

# Calendar No. 469

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1039

[Report No. 112-191]

To impose sanctions on persons responsible for the detention, abuse, or death of Sergei Magnitsky, for the conspiracy to defraud the Russian Federation of taxes on corporate profits through fraudulent transactions and lawsuits against Hermitage, and for other gross violations of human rights in the Russian Federation, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 19, 2011

Mr. CARDIN (for himself, Mr. McCAIN, Ms. AYOTTE, Mr. BEGICH, Mr. BLUMENTHAL, Mr. DURBIN, Mr. JOHANNES, Mr. KIRK, Mr. KYL, Mr. LIEBERMAN, Mr. RUBIO, Mrs. SHAHEEN, Mr. WHITEHOUSE, Mr. WICKER, Mr. UDALL of New Mexico, Mr. CASEY, Mrs. BOXER, Mr. SESSIONS, Mr. MENENDEZ, Mr. INHOFE, Mr. GRAHAM, Mr. RISCH, Mr. BLUNT, Mr. CORNYN, Mr. COONS, Mr. DEMINT, Mr. WYDEN, Ms. COLLINS, Mr. SCHUMER, Mr. COBURN, Mr. BROWN of Ohio, Mr. LEE, Mr. BURR, Mr. HARKIN, Mr. JOHNSON of Wisconsin, Mr. THUNE, Ms. CANTWELL, Ms. SNOWE, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

JULY 23, 2012

Reported by Mr. KERRY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To impose sanctions on persons responsible for the detention, abuse, or death of Sergei Magnitsky, for the conspiracy to defraud the Russian Federation of taxes on corporate

profits through fraudulent transactions and lawsuits against Hermitage, and for other gross violations of human rights in the Russian Federation, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Sergei Magnitsky Rule  
5 of Law Accountability Act of 2011”.

6 **SEC. 2. FINDINGS.**

7        Congress finds the following:

8            (1) The United States supports the people of  
9 the Russian Federation in their efforts to realize  
10 their full economic potential and to advance democ-  
11 racy, human rights, and the rule of law.

12            (2) The Russian Federation—

13            (A) is a member of the United Nations,  
14 the Organization for Security and Co-operation  
15 in Europe, the Council of Europe, and the  
16 International Monetary Fund;

17            (B) has ratified the Convention against  
18 Torture and Other Cruel, Inhuman or Degrad-  
19 ing Treatment or Punishment, the International  
20 Covenant on Civil and Political Rights, and the  
21 United Nations Convention against Corruption;  
22 and

1           (C) is bound by the legal obligations set  
2           forth in the European Convention on Human  
3           Rights.

4           (3) States voluntarily commit themselves to re-  
5           spect obligations and responsibilities through the  
6           adoption of international agreements and treaties,  
7           which must be observed in good faith in order to  
8           maintain the stability of the international order.  
9           Human rights are an integral part of international  
10          law, and lie at the foundation of the international  
11          order. The protection of human rights, therefore,  
12          particularly in the case of a country that has in-  
13          curred obligations to protect human rights under an  
14          international agreement to which it is a party, is not  
15          left exclusively to the internal affairs of that coun-  
16          try.

17          (4) Good governance and anti-corruption meas-  
18          ures are instrumental in the protection of human  
19          rights and in achieving sustainable economic growth,  
20          which benefits both the people of the Russian Fed-  
21          eration and the international community through the  
22          creation of open and transparent markets.

23          (5) Systemic corruption erodes trust and con-  
24          fidence in democratic institutions, the rule of law,  
25          and human rights protections. This is the case when

1 public officials are allowed to abuse their authority  
2 with impunity for political or financial gains in collu-  
3 sion with private entities.

4 (6) The Russian nongovernmental organization  
5 INDEM has estimated that corruption amounts to  
6 hundreds of billions of dollars a year, an increasing  
7 share of the gross domestic product of the Russian  
8 Federation.

9 (7) The President of the Russian Federation,  
10 Dmitry Medvedev, has addressed corruption in many  
11 public speeches, including stating in his 2009 ad-  
12 dress to Russia's Federal Assembly, "[Z]ero toler-  
13 ance of corruption should become part of our na-  
14 tional culture. . . . In Russia we often say that there  
15 are few cases in which corrupt officials are pros-  
16 ecuted. . . . [S]imply incarcerating a few will not re-  
17 solve the problem. But incarcerated they must be.".  
18 President Medvedev went on to say, "We shall over-  
19 come underdevelopment and corruption because we  
20 are a strong and free people, and deserve a normal  
21 life in a modern, prosperous democratic society.".  
22 Furthermore, President Medvedev has acknowledged  
23 Russia's disregard for the rule of law and used the  
24 term "legal nihilism" to describe a criminal justice  
25 system that continues to imprison innocent people.

1           (8) The systematic abuse of Sergei Magnitsky,  
2 including his repressive arrest and torture in custody  
3 by the same officers of the Ministry of the Interior  
4 of the Russian Federation that Mr. Magnitsky had  
5 implicated in the embezzlement of funds from the  
6 Russian Treasury and the misappropriation of 3  
7 companies from his client, Hermitage, reflects how  
8 deeply the protection of human rights is affected by  
9 corruption.

