

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—112th Cong., 1st 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 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

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;

8 (B) has ratified 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, and the
12 United Nations Convention against Corruption;
13 and

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

17 (3) States voluntarily commit themselves to re-
18 spect obligations and responsibilities through the
19 adoption of international agreements and treaties,
20 which must be observed in good faith in order to
21 maintain the stability of the international order.
22 Human rights are an integral part of international
23 law, and lie at the foundation of the international
24 order. The protection of human rights, therefore,
25 particularly in the case of a country that has in-

1 curred obligations to protect human rights under an
2 international agreement to which it is a party, is not
3 left exclusively to the internal affairs of that coun-
4 try.

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

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

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

22 (7) The President of the Russian Federation,
23 Dmitry Medvedev, has addressed corruption in many
24 public speeches, including stating in his 2009 ad-
25 dress to Russia's Federal Assembly, "[Z]ero toler-

1 ance of corruption should become part of our na-
2 tional culture. . . . In Russia we often say that there
3 are few cases in which corrupt officials are pros-
4 ecuted. . . . [S]imply incarcerating a few will not re-
5 solve the problem. But incarcerated they must be.”.
6 President Medvedev went on to say, “We shall over-
7 come underdevelopment and corruption because we
8 are a strong and free people, and deserve a normal
9 life in a modern, prosperous democratic society.”.
10 Furthermore, President Medvedev has acknowledged
11 Russia’s disregard for the rule of law and used the
12 term “legal nihilism” to describe a criminal justice
13 system that continues to imprison innocent people.

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

23 (9) The politically motivated nature of the per-
24 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 (10) 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 (11) 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 (12) 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 who were called to treat him as
20 he was dying were deliberately kept outside of his
21 cell for one hour and 18 minutes until he was dead.
22 The report of the Human Rights Council also states
23 the officials falsified their accounts of what hap-
24 pened to Sergei Magnitsky and, 18 months after his

1 death, no officials had been brought to trial for his
2 false arrest or the crime he uncovered.

3 (13) 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 (14) 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 (15) 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 (16) 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, Platon Lebedev, and
7 Fyodor Mikheev further illustrate the grave danger
8 of exposing the wrongdoing of officials of the Gov-
9 ernment of the Russian Federation, including
10 Chechen leader Ramzan Kadyrov, or of seeking to
11 obtain, exercise, defend, or promote internationally
12 recognized human rights and freedoms.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) ADMITTED; ALIEN.—The terms “admitted”
16 and “alien” have the meanings given those terms in
17 section 101 of the Immigration and Nationality Act
18 (8 U.S.C. 1101).

19 (2) APPROPRIATE CONGRESSIONAL COMMIT-
20 TEES.—The term “appropriate congressional com-
21 mittees” means—

22 (A) the Committee on Armed Services, the
23 Committee on Financial Services, the Com-
24 mittee on Foreign Affairs, the Committee on

1 Homeland Security, and the Committee on the
2 Judiciary of the House of Representatives; and

3 (B) the Committee on Armed Services, the
4 Committee on Banking, Housing, and Urban
5 Affairs, the Committee on Foreign Relations,
6 the Committee on Homeland Security and Gov-
7 ernmental Affairs, and the Committee on the
8 Judiciary of the Senate.

9 (3) FINANCIAL INSTITUTION; DOMESTIC FINAN-
10 CIAL AGENCY; DOMESTIC FINANCIAL INSTITUTION.—
11 The terms “financial institution”, “domestic finan-
12 cial agency”, and “domestic financial institution”
13 have the meanings given those terms in section 5312
14 of title 31, United States Code.

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

17 (A) a United States citizen or an alien law-
18 fully admitted for permanent residence to the
19 United States; or

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

1 **SEC. 4. IDENTIFICATION OF PERSONS RESPONSIBLE FOR**
2 **THE DETENTION, ABUSE, AND DEATH OF**
3 **SERGEI MAGNITSKY, THE CONSPIRACY TO**
4 **DEFRAUD THE RUSSIAN FEDERATION OF**
5 **TAXES ON CERTAIN CORPORATE PROFITS,**
6 **AND OTHER GROSS VIOLATIONS OF HUMAN**
7 **RIGHTS.**

8 (a) IN GENERAL.—Not later than 120 days after the
9 date of the enactment of this Act, the Secretary of State,
10 in consultation with the Secretary of the Treasury, shall
11 publish in the Federal Register a list of each person the
12 Secretary of State has reason to believe—

13 (1)(A) is responsible for the detention, abuse,
14 or death of Sergei Magnitsky or participated in ef-
15 forts to conceal the legal liability for the detention,
16 abuse, or death of Sergei Magnitsky; or

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

22 (2) is responsible for extrajudicial killings, torture,
23 or other gross violations of internationally recognized
24 human rights committed against individuals
25 seeking—
26

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 for the people of the Russian Federa-
7 tion, such as the freedoms of religion, expres-
8 sion, association, and assembly and the rights
9 to a fair trial and democratic elections; 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 per-
18 son demonstrates that the person did not engage in the
19 activity for which the person was added to the list.

