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2D SESSION

S. 5074

To provide assistance for United States citizens and nationals taken hostage or unlawfully or wrongfully detained abroad, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 19, 2020

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To provide assistance for United States citizens and nationals taken hostage or unlawfully or wrongfully detained abroad, 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 “Robert Levinson Hos-
5 tage Recovery and Hostage-Taking Accountability Act”.

6 **SEC. 2. ASSISTANCE FOR UNITED STATES NATIONALS UN-**
7 **LAWFULLY OR WRONGFULLY DETAINED**
8 **ABROAD.**

9 (a) REVIEW.—The Secretary of State shall review the
10 cases of United States nationals detained abroad to deter-

1 mine if there is credible information that they are being
2 detained unlawfully or wrongfully, based on criteria which
3 may include whether—

4 (1) United States officials receive or possess
5 credible information indicating innocence of the de-
6 tained individual;

7 (2) the individual is being detained solely or
8 substantially because he or she is a United States
9 national;

10 (3) the individual is being detained solely or
11 substantially to influence United States Government
12 policy or to secure economic or political concessions
13 from the United States Government;

14 (4) the detention appears to be because the in-
15 dividual sought to obtain, exercise, defend, or pro-
16 mote freedom of the press, freedom of religion, or
17 the right to peacefully assemble;

18 (5) the individual is being detained in violation
19 of the laws of the detaining country;

20 (6) independent nongovernmental organizations
21 or journalists have raised legitimate questions about
22 the innocence of the detained individual;

23 (7) the United States mission in the country
24 where the individual is being detained has received

1 credible reports that the detention is a pretext for an
2 illegitimate purpose;

3 (8) the individual is detained in a country
4 where the Department of State has determined in its
5 annual human rights reports that the judicial system
6 is not independent or impartial, is susceptible to cor-
7 ruption, or is incapable of rendering just verdicts;

8 (9) the individual is being detained in inhumane
9 conditions;

10 (10) due process of law has been sufficiently
11 impaired so as to render the detention arbitrary; and

12 (11) United States diplomatic engagement is
13 likely necessary to secure the release of the detained
14 individual.

15 (b) REFERRALS TO THE SPECIAL ENVOY.—Upon a
16 determination by the Secretary of State, based on the to-
17 tality of the circumstances, that there is credible informa-
18 tion that the detention of a United States national abroad
19 is unlawful or wrongful, and regardless of whether the de-
20 tention is by a foreign government or a nongovernmental
21 actor, the Secretary shall transfer responsibility for such
22 case from the Bureau of Consular Affairs of the Depart-
23 ment of State to the Special Envoy for Hostage Affairs
24 created pursuant to section 3.

25 (c) REPORT.—

1 (1) ANNUAL REPORT.—

2 (A) IN GENERAL.—The Secretary of State
3 shall submit to the appropriate congressional
4 committees an annual report with respect to
5 United States nationals for whom the Secretary
6 determines there is credible information of un-
7 lawful or wrongful detention abroad.

8 (B) FORM.—The report required under
9 this paragraph shall be submitted in unclassi-
10 fied form, but may include a classified annex if
11 necessary.

12 (2) COMPOSITION.—The report required under
13 paragraph (1) shall include current estimates of the
14 number of individuals so detained, as well as rel-
15 evant information about particular cases, such as—

16 (A) the name of the individual, unless the
17 provision of such information is inconsistent
18 with section 552a of title 5, United States Code
19 (commonly known as the “Privacy Act of
20 1974”);

21 (B) basic facts about the case;

22 (C) a summary of the information that
23 such individual may be detained unlawfully or
24 wrongfully;

(D) a description of specific efforts, legal and diplomatic, taken on behalf of the individual since the last reporting period, including a description of accomplishments and setbacks; and

(E) a description of intended next steps.

(d) RESOURCE GUIDANCE.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act and after consulting with relevant organizations that advocate on behalf of United States nationals detained abroad and the Family Engagement Coordinator established pursuant to section 4(c)(2), the Secretary of State shall provide resource guidance in writing for government officials and families of unjustly or wrongfully detained individuals.