10           (9) The politically motivated nature of the per-  
11 secution of Mr. Magnitsky is demonstrated by—

12           (A) the denial by all state bodies of the  
13 Russian Federation of any justice or legal rem-  
14 edies to Mr. Magnitsky during the nearly 12  
15 full months he was kept without trial in deten-  
16 tion; and

17           (B) the impunity of state officials he testi-  
18 fied against for their involvement in corruption  
19 and the carrying out of his repressive persecu-  
20 tion since his death.

21           (10) Mr. Magnitsky died on November 16,  
22 2009, at the age of 37, in Matrosskaya Tishina Pris-  
23 on in Moscow, Russia, and is survived by a mother,  
24 a wife, and 2 sons.

1           (11) The Public Oversight Commission of the  
2           City of Moscow for the Control of the Observance of  
3           Human Rights in Places of Forced Detention, an or-  
4           ganization empowered by Russian law to independ-  
5           ently monitor prison conditions, concluded, “A man  
6           who is kept in custody and is being detained is not  
7           capable of using all the necessary means to protect  
8           either his life or his health. This is a responsibility  
9           of a state which holds him captive. Therefore, the  
10          ease of Sergei Magnitsky can be described as a  
11          breach of the right to life. The members of the civic  
12          supervisory commission have reached the conclusion  
13          that Magnitsky had been experiencing both psycho-  
14          logical and physical pressure in custody, and the  
15          conditions in some of the wards of Butyrka can be  
16          justifiably called torturous. The people responsible  
17          for this must be punished.”.

18          (12) According to the Financial Times, “A  
19          commission appointed by President Dmitry  
20          Medvedev has found that Russian police fabricated  
21          charges against an anti-corruption lawyer [Sergei  
22          Magnitsky], whose death in prison in 2009 has come  
23          to symbolise pervasive corruption in Russian law en-  
24          forcement.”.

1           (13) The second trial and verdict against  
2 former Yukos executives Mikhail Khodorkovsky and  
3 Platon Lebedev evokes serious concerns about the  
4 right to a fair trial and the independence of the judi-  
5 ciary in the Russian Federation. The lack of credible  
6 charges, intimidation of witnesses, violations of due  
7 process and procedural norms, falsification or with-  
8 holding of documents, denial of attorney-client privi-  
9 lege, and illegal detention in the Yukos case are  
10 highly troubling. The Council of Europe, Freedom  
11 House, and Amnesty International, among others,  
12 have concluded that they were charged and impris-  
13 oned in a process that did not follow the rule of law  
14 and was politically influenced. Furthermore, senior  
15 officials of the Government of the Russian Federa-  
16 tion have acknowledged that the arrest and impris-  
17 onment of Khodorkovsky were politically motivated.

18           (14) According to Freedom House's 2011 re-  
19 port entitled "The Perpetual Battle: Corruption in  
20 the Former Soviet Union and the New EU Mem-  
21 bers", "[t]he highly publicized cases of Sergei  
22 Magnitsky, a 37-year-old lawyer who died in pretrial  
23 detention in November 2009 after exposing a multi-  
24 million-dollar fraud against the Russian taxpayer,  
25 and Mikhail Khodorkovsky, the jailed business mag-

1 nate and regime critic who was sentenced at the end  
2 of 2010 to remain in prison through 2017, put an  
3 international spotlight on the Russian state's con-  
4 tempt for the rule of law. : : : By silencing influen-  
5 tial and accomplished figures such as Khodorkovsky  
6 and Magnitsky, the Russian authorities have made  
7 it abundantly clear that anyone in Russia can be si-  
8 lenced.''.

9 (15) Sergei Magnitsky's experience, while par-  
10 ticularly illustrative of the negative effects of official  
11 corruption on the rights of an individual citizen, ap-  
12 pears to be emblematic of a broader pattern of dis-  
13 regard for the numerous domestic and international  
14 human rights commitments of the Russian Federa-  
15 tion and impunity for those who violate basic human  
16 rights and freedoms.

17 (16) The tragic and unresolved murders of  
18 Nustap Abdurakhmanov, Maksharip Aushev,  
19 Natalya Estemirova, Akhmed Hadjimagomedov,  
20 Umar Israilov, Paul Klebnikov, Anna Politkovskaya,  
21 Saihadji Saihadjiev, and Magomed Y. Yevloyev, the  
22 death in custody of Vera Trifonova, the disappear-  
23 ances of Mokhmadsalakh Mazaev and Said-Saleh  
24 Ibragimov, the torture of Ali Israilov and Islam  
25 Umarpashaev, the near-fatal beatings of Mikhail

1 Beketov, Oleg Kashin, Arkadiy Lander, and Mikhail  
2 Vinyukov, and the harsh and ongoing imprisonment  
3 of Mikhail Khodorkovsky, Alexei Kozlov, Platon  
4 Lebedev, and Fyodor Mikheev further illustrate the  
5 grave danger of exposing the wrongdoing of officials  
6 of the Government of the Russian Federation, in-  
7 cluding Chechen leader Ramzan Kadyrov, or of seek-  
8 ing to obtain, exercise, defend, or promote inter-  
9 nationally recognized human rights and freedoms.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) **ADMITTED; ALIEN.**—The terms “admitted”  
13 and “alien” have the meanings given those terms in  
14 section 101 of the Immigration and Nationality Act  
15 (8 U.S.C. 1101).

