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SERGEI MAGNITSKY RULE OF LAW
ACCOUNTABILITY ACT OF 2011

JULY 23, 2012.—Ordered to be printed

Mr. KERRY, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany S. 1039]

The Committee on Foreign Relations, having had under consideration the bill S. 1039, to impose sanctions on persons responsible for the detention, abuse, or death of Sergei Magnitsky, and for other purposes, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill do pass.

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I. PURPOSE

The purpose of this bill is to impose sanctions on persons that were responsible for or benefited financially from the detention, abuse, or death of Sergei Magnitsky, were involved in the criminal conspiracy uncovered by Sergei Magnitsky, or were responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals seeking to expose illegal activity carried out by officials of the Government of the Russian Federation or to obtain, exercise, defend or promote internationally recognized human rights and freedoms anywhere in the world.

II. COMMITTEE ACTION

S. 1039 was introduced on May 19, 2011, by Senator Cardin. On June 26, 2012, the committee considered S. 1039 and ordered it reported, with amendments, by voice vote.

III. DISCUSSION

Section 2—Findings

Section 2 sets forth several findings, including that the United States supports the people of the Russian Federation to realize their full economic potential and to advance democracy, human rights, and the rule of law; that the Russian Federation is a member of several international organizations; that in becoming parties to human rights treaties, governments voluntarily undertake international obligations to respect and encourage certain fundamental rights and freedoms and this is an important objective of U.S. foreign policy; that good governance and anticorruption measures are instrumental in the protection of human rights, economic development, and the creation of open markets; that systemic corruption erodes trust and confidence in democratic institutions, the rule of law, and human rights protections; that the Russian nongovernmental organization INDEM has estimated that corruption amounts to hundreds of billions of dollars a year; that former President Medvedev of Russia often cited corruption as a serious problem in his public remarks; that Presidential Proclamation 7750 of January 12, 2004, allows the Secretary of State to suspend the entry into the United States of aliens who are suspected of participating in corrupt practices; that Sergei Magnitsky's repressive arrest and torture was carried out by Russian interior ministry officials that Mr. Magnitsky had implicated in the embezzlement of funds from the Russian treasury and the misappropriation of his client Hermitage; that the persecution of Mr. Magnitsky was politically motivated; that the Public Oversight Commission of the City of Moscow for the Control of the Observance of Human Rights in Places of Forced Detention concluded that "the case of Sergei Magnitsky can be described as a breach of the right to life"; that the Russian President's Human Rights Council report indicated that Magnitsky was investigated by the very officials he had implicated in theft and fraud, that he was beaten by eight guards with rubber batons on the day he died, and that an ambulance crew was kept outside his cell until he was dead; that the second trial, verdict, and sentence against former Yukos executives Mikhail Khodorkovsky and Platon Lebedev evoke serious concerns about the right to a fair trial and the independence of the judiciary in the Russian Federation; that Mr. Magnitsky's experience appears to be emblematic of a broader pattern of disregard for the numerous domestic and international human rights commitments of the Russian Federation; that the deaths of a number of prominent Russians illustrate the grave danger of exposing the wrongdoing of officials of the Russian Federation or of seeking to obtain, exercise, defend, or promote internationally recognized human rights and freedoms; and that the people of the Russian Federation, like people everywhere, deserve to have their human rights and fundamental freedoms respected and that human rights and fundamental freedoms are inalienable and universal in character and thus bind all states.

Section 3—Definitions

Section 3 of the Act defines the terms “admitted”, “alien”, “appropriate congressional committees”, “financial institution”, and “United States Person.”

Section 4—Identification of Persons Responsible for the detention, abuse and death of Sergei Magnitsky and other gross violations of human rights

Section 4(a) of the Act requires the Secretary of State, in consultation with the Secretary of the Treasury, to submit to the appropriate congressional committees a list of each person the Secretary of State determines meets one of the following categories of criteria:

(1) Persons responsible for the detention, abuse, or death of Mr. Magnitsky; persons who participated in efforts to conceal the legal liability for the detention, abuse or death of Mr. Magnitsky; persons who benefited financially from the detention, abuse, or death of Mr. Magnitsky; or persons involved in the criminal conspiracy uncovered by Mr. Magnitsky; or

(2) Persons responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals seeking: (A) to expose illegal activity carried out by officials of the Russian Government; or (B) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association and assembly and the rights to a fair trial and democratic elections, anywhere in the world; or

(3) Persons who acted as an agent of or on behalf of a person in a matter relating to an activity described in paragraphs (1) or (2).

Section 4(b) of the Act requires the Secretary of State to update the list required by subsection 4(a) as more information becomes available.

Section 4(c) states that a person shall be removed from the list required by section 4(a) if the Secretary of State determines that the person did not engage in the activity for which the person was added to the list.

