

Responses for the Record from Casey Michel, Hudson Institute's Kleptocracy Initiative
U.S. Senate Judiciary Committee

"KleptoCapture: Aiding Ukraine through Forfeiture of Russian Oligarchs' Illicit Assets"

July 19, 2022

- 1) Since the United States is not at war with Russia, would you agree that it is necessary to craft legislation that adheres to U.S. Supreme Court precedent, including equal protection and due process precedent?

Concerns regarding equal protection and due process *must* be addressed as formulation of potential legislation proceeds, especially as it pertains to adhering to U.S. Supreme Court precedent. This reality stems not only from basic legal concerns – and the fact that America remains a rule-of-law jurisdiction – but also because of concerns about courts potentially striking down such legislation. Fortunately, all indications thus far point to such concerns not only being considered, but also mitigated via the proposed language of the legislation. The current iteration of the legislation has done much to address such concerns, from a sunset clause to myriad judicial touchpoints in the bill. While crafting such legislation is not easy, the legislation's authors have thus far clearly taken concerns about precedent, equal protection, and due process into consideration – and done a remarkable job of navigating and addressing those concerns.

- 2) Your testimony indicated that although the forfeiture provisions of the administration's proposal have garnered some concerns such as – in your own words – concerns about property rights, that it is "unquestionably" the best route to proceed. How would you square these legitimate concerns with your position of "unquestionable" support?

For the sake of clarification, this legislation – and the broader thrust of using the proceeds of Russian oligarchic assets to bankroll Ukraine's efforts to defend itself – is but one part of a far broader package of reforms, tactics, and counter-kleptocracy efforts that must be pursued in order to mitigate threats emanating from Moscow. This legislation is not a panacea, nor is it the *only* policy response that should be enacted. Rather, it should come alongside things like expanded sanctions, increased regulatory oversight of the so-called "enabling" classes of Americans aiding oligarchs, and increased transparency in things like real estate, artwork, and private equity investments in the U.S. – all of which we know have been repeatedly targeted by Russian oligarchic forces.¹

¹ For further elements of these much-needed counter-kleptocracy reforms, see: Casey Michel, "How the West Undermines Its Own Sanctions," *The Atlantic*, 9 March 2022, <https://www.theatlantic.com/ideas/archive/2022/03/russia-oligarchs-evade-sanctions-anonymous/626968/>; Nate Sibley and Ben Judah, "Countering Global Kleptocracy: A New US Strategy for Fighting Authoritarian Corruption," Hudson Institute, 8 Jan. 2021, <https://www.hudson.org/research/16608-countering-global-kleptocracy-a-new-us->

However, the push for increased forfeiture allowances remains one of the *easiest* provisions to enact amid this broader slate of policy responses – and, given the clear linkages between Russian oligarchic wealth (and assets) and the Kremlin’s reach, it remains unquestionably the right step forward. Given that these oligarchs owe the entirety of their wealth to Putin’s regime – and to remaining in the good graces of the regime – they should, and must, be viewed as simple extensions of Putin’s malign efforts. And their assets should be rightly viewed as potential tools to support Ukraine’s fight for sovereignty and democracy.

As mentioned above, there are legitimate concerns regarding due process and property rights. But all appearances indicate that, thus far, those pushing for increased forfeiture provisions have acknowledged those concerns, and addressed them appropriately. And rightly so, in order to take this necessary, and overdue, step of not only viewing Russian oligarchs as an extension of the Putin regime, but viewing their assets as potential tools to aid Ukraine’s fight for freedom.

[strategy-for-fighting-authoritarian-corruption](#); and Casey Michel, “Congress Takes Aim at Think Tanks and Their Corrupt Money,” The New Republic, 27 June 2022, <https://newrepublic.com/article/166899/jared-golden-foreign-lobbying-brookings>.