

The Magnitsky Act Needs to Be Strengthened

By [David J. Kramer](#)

April 13, 2013



The list of 18 names released Friday by the U.S. Treasury Department connected to the Sergei Magnitsky Act elicits a number of reactions. For starters, the U.S. has finally taken concrete action to address the Russian government's atrocious human rights situation. Credit for this, however, lies with the Congress, not the administration of U.S. President Barack Obama, who was opposed to the legislation. But Obama had no choice but to sign it into law last December because the Magnitsky Act was linked to lifting of the Jackson-Vanik amendment, which Obama very much wanted.

It is important for European states to follow the U.S. lead and pass similar legislation. After all, Russian officials travel more to Europe and keep more of their assets there than they do in the U.S. The Magnitsky Act is an important signal to Russian officials involved in human rights abuses to show that their days of impunity are over, at least outside of Russia. But it is also important for cleaning up Western institutions, so they are not complicit in laundering ill-gotten gains of corrupt Russian officials.

As for the list itself, it is too short. There should have been many more names of people who deserve to have their assets frozen and visas denied for their involvement in human rights abuses, in the Magnitsky case and others. That the legislation passed by Congress last year called for one list meant that the Treasury Department needed to have sufficient evidence to freeze a suspect's assets to stand up to a court challenge; denying visas is much easier and not subject to challenge. Had there been two public lists — one for asset freezes and another for visa denials — the latter presumably would have been much longer. Congress should amend the legislation to create two lists, making it easier to target more human rights abusers with a visa ban even if their assets aren't frozen.

Nonetheless, my disappointment with the small size of the initial Magnitsky list is offset by several important factors. First, there are additional names on a classified list, as permitted by the legislation. Although there is already one leak — Chechen leader Ramzan Kadyrov, as reported in the New York Times — and bound to be more leaks in the future, we don't know for sure how many Russians are on the classified list. But uncertainty isn't necessarily bad. Russian officials involved in human rights abuses should wonder whether they are on the list. Russian officials might also think twice before committing future abuses, knowing that if they were to do so, they, too, could wind up on the list. This could serve as an important deterrent to future human rights abuses.

Second, the list issued on Friday is only the first opportunity to punish Russian officials involved in human rights abuses. Obama administration officials made clear on Friday, consistent with the legislation, that this is an ongoing process, and names can be added in the future. Information from nongovernmental organizations, members of Congress and others can be submitted with recommendations for additions to the list. There is a requirement calling for an annual report to Congress on implementation of the legislation, but exactly how and when such additions can be made is still to be worked out.

Third, 16 of the 18 names on the public list are directly connected to the Magnitsky case. That is most appropriate since the legislation is named after him, and were it not for the relentless pursuit of justice for the murder of Magnitsky by his client, Hermitage Capital head Bill Browder, the legislation would never have existed. But equally important are two names listed for gross human rights abuses not related to Magnitsky — one for the 2004 murder of U.S. journalist Paul Klebnikov and the other for the killing of an outspoken critic of Kadyrov. The legislation explicitly called for the sanctions to apply beyond the Magnitsky case, and the list reflects that.

The Kremlin responded with a list of 18 Americans on Saturday, just before the arrival of Obama's national security adviser Tom Donilon, who will meet with his Russian counterpart and possibly with President Vladimir Putin on Monday. National security advisers generally don't hold press conferences, but Donilon should make an exception in this case and state clearly that the administration, despite its earlier opposition to the legislation before it was passed, firmly stands behind the Magnitsky Act.

Donilon should also find the political will in Moscow to stress that more names will be added in the future. By no means should he downplay the action taken on Friday by suggesting that the two sides should not let the Magnitsky Act spoil efforts to improve relations. This would completely undermine the effectiveness of the legislation by suggesting to the Kremlin that it

is really interested in returning to business as usual — which is to say, turning a blind eye to Putin's attacks against civil society and the opposition, the worst crackdown since the breakup of the Soviet Union.

Donilon should make clear that the legislation is targeted against individual Russian officials, not against Russia as a whole. He should note that in a December Levada poll, 44 percent of Russians supported the Magnitsky Act, and only 21 percent were against, reflecting Russians' own frustration with corrupt officials who abuse human rights. In the end, Donilon needs to hold up the Magnitsky Act to reflect that the U.S. has had enough of Putin's outrages and is finally doing something about them.

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