

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.**S. 712**

To provide assistance for United States citizens and nationals taken hostage or unlawfully or wrongfully detained abroad, 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 Mr. MENENDEZ

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 “Robert Levinson Hos-
5 tage Recovery and Hostage-Taking Accountability Act”.

6 **SEC. 2. ASSISTANCE FOR UNITED STATES NATIONALS UN-
7 LAWFULLY OR WRONGFULLY DETAINED
8 ABROAD.**

9 (a) REVIEW.—The Secretary of State shall review the
10 cases of United States nationals detained abroad to deter-
11 mine if there is credible information that they are being

1 detained unlawfully or wrongfully, based on criteria which
2 may include whether—

3 (1) United States officials receive or possess
4 credible information indicating innocence of the de-
5 tained individual;

6 (2) the individual is being detained solely or
7 substantially because he or she is a United States
8 national;

9 (3) the individual is being detained solely or
10 substantially to influence United States Government
11 policy or to secure economic or political concessions
12 from the United States Government;

13 (4) the detention appears to be because the in-
14 dividual sought to obtain, exercise, defend, or pro-
15 mote freedom of the press, freedom of religion, or
16 the right to peacefully assemble;

17 (5) the individual is being detained in violation
18 of the laws of the detaining country;

19 (6) independent nongovernmental organizations
20 or journalists have raised legitimate questions about
21 the innocence of the detained individual;

22 (7) the United States mission in the country
23 where the individual is being detained has received
24 credible reports that the detention is a pretext for an
25 illegitimate purpose;

1 (8) the individual is detained in a country
2 where the Department of State has determined in its
3 annual human rights reports that the judicial system
4 is not independent or impartial, is susceptible to cor-
5 ruption, or is incapable of rendering just verdicts;

6 (9) the individual is being detained in inhumane
7 conditions;

8 (10) due process of law has been sufficiently
9 impaired so as to render the detention arbitrary; and

10 (11) United States diplomatic engagement is
11 likely necessary to secure the release of the detained
12 individual.

13 (b) REFERRALS TO THE SPECIAL ENVOY.—Upon a
14 determination by the Secretary of State, based on the to-
15 tality of the circumstances, that there is credible informa-
16 tion that the detention of a United States national abroad
17 is unlawful or wrongful, and regardless of whether the de-
18 tention is by a foreign government or a nongovernmental
19 actor, the Secretary shall transfer responsibility for such
20 case from the Bureau of Consular Affairs of the Depart-
21 ment of State to the Special Envoy for Hostage Affairs
22 created pursuant to section 3.

23 (c) REPORT.—

24 (1) ANNUAL REPORT.—

1 (A) IN GENERAL.—The Secretary of State
2 shall submit to the appropriate congressional
3 committees an annual report with respect to
4 United States nationals for whom the Secretary
5 determines there is credible information of un-
6 lawful or wrongful detention abroad.

7 (B) FORM.—The report required under
8 this paragraph shall be submitted in unclassi-
9 fied form, but may include a classified annex if
10 necessary.

11 (2) COMPOSITION.—The report required under
12 paragraph (1) shall include current estimates of the
13 number of individuals so detained, as well as rel-
14 evant information about particular cases, such as—

15 (A) the name of the individual, unless the
16 provision of such information is inconsistent
17 with section 552a of title 5, United States Code
18 (commonly known as the “Privacy Act of
19 1974”);

20 (B) basic facts about the case;

21 (C) a summary of the information that
22 such individual may be detained unlawfully or
23 wrongfully;

24 (D) a description of specific efforts, legal
25 and diplomatic, taken on behalf of the indi-

1 vidual since the last reporting period, including
2 a description of accomplishments and setbacks;
3 and

4 (E) a description of intended next steps.

5 (d) RESOURCE GUIDANCE.—

6 (1) ESTABLISHMENT.—Not later than 180 days
7 after the date of the enactment of this Act and after
8 consulting with relevant organizations that advocate
9 on behalf of United States nationals detained abroad
10 and the Family Engagement Coordinator established
11 pursuant to section 4(c)(2), the Secretary of State
12 shall provide resource guidance in writing for gov-
13 ernment officials and families of unjustly or wrong-
14 fully detained individuals.

