

112TH CONGRESS  
1ST SESSION

# 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.

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## IN THE SENATE OF THE UNITED STATES

MAY 19, 2011

Mr. CARDIN (for himself, Mr. MCCAIN, Ms. AYOTTE, Mr. BEGICH, Mr. BLUMENTHAL, Mr. DURBIN, Mr. JOHANNES, Mr. KIRK, Mr. KYL, Mr. LIEBERMAN, Mr. RUBIO, Mrs. SHAHEEN, Mr. WHITEHOUSE, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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## A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sergei Magnitsky Rule  
3 of Law Accountability Act of 2011”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The United States supports the people of  
7 the Russian Federation in their efforts to realize  
8 their full economic potential and to advance democ-  
9 racy, human rights, and the rule of law.

10 (2) The Russian Federation—

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

15 (B) has ratified the Convention against  
16 Torture and Other Cruel, Inhuman or Degrad-  
17 ing Treatment or Punishment, the International  
18 Covenant on Civil and Political Rights, and the  
19 United Nations Convention against Corruption;  
20 and

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

24 (3) States voluntarily commit themselves to re-  
25 spect obligations and responsibilities through the  
26 adoption of international agreements and treaties,

1       which must be observed in good faith in order to  
2       maintain the stability of the international order.  
3       Human rights are an integral part of international  
4       law, and lie at the foundation of the international  
5       order. The protection of human rights, therefore,  
6       particularly in the case of a country that has in-  
7       curred obligations to protect human rights under an  
8       international agreement to which it is a party, is not  
9       left exclusively to the internal affairs of that coun-  
10      try.

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

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

23           (6) The Russian nongovernmental organization  
24      INDEM has estimated that corruption amounts to  
25      hundreds of billions of dollars a year, an increasing

1 share of the gross domestic product of the Russian  
2 Federation.

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

20 (8) The systematic abuse of Sergei Magnitsky,  
21 including his repressive arrest and torture in custody  
22 by the same officers of the Ministry of the Interior  
23 of the Russian Federation that Mr. Magnitsky had  
24 implicated in the embezzlement of funds from the  
25 Russian Treasury and the misappropriation of 3

1 companies from his client, Hermitage, reflects how  
2 deeply the protection of human rights is affected by  
3 corruption.

4 (9) The politically motivated nature of the per-  
5 secution of Mr. Magnitsky is demonstrated by—

6 (A) the denial by all state bodies of the  
7 Russian Federation of any justice or legal rem-  
8 edies to Mr. Magnitsky during the nearly 12  
9 full months he was kept without trial in deten-  
10 tion; and

11 (B) the impunity of state officials he testi-  
12 fied against for their involvement in corruption  
13 and the carrying out of his repressive persecu-  
14 tion since his death.

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

19 (11) The Public Oversight Commission of the  
20 City of Moscow for the Control of the Observance of  
21 Human Rights in Places of Forced Detention, an or-  
22 ganization empowered by Russian law to independ-  
23 ently monitor prison conditions, concluded, “A man  
24 who is kept in custody and is being detained is not  
25 capable of using all the necessary means to protect

1       either his life or his health. This is a responsibility  
2       of a state which holds him captive. Therefore, the  
3       case of Sergei Magnitsky can be described as a  
4       breach of the right to life. The members of the civic  
5       supervisory commission have reached the conclusion  
6       that Magnitsky had been experiencing both psycho-  
7       logical and physical pressure in custody, and the  
8       conditions in some of the wards of Butyrka can be  
9       justifiably called torturous. The people responsible  
10      for this must be punished.”.

11           (12) According to the Financial Times, “A  
12      commission appointed by President Dmitry  
13      Medvedev has found that Russian police fabricated  
14      charges against an anti-corruption lawyer [Sergei  
15      Magnitsky], whose death in prison in 2009 has come  
16      to symbolise pervasive corruption in Russian law en-  
17      forcement.”.

18           (13) The second trial and verdict against  
19      former Yukos executives Mikhail Khodorkovsky and  
20      Platon Lebedev evokes serious concerns about the  
21      right to a fair trial and the independence of the judi-  
22      ciary in the Russian Federation. The lack of credible  
23      charges, intimidation of witnesses, violations of due  
24      process and procedural norms, falsification or with-  
25      holding of documents, denial of attorney-client privi-

1        lege, and illegal detention in the Yukos case are  
2        highly troubling. The Council of Europe, Freedom  
3        House, and Amnesty International, among others,  
4        have concluded that they were charged and impris-  
5        oned in a process that did not follow the rule of law  
6        and was politically influenced. Furthermore, senior  
7        officials of the Government of the Russian Federa-  
8        tion have acknowledged that the arrest and impris-  
9        onment of Khodorkovsky were politically motivated.