(2) CONTENT.—The resource guidance required under paragraph (1) should include—

(A) information to help families understand United States policy concerning the release of United States nationals unlawfully or wrongfully held abroad;

(B) contact information for officials in the Department of State or other government agencies suited to answer family questions;

1 (C) relevant information about options
2 available to help families obtain the release of
3 unjustly or wrongfully detained individuals,
4 such as guidance on how families may engage
5 with United States diplomatic and consular
6 channels to ensure prompt and regular access
7 for the detained individual to legal counsel,
8 family members, humane treatment, and other
9 services;

10 (D) guidance on submitting public or pri-
11 vate letters from members of Congress or other
12 individuals who may be influential in securing
13 the release of an individual; and

14 (E) appropriate points of contacts, such as
15 legal resources and counseling services, who
16 have a record of assisting victims' families.

17 **SEC. 3. SPECIAL ENVOY FOR HOSTAGE AFFAIRS.**

18 (a) ESTABLISHMENT.—There shall be a Special Pres-
19 idential Envoy for Hostage Affairs, who shall be appointed
20 by the President, by and with the advice and consent of
21 the Senate, and shall report to the Secretary of State.

22 (b) RANK.—The Special Envoy shall have the rank
23 and status of ambassador.

24 (c) RESPONSIBILITIES.—The Special Presidential
25 Envoy for Hostage Affairs shall—

1 (1) lead diplomatic engagement on United
2 States hostage policy;

3 (2) coordinate all diplomatic engagements and
4 strategy in support of hostage recovery efforts, in
5 coordination with the Hostage Recovery Fusion Cell
6 and consistent with policy guidance communicated
7 through the Hostage Response Group;

8 (3) in coordination with the Hostage Recovery
9 Fusion Cell as appropriate, coordinate diplomatic
10 engagements regarding cases in which a foreign gov-
11 ernment has detained a United States national and
12 the United States Government regards such deten-
13 tion as unlawful or wrongful;

14 (4) provide senior representation from the Spe-
15 cial Envoy's office to the Hostage Recovery Fusion
16 Cell established under section 4 and the Hostage Re-
17 sponse Group established under section 5; and

18 (5) ensure that families of United States na-
19 tionals unlawfully or wrongly detained abroad re-
20 ceive updated information about developments in
21 cases and government policy.

22 **SEC. 4. HOSTAGE RECOVERY FUSION CELL.**

23 (a) ESTABLISHMENT.—The President shall establish
24 an interagency Hostage Recovery Fusion Cell.

1 (b) PARTICIPATION.—The President shall direct the
2 heads of each of the following executive departments,
3 agencies, and offices to make available personnel to par-
4 ticipate in the Hostage Recovery Fusion Cell:

5 (1) The Department of State.

6 (2) The Department of the Treasury.

7 (3) The Department of Defense.

8 (4) The Department of Justice.

9 (5) The Office of the Director of National Intel-
10 ligence.

11 (6) The Federal Bureau of Investigation.

12 (7) The Central Intelligence Agency.

13 (8) Other agencies as the President, from time
14 to time, may designate.

15 (c) PERSONNEL.—The Hostage Recovery Fusion Cell
16 shall include—

17 (1) a Director, who shall be a full-time senior
18 officer or employee of the United States Govern-
19 ment;

20 (2) a Family Engagement Coordinator who
21 shall—

22 (A) work to ensure that all interactions by
23 executive branch officials with a hostage's fam-
24 ily occur in a coordinated fashion and that the

1 family receives consistent and accurate informa-
2 tion from the United States Government; and

3 (B) if directed, perform the same function
4 as set out in subparagraph (A) with regard to
5 the family of a United States national who is
6 unlawfully or wrongfully detained abroad; and

7 (3) other officers and employees as deemed ap-
8 propriate by the President.