15 (2) CONTENT.—The resource guidance required
16 under paragraph (1) should include—

17 (A) information to help families under-
18 stand United States policy concerning the re-
19 lease of United States nationals unlawfully or
20 wrongfully held abroad;

21 (B) contact information for officials in the
22 Department of State or other government agen-
23 cies suited to answer family questions;

24 (C) relevant information about options
25 available to help families obtain the release of

1 unjustly or wrongfully detained individuals,
2 such as guidance on how families may engage
3 with United States diplomatic and consular
4 channels to ensure prompt and regular access
5 for the detained individual to legal counsel,
6 family members, humane treatment, and other
7 services;

8 (D) guidance on submitting public or pri-
9 vate letters from members of Congress or other
10 individuals who may be influential in securing
11 the release of an individual; and

12 (E) appropriate points of contacts, such as
13 legal resources and counseling services, who
14 have a record of assisting victims' families

15 **SEC. 3. SPECIAL ENVOY FOR HOSTAGE AFFAIRS.**

16 (a) ESTABLISHMENT.—There shall be a Special Pres-
17 idential Envoy for Hostage Affairs, appointed by the
18 President, who shall report to the Secretary of State.

19 (b) RANK.—The Special Envoy shall have the rank
20 and status of ambassador.

21 (c) RESPONSIBILITIES.—The Special Presidential
22 Envoy for Hostage Affairs shall—

23 (1) lead diplomatic engagement on United
24 States hostage policy;

1 (2) coordinate all diplomatic engagements and
2 strategy in support of hostage recovery efforts, in
3 coordination with the Hostage Recovery Fusion Cell
4 and consistent with policy guidance communicated
5 through the Hostage Response Group;

6 (3) in coordination with the Hostage Recovery
7 Fusion Cell as appropriate, coordinate diplomatic
8 engagements regarding cases in which a foreign gov-
9 ernment has detained a United States national and
10 the United States Government regards such deten-
11 tion as unlawful or wrongful;

12 (4) provide senior representation from the Spe-
13 cial Envoy's office to the Hostage Recovery Fusion
14 Cell established under section 4 and the Hostage Re-
15 sponse Group established under section 5; and

16 (5) ensure that families of United States na-
17 tionals unlawfully or wrongly detained abroad re-
18 ceive updated information about developments in
19 cases and government policy.

20 **SEC. 4. HOSTAGE RECOVERY FUSION CELL.**

21 (a) ESTABLISHMENT.—The President shall establish
22 an interagency Hostage Recovery Fusion Cell.

23 (b) PARTICIPATION.—The President shall direct the
24 heads of each of the following executive departments,

1 agencies, and offices to make available personnel to par-
2 ticipate in the Hostage Recovery Fusion Cell:

3 (1) The Department of State.

4 (2) The Department of the Treasury.

5 (3) The Department of Defense.

6 (4) The Department of Justice.

7 (5) The Office of the Director of National Intel-
8 ligence.

9 (6) The Federal Bureau of Investigation.

10 (7) The Central Intelligence Agency.

11 (8) Other agencies as the President, from time
12 to time, may designate.

13 (c) PERSONNEL.—The Hostage Recovery Fusion Cell
14 shall include—

15 (1) a Director, who shall be a full-time senior
16 officer or employee of the United States Govern-
17 ment;

18 (2) a Family Engagement Coordinator who
19 shall—

20 (A) work to ensure that all interactions by
21 executive branch officials with a hostage's fam-
22 ily occur in a coordinated fashion and that the
23 family receives consistent and accurate informa-
24 tion from the United States Government; and

1 (B) if directed, perform the same function
2 as set out in subparagraph (A) with regard to
3 the family of a United States national who is
4 unlawfully or wrongfully detained abroad; and
5 (3) other officers and employees as deemed ap-
6 propriate by the President.

