

IRAN TERROR FINANCING AND THE TAX CODE

HEARING
BEFORE THE
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OF THE
COMMITTEE ON WAYS AND MEANS
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CODE**

WEDNESDAY, NOVEMBER 4, 2015

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:03 a.m., in Room 1100, Longworth House Office Building, the Honorable Peter Roskam [Chairman of the Subcommittee] presiding.
[The advisory of the hearing follows:]



Chairman Roskam Announces Hearing on Iran Terror Financing and the Tax Code

House Committee on Ways and Means Subcommittee on Oversight Chairman Peter J. Roskam (R-IL) today announced that the Committee on Ways and Means Subcommittee on Oversight will hold a hearing on presidential authority to waive anti-terror provisions in the tax code with respect to Iran. The hearing will take place on Wednesday, November 4, 2015 at 10:00 AM in Room 1100 of the Longworth House Office Building.

Oral testimony at the hearing will be from the invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

Details for Submission of Written Comments:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, November 18, 2015**. For questions, or if you encounter technical problems, please call (202) 225-3625 or (202) 225-2610.

Formatting Requirements:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

3. Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at <http://www.waysandmeans.house.gov/>.

Chairman ROSKAM. The hearing will come to order. Welcome to the Ways and Means Oversight Subcommittee hearing on Iran terror financing and the Tax Code.

Today's hearing will review the President's authority to waive provisions in the Tax Code aimed at discouraging Iran's support for terrorism and explore whether those provisions should be strengthened. Earlier this year, James Clapper, the director of national intelligence, stated, quote, "Iran remains the foremost state sponsor of terrorism and is increasing its ability to influence regional crises and conduct terrorism. This has been the consistent view of the intelligence community for more than three decades," end quote.

Let's start by looking at how all this began. Ironically, today, 36 years ago, it is the anniversary in 1979, Iran's now ruling theocratic regime seized the U.S. Embassy and our diplomatic personnel in Tehran. In response, the U.S. severed our diplomatic relationship and imposed strict economic sanctions against Iran. We also enacted provisions in the Tax Code to discourage U.S. companies from doing business in Iran.

Iran has long been one of the most active and prolific State sponsors of terrorism in the world, funding hundreds of attacks through its terror proxies abroad including, Hezbollah, Hamas, and Islamic jihad. In 1984, the State Department officially designated Iran as the state sponsor of terrorism.

A year later, in 1985, Iran supported the Hezbollah-led high-jacking of TWA flight 847 en route from Athens to Rome. The hijackers diverted the plane, to Beirut, held most of the passengers and crew hostage. One victim, Navy petty officer Robert Stethem, was singled out because he was a member of the U.S. military. He was tortured and murdered during the attack. In forced heroism, he was posthumously awarded the Purple Heart and the Bronze Star. His brother, Kenneth, is here with us today as one of our witnesses.

Over the years, Iran has increased support for terrorism, committed heinous human rights violations, and engaged in an illegal mission to develop nuclear weapons. To punish these bad acts, numerous countries have imposed economic sanctions against Iran,

and the United Nations Security Council has followed suit. So let's fast forward to the present day. In July, the United States and the P5+1 countries finalized the Iran nuclear agreement. And under this deal, the U.S. and our international partners agreed to dismantle the current sanctions regime in the hope that Iran will slow its pursuit of nuclear weapons technology. The agreement also gives the Iranian regime access to an estimated \$150 billion in currently frozen assets.

The Obama administration pursued a nuclear agreement with Iran at any cost, rushing forward to implement the terms of a bad deal, despite majority opposition in both chambers of Congress. In order to do it, President Obama violated the Iran Nuclear Agreement Review Act, also known as Corker-Cardin, that he himself signed. And instead of submitting the full text of the nuclear agreement, plus any related documents and side deals to Congress, as the law requires, he refused to provide the text of the two secret side deals. And as a result, the American public still doesn't know the full scope of the concessions President Obama gave to the Iranians.

What we do know is, that the Iranian nuclear agreement says it will, quote, "Produce the comprehensive lifting of all U.N. Security Council sanctions as well as multi-lateral and national sanctions related to Iran's nuclear program," end quote.

Under the law we are examining today, U.S. companies get two benefits for their worldwide business, foreign tax credits and deferral.

One of the relief measures the President may provide to Iran while implementing his nuclear agreement is to waive these provisions, which work to discourage U.S. companies from doing business there. Under current law, because of Iran's extent of support for terrorism, and because the U.S. Government has severed diplomatic relationships with Iran, no foreign tax credit may be claimed by a U.S. company doing business in Iran. I would like to show a graph.

When U.S. companies do business with foreign countries, say Japan, for example, they are typically eligible for a foreign tax credit which offsets taxes paid to foreign governments. These foreign tax credits make sure U.S. companies don't pay the same taxes twice, once to their home country and once to a country where they may be doing business internationally. But business with Iran is not eligible for this benefit, obviously. U.S. companies do essentially have to pay tax twice for any business conducted in Iran; first, any taxes required by Iran, and then also the usual amount of taxes required by the U.S. Under current law, for every \$100 in profits earned in Japan, a U.S. company would be left with over \$65 after taxes. This is shown on the left.

But for a U.S. company doing business in Iran, they would have far less, from \$100 in profits, only \$42 after taxes, and this is shown on the right. So in addition to the foreign tax credit, the Tax Code requires U.S. companies to pay taxes immediately on any income derived from Iran by foreign subsidiaries. This is much harsher than the rules that would apply for international commerce in Japan, for example, where taxes are only owed in the U.S. once those profits are repatriated.

These provisions have generally been effective in discouraging U.S. companies from doing business in Iran, business that would certainly improve the Iranian economy and increase the power of financial resources of Iran's regime. However, the law currently gives the President the authority to waive these punishing tax provisions and allow beneficial tax treatment for businesses conducting business in Iran.

Historically, waiving these provisions has only occurred after a country has followed through on the concessions they have promised. For example, President Bush waived the provisions for Libya in 2004, but only after Libya had demonstrably ended its support for terrorism and its weapons of mass destruction programs.

In contrast, President Obama has already entered into an agreement with Iran that would waive most of the current sanctions, potentially including these tax provisions. But instead of requiring concrete proof that Iran's concessions have been achieved, the administration actually said it will waive sanctions against Iran even if the country doesn't comply with the nuclear agreement. So we have to ask ourselves, how will Iran move forward under the agreement?

Iran's supreme leader has publicly said that Iran will use some of the \$150 billion in newly unfrozen assets to continue funding terrorism, and influential Iranian critics and government officials, including the supreme leader himself, continue to call for death to America. The White House not only ignores these declarations, but actually defends them, assuring Americans that this rhetoric is only intended for Iranian domestic political consumption.

Secretary Kerry has said that it doesn't reflect Iran's intention to destroy the United States, because he adds, quote "no specific knowledge of a plan by Iran to actually destroy us," end quote. I think most people consider illegal efforts to build a nuclear arsenal while declaring death to America a clear demonstration of intent. With the lifting of sanctions, the Tax Code provisions that we examine today are more important than ever. This Committee wrote to the President asking whether he would waive the provisions or if he would commit not to waive them during his presidency. He has not responded. Stopping Iran's support for terrorism is crucial for the safety of the American people both at home and abroad.

And on a final note, let's be clear from the outset. Funds Iran will receive under the administration's nuclear agreement will go to sponsoring terrorism. Whatever one's opinion of the Iran nuclear agreement, and we have a wide range of views on this panel, we should be able to agree on the importance of taking measures to counter Iran's support for terrorism. The tax provisions that we are discussing today are in our jurisdiction and are related to Iran's support for terrorism, not nuclear proliferation. It is that support for terrorism which triggers them so they can and should remain in effect outside of the framework of the nuclear agreement. And I hope that we can work in a bipartisan basis to fight and defeat terrorism and examine how we can strengthen these tax provisions to achieve that goal.

I know that Mr. Rangel would like to be recognized just to acknowledge that he is called to another meeting of the Ways and Means Committee and intends to return.

Mr. RANGEL. Thank you so much for the courtesy, Mr. Chairman.

I promised Mr. Lewis and certainly the other members that I would be here, but Chairman Tiberi has called a meeting, which includes the Members of the Committee on Trade. We are meeting with the British parliamentary to take a look at the transatlantic agreement. And I wanted so much to be here because I read recently that Prime Minister Netanyahu next week will be visiting with the President of the United States. And I have every reason to believe that the Iranian agreement will not be renegotiated, especially by our Committee, and that we will be looking forward to working to see how we can have a binding bipartisan agreement to show Israel the depth of our commitment to her as a part of being a leader of the free world.

The \$3 billion annual aid package expires in 2017 with Israel, and we hope this Committee will play an important role in developing a 10-year defense package for Israel and to do the best we can to make what some may consider a bad agreement—it is certainly, not a good agreement, but it could be the best agreement we have had. And I hope the panel and our Committee and Congress and the President would do the best that we can to show that we are Israel's best friend.

So thank you for the courtesy, and I will be returning as soon as the other committee meeting has expired.

Chairman ROSKAM. Thank you.

Mr. RANGEL. Thank you so much.

Thank you, Mr. Lewis.

Chairman ROSKAM. Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Rangel.

Thank you, Mr. Chairman, for yielding.

Many of you know that sanctions can be useful diplomatic tools. For almost 40 years, Congress has worked with the executive branch on Iran's sanction policy and legislation.

It has always been a partnership. I often think some international sanctions help to bring about diplomatic and democratic changes to shift the course of history. This legacy is the reason why I, and many others, support the bipartisan sanction deal that finally brought Iran to the negotiation table to discuss their nuclear weapons program.

Let me be clear, I am no friend of Iran's regime. Like many of you, I am sickened by the acts of terror that the Iranian leadership has supported. Too many people have lost their lives and countless loved ones in senseless attacks and violence. This is why I supported bipartisan, bicameral legislation seeking justice for former American hostages and their families. This is why I speak up for religious freedom and the release of political prisoners, and this is why I fight to protect victims of human rights abuses in Iran and around the world.

After the Iran nuclear agreement was finalized, I spent months attending briefings, studying documents, and listening to citizens of my district. I held many long executive sessions with myself, and weighed all sides of the argument. In particular, I reflected on the words of Dr. Martin Luther King, Jr. when he called upon us to rededicate ourselves to the long and bitter but beautiful struggle

for a new world. You see, the way of peace is an immutable principle that I hold near and dear to my heart. I believe then, as I believe now, that the administration's nuclear agreement is a good deal. Though it may not be perfect, we must not, we cannot, let the perfect be the enemy of the good.

As we speak, the agreement is being implemented and Iran is just beginning to dismantle its nuclear weapons program. Any legislative attempt to undermine this opportunity for peace cannot, must not, be entertained. We do not need more war and conflict. War is messy. It is bloody, it destroy the hopes, the aspirations, and the dreams of a people.

The American public and people around the world are sick and tired of war and violence. As members of Congress, we have a moral obligation, a mission, and a mandate to give peace a chance. We cannot sow the seeds of failure. We must light the way of hope.

Mr. Chairman, thank you. I look forward to hearing from the witnesses, and I yield back.

Chairman ROSKAM. Thank you, Mr. Lewis.

We are joined by five witnesses, and I want to thank each of you for taking the time to spend with us this morning.

Mark Dubowitz is the executive director of Foundation for the Defense of Democracies. Mr. David Schizer is the dean emeritus and professor of law and economics at Columbia Law School. Mr. Douglas Feith is the senior fellow at the Hudson Institute, former Under Secretary of Defense for Policy. Mr. Kenneth Stethem, who I recognized in my opening statement, is the chairman and CEO of Aegis Industries. And Dr. Jim Walsh, research associate at the Massachusetts Institute of Technology's security studies program.

