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To require the Secretary of State to identify individuals responsible for the detention, abuse, or death of Sergei Magnitsky or for the conspiracy to defraud the Russian Federation of taxes on corporate profits through fraudulent transactions and lawsuits against Hermitage, and to impose a visa ban and certain financial measures with respect to such individuals, until the Russian Federation has thoroughly investigated the death of Sergei Magnitsky and brought the Russian criminal justice system into compliance with international legal standards, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. CARDIN (for himself and Mr. McCAIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for Sergei
5 Magnitsky Act of 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The United States supports the people of
9 the Russian Federation in their efforts to realize
10 their full economic potential and to advance democ-
11 racy, human rights, and the rule of law.

12 (2) The Russian Federation—

13 (A) is a member of the United Nations,
14 the Organization for Security and Cooperation
15 in Europe, and the International Monetary
16 Fund;

17 (B) has ratified the Convention against
18 Torture and Other Cruel, Inhuman or Degrad-
19 ing Treatment or Punishment, the International
20 Covenant on Civil and Political Rights, the
21 International Covenant on Economic, Social
22 and Cultural Rights, and the United Nations
23 Convention against Corruption; and

1 (C) is bound by the legal obligations set
2 forth in the European Convention on Human
3 Rights.

4 (3) States voluntarily commit themselves to re-
5 spect obligations and responsibilities through the
6 adoption of international agreements and treaties,
7 which must be observed in good faith in order to
8 maintain the stability of the international order.
9 Human rights are an integral part of international
10 law, and lie at the foundation of the international
11 order. The protection of human rights, therefore,
12 particularly in the case of a country that has in-
13 curred obligations to protect human rights under an
14 international agreement to which it is a party, is not
15 left exclusively to the internal affairs of that coun-
16 try.

17 (4) Good governance and anti-corruption meas-
18 ures are instrumental in the protection of human
19 rights and in achieving sustainable economic growth,
20 which benefits both the people of the Russian Fed-
21 eration and the international community through the
22 creation of open and transparent markets.

23 (5) Systemic corruption erodes trust and con-
24 fidence in democratic institutions, the rule of law,
25 and human rights protections. This is the case when

1 public officials are allowed to abuse their authority
2 with impunity for political or financial gains in collu-
3 sion with private entities.

4 (6) The President of the Russian Federation,
5 Dmitry Medvedev, has addressed corruption in many
6 public speeches, including stating in his 2009 ad-
7 dress to Russia’s Federal Assembly, “[Z]ero toler-
8 ance of corruption should become part of our na-
9 tional culture. . . . In Russia we often say that there
10 are few cases in which corrupt officials are pros-
11 ecuted. . . . [S]imply incarcerating a few will not re-
12 solve the problem. But incarcerated they must be.”.
13 President Medvedev went on to say, “We shall over-
14 come underdevelopment and corruption because we
15 are a strong and free people, and deserve a normal
16 life in a modern, prosperous democratic society.”.
17 Furthermore, President Medvedev has acknowledged
18 Russia’s disregard for the rule of law and used the
19 term “legal nihilism” to describe a criminal justice
20 system that continues to imprison innocent people.

21 (7) The systematic abuse of Sergei Magnitsky,
22 including his repressive arrest and torture in custody
23 by the same officers of the Ministry of the Interior
24 of the Russian Federation that Mr. Magnitsky had
25 implicated in the embezzlement of funds from the

1 Russian Treasury and the misappropriation of 3
2 companies from his client, Hermitage, reflects how
3 deeply the protection of human rights is affected by
4 corruption.

5 (8) The denial by all state bodies of the Rus-
6 sian Federation of any justice or legal remedies to
7 Mr. Magnitsky during the nearly 12 full months he
8 was kept without trial in detention, and the impu-
9 nity of state officials he testified against for their in-
10 volvement in corruption and the carrying out of his
11 repressive persecution since his death, shows the po-
12 litically motivated nature of the persecution of Mr.
13 Magnitsky.

14 (9) Mr. Magnitsky died on November 16, 2009,
15 at the age of 37, in Matrosskaya Tishina Prison in
16 Moscow, Russia, and is survived by a mother, a wife,
17 and 2 sons.

18 (10) There is extensive evidence that public of-
19 ficials from the Ministry of the Interior of the Rus-
20 sian Federation, the Russian federal tax authorities,
21 the Prosecutor General's Office of the Russian Fed-
22 eration, and the Russian Federal Security Service,
23 as well as regional courts and the prison system of
24 the Russian Federation, have abused their powers
25 and positions to commit serious human rights viola-

1 tions, embezzled funds from the Russian Treasury,
2 and retaliated against whistleblowers.

