

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT AND DIRECTING THE SECRETARY OF STATE TO TRANSMIT, RESPECTIVELY, CERTAIN DOCUMENTS TO THE HOUSE OF REPRESENTATIVES RELATING TO THE CONCLUSION OF THE DEPARTMENT OF STATE ON WHETHER MARC FOGEL IS WRONGFULLY DETAINED

DECEMBER 8, 2022.—Referred to the House Calendar and ordered to be printed

Mr. MEEKS, from the Committee on Foreign Affairs,
submitted the following

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 1456]

The Committee on Foreign Affairs, to whom was referred the resolution (H. Res. 1456) of inquiry requesting the President and directing the Secretary of State to transmit, respectively, certain documents to the House of Representatives relating to the conclusion of the Department of State on whether Marc Fogel is wrongfully detained, having considered the same, reports unfavorably thereon without amendment and recommends that the resolution not be agreed to.

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SUMMARY

H. Res. 1456 requests the President and directs the Secretary of State to transmit to the House of Representatives copies of all documents, memoranda, advisory legal opinions, notes from meetings, audio recordings (including telephone records), correspondence (including electronic mail records), and other communications, or any portion of any such communications, to the extent that any such items are within the possession of the President or the Secretary and refer to information relating to the review conducted by the Department of State of the statutory criteria for Marc Fogel to be designated as “wrongfully detained,” based on the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act.

BACKGROUND

The Committee on Foreign Affairs conducts oversight on the Department of State’s work to ensure the welfare and humane treatment of Americans detained overseas, including efforts to secure their release on humanitarian grounds. Since Marc Fogel’s detention by authorities in the Russian Federation in August 2021, the Committee and the House have held more than a dozen engagements for Members and staff to understand the conditions that he and other American citizens detained in Russia face and possible approaches to secure their return. In each instance, the Department of State provided information on specific cases as appropriate and pursuant to privacy act waivers.

The Committee welcomes more transparency from the Executive Branch regarding cases of American citizens detained overseas, including the process by which the State Department may assess that individuals are “wrongfully detained” under the criteria of the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act. Given the sensitive nature of these cases and the information policymakers rely on when assessing possible wrongful detentions, the Committee also recognizes the need to appropriately protect such information from hostile governments. Russian officials have at times hardened their stance as information becomes public about ongoing negotiations and will not hesitate to exploit debates in the U.S. Congress for their own benefit—and against the interests of the Americans they hold. Furthermore, other malign actors are seeking to scrutinize the necessarily sensitive deliberative process by which the State Department makes wrongful detention determinations and to capitalize on any disagreements around how best to bring detained Americans home.

This is why the recovery of American citizens detained overseas has long been a government-wide, bipartisan effort that has treated the safety and security of our citizens—and protecting any and all available means we have to get them back—as paramount. Unfortunately, while its co-sponsors have previously participated in bipartisan oversight on the Fogel case, this entirely partisan resolution of inquiry seeks to politicize an issue that Congress has long treated as sacred and above the partisan fray. Rather than engaging in serious oversight on this issue, either through further direct engagement with the Executive Branch or through the legislative process, this ROI instead is aimed at making a cheap political point—and in doing so, threatens to undermine prospects for Marc

Fogel's potential release and the U.S. government's broader advocacy to bring detained Americans home. While the Committee will remain vigilant on Mr. Fogel's case and will press the Administration to do all in its power to secure his return, H. Res. 1456 is a dangerous precedent and, practically speaking, the wrong approach for doing so.

HEARINGS

The Committee on Foreign Affairs held no hearings on H. Res. 1456.

COMMITTEE CONSIDERATION AND VOTE

The Committee considered H. Res. 1456 on December 6, 2022 and agreed to a motion to report the resolution adversely to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with Clause 3 (c)(1) of rule XIII of the rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under Clause 2(b)(1) of rule X of the House of Representatives, are incorporated in the descriptive portions of this report, particularly in the "Background" section.

NEW BUDGET AUTHORITY, TAX EXPENDITURES, AND FEDERAL MANDATES

Clause 3(c)(2) of House rule XIII and the Unfunded Mandates Reform Act (Public Law 104-4) are inapplicable because H. Res. 1456 does not provide new budget authority or increased tax expenditures.

PERFORMANCE GOALS AND OBJECTIVES

The rule requiring a statement of performance goals and objectives is inapplicable to this resolution.

CONGRESSIONAL ACCOUNTABILITY ACT

H. Res. 1456 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

NEW ADVISORY COMMITTEES

H. Res. 1456 does not establish or authorize any new advisory committees.

EARMARK IDENTIFICATION

H. Res. 1456 contains no congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of House Rule XXI.

SECTION-BY-SECTION ANALYSIS

This resolution, if adopted, would request the President and direct the Secretary of State to transmit to the House of Representatives copies of all documents, memoranda, advisory legal opinions,

notes from meetings, audio recordings (including telephone records), correspondence (including electronic mail records), and other communications, or any portion of any such communications, to the extent that any such items are within the possession of the President or the Secretary and refer to information relating to the review conducted by the Department of State of the statutory criteria for Marc Fogel to be designated as “wrongfully detained,” based on the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act.

DISSENTING VIEWS

This resolution of inquiry requires the Secretary of State to turn over records concerning Marc Fogel, a 60-year-old American teacher, who currently is detained in the IK-2 labor camp north of Moscow.

It is imperative that Congress receives these records, even if it is in a classified setting. Congress wrote the Robert Levinson Hostage Recovery and Hostage-taking Accountability Act (22 U.S.C. 1741 *et seq.*) for the express purpose of providing assistance to U.S. citizens taken hostage by foreign governments. We laid out explicit criteria for the State Department to use when deciding whether Americans are being unlawfully or wrongfully detained.

We owe Marc Fogel, and his family, a real determination. Not tomorrow or next week. Right now.

Marc Fogel was arrested by Russian authorities in August of 2021. This is not a new case. Every case is different and I understand that there is no statutorily mandated timeline. But almost a year and a half has gone by. That's much too long.

Republicans and Democrats alike are outraged by the Putin regime's use of Paul Whelan and Brittney Griner as political pawns. The Department made a relatively swift determination regarding their wrongful detentions. Marc and his family deserve answers.

I acknowledge that the State Department has not ignored this case—the Bureau of Consular Affairs, the Special Presidential Envoy for Hostage Affairs, and the Bureau of European and Eurasian Affairs are having regular deliberations. But this resolution would allow Congress to better understand those deliberations in real time, and gain access to the information that is being considered when weighing the Levinson Act factors.

MICHAEL T. McCAUL.

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