We have your written testimony for the record. You are each going to be recognized for 5 minutes.

And, Mr. Dubowitz, let's start with you. Thank you.

**STATEMENT OF MARK DUBOWITZ, EXECUTIVE DIRECTOR,
FOUNDATION FOR DEFENSE OF DEMOCRACIES**

Mr. DUBOWITZ. Chairman Roskam, Ranking Member Lewis, honorable Members of the Committee, on behalf of FDD and its center on sanctions and illicit finance, thank you for the opportunity to testify, particularly with such a distinguished panel of experts.

Ken, thank you for your service and your brother's service to our country.

I want to emphasize that today the Iranian regime is involved in a range of dangerous and illicit activities. In fact, recently, the regime tested a ballistic missile capable of carrying a nuclear warhead. It has massively increased its crackdown on its own citizens. It has expanded its support for Syria's murderous Assad regime and for terrorist organizations like Hezbollah and Hamas.

Meanwhile, Iran remains the leading state sponsor of terrorism and is currently holding several American hostages. The Iran nuclear agreement, the JCPOA, gives the regime a patient pathway to a nuclear weapons capability as key nuclear restrictions begin sunseting after 8 years. In addition, the agreement provides extensive sanctions relief likely to benefit the most dangerous elements of the regime, including those directly involved in terrorism. Spe-

cifically, the revolutionary guards, which control key strategic sectors of Iran's economy and the supreme leader's \$95 billion holding company called the execution of Imam Khomeini's order, or EIKO.

It is difficult to imagine a significant business transaction with foreign companies where the IRGC or EIKO won't be in on the deal. These financial gains will enable them to expand their dangerous activities. In anticipation of the sanctions relief from the Iran deal, President Rouhani's 2015–2016 budget rewards the IRGC, the intelligence services, and the hardline clerical establishment with a 48 percent increase in expenditures. The IRGC itself will receive 64 percent of public military spending, which is set to rise to \$11- to \$12- billion annually. The IRGC's massive construction arm, Khatam al-Anbiya, will see its budget double. If past is prologue, the cash will be spent partly on the IRGC's regional aggression, ballistic missile program, and support for terrorism.

Despite Iranian threats, including most recently from the supreme leader, the JCPOA does not preclude the use of nonnuclear sanctions. The administration has done little, however, to respond to Iran's threatening behavior. But regardless of whether one believes that the JCPOA was a great deal or a terrible deal, Congress needs to take the lead on ramping up sanctions to address Iran's support for terrorism and using other provisions to target illicit behavior not covered by the JCPOA.

An important first step is to designate the IRGC as a terrorist organization and to sanction EIKO, where the nexus between corruption and sponsorship of terrorism is overwhelmingly clear. There are major loopholes in U.S. law given the overwhelming evidence that the IRGC, and not just its Quds Forces involved in supporting terrorism, as well as the dangers from the imminent lifting of U.S. sanctions on the supreme leader's \$95 billion terrorism slush fund. Taking these steps against the IRGC and EIKO are not a violation of the agreement.

My written testimony provides greater detail and additional steps that Congress could take, but I want to emphasize the elimination of tax breaks for companies doing business in Iran, provisions addressing Iran's support for terrorism, nonproliferation, and therefore, not precluded by the agreement. The goal is to diminish the funds available to the IRGC, EIKO, and their support for terrorism, and other illicit activities.

Now, some may argue that preventing tax benefits to U.S. and foreign companies which do business with State sponsors of terrorism will have little impact. I disagree. It is the use of these non-nuclear measures that will undercut the incentives for these companies to engage with illicit Iranian actors.

First, if the U.S. doesn't increase pressure through these non-nuclear sanctions, including through the use of tax provisions, to target Iran's dangerous activities, we are going to be effectively rewriting the agreement as demanded by Iran's supreme leader, Ali Khamenei. We should not be unilaterally disarming our course of power by giving into the supreme leaders's threats.

Second, Congress should use its powers to limit the extent to which foreign subsidiaries of U.S. companies engage with the leading State sponsor of terrorism. If current tax provisions are insufficient to deter this business, Congress should consider strength-

ening them. If Congress limited OFAC's licensing authorities for U.S. parent-foreign subsidiary transactions and imposed a 100 percent tax rate, for example, on profits from Iran, these companies would be significantly deterred from this business. And Congress should explore imposing negative tax consequences on companies doing business in the U.S. with foreign affiliates doing business with Iran, regardless of the location of a company's headquarters.

Third, and finally, Congress should examine the criteria under which the President could use his waiver authority in this tax provision. These tax benefits should be blocked for State sponsor of terrorism like Iran. Unlike Libya, a country that did benefit from presidential waivers, Iran will not dismantle its nuclear program, not end its state sponsorship of terrorism, and not make restitution of the past victims of Iran terrorism. Unfortunately, there is a substantial risk that tens of billions of dollars will flow to Iran, will be used in part to kill and maim future victims.

Thank you for the opportunity to testify today. I look forward to your questions.

Chairman ROSKAM. Thank you.

[The prepared statement of Mr. Dubowitz follows:]

Congressional Testimony

Iran Terror Financing and the Tax Code

Mark Dubowitz
Executive Director
Foundation for Defense of Democracies
Center on Sanctions and Illicit Finance

**Hearing before the
House Ways and Means Committee
Subcommittee on Oversight**

Washington, DC
November 4, 2015



1726 M Street NW • Suite 700 • Washington, DC 20036

Mark Dubowitz

November 4, 2015

Chairman Roskam, Ranking Member Lewis, members of the Committee, on behalf of the Foundation for Defense of Democracies and its Center on Sanctions and Illicit Finance, thank you for the opportunity to testify.

EXECUTIVE SUMMARY

Despite the fanfare over the recently reached Iran deal, the Iranian regime remains involved in a range of destabilizing activities and illicit conduct. Recently, Iran tested a missile capable of carrying a nuclear warhead in violation of a key U.N. Security Council resolution,¹ increased its crackdown on its citizens,² and expanded its support for Syria's Assad regime and terrorist organizations like Hezbollah and Hamas.³ Meanwhile, Iran remains the leading state sponsor of terrorism,⁴ and is currently holding as hostages four Iranian-American citizens (Siamak Namazi, Jason Rezaian, Saeed Abedini, and Amir Hekmati) and refuses to give information on a missing American citizen (Robert Levinson) who vanished after traveling to Iran over eight years ago. While the Obama administration repeatedly has made it clear that the Joint Comprehensive Plan of Action (JCPOA) does not prevent the imposition of non-nuclear sanctions,⁵ the administration has done little to respond to the Iranian regime's threatening behavior.

¹ Sam Wilkins, "Iran Tests New Precision-Guided Ballistic Missile," *Reuters*, October 11, 2015. (<http://www.reuters.com/article/2015/10/11/us-iran-military-missiles-idUSKCN0S505L20151011>); "U.S.: Iran Missile Test 'Clear Violation' of U.N. Sanctions," *CBS News*, October 16, 2015.

(<http://www.cbsnews.com/news/iran-ballistic-missile-test-un-sanctions-us-ambassador-samantha-power/>)
² Rick Gladstone, "U.N. Rights Investigator Highly Critical of Iran," *The New York Times*, October 27, 2015. (http://www.nytimes.com/2015/10/28/world/middleeast/un-rights-investigator-highly-critical-of-iran.html?_r=2); Jon Gambrell, "2 Iranian Poets Are Latest Target in Hardliners' Crackdown on Expression in Iran," *Associated Press*, October 27, 2015. (<http://www.usnews.com/news/world/articles/2015/10/27/poets-latest-to-be-snared-in-iranian-hard-liners-crackdown>); "Situation of Human Rights in the Islamic Republic of Iran," *United Nations*, October 6, 2015. (<http://shaheedoniran.org/wp-content/uploads/2015/10/SR-Report-Iran-Oct2015.pdf>)

³ Sam Dagher & Asa Fitch, "Iran Expands Role in Syria in Conjunction With Russia's Airstrikes," *The Wall Street Journal*, October 2, 2015. (<http://www.wsj.com/articles/iran-expands-role-in-syria-in-conjunction-with-russias-airstrikes-1443811030>); Ladane Nasserri & Donna Abu-Nasr, "Iran's Syria Aid Deepens as It Jockeys for Role in Talks," *Bloomberg News*, October 27, 2015. (<http://www.bloomberg.com/news/articles/2015-10-27/iran-says-syria-aid-deepens-to-include-army-revamp-recruitment>)

⁴ U.S. Department of State, "Country Reports on Terrorism 2014: Chapter 3: State Sponsors of Terrorism Overview," April 2015. (<http://www.state.gov/j/ct/rls/crt/2014/239410.htm>)

⁵ For example see, Mina Al-Oraibi, "John Kerry: US Will 'Push Back' Against Iran's Role in Region," *Asharq Al-Awsat*, July 22, 2015. (<http://english.aawsat.com/2015/07/article55344466/john-kerry-us-will-push-back-against-irans-role-in-region>); John Kerry, "Iran Nuclear Agreement Review," *Testimony before the Senate Foreign Relations Committee*, July 23, 2015. (<http://www.state.gov/secretary/remarks/2015/07/245221.htm>); Jacob Lew, "Iran Nuclear Agreement: The Administration's Case," *Hearing before the House Foreign Affairs Committee*, July 28, 2015. (<https://foreignaffairs.house.gov/hearing/hearing-examine-iran-nuclear-agreement>); John Kerry, "Iran Nuclear Agreement: The Administration's Case," *Testimony before the House Foreign Affairs Committee*, July 28, 2015. (<http://www.state.gov/secretary/remarks/2015/07/245369.htm>); "Iran Nuclear Agreement Review," *Testimony before the Senate Foreign Relations Committee*, July 23, 2015. (<http://www.cq.com/doc/congressionaltranscripts-473101823>); Jeffrey Goldberg, "John Kerry on the Risk of Congress 'Screwing' the Ayatollah," *The Atlantic*, August 5, 2015. (<http://www.theatlantic.com/international/archive/2015/08/john-kerry-interview-iran-nuclear-deal/400457/>); Wendy Sherman & Adam Szubin, "The Implications of Sanctions Relief Under the Iran Agreement," *Hearing before the Senate Banking, Housing, and Urban Affairs Committee*, August 5, 2015. (http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=66419365-b8c6-4a0d-a5ea-e143742ca9e5); Barack Obama, "Press Conference by the President," *The White House*, July 15, 2015. (<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>); "Transcript: Secretary of

The JCPOA does not address the full range of Iran's record of illicit activities and lifts many of the most impactful sanctions on Iran. It also fails to achieve the stated goal of the P5+1: blocking all pathways to an Iranian nuclear bomb. Iran has merely agreed to certain limitations on its nuclear activities—a departure from the original U.S. policy goal of dismantling Iran's illicit nuclear infrastructure. Unfortunately, even these modest restrictions are fatally flawed because they disappear over time. Iran, instead, will mothball certain equipment and reduce enriched uranium stockpiles for ten to fifteen years, after which Tehran can expand its nuclear activities, build an industrial-scale infrastructure powered by easier-to-hide advanced centrifuges, and develop an intercontinental ballistic missile program.

As the United States and its partners dismantle the global sanctions regime, Iran can build greater economic resiliency against future sanctions pressure. The deal will provide extensive sanctions relief to Iran, and the impact of this relief will expand over time. Economic forecasts estimate that Iran's economic growth will expand to 4-5 percent annually for the next three years.⁶ The IMF estimates that Iran's real GDP growth may reach 5.5 percent in FY 2016/17 and FY 2017/18.⁷ This is a significant rebound from Iran's *negative* growth rate of 6 percent in FY 2012/13.⁸

Despite wishful thinking that the nuclear deal will empower the moderate forces in Iran, the deal is more likely to enrich the most dangerous elements of the regime, in particular Iran's Islamic Revolutionary Guard Corps (IRGC), as well as the massive business interests of Supreme Leader Ali Khamenei. The IRGC controls a vast business empire which is positioned to reap the benefits of sanctions relief. The IRGC directs Iran's external regional aggression, its nuclear and ballistic missile programs, and its vast system of domestic repression.