9 (d) DUTIES.—The Hostage Recovery Fusion Cell
10 shall—

11 (1) coordinate efforts by participating agencies
12 to ensure that all relevant information, expertise,
13 and resources are brought to bear to secure the safe
14 recovery of United States nationals held hostage
15 abroad;

16 (2) if directed, coordinate the United States
17 Government's response to other hostage-takings oc-
18 ccurring abroad in which the United States has a na-
19 tional interest;

20 (3) if directed, coordinate or assist the United
21 States Government's response to help secure the re-
22 lease of United States nationals unlawfully or
23 wrongfully detained abroad; and

24 (4) pursuant to policy guidance coordinated
25 through the National Security Council—

1 (A) identify and recommend hostage recov-
2 ery options and strategies to the President
3 through the National Security Council or the
4 Deputies Committee of the National Security
5 Council;

6 (B) coordinate efforts by participating
7 agencies to ensure that information regarding
8 hostage events, including potential recovery op-
9 tions and engagements with families and exter-
10 nal actors (including foreign governments), is
11 appropriately shared within the United States
12 Government to facilitate a coordinated response
13 to a hostage-taking;

14 (C) assess and track all hostage-takings of
15 United States nationals abroad and provide reg-
16 ular reports to the President and Congress on
17 the status of such cases and any measures
18 being taken toward the hostages' safe recovery;

19 (D) provide a forum for intelligence shar-
20 ing and, with the support of the Director of Na-
21 tional Intelligence, coordinate the declassifica-
22 tion of relevant information;

23 (E) coordinate efforts by participating
24 agencies to provide appropriate support and as-
25 sistance to hostages and their families in a co-

1 ordinated and consistent manner and to provide
2 families with timely information regarding sig-
3 nificant events in their cases;

4 (F) make recommendations to agencies in
5 order to reduce the likelihood of United States
6 nationals' being taken hostage abroad and en-
7 hance United States Government preparation to
8 maximize the probability of a favorable outcome
9 following a hostage-taking; and

10 (G) coordinate with agencies regarding
11 congressional, media, and other public inquiries
12 pertaining to hostage events.

13 (e) ADMINISTRATION.—The Hostage Recovery Fu-
14 sion Cell shall be located within the Federal Bureau of
15 Investigation for administrative purposes.

16 **SEC. 5. HOSTAGE RESPONSE GROUP.**

17 (a) ESTABLISHMENT.—The President shall establish
18 a Hostage Response Group, chaired by a designated mem-
19 ber of the National Security Council or the Deputies Com-
20 mittee of the National Security Council, to be convened
21 on a regular basis, to further the safe recovery of United
22 States nationals held hostage abroad or unlawfully or
23 wrongfully detained abroad, and to be tasked with coordi-
24 nating the United States Government response to other

1 hostage-takings occurring abroad in which the United
2 States has a national interest.

3 (b) MEMBERSHIP.—The regular members of the Hos-
4 tage Response Group shall include the Director of the
5 Hostage Recovery Fusion Cell, the Hostage Recovery Fu-
6 sion Cell’s Family Engagement Coordinator, the Special
7 Envoy appointed pursuant to section 3, and representa-
8 tives from the Department of the Treasury, the Depart-
9 ment of Defense, the Department of Justice, the Federal
10 Bureau of Investigation, the Office of the Director of Na-
11 tional Intelligence, the Central Intelligence Agency, and
12 other agencies as the President, from time to time, may
13 designate.

14 (c) DUTIES.—The Hostage Recovery Group shall—

15 (1) identify and recommend hostage recovery
16 options and strategies to the President through the
17 National Security Council;

18 (2) coordinate the development and implemen-
19 tation of United States hostage recovery policies,
20 strategies, and procedures;

21 (3) receive regular updates from the Hostage
22 Recovery Fusion Cell and the Special Envoy for
23 Hostage Affairs on the status of United States na-
24 tionals being held hostage or unlawfully or wrong-

1 fully detained abroad and measures being taken to
2 effect safe recoveries;

3 (4) coordinate the provision of policy guidance
4 to the Hostage Recovery Fusion Cell, including re-
5 viewing recovery options proposed by the Hostage
6 Recovery Fusion Cell and working to resolve dis-
7 putes within the Hostage Recovery Fusion Cell;

8 (5) as appropriate, direct the use of resources
9 at the Hostage Recovery Fusion Cell to coordinate
10 or assist in the safe recovery of United States na-
11 tionals unlawfully or wrongfully detained abroad;
12 and

13 (6) as appropriate, direct the use of resources
14 at the Hostage Recovery Fusion Cell to coordinate
15 the United States Government response to other
16 hostage-takings occurring abroad in which the
17 United States has a national interest.

