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15 May 2011

Dear Sirs,

RE: **WILLIAM BROWDER / Politically Motivated Criminal Case No. 153123**

**ILLEGITIMATE REQUEST FOR ANNOUNCING ACCUSATION DATED 10 MAY 2011 &
12 MAY 2011**

We act for Mr William Browder, a British citizen, who, as you are aware, is the CEO of Hermitage Capital Management Limited ("Hermitage"). We refer to two letters signed by the Russian Interior Ministry Investigator O.F.

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Silchenko dated 10 May 2011 (the "10 May 2011 Letter") and 12 May 2011 (the "12 May 2011 Letter") addressed to Mr Browder.

The letters state that Mr Browder is required to attend the Interior Ministry offices in Moscow giving him just eleven business hours to organise the trip.

The circumstances surrounding these requests for attendance suggest that these requests were not made in the course of a fair and impartial investigation, but that they were made in order to unfairly and improperly continue the persecution of Mr Browder. We suspect that these requests constitute yet further abuse of the instruments of criminal justice for the illegitimate purpose of politically-motivated and state-directed attack on Mr Browder, which has been carried out in stark violation of the European Convention on Human Rights and the applicable statutes of the Council of Europe, of which the Russian Federation is a member.

The politically motivated attack on Mr Browder and Hermitage's other executives and lawyers by the Russian authorities has a high international profile and is widely seen as an emblematic of the current state of the rule of law, human rights and justice system in the Russian Federation. The attack on Hermitage and on Mr Browder has also been discussed regularly at the highest diplomatic level during the course of the last six years and was recently raised by the UK Prime Minister David Cameron with the Russian Foreign Affairs Minister Sergei Lavrov during his official visit to the United Kingdom.

We remain deeply concerned about the real motive behind the attendance requests from the Russian Interior Ministry officials and their public statements about "*enforcing the presence*" in Russia of Mr Browder, who resides in the UK. In light of the history of the way the Russian authorities have treated Mr Browder and those associated with him since 2005, we consider our concern to be fully justified. These events and the treatment of those concerned, which, at best, amount to intimidation and harassment and, at worst, serious physical harm, torture and even death, have been recognised, documented and discussed by highly reputable and independent sources. In particular, we would highlight the following:

1. Resolution by the Parliamentary Assembly of the Council of Europe on Political Motivation of Persecution of Mr Browder by the Russian Federation

Membership in the Council of Europe imposes an obligation, under Article 3 of its Statute, on all member states to uphold the rule of law principle and human rights and freedoms.

On 30 September 2009, the Parliamentary Assembly of the Council of Europe (the "Assembly") adopted a Resolution 1685¹ on "*Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states*" (the "Resolution"). The Resolution describes the proceedings against Hermitage's executives and lawyers as a high-profile case of legal nihilism.

The Assembly approved the report to the Council of Europe's Committee on Legal Affairs and Human Rights (adopted by the Committee on 23 June 2009) prepared by the Council's Rapporteur, Sabine Leutheusser-Schnarrenberger (now the German Minister of Justice). In this report, Ms Leutheusser-Schnarrenberger concluded that Hermitage has '*become the victim of the corruption and collusion of senior police officials and organised criminals, and that when it attempted to defend itself against these massive frauds with the help of the competent authorities, became itself the victim of systematic retaliatory measures that must have had the support of senior law enforcement officials*' (pages 34-5, paragraph 108-9). She also highlighted the detention of Sergei Magnitsky, one of Hermitage's Russian lawyers, as a particularly serious instance of the Russian authorities' persecution of lawyers acting for, or associated with, Hermitage.

¹ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedTtxt/ta09/ERES1685.htm>

The Council of Europe, which thoroughly examined the proceedings in Russia against Mr Browder and other Hermitage executives and lawyers, concluded that the Council of Europe member states must not provide any mutual legal assistance to the Russian Federation in this case, stating that:

"the proceedings in the Russian Federation against Hermitage executives and lawyers were politically motivated and as such, any request from Russia for mutual legal assistance must be rejected as being contrary to the established legal norms".

