, and open up further accounts in the United States for a period of one year.³⁷ The license also authorized American International Group ("AIG") on behalf of several other named "Bank Licensees" to engage in "all transactions and activities" involving the "unblocking" of all "properties and interests in property" in their possession belonging to Gertler as well as the other named licensees.³⁸ Other than limiting its duration to a one-year time period, the only restrictions placed on the license were those mandated

Quarter of 2020; \$20,000 for the 2nd Quarter of 2020 and \$20,000 for the 3rd Quarter of 2020. Alan Dershowitz Consulting LLC also filed several subsequent reports, including a termination report in the 4th Quarter of 2021, but reported no income derived from this activity. *Id.*

³¹ 31 C.F. R. §§ 583.506 and .507.

³² Lipton, N.Y. TIMES, Feb. 21, 2021.

³³ *Id.*

³⁴ Ethan Bronner, *Israel Pushed Trump Officials to Lift Sanctions on Dan Gertler*, BLOOMBERG, (Mar. 19, 2021), <https://www.bloomberg.com/news/articles/2021-03-19/israel-pushed-trump-officials-to-lift-sanctions-on-dan-gertler#xj4y7vzkg>.

³⁵ Letter from House Oversight and Reform Committee Chairwoman Maloney and Senate Finance Committee Chairman Wyden to Secretary Yellen (Oct. 27, 2022) at 8; *Former Mossad Chief Yossi Cohen to Head Softbank's Israel Operations*, TIMES OF ISRAEL (July 9, 2021), <https://www.timesofisrael.com/former-mossad-chief-yossi-cohen-to-head-softbanks-israel-operations/>; Aakriti Bhalla, Davide Barbuscia, and Sam Nussey, *SoftBank backs Steven Mnuchin \$2.5 bln private equity fund*, REUTERS (Sept. 22, 2021), <https://www.reuters.com/business/finance/softbank-backs-steven-mnuchins-25-bln-private-equity-fund-ft-2021-09-22/>.

³⁶ *License GLOMAG-2021-371648-1*, U.S. DEP'T OF TREASURY (Jan. 15, 2021), <https://int.nyt.com/data/documenttools/2020-01-15-4-5771613563881785837/3642513f8e4402f8/full.pdf> [hereinafter "January 2021 License"].

³⁷ *Id.*

³⁸ *Id.*

by default regulations, 31 C.F.R. §§ 501.601–501.602, requiring Gertler, as with all licensees, to keep records of any and all transactions pursuant to the license and submit periodic reports of those transactions to OFAC.³⁹

Within days of President Biden’s inauguration, Assistant Secretary of Economic & Business Affairs Peter Haas and two other State Department officials sought and received authorization from Pompeo’s successor, Secretary of State Antony Blinken, to issue foreign policy guidance requesting that Treasury “immediately revoke all specific licenses issued to Gertler.”⁴⁰ On March 8, 2021, State announced that Treasury had rescinded the January 2021 license, explaining the January 2021 license was “inconsistent with America’s strong foreign policy interests in combating corruption around the world, specifically including U.S. efforts to counter corruption and promote stability in the [DRC].”⁴¹

Despite the Biden Administration’s attempts to mitigate the damage caused by the license issuance, the licenses dealt both symbolic and practical blows to the efficacy and legitimacy of U.S. anti-corruption efforts.⁴² By permitting Gertler access to U.S.-blocked assets, the licenses had potentially irreparable consequences once his assets were removed from U.S. jurisdiction.

II. CONTENTS OF THE INTERNAL COMMUNICATIONS OBTAINED BY CREW SHOW GERTLER LICENSES CAUSED “SIGNIFICANT” DAMAGE TO U.S. INTERESTS

The State Department recently released to CREW two internal memoranda that provide further insight into the troubling circumstances surrounding the specific licenses granted to Gertler. As detailed below, the memoranda document the issuance of *two* specific licenses to Gertler – a previously undisclosed November 2020 specific license that authorized Gertler to engage in certain transactions carried out for charitable purposes and the much broader January 15, 2021 specific license, which had been previously reported on, that provided more comprehensive sanctions relief. The memoranda indicate that both licenses caused “significant” damage to U.S. interests and credibility and show that Secretary Pompeo disregarded recommendations from his Department’s most senior career officials and subject matter experts on the merits of issuing the licenses.

The November 2020 Memorandum

The first internal memorandum released to CREW represents an attempt by senior State Department officials to prevent Treasury’s issuance of a specific license to Gertler in early November 2020.⁴³ On November 2, 2020, Assistant Secretary Haas and then Assistant Secretary of African Affairs Tibor Nagy submitted the memorandum to

³⁹ *Id.*

⁴⁰ Appendix 1, January 29, 2021 Revocation Memo.

⁴¹ *Press Statement: Revocation of License Granted for Dan Gertler*, STATE DEPARTMENT (Mar. 8, 2021), <https://www.state.gov/revocation-of-license-granted-for-dan-gertler/> [hereinafter “State Department License Revocation Statement”].

