

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4405
OFFERED BY MS. ROS-LEHTINEN OF FLORIDA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) The United States aspires to a mutually
7 beneficial relationship with the Russian Federation
8 based on respect for human rights and the rule of
9 law, and supports the people of the Russian Federa-
10 tion in their efforts to realize their full economic po-
11 tential and to advance democracy, human rights,
12 and the rule of law.

13 (2) The Russian Federation—

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

1 (B) has ratified the Convention against
2 Torture and Other Cruel, Inhuman or Degrad-
3 ing Treatment or Punishment, the International
4 Covenant on Civil and Political Rights, and the
5 United Nations Convention against Corruption;
6 and

7 (C) is bound by the legal obligations set
8 forth in the European Convention on Human
9 Rights.

10 (3) States voluntarily commit themselves to re-
11 spect obligations and responsibilities through the
12 adoption of international agreements and treaties,
13 which must be observed in good faith in order to
14 maintain the stability of the international order.
15 Human rights are an integral part of international
16 law, and lie at the foundation of the international
17 order. The protection of human rights, therefore,
18 particularly in the case of a country that has in-
19 curred obligations to protect human rights under an
20 international agreement to which it is a party, is not
21 left exclusively to the internal affairs of that coun-
22 try.

23 (4) Good governance and anti-corruption meas-
24 ures are instrumental in the protection of human
25 rights and in achieving sustainable economic growth,

1 which benefits both the people of the Russian Fed-
2 eration and the international community through the
3 creation of open and transparent markets.

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

10 (6) The Russian nongovernmental organization
11 INDEM has estimated that bribes by individuals
12 and businesses in the Russian Federation amount to
13 hundreds of billions of dollars a year, an increasing
14 share of the country's gross domestic product.

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

19 (8) On July 6, 2011, Russian President
20 Dimitry Medvedev's Human Rights Council an-
21 nounced the results of its independent investigation
22 into the death of Sergei Magnitsky. The Human
23 Rights Council concluded that Sergei Magnitsky's
24 arrest and detention was illegal; he was denied ac-
25 cess to justice by the courts and prosecutors of the

1 Russian Federation; he was investigated by the same
2 law enforcement officers whom he had accused of
3 stealing Hermitage Fund companies and illegally ob-
4 taining a fraudulent \$230,000,000 tax refund; he
5 was denied necessary medical care in custody; he
6 was beaten by 8 guards with rubber batons on the
7 last day of his life; and the ambulance crew that was
8 called to treat him as he was dying was deliberately
9 kept outside of his cell for one hour and 18 minutes
10 until he was dead. The report of the Human Rights
11 Council also states the officials falsified their ac-
12 counts of what happened to Sergei Magnitsky and,
13 18 months after his death, no officials had been
14 brought to trial for his false arrest or the crime he
15 uncovered. The impunity continued in April 2012,
16 when Russian authorities dropped criminal charges
17 against Larisa Litvinova, the head doctor at the
18 prison where Magnitsky died.

19 (9) The systematic abuse of Sergei Magnitsky,
20 including his repressive arrest and torture in custody
21 by officers of the Ministry of the Interior of the Rus-
22 sian Federation that Mr. Magnitsky had implicated
23 in the embezzlement of funds from the Russian
24 Treasury and the misappropriation of 3 companies
25 from his client, Hermitage Capital Management, re-

1 fleets how deeply the protection of human rights is
2 affected by corruption.

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

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

10 (B) the impunity since his death of state
11 officials he testified against for their involve-
12 ment in corruption and the carrying out of his
13 repressive persecution.