2. The Report of the Moscow Public Oversight Commission

You will be aware that on 29 December 2009, the Moscow Public Oversight Commission, a body with responsibility for monitoring human rights in detention centres, published a report on the death of Mr Magnitsky. You will undoubtedly be aware of the events surrounding his tragic death in custody and of the worldwide condemnation of these events, given your knowledge of and your role in the events leading up to Mr Magnitsky's death, as noted in this report and the publicity since.

This independent review of the matter concluded that *"psychological and physical pressure was exerted upon [Mr Magnitsky]."* The Commission report also concluded that detention centre officials had either negligently failed to record Mr Magnitsky's complaints, or had subsequently re-written the relevant log to expunge them from the record. The Commission report noted serious and inexplicable inconsistencies between the statements of those officials who came into contact with Mr Magnitsky around the time of his death at Matrosskaya Tishina, and found that *"no medical help was provided to Sergei Magnitsky in Matrosskaya Tishina prison when it was urgently required... An ill person was effectively left without medical attention (for one hour 18 minutes) to die in an isolation ward."* The report finally concluded that Mr Magnitsky's treatment by the authorities was, not just negligence, not just non-provision of medical care, but a breach of Mr Magnitsky's right to life.

You are aware that Mr Magnitsky was a Russian lawyer and a partner in the Moscow based legal services and auditing firm, Firestone Duncan, and that he was instructed to act on behalf of Hermitage. He was therefore professionally closely associated with Mr Browder and Hermitage. You should also be aware that the case in relation to which Mr Magnitsky was detained is the same case in relation to which Mr Browder was now invited for questioning.

3. Application for the Criminal Prosecution of Investigator Oleg Silchenko for the False Arrest, Torture and Murder of Mr Magnitsky from the Moscow Helsinki Group

In March 2010, the Moscow Helsinki Group, an independent human rights organisation, demanded the opening of an investigation into Mr Magnitsky's false arrest, torture and murder in custody by the police officers, including Investigator Silchenko. The application for the criminal prosecution of Investigator Silchenko describes in detail his role in denying Mr Magnitsky access to justice by denying his request for medical examination, denying his requests to see his family, by ordering his transfers between detention centres and by performing other acts to put unlawful pressure on him in order to retract his testimonies against the state officials and to extract from him a false testimony against himself and against Mr Browder. The application states that Investigator Silchenko's objective was to conceal the crime uncovered and exposed by Mr Magnitsky, namely the theft of some \$230 million of Russian public funds by Russian government officials.

You should be aware that Investigator Silchenko is the same investigator that invited Mr Browder for questioning.

4. Application to the UN Special Rapporteurs on Torture, Extrajudicial Killings and Independence of Lawyers and Judges

In December 2010, REDRESS, an international human rights non-governmental organisation with a mandate to assist survivors of torture in seeking justice and other forms of reparation, applied to the UN Special Rapporteurs on Torture, Extrajudicial Killings and the Independence of Lawyers and Judges² seeking an independent and impartial examination of the treatment of Mr Magnitsky by the Russian authorities. REDRESS concluded that the abuse carried out against Mr Magnitsky in custody by Investigator Silchenko and a group of other Russian government officials amounted to torture and breached the UN Convention against Torture, of which the Russian Federation is a party.

The application says:

"The methods used against Magnitsky, singly and in combination- the inhuman detention conditions, the isolation from his family, the lack of regular access to his lawyers and the intentional refusal to provide adequate medical assistance resulted in the deliberate infliction of severe pain and suffering, and ultimately his death. These measures were designed to increase his discomfort and to put further pressure on him to confess and testify against others. The methods were also used to force Magnitsky to retract his testimonies against Russian officials...For these reasons, the acts were of such a severity and carried the requisite purpose to have amounted to torture in violation of Article 2 (1) and Article 1 of the UN Convention against Torture."

You should be aware that Investigator Silchenko and the head of the Investigative Committee Anichin are both among the officials held responsible for Mr Magnitsky's torture.