⁴² Appendix 1, January 29, 2021 Revocation Memo.

⁴³ Appendix 3, Action Memo for Secretary Pompeo from EB (Peter Haas, Acting) and AF (Tibor Nagy), Nov. 2, 2020 [hereinafter “November 2, 2020 Disapproval Memo”].

Secretary Pompeo.⁴⁴ The memorandum describes how Gertler had requested authorization to transfer “major funds” to “DRC NGOs”, and reveals that the State Department was notified on October 29, 2020 of the Treasury Department’s “intent to approve the license request absent State’s objection.”⁴⁵ Facing apparent pressure from the Treasury Department, Assistant Secretaries Hass and Nagy requested “an expedited decision” and to “brief [Secretary Pompeo] on this matter given the significant foreign policy issues at play.”⁴⁶

Although more detailed discussions of the case are redacted, the memorandum cautions against the license’s issuance by citing as precedent a “similar” license application by “malign Russian actor Viktor Vekselberg,” which State Department “recommended Treasury deny.”⁴⁷ The memorandum authors argued that issuing a license “to distribute tens of millions of dollars” abroad to such “an individual” would be “inconsistent with our foreign policy goals of curbing [] malign influence.”⁴⁸

The memorandum carried the signatures and clearance of 19 State Department officials.⁴⁹ Despite these admonitions, a marking on the top of the memo—“S disapproved” preceded by Secretary Pompeo’s initials “MRP”—indicates Secretary Pompeo disregarded the concerns of the Department’s most senior career officials and subject matter experts, but apparently without a justification to counter the foreign policy concerns raised by his staff.⁵⁰ Presumptively, the Secretary’s disapproval resulted in the State Department’s acquiescence to the Treasury Department’s November 2020 license issued to Gertler (“November 2020 license”).

The January 2021 Memorandum

The second internal memorandum provides further context into the circumstances of the specific licenses issued to Gertler. On January 29, 2021, Assistant Secretary Haas, Acting Assistant Secretary of African Affairs Robert Godec, and Acting Assistant Secretary of International Narcotics and Law Enforcement James A. Walsh submitted a memorandum to Secretary of State Anthony Blinken. The memorandum recommended that Secretary Blinken “authorize [the Bureau of Economic & Business Affairs] to transmit foreign policy guidance to Treasury requesting that the Secretary of the Treasury immediately revoke the January 2021 specific license issued to Gertler.”⁵¹

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* The November memorandum was drafted by two officers within the Bureau of Economic and Business Affairs’ (EB) Office of Economic Sanctions Policy and Implementation and submitted by Assistant Secretaries Haas and Nagy. See also *Department of State Organization Chart*, U.S. DEP’T OF STATE (last updated May 2022), <https://www.state.gov/department-of-state-organization-chart/>.

⁵⁰ *Id.* While CREW’s FOIA requests continue to be processed on a rolling basis, based on the records received to date from the State Department in response to CREW’s March 11, 2021 FOIA request, we believe that if it existed, the State Department would have produced to CREW any record containing a foreign policy justification provided to Treasury that supported either the November 2020 or the January 2021 license.

⁵¹ Appendix 1, January 29, 2021 Revocation Memo.

Significantly, the memorandum reveals that the January 2021 license to Gertler was the second of its kind—confirming that Treasury *did* after all issue a separate license to Gertler in “early November 2020, allow[ing] Gertler to distribute \$10 million of his wealth throughout the DRC for what he claims are charitable purposes.”⁵² While previous reporting indicated Gertler had lobbied for relief, there was no evidence nor public confirmation that a first license had indeed been granted. Despite the confirmation of its issuance, the specific date, terms and conditions of the November 2020 license are still unknown.⁵³

Most importantly, the memorandum calls for a revocation of the January 2021 license, which “provide[d] sweeping sanctions relief for Gertler and his network and permits him to open bank accounts in the United States.”⁵⁴ In striking clarity, the memorandum, which was signed and cleared by a total of 26 State Department officials,⁵⁵ emphasized the damage caused by the two licenses:

The[] licenses provide[d] Gertler significant opportunities to exert malign influence in the DRC in a way that would undermine U.S. interests. Due to the breadth of activities authorized, U.S. credibility has been significantly damaged, as has the credibility of the Global Magnitsky Sanctions program...The issuance of the licenses has also jeopardized cooperation with the DRC, Congress, and our close partners in civil society.⁵⁶

III. POTENTIAL VIOLATIONS

These internal communications reveal numerous procedural irregularities and significant legal questions about Treasury’s pursuit and issuance of the specific licenses to Gertler, and evidence of the roles played by Secretary Mnuchin and Secretary Pompeo in their issuances. These irregularities and potential legal violations undermine public trust in the U.S. sanctions process and call into question the integrity of the U.S. Government’s policy determinations. Accordingly, the U.S. Government’s licensing decisions and the roles played by Secretaries Mnuchin and Pompeo merit investigation by each Department’s OIG.