16 (2) **APPROPRIATE CONGRESSIONAL COMMIT-**  
17 **TEES.**—The term “appropriate congressional com-  
18 mittees” means—

19 (A) the Committee on Financial Services,  
20 the Committee on Foreign Affairs, and the  
21 Committee on the Judiciary of the House of  
22 Representatives; and

23 (B) the Committee on Banking, Housing,  
24 and Urban Affairs, the Committee on Foreign

1 Relations, and the Committee on the Judiciary  
2 of the Senate.

3 ~~(3) FINANCIAL INSTITUTION; DOMESTIC FINAN-~~  
4 ~~CIAL AGENCY; DOMESTIC FINANCIAL INSTITUTION.—~~  
5 The terms “financial institution”, “domestic finan-

6 cial agency”, and “domestic financial institution”  
7 have the meanings given those terms in section 5312  
8 of title 31, United States Code.

9 ~~(4) UNITED STATES PERSON.—~~The term  
10 “United States person” means—

11 ~~(A) a United States citizen or an alien law-~~  
12 ~~fully admitted for permanent residence to the~~  
13 ~~United States; or~~

14 ~~(B) an entity organized under the laws of~~  
15 ~~the United States or of any jurisdiction within~~  
16 ~~the United States, including a foreign branch of~~  
17 ~~such an entity.~~

1 **SEC. 4. IDENTIFICATION OF PERSONS RESPONSIBLE FOR**  
2 **THE DETENTION, ABUSE, AND DEATH OF**  
3 **SERGEI MAGNITSKY, THE CONSPIRACY TO**  
4 **DEFRAUD THE RUSSIAN FEDERATION OF**  
5 **TAXES ON CERTAIN CORPORATE PROFITS,**  
6 **AND OTHER GROSS VIOLATIONS OF HUMAN**  
7 **RIGHTS.**

8 (a) **IN GENERAL.**—Not later than 90 days after the  
9 date of the enactment of this Act, the Secretary of State,  
10 in consultation with the Secretary of the Treasury, shall  
11 publish a list of each person the Secretary of State has  
12 reason to believe—

13 (1)(A) is responsible for the detention, abuse,  
14 or death of Sergei Magnitsky;

15 (B) participated in efforts to conceal the legal  
16 liability for the detention, abuse, or death of Sergei  
17 Magnitsky; or

18 (C) committed those frauds discovered by  
19 Sergei Magnitsky, including conspiring to defraud  
20 the Russian Federation of taxes on corporate profits  
21 through fraudulent transactions and lawsuits against  
22 the foreign investment company known as Hermitage  
23 and to misappropriate entities owned or con-  
24 trolled by Hermitage; or

1           (2) is responsible for extrajudicial killings, tor-  
2           ture, or other gross violations of human rights com-  
3           mitted against individuals seeking—

4                   (A) to expose illegal activity carried out by  
5           officials of the Government of the Russian Fed-  
6           eration; or

7                   (B) to obtain, exercise, defend, or promote  
8           internationally recognized human rights and  
9           freedoms, such as the freedoms of religion, ex-  
10          pression, association, and assembly and the  
11          rights to a fair trial and democratic elections.

12          (b) **UPDATES.**—The Secretary of State shall update  
13          the list required by subsection (a) as new information be-  
14          comes available.

15          (c) **NOTICE.**—The Secretary of State shall—

16                   (1) to the extent practicable, provide notice and  
17          an opportunity for a hearing to a person before the  
18          person is added to the list required by subsection  
19          (a); and

20                   (2) remove a person from the list if the person  
21          demonstrates to the satisfaction of the Secretary  
22          that the person did not engage in the activity for  
23          which the person was added to the list.

24          (d) **REQUESTS BY MEMBERS OF CONGRESS.**—Not  
25          later than 30 days after receiving a written request from

1 a Member of Congress with respect to whether a person  
2 meets the criteria for being added to the list required by  
3 subsection (a), the Secretary of State shall inform that  
4 Member of the determination of the Secretary with respect  
5 to whether or not that person meets those criteria.

6 **SEC. 5. INADMISSIBILITY OF CERTAIN ALIENS.**

7 (a) **INELIGIBILITY FOR VISAS.**—An alien is ineligible  
8 to receive a visa to enter the United States and ineligible  
9 to be admitted to the United States if the alien is on the  
10 list required by section 4(a).

11 (b) **CURRENT VISAS REVOKED.**—The Secretary of  
12 State shall revoke, in accordance with section 221(i) of  
13 the Immigration and Nationality Act (8 U.S.C. 1201(i)),  
14 the visa or other documentation of any alien who would  
15 be ineligible to receive such a visa or documentation under  
16 subsection (a).

