AMENDMENT NO._______ Calendar No._____

Purpose: In the nature of a substitute.


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 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
their full economic potential and to advance democ-
raey, 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 Degrad-
ing 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 re-
spect 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 in-
curred 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 coun-
try.

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

(5) Systemic corruption erodes trust and con-
fidence 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 collu-
sion with private entities.

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

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

(8) The systematic abuse of Sergei Magnitsky,
including his repressive arrest and torture in custody
by the same 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, reflects how
deeply the protection of human rights is affected by
corruption.

(9) The politically motivated nature of the per-
secution 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 of state officials he testified against for their involvement in corruption and the carrying out of his repressive persecution since his death.

(10) Mr. 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.

(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, “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 psy-
ological 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) On July 6, 2011, President 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 ille-
gal, 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 who were called to treat him as
he was dying were 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 hap-
pened 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.

(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 have acknowledged that the arrest and imprisonment of Khodorkovsky were politically motivated.

detention in November 2009 after exposing a multi-
million-dollar fraud against the Russian taxpayer,
and Mikhail Khodorkovsky, the jailed business mag-
nate 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 con-
tempt for the rule of law. . . . By silencing influen-
tial and accomplished figures such as Khodorkovsky
and Magnitsky, the Russian authorities have made
it abundantly clear that anyone in Russia can be si-

cenced.”.

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

(16) The tragic and unresolved murders of
Nustap Abdurakhmanov, Maksharip Aushev,
Natalya Estemirova, Akhmed Hadjimagomedov,
Umar Israilov, Paul Klebnikov, Anna Politkovskaya,
Saihadji Saihadjiev, and Magomed Y. Yevloyev, the
death in custody of Vera Trifonova, the disappear-
ances 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, 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; DOMESTIC FINANCIAL AGENCY; DOMESTIC FINANCIAL INSTITUTION.—

The terms “financial institution”, “domestic financial agency”, and “domestic financial institution” have the meanings given those terms 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, THE CONSPIRACY TO DEFRAUD THE RUSSIAN FEDERATION OF TAXES ON CERTAIN CORPORATE PROFITS, 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)(A) is responsible for the detention, abuse, or death of Sergei Magnitsky or participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky; or

(B) committed those frauds discovered by Sergei Magnitsky, including conspiring to defraud the Russian Federation of taxes through fraudulent transactions, collusive lawsuits, and misappropriating entities controlled by the investment company known as Hermitage;

(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 for the people of the Russian Federation, 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.

(e) Removal From List.—A person shall be removed from the list required by subsection (a) if the person demonstrates 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 or the ranking member of one of the appro-
priate 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
or ranking member (as the case may be) with re-
spect 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.

(e) Nonapplicability of Confidentiality Re-
quirement With Respect to Visa Records.—The
Secretary of State shall publish the list required by sub-
section (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 per-
taining 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 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 interests of the United States; and

2. upon 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 and the Secretary of the Treasury 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 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) that are in the United States, that come within the United States, or that are or come within the possession or control of a United States person.

(b) Waiver for National Interests.—The Secretary of the Treasury may waive the application of subsection (a) or (b) if the Secretary determines that such a waiver is in the national interests of the United States. Upon 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 1 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 times and the circumstances in which persons described in section 4(a) have been added to the list required by that section during the year preceding the report; 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 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 12 years after the date of the enactment of this Act.