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H. R. 6365

To make certain individuals ineligible for visas or admission to the United States and to revoke visas and other entry documents previously issued to such individuals, and to impose certain financial measures on such individuals, until the Russian Federation has thoroughly investigated the death of Sergei Leonidovich Magnitsky and brought the Russian criminal justice system into compliance with international legal standards, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2010

Mr. MCGOVERN (for himself, Mr. ISSA, and Mr. HASTINGS of Florida) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To make certain individuals ineligible for visas or admission to the United States and to revoke visas and other entry documents previously issued to such individuals, and to impose certain financial measures on such individuals, until the Russian Federation has thoroughly investigated the death of Sergei Leonidovich Magnitsky and brought the Russian criminal justice system into compliance with international legal standards, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Justice for Sergei Magnitsky Act of 2010''.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The United States supports the people of the Russian Federation in their efforts to realize their full economic potential and to advance democracy, human rights, and the rule of law.

(2) The Russian Federation is a member of the United Nations, the Organization for Security and Cooperation in Europe, and the International Monetary Fund, has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the United Nations Convention against Corruption, and is bound by the legal obligations set forth in the European Convention of Human Rights.

(3) States voluntarily commit themselves to respect obligations and responsibilities through the adoption of international agreements and treaties,

which must be observed in good faith in order to maintain the stability of the international order. Human rights are an integral part of international law, and lie at the foundation of the international order. The protection of human rights, therefore, particularly in the case of a country that has incurred obligations to protect human rights under an international agreement to which it is a party, is not left exclusively to the internal affairs of that country.

(4) Good governance and anti-corruption measures are instrumental in the protection of human rights and in achieving sustainable economic growth, which benefits both the people of the Russian Federation and the international community through the creation of open and transparent markets.

(5) Systemic corruption erodes trust and confidence in democratic institutions, the rule of law, and human rights protections; this is the case when public officials are allowed to abuse their authority with impunity for political or financial gains in collusion with private entities.

(6) The President of the Russian Federation, Dmitry Medvedev, has addressed corruption in many public speeches, including stating in his 2009 ad-

dress to Russia's Federal Assembly, ''[Z]ero tolerance of corruption should become part of our national culture . . . In Russia we often say that there are few cases in which corrupt officials are prosecuted . . . [S]imply incarcerating a few will not resolve the problem. But incarcerated they must be.''. President Medvedev went on to say, ''We shall overcome underdevelopment and corruption because we are a strong and free people, and deserve a normal life in a modern, prosperous democratic society.''. Furthermore, President Medvedev has acknowledged Russia's disregard for the rule of law and used the term ''legal nihilism'' to describe a criminal justice system that continues to imprison innocent people.

(7) The systematic abuse of Sergei Magnitsky, including his arbitrary detention and mistreatment in custody, by the same officers of the Russian Interior Ministry that Mr. Magnitsky had implicated in the embezzlement of funds from the Russian Treasury, reflects how deeply the protection of human rights is affected by corruption. Sergei Leonidovich Magnitsky died on November 16, 2009, at the age of 37, in Matrosskaya Tishina Prison in Moscow, Russia, and is survived by a wife and two sons.

(8) There is extensive evidence that public officials from the Russian Interior Ministry, the Russian Federal Tax Authorities, the Russian General Prosecutor's Office, the Russian Federal Security Service, as well as Russian regional courts and the prison system have abused their powers and positions to commit serious human rights violations, embezzled funds from the Russian Treasury, and retaliated against whistleblowers.

(9) The Public Oversight Commission for the Observance of Human Rights in Penitentiary Centers of the city of Moscow, an organization empowered by Russian law to independently monitor prison conditions, concluded that ''A man who is kept in custody and is being detained is not capable of using all the necessary means to protect either his life or his health. This is a responsibility of a state which holds him captive. Therefore, the case of Sergei Magnitsky can be described as a breach of the right to life. The members of the civic supervisory commission have reached the conclusion that Magnitsky had been experiencing both psychological and physical pressure in custody, and the conditions in some of the wards of Butyrka can be justifiably called tor-

turous. The people responsible for this must be punished.''.

SEC. 3. VISA LIMITATIONS ON CERTAIN PERSONS FROM THE RUSSIAN FEDERATION.