The IRGC also controls large swaths of Iran's economy. "The IRGC is Iran's most powerful economic actor," the U.S. Treasury Department explained, "dominating many sectors of the economy, including energy, construction, and banking"⁹—precisely those sectors set to receive sanctions relief under the JCPOA. Likewise, Supreme Leader Ali Khamenei controls a vast business empire estimated to be worth at least \$95 billion through a holding company called the Execution of Imam Khomeini's Order (EIKO, or Setad in Farsi). EIKO will be de-designated by the U.S. government on Implementation Day under the JCPOA. It is difficult to image a significant business transaction in these key sectors where the IRGC or EIKO won't be in on the deal. The

State John Kerry On Cuba, Nuclear Deal With Iran," *NPR*, July 20, 2015.

(<http://www.npr.org/2015/07/20/424769835/transcript-secretary-of-state-john-kerry-on-cuba-nuclear-deal-with-iran>)

⁶ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Mysterious Shrinking Reserves: Estimating the Value of Tehran's Foreign Assets," *Foundation for Defense of Democracies & Roubini Global Economics*, September 2015. (http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)

⁷ International Monetary Fund, "Regional Economic Outlook for the Middle East and Central Asia," October 21, 2015, page 83. (<http://www.imf.org/external/pubs/ft/reo/2015/mcd/eng/pdf/mreo1015.pdf>)

⁸ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Economic Resilience Against Snapback Sanctions Will Grow Over Time," *Foundation for Defense of Democracies & Roubini Global Economics*, June 2015. (http://www.defenddemocracy.org/content/uploads/publications/Iran_economy_resilience_against_snapback_sanctions.pdf)

⁹ U.S. Department of the Treasury, Press Release, "Treasury Submits Report to Congress on NIOC and NITC," September 24, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1718.aspx>)

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financial gains from the JCPOA will enable the IRGC and EIKO to expand their dangerous activities.

While the JCPOA lifts sanctions on Iran's nuclear activities, it does not preclude the United States from using economic tools to address the full range of Iran's illicit activities—despite statements from Iran that it will view any imposition of sanctions, nuclear or non-nuclear, as a violation of the deal. Giving into that interpretation would significantly undermine Washington's ability to use non-military tools to address national security threats. Instead, Congress should take the lead and impose measures to target Iran's support for terrorism, ballistic missile program, support for the Assad regime in Syria, human rights abuses, and systemic corruption. An important first step in this approach is to designate the IRGC as a terrorist organization and to sanction those Iranian entities like EIKO where the nexus between corruption and sponsorship of terrorism is clear. These steps are not a violation of the JCPOA, but rather an affirmation of the stated U.S. policy to "oppose Iran's destabilizing policies with every national security tool available."¹⁰

Congress should act to defend the sanctions architecture established to address the full range of Iran's illicit activities. Even within the confines of the JCPOA, there are significant "non-nuclear" measures, including through the use of the tax code, that Congress should consider to prevent the enrichment of those in the Iranian regime who continue to engage in terrorism and other activities inimical to U.S. interests.

My specific recommendations in this testimony are:

1. Designate the IRGC for terrorism;
2. Designate additional IRGC entities and individuals and foreign companies that do business with the IRGC;
3. Sanction the Supreme Leader's financial empire for its use of funds from corruption to support terrorism;
4. Prevent tax breaks for companies doing business in Iran;
5. Prevent the re-opening of the U.S. parent-foreign subsidiary loophole;
6. Develop a rehabilitation program for designated Iranian banks that relies on a change in illicit financial conduct; and,
7. Legislate criteria for the lifting of the Section 311 finding.

¹⁰ John Kerry, "Remarks on Nuclear Agreement With Iran," *National Constitution Center, Philadelphia*, September 2, 2015. (<http://www.state.gov/secretary/remarks/2015/09/246574.htm>)

INTRODUCTION

Throughout the summer and fall, Congress held numerous, in-depth debates and discussions about the terms of the deal and the sunset clauses that over time lift restrictions on Iran's nuclear activities. Given the deeply-flawed nature of the JCPOA, it should come as no surprise that bipartisan majorities of both the House and Senate opposed the deal and that the American public overwhelmingly rejected it. Some members of Congress who ultimately decided not to vote against the deal did so after issuing lengthy—and anguished—statements outlining its serious shortcomings.

Despite congressional reservations about the deal, the Obama administration has already issued waivers suspending “nuclear-related” sanctions pursuant to this summer's agreement.¹¹ These suspensions will take effect on Implementation Day when the International Atomic Energy Agency (IAEA) verifies that Iran has fulfilled specific nuclear commitments, though the IAEA is not required to conclude that Iran's nuclear program is exclusively peaceful, another flaw in the terms of the JCPOA.

While the political debate over the JCPOA continues into the election year, the challenges for international companies are just beginning. Navigating economic sanctions on Iran—both those that will be lifted and those that will remain—will be a legal and reputational minefield for international companies.

First, major discrepancies exist between U.S. and EU “de-designation” lists. Differences between EU and U.S. sanctions have existed for years—for example, the EU has designated more than 50 high ranking Iranian human rights violators who have escaped U.S. sanction, while the U.S. has designated two dozen Iranian financial institutions that have never been sanctioned by Europe. These inconsistencies will continue, and on Implementation Day, there will be more than one hundred entities “de-listed” by the U.S. but not by the EU, or vice versa.

These discrepancies likely will create a nightmare for professionals charged with keeping international businesses in compliance with U.S. laws and global reputational standards. The problem is especially acute when it comes to foreign financial institutions. Any institution engaged in “significant financial transactions” with banks that remain under U.S. sanctions “will risk losing its access to the U.S. financial system,” warned Treasury Secretary Lew.¹²

American companies also need to be wary of doing business with entities removed from Treasury's Specially Designated Nationals (SDN) list. Despite their removal from the SDN list, more than 140 entities (including financial institutions) will remain off limits to U.S. firms and their subsidiaries.¹³ According to the JCPOA, these entities are identified by the U.S. Treasury as owned

¹¹ U.S. Department of State, Bureau of Economic and Business Affairs, “JCPOA Contingent Waivers,” October 18, 2015. (<http://www.state.gov/e/eb/rls/othr/2015/248320.htm>)

¹² Jacob J. Lew, “Iran Nuclear Agreement: The Administration's Case,” *Testimony before the House Foreign Affairs Committee*, July 28, 2015. (<http://docs.house.gov/meetings/FA/FA00/20150728/103823/HHRG-114-FA00-Wstate-LewJ-20150728.pdf>)

¹³ “Joint Comprehensive Plan of Action – Attachments,” Vienna, July 14, 2015, Attachment 3. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachments_en.pdf)

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or controlled by the government of Iran, and U.S. persons are “prohibited from transactions with these individuals and entities, pursuant to the Iran Transactions and Sanctions Regulations.”

Next, American companies need to navigate the legal and political complexities of what business they are permitted to conduct through their foreign subsidiaries. Under the JCPOA, the U.S. government will license foreign subsidiaries to conduct business from which their parent companies are prohibited¹⁴—a loophole that Congress previously closed and one that legislators, and a future administration, may not want reopened.¹⁵

Since America’s primary trade embargo against Iran will continue, U.S. persons will continue to be banned from conducting business with most Iranian entities. Foreign companies meanwhile need to ensure that their transactions don’t transit through New York because Iran is banned from conducting the “momentary transaction to...dollarize a foreign payment,” known as a U-turn transaction. Acting Under Secretary of the Treasury Adam Szubin noted.¹⁶ As Treasury Secretary Lew explained succinctly, Iran “will continue to be denied access to the world’s largest financial and commercial market.”¹⁷

Behind all of the technical details and legal hurdles to navigate, one overarching concern should remain at the forefront of risk concerns for international firms: the IRGC’s dominant role in the Iranian economy. The IRGC controls significant companies in all major sectors of Iran’s economy. Any foreign company partnering with local Iranian businesses will likely expose itself to the IRGC or to the business interests of Supreme Leader Ali Khamenei through EIKO, his massive holding company, or both. That is, unless Congress takes steps now to mitigate this very significant problem.

In the following testimony, I will explain the problems with the structure of JCPOA’s sanctions relief and the leverage that the deal provides Iran—what I call Iran’s “nuclear snapback.” I will also elaborate on how sanctions relief is projected to enrich the most dangerous elements of the regime—the business empires of the IRGC and Supreme Leader Ali Khamenei. Congress can mitigate some of the worst effects of the sanctions relief by using non-nuclear sanctions and the tax code to raise the costs for international companies and the foreign subsidiaries of U.S. companies engaging with the IRGC, EIKO, and other dangerous Iranian elements.

¹⁴ “Joint Comprehensive Plan of Action, Annex II – Sanctions-related commitments,” Vienna, July 14, 2015, paragraph 5.1.2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf)

¹⁵ U.S. House of Representatives, 112th Congress, 2nd Session, H.R. 1905, “Iran Threat Reduction and Syria Human Rights Act of 2012,” *Government Printing Office*, 2012, Section 218. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905enr/pdf/BILLS-112hr1905enr.pdf>)

¹⁶ Adam Szubin, “Beyond the Vote: Implications for the Sanctions Regime on Iran,” *Keynote Address before The Washington Institute for Near East Policy*, September 16, 2015. (<http://www.washingtoninstitute.org/uploads/Documents/other/SzubinTranscript20150916-v2.pdf>)

¹⁷ Jacob J. Lew, “Iran Nuclear Agreement: The Administration’s Case,” *Testimony before the House Foreign Affairs Committee*, July 28, 2015. (<http://docs.house.gov/meetings/FA/FA00/20150728/103823/HHRG-114-FA00-Wstate-LewJ-20150728.pdf>)

THE STRUCTURE OF SANCTIONS RELIEF

The Joint Comprehensive Plan of Action (JCPOA) is a fatally flawed deal because rather than block Iran's pathways, it opens a "patient path" to a nuclear weapon and intercontinental ballistic missile (ICBM) capability over the next decade and a half. Tehran has to simply abide by the agreement to emerge as a threshold nuclear power with an industrial-size enrichment program, an advanced long-range ballistic missile program, access to advanced heavy weaponry, and a more powerful economy increasingly immunized against Western sanctions.

On Implementation Day, Iran will receive substantial sanctions relief creating a major "stimulus package" for Iran's economy, with the benefits expanding and creating greater economic resiliency over time. The JCPOA front-loads sanctions relief, reconnecting Iranian banks back into the global financial system and providing Iran with access to about \$90-120 billion in previously frozen foreign assets.¹⁸ These funds could flow to the coffers of terrorist groups and rogue actors. While President Obama has claimed the money would not be a "game-changer" for Iran,¹⁹ Supreme Leader Ali Khamenei stated in a speech less than one week after the JCPOA announcement, "We shall not stop supporting our friends in the region: The meek nation of Palestine, the nation and government of Syria... and the sincere holy warriors of the resistance in Lebanon and Palestine."²⁰ This infusion of \$90-\$12 billion in cash and other assets will relieve budgetary challenges for a country that had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013²¹ but was spending at least \$6 billion annually to support Assad.²²

Sanctions on Iran's crude oil export transactions will also be lifted, as will sanctions on key sectors of the Iranian economy. This sanctions relief will enable Iran to build economic resilience against future economic sanctions pressure—both sanctions aimed at isolating other illicit financial conduct and so-called "snapback" sanctions in the event of Iranian non-compliance with the JCPOA.