7 (d) DUTIES.—The Hostage Recovery Fusion Cell
8 shall—

9 (1) coordinate efforts by participating agencies
10 to ensure that all relevant information, expertise,
11 and resources are brought to bear to secure the safe
12 recovery of United States nationals held hostage
13 abroad;

14 (2) if directed, coordinate the United States
15 Government's response to other hostage-takings oc-
16 ccurring abroad in which the United States has a na-
17 tional interest;

18 (3) if directed, coordinate or assist the United
19 States Government's response to help secure the re-
20 lease of United States nationals unlawfully or
21 wrongfully detained abroad; and

22 (4) pursuant to policy guidance coordinated
23 through the National Security Council—

24 (A) identify and recommend hostage recov-
25 ery options and strategies to the President

1 through the National Security Council or the
2 Deputies Committee of the National Security
3 Council;

4 (B) coordinate efforts by participating
5 agencies to ensure that information regarding
6 hostage events, including potential recovery op-
7 tions and engagements with families and exter-
8 nal actors (including foreign governments), is
9 appropriately shared within the United States
10 Government to facilitate a coordinated response
11 to a hostage-taking;

12 (C) assess and track all hostage-takings of
13 United States nationals abroad and provide reg-
14 ular reports to the President and Congress on
15 the status of such cases and any measures
16 being taken toward the hostages' safe recovery;

17 (D) provide a forum for intelligence shar-
18 ing and, with the support of the Director of Na-
19 tional Intelligence, coordinate the declassifica-
20 tion of relevant information;

21 (E) coordinate efforts by participating
22 agencies to provide appropriate support and as-
23 sistance to hostages and their families in a co-
24 ordinated and consistent manner and to provide

1 families with timely information regarding sig-
2 nificant events in their cases;

3 (F) make recommendations to agencies in
4 order to reduce the likelihood of United States
5 nationals' being taken hostage abroad and en-
6 hance United States Government preparation to
7 maximize the probability of a favorable outcome
8 following a hostage-taking; and

9 (G) coordinate with agencies regarding
10 congressional, media, and other public inquiries
11 pertaining to hostage events.

12 (e) ADMINISTRATION.—The Hostage Recovery Fu-
13 sion Cell shall be located within the Federal Bureau of
14 Investigation for administrative purposes.

15 **SEC. 5. HOSTAGE RESPONSE GROUP.**

16 (a) ESTABLISHMENT.—The President shall establish
17 a Hostage Response Group, chaired by a designated mem-
18 ber of the National Security Council or the Deputies Com-
19 mittee of the National Security Council, to be convened
20 on a regular basis, to further the safe recovery of United
21 States nationals held hostage abroad or unlawfully or
22 wrongfully detained abroad, and to be tasked with coordi-
23 nating the United States Government response to other
24 hostage-takings occurring abroad in which the United
25 States has a national interest

1 (b) MEMBERSHIP.—The regular members of the Hos-
2 tage Response Group shall include the Director of the
3 Hostage Recovery Fusion Cell, the Hostage Recovery Fu-
4 sion Cell’s Family Engagement Coordinator, the Special
5 Envoy appointed pursuant to section 3, and representa-
6 tives from the Department of the Treasury, the Depart-
7 ment of Defense, the Department of Justice, the Federal
8 Bureau of Investigation, the Office of the Director of Na-
9 tional Intelligence, the Central Intelligence Agency, and
10 other agencies as the President, from time to time, may
11 designate.

12 (c) DUTIES.—The Hostage Recovery Group shall—

13 (1) identify and recommend hostage recovery
14 options and strategies to the President through the
15 National Security Council;

16 (2) coordinate the development and implemen-
17 tation of United States hostage recovery policies,
18 strategies, and procedures;

19 (3) receive regular updates from the Hostage
20 Recovery Fusion Cell and the Special Envoy for
21 Hostage Affairs on the status of United States na-
22 tionals being held hostage or unlawfully or wrong-
23 fully detained abroad and measures being taken to
24 effect safe recoveries;

1 (4) coordinate the provision of policy guidance
2 to the Hostage Recovery Fusion Cell, including re-
3 viewing recovery options proposed by the Hostage
4 Recovery Fusion Cell and working to resolve dis-
5 putes within the Hostage Recovery Fusion Cell;

6 (5) as appropriate, direct the use of resources
7 at the Hostage Recovery Fusion Cell to coordinate
8 or assist in the safe recovery of United States na-
9 tionals unlawfully or wrongfully detained abroad;
10 and

11 (6) as appropriate, direct the use of resources
12 at the Hostage Recovery Fusion Cell to coordinate
13 the United States Government response to other
14 hostage-takings occurring abroad in which the
15 United States has a national interest.