10        (14) According to Freedom House’s 2011 re-  
11        port entitled “The Perpetual Battle: Corruption in  
12        the Former Soviet Union and the New EU Mem-  
13        bers”, “[t]he highly publicized cases of Sergei  
14        Magnitsky, a 37-year-old lawyer who died in pretrial  
15        detention in November 2009 after exposing a multi-  
16        million-dollar fraud against the Russian taxpayer,  
17        and Mikhail Khodorkovsky, the jailed business mag-  
18        nate and regime critic who was sentenced at the end  
19        of 2010 to remain in prison through 2017, put an  
20        international spotlight on the Russian state’s con-  
21        tempt for the rule of law. . . . By silencing influen-  
22        tial and accomplished figures such as Khodorkovsky  
23        and Magnitsky, the Russian authorities have made  
24        it abundantly clear that anyone in Russia can be si-  
25        lenced.”.

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

9           (16) The tragic and unresolved murders of  
10          Nustap Abdurakhmanov, Maksharip Aushev,  
11          Natalya Estemirova, Akhmed Hadjimagomedov,  
12          Umar Israilov, Paul Klebnikov, Anna Politkovskaya,  
13          Saihadji Saihadjiev, and Magomed Y. Yevloyev, the  
14          death in custody of Vera Trifonova, the disappear-  
15          ances of Mokhmadsalakh Masaev and Said-Saleh  
16          Ibragimov, the torture of Ali Israilov and Islam  
17          Umarpashaev, the near-fatal beatings of Mikhail  
18          Beketov, Oleg Kashin, Arkadiy Lander, and Mikhail  
19          Vinyukov, and the harsh and ongoing imprisonment  
20          of Mikhail Khodorkovsky, Alexei Kozlov, Platon  
21          Lebedev, and Fyodor Mikheev further illustrate the  
22          grave danger of exposing the wrongdoing of officials  
23          of the Government of the Russian Federation, in-  
24          cluding Chechen leader Ramzan Kadyrov, or of seek-



1       ing to obtain, exercise, defend, or promote inter-  
2       nationally recognized human rights and freedoms.

3 **SEC. 3. DEFINITIONS.**

4       In this Act:

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

9           (2) APPROPRIATE CONGRESSIONAL COMMIT-  
10       TEES.—The term “appropriate congressional com-  
11       mittees” means—

12           (A) the Committee on Financial Services,  
13       the Committee on Foreign Affairs, and the  
14       Committee on the Judiciary of the House of  
15       Representatives; and

16           (B) the Committee on Banking, Housing,  
17       and Urban Affairs, the Committee on Foreign  
18       Relations, and the Committee on the Judiciary  
19       of the Senate.

20           (3) FINANCIAL INSTITUTION; DOMESTIC FINAN-  
21       CIAL AGENCY; DOMESTIC FINANCIAL INSTITUTION.—  
22       The terms “financial institution”, “domestic finan-  
23       cial agency”, and “domestic financial institution”  
24       have the meanings given those terms in section 5312  
25       of title 31, United States Code.

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

3 (A) a United States citizen or an alien law-  
4 fully admitted for permanent residence to the  
5 United States; or

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

10 **SEC. 4. IDENTIFICATION OF PERSONS RESPONSIBLE FOR**  
11 **THE DETENTION, ABUSE, AND DEATH OF**  
12 **SERGEI MAGNITSKY, THE CONSPIRACY TO**  
13 **DEFRAUD THE RUSSIAN FEDERATION OF**  
14 **TAXES ON CERTAIN CORPORATE PROFITS,**  
15 **AND OTHER GROSS VIOLATIONS OF HUMAN**  
16 **RIGHTS.**

17 (a) IN GENERAL.—Not later than 90 days after the  
18 date of the enactment of this Act, the Secretary of State,  
19 in consultation with the Secretary of the Treasury, shall  
20 publish a list of each person the Secretary of State has  
21 reason to believe—

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

1 (B) participated in efforts to conceal the legal  
2 liability for the detention, abuse, or death of Sergei  
3 Magnitsky; or

4 (C) committed those frauds discovered by  
5 Sergei Magnitsky, including conspiring to defraud  
6 the Russian Federation of taxes on corporate profits  
7 through fraudulent transactions and lawsuits against  
8 the foreign investment company known as Hermitage  
9 and to misappropriate entities owned or controlled  
10 by Hermitage; or

11 (2) is responsible for extrajudicial killings, torture,  
12 or other gross violations of human rights committed  
13 against individuals seeking—

14 (A) to expose illegal activity carried out by  
15 officials of the Government of the Russian Federation;  
16 or

17 (B) to obtain, exercise, defend, or promote  
18 internationally recognized human rights and  
19 freedoms, such as the freedoms of religion, expression,  
20 association, and assembly and the  
21 rights to a fair trial and democratic elections.