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 on De-
19 cember 29, 2009, “A man who is kept in custody
20 and is being detained is not capable of using all the
21 necessary means to protect either his life or his
22 health. This is a responsibility of a state which holds
23 him captive. Therefore, the case of Sergei Magnitsky
24 can be described as a breach of the right to life. The
25 members of the civic supervisory commission have

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

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

14 (13) The second trial, verdict, and sentence
15 against former Yukos executives Mikhail
16 Khodorkovsky and Platon Lebedev evoke serious
17 concerns about the right to a fair trial and the inde-
18 pendence of the judiciary in the Russian Federation.
19 The lack of credible charges, intimidation of wit-
20 nesses, violations of due process and procedural
21 norms, falsification or withholding of documents, de-
22 nial of attorney-client privilege, and illegal detention
23 in the Yukos case are highly troubling. The Council
24 of Europe, Freedom House, and Amnesty Inter-
25 national, among others, have concluded that they

1 were charged and imprisoned in a process that did
2 not follow the rule of law and was politically influ-
3 enced. Furthermore, senior officials of the Govern-
4 ment of the Russian Federation, including First
5 Deputy Prime Minister Igor Shuvalov, have acknowl-
6 edged that the arrest and imprisonment of
7 Khodorkovsky were politically motivated.

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

24 (15) The tragic and unresolved murders of
25 Nustap Abdurakhmanov, Maksharip Aushev,

1 Natalya Estemirova, Akhmed Hadjimagomedov,
2 Umar Israilov, Paul Klebnikov, Anna Politkovskaya,
3 Saihadji Saihadjiev, and Magomed Y. Yevloyev, the
4 death in custody of Vera Trifonova, the disappear-
5 ances of Mokhmadsalakh Masaev and Said-Saleh
6 Ibragimov, the torture of Ali Israilov and Islam
7 Umarpashaev, the near-fatal beatings of Mikhail
8 Beketov, Oleg Kashin, Arkadiy Lander, and Mikhail
9 Vinyukov, and the harsh and ongoing imprisonment
10 of Mikhail Khodorkovsky, Alexei Kozlov, Platon
11 Lebedev, and Fyodor Mikheev further illustrate the
12 grave danger of exposing the wrongdoing of officials
13 of the Government of the Russian Federation, in-
14 cluding Chechen leader Ramzan Kadyrov, or of seek-
15 ing to obtain, exercise, defend, or promote inter-
16 nationally recognized human rights and freedoms.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

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

23 (2) APPROPRIATE CONGRESSIONAL COMMIT-
24 TEES.—The term “appropriate congressional com-
25 mittees” means—

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

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

12 (3) FINANCIAL INSTITUTION.—The term “fi-
13 nancial institution” has the meaning given that term
14 in section 5312 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 AND OTHER GROSS VIO-**
4 **LATIONS OF HUMAN RIGHTS.**

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

10 (1) is responsible for the detention, abuse, or
11 death of Sergei Magnitsky, participated in efforts to
12 conceal the legal liability for the detention, abuse, or
13 death of Sergei Magnitsky, financially benefited
14 from the detention, abuse, or death of Sergei
15 Magnitsky, or was involved in the criminal con-
16 spiracy uncovered by Sergei Magnitsky; or

17 (2) is responsible for extrajudicial killings, tor-
18 ture, or other gross violations of internationally rec-
19 ognized human rights committed against individuals
20 seeking—

21 (A) to expose illegal activity carried out by
22 officials of the Government of the Russian Fed-
23 eration; or

24 (B) to obtain, exercise, defend, or promote
25 internationally recognized human rights and
26 freedoms, such as the freedoms of religion, ex-

1 pression, association, and assembly, and the
2 rights to a fair trial and democratic elections,
3 in Russia; or

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

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

10 (c) REMOVAL FROM LIST.—A person shall be re-
11 moved from the list required by subsection (a) if the per-
12 son demonstrates to the Secretary of State that the person
13 did not engage in the activity for which the person was
14 added to the list.

15 (d) REQUESTS BY CHAIRPERSON AND RANKING
16 MEMBER OF APPROPRIATE CONGRESSIONAL COMMIT-
17 TEES.—

18 (1) IN GENERAL.—Not later than 120 days
19 after receiving a written request from the chair-
20 person and the ranking member of one of the appro-
21 priate congressional committees with respect to
22 whether a person meets the criteria for being added
23 to the list required by subsection (a), the Secretary
24 of State shall submit a response to the chairperson
25 and ranking member of the committee which made

1 the request with respect to whether or not the Sec-
2 retary determines that the person meets those cri-
3 teria.