16 (d) MEETINGS.—The Hostage Response Group shall
17 meet regularly.

18 (e) REPORTING.—The Hostage Response Group shall
19 regularly provide recommendations on hostage recovery
20 options and strategies to the National Security Council.

21 **SEC. 6. AUTHORIZATION OF IMPOSITION OF SANCTIONS.**

22 (a) IN GENERAL.—The President may impose the
23 sanctions described in subsection (b) with respect to any
24 foreign person the President determines, based on credible
25 evidence—

1 (1) is responsible for or is complicit in, or re-
2 sponsible for ordering, controlling, or otherwise di-
3 recting, the hostage-taking of a United States na-
4 tional abroad or the unlawful or wrongful detention
5 of a United States national abroad; or

6 (2) knowingly provides financial, material, or
7 technological support for, or goods or services in
8 support of, an activity described in paragraph (1).

9 (b) SANCTIONS DESCRIBED.—The sanctions de-
10 scribed in this subsection are the following:

11 (1) INELIGIBILITY FOR VISAS, ADMISSION, OR
12 PAROLE.—

13 (A) VISAS, ADMISSION, OR PAROLE.—An
14 alien described in subsection (a) may be—

15 (i) inadmissible to the United States;

16 (ii) ineligible to receive a visa or other
17 documentation to enter the United States;

18 and

19 (iii) otherwise ineligible to be admitted
20 or paroled into the United States or to re-
21 ceive any other benefit under the Immigra-
22 tion and Nationality Act (8 U.S.C. 1101 et
23 seq.).

24 (B) CURRENT VISAS REVOKED.—

1 (i) IN GENERAL.—An alien described
2 in subsection (a) may be subject to revoca-
3 tion of any visa or other entry documenta-
4 tion regardless of when the visa or other
5 entry documentation is or was issued.

6 (ii) IMMEDIATE EFFECT.—A revoca-
7 tion under clause (i) may—

8 (I) take effect immediately; and

9 (II) cancel any other valid visa or
10 entry documentation that is in the
11 alien's possession.

12 (2) BLOCKING OF PROPERTY.—

13 (A) IN GENERAL.—The President may ex-
14 ercise all of the powers granted to the President
15 under the International Emergency Economic
16 Powers Act (50 U.S.C. 1701 et seq.), to the ex-
17 tent necessary to block and prohibit all trans-
18 actions in property and interests in property of
19 a foreign person described in subsection (a) if
20 such property and interests in property are in
21 the United States, come within the United
22 States, or are or come within the possession or
23 control of a United States person.

24 (B) INAPPLICABILITY OF NATIONAL EMER-
25 GENCY REQUIREMENT.—The requirements of

1 section 202 of the International Emergency
2 Economic Powers Act (50 U.S.C. 1701) shall
3 not apply for purposes of this section.

4 (c) EXCEPTIONS.—

5 (1) EXCEPTION FOR INTELLIGENCE ACTIVI-
6 TIES.—Sanctions under this section shall not apply
7 to any activity subject to the reporting requirements
8 under title V of the National Security Act of 1947
9 (50 U.S.C. 3091 et seq.) or any authorized intel-
10 ligence activities of the United States.

11 (2) EXCEPTION TO COMPLY WITH INTER-
12 NATIONAL OBLIGATIONS AND FOR LAW ENFORCE-
13 MENT ACTIVITIES.—Sanctions under subsection
14 (b)(1) shall not apply with respect to an alien if ad-
15 mitting or paroling the alien into the United States
16 is necessary—

17 (A) to permit the United States to comply
18 with the Agreement regarding the Head-
19 quarters of the United Nations, signed at Lake
20 Success June 26, 1947, and entered into force
21 November 21, 1947, between the United Na-
22 tions and the United States, or other applicable
23 international obligations; or

24 (B) to carry out or assist law enforcement
25 activity in the United States.