5. Treatment of Mr Antipov, the lawyer acting for Mr Browder and Mr Ivan Cherkasov

In the course of the investigation that Mr Browder was now called to attend in Moscow, Investigator Silchenko made false accusations against Mr Antipov, a lawyer acting for Mr Browder and Mr Ivan Cherkasov, another London-based executive of Hermitage, with an attempt to disbar and falsely criminally prosecute him. Mr Antipov expressed his concerns in relation to this criminal conduct by Investigator Silchenko to the Moscow Bar Association. As a result of Mr Antipov's concerns, the Moscow Bar Association carried out a detailed investigation, conducted by an independent special commission dealing with the protection of lawyers' professional and social rights. In a letter dated 30 June 2010, the Moscow Bar Association concluded that the action taken by Investigator Silchenko against Mr Antipov was without merit and in bad faith and requested the initiation against Investigator Silchenko for criminal offences, pursuant to Articles 129, 286, 292 and 303 of the Criminal Code of the Russian Federation (which includes falsification of materials of the criminal case and abuse of office). Investigator Silchenko is the same investigator who now issued summonses to Mr Browder.

6. Justice for Sergei Magnitsky Act of 2011

We are concerned by the fact that the attack on Mr Browder has intensified within less than a month of submission of the *Justice for Sergei Magnitsky Act of 2011* to the US Congress. This legislation, in relation to which Mr Browder has been a keen advocate, puts forward visa and economic sanctions on the Russian government officials involved in Mr Magnitsky's torture and murder in custody. The list of the officials involved published by the US Helsinki Commission includes Investigator Silchenko, the same official that signed the 10 May Letter and the 12 May Letter.

7. Switzerland

We are also struck by the fact that the attendance request was made just weeks after the Swiss authorities commenced a criminal investigation into money laundering in Switzerland following a receipt of the complaint from

² <http://www.redress.org/case-docket/allegation-letter-to-un-special-rapporteurs-on-torture-and-on-the-independence-of-the-judiciary-and->



Hermitage's lawyers that deals with the fact that the money stolen from the Russian government had been laundered through the Swiss accounts. It appears that the coordinated campaign against our client has intensified in retaliation of these developments with the grant of an arrest warrant for Mr Cherkasov and with the 10 May and 12 May Letters.

8. Non-notification of lawyers and bypassing official channels in delivering letters to Mr Browder

The method through which the Russian authorities chose to deliver the 10 May and 12 May Letters to Mr Browder was specious and illegitimate and a detailed description and questions it raises are attached in the appendix.

It is evident from the above that Mr Browder has good reason to be concerned about the nature of the Interior Ministry requests. In any event, it remains physically impossible for Mr Browder to attend on the time and date appointed for the announcement of the accusation, a fact of which Investigator Silchenko would have been fully aware when the request was made. Mr Browder's lawyers in Russia have been duly instructed to challenge the attack on Mr Browder's human rights and freedoms carried out *in absentia* and to keep record of the violations and obstruction of access to justice in this case by the Russian Federation.

We look forward to your timely response and to an explanation of the purpose of these recent actions carried out by the Russian Interior Ministry officials branching out to the UK territory. We also look forward to your confirmation that these actions are, indeed, being made in discharge of the official government business..

Yours faithfully


BROWN RUDNICK LLP

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APPENDIX

The purpose of this appendix is to describe the circumstances surrounding the dispatch of two letters from the Russian Interior Ministry addressed to Mr William Browder, a British citizen and the CEO of Hermitage Capital Management Limited ("Hermitage"). In particular, we write in reference to a letter signed by the Russian Interior Ministry investigator O.F. Silchenko dated 10 May 2011, which was faxed to the Hermitage's Moscow office fax number and received at Hermitage's London office at around 1:45 pm (16:45 pm Moscow time) on 10 May 2011 (the "10 May Letter").

Two days later, a similar letter also signed by Investigator Silchenko was dispatched in the same way and received via the Moscow office fax number at Hermitage's London office at around 1:10 pm (4:10 pm Moscow time) on 12 May 2011 (the "12 May Letter").

The 10 May and the 12 May Letters state that Mr Browder is required to attend the Interior Ministry offices in Moscow giving him 11 business hours to organise the trip.