After five and eight years respectively, the arms embargo and restrictions on ballistic missile development will lapse. Already, since the July 14 JCPOA agreement, Iran tested a ballistic missile capable of carrying a nuclear warhead in violation of U.N. Security Council resolutions,²³ and yet

¹⁸ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Mysterious Shrinking Reserves: Estimating the Value of Tehran's Foreign Assets," *Foundation for Defense of Democracies & Roubini Global Economics*, September 2015. (http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)

¹⁹ Barack Obama, "Press Conference by the President," *Washington, D.C.*, July 15, 2015. (<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>)

²⁰ "Iran Press Review 20 July," *Foundation for Defense of Democracies*, July 20, 2015. (<http://www.defenddemocracy.org/iran-press-review-20-july>)

²¹ Mark Dubowitz & Rachel Ziemba, "When Will Iran Run Out of Money?," *Foundation for Defense of Democracies & Roubini Global Economics*, October 2, 2013. (http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

²² Eli Lake, "Iran Spends Billions to Prop Up Assad," *Bloomberg*, June 9, 2015. (<http://www.bloombergview.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>)

²³ Sam Wilkins, "Iran Tests New Precision-Guided Ballistic Missile," *Reuters*, October 11, 2015. (<http://www.reuters.com/article/2015/10/11/us-iran-military-missiles-idUSKCN0S505L20151011>); "U.S.: Iran Missile Test 'Clear Violation' of U.N. Sanctions," *CBS News*, October 16, 2015. (<http://www.cbsnews.com/news/iran-ballistic-missile-test-un-sanctions-us-ambassador-samantha-power/>)

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over the past decade will remain sanctioned.

The Supreme Leader has already begun renegotiating the terms of the JCPOA. In a public letter to President Rouhani on October 21, the Supreme Leader demanded that the U.S. and the EU must commit, in writing, to completely lift all sanctions before Iran begins to implement its nuclear commitments.²⁷ While the EU and U.S. have already committed to the suspension of sanctions by issuing the necessary legal documents on Adoption Day, Khamenei's statement implies that a suspension is insufficient and a full termination of sanctions is required.

The goal of sanctions was to provide the president with the tools to stop the development of an Iranian nuclear threshold capacity and also to protect the integrity of the U.S.-led global financial sector from the vast network of Iranian financial criminals. The JCPOA, however, requires a de-listing of sanctioned entities divorced from a change in the illicit and illegal behavior that prompted the designation in the first place. The JCPOA requires the wholesale lifting of sanctions on entire sectors rather than creating a rehabilitation program (as was the case for the termination of sanctions on Myanmar) requiring that sanctioned entities demonstrate that they are no longer engaged in illicit behavior. Instead, the JCPOA's sanctions relief program creates no guarantees that these entities will, once de-listed, cease the patterns of illicit conduct that caused them to be sanctioned in the first place. Indeed, there is ample reason to believe they will redouble that activity.

The JCPOA & the Challenge to Conduct-Based Financial Sanctions

The JCPOA dismantles the international economic sanctions architecture which was designed to respond to the full range of Iran's illicit activities, not only the development of Iran's illicit nuclear program. The United States has spent the last decade building a powerful sanctions architecture to punish Iran for its nuclear mendacity, illicit ballistic missile development, vast financial support for terrorist groups, backing of other rogue states like Bashar al-Assad's Syria, human rights abuses, and the financial crimes that sustain these illicit activities. More broadly, a primary goal of the sanctions on Iran, as explained by senior Treasury Department officials over the past decade, was to "protect the integrity of the U.S. and international financial systems" from Iranian illicit financial activities.²⁸

Tranche after tranche of designations issued by Treasury, backed by intelligence that often took months, if not years, to compile, isolated Iran's worst financial criminals. And designations were only the tip of the iceberg. Treasury officials traveled the globe to meet with financial leaders and business executives to warn them against transacting with known and suspected terrorists and weapons proliferators.²⁹ This campaign was crucial to isolating Iran.

²⁷ "Iran Press Review," *Foundation for Defense of Democracies*, October 21, 2015. (<http://fdd.email20.com/t/ViewEmail/r/941B907BD0F8D6F62540EF23F30FEDED/18EF3159F08F673EDDA3541AF197FE1F>)

²⁸ David Cohen, "The Law and Policy of Iran Sanctions," Remarks before the New York University School of Law, September 12, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1706.aspx>)

²⁹ Robin Wright, "Stuart Levey's War," *The New York Times*, November 2, 2008. (http://www.nytimes.com/2008/11/02/magazine/02IRAN-t.html?pagewanted=all&_r=0)

Following years of individual designations of Iranian and foreign financial institutions for involvement in the illicit financing of nuclear, ballistic missile, and terrorist activities,³⁰ Treasury issued a finding in November 2011 under Section 311 of the USA PATRIOT Act that Iran (and its entire financial sector, including its central bank) was a “jurisdiction of primary money laundering concern.”³¹ Treasury cited Iran’s “support for terrorism,” “pursuit of weapons of mass destruction,” including its financing of nuclear and ballistic missile programs, and the use of “deceptive financial practices to facilitate illicit conduct and evade sanctions.”³² The entire country’s financial system posed “illicit finance risks for the global financial system.”³³

Internationally, the global anti-money laundering and anti-terror finance standards body the Financial Action Task Force (FATF) also warned its members that they should “apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran.”³⁴ Despite the JCPOA, in June and in October 2015, FATF again issued statements warning that Iran’s “failure to address the risk of terrorist financing” poses a “serious threat...to the integrity of the international financial system.”³⁵

The Section 311 finding was conduct-based, and it would therefore be appropriate to tie the lifting of sanctions on all designated Iranian banks (especially the legislatively-designated Central Bank of Iran) and their readmission into the global financial system to specific changes in their conduct. The JCPOA, however, requires the lifting of financial sanctions prior to a demonstrable change in Iran’s illicit financial conduct.

In the past, Washington has given “bad banks” access to the global financial system in order to secure a nuclear agreement. In 2005, Treasury issued a Section 311 finding against Macau-based Banco Delta Asia,³⁶ and within days, North Korean accounts and transactions were frozen or blocked in banking capitals around the world. North Korea refused to make nuclear concessions

³⁰ Treasury designated 23 Iranian and Iranian-allied foreign financial institutions as “proliferation supporting entities” under Executive Order 13382 and sanctioned Bank Saderat as a “terrorism supporting entity” under Executive Order 13224. U.S. Department of the Treasury, Press Release, “Treasury Cuts Iran’s Bank Saderat Off from U.S. Financial System,” September 8, 2006. (<http://www.treasury.gov/press-center/press-releases/Pages/lp87.aspx>); U.S. Department of the Treasury, Press Release, “Treasury Designates Major Iranian State-Owned Bank,” January 23, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1397.aspx>)

³¹ U.S. Department of the Treasury, Press Release, “Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern,” November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf>)

³² *Ibid.*

³³ U.S. Department of the Treasury, Press Release, “Fact Sheet: New Sanctions on Iran,” November 21, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

³⁴ The Financial Action Task Force, Public Statement, “FATF Public Statement 14 February 2014,” February 14, 2014. (<http://www.fatf-gafi.org/countries/d-i/islamicrepublicofiran/documents/public-statement-feb-2014.html>)

³⁵ The Financial Action Task Force, Public Statement, “FATF Public Statement 26 June 2015,” June 26, 2015. (<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2015.html>)

The Financial Action Task Force, Public Statement, “FATF Public Statement – 23 October 2015,” October 23, 2015. (<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-october-2015.html>)

³⁶ U.S. Department of the Treasury, Press Release, “Treasury Designates Banco Delta Asia as Primary Money Laundering Concern Under USA PATRIOT Act,” September 15, 2005. (<http://www.treasury.gov/press-center/press-releases/Pages/js2720.aspx>)

before sanctions relief and defiantly conducted a nuclear test.³⁷ The State Department advocated for the release of frozen North Korean funds on good faith,³⁸ and ultimately prevailed. As a result, however, Washington lost its leverage and its credibility by divorcing the Section 311 finding from the illicit conduct that had prompted the finding in the first place. Undeterred, North Korea moved forward with its nuclear weapons program while continuing to engage in money laundering, counterfeiting, and other financial crimes.

Compromising the integrity of the U.S. and global financial system to conclude a limited agreement with North Korea neither sealed the deal nor protected the system. The JCPOA repeats this same mistake by lifting financial restrictions on bad banks without certifications that Iran's illicit finance activities have ceased.

This is what is especially notable about the lifting of designations: the Obama administration has provided no evidence to suggest that these individuals, banks, and businesses are no longer engaged in the full range of illicit conduct on which the original designations were based. What evidence, for example, is there for the de-designation of the Central Bank of Iran (CBI), which is the main financial conduit for the full range of Iran's illicit activities? How does a nuclear agreement resolve the proven role of the CBI in terrorism and ballistic missile financing, money laundering, deceptive financial activities, and sanctions evasion? In other words, with the dismantlement of much of the Iran sanctions architecture in the wake of a nuclear agreement, the principle upon which Treasury created the sanctions architecture—the protection of the global financial system—appears no longer to be the standard.

Banking and Financial Provisions

On Implementation Day, the United States will terminate financial sanctions against most Iranian financial institutions. The nuclear deal lifts U.S. sanctions on 21 out of the 23 Iranian banks designated for proliferation financing—including both nuclear and ballistic missile activity.³⁹ The designation of Bank Saderat for terrorist financing will remain in place, but the sanctions against the Central Bank of Iran will be lifted. Twenty-six other Iranian financial institutions blacklisted for providing financial services to previously-designated entities or for being owned by the government of Iran will also be removed from Treasury's blacklist.⁴⁰

³⁷ David E. Sanger, "North Koreans Say They Tested Nuclear Device," *The New York Times*, October 9, 2006. (<http://www.nytimes.com/2006/10/09/world/asia/09korea.html?pagewanted=all>)

³⁸ Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare*, (New York: Public Affairs, 2013), page 258.

³⁹ U.S. sanctions on Ansar Bank and Mehr Bank are scheduled to remain in place. Sanctions on Arian Bank, Banco Internacional de Desarrollo, Bank Kargoshae, Bank of Industry and Mine, Bank Melli, Bank Mellat, Bank Refah, Bank Sepah, Bank Tejarat, Europaisch-Iranische Handelsbank, Export Development Bank of Iran, First East Export Bank, First Islamic Bank, Future Bank, Iranian-Venezuela Bi-National Bank, Kont Investment Bank, Moallem Insurance Company, Persia International Bank, Post Bank, Sorinet Commercial Trust Bankers, and Trade Capital Bank (aka Bank Torgovoy Kapital ZAO) as well as the Central Bank of Iran (aka Bank Markazi Jomhouri Islami Iran) will be lifted on "Implementation Day." See Attachment 3. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachments_en.pdf)

⁴⁰ Over the past decade, the Treasury Department has designated 51 banks and their subsidiaries inclusive of the 23 banks designated as proliferators, Bank Saderat which was designated for financing terrorism, and the Central Bank of Iran. With the exception of Bank Saderat, Ansar Bank, and Mehr Bank, all Iranian financial institutions will be de-listed on implementation day. Note, there is an inconsistency in Attachment 3. The Joint Iran-Venezuela Bank is

U.S. persons will remain prohibited from transacting with Iranian financial institutions, and these de-listed banks will continue to be prohibited from transacting in dollars.⁴¹ Restrictions banning Iran from engaging in U-turn payments will remain in place.⁴²

Meanwhile, the European Union will de-list most Iranian banks that it sanctioned over the past decade and remove restrictions on financial messaging services, allowing these de-listed Iranian banks back onto the SWIFT financial messaging system from where they were expelled in March 2012.⁴³ SWIFT sanctions will be lifted on the Central Bank of Iran and all Iranian banks⁴⁴ originally banned from SWIFT⁴⁵ without any indication that their financial conduct has changed.

