

December 1, 2021

OFAC

The Engel List Foreshadows U.S. Enforcement in Central America

By [Martin De Luca](#), [Wade Weems](#) and [Scott Nielson](#), [Kobre & Kim](#)

In December 2020, the U.S. Congress passed the [United States-Northern Triangle Enhanced Engagement Act](#), providing for “targeted sanctions to fight corruption in El Salvador, Guatemala, and Honduras.” The law required a report to be issued within 180 days (and at least annually thereafter) identifying individuals in the Northern Triangle who, according to the State Department, engaged in corruption or undermined democracy. In July 2021, the State Department published what has become called “Engel List,” named after the law’s author, former Representative Eliot Engel. The [first list](#) named 55 purportedly “corrupt and undemocratic actors for Guatemala, Honduras, and El Salvador.” While the sanction for inclusion on the Engel List is merely visa ineligibility or revocation, this action signals that the U.S. is focused on corruption in Central America.

The United States will closely scrutinize individuals on the Engel List as well as other allegedly corrupt actors in the region and possibly target them for violations of economic sanctions, money laundering, the FCPA and other U.S. laws.

In this article, we look at how the Engel List, which will be updated at least annually, will lead to increased enforcement of the FCPA, money laundering and other violations of U.S.

law in Central America targeting government officials and others the U.S. authorities deem to be involved in corruption. Additionally, we discuss how these changes might provide political or business rivals in the region an additional U.S. forum to file complaints, and that U.S. counsel can assist listed individuals in seeking recourse.

See “[Latin American Corruption in the Crosshairs of the Biden Administration](#)” (Apr. 14, 2021).

An Intersection of Government Priorities

U.S. regulators view the Engel List as a complement to existing tools to combat corruption and anti-democratic actions in the region.

Focus on Human Rights

In April 2021, before the Engel List was published, the U.S. Treasury’s Office of Foreign Assets Control (OFAC) [sanctioned](#) several current and former government officials in Central America for their alleged roles in corruption in the region. Pursuant to the [Global Magnitsky Human Rights Accountability Act](#) (which aims to target human rights abuses

and corruption around the world), these individuals were designated on the Specially Designated Nationals and Blocked Persons List (SDN), meaning that their U.S. assets are blocked and must be reported to OFAC, and that U.S. persons are prohibited from transacting with those officials. When the State Department published the Engel List, it [noted](#) that some of these individuals had already been designated under the Global Magnitsky sanctions program.

Similarly, before being added to the Engel List, several Central American individuals had been designated under Section 7031(c) of an anti-kleptocracy and human rights law, which “provides that officials of foreign governments and their immediate family members are ineligible for entry into the United States” when the State Department finds that they are involved in significant corruption and/or violation of human rights.

See “[One More Arrow in the Government’s Anti-Corruption Quiver: The Global Magnitsky Act](#)” (May 30, 2018).

Focus on the Northern Triangle

The Engel List is part of a broader anti-corruption effort by U.S. authorities in Central America. In June 2021, DOJ launched a [task force](#) to combat corruption in Mexico and Central America. The task force includes representatives from different components of DOJ, including the FCPA Unit, the Kleptocracy Team and the Narcotic and Dangerous Drug Section, as well as the FBI’s International Corruption Unit. In October 2021, DOJ’s task force launched [new measures](#) to combat corruption in Central America, including a hotline to provide tips and information about allegedly corrupt actors in El Salvador,

Guatemala or Honduras who may be violating U.S. laws. This task force may turn its attention to those individuals already on the Engel List, including several foreign government officials. In recent years, DOJ has charged foreign officials with violations of a wide variety of U.S. laws such as money laundering, mail and wire fraud, the Travel Act, and even drug trafficking in connection with allegedly corrupt conduct in their countries of origin.

See “[All Eyes on the Northern Triangle: A Call to Action for Companies Operating in the Region](#)” (Nov. 10, 2021).

