

ISSUE BRIEF

No. 3580 | APRIL 25, 2012

Promoting Human Rights in Russia Through the Sergei Magnitsky Act

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Protection of basic human rights, including the right to own property, is an important issue for those who hold American values close to heart. In Russia, human and property rights violations are undermining the state and preventing investment and business development.

The poor state of the rule of law and pervasive corruption—including the failing court and law enforcement systems—are at the heart of persistent rights violations. They are challenging everyday Russians as well as Western and domestic investors. Russian top leaders, including both Presidents Vladimir Putin and Dmitry Medvedev, have bitterly complained about the state of affairs but did little to improve things.

Congress should press for trade reforms that are in the best interests of the United States while supporting

the cause of human rights for all. The Sergei Magnitsky Rule of Law Accountability Act (S. 1039), and its sister legislation introduced in the House of Representatives, is drafted in response to the death of Sergei Magnitsky in detention following his whistle-blowing on massive fraud allegedly committed by Russian officials. It provides a practical and balanced way forward and accommodates Russian membership in the World Trade Organization (WTO) while signaling long-term American commitment to the rule of law.

Human Rights and the Sergei Magnitsky Case. Sergei Magnitsky was a 37-year-old attorney who uncovered a giant corruption scheme that involved embezzlements of \$230 million from the Russian Treasury by law enforcement and tax officials. After making accusations, he was arrested on fabricated tax evasion and tax fraud charges.

Magnitsky died in isolation at a Russian prison where he was denied medical care and beaten mercilessly by guards; an investigation by the Russian Presidential Council on Human Rights has confirmed as much. This has not resulted in the punishment of those involved. Those that were in power remain in power, and some have even been decorated

or promoted. Earlier this month, Russian state prosecutors dropped charges against the chief doctor at the prison where Magnitsky died after the statute of limitations expired. The physician had been accused of negligence resulting in Magnitsky's death.¹ Other officials implicated in the affair have been promoted instead of being punished.

Another case the legislation could be applied to is that of Mikhail Khodorkovsky. Khodorkovsky, chairman and CEO of the Yukos oil company, was once Russia's wealthiest man. In 2003, he was arrested on charges of tax fraud, and in 2005 he was sentenced to nine years in prison. At a second show trial in December 2010, he was sentenced to 14 years in prison. In 2006, Yukos was auctioned off at a rock-bottom price to Rosneft, Russia's state-run oil company. Yukos shareholders, including many American small investors and mutual funds, were effectively expropriated by the Russian government without compensation.

In reality, Khodorkovsky ran afoul of the Putin administration due to his calls to curb corruption and because some of Putin's associates coveted parts of Yukos. The show trial was used to intimidate and control other oligarchs that

This paper, in its entirety, can be found at <http://report.heritage.org/ib3580>

Produced by the Douglas and Sarah Allison Center for Foreign Policy Studies

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might have disobeyed the Kremlin. Amnesty International recognized Khodorkovsky as a political prisoner. Russia remains the only G-8 country with political prisoners.

U.S. Response to the Outrage.

The Obama Administration fears that the increased pressure on Russia to get its act together will fracture its hallowed “reset” policy. This is why the Administration pressured Senate Foreign Relations Committee chairman John Kerry (D-MA) to postpone the vote on the Magnitsky Act.

However, it is no longer time to play softball in the human rights arena. The Magnitsky bill has prominent supporters: David J. Kramer, the president of Freedom House and former assistant secretary of state for human rights in the George W. Bush Administration, has stated that the Magnitsky bill has “done more for the cause of human rights [in Russia] than anything done” by the two previous Administrations.²

Yet in late July 2011, the State Department placed some 64 Russian officials involved in Magnitsky’s murder on a visa blacklist. This brought about some protests on the Russian side, but it was most likely a preemptive attempt by this Administration to keep the Magnitsky Act from passing.

The bill is aimed at human rights abusers not only in the Magnitsky case, and not only in Russia, but around the globe. Individuals guilty of massive human rights violations would be refused visas, and their assets within the preview of the U.S. government would be frozen. Russia has threatened to retaliate “asymmetrically” if the legislation is passed. It has already banned U.S. officials prosecuting Viktor Bout, an arms trader known as the “Lord of War,” from entering Russia.³

What the U.S. Should Do.