While the U.S. and EU “de-designation” lists are similar, there are important differences that international companies should keep in mind.

The U.S. will lift sanctions on Bank Sepah on Implementation Day while the bank will remain under EU and U.N. sanctions for another eight years. Bank Sepah was originally designated in 2007 by the U.S., EU, and U.N. because it was the “financial linchpin of Iran’s missile procurement network.”⁴⁶ It is not clear why the United States is de-listing this bank before it is removed from EU and U.N. sanctions lists.

listed as the same entry as Iran-Venezuela Bi-National Bank. On the SDN list, the two are listed with unique entries and different designations. FDD assumes, however, that both banks are being de-listed.

⁴¹ Henry Balani, “Iran Nuclear Agreement’s AML Policy Implications: Banks Should Be Researching Changes Now,” *Banking Exchange*, September 4, 2015. (<http://www.bankingexchange.com/compliance/bsa-aml/item/5726-iran-nuclear-agreement-s-aml-policy-implications>)

⁴² U.S. Department of the Treasury, Office of Foreign Assets Control, “Additional Iran-related Questions From Financial Institutions,” Accessed October 30, 2015. (http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#misc_fi)

⁴³ “Joint Comprehensive Plan of Action, Annex II – Sanctions-related commitments,” Vienna, July 14, 2015. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf);

SWIFT, Press Release, “SWIFT Instructed to Disconnect Sanctioned Iranian Banks Following EU Council Decision,” March 15, 2012. (http://www.swift.com/news/press_releases/SWIFT_disconnect_iranian_banks)
⁴⁴ On Implementation Day, the EU will lift sanctions on the Central Bank of Iran and Bank Mellat, Bank Melli, Bank Refah, Bank Tejarat, Europaische-Iranische Handelsbank (EIH), Export Development Bank of Iran, Future Bank, Onerbank ZAO, Post Bank, and Sina Bank. On Transition Day, the EU will also lift sanctions on Ansar Bank, Bank Saderat, Bank Sepah and Bank Sepah International, and Mehr Bank. See Attachment 1, parts 1 and 2 and Attachment 2, parts 1 and 2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf)

⁴⁵ The Council of the European Union, “Council Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures against Iran and Repealing Regulation (EU) No 961/2010,” *Official Journal of the European Union*, March 24, 2012. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406807228342&uri=CELEX:32012R0267>)

⁴⁶ U.S. Department of the Treasury, Press Release, “Iran’s Bank Sepah Designated by Treasury: Sepah Facilitating Iran’s Weapons Program,” January 9, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp219.aspx>); The Council of the European Union, “Commission Regulation (EC) No 441/2007 of 20 April 2007 Amending Council Regulation (EC) No 423/2007 Concerning Restrictive Measures Against Iran,” *Official Journal of the European Union*, April 21, 2007. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1444852679147&uri=CELEX:32007R0441>); United Nations Security Council, “Resolution 1747 (2007),” March 24, 2007. (https://www.iaea.org/sites/default/files/unsc_res1747-2007.pdf)

In contrast, the EU will de-list Bank Saderat in eight years, but U.S. sanctions will remain in place indefinitely. The EU designated Saderat in July 2010 for providing “financial services for entities procuring on behalf of Iran’s nuclear and ballistic missile” programs.⁴⁷ This designation followed a U.N. Security Council resolution calling on all states to “exercise vigilance over the activities of [Iranian] financial institutions” and mentioned Bank Melli and Bank Saderat by name.⁴⁸ The U.S. designated the bank in 2007 because Iran used it to “channel funds to terrorist organizations” and because Hezbollah used the bank to “send money to other terrorist groups.”⁴⁹

Then there are banks owned or controlled by the IRGC: The EU will lift nuclear and ballistic missile sanctions on Ansar Bank and Mehr Bank in eight years, but U.S. sanctions will remain in place. The two banks were created by the IRGC to provide services to its personnel and to its paramilitary Basij force, according to both the U.S. Treasury and the EU.⁵⁰ When these two banks are de-listed by the EU, they, along with all other de-listed banks, including the Central Bank of Iran, will be permitted back onto the SWIFT system.

On Implementation Day, the United States will also de-list Bank Melli and its subsidiaries, including Arian Bank, Bank Kargoshaee, and Future Bank. When Treasury sanctioned Bank Melli, it specifically mentioned that the institution facilitates transactions for the IRGC and engages in deceptive financial practices to hide the IRGC’s involvement.⁵¹ Lifting sanctions on these financial institutions will provide the IRGC and its elite arm, the Quds Force, with renewed access to the international financial systems and an easier ability to finance their illicit activities.

The Challenge of “Non-Nuclear” Sanctions and Iran’s “Nuclear Snapback”

Another fatal deficiency of the JCPOA is that it creates an Iranian “nuclear snapback” instead of an effective economic sanctions snapback. Throughout the negotiations, the Obama administration assured the public and Congress that if Iran violated its nuclear commitments under the final deal, sanctions could be “snapped back” into place.

⁴⁷ The Council of the European Union, “Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 Implementing Article 7(2) of Regulation (EC) No 423/2007 Concerning Restrictive Measures Against Iran,” *Official Journal of the European Union*, July 27, 2010. (<http://www.iranwatch.org/sites/default/files/eu-council-sanctions-072610.pdf>)

⁴⁸ United Nations Security Council, “Resolution 1803 (2008),” March 3, 2008, page 4. (<http://www.treasury.gov/resource-center/sanctions/Programs/Documents/1803.pdf>)

⁴⁹ U.S. Department of the Treasury, Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

⁵⁰ U.S. Department of the Treasury, Press Release, “Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL,” December 21, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx>); The Council of the European Union, “Council Implementing Regulation (EU) No 503/2011 Of 23 May 2011 Implementing Regulation (EU) No 961/2010 On Restrictive Measures Against Iran,” *Official Journal of the European Union*, May 24, 2011. (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:136:0026:0044:EN:PDF>)

⁵¹ U.S. Department of the Treasury, Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

Even as originally conceived, this enforcement mechanism was flawed⁵² because of the significant disagreements that are likely to take place between the United States, Europe, and members of the U.N. Security Council on the evidence, the seriousness of infractions, the appropriate level of response, and likely Iranian retaliation. The snapback sanction mechanism also is economically flawed because it does not account for the effort it will take to persuade companies to leave Iran. It took years to persuade international companies to exit Iran after they had invested billions of dollars; once companies re-enter the Iranian market, it will be difficult to get them to leave again. Furthermore, as international companies reengage in the Iranian market, European countries may experience domestic economic pressure not to re-impose sanctions. These companies may have invested billions of dollars back into Iran and may be unwilling to walk away from those investments despite Iranian nuclear non-compliance. Foreign Minister Mohammad Zarif noted that the “swarming of businesses to Iran” is a barrier to the re-imposition of sanctions, and once the sanctions architecture is dismantled, “it will be impossible to reconstruct it.” Zarif boasted that Iran can restart its nuclear activities faster than the United States can re-impose sanctions.⁵³

The Obama administration’s understanding of the “snapback” sanction also reflected a too-optimistic assessment of the lag-time between the imposition of sanctions and market and Iranian reaction. Previous economic sanctions impacted reputational and legal risk calculations of private companies evaluating potential business deals with Iranian entities that had consistently engaged in deceptive and other illicit conduct. The question of risk and the integrity of Iran’s economy and financial dealings cannot be turned on and off quickly.

United Nations Resolution 2231 also states that the snapback mechanism is for issues of “significant non-performance,” implying that it would not likely be used for incidents of incremental cheating.⁵⁴ The Iranian regime has previously cheated incrementally, not egregiously, although the sum total of these infractions has been egregious. The snapback provision incentivizes Iran to continue this behavior because there is no enforcement mechanism to punish incremental cheating. Acting Under Secretary of the Treasury Adam Szubin and other administration officials have emphasized that if there are small violations, “We have a host of calibrated penalty tools to respond.”⁵⁵ However, Iran is likely to interpret these actions—“from small measures to sectoral measures to full snap-back of the current sanctions,” to quote Szubin⁵⁶—as a re-imposition of sanctions and grounds to walk away from the deal, and has said as much.⁵⁷

⁵² For more detail on the challenges of the “snapback” sanction, see “The ‘Snapback’ Sanction as a Response to Iranian Non-Compliance,” *Iran Task Force*, January 2015. (http://taskforceoniran.org/pdf/Snapback_Memo.pdf)

⁵³ “Foreign Investments in Iran to Serve as Barrier for Sanctions Snapback – FM,” *Voice of the Islamic Republic of Iran, Radio Farhang* (in Persian), July 21, 2015. (Accessed via BBC Worldwide Monitoring)

⁵⁴ United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015, page 4, paragraph 11. (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

⁵⁵ Adam Szubin, “Beyond the Vote: Implications for the Sanctions Regime on Iran,” *Keynote Address before The Washington Institute for Near East Policy*, September 16, 2015.

(<http://www.washingtoninstitute.org/uploads/Documents/other/SzubinTranscript20150916-v2.pdf>)

⁵⁶ Adam Szubin, “Beyond the Vote: Implications for the Sanctions Regime on Iran,” *Keynote Address before The Washington Institute for Near East Policy*, September 16, 2015.

(<http://www.washingtoninstitute.org/uploads/Documents/other/SzubinTranscript20150916-v2.pdf>)

⁵⁷ Column Lynch, “Iran to United Nations; New Sanctions Could Kill Nuclear Deal,” *Foreign Policy*, July 28, 2015. (<https://foreignpolicy.com/2015/07/28/john-kerry-obama-administration-terrorism-human-rights-iran-to-united-nations-new-sanctions-could-kill-nuclear-deal/>)

According to statements from the Obama administration, the snapback will not be used to address Iranian violations of the “non-nuclear” provisions of U.N. Security Council resolutions, namely the arms embargo and the ballistic missile restrictions.⁵⁸ To date, the United Nations has not taken direct action to address Iran’s violation of the ballistic missile restrictions or to address Quds Force Commander Qassem Soleimani’s visit to Russia in violation of international sanctions.⁵⁹ Members of Congress already have raised concerns about the unwillingness of the Obama administration to respond to Iran’s illicit activities.⁶⁰

Instead of an effective sanctions snapback, the JCPOA provides Iran with a powerful “nuclear snapback.” The JCPOA makes it clear that using snapback sanctions may lead to a cancelling of the agreement, with Iran walking away from its commitments and resuming its nuclear program. Under the JCPOA, both the EU and U.S. “will refrain from re-introducing or re-imposing” the sanctions specified by the JCPOA and “from imposing new nuclear-related sanctions.”⁶¹ Nor will there be any “new nuclear-related UN Security Council sanctions... [or] new EU nuclear-related sanctions or restrictive measures.”⁶² Twice the text then states that if the U.S. or EU re-impose sanctions, Iran will treat this “as grounds to cease performing its commitments under this JCPOA in whole or in part.”⁶³

In short, because any re-imposition of sanctions is likely to scuttle the entire agreement, it will be difficult to persuade our P5+1 partners to punish Iran for any violations short of the most flagrant unless the administration sends a message by its own actions that it is determined to punish any violation. Any punishment of a small-to-medium level violation may lead Iran to stop complying with the agreement. Because both the United States and Europe will be heavily invested in the deal and only willing to abrogate it for a major violation, and without serious, explicit action that signals a determination to hold Iran accountable for non-compliance, Iran is likely to get away with small- and medium-sized violations. Iran may also use an implicit—or explicit—threat of nuclear escalation to pressure U.S. allies not to support efforts to address Iranian non-compliance.

