

# *Countering Wrongful Detention Act of 2024*

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**Problem: The U.S. government must deter states that wrongfully detain Americans.**

- Over 70 Americans have returned home after being unjustly held abroad in recent years. However, the job is not yet done. The U.S. government must institutionalize deterrence against this practice and strengthen existing processes for recovering Americans wrongfully detained.

**Solution: *The Countering Wrongful Detention Act of 2024***

- This bill provides the U.S. government with effective tools, refined processes, and additional resources to better counter wrongful detention. Title One creates tools to deter and prevent this practice. Title Two refines processes of the *Robert Levinson Hostage Accountability Act* and provides additional resources to wrongful detainees.

**Summary:**

**TITLE ONE – Deterring and Preventing Wrongful Detention**

- **Creates the *State Sponsor of Unlawful or Wrongful Detention* designation**, through which the Secretary of State can impose a range of penalties on states that wrongfully detain Americans.
- **Requires an administration strategy on how to deter and counter wrongful detention.**
- **Authorizes \$2 million for the Departments of State and Treasury to carry out sanctions** in response to wrongful detention.
- **Authorizes \$2 million to improve the distribution of travel advisers** to Americans considering travel to high-risk countries.
- **Requires airlines operating in the U.S. to disclose travel advisory information to consumers.**
- **Includes the Privacy Act Waiver form in the U.S. Passport application process** so that Americans traveling internationally can disclose certain information to the U.S. government in the case of an arbitrary arrest, detention or sentence by a foreign government.

**TITLE TWO – Strengthening Processes and Services for Hostages and Wrongful Detainees**

- **Establishes timelines for the Secretary of State and relevant Department of State offices to make timely wrongful detention determinations and report on findings of certain cases.**
- **Requires the President to issue a Declaration of Invalidity** declaring a wrongful detention as invalid for the purpose of completing documentation that warrants a background investigation or review of prior offenses.
- **Establishes an Advisory Council on Hostage Taking and Wrongful Detention** to advise on federal policy making.

**TITLE I—DETECTING AND PREVENTING WRONGFUL DETENTION**

**Sec.101. Designation of a foreign country as a State Sponsor of Unlawful or Wrongful Detention.**

- Summary: Provides the Secretary of State with the authority to designate a country as a State Sponsor of Unlawful or Wrongful Detention (SSWD). The designation includes a range of penalties and specific criteria for its removal in order to promote behavior change.
- Background: The SSWD seeks to amplify awareness surrounding and consequences for states that wrongfully detain Americans. When imposed, the State Department would make public on its website that the foreign country is designated as an SSWD. Further, the State Department must consider issuing additional measures in response to a designation, including sanctions; visa restrictions; asset seizure or forfeiture (if permissible under existing U.S. code, including the International Emergency Economic Powers Act); geographic travel restrictions; and potential termination of foreign assistance. To remove the designation, a state would need to meet certain criteria, including to release all U.S. nationals wrongfully detained or positively contribute to the release of U.S. nationals taken hostage within their territory; demonstrate a fundamental change in policies with respect to wrongful detention and hostage taking; and/or provide assurances that it will not support acts of wrongful detention in the future.

**Sec.102. Options and strategies for reducing the likelihood of United States nationals wrongfully detained.**

- Summary: Requires a strategy on how to deter and counter wrongful detention.
- Background: Wrongful detention and hostage taking are included in the Biden-Harris administration's 2022 National Security Strategy as foreign policy concerns and priorities. Yet, no public strategy or report has ever been released by the administration. Requiring such a strategy would complement the bipartisan actions taken on this issue and would serve as a resource for the general public, and particularly the U.S. private sector, about the risks, patterns, and trends of hostage diplomacy to promote secure travel for U.S. nationals.

**Sec.103. Additional funding for sanctions implementation.**

- Summary: Authorizes \$2,000,000 to the Departments of State and Treasury to carry out sanctions authorities established under Section 6 of the Levinson Act.
- Background: The Departments of State and Treasury have imposed a total of 15 sanctions designations pursuant to the Levinson Act on Iranian and Russian officials and entities, as well as members of the JNIM terrorist group based in Mali. However, neither Department is currently able to dedicate adequate resources to identifying and targeting individuals or entities engaged in wrongful detention or hostage taking for the purpose of effectively

disrupting networks and promoting behavior change. Additional funding would increase consequences for states that engage in wrongful detention by improving U.S. sanctions enforcement.

#### **Sec.104.Enhance awareness of United States Travel Advisories.**

- Summary: Authorizes \$2,000,000 for the State Department’s Bureau of Consular Affairs to use for search engine targeted ad campaigns to increase awareness of travel advisory pages for countries ranked at a level 4 – do not travel – by the State Department.
- Background: Americans are not consistently warned about the dangers associated with travel to high-risk countries by commonly used search engines. Enhancing current travel advisories and the way they are advertised to U.S. nationals would provide potential travelers with the information they need to protect themselves against such dangers.