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

9 (3) REMOVAL.—If the Secretary of State re-
10 moves from the list required by subsection (a) a per-
11 son who has been placed on the list at the request
12 of the chairperson and the ranking member of one
13 of the appropriate congressional committees, the
14 Secretary shall provide that chairperson and ranking
15 member with any evidence that contributed to the
16 removal decision. The Secretary may submit such
17 evidence in classified form if the Secretary deter-
18 mines that such is necessary for the national secu-
19 rity interests of the United States.

20 (e) NONAPPLICABILITY OF CONFIDENTIALITY RE-
21 QUIREMENT WITH RESPECT TO VISA RECORDS.—The
22 Secretary of State shall publish the list required by sub-
23 section (a) without regard to the requirements of section
24 222(f) of the Immigration and Nationality Act (8 U.S.C.
25 1202(f)) with respect to confidentiality of records per-

1 taining to the issuance or refusal of visas or permits to
2 enter the United States.

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

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

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

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

17 (1) the Secretary determines that such a waiv-
18 er—

19 (A) is necessary to permit the United
20 States to comply with the Agreement between
21 the United Nations and the United States of
22 America regarding the Headquarters of the
23 United Nations, signed June 26, 1947, and en-
24 tered into force November 21, 1947; or

1 (B) is in the national security interests of
2 the United States; and

3 (2) prior to granting such a waiver, the Sec-
4 retary provides to the appropriate congressional
5 committees notice of, and a justification for, the
6 waiver.

7 (d) REGULATORY AUTHORITY.—The Secretary of
8 State shall prescribe such regulations as are necessary to
9 carry out this section.

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

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

21 (b) WAIVER FOR NATIONAL SECURITY INTERESTS.—
22 The Secretary of the Treasury may waive the application
23 of subsection (a) if the Secretary determines that such a
24 waiver is in the national security interests of the United
25 States. Prior to granting such a waiver, the Secretary

1 shall provide to the appropriate congressional committees
2 notice of, and a justification for, the waiver.

3 (c) ENFORCEMENT.—

4 (1) PENALTIES.—A person that violates, at-
5 tempts to violate, conspires to violate, or causes a
6 violation of this section or any regulation, license, or
7 order issued to carry out this section shall be subject
8 to the penalties set forth in subsections (b) and (c)
9 of section 206 of the International Emergency Eco-
10 nomic Powers Act (50 U.S.C. 1705) to the same ex-
11 tent as a person that commits an unlawful act de-
12 scribed in subsection (a) of such section.

13 (2) REQUIREMENTS FOR FINANCIAL INSTITU-
14 TIONS.—

15 (A) IN GENERAL.—Not later than 120
16 days after the date of the enactment of this
17 Act, the Secretary of the Treasury shall pre-
18 scribe regulations to require each financial in-
19 stitution that is a United States person to cer-
20 tify to the Secretary that, to the best of the
21 knowledge of the financial institution, the finan-
22 cial institution has frozen all assets within the
23 possession or control of the financial institution
24 that are required to be frozen pursuant to sub-
25 section (a).

1 (B) PENALTIES.—The penalties provided
2 for in sections 5321(a) and 5322 of title 31,
3 United States Code, shall apply to a financial
4 institution that violates a regulation prescribed
5 under subparagraph (A) in the same manner
6 and to the same extent as such penalties would
7 apply to any person that is otherwise subject to
8 such section 5321(a) or 5322.

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

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

13 Not later than one year after the date of the enact-
14 ment of this Act and annually thereafter, the Secretary
15 of State and the Secretary of the Treasury shall submit
16 to the appropriate congressional committees a report on—

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

19 (A) the number of persons added to or re-
20 moved from the list required by section 4(a)
21 during the year preceding the report, the dates
22 on which such persons have been added or re-
23 moved, and the reasons for adding or removing
24 them; and

1 (B) if few or no such persons have been
2 added to that list during that year, the reasons
3 for not adding more such persons to the list;
4 and

5 (2) efforts by the executive branch to encourage
6 the governments of other countries to impose sanc-
7 tions that are similar to the sanctions imposed under
8 this Act.

9 **SEC. 8. TERMINATION.**

10 The provisions of this Act shall terminate on the date
11 that is 10 years after the date of the enactment of this
12 Act.