(1) Improper Basis for Sanctions Termination in Potential Violation of the Global Magnitsky Act

The January 2021 license effectively nullified the sanctions against Gertler, providing Gertler and his affiliates with comprehensive, unfettered access to previously blocked assets and the U.S. financial system. However, under the Global Magnitsky Act,

⁵² *Id.*

⁵³ It is not known whether the \$10 million in funds licensed by OFAC had in fact been blocked and then released under OFAC’s licensing authority or whether the transactions ostensibly issued for “charitable purposes” were subject to the use of “fresh funds” (i.e., unblocked assets); CREW is currently seeking information from OFAC about how the specific licenses may have affected Gertler’s blocked assets.

⁵⁴ Appendix 1, January 29, 2021 Revocation Memo.

⁵⁵ *Id.* The January memorandum was similarly drafted by two officers within the Bureau of Economic and Business Affairs’ Office of Economic Sanctions Policy and Implementation and submitted by Assistant Secretary Haas and Acting Assistant Secretaries Godec and Walsh.

⁵⁶ *Id.*

the termination of “the application of sanctions” can only occur if certain preconditions are met and with prior notification to Congress.⁵⁷ The Act provides, in relevant part, that:

The president may terminate the application of sanctions under this section with respect to a person if the President determines and reports to the appropriate congressional committees not later than 15 days before the termination of the sanctions that—

1. credible information exists that the person did not engage in the activity for which sanctions were imposed;
2. the person has been prosecuted appropriately for the activity for which sanctions were imposed;
3. the person has credibly demonstrated a significant change in behavior, has paid an appropriate consequence for the activity for which sanctions were imposed, and has credibly committed to not engage in an activity described in subsection (a) in the future; or
4. the termination of the sanctions is in the national security interests of the United States.⁵⁸

The Global Magnitsky Act thus prescribes very restrictive conditions to “terminate the application of sanctions...with respect to a person,” such as Gertler.⁵⁹

Gertler’s lawyers initially sought support from the State Department for a delisting action, which, if granted, would have clearly triggered Congressional notification and termination requirements since it would have removed him from OFAC’s SDN List.⁶⁰ However, instead of delisting Gertler, Treasury quietly issued him two licenses – the second of which, the January 2021 license, is one of the broadest types that can be issued by Treasury. Although the January 2021 license ostensibly was in effect for only one year,⁶¹ its impact was functionally equivalent to a delisting action. The damage resulting from the January 2021 license was potentially irreversible since it allowed Gertler to transfer blocked assets outside U.S. jurisdiction. Once his assets left U.S. jurisdiction, Treasury could not compel their return even after sanctions had been reinstated. Nor would Gertler likely engage in new transactions that would expose him to future blocking actions. By issuing a license to Gertler of “sweeping” proportions, the U.S. Government would seemingly lose some of its best leverage to effectuate a “positive change in behavior” consistent with OFAC objectives and U.S. foreign policy and national security interests.⁶²

⁵⁷ 22 U.S.C. § 10102(g).

⁵⁸ 22 U.S.C. § 10102(g) (formatting altered for clarity).

⁵⁹ 22 U.S.C. § 10102(g).

⁶⁰ Appendix 2, November 13, 2019 Shaffer Email; 5 C.F.R. § 501.807.

⁶¹ January 2021 License.

⁶² OFAC Website, *Filing a Petition for Removal from an OFAC List* (last visited Aug. 11, 2022), <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-list-sdn-list/filing-a-petition-for-removal-from-an-ofac-list>. (“The power and integrity of the Office of Foreign Assets Control (OFAC) sanctions derive not only from its ability to designate and add persons to the Specially Designated Nationals and Blocked Persons List (SDN List), but also from its willingness to remove persons from the SDN List consistent with the law. The ultimate goal of sanctions is not to punish, but to bring about a positive change in behavior. Each year, OFAC removes hundreds of individuals and entities from the SDN List. Each removal is based on a thorough review by OFAC. Maintaining the integrity

Since the January 2021 license was functionally equivalent to a delisting action in that it effectively terminated sanctions against Gertler, Treasury seemingly violated two provisions of the Global Magnitsky Act.⁶³ First, Treasury apparently failed to notify Congress 15 days prior to issuing the January 2021 license to Gertler.⁶⁴ Second, the internal communications released to CREW belie the applicability of any of the prerequisites for sanctions termination listed in the Act.

