

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.

S. 1039

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

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

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

1 their full economic potential and to advance democ-
2 racy, human rights, and the rule of law.

3 (2) The Russian Federation—

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

8 (B) is a party to the Convention against
9 Torture and Other Cruel, Inhuman or Degrad-
10 ing Treatment or Punishment, the International
11 Covenant on Civil and Political Rights, the
12 United Nations Convention against Corruption,
13 and the European Convention on Human
14 Rights.

15 (3) In becoming parties to human rights trea-
16 ties, governments voluntarily undertake international
17 obligations to respect and encourage certain funda-
18 mental rights and freedoms of their citizens. The
19 protection and encouragement of human rights
20 throughout the world is an important objective of
21 United States foreign policy.

22 (4) Good governance and anti-corruption meas-
23 ures are instrumental in the protection of human
24 rights and in achieving sustainable economic growth,
25 which benefits both the people of the Russian Fed-

1 eration and the international community through the
2 creation of open and transparent markets.

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

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

14 (7) The President of the Russian Federation,
15 Dmitry Medvedev, has addressed corruption in many
16 public speeches, including stating in his 2009 ad-
17 dress to Russia's Federal Assembly, "[Z]ero toler-
18 ance of corruption should become part of our na-
19 tional culture. . . . In Russia we often say that there
20 are few cases in which corrupt officials are pros-
21 ecuted. . . . [S]imply incarcerating a few will not re-
22 solve the problem. But incarcerated they must be.".
23 President Medvedev went on to say, "We shall over-
24 come underdevelopment and corruption because we
25 are a strong and free people, and deserve a normal

1 life in a modern, prosperous democratic society.”.
2 Furthermore, President Medvedev has acknowledged
3 Russia’s disregard for the rule of law and used the
4 term “legal nihilism” to describe a criminal justice
5 system that continues to imprison innocent people.

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

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

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

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

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

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

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

1 that Magnitsky had been experiencing both psycho-
2 logical and physical pressure in custody, and the
3 conditions in some of the wards of Butyrka can be
4 justifiably called torturous. The people responsible
5 for this must be punished.”.

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

1 officials had been brought to trial for his false arrest
2 or the crime he uncovered.

3 (14) The second trial, verdict, and sentence
4 against former Yukos executives Mikhail
5 Khodorkovsky and Platon Lebedev evoke serious
6 concerns about the right to a fair trial and the inde-
7 pendence of the judiciary in the Russian Federation.
8 The lack of credible charges, intimidation of wit-
9 nesses, violations of due process and procedural
10 norms, falsification or withholding of documents, de-
11 nial of attorney-client privilege, and illegal detention
12 in the Yukos case are highly troubling. The Council
13 of Europe, Freedom House, and Amnesty Inter-
14 national, among others, have concluded that they
15 were charged and imprisoned in a process that did
16 not follow the rule of law and was politically influ-
17 enced. Furthermore, senior officials of the Govern-
18 ment of the Russian Federation have acknowledged
19 that the arrest and imprisonment of Khodorkovsky
20 were politically motivated.

21 (15) According to Freedom House's 2011 re-
22 port entitled "The Perpetual Battle: Corruption in
23 the Former Soviet Union and the New EU Mem-
24 bers", "[t]he highly publicized cases of Sergei
25 Magnitsky, a 37-year-old lawyer who died in pretrial

1 detention in November 2009 after exposing a multi-
2 million-dollar fraud against the Russian taxpayer,
3 and Mikhail Khodorkovsky, the jailed business mag-
4 nate and regime critic who was sentenced at the end
5 of 2010 to remain in prison through 2017, put an
6 international spotlight on the Russian state’s con-
7 tempt for the rule of law. . . . By silencing influen-
8 tial and accomplished figures such as Khodorkovsky
9 and Magnitsky, the Russian authorities have made
10 it abundantly clear that anyone in Russia can be si-
11 lenced.”.

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

20 (17) The tragic and unresolved murders of
21 Nustap Abdurakhmanov, Maksharip Aushev,
22 Natalya Estemirova, Akhmed Hadjimagomedov,
23 Umar Israilov, Paul Klebnikov, Anna Politkovskaya,
24 Saihadji Saihadjiev, and Magomed Y. Yevloyev, the
25 death in custody of Vera Trifonova, the disappear-

1 ances of Mokhmadsalakh Masaev and Said-Saleh
2 Ibragimov, the torture of Ali Israilov and Islam
3 Umarpashaev, the near-fatal beatings of Mikhail
4 Beketov, Oleg Kashin, Arkadiy Lander, and Mikhail
5 Vinyukov, and the harsh and ongoing imprisonment
6 of Mikhail Khodorkovsky, Alexei Kozlov, Platon
7 Lebedev, and Fyodor Mikheev further illustrate the
8 grave danger of exposing the wrongdoing of officials
9 of the Government of the Russian Federation, in-
10 cluding Chechen President Ramzan Kadyrov, or of
11 seeking to obtain, exercise, defend, or promote inter-
12 nationally recognized human rights and freedoms.

13 (18) The people of the Russian Federation, like
14 people everywhere, deserve to have their human
15 rights and fundamental freedoms respected. Human
16 rights and fundamental freedoms are inalienable and
17 universal in character and thus bind all states.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) ADMITTED; ALIEN.—The terms “admitted”
21 and “alien” have the meanings given those terms in
22 section 101 of the Immigration and Nationality Act
23 (8 U.S.C. 1101).