17 (c) **WAIVER FOR NATIONAL INTERESTS.**—The Sec-  
18 retary of State may waive the application of subsection  
19 (a) or (b) in the case of an alien if the Secretary deter-  
20 mines that such a waiver is in the national interests of  
21 the United States. Upon granting such a waiver, the Sec-  
22 retary shall provide to the appropriate congressional com-  
23 mittees notice of, and a justification for, the waiver.

1 **SEC. 6. FINANCIAL MEASURES.**

2 (a) SPECIAL MEASURES.—Not later than 120 days  
3 after the date of the enactment of this Act, the Secretary  
4 of the Treasury shall investigate money laundering relat-  
5 ing to the conspiracy described in section 4(a)(1)(C). If  
6 the Secretary of the Treasury makes a determination  
7 under section 5318A of title 31, United States Code, with  
8 respect to such money laundering, the Secretary of the  
9 Treasury shall instruct domestic financial institutions and  
10 domestic financial agencies to take 1 or more special  
11 measures described in section 5318A(b) of such title.

12 (b) FREEZING OF ASSETS.—The Secretary of the  
13 Treasury shall freeze and prohibit all transactions in all  
14 property and interests in property of a person that are  
15 in the United States, that come within the United States,  
16 or that are or come within the possession or control of  
17 a United States person if the person—

18 (1) is on the list required by section 4(a); or

19 (2) acts as an agent of or on behalf of a person  
20 on that list in a matter relating to the activity for  
21 which the person was added to that list.

22 (c) WAIVER FOR NATIONAL INTERESTS.—The Sec-  
23 retary of the Treasury may waive the application of sub-  
24 section (a) or (b) if the Secretary determines that such  
25 a waiver is in the national interests of the United States.  
26 Upon granting such a waiver, the Secretary shall provide

1 to the appropriate congressional committees notice of, and  
 2 a justification for, the waiver.

3 ~~(d) ENFORCEMENT.—~~

4 ~~(1) PENALTIES.—A person that violates, at-~~  
 5 ~~tempts to violate, conspires to violate, or causes a~~  
 6 ~~violation of this section or any regulation, license, or~~  
 7 ~~order issued to carry out this section shall be subject~~  
 8 ~~to the penalties set forth in subsections (b) and (c)~~  
 9 ~~of section 206 of the International Emergency Eco-~~  
 10 ~~nomic Powers Act (50 U.S.C. 1705) to the same ex-~~  
 11 ~~tent as a person that commits an unlawful act de-~~  
 12 ~~scribed in subsection (a) of such section.~~

13 ~~(2) REQUIREMENTS FOR FINANCIAL INSTITU-~~  
 14 ~~TIONS.—~~

15 ~~(A) IN GENERAL.—Not later than 120~~  
 16 ~~days after the date of the enactment of this~~  
 17 ~~Act, the Secretary of the Treasury shall pre-~~  
 18 ~~scribe regulations to require each financial in-~~  
 19 ~~stitution that is a United States person—~~

20 ~~(i) to perform an audit of the assets~~  
 21 ~~within the possession or control of the fi-~~  
 22 ~~nancial institution to determine whether~~  
 23 ~~any of such assets are required to be fro-~~  
 24 ~~zen pursuant to subsection (b); and~~

25 ~~(ii) to submit to the Secretary—~~

1                   (I) a report containing the re-  
2                   sults of the audit; and

3                   (II) a certification that, to the  
4                   best of the knowledge of the financial  
5                   institution, the financial institution  
6                   has frozen all assets within the pos-  
7                   session or control of the financial in-  
8                   stitution that are required to be fro-  
9                   zen pursuant to subsection (b).

10                  (B) PENALTIES.—The penalties provided  
11                  for in sections 5321(a) and 5322 of title 31,  
12                  United States Code, shall apply to a financial  
13                  institution that violates a regulation prescribed  
14                  under subparagraph (A) in the same manner  
15                  and to the same extent as such penalties would  
16                  apply to any person that is otherwise subject to  
17                  such section 5321(a) or 5322.

18                  (c) REGULATORY AUTHORITY.—The Secretary of the  
19                  Treasury shall issue such regulations, licenses, and orders  
20                  as are necessary to carry out this section.

21                  **SEC. 7. REPORT TO CONGRESS.**

22                  Not later than 180 days after the date of the enact-  
23                  ment of this Act, and annually thereafter, the Secretary  
24                  of State and the Secretary of the Treasury shall submit  
25                  to the appropriate congressional committees a report on—

1           (1) the actions taken to carry out this Act, in-  
2       cluding—

3           (A) the number of times and the cir-  
4       cumstances in which persons described in sec-  
5       tion 4(a) have been added to the list required  
6       by that section during the year preceding the  
7       report; and

8           (B) if few or no such persons have been  
9       added to that list during that year; the reasons  
10      for not adding more such persons to the list;  
11      and

12          (2) efforts to encourage the governments of  
13      other countries to impose sanctions that are similar  
14      to the sanctions imposed under this Act.