(a) INELIGIBLE FOR VISAS.—

(1) IN GENERAL.—Except as provided in paragraph (2), an alien is ineligible to receive a visa to enter the United States and ineligible to be admitted to the United States who the Secretary of State determines to be—

(A) an individual who engaged in any act that was instrumental in causing the death of Sergei Leonidovich Magnitsky;

(B) an individual who conspired to defraud the Russian Federation of taxes on corporate profits because of fraudulent transactions and lawsuits against the foreign investment company known as Hermitage; or

(C) the spouse, son, daughter, or parent of an alien described in subparagraph (A) or (B).

(2) PERIOD IN WHICH DETERMINATIONS TO BE MADE.—The Secretary of State shall make the determinations described in paragraph (1) not later than the expiration of the 180-day period beginning on the date of the enactment of this Act.

(3) WAIVER FOR NATIONAL INTERESTS.—The Secretary of State may waive the application of paragraph (1) in the case of an alien if the Secretary determines that such a waiver is in the national interests of the United States. Upon granting such a waiver, the Secretary of State shall provide to the Congress notice of, and justification for, the waiver.

(4) TERMINATION.—The provisions of this subsection shall cease to be effective on the date that the Secretary of State transmits to the Congress a statement certifying that the Secretary has determined the following:

(A) That the Government of the Russian Federation has conducted a thorough and impartial investigation into the arbitrary detention, systematic abuse, and resultant death in custody of Sergei Leonidovich Magnitsky, and that the individuals responsible have been brought to justice according to the laws of the Russian Federation and pursuant to the international legal obligations of the Russian Federation.

(B) That the Government of the Russian Federation has taken significant steps to bring

the criminal justice system and penal system of the Russian Federation into compliance with applicable international legal standards.

(C) That the Government of the United States is confident that the investigation described in subparagraph (A) was properly conducted, transparent, and free of political influence.

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

(c) TERMINOLOGY.—Terms used in this section shall have the meanings given such terms in section 101(a) and (b) of the Immigration and Nationality Act (8 U.S.C. 1101(a) and (b)).

SEC. 4. FINANCIAL MEASURES.

(a) SPECIAL MEASURES.—The Secretary of the Treasury shall instruct domestic financial institutions and domestic financial agencies to take 1 or more special measures described in section 5318A(b) of title 31, United States Code, if the Secretary of the Treasury makes a determination, under section 5318A of such title, with re-

spect to money laundering relating to the conspiracy described in section 3(a)(1)(B).

(b) BLOCKING OF ASSETS.—The Secretary of the Treasury shall freeze and prohibit all transactions in all property and interests in property of an individual described in section 3(a)(1), or of any person acting as an agent of or on behalf of such an individual, that are in the United States, that come within the United States, or that are or come within the possession or control of United States persons, including their overseas branches.

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

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

(e) TERMINATION.—The provisions of this section shall cease to be effective on the date that the Secretary of the Treasury transmits to the Congress a statement certifying that the Secretary has determined the following:

(1) That the Government of the Russian Federation has conducted a thorough and impartial investigation into the conspiracy (described in section 3(a)(1)(B)) to defraud the Russian Federation of taxes on corporate profits, and that the individuals responsible have been brought to justice according to the laws of the Russian Federation and pursuant to the international legal obligations of the Russian Federation.

(2) That the Government of the Russian Federation—

(A) has taken significant steps to bring the criminal justice system of the Russian Federation into compliance with applicable international financial and banking standards; and

(B) has substantially strengthened statutory protections for individuals who disclose evidence of illegal government activities.

(3) That the Government of the United States is confident that the investigation described in paragraph (1) was properly conducted, transparent, and free of political influence.

SEC. 5. REPORT TO CONGRESS.

Not later than the 180th day after the date of the enactment of this Act, the Secretary of State and the Sec-

retary of the Treasury shall submit to the Congress a report on the actions taken to carry out this Act.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the 90th day after the date of the enactment of this Act.

SEC. 7. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

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

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

(2) FINANCIAL INSTITUTION; DOMESTIC FINANCIAL AGENCY; DOMESTIC FINANCIAL INSTITUTION.—The terms ''financial institution'', ''domestic financial agency'', and ''domestic financial institution'' have the meanings of those terms as used in section 5318A of title 31, United States Code.

(3) UNITED STATES PERSON.—The term ''United States person'' means any United States citizen, any alien lawfully admitted for permanent

1 residence to the United States, any entity organized
2 under the laws of the United States or of any juris-
3 diction within the United States (including foreign
4 branches), or any person in the United States.

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