Of deep concern, the JCPOA’s language also provides Iran with an opening to diminish the ability of the United States to apply any sanctions, including non-nuclear sanctions, against the full range of Iran’s illicit conduct. The JCPOA text specifically states that the EU and the United States will

⁵⁸ Louis Charbonneau & Michelle Nichols, “No Automatic Return of Sanctions If Iran Breaks Arms Embargo: Kerry,” *Reuters*, August 11, 2015. (<http://www.reuters.com/article/2015/08/11/us-iran-nuclear-kerry-sanctions-idUSKCN0QG22M20150811>)

⁵⁹ Jennifer Griffin & Lucas Tomlinson, “Exclusive: Quds Force Commander Soleimani Visited Moscow, Met Russian Leaders in Defiance of Sanctions,” *Fox News*, August 6, 2015. (<http://www.foxnews.com/politics/2015/08/06/exclusive-quds-force-commander-soleimani-visited-moscow-met-russian-leaders-in/>)

⁶⁰ Office of Sen. Richard Blumenthal, Press Release, “Blumenthal, Murphy Express Profound Concern over Iranian Ballistic Missile Test in Letter to Secretary Kerry,” October 21, 2015.

(<http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-murphy-express-profound-concern-over-iranian-ballistic-missile-test-in-letter-to-secretary-kerry>); Jordan Carney, “Senators Push Obama for Response to Iran’s Ballistic Missile Test,” *The Hill*, October 15, 2015. (<http://thehill.com/blogs/floor-action/senate/257018-senators-push-administration-on-iran-missile-test>)

⁶¹ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 26. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁶² *Ibid.*

⁶³ *Ibid.*, paragraph 26 and 37.

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“refrain from any policy specifically intended to directly and adversely affect the normalization of trade and economic relations with Iran.” Tehran may use this provision to argue that any imposition of sanctions, even for non-nuclear illicit activities, violates the JCPOA.⁶⁴ Iran will likely threaten to walk away from the deal and expand its nuclear program if the United States and its allies attempt to strengthen counter-terrorism related sanctions, for example. The administration should be mindful of this and enforce non-nuclear sanctions vigorously, as it indicated many times that it would.

Iran has already stated that it may “reconsider its commitments” under the JCPOA if “new sanctions [are imposed] with a nature and scope identical or similar to those that were in place prior to the implementation date, irrespective of whether such new sanctions are introduced on nuclear related or other grounds.”⁶⁵ Supreme Leader Khamenei reiterated this threat in his October 21 letter on Iran’s implementation of the JCPOA:

“Imposition of any sanctions at any level and under any pretexts (including the repeated and fabricated pretexts of terrorism and human rights) by any of the negotiating countries will be considered a violation of the JCPOA.”⁶⁶

U.S. administration officials, in contrast, have stated that Washington is not limited by the JCPOA in its use of targeted economic sanctions to combat the full range of Iran’s illicit activities. Secretary of State John Kerry pledged that the United States “will oppose Iran’s destabilizing policies with every national security tool available.”⁶⁷ Secretary of the Treasury Jack Lew committed before Congress that the United States will “continue to prosecute our unilateral sanctions on things like terrorism, on things like regional destabilization and human rights.”⁶⁸ And Under Secretary Szubin has been most explicit on this point:

“The JCPOA does not in any way affect our sanctions that touch on Iran’s support to terrorist groups such as Hezbollah, Palestinian Islamic Jihad, other destabilizing proxies, such as the Qods Force, the Islamic Revolutionary Guard Corps (IRGC). It doesn’t touch on Iran’s abuse of human rights and other areas, such as their support to Bashar al-Assad in Syria and the Houthis in Yemen.... The JCPOA in no way limits our ability to target Iran’s destabilizing activities, and we have made our posture on this point clear not just to our negotiating partners but to Iran as well.”⁶⁹

⁶⁴ Ibid, paragraph 29.

⁶⁵ Column Lynch, “Iran to United Nations; New Sanctions Could Kill Nuclear Deal,” *Foreign Policy*, July 28, 2015. (<https://foreignpolicy.com/2015/07/28/john-kerry-obama-administration-terrorism-human-rights-iran-to-united-nations-new-sanctions-could-kill-nuclear-deal/>)

⁶⁶ “Iran Press Review,” *Foundation for Defense of Democracies*, October 21, 2015. (<http://fdd.cmail20.com/t/ViewEmail/r/941B907BD0F8D6F62540EF23F30FEDED/18EF3159F08F673EDDA3541AF197FE1F>)

⁶⁷ John Kerry, “Remarks on Nuclear Agreement With Iran,” *National Constitution Center, Philadelphia*, September 2, 2015. (<http://www.state.gov/secretary/remarks/2015/09/246574.htm>)

⁶⁸ Jacob J. Lew, “Iran Nuclear Agreement: The Administration’s Case,” *Hearing before the House Foreign Affairs Committee*, July 28, 2015. (<http://www.cq.com/doc/congressionaltranscripts-4734477?3>)

⁶⁹ Adam Szubin, “Beyond the Vote: Implications for the Sanctions Regime on Iran,” *Keynote Address before The Washington Institute for Near East Policy*, September 16, 2015. (<http://www.washingtoninstitute.org/uploads/Documents/other/SzubinTranscript20150916-v2.pdf>)

It is important now, before international companies return to Iran, to test the proposition that the JCPOA does not limit America's ability to use economic sanctions to combat non-nuclear illicit activities. Throughout the negotiating period and now following the JCPOA's adoption, Iran has continued to engage in support for terrorism, support for Assad's brutality against Syrian civilians, and systemic human rights abuses against Iranian civilians. Congress should pass legislation to enhance sanctions against these activities by targeting the IRGC, the primary organ of the regime responsible for these activities. If administration officials argue that congressional efforts undermine the JCPOA, we will know that Iran, rather than the United States, is speaking truthfully about the JCPOA's impact on non-nuclear sanctions.

ENRICHING THE HARDLINERS

The JCPOA will enrich the most dangerous elements of the Iranian regime. Rather than benefitting independent Iranian businesses, the sanctions relief likely will strengthen the control of the Supreme Leader, IRGC, and state of key sectors of Iran's economy.

These elements stand to be the greatest beneficiaries of the economic relief granted under the JCPOA. They will benefit both from their dominance of key strategic areas of the Iranian economy and from an overall improvement in Iran's macroeconomic environment. Already, the sanctions relief provided as part of the interim agreement enabled Iran to move from a severe economic recession to a modest recovery. During negotiations, Iran received \$11.9 billion in direct sanctions relief, sanctions on major sectors of Iran's economy were suspended, and President Obama de-escalated the sanctions pressure by blocking new congressional sanctions. Jointly, these forces rescued the Iranian economy and its leaders, including the IRGC, from an imminent and severe balance of payments crisis.⁷⁰

Iran's growth for this fiscal year (FY 2015/16) is forecast to stabilize around 1-2 percent and expand to 4-5 percent annually for the next three years.⁷¹ Depending on Iran's policy choices, economic growth could reach 5-6 percent.⁷² In addition to the improvement in Iran's macroeconomic environment, on Implementation Day, the European Union, United States, and United Nations will lift or suspend sanctions against entire sectors of the Iranian economy. The IRGC in particular is active in many of these sectors, and IRGC companies and entities controlled by the Supreme Leader are set to capitalize on new business opportunities.

The IRGC and Iran's Rogue Activities

⁷⁰ Jennifer Hsieh, Rachel Ziemba, & Mark Dubowitz, "Iran's Economy: Out of the Red, Slowly Growing,"

Foundation for Defense of Democracies & Roubini Global Economics, October 2014.

(http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDRReport_Oct14.pdf); Jennifer Hsieh,

Rachel Ziemba, & Mark Dubowitz, "Iran's Economy Will Slow but Continue to Grow Under Cheaper Oil and

Current Sanctions," *Foundation for Defense of Democracies & Roubini Global Economics*, February 2015.

(http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDRReport_FEB15.pdf)

⁷¹ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Mysterious Shrinking Reserves: Estimating the Value of

Tehran's Foreign Assets," *Foundation for Defense of Democracies & Roubini Global Economics*, September 2015.

(http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)

⁷² Roubini Global Economics predicts 5-6 percent, and the IMF predicts 5.5 percent in FY 2016/17 and 2017/18.

International Monetary Fund, "Regional Economic Outlook for the Middle East and Central Asia," October 21,

2015, page 83. (<http://www.imf.org/external/pubs/ft/reo/2015/mcd/eng/pdf/mreo1015.pdf>)

The IRGC is the central force behind the range of Iran's illicit and illegal activities—from nuclear proliferation to support of international terrorism to systemic human rights abuses. In 2011, then-Secretary of State Hillary Clinton and then-Secretary of the Treasury Timothy Geithner explained:

“The IRGC also serves as the domestic ‘enforcer’ for the Iranian regime, continues to play an important proliferation role by orchestrating the import and export of prohibited items to and from Iran, is involved in support of terrorism throughout the region, and is responsible for serious human rights abuses against peaceful Iranian protesters and other opposition participants.”⁷³

It is for this reason that the United States and the international community have targeted the IRGC with a range of sanctions tools. The IRGC was designated first in 2007 for involvement in Iran's proliferation activities,⁷⁴ in 2011 for “severe human rights abuses in Iran,”⁷⁵ and in 2012 activities like monitoring dissidents and censorship.⁷⁶

At the same time, the United States also targeted the IRGC's elite arm, the Quds Force (QF), for its role in international terrorism and supporting a range of terrorist groups. The Quds Force is responsible for “exporting the revolution” abroad,⁷⁷ is Iran's “primary arm for...supporting terrorist and insurgent groups,” and “provides material, logistical assistance, training and financial support to militants and terrorist operatives throughout the Middle East and South Asia.”⁷⁸ In its designation of the Quds Force in 2007 for terrorism, Treasury noted that the Quds Force provided “weapons, training, funding, and guidance” to groups in Iraq that targeted American servicemen.⁷⁹ The Quds Force and IRGC-QF Commander Qassem Soleimani were also sanctioned for supporting Syria's intelligence services during the current crisis in Syria.⁸⁰

⁷³ Hillary Rodham Clinton & Timothy Geithner, “Joint Statement on Iran Sanctions,” June 23, 2011.

(<http://www.state.gov/r/pa/prs/ps/2011/06/166814.htm>)

⁷⁴ U.S. Department of the Treasury, Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

⁷⁵ U.S. Department of the Treasury, Press Release, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

⁷⁶ Executive Order 13606, “Blocking the Property and Suspending Entry into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology,” April 22, 2012. (<http://www.treasury.gov/resource-center/sanctions/Programs/Documents/13606.pdf>)

⁷⁷ Tony Badran, “Exporting the Islamic Revolution,” *Now Lebanon*, June 3, 2015.

(<https://now.mmedia.me/lb/en/commentary/564933-exporting-the-islamic-revolution>)

⁷⁸ U.S. Department of the Treasury, Press Release, “Fact Sheet: U.S. Treasury Department Targets Iran's Support for Terrorism Treasury Announces New Sanctions Against Iran's Islamic Revolutionary Guard Corps-Qods Force Leadership,” August 3, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg810.aspx>)

⁷⁹ U.S. Department of the Treasury, Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

⁸⁰ Executive Order, “13572 Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria,”

April 29, 2011. (<http://www.treasury.gov/resource-center/sanctions/Programs/Documents/13572.pdf>); U.S.