15   **SECTION 1. SHORT TITLE.**

16       *This Act may be cited as the “Sergei Magnitsky Rule*  
17   *of Law Accountability Act of 2012”.*

18   **SEC. 2. FINDINGS.**

19       *Congress finds the following:*

20           (1) *The United States supports the people of the*  
21       *Russian Federation in their efforts to realize their full*  
22       *economic potential and to advance democracy, human*  
23       *rights, and the rule of law.*

24           (2) *The Russian Federation—*

1           (A) is a member of the United Nations, the  
2           Organization for Security and Co-operation in  
3           Europe, the Council of Europe, and the Inter-  
4           national Monetary Fund; and

5           (B) is a party to the Convention against  
6           Torture and Other Cruel, Inhuman or Degrading  
7           Treatment or Punishment, the International  
8           Covenant on Civil and Political Rights, the  
9           United Nations Convention against Corruption,  
10          and the European Convention on Human  
11          Rights.

12          (3) In becoming parties to human rights treaties,  
13          governments voluntarily undertake international obli-  
14          gations to respect and encourage certain fundamental  
15          rights and freedoms of their citizens. The protection  
16          and encouragement of human rights throughout the  
17          world is an important objective of United States for-  
18          eign policy.

19          (4) Good governance and anti-corruption meas-  
20          ures are instrumental in the protection of human  
21          rights and in achieving sustainable economic growth,  
22          which benefits both the people of the Russian Federa-  
23          tion and the international community through the  
24          creation of open and transparent markets.

1           (5) *Systemic corruption erodes trust and con-*  
2 *fidence in democratic institutions, the rule of law,*  
3 *and human rights protections. This is the case when*  
4 *public officials are allowed to abuse their authority*  
5 *with impunity for political or financial gains in col-*  
6 *lusion with private entities.*

7           (6) *The Russian nongovernmental organization*  
8 *INDEM has estimated that corruption amounts to*  
9 *hundreds of billions of dollars a year, an increasing*  
10 *share of the gross domestic product of the Russian*  
11 *Federation.*

12           (7) *The President of the Russian Federation,*  
13 *Dmitry Medvedev, has addressed corruption in many*  
14 *public speeches, including stating in his 2009 address*  
15 *to Russia’s Federal Assembly, “[Z]ero tolerance of*  
16 *corruption should become part of our national cul-*  
17 *ture. . . . In Russia we often say that there are few*  
18 *cases in which corrupt officials are prosecuted. . . .*  
19 *[S]imply incarcerating a few will not resolve the*  
20 *problem. But incarcerated they must be.”. President*  
21 *Medvedev went on to say, “We shall overcome under-*  
22 *development and corruption because we are a strong*  
23 *and free people, and deserve a normal life in a mod-*  
24 *ern, prosperous democratic society.”. Furthermore,*  
25 *President Medvedev has acknowledged Russia’s dis-*

1 regard for the rule of law and used the term “legal  
2 nihilism” to describe a criminal justice system that  
3 continues to imprison innocent people.

4 (8) *In light of the importance of legitimate and*  
5 *transparent public institutions and the serious nega-*  
6 *tive effects that corruption has on the efforts of the*  
7 *United States to strengthen democratic institutions*  
8 *and free market systems, Presidential Proclamation*  
9 *7750 of January 12, 2004, allows the Secretary of*  
10 *State to suspend the entry into the United States of*  
11 *aliens who are suspected of participating in corrupt*  
12 *practices.*

13 (9) *The systematic abuse of Sergei Magnitsky,*  
14 *including his repressive arrest and torture in custody*  
15 *by the same officers of the Ministry of the Interior of*  
16 *the Russian Federation that Mr. Magnitsky had im-*  
17 *pllicated in the embezzlement of funds from the Rus-*  
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1           to Mr. Magnitsky during the nearly 12 full  
2           months he was kept without trial in detention;  
3           and

4                   (B) the impunity of state officials he testi-  
5           fied against for their involvement in corruption  
6           and the carrying out of his repressive persecu-  
7           tion since his death.

8           (11) Mr. Magnitsky died on November 16, 2009,  
9           at the age of 37, in Matrosskaya Tishina Prison in  
10          Moscow, Russia, and is survived by a mother, a wife,  
11          and 2 sons.

12                   (12) The Public Oversight Commission of the  
13          City of Moscow for the Control of the Observance of  
14          Human Rights in Places of Forced Detention, an or-  
15          ganization empowered by Russian law to independ-  
16          ently monitor prison conditions, concluded, “A man  
17          who is kept in custody and is being detained is not  
18          capable of using all the necessary means to protect ei-  
19          ther his life or his health. This is a responsibility of  
20          a state which holds him captive. Therefore, the case  
21          of Sergei Magnitsky can be described as a breach of  
22          the right to life. The members of the civic supervisory  
23          commission have reached the conclusion that  
24          Magnitsky had been experiencing both psychological  
25          and physical pressure in custody, and the conditions

1        *in some of the wards of Butyrka can be justifiably*  
2        *called torturous. The people responsible for this must*  
3        *be punished.”.*