The circumstances surrounding the 10 May and 12 May Letters and the method through which the Russian authorities chose to deliver them to Mr Browder was specious and illegitimate and they clearly bypass the official channels available to the official state bodies of the Russian Federation.

The 10 May Letter states that Mr Browder is required to attend the Interior Ministry offices in order to be presented with an accusation and interrogated as an accused person at 10/2 B.Nikitskaya Street, Office 71, at 11 on 12 May 2011. To this effect, please could you clarify why, in breach of Article 172, p.1 of the Russian Criminal Procedural Code which stipulates that "*an accusation shall be presented in the presence of the lawyer if the lawyer participates in the case*", the 10 May Letter was not sent to any of the Russian lawyers that act for Mr Browder.

None of the letters state the address, the telephone or the fax number for Mr Browder or the chosen means of transmitting it. This is despite the fact that Mr Browder's contact details have been communicated and are available in the Russian Interior Ministry files, a fact which was confirmed by the Tverskoi district court in Moscow during a hearing held in May 2010 last year.

The letters were drafted in Russian and were not accompanied by translations. Please could you explain whether this meets the relevant requirements of the Russian law that deal with communicating with a foreign national.

Further, there is, of course, an established way of conducting law enforcement business on the territory of another state through the competent bodies in accordance with and as set by Article 15 the European Convention on Mutual Assistance in Criminal Matters signed in Strasbourg, 20.IV.1959 (the "Convention"). The Russian Federation and the United Kingdom are both signatories to the Convention. Under the Russian law, a particular procedure is outlined for carrying out investigative actions outside the territory of the Russian Federation via a request by an authorised state body transmitted to a competent authority of another state in accordance with an international agreement or based on the mutual reciprocity principle. This norm is set out in Chapter 53, Article 453 and 454 of the Russian Criminal Procedural Code. In light of this, please could you explain the reason for bypassing the internationally accepted means of communication in this particular case and for resorting to a faxed communication with unspecified details of address, the method of communication which neither

guarantees the confirmed receipt of delivery nor does it indicate that the addressee of this letter is indeed an authorised competent body of the Russian Federation.

The 10 May and 12 May Letters have provided barely 11 working hours' notice within which Mr Browder could have to make arrangements to travel from the United Kingdom to the Russian Federation and to consult any legal advisors in preparation for any such interview.

In any event Mr Browder is not able to travel to the Russian Federation since, as you are aware, Mr Browder has been denied access to the Russian Federation by the Russian government, on "national security" grounds in November 2005. Despite various interventions made by senior representatives of the UK government, senior US and EU politicians, and repeatedly renewed applications for a Russian visa, Mr Browder has remained unable to enter the Russian Federation for almost six years.

The circumstances surrounding these requests for attendance suggest that these requests were not made in the course of a fair and impartial investigation, but that they were made in order to unfairly and improperly continue the persecution of Mr Browder.

The substance and the background around the 10 May and 12 May letters from the Russian Interior Ministry indicate that they have been issued and delivered in an intentionally unreasonable manner with the sole intention of creating a fictitious ground for the further misuse of the instruments of criminal justice for the illegitimate purpose of politically-motivated and state-directed attack on Mr Browder.

This theory is further confirmed by the statements made on 12 May 2011 by the Russian Interior Ministry Investigative Committee distributed in a press statement from its spokeswoman Irina Dudukina which has been transmitted in the UK saying:

"If he [Browder] fails to appear again, action will be taken to establish his whereabouts and enforce his presence."

Moreover, the public statement from the official Russian Interior Ministry spokesperson contains a false and misleading statement, as it implies that the Russian Interior Ministry is unaware of Mr Browder's whereabouts. This is not the case and is easily contradicted by the documents in the Interior Ministry's possession and court records. It raises questions as to the nature of this purposeful lie by a government official. It appears that the only plausible rationale for such a patently false statement is that the Russian Interior Ministry attempts to justify in advance its petition for an arrest *in absentia*, knowing that it can only be heard by a Russian court in case when the person's whereabouts are not known.

We look forward to your timely responses to the questions raised in this appendix.