When Freeh, Dershowitz, Apfel and Paw met with State Department officials on November 13, 2019, Gertler's lobbyists apparently presented no evidence that Gertler did not engage in the conduct that founded the basis of his designation.⁶⁵ Gertler thus fails to satisfy the first condition for sanctions relief. As to the second condition, Gertler has not been prosecuted for the sanctions nor held accountable in other meaningful ways. Likewise, the third condition for relief is inapplicable since Gertler's representatives did not claim during that meeting that Gertler has divested himself of illicitly obtained assets, nor that Gertler has altered his behavior.⁶⁶ Rather, his representatives held out the vague possibility that Gertler could "wield his influence in support of US interests ... and against Russia and China" by promoting U.S. trade and investment.⁶⁷

Not only did Gertler not appear to satisfy any of the Global Magnitsky Act's substantive prerequisites for sanctions termination,⁶⁸ State Department officials explicitly demanded sanctions be reinstated by Treasury because they viewed Gertler's corrupt activities to be "ongoing."⁶⁹ Under these circumstances, Treasury OIG and State OIG should investigate whether the January 2021 license was functionally equivalent to a delisting action, and if so, whether Treasury violated the Global Magnitsky Act when it bypassed substantive and procedural requirements necessary for the termination of sanctions. Additionally, your offices should determine whether the yearlong duration of the January 2021 license may have been part of a conscious strategy to circumvent the statutory mandate.

(2) Procedural Irregularities Indicate Potential Violation of Federal Ethics Rules

of U.S. sanctions is a high priority for OFAC and is the driving principle behind its rigorous review process that evaluates every request for removal individually on its merits and applies consistent standards to all of them.")

⁶³ 22 U.S.C. § 10102(g).

⁶⁴ CREW has been unable to identify any public reporting that indicates the requisite prior Congressional notice was provided. Additionally, CREW has received no documentation in response to its FOIAs nor confirmation through congressional outreach efforts that the requisite prior notice was given.

⁶⁵ Appendix 2, November 13, 2019 Shaffer Email.

⁶⁶ More recently, since the January 2021 license was revoked and U.S. sanctions reinstated, Gertler has attempted to address this deficiency by negotiating for DRC support in exchange for his return of two oil blocks and relinquish his rights to gold and iron-ore permits. Michael J. Kavanagh, *Congo Backs Billionaire Gertler's Bid to End U.S. Sanctions*, BLOOMBERG (Apr. 29, 2022), <https://www.bloomberg.com/news/articles/2022-04-29/billionaire-gertler-s-bid-to-end-u-s-sanctions-backed-by-congo>.

⁶⁷ *Id.*

⁶⁸ 22 U.S.C. § 10102(g).

⁶⁹ Appendix 1, January 29, 2021 Revocation Memo.

Beyond possible violations of the Global Magnitsky Act, numerous procedural irregularities strongly suggest that Secretary Mnuchin and Secretary Pompeo violated federal ethics regulations by authorizing, or authorizing their subordinates to grant, the licenses for the private gain of Gertler in violation of executive branch ethics laws. Under 5 C.F.R. § 2635.101(b)(7)–(8), every federal government employee is prohibited from “us[ing] public office for private gain” and is obligated to “act impartially and not give preferential treatment to any private organization or individual.”⁷⁰ The following irregularities, which characterize the issuances of the licenses, point to personal involvement and possible violations of executive branch ethics regulations on the part of Secretary Mnuchin and Secretary Pompeo in connection with the issuance of specific licenses to Gertler.

a) *Gap in Consultation Process Between Treasury and State Department*

A review of records produced to date indicates a gap in the consultation process between the Treasury Department and the State Department preceding the January 2021 license. Section 8 of Executive Order No. 13818 establishes the consultation obligation as follows: “The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including adopting rules and regulations, and to employ all powers...as may be necessary to implement this order and section 1263(a) of the Act with respect to the determinations provided for therein.”⁷¹ Seemingly implicit in this consultation requirement is that it be based on a coherent and coordinated foreign policy strategy.

The standard consultation process is reflected in the November 2, 2020 State Department action memo to Secretary Pompeo, which shows that the Assistant Secretary for Economic and Business Affairs (EB), the Assistant Secretary for African Affairs (AFR) and 17 other State Department officials had been consulted in advance by Treasury about the November 2020 license, even if their recommendations were later disregarded by Secretary Pompeo.⁷² In contrast, to date, no similar record has been released to CREW that shows Treasury had contacted State Department country and sanctions experts for input into the broader and significantly more impactful January 2021 license.

Rather, February 2021 reporting from the *New York Times* indicates that the then-Ambassador to the DRC, Michael A. Hammer, and other key officials in the State Department’s Bureau of African Affairs were apparently not consulted in advance since they expressed surprise and dismay when they learned of the license’s issuance.⁷³ For example, Ambassador Hammer was reportedly “so confused” when he received news of the license that “he called officials in Washington to figure out if a mistake had been made” and then angrily denounced the decision, indicating that “this has made my job much tougher.”⁷⁴ Another senior State Department Advisor on Africa, J. Peter Pham, also expressed his disappointment by stating, “here you have one of the most poverty-

⁷⁰ 5 C.F.R. §§ 2635.101(b), 2635.101(b)(7)–(8).

⁷¹ Exec. Order No. 13818, 82 Fed. Reg. 60,839, § 8 (Dec. 20, 2017).

⁷² Appendix 3, November 2, 2020 Disapproval Memo.

⁷³ See Lipton, N.Y. TIMES, Feb. 21, 2021.

