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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.

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The United States aspires to a mutually
4 beneficial relationship with the Russian Federation
5 based on respect for human rights and the rule of
6 law, and supports the people of the Russian Federa-
7 tion in their efforts to realize their full economic po-
8 tential and to advance democracy, human rights,
9 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 Degradi-
17 ng 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 bribes by individuals
25 and businesses in the Russian Federation amount to

1 hundreds of billions of dollars a year, an increasing
2 share of the country's gross domestic product.

3 (7) Sergei Leonidovich Magnitsky died on No-
4 vember 16, 2009, at the age of 37, in Matrosskaya
5 Tishina Prison in Moscow, Russia, and is survived
6 by a mother, a wife, and 2 sons.

7 (8) On July 6, 2011, Russian President
8 Dmitry Medvedev's Human Rights Council an-
9 nounced the results of its independent investigation
10 into the death of Sergei Magnitsky. The Human
11 Rights Council concluded that Sergei Magnitsky's
12 arrest and detention was illegal; he was denied ac-
13 cess to justice by the courts and prosecutors of the
14 Russian Federation; he was investigated by the same
15 law enforcement officers whom he had accused of
16 stealing Hermitage Fund companies and illegally ob-
17 taining a fraudulent \$230,000,000 tax refund; he
18 was denied necessary medical care in custody; he
19 was beaten by 8 guards with rubber batons on the
20 last day of his life; and the ambulance crew that was
21 called to treat him as he was dying was deliberately
22 kept outside of his cell for one hour and 18 minutes
23 until he was dead. The report of the Human Rights
24 Council also states the officials falsified their ac-
25 counts of what happened to Sergei Magnitsky and,

1 18 months after his death, no officials had been
2 brought to trial for his false arrest or the crime he
3 uncovered. The impunity continued in April 2012,
4 when Russian authorities dropped criminal charges
5 against Larisa Litvinova, the head doctor at the
6 prison where Magnitsky died.

7 (9) The systematic abuse of Sergei Magnitsky,
8 including his repressive arrest and torture in custody
9 by officers of the Ministry of the Interior of the Rus-
10 sian Federation that Mr. Magnitsky had implicated
11 in the embezzlement of funds from the Russian
12 Treasury and the misappropriation of 3 companies
13 from his client, Hermitage Capital Management, re-
14 flects how deeply the protection of human rights is
15 affected by corruption.

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

18 (A) the denial by all state bodies of the
19 Russian Federation of any justice or legal rem-
20 edies to Mr. Magnitsky during the nearly 12
21 full months he was kept without trial in deten-
22 tion; and

23 (B) the impunity since his death of state
24 officials he testified against for their involve-

1 ment in corruption and the carrying out of his
2 repressive persecution.

3 (11) The Public Oversight Commission of the
4 City of Moscow for the Control of the Observance of
5 Human Rights in Places of Forced Detention, an or-
6 ganization empowered by Russian law to independ-
7 ently monitor prison conditions, concluded on De-
8 cember 29, 2009, “A man who is kept in custody
9 and is being detained is not capable of using all the
10 necessary means to protect either his life or his
11 health. This is a responsibility of a state which holds
12 him captive. Therefore, the case of Sergei Magnitsky
13 can be described as a breach of the right to life. The
14 members of the civic supervisory commission have
15 reached the conclusion that Magnitsky had been ex-
16 periencing both psychological and physical pressure
17 in custody, and the conditions in some of the wards
18 of Butyrka can be justifiably called torturous. The
19 people responsible for this must be punished.”.

20 (12) Sergei Magnitsky’s experience, while par-
21 ticularly illustrative of the negative effects of official
22 corruption on the rights of an individual citizen, ap-
23 pears to be emblematic of a broader pattern of dis-
24 regard for the numerous domestic and international
25 human rights commitments of the Russian Federa-

1 tion and impunity for those who violate basic human
2 rights and freedoms.

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, including First
19 Deputy Prime Minister Igor Shuvalov, have acknowl-
20 edged that the arrest and imprisonment of
21 Khodorkovsky were politically motivated.

22 (14) According to Freedom House's 2011 re-
23 port entitled "The Perpetual Battle: Corruption in
24 the Former Soviet Union and the New EU Mem-
25 bers", "[t]he highly publicized cases of Sergei

1 Magnitsky, a 37-year-old lawyer who died in pretrial
2 detention in November 2009 after exposing a multi-
3 million-dollar fraud against the Russian taxpayer,
4 and Mikhail Khodorkovsky, the jailed business mag-
5 nate and regime critic who was sentenced at the end
6 of 2010 to remain in prison through 2017, put an
7 international spotlight on the Russian state's con-
8 tempt for the rule of law. . . . By silencing influen-
9 tial and accomplished figures such as Khodorkovsky
10 and Magnitsky, the Russian authorities have made
11 it abundantly clear that anyone in Russia can be si-
12 lenced.”.

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

1 grave danger of exposing the wrongdoing of officials
2 of the Government of the Russian Federation, in-
3 cluding Chechen leader Ramzan Kadyrov, or of seek-
4 ing to obtain, exercise, defend, or promote inter-
5 nationally recognized human rights and freedoms.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) ADMITTED; ALIEN.—The terms “admitted”
9 and “alien” have the meanings given those terms in
10 section 101 of the Immigration and Nationality Act
11 (8 U.S.C. 1101).