4            (13) *On July 6, 2011, President Medvedev’s*  
5        *Human Rights Council announced the results of its*  
6        *independent investigation into the death of Sergei*  
7        *Magnitsky. The Human Rights Council concluded*  
8        *that Sergei Magnitsy’s arrest and detention was ille-*  
9        *gal, he was denied access to justice by the courts and*  
10       *prosecutors of the Russian Federation, he was inves-*  
11       *tigated by the same law enforcement officers whom he*  
12       *had accused of stealing Hermitage Fund companies*  
13       *and illegally obtaining a fraudulent \$230,000,000 tax*  
14       *refund, he was denied necessary medical care in cus-*  
15       *tody, he was beaten by 8 guards with rubber batons*  
16       *on the last day of his life, and the ambulance crew*  
17       *that was called to treat him as he was dying was de-*  
18       *liberately kept outside of his cell for one hour and 18*  
19       *minutes until he was dead. The report of the Human*  
20       *Rights Council also states the officials falsified their*  
21       *accounts of what happened to Sergei Magnitsky and,*  
22       *18 months after his death, no officials had been*  
23       *brought to trial for his false arrest or the crime he un-*  
24       *covered.*

1           (14) *The second trial, verdict, and sentence*  
2 *against former Yukos executives Mikhail*  
3 *Khodorkovsky and Platon Lebedev evoke serious con-*  
4 *cerns about the right to a fair trial and the independ-*  
5 *ence of the judiciary in the Russian Federation. The*  
6 *lack of credible charges, intimidation of witnesses,*  
7 *violations of due process and procedural norms, fal-*  
8 *sification or withholding of documents, denial of at-*  
9 *torney-client privilege, and illegal detention in the*  
10 *Yukos case are highly troubling. The Council of Eu-*  
11 *rope, Freedom House, and Amnesty International,*  
12 *among others, have concluded that they were charged*  
13 *and imprisoned in a process that did not follow the*  
14 *rule of law and was politically influenced. Further-*  
15 *more, senior officials of the Government of the Rus-*  
16 *sian Federation have acknowledged that the arrest*  
17 *and imprisonment of Khodorkovsky were politically*  
18 *motivated.*

19           (15) *According to Freedom House's 2011 report*  
20 *entitled "The Perpetual Battle: Corruption in the*  
21 *Former Soviet Union and the New EU Members",*  
22 *"[t]he highly publicized cases of Sergei Magnitsky, a*  
23 *37-year-old lawyer who died in pretrial detention in*  
24 *November 2009 after exposing a multimillion-dollar*  
25 *fraud against the Russian taxpayer, and Mikhail*

1 *Khodorkovsky, the jailed business magnate and regime*  
2 *critic who was sentenced at the end of 2010 to remain*  
3 *in prison through 2017, put an international spot-*  
4 *light on the Russian state's contempt for the rule of*  
5 *law. . . . By silencing influential and accomplished*  
6 *figures such as Khodorkovsky and Magnitsky, the*  
7 *Russian authorities have made it abundantly clear*  
8 *that anyone in Russia can be silenced.”.*

9 (16) *Sergei Magnitsky's experience, while par-*  
10 *ticularly illustrative of the negative effects of official*  
11 *corruption on the rights of an individual citizen, ap-*  
12 *pears to be emblematic of a broader pattern of dis-*  
13 *regard for the numerous domestic and international*  
14 *human rights commitments of the Russian Federation*  
15 *and impunity for those who violate basic human*  
16 *rights and freedoms.*

17 (17) *The tragic and unresolved murders of*  
18 *Nustap Abdurakhmanov, Maksharip Aushev, Natalya*  
19 *Estemirova, Akhmed Hadjimagomedov, Umar*  
20 *Israilov, Paul Klebnikov, Anna Politkovskaya,*  
21 *Saihadji Saihadjiev, and Magomed Y. Yevloyev, the*  
22 *death in custody of Vera Trifonova, the disappear-*  
23 *ances of Mokhmadsalakh Masaev and Said-Saleh*  
24 *Ibragimov, the torture of Ali Israilov and Islam*  
25 *Umarpashaev, the near-fatal beatings of Mikhail*

1 *Beketov, Oleg Kashin, Arkadiy Lander, and Mikhail*  
2 *Vinyukov, and the harsh and ongoing imprisonment*  
3 *of Mikhail Khodorkovsky, Alexei Kozlov, Platon*  
4 *Lebedev, and Fyodor Mikheev further illustrate the*  
5 *grave danger of exposing the wrongdoing of officials*  
6 *of the Government of the Russian Federation, includ-*  
7 *ing Chechen President Ramzan Kadyrov, or of seek-*  
8 *ing to obtain, exercise, defend, or promote inter-*  
9 *nationally recognized human rights and freedoms.*

10 (18) *The people of the Russian Federation, like*  
11 *people everywhere, deserve to have their human rights*  
12 *and fundamental freedoms respected. Human rights*  
13 *and fundamental freedoms are inalienable and uni-*  
14 *versal in character and thus bind all states.*