Pandora Papers May Bring Further Scrutiny

At least ten Central American individuals as well as a Panama law firm have been named in the recent Pandora Papers revelations, including one individual previously included on the Engel List. Though the Pandora Papers have mainly caused reputational concerns for those named, media scrutiny may lead to government enforcement actions.

Following the revelations, “Panama’s tax authority said it will audit all taxpayers in Panama that have been mentioned in the investigation,” according to the [International Consortium of Investigative Journalists](#). Increased domestic investigations and enforcement across Central America could foster cooperation with U.S. authorities, which is particularly important in the context of cross-border corruption investigations that require foreign evidence gathering.

See “[Aruba Telecom Sentencings Demonstrate Continued Panama Papers Repercussions](#)” (Jul. 11, 2018).

Using Money Laundering Statutes to Fight Corruption

Given the increased scrutiny of Central American government officials and business owners, certain new enforcement tools utilized by U.S. authorities may become increasingly relevant. For example, the use of money laundering statutes to target foreign officials and their close associates is gaining popularity among U.S. prosecutors. In recent years, government officials in Latin America have been indicted for alleged money laundering violations by federal prosecutors in Florida, Texas and New York.

[The Anti-Money Laundering Act of 2020](#) has provided U.S. authorities with more expansive subpoena authority, which could be used in Central America if enforcement trends continue. Under this law, DOJ and the Treasury Department may subpoena any foreign bank that maintains a U.S. correspondent bank account, even if the records requested are unrelated to the correspondent bank account, a broad assertion of authority. This new law circumvents Mutual Legal Assistance Treaty (MLAT) procedures, which often take years to navigate even when the foreign government cooperates. While the [Justice Manual](#) still states that MLATs should be a first course of action “prior to resorting to unilateral compulsory measures,” in extraordinary cases, DOJ may take advantage of this new authority, for example to seek bank records in uncooperative foreign nations, or in places with potentially high-value targets such as Panama, given its prominence as an offshore banking hub.

Individuals and companies across Central America may also face exposure to U.S. money laundering charges due to the Treasury Department’s new anti-money laundering whistleblower program. Individuals can profit by reporting potential violations and wrongdoing, and non-U.S. citizens are eligible for whistleblower awards of up to 30 percent of any monetary penalties when those penalties exceed \$1 million. This threshold is higher than other whistleblower programs and whistleblowers must be compensated through congressional appropriations rather than directly from the recovered penalty. Thus, the effectiveness and reach of this new program remains to be seen.

See [“Navigating an Aggressive AML and Sanctions Enforcement Environment: Risks and Frameworks”](#) (Jan. 20, 2021).

Latin American Companies and Individuals Targeted for Sanctions

In certain Latin American countries, particularly in the Northern Triangle, Nicaragua and Venezuela, the blurred lines between business and politics may extend U.S. enforcement measures even further, including for individuals on the Engel List.

Family Businesses Spread Risk

Family businesses are common in the region and individuals, institutions or businesses may face sanctions or be prosecuted for violations of U.S. law because of their alleged support for anti-democratic activity or corrupt conduct. In recent years OFAC has sanctioned state-owned

enterprises in [Venezuela](#) and Nicaragua. In December 2019, OFAC [sanctioned](#) a chain of gas stations, which were allegedly purchased with public money before being transferred to the family of Nicaraguan President Daniel Ortega, though no concrete evidence of this has been made public by OFAC. OFAC has also [sanctioned](#) President Ortega's son, Rafael, as well as certain companies affiliated with him. This apparent blend between business and politics creates the incentives and the conditions for business or political rivals to denounce one another for violations of U.S. law in order to gain a political or commercial advantage.

Increased Sanctions Risk

The Engel List may also signal a growing trend of OFAC imposing economic sanctions on individuals in Central America for alleged corruption and anti-democratic actions. Economic sanctions are not new to Latin America, though. Cuba has faced a U.S. embargo for many years and multiple individuals in Cuba are subject to Global Magnitsky sanctions. In recent years, over 100 Venezuelan individuals have faced economic sanctions, most under country-specific sanctions.