18 (d) MEETINGS.—The Hostage Response Group shall
19 meet regularly.

20 (e) REPORTING.—The Hostage Response Group shall
21 regularly provide recommendations on hostage recovery
22 options and strategies to the National Security Council.

23 **SEC. 6. AUTHORIZATION OF IMPOSITION OF SANCTIONS.**

24 (a) IN GENERAL.—The President may impose the
25 sanctions described in subsection (b) with respect to any

1 foreign person the President determines, based on credible
2 evidence—

3 (1) is responsible for or is complicit in, or re-
4 sponsible for ordering, controlling, or otherwise di-
5 recting, the hostage-taking of a United States na-
6 tional abroad or the unlawful or wrongful detention
7 of a United States national abroad; or

8 (2) knowingly provides financial, material, or
9 technological support for, or goods or services in
10 support of, an activity described in paragraph (1).

11 (b) SANCTIONS DESCRIBED.—The sanctions de-
12 scribed in this subsection are the following:

13 (1) INELIGIBILITY FOR VISAS, ADMISSION, OR
14 PAROLE.—

15 (A) VISAS, ADMISSION, OR PAROLE.—An
16 alien described in subsection (a) may be—

17 (i) inadmissible to the United States;

18 (ii) ineligible to receive a visa or other
19 documentation to enter the United States;
20 and

21 (iii) otherwise ineligible to be admitted
22 or paroled into the United States or to re-
23 ceive any other benefit under the Immigra-
24 tion and Nationality Act (8 U.S.C. 1101 et
25 seq.).

1 (B) CURRENT VISAS REVOKED.—

2 (i) IN GENERAL.—An alien described
3 in subsection (a) may be subject to revoca-
4 tion of any visa or other entry documenta-
5 tion regardless of when the visa or other
6 entry documentation is or was issued.

7 (ii) IMMEDIATE EFFECT.—A revoca-
8 tion under clause (i) may—

9 (I) take effect immediately; and

10 (II) cancel any other valid visa or
11 entry documentation that is in the
12 alien's possession.

13 (2) BLOCKING OF PROPERTY.—

14 (A) IN GENERAL.—The President may ex-
15 ercise all of the powers granted to the President
16 under the International Emergency Economic
17 Powers Act (50 U.S.C. 1701 et seq.), to the ex-
18 tent necessary to block and prohibit all trans-
19 actions in property and interests in property of
20 a foreign person described in subsection (a) if
21 such property and interests in property are in
22 the United States, come within the United
23 States, or are or come within the possession or
24 control of a United States person.

1 (B) INAPPLICABILITY OF NATIONAL EMER-
2 GENCY REQUIREMENT.—The requirements of
3 section 202 of the International Emergency
4 Economic Powers Act (50 U.S.C. 1701) shall
5 not apply for purposes of this section.

6 (c) EXCEPTIONS.—

7 (1) EXCEPTION FOR INTELLIGENCE ACTIVI-
8 TIES.—Sanctions under this section shall not apply
9 to any activity subject to the reporting requirements
10 under title V of the National Security Act of 1947
11 (50 U.S.C. 3091 et seq.) or any authorized intel-
12 ligence activities of the United States.

13 (2) EXCEPTION TO COMPLY WITH INTER-
14 NATIONAL OBLIGATIONS AND FOR LAW ENFORCE-
15 MENT ACTIVITIES.—Sanctions under subsection
16 (b)(1) shall not apply with respect to an alien if ad-
17 mitting or paroling the alien into the United States
18 is necessary—

19 (A) to permit the United States to comply
20 with the Agreement regarding the Head-
21 quarters of the United Nations, signed at Lake
22 Success June 26, 1947, and entered into force
23 November 21, 1947, between the United Na-
24 tions and the United States, or other applicable
25 international obligations; or

1 (B) to carry out or assist law enforcement
2 activity in the United States.