20 (d) REQUESTS BY CHAIRPERSON AND RANKING
21 MEMBER OF APPROPRIATE CONGRESSIONAL COMMIT-
22 TEES.—

23 (1) IN GENERAL.—Not later than 120 days
24 after receiving a written request from the chair-
25 person or the ranking member of one of the appro-

1 appropriate congressional committees with respect to
2 whether a person meets the criteria for being added
3 to the list required by subsection (a), the Secretary
4 of State shall submit a response to the chairperson
5 or ranking member (as the case may be) with re-
6 spect to whether or not the Secretary determines
7 that the person meets those criteria.

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

13 (e) NONAPPLICABILITY OF CONFIDENTIALITY RE-
14 QUIREMENT WITH RESPECT TO VISA RECORDS.—The
15 Secretary of State shall publish the list required by sub-
16 section (a) without regard to the requirements of section
17 222(f) of the Immigration and Nationality Act (8 U.S.C.
18 1202(f)) with respect to confidentiality of records per-
19 taining to the issuance or refusal of visas or permits to
20 enter the United States.

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

22 (a) INELIGIBILITY FOR VISAS.—An alien is ineligible
23 to receive a visa to enter the United States and ineligible
24 to be admitted to the United States if the alien is on the
25 list required by section 4(a).

1 (b) CURRENT VISAS REVOKED.—The Secretary of
2 State shall revoke, in accordance with section 221(i) of
3 the Immigration and Nationality Act (8 U.S.C. 1201(i)),
4 the visa or other documentation of any alien who would
5 be ineligible to receive such a visa or documentation under
6 subsection (a).

7 (c) WAIVER FOR NATIONAL INTERESTS.—The Sec-
8 retary of State may waive the application of subsection
9 (a) or (b) in the case of an alien if—

10 (1) the Secretary determines that such a waiv-
11 er—

12 (A) is necessary to permit the United
13 States to comply with the Agreement between
14 the United Nations and the United States of
15 America regarding the Headquarters of the
16 United Nations, signed June 26, 1947, and en-
17 tered into force November 21, 1947; or

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

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

23 (d) REGULATORY AUTHORITY.—The Secretary of
24 State and the Secretary of the Treasury shall prescribe
25 such regulations as are necessary to carry out this section.

1 **SEC. 6. FINANCIAL MEASURES.**

2 (a) FREEZING OF ASSETS.—The Secretary of the
3 Treasury shall freeze and prohibit all transactions in all
4 property and interests in property of a person that the
5 Secretary determines has engaged in an activity described
6 in paragraph (1), (2), or (3) of section 4(a) that are in
7 the United States, that come within the United States,
8 or that are or come within the possession or control of
9 a United States person.

10 (b) WAIVER FOR NATIONAL INTERESTS.—The Sec-
11 retary of the Treasury may waive the application of sub-
12 section (a) or (b) if the Secretary determines that such
13 a waiver is in the national interests of the United States.
14 Upon granting such a waiver, the Secretary shall provide
15 to the appropriate congressional committees notice of, and
16 a justification for, the waiver.

17 (c) ENFORCEMENT.—

18 (1) PENALTIES.—A person that violates, at-
19 tempts to violate, conspires to violate, or causes a
20 violation of this section or any regulation, license, or
21 order issued to carry out this section shall be subject
22 to the penalties set forth in subsections (b) and (c)
23 of section 206 of the International Emergency Eco-
24 nomic Powers Act (50 U.S.C. 1705) to the same ex-
25 tent as a person that commits an unlawful act de-
26 scribed in subsection (a) of such section.

1 (2) REQUIREMENTS FOR FINANCIAL INSTITU-
2 TIONS.—

3 (A) IN GENERAL.—Not later than 120
4 days after the date of the enactment of this
5 Act, the Secretary of the Treasury shall pre-
6 scribe regulations to require each financial in-
7 stitution that is a United States person to cer-
8 tify to the Secretary that, to the best of the
9 knowledge of the financial institution, the finan-
10 cial institution has frozen all assets within the
11 possession or control of the financial institution
12 that are required to be frozen pursuant to sub-
13 section (a).

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

22 (d) REGULATORY AUTHORITY.—The Secretary of the
23 Treasury shall issue such regulations, licenses, and orders
24 as are necessary to carry out this section.

1 **SEC. 7. REPORT TO CONGRESS.**

2 Not later than 1 year after the date of the enactment
3 of this Act, and annually thereafter, the Secretary of State
4 and the Secretary of the Treasury shall submit to the ap-
5 propriate congressional committees a report on—

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

8 (A) the number of times and the cir-
9 cumstances in which persons described in sec-
10 tion 4(a) have been added to the list required
11 by that section during the year preceding the
12 report; and

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

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

20 **SEC. 8. TERMINATION.**

21 The provisions of this Act shall terminate on the date
22 that is 12 years after the date of the enactment of this
23 Act.