⁷⁴ *Id.*

stricken nations, with a population that has suffered incredibly over the last several decades, and we have worked to turn that around, so why do this,” while adding that the “only value to national security that Gertler has comes from him being placed in the box that he was put into with the sanctions.”⁷⁵

A newly-released January 2021 State Department email likewise suggests that sanctions experts may have been similarly excluded. This email shows that the State Department’s Director of the Office of Sanctions Policy & Implementation (“SPI”), which “maintains and enforces sanctions to maximize their economic impact,” requested a copy of the foreign policy guidance Treasury received “from State concurring with a proposal to issue Dan Gertler a specific license valid for all transactions.”⁷⁶ Although OFAC responded on January 27, 2021 to SPI’s request by attaching a “memo” that purportedly had the “signed concurrence” of Secretary Pompeo,⁷⁷ the entire last page of the email communication is redacted, so we cannot tell whether it reflects Secretary Pompeo’s actual concurrence to the January 2021 licensing decision. SPI’s email request was sent almost a week after the January 2021 license was issued. If SPI had been engaged in the consultation process, as would be normal practice and reasonably expected given its critical State Department function, it likely would have had access to that guidance internally without any need to request a copy of that information from Treasury.

Under these circumstances, the informed consultation process contemplated by Executive Order No. 13818 may have been circumvented to avoid input from the very State Department officials (i.e., SPI officials and the then-U.S. Ambassador to Congo) who were most familiar with the foreign policy considerations behind U.S. sanctions against Gertler based on his corrupt activities in the DRC, resulting in a possible corruption of the U.S. sanctions process and the Global Magnitsky sanctions program.

b) The Trump Administration’s failure to offer legitimate justifications for the licenses

The Trump Administration under Secretary Mnuchin and Secretary Pompeo never provided an affirmative justification for issuing the licenses—not in the memoranda released to CREW nor publicly elsewhere. Meanwhile, the State Department’s own January 2021 and November 2020 memoranda presents a compelling case for why both licenses were detrimental by virtue of their capacity to: reward a corrupt actor; foment political instability and corruption in the DRC; alienate the United States from its partners; significantly diminish any leverage the United States may have had over Gertler and those within Gertler’s network; and upend programmatic precedent, given the State Department’s guidance against Viktor Vekselberg’s analogous license application.⁷⁸

⁷⁵ *Id.*

⁷⁶ Appendix 4, Email from State Department Director of Sanctions Policy & Implementation to Lisa Palluconi, OFAC Associate Director, Jan. 21, 2021 [hereinafter “January 21, 2021 SPI Director Email”].

⁷⁷ *Id.*

⁷⁸ Appendix 1, January 29, 2021 Revocation Memo; Appendix 3, November 2, 2020 Disapproval Memo.

To date, the U.S. Government has not publicly endorsed any foreign policy or national security interest to be gained from enabling Gertler. Rather, the State Department press release announcing the subsequent revocation of the January 2021 license makes clear that the license was actually “inconsistent with America’s strong foreign policy interests in combatting corruption around the world, specifically including U.S. efforts to counter corruption and promote stability” in the DRC.⁷⁹ Additionally, the State Department’s own internal communications express Department officials’ emphatic disapproval of the licenses, even after the Department heard all of Gertler’s arguments in November 2019.⁸⁰

c) *Treasury quietly issued a comprehensive license to Gertler just five days before the change of Administration*

The Treasury Department issued the January 2021 license—a non-urgent license of unusually broad proportions—with only five days remaining before the Trump Administration would relinquish its authority over U.S. sanctions policy. Rather than giving the next administration an opportunity to review the license application and make a reasoned determination based on foreign policy and national security interests, Treasury issued a broad license of almost unprecedented proportions for an unlikely beneficiary, giving the appearance that departing members of the outgoing administration were rewarding influence peddling by Gertler’s lobbyists in their final days in office.⁸¹

Not only did Treasury seemingly rush through the January 2021 license in the final days of the Trump administration, but the Department also issued the license quietly without any form of public acknowledgement. Although there is no legal requirement on the part of OFAC to issue a public announcement when it lifts sanctions, had the Treasury Department been compelled by legitimate foreign policy justifications to lift sanctions against Gertler, the Treasury Department would likely have publicized their decisions – as they have done for delisting cases – to demonstrate the success of the program in incentivizing corrupt actors’ rehabilitation and behavior modification.⁸² The Department’s opacity is especially concerning given how the sanctions against Gertler formed the basis of one of the most prominent success stories of the Global Magnitsky sanctions program, a narrative in which partners in civil society and the international community were deeply invested.⁸³

⁷⁹ State Department License Revocation Statement.

⁸⁰ Appendix 1, January 29, 2021 Revocation Memo; Appendix 2, November 13, 2019 Shaffer Email; Appendix 3, November 2, 2020 Disapproval Memo.

⁸¹ January 2021 License.