1 (2) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means—

4 (A) the Committee on Armed Services, the
5 Committee on Financial Services, the Com-
6 mittee on Foreign Affairs, the Committee on
7 Homeland Security, and the Committee on the
8 Judiciary of the House of Representatives; and

9 (B) the Committee on Armed Services, the
10 Committee on Banking, Housing, and Urban
11 Affairs, the Committee on Foreign Relations,
12 the Committee on Homeland Security and Gov-
13 ernmental Affairs, and the Committee on the
14 Judiciary of the Senate.

15 (3) FINANCIAL INSTITUTION.—The term “fi-
16 nancial institution” has the meaning given that term
17 in section 5312 of title 31, United States Code.

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

20 (A) a United States citizen or an alien law-
21 fully admitted for permanent residence to the
22 United States; or

23 (B) an entity organized under the laws of
24 the United States or of any jurisdiction within

1 the United States, including a foreign branch of
2 such an entity.

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

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

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

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

17 (C) benefitted financially from the detention,
18 abuse, or death of Sergei Magnitsky; or

19 (D) was involved in the criminal conspiracy un-
20 covered by Sergei Magnitsky;

21 (2) is responsible for extrajudicial killings, tor-
22 ture, or other gross violations of internationally rec-
23 ognized human rights committed against individuals
24 seeking—

1 (A) to expose illegal activity carried out by
2 officials of the Government of the Russian Fed-
3 eration; or

4 (B) to obtain, exercise, defend, or promote
5 internationally recognized human rights and
6 freedoms, such as the freedoms of religion, ex-
7 pression, association, and assembly and the
8 rights to a fair trial and democratic elections,
9 anywhere in the world; or

10 (3) acted as an agent of or on behalf of a per-
11 son in a matter relating to an activity described in
12 paragraph (1) or (2).

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

16 (c) REMOVAL FROM LIST.—A person shall be re-
17 moved from the list required by subsection (a) if the Sec-
18 retary of State determines that the person did not engage
19 in the activity for which the person was added to the list.

20 (d) FORM OF LIST; PUBLIC AVAILABILITY.—

21 (1) FORM.—The list required by subsection (a)
22 shall be submitted in unclassified form but may in-
23 clude a classified annex if the Secretary of State de-
24 termines that it is necessary for the national secu-

1 rity interests of the United States for the list to in-
2 clude a classified annex.

3 (2) PUBLIC AVAILABILITY.—The unclassified
4 portion of the list required by subsection (a) shall be
5 published in the Federal Register.

6 (e) REQUESTS BY CHAIRPERSON AND RANKING
7 MEMBER OF APPROPRIATE CONGRESSIONAL COMMIT-
8 TEES.—

9 (1) IN GENERAL.—Not later than 120 days
10 after receiving a written request from the chair-
11 person and the ranking member of one of the appro-
12 priate congressional committees with respect to
13 whether a person meets the criteria for being added
14 to the list required by subsection (a), the Secretary
15 of State shall submit a response to the committee
16 the chairperson and ranking member of which made
17 the request with respect to whether or not the Sec-
18 retary determines that the person meets those cri-
19 teria.

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

1 (f) NONAPPLICABILITY OF CONFIDENTIALITY RE-
2 QUIREMENT WITH RESPECT TO VISA RECORDS.—The
3 Secretary of State shall publish the list required by sub-
4 section (a) without regard to the requirements of section
5 222(f) of the Immigration and Nationality Act (8 U.S.C.
6 1202(f)) with respect to confidentiality of records per-
7 taining to the issuance or refusal of visas or permits to
8 enter the United States.

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

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

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

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

23 (1) the Secretary determines that such a waiv-
24 er—

1 (A) is necessary to permit the United
2 States to comply with the Agreement between
3 the United Nations and the United States of
4 America regarding the Headquarters of the
5 United Nations, signed June 26, 1947, and en-
6 tered into force November 21, 1947; or

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

9 (2) prior to granting such a waiver, the Sec-
10 retary provides to the appropriate congressional
11 committees notice of, and a justification for, the
12 waiver.

13 **SEC. 6. FINANCIAL MEASURES.**

14 (a) FREEZING OF ASSETS.—The Secretary of the
15 Treasury shall, pursuant to the International Emergency
16 Economic Powers Act (50 U.S.C. 1701 et seq.), freeze and
17 prohibit all transactions in all property and interests in
18 property of a person that the Secretary, in consultation
19 with the Secretary of State, determines has engaged in
20 an activity described in paragraph (1), (2), or (3) of sec-
21 tion 4(a) if such property and interests in property are
22 in the United States, come within the United States, or
23 are or come within the possession or control of a United
24 States person.

1 (b) WAIVER FOR NATIONAL SECURITY INTERESTS.—
2 The Secretary of the Treasury may waive the application
3 of subsection (a) if the Secretary determines that such a
4 waiver is in the national security interests of the United
5 States. Prior to granting such a waiver, the Secretary
6 shall provide to the appropriate congressional committees
7 notice of, and a justification for, the waiver.

8 **SEC. 7. REPORT TO CONGRESS.**

9 Not later than 1 year after the date of the enactment
10 of this Act, and annually thereafter, the Secretary of State
11 and the Secretary of the Treasury shall submit to the ap-
12 propriate congressional committees a report on—

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

15 (A) the number of times and the cir-
16 cumstances in which persons described in sec-
17 tion 4(a) have been added to the list required
18 by that section during the year preceding the
19 report; and

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

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