However, approximately 80 individuals in Central America have also been sanctioned. In Nicaragua, following the Ortega government's response to 2018 protests, OFAC sanctioned several Nicaraguan individuals pursuant to country-specific sanctions. In August 2021 the E.U. sanctioned eight Nicaraguan individuals, and now 14 Nicaraguans face E.U. sanctions. Ahead of the November 2021 presidential election in Nicaragua, the U.S. will likely move forward with additional Nicaragua sanctions.

On November 3, 2021, the U.S. Congress passed a [law, signed](#) by President Joe Biden on November 10, calling for additional Nicaragua sanctions, requiring the U.S. government to report on alleged corruption and human rights abuses in Nicaragua, and asking the Biden administration to review Nicaragua's participation in the Central America Free Trade Agreement.

Sanctions have extended to other parts of Central America, with approximately 20 Guatemalans and 10 Hondurans having been sanctioned by OFAC. The rate of U.S. sanctions enforcement in Latin America is on the rise.

Latin American Sanctions Trend Expands to El Salvador?

Currently only two El Salvadorans have been sanctioned by OFAC. However, given recent developments in El Salvador, additional El Salvadorans may be added to the Engel List or face sanctions similar to those in Venezuela and Nicaragua. In May 2021, El Salvador's National Assembly voted to dismiss all five Supreme Court judges, as well as the Attorney General. In September 2021, El Salvador's Supreme Court issued a ruling allowing presidents to run for consecutive terms, providing a path for the current president's reelection. These actions echoed developments in Honduras a decade earlier, when the Honduran Congress removed four of the five Supreme Court Justices and the new Supreme Court then invalidated the constitutional one-term limit, allowing Honduras's president to run for reelection.

These developments may be perceived by the State Department as anti-democratic and lead to sanctions in El Salvador. The Engel List already includes some advisors to El Salvador's

president, and more individuals associated with the government could be sanctioned or added to the Engel List in the future.

Given recent political developments in El Salvador, and the focus of the Engel List on deterring purportedly undemocratic activity, individuals from El Salvador may be at increased risk of being included the next time the list is published. As a result, companies and individuals operating in this region with significant government ties should exercise increased caution and diligence to build a record that can be used to fight potential sanctions listings.

See “[Managing Sanctions Risk Up and Down the Supply Chain](#)” (Jun. 9, 2021).

Recourse for Listed Individuals

Individuals who are sanctioned or added to the Engel List may be surprised by how little evidence OFAC or the State Department provide when they label someone as corrupt or anti-democratic. Usually, these individuals have not been convicted of any crime or even been charged with a criminal offense. For the Engel List, the State Department typically devotes a single sentence to describe allegedly corrupt or anti-democratic actions, using conclusory language without citing facts or evidence. This leaves listed individuals in the difficult position of having to prove a negative.

It is important for sanctioned individuals and companies to consider that they have recourse should they be unfairly targeted for sanctions, and U.S. counsel may help achieve a de-listing in certain cases.

Government Outreach

Targeted government outreach can be helpful if the person (often a political or business rival) who may have recommended sanctions in the first place can be identified. One strategy is to marginalize that person while building a credible counternarrative, to convince OFAC that the reason for the sanctions no longer applies. For example, recently five companies purportedly associated with a Honduran individual who OFAC alleged to be involved in money laundering were [delisted](#) after OFAC determined that, “the basis for designation of these entities no longer applies.”

Distancing From Corrupt Governments

Another strategy is to publicly break with a government that may be disfavored by OFAC and the State Department and/or collaborate with U.S. authorities to share evidence regarding potential crimes committed in the region, in order to negotiate a de-listing. In May 2019 OFAC [delisted](#) a former Venezuelan official after he publicly split with the Venezuelan government and took steps which the OFAC and the State Department deemed supportive of democracy and helpful in combatting corruption. OFAC and the State Department have broad discretion to deny or even ignore requests, so a creative approach is helpful in addressing these situations.

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