Department of the Treasury, Press Release, “Administration Takes Additional Steps to Hold the Government of Syria Accountable for Violent Repression Against the Syrian People,” May 18, 2011.

(<http://www.treasury.gov/press-center/press-releases/Pages/tg1181.aspx>)

As discussed below in the recommendations section, the IRGC should be treated as a terrorist entity under U.S. law. It makes no sense to distinguish between the IRGC and QF for the purposes of terrorist designations. The IRGC is “involved in support of terrorism throughout the region,” as Secretaries Clinton and Geithner explained,⁸¹ and should be designated as a terrorist organization under Executive Order 13224 or as a Foreign Terrorist Organization (FTO), or both.

The IRGC’s Pervasive Control of the Iranian Economy

The IRGC has become a dominant force in the Iranian economy, and Iran’s “most powerful economic actor,” according to the U.S. Treasury.⁸² Although exact figures are difficult to estimate because of the opaque nature of the IRGC’s influence and the size of off-book enterprises, experts calculate that the IRGC controls around 20-30 percent of the Iranian economy.⁸³ Its annual income may be as high as one-sixth of Iran’s GDP.⁸⁴ The IRGC has “displace[d]...the legitimate Iranian private sector,” created a preferential system “in favor of a select group of insiders” and “expanded its reach into critical sectors of Iran’s economic infrastructure,” according to the U.S. government.⁸⁵

The IRGC investment portfolio is robust, including substantial shares in companies publicly traded on Tehran’s Stock Exchange (TSE). Taken together, the companies in which the IRGC holds shares are worth more than 20 percent of the TSE, and are valued at \$16.5 billion.⁸⁶ Former senior IRGC commanders, many of whom have never been subjected to sanctions, sit on their boards. And this estimate does not account for the hundreds of non-publicly-traded companies in which the IRGC holds controlling stakes.

⁸¹ Hillary Rodham Clinton & Timothy Geithner, “Joint Statement on Iran Sanctions,” June 23, 2011. (<http://www.state.gov/r/pa/prs/ps/2011/06/166814.htm>)

⁸² U.S. Department of the Treasury, Press Release, “Treasury Submits Report to Congress on NIOC and NITC,” September 24, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1718.aspx>)

⁸³ Greg Bruno, Jayshree Bajoria, & Jonathan Masters, “Iran’s Revolutionary Guard,” *Council on Foreign Relations*, June 14, 2013. (<http://www.cfr.org/iran/irans-revolutionary-guards/p14324>); Emanuele Ottolenghi & Saeed Ghasseminejad, “Who Really Controls Iran’s Economy?,” *The National Interest*, May 20, 2015. (<http://nationalinterest.org/feature/who-really-controls-irans-economy-12925>); Frederic Wehrey, Jerrold D. Green, Brian Nichiporuk, Alireza Nader, Lydia Hansell, Rasool Nafisi, & S. R. Bohandy, “The Rise of the Pasdaran: Assessing the Domestic Roles of Iran’s Islamic Revolutionary Guards Corps,” *The RAND Corporation*, 2009. (http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG821.pdf); Mark Gregory, “Expanding Business Empire of Iran’s Revolutionary Guards,” *BBC News*, July 26, 2010. (<http://www.bbc.com/news/world-middle-east-10743580>)

⁸⁴ Parisa Hafezi & Louis Charbonneau, “Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer,” *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>)

⁸⁵ U.S. Department of State, “Joint Statement on Iran Sanctions,” June 23, 2011. (<http://www.state.gov/r/pa/prs/ps/2011/06/166814.htm>); U.S. Department of State, “Treasury Targets Iran’s Islamic Revolutionary Guard Corps,” February 10, 2010. (<http://www.state.gov/r/pa/prs/ps/2010/02/136595.htm>); U.S. Department of the Treasury, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

⁸⁶ This number is their combined value on August 31, 2015 on the Tehran Stock Exchange (www.tse.ir). See more: Alexi Mostrous, Billy Kenber, & Hugh Tomlinson, “Iranian Militia to Grab British Cash,” *The Times* (U.K.), August 26, 2015. (<http://www.thetimes.co.uk/tto/news/world/middleeast/article4538125.ece>)

The IRGC is heavily involved in Iran’s “financial and commercial sectors and [has] extensive economic interests in the defense production, construction, and oil industries, controlling billions of dollars in corporate business,” noted Treasury.⁸⁷ The IRGC’s control over strategic sectors of the Iranian economy—banking, energy, construction, industrial, engineering, mining, shipping, shipbuilding, amongst others—means that any foreign firms interested in doing business with Iran will have to do business with the IRGC. The IRGC will thus directly benefit from the lifting of sanctions on key sectors of the Iranian economy.

For an extensive analysis of the role of the IRGC in strategic sectors of the Iranian economy and how it will benefit from sanctions relief under the JCPOA, I recommend the testimony of my colleague Emanuele Ottolenghi before the House Foreign Affairs Middle East and North Africa Subcommittee.⁸⁸ What follows are key highlights from his testimony:

Oil, Gas, and Petrochemical Sectors

Iran will benefit from the lifting of sanctions on its energy sector both through renewed foreign investment in upstream and downstream projects and from access to previously-restricted Western technology. IRGC firms own important contracts across the entire energy sector and are positioned to secure additional contracts as foreign capital and technology return to the energy industry. Additionally, the lifting of oil sanctions will benefit the National Iran Oil Company (NIOC) and its many subsidiaries, which both the U.S. and EU are set to de-list on Implementation Day. At the time of NIOC’s designation, the U.S. Treasury explained that “the IRGC has been coordinating a campaign to sell Iranian oil in an effort to evade international sanctions” and that “the IRGC’s influence has grown within NIOC,” the firm responsible for exporting oil and petroleum products.⁸⁹ Thus, when oil sanctions are lifted, the IRGC will likely benefit from these increased sales through its influence in NIOC.

The JCPOA also will permanently remove barriers to trade in the petrochemical sector, allowing renewed Iranian access to sensitive dual-use technology. United Nations Security Council Resolution 1929 (2010) noted the “potential connection between Iran’s revenues derived from its energy sector and the funding of Iran’s proliferation-sensitive nuclear activities,” and also that “chemical process equipment and materials required for the petrochemical industry have much in common with those required for certain sensitive nuclear fuel cycle activities.”⁹⁰ Iran’s petrochemical products are, after oil, the country’s largest source of foreign income and its second-leading export.⁹¹ During the interim agreement, sanctions on this sector were suspended and

⁸⁷ U.S. Department of the Treasury, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

⁸⁸ Emanuele Ottolenghi, “Major Beneficiaries of the Iran Deal: IRGC and Hezbollah,” *Hearing before the House Foreign Affairs Subcommittee on the Middle East and North Africa*, September 17, 2015. (<http://foreignaffairs.house.gov/hearing/subcommittee-hearing-major-beneficiaries-iran-deal-irgc-and-hezbollah>)

⁸⁹ U.S. Treasury Department, Press Release, “Treasury Submits Report to Congress on NIOC and NITC,” September 24, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1718.aspx>)

⁹⁰ United Nations Security Council, “Resolution 1929 (2010),” June 9, 2010. (http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1929%282010%29)

⁹¹ Maysam Bizær, “Iran Holds Trump Card on Oil: Petrochemicals,” *Al-Monitor*, January 22, 2015. (<http://www.al-monitor.com/pulse/originals/2015/01/iran-oil-petrochemicals.html>)

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exports rose 32 percent to \$3.17 billion.⁹² While not a majority owner in any of the publicly-traded petrochemical companies, the IRGC holds major stakes in many of these firms and will no doubt benefit from the suspension of petrochemical sanctions.⁹³

Automotive

The United States imposed sanctions on Tehran's automotive sector in June 2013, noting that the sector "is a significant contributor to its overall economic activity, generating funds that help prop up the rial and the regime."⁹⁴ The IRGC is active in the automotive sector, controlling five major automotive companies listed on the Tehran Stock Exchange including the Bahman Group, Iran's third largest carmaker.⁹⁵

The automotive industry relies on dual-use technology, which has applications in the aerospace, defense, and nuclear industries. Lifting bans on such goods is problematic given the IRGC's significant presence in this sector and considering past cases of Iran's illicit procurement under the guise of legitimate trade in the automotive sector.⁹⁶

Transportation

The IRGC has relied on Iran's largest shipping and aviation companies to transport military equipment and personnel to proxies abroad.⁹⁷ Under the JCPOA, sectoral sanctions as well as individual designations of companies in the transportation sector will be lifted.

In addition to the deceptive practices in which Iran's state-owned shipping companies, the Islamic Republic of Iran Shipping Lines (IRISL) and the National Iranian Tanker Company (NITC) engage, the IRGC itself controls and manages most Iranian commercial ports. Although Iran's biggest port operator, Tidewater Middle East PLC, will remain under EU sanctions until Transition Day (and under U.S. sanctions indefinitely), any increase in shipping prompted by the lifting of sanctions will enrich IRGC-owned companies managing container terminals and port services. As

⁹² Emanuele Ottolenghi & Saeed Ghasseminejad, "Iran Sanctions Relief Sparks Growing Trade with Europe, Asia," *Foundation for Defense of Democracies*, March 27, 2015. (<http://www.defenddemocracy.org/media-hit/iran-sanctions-relief-sparks-growing-trade-with-europe-asia/>)

⁹³ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Geneva Joint Plan of Action and Iran's Petrochemical Sector," *Foundation for Defense of Democracies*, December 9, 2013. (<http://www.defenddemocracy.org/media-hit/the-geneva-joint-plan-of-action-and-irans-petrochemical-sector/>)

⁹⁴ U.S. Department of the Treasury, Press Release, "Testimony of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Senate Committee on Banking, Housing and Urban Affairs on 'Iran Sanctions: Ensuring Robust Enforcement, and Assessing Next Steps,'" June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11969.aspx>)

⁹⁵ Emanuele Ottolenghi & Saeed Ghasseminejad, "Sanctions Relief Under the JCPOA," *Foundation for Defense of Democracies*, February 23, 2015. (<http://www.defenddemocracy.org/media-hit/emaneuele-ottolenghi-sanctions-relief-under-the-jpoa/>)

⁹⁶ Michael Birbaum and Joby Warrick, "A Mysterious Iranian-Run Factory in Germany," *The Washington Post*, April 15, 2013. (https://www.washingtonpost.com/world/europe/a-mysterious-iranian-run-factory-in-germany/2013/04/15/92259d7a-a29f-11e2-82bc-511538ae90a4_story.html); Mark Dubowitz & Emanuele Ottolenghi, "Iran's Car Industry - A Big Sanctions Buster," *Forbes*, May 13, 2013. (<http://www.forbes.com/sites/energysource/2013/05/13/irans-car-industry-a-big-sanctions-buster/>)

⁹⁷ U.S. Department of the Treasury, Press Release, "Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities," June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

Treasury noted when it sanctioned Tidewater in June 2011, “[S]hipments into Tidewater facilities provide an avenue of revenue to the IRGC in support of its illicit conduct.”⁹⁸

At the same time, the United States will “allow for the sale of commercial passenger aircraft and related parts and services to Iran,” as well as the export, lease, and transfer of aircraft, and the provision of associated services to aircraft, provided they are “for exclusively civil aviation end-use.”⁹⁹ The U.S. and EU will also de-list major Iranian airlines, including those designated for facilitating illegal activities. For example, Yas Air (now called Pouya Air), was designated for acting “on behalf of the IRGC-QF [Quds Force] to transport illicit cargo—including weapons—to Iran’s clients in the Levant.”¹⁰⁰ According to Treasury, Yas Air “has moved IRGC-QF personnel and weapons under the cover of humanitarian aid.”¹⁰¹

Similarly, Mahan Air was designated in October 2011 “for providing financial, material and technological support” to the Quds Force including ferrying personnel and weapons to Syria.¹⁰² Mahan’s role in the shipment of weapons and military personnel to Syria appears to be ongoing with shipments reportedly taking place as recently as this week.¹⁰³ U.S. sanctions on these two firms will remain in place, though the EU will lift sanctions on Yas Air on Transition Day. Of greater concern, the EU has not previously designated Mahan Air, and therefore its airplanes fly with impunity to more than a dozen European destinations.