1 (3) EXCEPTION RELATING TO IMPORTATION OF
2 GOODS.—

3 (A) IN GENERAL.—The authorities and re-
4 quirements to impose sanctions authorized
5 under subsection (b)(2) shall not include the
6 authority or a requirement to impose sanctions
7 on the importation of goods.

8 (B) GOOD DEFINED.—In this paragraph,
9 the term “good” means any article, natural or
10 manmade substance, material, supply or manu-
11 factured product, including inspection and test
12 equipment, and excluding technical data.

13 (d) PENALTIES.—A person that violates, attempts to
14 violate, conspires to violate, or causes a violation of sub-
15 section (b)(2) or any regulation, license, or order issued
16 to carry out that subsection shall be subject to the pen-
17 alties set forth in subsections (b) and (c) of section 206
18 of the International Emergency Economic Powers Act (50
19 U.S.C. 1705) to the same extent as a person that commits
20 an unlawful act described in subsection (a) of that section.

21 (e) TERMINATION OF SANCTIONS.—The President
22 may terminate the application of sanctions under this sec-
23 tion with respect to a person if the President determines
24 that—

1 (1) information exists that the person did not
2 engage in the activity for which sanctions were im-
3 posed;

4 (2) the person has been prosecuted appro-
5 priately for the activity for which sanctions were im-
6 posed;

7 (3) the person has credibly demonstrated a sig-
8 nificant change in behavior, has paid an appropriate
9 consequence for the activity for which sanctions were
10 imposed, and has credibly committed to not engage
11 in an activity described in subsection (a) in the fu-
12 ture; or

13 (4) the termination of the sanctions is in the
14 national security interests of the United States.

15 (f) REPORTING REQUIREMENT.—If the President
16 terminates sanctions pursuant to subsection (d), the Presi-
17 dent shall report to the appropriate congressional commit-
18 tees a written justification for such termination within 15
19 days.

20 (g) IMPLEMENTATION OF REGULATORY AUTHOR-
21 ITY.—The President may exercise all authorities provided
22 under sections 203 and 205 of the International Emer-
23 gency Economic Powers Act (50 U.S.C. 1702 and 1704)
24 to carry out this section.

25 (h) DEFINITIONS.—In this section:

1 (1) FOREIGN PERSON.—The term “foreign per-
2 son” means—

3 (A) any citizen or national of a foreign
4 country (including any such individual who is
5 also a citizen or national of the United States);
6 or

7 (B) any entity not organized solely under
8 the laws of the United States or existing solely
9 in the United States.

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

12 (A) an individual who is a United States
13 citizen or an alien lawfully admitted for perma-
14 nent residence to the United States;

15 (B) an entity organized under the laws of
16 the United States or any jurisdiction within the
17 United States, including a foreign branch of
18 such an entity; or

19 (C) any person in the United States.

20 **SEC. 7. DEFINITIONS.**

21 In this Act:

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

1 (A) the Committee on Foreign Relations,
2 the Committee on Appropriations, the Com-
3 mittee on Banking, Housing, and Urban Af-
4 fairs, the Committee on the Judiciary, the Com-
5 mittee on Armed Services, and the Select Com-
6 mittee on Intelligence of the United States Sen-
7 ate; and

8 (B) the Committee on Foreign Affairs, the
9 Committee on Appropriations, the Committee
10 on Financial Services, the Committee on the
11 Judiciary, the Committee on Armed Services,
12 and the Permanent Select Committee on Intel-
13 ligence of the House of Representatives.

14 (2) UNITED STATES NATIONAL.—The term
15 “United States national” means—

16 (A) a United States national as defined in
17 section 101(a)(22) or section 308 of the Immi-
18 gration and Nationality Act (8 U.S.C.
19 1101(a)(22), 8 U.S.C. 1408); and

20 (B) a lawful permanent resident alien with
21 significant ties to the United States.

22 **SEC. 8. RULE OF CONSTRUCTION.**

23 Nothing in this Act shall be construed to authorize
24 a private right of action.