22 (b) UPDATES.—The Secretary of State shall update  
23 the list required by subsection (a) as new information  
24 comes available.

25 (c) NOTICE.—The Secretary of State shall—

1           (1) to the extent practicable, provide notice and  
2           an opportunity for a hearing to a person before the  
3           person is added to the list required by subsection  
4           (a); and

5           (2) remove a person from the list if the person  
6           demonstrates to the satisfaction of the Secretary  
7           that the person did not engage in the activity for  
8           which the person was added to the list.

9           (d) **REQUESTS BY MEMBERS OF CONGRESS.**—Not  
10          later than 30 days after receiving a written request from  
11          a Member of Congress with respect to whether a person  
12          meets the criteria for being added to the list required by  
13          subsection (a), the Secretary of State shall inform that  
14          Member of the determination of the Secretary with respect  
15          to whether or not that person meets those criteria.

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

17          (a) **INELIGIBILITY FOR VISAS.**—An alien is ineligible  
18          to receive a visa to enter the United States and ineligible  
19          to be admitted to the United States if the alien is on the  
20          list required by section 4(a).

21          (b) **CURRENT VISAS REVOKED.**—The Secretary of  
22          State shall revoke, in accordance with section 221(i) of  
23          the Immigration and Nationality Act (8 U.S.C. 1201(i)),  
24          the visa or other documentation of any alien who would

1 be ineligible to receive such a visa or documentation under  
2 subsection (a).

3 (c) WAIVER FOR NATIONAL INTERESTS.—The Sec-  
4 retary of State may waive the application of subsection  
5 (a) or (b) in the case of an alien if the Secretary deter-  
6 mines that such a waiver is in the national interests of  
7 the United States. Upon granting such a waiver, the Sec-  
8 retary shall provide to the appropriate congressional com-  
9 mittees notice of, and a justification for, the waiver.

10 **SEC. 6. FINANCIAL MEASURES.**

11 (a) SPECIAL MEASURES.—Not later than 120 days  
12 after the date of the enactment of this Act, the Secretary  
13 of the Treasury shall investigate money laundering relat-  
14 ing to the conspiracy described in section 4(a)(1)(C). If  
15 the Secretary of the Treasury makes a determination  
16 under section 5318A of title 31, United States Code, with  
17 respect to such money laundering, the Secretary of the  
18 Treasury shall instruct domestic financial institutions and  
19 domestic financial agencies to take 1 or more special  
20 measures described in section 5318A(b) of such title.

21 (b) FREEZING OF ASSETS.—The Secretary of the  
22 Treasury shall freeze and prohibit all transactions in all  
23 property and interests in property of a person that are  
24 in the United States, that come within the United States,

1 or that are or come within the possession or control of  
2 a United States person if the person—

3 (1) is on the list required by section 4(a); or

4 (2) acts as an agent of or on behalf of a person  
5 on that list in a matter relating to the activity for  
6 which the person was added to that list.

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

14 (d) ENFORCEMENT.—

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

24 (2) REQUIREMENTS FOR FINANCIAL INSTITU-  
25 TIONS.—

1 (A) IN GENERAL.—Not later than 120  
2 days after the date of the enactment of this  
3 Act, the Secretary of the Treasury shall pre-  
4 scribe regulations to require each financial in-  
5 stitution that is a United States person—

6 (i) to perform an audit of the assets  
7 within the possession or control of the fi-  
8 nancial institution to determine whether  
9 any of such assets are required to be fro-  
10 zen pursuant to subsection (b); and

11 (ii) to submit to the Secretary—

12 (I) a report containing the re-  
13 sults of the audit; and

14 (II) a certification that, to the  
15 best of the knowledge of the financial  
16 institution, the financial institution  
17 has frozen all assets within the pos-  
18 session or control of the financial in-  
19 stitution that are required to be fro-  
20 zen pursuant to subsection (b).

21 (B) PENALTIES.—The penalties provided  
22 for in sections 5321(a) and 5322 of title 31,  
23 United States Code, shall apply to a financial  
24 institution that violates a regulation prescribed  
25 under subparagraph (A) in the same manner

1           and to the same extent as such penalties would  
2           apply to any person that is otherwise subject to  
3           such section 5321(a) or 5322.

4           (e) REGULATORY AUTHORITY.—The Secretary of the  
5 Treasury shall issue such regulations, licenses, and orders  
6 as are necessary to carry out this section.

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

8           Not later than 180 days after the date of the enact-  
9 ment of this Act, and annually thereafter, the Secretary  
10 of State and the Secretary of the Treasury shall submit  
11 to the appropriate congressional committees a report on—

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

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

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

○