- **Develop new measures to protect human rights in Russia and elsewhere.** Targeted legislation like the Magnitsky Act would be a more effective way to encourage Russia to respect the rights of its citizens. As seven leaders of Russia’s pro-democracy movement observed: “We, leading figures of the Russia political opposition, strongly stand behind efforts to remove Russia from the provisions of the Jackson-Vanik Amendment. Jackson-Vanik is not helpful in any way—neither for promotion of human rights and democracy in Russia, nor for the economic interests of its people. ... [M]uch more effective are targeted sanctions against specific

officials involved in human rights abuse, like those named in the Senator Benjamin Cardin’s list in the Sergey Magnitsky case.”⁴ By doing so, the U.S. would comply with its WTO obligation to offer permanent normal trade relations (PNTR) to America’s trading partners, thereby allowing U.S. firms the best chance to compete for business in Russia. Extending PNTR to Russia would also promote transparency, property rights, and the rule of law.

- **Cooperate with Western banking regulators, intelligence services, and law enforcement agencies to track Russian state and oligarch money laundering activities, corruption, and unfair competition practices.** The Obama Administration should prioritize gathering and acting on intelligence on questionable Russian activities. The U.S. should lead an international effort among law enforcement agencies to prevent and stop complex transnational crimes⁵ and those that involve current or former Russian government officials, oligarchs with close ties to Russia’s political leaders, intelligence operatives, and persons with ties to organized crime.

1. Nataliya Vasilyeva, “Russia Drops Charges in Lawyer’s Prison Death,” Associated Press, April 9, 2011, <http://abcnews.go.com/International/wireStory/russia-drops-charges-lawyers-prison-death-16099933> (accessed April 19, 2012).

2. David J. Kramer, “The State of Human Rights and Rule of Law in Russia: U.S. Policy Options,” testimony before the Subcommittee on European Affairs, Committee on Foreign Relations, U.S. Senate, December 14, 2011, <http://www.freedomhouse.org/article/state-human-rights-and-rule-law-russia-us-policy-options> (accessed April 19, 2012).

3. Thomas Grove, “Russia Draws Up Tit-for-Tat U.S. Visa Bans: Report,” Thomson Reuters, August 10, 2011, <http://www.reuters.com/article/2011/08/10/us-russia-usa-idUSTRE77922V20110810> (accessed March 27, 2012).

4. Sergey Aleksashenko et al., “Remove Russia from Jackson-Vanik!,” Blog of Vladimir Milov, March 14, 2012, <http://v-milov.blogspot.com/2012/03/remove-russia-from-jackson-vanik.html> (accessed March 27, 2012).

5. Ariel Cohen and Lajos F. Szaszdi, “Russia’s Drive for Global Economic Power: A Challenge for the Obama Administration,” Heritage Foundation *Executive Summary* No. 2235, January 30, 2009, <http://www.heritage.org/research/reports/2009/01/executive-summary-russias-drive-for-global-economic-power-a-challenge-for-the-obama-administration>.

■ **Target blatant and systematic abusers of human rights that prefer to spend their time or keep their financial resources in the West.** The U.S. should also reach out to and coordinate with allies in Europe and elsewhere that are promoting pieces of legislation similar to the Magnitsky Act. International cooperation will go a long way in deterring gross violations of individual rights, including property rights. This is the way for the U.S. and its allies to project their values in the 21st century.

A Message of Support. America should not ignore the subject of the

rule of law—including individual rights, human rights, corruption, and organized crime—in its relationship with Russia. Congress should take action against those tyrants that systematically violate the natural rights of people not just in Russia but across the globe. The Sergei Magnitsky Act not only empowers Congress to take action against such individuals but sends a message that the U.S. will support those who value the rule of law and freedom worldwide.

By taking action on human rights front and center, and then addressing the PNTR issue before Russia officially joins the WTO, Congress and President Obama can both protect U.S. interests in the global

marketplace and maintain America's stature as a nation that believes in and actively defends human rights.

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