⁸² See, e.g., *Press Release: Treasury Delists Former Honduran Money Launderer and Associated Companies*, U.S. DEP’T OF TREASURY (Aug. 25, 2020), <https://home.treasury.gov/news/press-releases/sm1106> (“This delisting serves as a successful example of the ultimate goal of the Administration’s use of sanctions as a tool—to bring about a positive change in behavior. The joint efforts by the U.S. and Honduran governments to isolate and disrupt the Rosenthal money laundering organization through sanctions, criminal prosecution, and regulatory intervention have crippled this network and its ability to launder drug proceeds.”)

⁸³ See, e.g., *Press Release: US Sanctions 13 More in Dan Gertler Network*, SENTRY (Dec. 6, 2021), <https://thesentry.org/2021/12/06/6597/us-sanctions-13-dan-gertler-network/>.

d) The roles played by Secretaries Pompeo and Mnuchin in the issuance of the November 2020 and January 2021 licenses merit full investigation by your offices

In acquiescing to sanctions relief for Gertler, Secretary Pompeo willfully and inexplicably disregarded the guidance of 19 senior State Department officials and subject matter experts,⁸⁴ in addition to guidance he and Secretary Mnuchin received from the Senate Foreign Relations Committee, which counselled the Government to expand and strengthen Global Magnitsky Act sanctions.⁸⁵

In the November 2020 memo to Secretary Pompeo, 19 State Department officials voiced objection to the first Gertler licensing request on the basis that State had previously acted to deny a similar license application from a “malign actor” who had sought similar relief for charitable purposes.⁸⁶ Secretary Pompeo’s rejection of his staff’s recommendations seemingly without explanation reflects an inexplicable favorable disposition and partiality toward Gertler and a disturbing willingness to treat Gertler differently than other malign actors. Absent a specific foreign policy or national security interest to be served, such a break with precedent raises questions about Secretary Pompeo’s compliance with 5 C.F.R. § 2635.101(b)(8), which obligates every federal government employee to “act impartially and not give preferential treatment to any private organization or individual.”⁸⁷

Also relevant to this discussion is the lack of intra-agency consultation about the January 2021 license. The State Department’s own review process appears to have been circumvented as evidenced by the surprise and dismay expressed by the U.S. Ambassador to the DRC and other State Department subject experts upon learning about the licenses.⁸⁸ This circumvention of the intra-agency review process raises additional questions about whether Secretary Pompeo may have improperly extended preferential treatment to Gertler in furtherance of his personal financial interests by limiting the ability of key State Department officials to weigh in on merits of the January 2021 license.

Similar questions apply to Secretary Mnuchin’s conduct given his apparent personal involvement in the issuances of the licenses. While the January 2021 license was signed by OFAC Director Gacki, official Treasury calendars and email communications suggest that Secretary Mnuchin was personally involved in the licensing matters. Specifically, Treasury records show Secretary Mnuchin had a series of communications with several notable individuals prior to the issuance of the specific licenses, including at least two calls with individuals who had registered as lobbyists for Gertler.⁸⁹

⁸⁴ Appendix 3, November 2, 2020 Disapproval Memo.

⁸⁵ Sen. Foreign Relations Committee Letter to Secretary Mnuchin and Secretary Pompeo, Aug. 17, 2020, <https://www.foreign.senate.gov/imo/media/doc/200817%20-%20DRC%20Corruption%20Letter%20to%20Sec%20Mnuchin%20Pompeo.pdf>

⁸⁶ Appendix 3, November 2, 2020 Disapproval Memo.

⁸⁷ 5 C.F.R. § 2635.101(b)(8).

⁸⁸ See Lipton, N.Y. TIMES, Feb. 21, 2021.

⁸⁹ See Lipton, N. Y. TIMES, Feb. 21, 2021.

Prior to the issuance of the first Gertler license, Secretary Mnuchin met on October 20, 2020 with then-Israeli Prime Minister Benjamin Netanyahu.⁹⁰ On October 26, 2020, just three days prior to Treasury notifying State of its intent to grant Gertler a license, Secretary Mnuchin had a call with Dershowitz.⁹¹ On October 26 and 27, OFAC Director Gacki tasked her staff to prepare briefing materials on Gertler's licensing request for Secretary Mnuchin's "readbook."⁹² Secretaries Mnuchin and Pompeo then spoke by phone on November 3, 2020, just one day after 19 State Department officials objected to Treasury's issuance of the first Gertler license.⁹³ On November 4, 2020, Pompeo disapproved his staff's recommendation to deny Gertler the license, which presumably led to Treasury's issuance of the November 2020 license.⁹⁴