15 **SEC. 3. DEFINITIONS.**

16 *In this Act:*

17 (1) *ADMITTED; ALIEN.—The terms “admitted”*  
18 *and “alien” have the meanings given those terms in*  
19 *section 101 of the Immigration and Nationality Act*  
20 *(8 U.S.C. 1101).*

21 (2) *APPROPRIATE CONGRESSIONAL COMMIT-*  
22 *TEES.—The term “appropriate congressional commit-*  
23 *tees” means—*

24 (A) *the Committee on Armed Services, the*  
25 *Committee on Financial Services, the Committee*

1           *on Foreign Affairs, the Committee on Homeland*  
2           *Security, and the Committee on the Judiciary of*  
3           *the House of Representatives; and*

4                     *(B) the Committee on Armed Services, the*  
5           *Committee on Banking, Housing, and Urban Af-*  
6           *airs, the Committee on Foreign Relations, the*  
7           *Committee on Homeland Security and Govern-*  
8           *mental Affairs, and the Committee on the Judi-*  
9           *ciary of the Senate.*

10           (3) *FINANCIAL INSTITUTION.*—*The term “finan-*  
11           *cial institution” has the meaning given that term in*  
12           *section 5312 of title 31, United States Code.*

13           (4) *UNITED STATES PERSON.*—*The term “United*  
14           *States person” means—*

15                     *(A) a United States citizen or an alien law-*  
16           *fully admitted for permanent residence to the*  
17           *United States; or*

18                     *(B) an entity organized under the laws of*  
19           *the United States or of any jurisdiction within*  
20           *the United States, including a foreign branch of*  
21           *such an entity.*

1 **SEC. 4. IDENTIFICATION OF PERSONS RESPONSIBLE FOR**  
2 **THE DETENTION, ABUSE, AND DEATH OF**  
3 **SERGEI MAGNITSKY AND OTHER GROSS VIO-**  
4 **LATIONS OF HUMAN RIGHTS.**

5 (a) *IN GENERAL.*—Not later than 120 days after the  
6 date of the enactment of this Act, the Secretary of State,  
7 in consultation with the Secretary of the Treasury, shall  
8 submit to the appropriate congressional committees a list  
9 of each person the Secretary of State determines—

10 (1)(A) *is responsible for the detention, abuse, or*  
11 *death of Sergei Magnitsky;*

12 (B) *participated in efforts to conceal the legal li-*  
13 *ability for the detention, abuse, or death of Sergei*  
14 *Magnitsky;*

15 (C) *benefitted financially from the detention,*  
16 *abuse, or death of Sergei Magnitsky; or*

17 (D) *was involved in the criminal conspiracy un-*  
18 *covered by Sergei Magnitsky;*

19 (2) *is responsible for extrajudicial killings, tor-*  
20 *ture, or other gross violations of internationally recog-*  
21 *nized human rights committed against individuals*  
22 *seeking—*

23 (A) *to expose illegal activity carried out by*  
24 *officials of the Government of the Russian Fed-*  
25 *eration; or*

1           (B) to obtain, exercise, defend, or promote  
2           internationally recognized human rights and  
3           freedoms, such as the freedoms of religion, expres-  
4           sion, association, and assembly and the rights to  
5           a fair trial and democratic elections, anywhere  
6           in the world; or

7           (3) acted as an agent of or on behalf of a person  
8           in a matter relating to an activity described in para-  
9           graph (1) or (2).

10          (b) *UPDATES.*—The Secretary of State shall update the  
11          list required by subsection (a) as new information becomes  
12          available.

13          (c) *REMOVAL FROM LIST.*—A person shall be removed  
14          from the list required by subsection (a) if the Secretary of  
15          State determines that the person did not engage in the ac-  
16          tivity for which the person was added to the list.

17          (d) *FORM OF LIST; PUBLIC AVAILABILITY.*—

18               (1) *IN GENERAL.*—Except as provided in para-  
19               graph (2), the list required by subsection (a) shall be  
20               submitted in unclassified form.

21               (2) *CLASSIFIED ANNEX.*—The list required by  
22               subsection (a) may include a classified annex if the  
23               Secretary of State—

1           (A) determines that it is necessary for the  
2           national security interests of the United States  
3           to do so; and

4           (B) prior to submitting the list including a  
5           classified annex, provides to the appropriate con-  
6           gressional committees notice of, and a justifica-  
7           tion for, including each person in the classified  
8           annex.

9           (3) *REVIEW OF CLASSIFIED ANNEX.*—Not later  
10          than 300 days after the date of the enactment of this  
11          Act, and annually thereafter, the Secretary shall—

12           (A) review the classified annex, if any, in-  
13           cluded in the list required by subsection (a); and

14           (B) provide to the appropriate congressional  
15           committees a justification for continuing to in-  
16           clude each person in the classified annex.

