

Lawsuit Alleges U.S. State Department Has Neglected American Wrongfully Detained in Russia for Eight Years, Violating Laws That Require Action

Last month, Evan Gershkovich and two other Americans wrongfully detained in Russia were brought home, but there are still others left behind. A complaint filed in May by one of these forgotten Americans, Jimmy Wilgus, alleged that State Department officials are ignoring laws that require them to make a prompt determination, whenever an American is detained by a foreign government, as to whether that person is wrongfully detained. Jimmy's complaint asked only that the Court order the State Department to follow these laws.

In responding to the complaint, the Government did not deny Jimmy's allegations. It admitted that the State Department has not in fact evaluated whether Jimmy is wrongfully detained, and—rather than make an excuse for its not having done so—the Government argued that the law does not require the State Department to give this attention to every American. But, as Jimmy's lawyers noted in their response, the Executive Branch is required to follow duly enacted laws passed by Congress, and those laws have been perfectly clear on this issue: every American detained abroad must have his or her case reviewed for evidence of wrongful detention.

At the heart of this lawsuit is the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act (“Levinson Act”), which Congress passed after American Bob Levinson died in Iranian custody in 2020.¹ This law requires the State Department to review the case of every American detained abroad “as expeditiously as possible” to make a determination as to whether “there is credible information that they are being detained unlawfully or wrongfully,” and then, if they are wrongfully detained, to work to bring them home and provide detailed reports to Congress about their efforts. A similar law known as the Hostage Act has been in place since 1868, but the State Department has ignored these laws in Jimmy's case for almost eight years. The Court's decision in this case will be the first to interpret the meaning and import of the Levinson Act, and one of the first to address the Hostage Act as well, at a time when wrongful detention of Americans has becoming an increasingly prevalent tool of foreign governments.

Jimmy Wilgus is an American musician who has been wrongfully detained in Russia since November 2016. He was sentenced, after a ridiculous show-trial, to twelve-and-a-half years of hard labor and has survived eight years in torturous conditions at the same penal colony where Paul Whelan and Brittany Griner were held. But he is in extremely poor health, and his family worries that Jimmy, like Bob Levinson, will not make it out of Russia alive without urgent action by the State Department.

¹ See Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act, Press Statement, Senate Foreign Relations Committee, *Senate Approves Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act* (Jun. 16, 2020), <https://www.foreign.senate.gov/press/dem/release/senate-approves-robert-levinson-hostage-recovery-and-hostage-taking-accountability-act> (quoting Senators who sponsored the Levinson Act and describing its purpose). The full text of the Levinson Act, as enacted on December 27, 2020, can be found at <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title22-section1741>.

The facts of Jimmy's case are detailed in his complaint. The lawsuit is *James Vincent Wilgus v. United States Department of State*, et al., Case No. 24-cv-1384 in the U.S. District Court for the District of Columbia. Jimmy's lawyers, Lawrence S. Lustberg and Ruth O'Herron of Gibbons, P.C. in Newark, New Jersey, are confident that the Government's motion to dismiss will be denied and Jimmy will have his day in court, but they are disappointed that the Government has not resolved this case which only asks for the State Department to review the circumstances of Jimmy's detention and make a determination as to whether he is wrongfully detained.