3 (11) While he was in detention, Sergei
4 Magnitsky called himself a hostage of officials who
5 misappropriated companies from his client, the Her-
6 mitage Fund, and embezzled funds from the Russian
7 Treasury. He said that his criminal prosecution, ar-
8 rest, and detention were organized as a retribution
9 by police officers who had the full knowledge of his
10 innocence.

11 (12) The Public Oversight Commission of the
12 City of Moscow for the Control of the Observance of
13 Human Rights in Places of Forced Detention, an or-
14 ganization empowered by Russian law to independ-
15 ently monitor prison conditions, concluded, “A man
16 who is kept in custody and is being detained is not
17 capable of using all the necessary means to protect
18 either his life or his health. This is a responsibility
19 of a state which holds him captive. Therefore, the
20 case of Sergei Magnitsky can be described as a
21 breach of the right to life. The members of the civic
22 supervisory commission have reached the conclusion
23 that Magnitsky had been experiencing both psycho-
24 logical and physical pressure in custody, and the
25 conditions in some of the wards of Butyrka can be

1 justifiably called torturous. The people responsible
2 for this must be punished.”.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) ADMITTED; ALIEN; SPOUSE.—The terms
6 “admitted”, “alien”, and “spouse” have the mean-
7 ings given those terms in section 101(a) of the Im-
8 migration and Nationality Act (8 U.S.C. 1101(a)).

9 (2) APPROPRIATE CONGRESSIONAL COMMIT-
10 TEES.—The term “appropriate congressional com-
11 mittees” means—

12 (A) the Committee on Foreign Affairs and
13 the Committee on Financial Services of the
14 House of Representatives; and

15 (B) the Committee on Foreign Relations
16 and the Committee on Banking, Housing, and
17 Urban Affairs of the Senate.

18 (3) FINANCIAL INSTITUTION; DOMESTIC FINAN-
19 CIAL AGENCY; DOMESTIC FINANCIAL INSTITUTION.—
20 The terms “financial institution”, “domestic finan-
21 cial agency”, and “domestic financial institution”
22 have the meanings given those terms in section 5312
23 of title 31, United States Code.

24 (4) PARENT.—The term “parent” has the
25 meaning given that term in section 101(b) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1101(b)).

3 (5) UNITED STATES PERSON.—The term
4 “United States person” means—

5 (A) a United States citizen or an alien law-
6 fully admitted for permanent residence to the
7 United States; or

8 (B) an entity organized under the laws of
9 the United States or of any jurisdiction within
10 the United States, including a foreign branch of
11 such an entity.

12 **SEC. 4. IDENTIFICATION OF INDIVIDUALS RESPONSIBLE**
13 **FOR THE DETENTION, ABUSE, AND DEATH OF**
14 **SERGEI MAGNITSKY AND FOR THE CON-**
15 **SPIRACY TO DEFRAUD THE RUSSIAN FED-**
16 **ERATION OF TAXES ON CERTAIN CORPORATE**
17 **PROFITS.**

18 (a) IN GENERAL.—Not later than 180 days after the
19 date of the enactment of this Act, the Secretary of State,
20 in consultation with the Secretary of the Treasury, shall
21 publish a list of each individual the Secretary has reason
22 to believe—

23 (1) is responsible for the detention, abuse, or
24 death of Sergei Magnitsky;

1 (2) conspired to defraud the Russian Federa-
2 tion of taxes on corporate profits through fraudulent
3 transactions and lawsuits against the foreign invest-
4 ment company known as Hermitage and to mis-
5 appropriate entities owned or controlled by Hermit-
6 age; or

7 (3) participated in efforts to conceal the deten-
8 tion, abuse, or death of Sergei Magnitsky described
9 in paragraph (1) or the existence of the conspiracy
10 described in paragraph (2).

11 (b) UPDATES.—The Secretary of State shall update
12 the list required by subsection (a) as new information be-
13 comes available.

14 (c) NOTICE.—The Secretary of State shall, to the
15 maximum extent practicable, provide notice and an oppor-
16 tunity for a hearing to an individual before the individual
17 is placed on the list required by subsection (a).

18 **SEC. 5. INADMISSIBILITY OF CERTAIN INDIVIDUALS.**

19 (a) INELIGIBILITY FOR VISAS.—An alien is ineligible
20 to receive a visa to enter the United States and ineligible
21 to be admitted to the United States if the alien—

22 (1) is an individual on the list required by sec-
23 tion 4(a); or

24 (2) is the spouse, son, daughter, or parent of an
25 individual on that list.