17          (4) *PUBLIC AVAILABILITY OF UNCLASSIFIED POR-*  
18          *TION.*—The unclassified portion of the list required by  
19          subsection (a) shall be published in the *Federal Reg-*  
20          *ister.*

21          (e) *REQUESTS BY CHAIRPERSON AND RANKING MEM-*  
22          *BER OF APPROPRIATE CONGRESSIONAL COMMITTEES.*—

23           (1) *IN GENERAL.*—Not later than 120 days after  
24           receiving a written request from the chairperson and  
25           the ranking member of one of the appropriate congres-

1       sional committees with respect to whether a person  
2       meets the criteria for being added to the list required  
3       by subsection (a), the Secretary of State shall submit  
4       a response to the committee the chairperson and rank-  
5       ing member of which made the request with respect to  
6       whether or not the Secretary determines that the per-  
7       son meets those criteria.

8               (2) *FORM.*—The Secretary of State may submit  
9       a response required by paragraph (1) in classified  
10      form if the Secretary determines that it is necessary  
11      for the national security interests of the United States  
12      to do so.

13      (f) *NONAPPLICABILITY OF CONFIDENTIALITY RE-*  
14      *QUIREMENT WITH RESPECT TO VISA RECORDS.*—The Sec-  
15      retary of State shall publish the list required by subsection  
16      (a) without regard to the requirements of section 222(f) of  
17      the Immigration and Nationality Act (8 U.S.C. 1202(f))  
18      with respect to confidentiality of records pertaining to the  
19      issuance or refusal of visas or permits to enter the United  
20      States.

21      **SEC. 5. INADMISSIBILITY OF CERTAIN ALIENS.**

22      (a) *INELIGIBILITY FOR VISAS.*—An alien is ineligible  
23      to receive a visa to enter the United States and ineligible  
24      to be admitted to the United States if the alien is on the  
25      list required by section 4(a).

1       (b) *CURRENT VISAS REVOKED.*—*The Secretary of*  
2 *State shall revoke, in accordance with section 221(i) of the*  
3 *Immigration and Nationality Act (8 U.S.C. 1201(i)), the*  
4 *visa or other documentation of any alien who would be in-*  
5 *eligible to receive such a visa or documentation under sub-*  
6 *section (a).*

7       (c) *WAIVER FOR NATIONAL SECURITY INTERESTS.*—  
8 *The Secretary of State may waive the application of sub-*  
9 *section (a) or (b) in the case of an alien if—*

10           (1) *the Secretary determines that such a waiv-*  
11 *er—*

12                   (A) *is necessary to permit the United States*  
13 *to comply with the Agreement between the*  
14 *United Nations and the United States of Amer-*  
15 *ica regarding the Headquarters of the United*  
16 *Nations, signed June 26, 1947, and entered into*  
17 *force November 21, 1947; or*

18                   (B) *is in the national security interests of*  
19 *the United States; and*

20           (2) *prior to granting such a waiver, the Sec-*  
21 *retary provides to the appropriate congressional com-*  
22 *mittees notice of, and a justification for, the waiver.*

23 **SEC. 6. FINANCIAL MEASURES.**

24       (a) *FREEZING OF ASSETS.*—*The Secretary of the*  
25 *Treasury shall, pursuant to the International Emergency*

1 *Economic Powers Act (50 U.S.C. 1701 et seq.), freeze and*  
2 *prohibit all transactions in all property and interests in*  
3 *property of a person that the Secretary, in consultation*  
4 *with the Secretary of State, determines has engaged in an*  
5 *activity described in paragraph (1), (2), or (3) of section*  
6 *4(a) if such property and interests in property are in the*  
7 *United States, come within the United States, or are or*  
8 *come within the possession or control of a United States*  
9 *person.*

10 (b) *WAIVER FOR NATIONAL SECURITY INTERESTS.—*  
11 *The Secretary of the Treasury may waive the application*  
12 *of subsection (a) if the Secretary determines that such a*  
13 *waiver is in the national security interests of the United*  
14 *States. Prior to granting such a waiver, the Secretary shall*  
15 *provide to the appropriate congressional committees notice*  
16 *of, and a justification for, the waiver.*

17 **SEC. 7. REPORT TO CONGRESS.**

18 *Not later than 1 year after the date of the enactment*  
19 *of this Act, and annually thereafter, the Secretary of State*  
20 *and the Secretary of the Treasury shall submit to the appro-*  
21 *priate congressional committees a report on—*

22 (1) *the actions taken to carry out this Act, in-*  
23 *cluding—*

24 (A) *the number of times and the cir-*  
25 *cumstances in which persons described in section*

1           4(a) have been added to the list required by that  
2           section during the year preceding the report; and  
3           (B) if few or no such persons have been  
4           added to that list during that year, the reasons  
5           for not adding more such persons to the list; and  
6           (2) efforts to encourage the governments of other  
7           countries to impose sanctions that are similar to the  
8           sanctions imposed under this Act.

Calendar No. 469

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1039**

[Report No. 112-191]

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## **A BILL**

To impose sanctions on persons responsible for the detention, abuse, or death of Sergei Magnitsky, for the conspiracy to defraud the Russian Federation of taxes on corporate profits through fraudulent transactions and lawsuits against Hermitage, and for other gross violations of human rights in the Russian Federation, and for other purposes.

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JULY 23, 2012

Reported with an amendment