12 (2) APPROPRIATE CONGRESSIONAL COMMIT-
13 TEES.—The term “appropriate congressional com-
14 mittees” means—

15 (A) the Committee on Armed Services, the
16 Committee on Financial Services, the Com-
17 mittee on Foreign Affairs, the Committee on
18 Homeland Security, and the Committee on the
19 Judiciary of the House of Representatives; and

20 (B) the Committee on Armed Services, the
21 Committee on Banking, Housing, and Urban
22 Affairs, the Committee on Foreign Relations,
23 the Committee on Homeland Security and Gov-
24 ernmental Affairs, and the Committee on the
25 Judiciary of the Senate.

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

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

6 (A) a United States citizen or an alien law-
7 fully admitted for permanent residence to the
8 United States; or

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

13 **SEC. 4. IDENTIFICATION OF PERSONS RESPONSIBLE FOR**
14 **THE DETENTION, ABUSE, AND DEATH OF**
15 **SERGEI MAGNITSKY AND OTHER GROSS VIO-**
16 **LATIONS OF HUMAN RIGHTS.**

17 (a) IN GENERAL.—Not later than 120 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 in the Federal Register a list of each person the
21 Secretary of State has reason to believe—

22 (1) is responsible for the detention, abuse, or
23 death of Sergei Magnitsky, participated in efforts to
24 conceal the legal liability for the detention, abuse, or
25 death of Sergei Magnitsky, financially benefited

1 from the detention, abuse, or death of Sergei
2 Magnitsky, or was involved in the criminal con-
3 spiracy uncovered by Sergei Magnitsky; or

4 (2) is responsible for extrajudicial killings, tor-
5 ture, or other gross violations of internationally rec-
6 ognized human rights committed against individuals
7 seeking—

8 (A) to expose illegal activity carried out by
9 officials of the Government of the Russian Fed-
10 eration; or

11 (B) to obtain, exercise, defend, or promote
12 internationally recognized human rights and
13 freedoms, such as the freedoms of religion, ex-
14 pression, association, and assembly, and the
15 rights to a fair trial and democratic elections;
16 or

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

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

23 (c) REMOVAL FROM LIST.—A person shall be re-
24 moved from the list required by subsection (a) if the per-
25 son demonstrates to the Secretary of State that the person

1 did not engage in the activity for which the person was
2 added to the list.

3 (d) REQUESTS BY CHAIRPERSON AND RANKING
4 MEMBER OF APPROPRIATE CONGRESSIONAL COMMIT-
5 TEES.—

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

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

22 (3) REMOVAL.—If the Secretary of State re-
23 moves from the list required by subsection (a) a per-
24 son who has been placed on the list at the request
25 of the chairperson and the ranking member of one

1 of the appropriate congressional committees, the
2 Secretary shall provide that chairperson and ranking
3 member with any evidence that contributed to the
4 removal decision. The Secretary may submit such
5 evidence in classified form if the Secretary deter-
6 mines that such is necessary for the national secu-
7 rity interests of the United States.

8 (e) NONAPPLICABILITY OF CONFIDENTIALITY RE-
9 QUIREMENT WITH RESPECT TO VISA RECORDS.—The
10 Secretary of State shall publish the list required by sub-
11 section (a) without regard to the requirements of section
12 222(f) of the Immigration and Nationality Act (8 U.S.C.
13 1202(f)) with respect to confidentiality of records per-
14 taining to the issuance or refusal of visas or permits to
15 enter the United States.

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 SECURITY INTERESTS.—

4 The Secretary of State may waive the application of sub-
5 section (a) or (b) in the case of an alien if—

6 (1) the Secretary determines that such a waiv-
7 er—

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

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

16 (2) prior to granting such a waiver, the Sec-
17 retary provides to the appropriate congressional
18 committees notice of, and a justification for, the
19 waiver.

20 (d) REGULATORY AUTHORITY.—The Secretary of
21 State shall prescribe such regulations as are necessary to
22 carry out this section.

23 **SEC. 6. FINANCIAL MEASURES.**

24 (a) FREEZING OF ASSETS.—The Secretary of the
25 Treasury shall, pursuant to the International Emergency

1 Economic Powers Act (50 U.S.C. 1701 et seq.), freeze and
2 prohibit all transactions in all property and interests in
3 property of a person that the Secretary determines has
4 engaged in an activity described in paragraph (1), (2), or
5 (3) of section 4(a) if such property and interests in prop-
6 erty are in the United States, come within the United
7 States, or are or come within the possession or control
8 of a United States person.

9 (b) WAIVER FOR NATIONAL SECURITY INTERESTS.—
10 The Secretary of the Treasury may waive the application
11 of subsection (a) if the Secretary determines that such a
12 waiver is in the national security interests of the United
13 States. Prior to granting such a waiver, the Secretary
14 shall provide to the appropriate congressional committees
15 notice of, and a justification for, the waiver.

16 (c) ENFORCEMENT.—

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

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 one year after the date of the enact-
3 ment of this Act and annually thereafter, the Secretary
4 of State and the Secretary of the Treasury shall submit
5 to the appropriate congressional committees a report on—

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

8 (A) the number of persons added to or re-
9 moved from the list required by section 4(a)
10 during the year preceding the report, the dates
11 on which such persons have been added or re-
12 moved, and the reasons for adding or removing
13 them; and

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

18 (2) efforts by the executive branch to encourage
19 the governments of other countries to impose sanc-
20 tions that are similar to the sanctions imposed under
21 this Act.

22 **SEC. 8. TERMINATION.**

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