Section 4(d) describes the form the list will take and the extent of its public availability. It requires that, except as permitted by subsections 4(d)(2)–(3), the list shall be submitted in unclassified form and published in the Federal Register. Section 4(d)(2) permits information to be submitted in a classified annex if the Secretary of State determines that it is necessary for the national security interests of the United States to do so, and, prior to submitting a list including a classified annex, provides the appropriate congressional committees notice of and a justification for including each person in the classified annex. Section 4(d)(3) requires that, not later than 300 days after the date of enactment and annually thereafter, the Secretary review the classified annex and provide to the appropriate congressional committees a justification for continuing to include each person in such an annex.

Section 4(e) requires the Secretary of State to provide a response not later than 120 days after receiving a written request from the

chairperson and ranking member of one of the appropriate congressional committees concerning whether a specific person meets the criteria for being added to the list required by subsection 4(a). The response may be submitted in classified form if the Secretary determines that it is necessary for the national security interests of the United States to do so.

Section 4(f) clarifies that the Secretary of State shall publish the list required by subsection 4(a) without regard to the requirements of section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) with respect to confidentiality of records pertaining to the issuance or refusal of visas or permits to enter the United States.

Section 5—Inadmissibility of Certain Aliens

This section provides that an alien is ineligible to receive a visa to enter the United States and ineligible to be admitted to the United States if the alien is on the list required by section 4(a), and that the Secretary of State shall revoke, in accordance with section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)), the visa or other documentation of any alien who would be ineligible to receive such a visa or documentation under the Act. The application of this section may be waived by the Secretary of State if the Secretary determines that such a waiver is necessary to permit the United States to comply with the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed June 26, 1947, and entered into force November 21, 1947, or if the Secretary determines that a waiver is in the national security interests of the United States and provides, prior to granting such a waiver, notice of and a justification for the waiver to the appropriate congressional committees.

Section 6—Financial Measures

This section requires the Secretary of Treasury to freeze and prohibit all transactions in property and interests in property of a person that the Secretary, in consultation with the Secretary of State, determines has engaged in an activity described in paragraph (1), (2), or (3) of section 4(a) if such property and interests in property are in the United States, come within the United States, or come within the possession or control of a United States person. The Secretary of the Treasury may waive the application of this section if the Secretary determines that such a waiver is in the national security interests of the United States and, prior to granting such a waiver, provides notice of and justification for the waiver to the appropriate congressional committees.

Section 7—Report to Congress

This section requires the Secretary of State and Secretary of Treasury to submit a report one year after the date of enactment (and annually thereafter) to the appropriate congressional committees. The report must describe the actions taken to carry out the Act, including the number of times and circumstances in which persons described in section 4(a) have been added to the list during the year preceding the report and if few or no such persons have been added during that year, the reasons for not adding more persons to the list. The report must also describe efforts to encourage

the governments of other countries to impose sanctions that are similar to the sanctions imposed under the Act.

IV. COST ESTIMATE

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee provides this estimate of the costs of this legislation prepared by the Congressional Budget Office.

UNITED STATES CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 5, 2012.

Hon. JOHN F. KERRY,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1039, the Sergei Magnitsky Rule of Law Accountability Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Sunita D'Monte and Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

S. 1039—Sergei Magnitsky Rule of Law Accountability Act of 2012

S. 1039 would require the Departments of State and Treasury to compile, publish, and annually report on a list of persons responsible for the death of Sergei Magnitsky or human rights violations in foreign countries. Listed persons would be ineligible for entry into the United States, have any existing visas revoked, and have their assets frozen.

Based on information from the Department of State, CBO expects the Department would hire seven additional staff to implement the bill's provisions at an annual cost of about \$200,000 per person. CBO further estimates that the administrative costs to the Department of Treasury would be insignificant each year and over the 5-year period. On that basis, and adjusting for anticipated inflation, CBO estimates that implementing S. 1039 would cost \$6 million over the 2013–2017 period, assuming the appropriation of the necessary amounts.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting S. 1039 would decrease revenues from visa fees and increase revenues from civil and criminal penalties imposed on those who violate the regulations. CBO estimates that the provisions would affect few people and that revenues deposited in the Treasury would not be significant in any year. The legislation also would increase direct spending from criminal penalties which are deposited in the Crime Victims Fund, and spent in subsequent years. However, CBO expects that any net effects associated with collecting and spending such penalties would not be significant in any year.

S. 1039 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On June 29, 2012, CBO transmitted a cost estimate for H.R. 4405, the Sergei Magnitsky Rule of Law Accountability Act of 2012, as ordered reported by the House Committee on Foreign Affairs on June 7, 2012. The House bill has some similarities to S. 1039 but is restricted to human rights violations in Russia, and thus, the estimate of H.R. 4405's cost is correspondingly lower.

The CBO staff contacts for this estimate are Sunita D'Monte and Matthew Pickford. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has determined that it is unable to fully anticipate the regulatory impact resulting from this legislation because the number of persons determined to have committed the conduct set forth in section 4(a) of the Act is not known at this time.

VI. CHANGES IN EXISTING LAW

In compliance with Rule XXVI, paragraph 12 of the Standing Rules of the Senate, the committee has determined that there are no changes in existing legislation as a result of this bill.