1 (b) CURRENT VISAS REVOKED.—The Secretary of
2 State shall revoke, in accordance with section 221(i) of
3 the Immigration and Nationality Act (8 U.S.C. 1201(i)),
4 the visa or other documentation of any alien who would
5 be ineligible to receive such a visa or documentation under
6 subsection (a).

7 (c) WAIVER FOR NATIONAL INTERESTS.—The Sec-
8 retary of State may waive the application of subsection
9 (a) or (b) in the case of an alien if the Secretary deter-
10 mines that such a waiver is in the national interests of
11 the United States. Upon granting such a waiver, the Sec-
12 retary shall provide to the appropriate congressional com-
13 mittees notice of, and a justification for, the waiver.

14 **SEC. 6. FINANCIAL MEASURES.**

15 (a) SPECIAL MEASURES.—The Secretary of the
16 Treasury shall instruct domestic financial institutions and
17 domestic financial agencies to take 1 or more special
18 measures described in section 5318A(b) of title 31, United
19 States Code, if the Secretary of the Treasury makes a de-
20 termination under section 5318A of such title with respect
21 to money laundering relating to the conspiracy described
22 in section 4(a)(2).

23 (b) FREEZING OF ASSETS.—The Secretary of the
24 Treasury shall freeze and prohibit all transactions in all
25 property and interests in property of an individual that

1 are in the United States, that come within the United
2 States, or that are or come within the possession or con-
3 trol of a United States person if the individual—

4 (1) is on the list required by section 4(a); or

5 (2) acts as an agent of or on behalf of an indi-
6 vidual on the list in a matter relating to an act de-
7 scribed in paragraph (1), (2), or (3) of section 4(a).

8 (c) WAIVER FOR NATIONAL INTERESTS.—The Sec-
9 retary of the Treasury may waive the application of sub-
10 section (a) or (b) if the Secretary determines that such
11 a waiver is in the national interests of the United States.
12 Upon granting such a waiver, the Secretary shall provide
13 to the appropriate congressional committees notice of, and
14 a justification for, the waiver.

15 (d) REGULATORY AUTHORITY.—The Secretary of the
16 Treasury shall issue such regulations, licenses, and orders
17 as are necessary to carry out this section.

18 (e) ENFORCEMENT.—A person that violates, at-
19 tempts to violate, conspires to violate, or causes a violation
20 of this section or any regulation, license, or order issued
21 to carry out this section shall be subject to the penalties
22 set forth in subsections (b) and (c) of section 206 of the
23 International Emergency Economic Powers Act (50
24 U.S.C. 1705) to the same extent as a person that commits
25 an unlawful act described in subsection (a) of such section.

1 **SEC. 7. REPORT TO CONGRESS.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 date of the enactment of this Act, the Secretary of State
4 and the Secretary of the Treasury shall submit to the ap-
5 propriate congressional committees a report on the actions
6 taken to carry out this Act.

7 (b) UPDATES.—The Secretary of State and the Sec-
8 retary of the Treasury shall submit an updated version
9 of the report required by subsection (a) as new informa-
10 tion becomes available.

11 **SEC. 8. EFFECTIVE DATE.**

12 This Act shall take effect on the date that is 90 days
13 after the date of the enactment of this Act.

14 **SEC. 9. TERMINATION.**

15 The provisions of this Act shall cease to be effective
16 on the date on which the Secretary of State and the Sec-
17 retary of the Treasury certify to the appropriate congres-
18 sional committees that—

19 (1) the Government of the Russian Federation
20 has conducted a thorough and impartial investiga-
21 tion into—

22 (A) the detention, abuse, and resulting
23 death in custody of Sergei Magnitsky; and

24 (B) the conspiracy (described in section
25 4(a)(2)) to defraud the Russian Federation of
26 taxes on corporate profits and to misappro-

1 private entities owned or controlled by Hermit-
2 age;

3 (2) the investigation described in paragraph (1)
4 was properly conducted, transparent, and free of po-
5 litical influence;

6 (3) the individuals responsible for the detention,
7 abuse, or resulting death of Sergei Magnitsky or for
8 the conspiracy referred to in paragraph (1)(B) have
9 been brought to justice according to the laws of the
10 Russian Federation and pursuant to the inter-
11 national legal obligations of the Russian Federation;
12 and

13 (4) the Government of the Russian Federa-
14 tion—

15 (A) has taken significant steps to bring the
16 criminal justice system and penal system of the
17 Russian Federation into compliance with appli-
18 cable international legal standards;

19 (B) has substantially strengthened statu-
20 tory protections for individuals who disclose evi-
21 dence of illegal government activities; and

22 (C) has recognized the contribution of
23 Sergei Magnitsky to the fight against corrup-
24 tion and for the rule of law.

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