

# United States Senate

WASHINGTON, DC 20510

August 23, 2022

The Honorable Antony Blinken  
Secretary of State  
U.S. Department of State  
2201 C Street NW  
Washington, D.C. 20520

Dear Secretary Blinken:

We write with grave concern for the safety of Mr. Marc Fogel, a U.S. citizen currently imprisoned in Russia, and urge you to designate him as “wrongfully detained” under the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act. Mr. Fogel's recent 14-year sentence to a maximum-security penal colony for possession of less than an ounce of medical marijuana can only be understood as a political ploy by Vladimir Putin’s authoritarian regime. Mr. Fogel, a 61-year-old with severe medical conditions, has already been detained for a year. The United States cannot stand by as Mr. Fogel wastes away in a Russian hard labor camp.

Marc Fogel has served as an international educator for 35 years in Malaysia, Mexico, Colombia, Oman, Venezuela and, for the last nine years, in Russia. Students and parents from all these countries, including former U.S. Ambassador to Russia Michael McFaul, have celebrated Mr. Fogel's infectious teaching style. In August 2021, Mr. Fogel was flying back to Russia to teach at the Anglo-American School in Moscow, which educates the children of American and other international diplomats, for one last year before retirement.

Mr. Fogel has lived with chronic pain for decades. He has undergone three back surgeries, a spinal fusion, a hip replacement and two knee surgeries that have failed to remedy the pain and left him with a permanent limp. In 2021, a doctor recommended medical marijuana as an opioid alternative to treat his chronic pain.

Though Mr. Fogel did violate Russian law by bringing 17 grams of marijuana to the country, his sentence is grossly disproportionate to similar cases. As Russian lawyers have pointed out, the most common sentence in similar cases is five years of probation. Drug traffickers who have committed much worse offenses have received shorter sentences. For example, in 2019 Alexander Grigoriev received an eight-year sentence from the same Khimkinsky court for contraband and possession of 1,500 grams of various narcotics. Sentences similar to Mr. Fogel’s are typically reserved for serious drug traffickers like Guido Guillermo Walters, who received 15 years in 2018 for the contraband and sale of more than 105,000 grams of cocaine.

These extreme sentences are also levied by Russian courts in cases of politically motivated prosecutions, such as that of Israeli-American backpacker, Naama Issachar; Women's National Basketball Association player, Brittney Griner; and Marc Fogel. In the case of Ms. Issachar, who was sentenced to seven-and-a-half years for possession of nine grams of marijuana, the Israeli government negotiated her release. The State Department is currently attempting to negotiate the release of Ms. Griner, who was recently sentenced to nine-and-a-half years in prison for carrying vape cartridges and less than a gram of cannabis into Russia. Marc Fogel's case warrants the same degree of political attention and diplomatic intervention.

To avoid turning the case into a "political football" and in the hopes that the Moscow court would give Mr. Fogel a reasonable sentence, Mr. Fogel's family decided to not seek media attention during his pretrial detention. Unfortunately, this low-profile strategy has failed. Mr. Fogel has spent a year detained without any oversight of his medical treatments and, on June 16, 2022, he was sentenced to 14 years in a Russian penal colony.

While we understand the State Department has previously requested Mr. Fogel's release on humanitarian grounds due to his poor medical condition, we strongly urge that the Administration to escalate Mr. Fogel's case by designating him as "wrongfully detained." Based on the statute governing such cases, the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act,<sup>1</sup> Marc Fogel meets six of the 11 established criteria to be designated "wrongfully detained."

- (2) Mr. Fogel is being detained substantially because he is a U.S. citizen.
- (3) Mr. Fogel's detainment is being used substantially to influence U.S. policy, specifically requiring the concession of a prisoner swap.
- (8) Russia is a country where the judicial system is not independent, is susceptible to corruption and is incapable of rendering just verdicts.
- (9) Mr. Fogel is sentenced to be detained in a maximum-security penal colony, well-known to have inhumane conditions.<sup>2 3</sup>
- (10) Due process of law has been sufficiently impaired so as to render Mr. Fogel's detention arbitrary.
- (11) Based on Mr. Fogel's citizenship, age, health and sentence length, diplomatic engagement will be necessary to secure his release.

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<sup>1</sup> <https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter23/subchapter2&edition=prelim>

<sup>2</sup> <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/russia/>

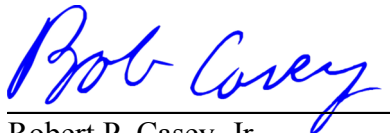
<sup>3</sup> <https://www.washingtonpost.com/world/2022/08/05/brittney-griner-russia-penal-colonies-prison/>

While Ms. Griner was only recently sentenced, the Khimkinsky court sentenced Mr. Fogel more than 60 days ago, and there are reports that the court could adjudicate his appeal any day now. After that appeal, the Russian government will transfer Mr. Fogel from his current detention center to a penal colony, notorious for harsh labor requirements and treatment of prisoners. According to a State Department 2021 Country Report on Human Rights Practices in Russia, “conditions in prisons and detention centers... were often harsh and life threatening. Overcrowding, abuse by guards and inmates, limited access to health care, food shortages, and inadequate sanitation were common.”<sup>4</sup> Mr. Fogel's medical conditions will very likely worsen in such circumstances. According to Mr. Fogel's family, “he will not survive this [sentence].”<sup>5</sup>

We strongly urge the State Department to shift its strategy given the realities of Marc Fogel’s situation and act immediately to designate him as “wrongfully detained.” Such a designation will provide the warranted level of support to Marc Fogel's family after a year of communication with Mr. Fogel only via mail and, most importantly, will require the U.S. Special Presidential Envoy for Hostage Affairs to secure Mr. Fogel's freedom. We cannot allow Mr. Fogel to be used as a political pawn by Vladimir Putin.

Thank you for your swift consideration of our request. We look forward to your response.

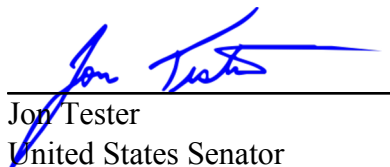
Sincerely,



Robert P. Casey, Jr.  
United States Senator



Marco Rubio  
U.S. Senator



Jon Tester  
United States Senator



Steve Daines  
United States Senator

<sup>4</sup> <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/russia/>

<sup>5</sup> <https://www.pbs.org/newshour/show/sister-of-american-detained-in-russia-discusses-his-exclusion-from-proposed-prisoner-swap>



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John Hickenlooper  
United States Senator



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Pat Toomey  
United States Senator



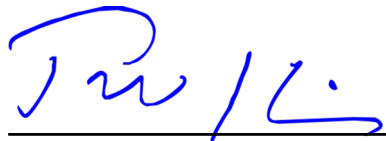
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Joe Manchin III  
United States Senator



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Shelley Moore Capito  
United States Senator



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Tim Kaine  
United States Senator