

H.R. 4405 Sergei Magnitsky Rule of Law Accountability Act of 2012

The following was introduced in the House on April 19, 2012. The result was a bipartisan bill passed by U.S. Congress and signed by President Obama in November-December 2012 with the intent to punish Russian officials responsible for the death of Russian lawyer Sergei Magnitsky in a Moscow prison in 2009.

112th CONGRESS
2d Session

H. R. 4405

To impose sanctions on persons responsible for the detention, abuse, or death of Sergei Magnitsky, and for other gross violations of human rights in the Russian Federation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 19, 2012

Mr. McGovern (for himself, Mr. Wolf, Mr. Levin, Ms. Ros-Lehtinen, Mr. Hastings of Florida, Mr. Royce, Mr. McDermott, Mr. Burton of Indiana, Mr. Connolly of Virginia, Mr. Smith of New Jersey, Mr. Towns, Mr. Roskam, Mr. Michaud, Mr. Pitts, Mr. Rangel, and Mr. Turner of Ohio) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on the Judiciary and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To impose sanctions on persons responsible for the detention, abuse, or death of Sergei Magnitsky, and for other gross violations of human rights in the Russian Federation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds the following:

(1) The United States aspires to a mutually beneficial relationship with the Russian Federation based on respect for human rights and the rule of law, and supports the people of the Russian Federation in their efforts to realize their full economic potential and to advance democracy, human rights, and the rule of law.

(2) The Russian Federation—

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

(B) has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the United Nations Convention against Corruption; and

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

(3) States voluntarily commit themselves to respect obligations and responsibilities through the adoption of international agreements and treaties, which must be observed in good faith in order to maintain the stability of the international order. Human rights are an integral part of international law, and lie at the foundation of the international order. The protection of human rights, therefore, particularly in the case of a country that has incurred obligations to protect human rights under an international agreement to which it is a party, is not left exclusively to the internal affairs of that country.

(4) Good governance and anti-corruption measures are instrumental in the protection of human rights and in achieving sustainable economic growth, which benefits both the people of the Russian Federation and the international community through the creation of open and transparent markets.

(5) Systemic corruption erodes trust and confidence in democratic institutions, the rule of law, and human rights protections. This is the case when public officials are allowed to abuse their authority with impunity for political or financial gains in collusion with private entities.

(6) The Russian nongovernmental organization INDEM has estimated that bribes by individuals and businesses in the Russian Federation amount to hundreds of billions of dollars a year, an increasing share of the country's gross domestic product.

(7) Sergei Leonidovich Magnitsky died on November 16, 2009, at the age of 37, in Matrosskaya Tishina Prison in Moscow, Russia, and is survived by a mother, a wife, and 2 sons.

(8) On July 6, 2011, Russian President Dimitry Medvedev's Human Rights Council announced the results of its independent investigation into the death of Sergei Magnitsky. The Human Rights Council concluded that Sergei Magnitsky's arrest and detention was illegal; he was denied access to justice by the courts and prosecutors of the Russian Federation; he was investigated by the same law enforcement officers whom he had accused of stealing Hermitage Fund companies and illegally obtaining a fraudulent \$230,000,000 tax refund; he was denied necessary medical

care in custody; he was beaten by 8 guards with rubber batons on the last day of his life; and the ambulance crew that was called to treat him as he was dying was deliberately kept outside of his cell for one hour and 18 minutes until he was dead. The report of the Human Rights Council also states the officials falsified their accounts of what happened to Sergei Magnitsky and, 18 months after his death, no officials had been brought to trial for his false arrest or the crime he uncovered. The impunity continued in April 2012, when Russian authorities dropped criminal charges against Larisa Litvinova, the head doctor at the prison where Magnitsky died.

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

(10) The politically motivated nature of the persecution of Mr. Magnitsky is demonstrated by—

(A) the denial by all state bodies of the Russian Federation of any justice or legal remedies to Mr. Magnitsky during the nearly 12 full months he was kept without trial in detention; and

(B) the impunity since his death of state officials he testified against for their involvement in corruption and the carrying out of his repressive persecution.