Likewise, prior to the issuance of the January 2021 license, Secretary Mnuchin had several key calls and meetings. Mnuchin again spoke with Dershowitz by phone, on December 11, 2020.⁹⁵ This call was followed by a January 6-7, 2021 trip to Israel, where he met with U.S. Ambassador to Israel David Friedman and several Israeli officials, including Prime Minister Netanyahu.⁹⁶ After his return, Secretary Mnuchin had a January 11 phone call with Maurice R. "Hank" Greenberg, CEO of CV Starr & Co.⁹⁷ While we do not know the exact purpose of Greenberg's call, it's very possible he was calling about the Gertler license given his long-time affiliation with AIG as its former Chairman and CEO,⁹⁸ and AIG's status in the January 2021 license as one of the primary "Bank Licensees" authorized to unblock Gertler's assets.⁹⁹ Within two hours of his call with Greenberg, Secretary Mnuchin met with OFAC Director Gacki, followed by a call with Secretary Pompeo the next morning.¹⁰⁰

While we do not know the substance of any of these conversations, the timing of these calls and surrounding circumstances suggest that Secretary Mnuchin was personally involved in and may have orchestrated the issuance of specific licenses to Gertler. These records also suggest Gertler's lobbying campaign persisted primarily through Treasury after Gertler's team failed to convince career State Department officials to reverse course in November 2019, and reflects tactics seemingly intended to circumvent the standard State Department – Treasury consultation process, which occurs between career appointees. Treasury's pursuit of the first license and allowing

⁹⁰ *Secretary Mnuchin's Calendar October 2020*, U.S. DEP'T OF TREASURY (last visited Jun. 22, 2022), <https://home.treasury.gov/system/files/236/October-2020-Final.pdf>.

⁹¹ *Id.*

⁹² Appendix 5, Treasury FOIA Records, Enclosure to Letter from OFAC Assistant Director Marshall H. Fields, Jr. to Nikhel Sus, June 30, 2022, at 27-29, 35, and 38 [hereinafter "Treasury FOIA Records"].

⁹³ *Secretary Mnuchin's Calendar November 2020*, U.S. DEP'T OF TREASURY (last visited Jun. 22, 2022), <https://home.treasury.gov/system/files/236/November-2020-Final.pdf>.

⁹⁴ Appendix 3, November 2, 2020 Disapproval Memo.

⁹⁵ *Secretary Mnuchin's Calendar December 2020*, U.S. DEP'T OF TREASURY (last visited Jun. 22, 2022), <https://home.treasury.gov/system/files/236/December-2020-Final.pdf>.

⁹⁶ *Secretary Mnuchin's Calendar January 2021*, U.S. DEP'T OF TREASURY (last visited Jun. 22, 2022), <https://home.treasury.gov/system/files/236/January-2021.pdf>.

⁹⁷ *Id.*

⁹⁸ Starr Insurance Companies website, Bio of Maurice R. Greenberg (last visited Aug. 15, 2022), <https://starrcompanies.com/About/Leadership/Maurice-R-Greenberg>.

⁹⁹ January 2021 License.

¹⁰⁰ *Secretary Mnuchin's Calendar January 2021*, U.S. DEP'T OF TREASURY (last visited Jun. 22, 2022).

State only a brief window during which State could voice its opposition was itself unusual. Even more unusual is the apparent absence of records documenting how Treasury career officials sought and obtained foreign policy guidance from their State Department counterparts as to the second, more consequential license application. Treasury's pursuit of increasingly broad licenses for Gertler calls into question whether Secretary Mnuchin may have used his Government position and official authority to further the private financial interests of Gertler at the expense of a U.S. efforts to combat foreign corruption.

Ignoring Congressional recommendations to expand sanctions against entities involved in corruption in the DRC is likewise noteworthy, given the Global Magnitsky Act's requirement that the President, in exercising sanctions authority, must consider "information provided jointly by the chairperson and ranking member of each of the appropriate congressional committees."¹⁰¹

e) *Summary*

In summary, neither Department has ever referenced nor made public any legitimate foreign policy or national security basis to justify issuance of the licenses. To the contrary, the State Department has confirmed that the licenses issued to Gertler caused significant damage to U.S. interests. Meanwhile, Treasury granted Gertler sanctions relief, despite State Department documents and Congressional guidance that would support a contrary outcome. Collectively, the licenses' procedural irregularities— together with evidence of extensive and persistent efforts by Gertler to lobby career and Cabinet-level officials—suggest wrongdoing and influence peddling at the highest levels of U.S. government.¹⁰²

Under these circumstances, the conduct of Secretary Mnuchin and Secretary Pompeo in the final days and weeks of the administration should be investigated to determine if they improperly used their authority to issue, or cause other government officials to issue, specific licenses for the personal financial benefit of Gertler — treating him more favorably than other similarly positioned persons —in potential violation of executive branch ethics rules prohibiting use of public office for private gain and barring preferential treatment.¹⁰³

IV. AREAS FOR INVESTIGATION

Based on information gleaned from internal State Department memoranda and email communications, CREW requests that Treasury OIG and State OIG use their authority to assess damage done to the Global Magnitsky sanctions program that resulted from issuance of two specific licenses to Gertler that undermined U.S. interests and credibility and investigate the roles of Secretary Mnuchin and Secretary Pompeo in the following potential violations:

¹⁰¹ 22 U.S.C. § 10102(c)(1).