#### **Sec.105.Certification for International Travel Advisories.**

- Summary: Requires any air carrier or ticket agent that operates in the United States and sells international flights to a country with either a “D” indicator (for wrongful detention) or “K” indicator (for kidnapping or hostage taking) on the Department of State’s Travel Advisory System to require any consumer to certify that the consumer 1) has reviewed the State Department travel advisory country page and 2) understands the risks involved with traveling to such country with one or both of these indicators.
- Background: The State Department ranks international countries at various levels of safety from Level 1 – “Safe” to Level 4 – “Do not Travel” and uses indicators to describe specific risks associated with the ranking level. The “D” indicator is associated with the risk of wrongful detention, and the “K” indicator is associated with kidnappings or takings of hostages. Airlines are permitted to sell consumers tickets to travel to high-risk countries unless there is a geographic travel restriction imposed. At the point of ticket purchasing, however, consumers are not provided any travel-related information regarding their safety in these unsafe destinations. As such, this provision would provide consumers with relevant information at the point of purchasing a ticket so that travelers have more awareness of the State Department’s issuance of the D or K indicator for certain countries.

#### **Sec.106.Privacy Act waiver and passport renewals.**

- Summary: Includes a form in the passport application and renewal processes that, if completed, indicates the applicant’s consent for the disclosure of information otherwise known as the ‘Privacy Act of 1974’ in the event the applicant is detained by a foreign government. Declining to complete this form would not impact the issuance of a passport to a qualified applicant or diplomatic efforts to secure the release of a United States citizen from the custody of a foreign government or entity.
- Background: The United States Government is not authorized to provide support for individuals who are wrongfully detained overseas unless such individuals have signed a form

providing consent for the disclosure of personal information otherwise protected under the Privacy Act. Most Americans are unaware of this consent requirement, which may be extremely difficult to meet once an individual is being wrongfully detained by a foreign government. If all American passport holders are given an opportunity, before traveling overseas, to consent to the disclosure of the information, the United States Government can expeditiously assist such Americans in the event of a wrongful detention.

## **TITLE II—STRENGTHENING PROCESSES AND SERVICES FOR HOSTAGES AND WRONGFUL DETAINEES**

### **Sec.201. Timelines for wrongful detention determinations.**

- Summary: Amends the Levinson Act to require:
  - The State Department's Bureau of Consular Affairs and the Office of the Special Presidential Envoy for Hostage Affairs (SPEHA) to jointly submit a report of findings to Congress detailing which U.S. nationals detained overseas have been assessed not to be wrongfully detained; and
  - That the Secretary of State determine whether a U.S. national is wrongfully detained within a six-month time period upon the Secretary's receipt of a wrongful detention decision memo.
- Background: The Bureau of Consular Affairs and SPEHA review cases monthly to evaluate the totality of circumstances for every U.S. national who could potentially be wrongfully detained. Sharing a report of these results would provide more transparency for families and Congress about which cases will not proceed with a wrongful detention determination and include a justification. Additionally, the Secretary of State's decision-making process on wrongful detention determinations has ranged from 10 days to two years. During the determination process, families are left in a holding pattern until the Secretary's decision is made. This provision seeks to provide both families and the U.S. government with more predictability and a clearer timeline for decision making over a designated six-month period. The Secretary may waive the six-month determination requirement if they assess that the determination may jeopardize the safety or interests of the U.S. national held overseas or the national security interests of the United States.

### **Sec.202. Declarations of Invalidity.**

- Summary: Requires the President to issue a letter called the Declaration of Invalidity to a wrongful detainee or hostage upon their return to the United States.
- Background: Many former wrongful detainees have admitted to feeling a suspicion of guilt when reintegrating back into society, especially when processing a job or visa application that requires a background check or review of prior offenses, such as a conviction. This letter would officially declare a wrongful detention as invalid for the purpose of completing any documentation that warrants a background investigation or review of prior offenses, providing tangible evidence that their detention is not part of a criminal record. This letter would be issued to former wrongful detainees from 2021 onwards.

### **Sec.203. Advisory Council on Hostage Taking and Wrongful Detention.**

- Summary: Establishes a U.S. Advisory Council on Hostage Diplomacy made up of former wrongful detainees and hostages to advise on policy making.
- Former wrongful detainees and their family members offer some of the richest insight and perspective on the issue of hostage taking and wrongful detention. Similar to the Advisory Council on Human Trafficking, established by the Justice for Victims of Trafficking Act of 2015, this council would provide a platform for survivors of hostage taking or wrongful detention, including family members and selected experts, to advise and make policy recommendations to the U.S. government. The council's members would be appointed by the President for three-year terms and would be responsible for gathering information across agencies to release an annual report. Members of the Council would not be considered federal employees and would not receive compensation. However, they would be afforded reimbursement of travel expenses and per diem allowance.

### **Sec.204. Chairmanship of the Hostage Response Group.**

- Summary: Requires the Special Presidential Envoy for Hostage Affairs to chair the National Security Council's Hostage Response Group.
- Background: To ensure transparency and adequate information sharing between agencies, this provision would amend the Levinson Act's establishment of the Hostage Response Group (HRG) by requiring that the HRG be chaired by the SPEHA as opposed to a member of the National Security Council and convened on a regular basis to further the safe recovery of U.S. nationals held abroad.