(11) The Public Oversight Commission of the City of Moscow for the Control of the Observance of Human Rights in Places of Forced Detention, an organization empowered by Russian law to independently monitor prison conditions, concluded on December 29, 2009, “A man who is kept in custody and is being detained is not capable of using all the necessary means to protect either his life or his health. This is a responsibility of a state which holds him captive. Therefore, the case of Sergei Magnitsky can be described as a breach of the right to life. The members of the civic supervisory commission have reached the conclusion that Magnitsky had been experiencing both psychological and physical pressure in custody, and the conditions in some of the wards of Butyrka can be justifiably called torturous. The people responsible for this must be punished.”

(12) Sergei Magnitsky’s experience, while particularly illustrative of the negative effects of official corruption on the rights of an individual citizen, appears to be emblematic of a broader pattern of disregard for the numerous domestic and international human rights commitments of the Russian Federation and impunity for those who violate basic human rights and freedoms.

(13) 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. The lack of credible charges, intimidation of witnesses, violations of due process and procedural norms, falsification or withholding of documents, denial of attorney-client privilege, and illegal detention in the Yukos case are highly troubling. The Council of Europe, Freedom House, and Amnesty International, among others, have concluded that they were charged and imprisoned in a process that did not follow the rule of law and was politically influenced. Furthermore, senior officials of the

Government of the Russian Federation, including First Deputy Prime Minister Igor Shuvalov, have acknowledged that the arrest and imprisonment of Khodorkovsky were politically motivated.

(14) According to Freedom House’s 2011 report entitled “The Perpetual Battle: Corruption in the Former Soviet Union and the New EU Members”, “[t]he highly publicized cases of Sergei Magnitsky, a 37-year-old lawyer who died in pretrial detention in November 2009 after exposing a multimillion-dollar fraud against the Russian taxpayer, and Mikhail Khodorkovsky, the jailed business magnate and regime critic who was sentenced at the end of 2010 to remain in prison through 2017, put an international spotlight on the Russian state’s contempt for the rule of law. . . . By silencing influential and accomplished figures such as Khodorkovsky and Magnitsky, the Russian authorities have made it abundantly clear that anyone in Russia can be silenced.”.

(15) The tragic and unresolved murders of Nustap Abdurakhmanov, Maksharip Aushev, Natalya Estemirova, Akhmed Hadjimamedov, Umar Israilov, Paul Klebnikov, Anna Politkovskaya, Saihadji Saihadjiev, and Magomed Y. Yevloyev, the death in custody of Vera Trifonova, the disappearances of Mokhmadsalakh Masaev and Said-Saleh Ibragimov, the torture of Ali Israilov and Islam Umarpashaev, the near-fatal beatings of Mikhail Beketov, Oleg Kashin, Arkadiy Lander, and Mikhail Vinyukov, and the harsh and ongoing imprisonment of Mikhail Khodorkovsky, Alexei Kozlov, Platon Lebedev, and Fyodor Mikheev further illustrate the grave danger of exposing the wrongdoing of officials of the Government of the Russian Federation, including Chechen leader Ramzan Kadyrov, or of seeking to obtain, exercise, defend, or promote internationally recognized human rights and freedoms.

SEC. 3. DEFINITIONS.

In this Act:

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

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Armed Services, the Committee on Financial Services, the Committee on Foreign Affairs, the Committee on Homeland Security, and the Committee on the Judiciary of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on the Judiciary of the Senate.

(3) FINANCIAL INSTITUTION.—The term “financial institution” has the meaning given that term in section 5312 of title 31, United States Code.

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

(A) a United States citizen or an alien lawfully admitted for permanent residence to the United States; or

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

SEC. 4. IDENTIFICATION OF PERSONS RESPONSIBLE FOR THE DETENTION, ABUSE, AND DEATH OF SERGEI MAGNITSKY AND OTHER GROSS VIOLATIONS OF HUMAN RIGHTS.