3 (d) PENALTIES.—A person that violates, attempts to
4 violate, conspires to violate, or causes a violation of sub-
5 section (b)(2) or any regulation, license, or order issued
6 to carry out that subsection shall be subject to the pen-
7 alties set forth in subsections (b) and (c) of section 206
8 of the International Emergency Economic Powers Act (50
9 U.S.C. 1705) to the same extent as a person that commits
10 an unlawful act described in subsection (a) of that section.

11 (e) TERMINATION OF SANCTIONS.—The President
12 may terminate the application of sanctions under this sec-
13 tion with respect to a person if the President determines
14 that—

15 (1) information exists that the person did not
16 engage in the activity for which sanctions were im-
17 posed;

18 (2) the person has been prosecuted appro-
19 priately for the activity for which sanctions were im-
20 posed;

21 (3) the person has credibly demonstrated a sig-
22 nificant change in behavior, has paid an appropriate
23 consequence for the activity for which sanctions were
24 imposed, and has credibly committed to not engage

1 in an activity described in subsection (a) in the fu-
2 ture; or

3 (4) the termination of the sanctions is in the
4 national security interests of the United States.

5 (f) REPORTING REQUIREMENT.—If the President
6 terminates sanctions pursuant to subsection (d), the Presi-
7 dent shall report to the appropriate congressional commit-
8 tees a written justification for such termination within 15
9 days.

10 (g) IMPLEMENTATION OF REGULATORY AUTHOR-
11 ITY.—The President may exercise all authorities provided
12 under sections 203 and 205 of the International Emer-
13 gency Economic Powers Act (50 U.S.C. 1702 and 1704)
14 to carry out this section.

15 (h) EXCEPTION RELATING TO IMPORTATION OF
16 GOODS.—

17 (1) IN GENERAL.—The authorities and require-
18 ments to impose sanctions authorized under this Act
19 shall not include the authority or a requirement to
20 impose sanctions on the importation of goods.

21 (2) GOOD DEFINED.—In this paragraph, the
22 term “good” means any article, natural or manmade
23 substance, material, supply or manufactured prod-
24 uct, including inspection and test equipment, and ex-
25 cluding technical data.

1 (i) DEFINITIONS.—In this section:

2 (1) FOREIGN PERSON.—The term “foreign per-
3 son” means—

4 (A) any citizen or national of a foreign
5 country (including any such individual who is
6 also a citizen or national of the United States);
7 or

8 (B) any entity not organized solely under
9 the laws of the United States or existing solely
10 in the United States.

11 (2) UNITED STATES PERSON.—The term
12 “United States person” means—

13 (A) an individual who is a United States
14 citizen or an alien lawfully admitted for perma-
15 nent residence to the United States;

16 (B) an entity organized under the laws of
17 the United States or any jurisdiction within the
18 United States, including a foreign branch of
19 such an entity; or

20 (C) any person in the United States.

21 **SEC. 7. DEFINITIONS.**

22 In this Act:

23 (1) APPROPRIATE CONGRESSIONAL COMMIT-
24 TEES.—The term “appropriate congressional com-
25 mittees” means—

(A) the Committee on Foreign Relations, the Committee on Appropriations, the Committee on Banking, Housing, and Urban Affairs, the Committee on the Judiciary, the Committee on Armed Services, and the Select Committee on Intelligence of the United States Senate; and

(B) the Committee on Foreign Affairs, the Committee on Appropriations, the Committee on Financial Services, the Committee on the Judiciary, the Committee on Armed Services, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) UNITED STATES NATIONAL.—The term “United States national” means—

(A) a United States national as defined in section 101(a)(22) or section 308 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22), 8 U.S.C. 1408); and

(B) a lawful permanent resident alien with significant ties to the United States.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in this Act may be construed to authorize a private right of action.

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