¹⁰² Letter from Senators Booker, Cardin, and Durbin to Secretary Yellen Requesting Investigation into January 2021 Specific License Issued to Gertler, SENTRY (Feb. 1, 2021), <https://thesentry.org/wp-content/uploads/2021/02/Letter-to-Treasury-re-Dan-Gertler.pdf>.

¹⁰³ 5 C.F.R. § 2635.101(b)(7)–(8).

- (1) Whether Treasury's January 2021 license, which broadly authorized transactions to unblock Gertler's assets and access the U.S. financial system, was functionally equivalent to an OFAC delisting action, and if so, whether Secretary Mnuchin and Secretary Pompeo violated, or caused other government officials to violate, the Global Magnitsky Act by disregarding substantive and procedural requirements mandated under that program. Additionally, your offices should determine whether the yearlong duration of the January 2021 license may have been part of a conscious strategy to circumvent statutory mandates;
- (2) Whether Secretary Mnuchin and Secretary Pompeo violated executive branch ethics rules against use of public office for private gain and improper preferential treatment by circumventing the standard consultation process carried out by Treasury and the State Department under Executive Order No. 13818 and by engaging in other procedural irregularities that resulted in the authorization of licenses that served the private interests of Gertler to the detriment of U.S. foreign policy interests; and
- (3) Determine the full extent to which Treasury's issuance of the two specific licenses may have damaged U.S. efforts to combat corruption in the DRC. Specifically, Treasury OIG and State OIG should use their authority to:
 - a. Assess the transactions that resulted from the January 2021 license, including the total amount of blocked assets released from U.S. jurisdiction before the license was rescinded on March 8, 2021, and determine to whom funds were transferred and whether any such transactions resulted in the transfer of funds to the DRC;
 - b. Assess the transactions that resulted from the November 2020 license and determine to whom the funds were transferred and whether any such transactions resulted in the transfer of funds to the DRC; and
 - c. Assess the LDA services and income reported by Freeh's law firm for 2019 and 2020 and determine whether such services and income, which totaled \$100,000, were authorized pursuant to OFAC General License, 31 C.F. R. § 583.506 and .507, or specific license authority, and if not, whether the services provided by, and payments made to, Gertler's representatives may have violated U.S. sanctions.

V. CONCLUSION

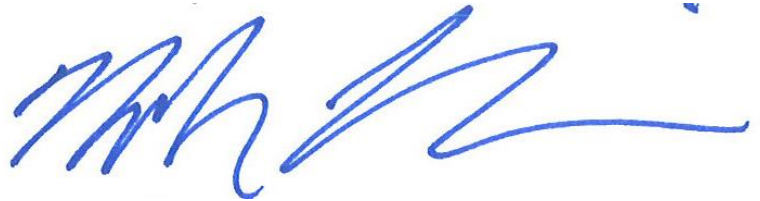
In the final days and weeks of the last Administration, Secretary Mnuchin and other senior Treasury officials covertly and inexplicably pursued detrimental foreign policy choices, with Secretary Pompeo's acquiescence and in contravention of U.S. foreign policy interests and Congressional guidance. The apparent corruption of the Global Magnitsky program not only undermines sanctions against Gertler, but also threatens U.S. credibility as a global leader in the fight against corruption. To restore our partnerships and the legitimacy of U.S. anti-corruption efforts, Treasury OIG and State OIG must investigate the possible co-optation of the United States' anti-corruption mechanisms for illicit ends.

December 16, 2022

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CREW greatly appreciates your prompt attention to this urgent matter of national importance.

Sincerely,



Noah Bookbinder
President



Virginia Canter
Chief Ethics Counsel

Attachments:

- Appendix 1 - January 29, 2021 Revocation Memo
- Appendix 2 - November 13, 2019 Shaffer Email
- Appendix 3 - November 2, 2020 Disapproval Memo
- Appendix 4 - January 21, 2021 SPI Director Email
- Appendix 5 - Treasury FOIA Records

cc: The Honorable Carolyn B. Maloney
Chairwoman
House Committee on Oversight and Reform
Finance

The Honorable Ron Wyden
Chairman
Senate Committee on

The Honorable James Comer
Ranking Member
House Committee on Oversight and Reform
Finance

The Honorable Mike Crapo
Ranking Member
Senate Committee on

The Honorable Maxine Waters
Brown
Chairwoman
House Committee on Financial Services
Banking,

The Honorable Sherrod
Chairman
Senate Committee on

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The Honorable Patrick McHenry
Toomey
Ranking Member
House Committee on Financial Services
Banking,

The Honorable Gregory Meeks
Menendez
Chairman
House Foreign Affairs Committee

The Honorable Michael McCaul
Risch
Ranking Member
House Foreign Affairs Committee

Housing, and Urban Affairs

The Honorable Patrick J.
Ranking Member
Senate Committee on
Housing, and Urban Affairs

The Honorable Bob
Chairman
Senate Foreign Relations
Committee

The Honorable James E.
Ranking Member
Senate Foreign Relations
Committee