(a) In General.—Not later than 120 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of the Treasury, shall publish in the Federal Register a list of each person the Secretary of State has reason to believe—

(1) is responsible for the detention, abuse, or death of Sergei Magnitsky, participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky, financially benefited from the detention, abuse, or death of Sergei Magnitsky, or was involved in the criminal conspiracy uncovered by Sergei Magnitsky; or

(2) is 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 Government of the Russian Federation; 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; or

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

(b) Updates.—The Secretary of State shall update the list required by subsection (a) as new information becomes available.

(c) Removal From List.—A person shall be removed from the list required by subsection (a) if the person demonstrates to the Secretary of State that the person did not engage in the activity for which the person was added to the list.

(d) Requests By Chairperson And Ranking Member Of Appropriate Congressional Committees.—

(1) IN GENERAL.—Not later than 120 days after receiving a written request from the chairperson and the ranking member of one of the appropriate congressional committees with respect to whether a person meets the criteria for being added to the list required by subsection (a), the Secretary of State shall submit a response to the chairperson and ranking member of the

committee which made the request with respect to whether or not the Secretary determines that the person meets those criteria.

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

(3) REMOVAL.—If the Secretary of State removes from the list required by subsection (a) a person who has been placed on the list at the request of the chairperson and the ranking member of one of the appropriate congressional committees, the Secretary shall provide that chairperson and ranking member with any evidence that contributed to the removal decision. The Secretary may submit such evidence in classified form if the Secretary determines that such is necessary for the national security interests of the United States.

(e) Nonapplicability Of Confidentiality Requirement With Respect To Visa Records.—The Secretary of State shall publish the list required by subsection (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.

SEC. 5. INADMISSIBILITY OF CERTAIN ALIENS.

(a) Ineligibility For Visas.—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).

(b) Current Visas Revoked.—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 subsection (a).

(c) Waiver For National Security Interests.—The Secretary of State may waive the application of subsection (a) or (b) in the case of an alien if—

(1) the Secretary determines that such a waiver—

(A) 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

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

(2) prior to granting such a waiver, the Secretary provides to the appropriate congressional committees notice of, and a justification for, the waiver.

(d) Regulatory Authority.—The Secretary of State shall prescribe such regulations as are necessary to carry out this section.

SEC. 6. FINANCIAL MEASURES.

(a) Freezing Of Assets.—The Secretary of the Treasury shall, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), freeze and prohibit all transactions in all property and interests in property of a person that the Secretary 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 are or come within the possession or control of a United States person.

(b) Waiver For National Security Interests.—The Secretary of the Treasury may waive the application of subsection (a) if the Secretary determines that such a waiver is in the national security interests of the United States. Prior to granting such a waiver, the Secretary shall provide to the appropriate congressional committees notice of, and a justification for, the waiver.

(c) Enforcement.—

(1) PENALTIES.—A person that violates, attempts to violate, conspires to violate, or causes a violation of this section or any regulation, license, or order issued to carry out this section shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of such section.

(2) REQUIREMENTS FOR FINANCIAL INSTITUTIONS.—

(A) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury shall prescribe regulations to require each financial institution that is a United States person to certify to the Secretary that, to the best of the knowledge of the financial institution, the financial institution has frozen all assets within the possession or control of the financial institution that are required to be frozen pursuant to subsection (a).

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

(d) Regulatory Authority.—The Secretary of the Treasury shall issue such regulations, licenses, and orders as are necessary to carry out this section.

SEC. 7. REPORT TO CONGRESS.

Not later than one year after the date of the enactment of this Act and annually thereafter, the Secretary of State and the Secretary of the Treasury shall submit to the appropriate congressional committees a report on—

(1) the actions taken to carry out this Act, including—

(A) the number of persons added to or removed from the list required by section 4(a) during the year preceding the report, the dates on which such persons have been added or removed, and the reasons for adding or removing them; and

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

(2) efforts by the executive branch to encourage the governments of other countries to impose sanctions that are similar to the sanctions imposed under this Act.

SEC. 8. TERMINATION.

The provisions of this Act shall terminate on the date that is 10 years after the date of the enactment of this Act.