The removal of sanctions on other firms in the aviation sector will likely also enhance the IRGC’s ability to engage in illicit activities. On Implementation Day, the U.S. will de-list Iran Air, which has, according to the U.S. Treasury, “shipped military-related equipment on behalf of the IRGC since 2006. . . [and has] also been used to transport missile or rocket components to Syria.”¹⁰⁴ Quds Force uses Iran Air to “dispatch weapons and military personnel to conflict zones worldwide.”¹⁰⁵ As a result of the JCPOA, my colleagues Emanuele Ottolenghi and Saeed Ghasseminejad explain,

⁹⁸ Ibid.

⁹⁹ “Joint Comprehensive Plan of Action – Annex II – Sanctions related commitments,” July 14, 2015, Section 5.1.1. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf)

¹⁰⁰ U.S. Department of the Treasury, Press Release, “Treasury Targets Iranian Arms Shipments,” March 27, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1506.aspx>)

¹⁰¹ U.S. Department of the Treasury, Press Release, “Treasury Designates Syrian Entity, Others Involved in Arms and Communications Procurement Networks and Identifies Blocked Iranian Aircraft,” September 19, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1714.aspx>)

¹⁰² U.S. Department of the Treasury, Press Release, “Treasury Designates Iranian Commercial Airline Linked to Iran’s Support for Terrorism,” October 12, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1322.aspx>)

¹⁰³ Emanuele Ottolenghi & Benjamin Weinthal, “The Wings of War,” *Politico EU*, September 16, 2015. (<http://www.politico.eu/article/iran-mahan-air-sanctions-nuclear-deal-aviation-air-safety/>); Jennifer Griffin, “Exclusive: Russia Flying Iranian Weapons Shipments into Syria, Sources Say,” *Fox News*, October 29, 2015. (<http://www.foxnews.com/world/2015/10/29/exclusive-russia-flying-iranian-weapons-shipments-into-syria-sources-say/>)

¹⁰⁴ U.S. Department of the Treasury, Press Release, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

¹⁰⁵ Emanuele Ottolenghi & Saeed Ghasseminejad, “The Nuclear Deal’s Impact on Iran’s Revolutionary Guards,” *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

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“The Quds Force will have access to newer, larger, and more efficient planes with which to pursue its strategic objectives.”¹⁰⁶

Construction

Khatam al-Anbiya (KAA), a massive IRGC conglomerate, was designated by the United States as a proliferator of weapons of mass destruction.¹⁰⁷ It is Iran’s biggest construction firm and, according to my colleagues’ estimates, “may be its largest company outright, with 135,000 employees and 5,000 subcontracting firms.”¹⁰⁸ The value of its current contracts is estimated to be nearly \$50 billion, or about 12 percent of Iran’s GDP.¹⁰⁹ KAA has hundreds of subsidiaries in numerous sectors of Iran’s economy, including its nuclear and defense programs, energy, construction, and engineering. The company is also involved in “road-building projects, offshore construction, oil and gas pipelines, and water systems.”¹¹⁰

The IRGC uses KAA to “generate income and funds its operations,” according to the U.S. Treasury Department.¹¹¹ Even though KAA will remain under EU sanctions for eight years and under U.S. sanctions indefinitely, its primary constraint until now was Iran’s failing economy itself. With Tehran’s economy on the potential rebound, the organization’s prospects look bright. The anticipated increase in public spending to modernize and improve Iran’s aging infrastructure will no doubt lead to public tenders for large projects. KAA will be the primary beneficiary. More business coming into Iran means more construction, so even if the company is still under sanctions, it will make money.

While the Obama administration may be correct that Iran will use the bulk of funds in previously frozen accounts to finance construction projects rather than transferring the funds directly to terrorist proxies, the money will flow through the IRGC’s construction arm, which in turn will support the IRGC’s ability to fund terrorism.

Telecommunications

¹⁰⁶ Ibid.

¹⁰⁷ U.S. Department of State, Office of the Spokesman, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm>)

¹⁰⁸ Parisa Hafezi & Louis Charbonneau, “Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer,” *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>); Emanuele Ottolenghi & Saeed Ghasseminejad, “The Nuclear Deal’s Impact on Iran’s Revolutionary Guards,” *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

¹⁰⁹ Benoit Faucon & Asa Fitch, “Iran’s Guards Cloud Western Firms’ Entry After Nuclear Deal,” *The Wall Street Journal*, July 21, 2015. (<http://www.wsj.com/articles/irans-guards-cloud-western-firms-entry-after-nuclear-deal-1437510830>)

¹¹⁰ Ibid.

¹¹¹ U.S. Department of the Treasury, Press Release, “Treasury Announces Additional Sanctions Against Iranian Engineering and Shipping Firms,” March 28, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1509.aspx>)

The United States sanctioned the IRGC in April 2012 for its role for systemic human right abuses via information technology. Executive Order 13606 targets those entities and individuals that operate, support, or provided technology that disrupts, monitors, or tracks communication that could assist or enable human rights abuses by the governments of Iran.¹¹²

All mobile operators in Iran are directly or indirectly partners with IRGC-affiliated companies.¹¹³ The IRGC also controls Iran's largest telecom company, the Telecommunication Company of Iran (TCI).¹¹⁴ The company has a near monopoly on Iran's landline telephone services,¹¹⁵ and reportedly "all internet traffic in and out of Iran travels through" TCI,¹¹⁶ which is particularly problematic since TCI purchased "a powerful surveillance system capable of monitoring landline, mobile and internet communications" from a Chinese firm.¹¹⁷

As sanctions on the telecommunication sector are lifted, the sector will attract foreign investment and gain significant access to advanced technology. The IRGC will be in a position to benefit from additional sensitive monitoring technology, and it will likely use these tools to enhance its surveillance of Iranian dissidents. As a result of the JCPOA, the IRGC will thus increase revenue, as well as its ability to spy on and censor its citizens.

Funding the IRGC's Illicit Activities

The profits the IRGC derives from its business interests fund Iran's military, terrorist proxies, and other activities hostile to U.S. interests. The U.S. Treasury has repeatedly noted that the IRGC's economic empire "ultimately benefits the IRGC and its dangerous activities."¹¹⁸ As a result, international sanctions have singled out the IRGC and its affiliated entities for sanctions.

Justifying sanctions against the IRGC's business interests, Treasury noted, "Imposing financial sanctions on commercial enterprises of the IRGC has a direct impact on revenues that could be used by the IRGC to facilitate illicit conduct."¹¹⁹ Logically, the lifting of sanctions on these entities and the relevant sectors will also have a direct impact—increasing revenues that could be used to facilitate illicit conduct.

¹¹² Executive Order 13606, "Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology," April 23, 2012. (http://www.treasury.gov/resource-center/sanctions/Programs/Documents/2012iran_syria_eo.pdf)

¹¹³ Khouroush Avaei, "What to expect in Iran's Telecom Sector," *Al-Monitor*, August 18, 2013. (<http://www.al-monitor.com/pulse/originals/2013/08/expect-iran-telecom-sector.html#>)

¹¹⁴ Michael Slackman, "Elite Guard in Iran Tightens Grip with Media Move," *The New York Times*, October 8, 2009. (http://www.nytimes.com/2009/10/09/world/middleeast/09iran.html?_r=0)

¹¹⁵ Steve Stecklow, "Special Report: Chinese firm helps Iran spy on citizens," *Reuters*, March 22, 2012.

(<http://uk.reuters.com/article/2012/03/22/uk-iran-telecoms-idUKBRE82L0B720120322>); Robin Wright, editor, *The Iran Primer*, (Washington, DC: United States Institute of Peace, 2010), page 55.

¹¹⁶ Ian Black, "How Iran is filtering out dissent," *The Guardian*, June 30, 2009. (<http://www.guardian.co.uk/technology/2009/jun/30/internet-censorship-iran>)

¹¹⁷ Steve Stecklow, "Special Report: Chinese Firm helps Iran spy on its Citizens," *Reuters*, 22 March 2012. (<http://www.reuters.com/article/2012/03/22/us-iran-telecoms-idUSBRE82L0B820120322>)

¹¹⁸ U.S. Department of the Treasury, Press Center, Press Release, "Treasury Targets Iran's Islamic Revolutionary Guards Corps," February 10, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg539.aspx>)

¹¹⁹ U.S. Department of the Treasury, "Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities," June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

In its role as a protector of the integrity of the global financial system, the U.S. Treasury—as well as the U.S. government more broadly—has a duty to expose the connections of Iranian companies to the IRGC. Even if official government designations do not always follow, this exposure can still discourage business ties and dissuade multilateral companies from being complicit in the IRGC’s illicit behavior. Exposing the links between the IRGC and seemingly legitimate Iranian enterprises can go a long way to reducing the IRGC’s ability to fund its illegal activities. As Treasury has stated in the past, “target[ing the] core commercial interests of the IRGC... undermin[es its] ability to continue using these interests to facilitate its proliferation activities and other illicit conduct.”¹²⁰

The JCPOA’s Big Winner: The IRGC

As a significant force in the Iranian economy, the IRGC is set to be a primary direct and indirect beneficiary of the deal unless the United States and its allies act decisively to prevent its enrichment. With the lifting of EU sanctions under the JCPOA, Europe will increasingly become an economic free zone for Iran’s most dangerous people and entities. In addition to the lifting of specific types of economic and financial sanctions, the JCPOA requires the United States and Europe to remove numerous IRGC-linked entities from their sanction lists.

In anticipation of the sanctions relief in a final nuclear deal, President Rouhani’s 2015 budget rewards the IRGC. It includes a 48 percent increase on expenditures related to the IRGC, the intelligence branches, and clerical establishment. Iran’s official defense spending will increase to about \$11-12 billion—excluding off the books funding—up from \$10 billion last year.¹²¹ The IRGC and its paramilitary force, the Basij, are set to receive 64 percent of public military spending, and the IRGC’s massive construction arm Khatam al-Anbiya will see its budget double. Rouhani’s budget also included a 40 percent increase (\$790 million) for Iran’s Ministry of Intelligence.¹²² Iran’s latest five-year plan, announced days before the JCPOA, calls for an additional increase in military spending to 5 percent of the total government budget.¹²³ With access to additional revenue around the corner and with the termination of the arms embargo just over the horizon, Iran knows how it will spend its new cash.

These estimates do not include Iran’s black market economy, from which the IRGC draws another significance source of income. My colleague Saeed Ghasseminejad, who studies the Iranian economy, notes that the underground economy is estimated to be valued at 6-36 percent of Iran’s GDP. He concludes: “Assuming a conservative 15 [percent], the underground economy is worth an additional \$60 billion each year.... The IRGC is in the best position to have the lion’s share of

¹²⁰ U.S. Department of the Treasury, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

¹²¹ Saeed Ghasseminejad, “Iran’s Military Budget is Going to Get a Huge Boost From the Nuclear Deal,” *Business Insider*, October 30, 2015. (<http://www.businessinsider.com/irans-military-budget-is-going-to-get-a-huge-boost-from-the-nuclear-deal-2015-10>)

¹²² Emanuele Ottolenghi & Saeed Ghasseminejad, “Iran’s Repressive Apparatus Gets a Raise,” *The Wall Street Journal*, December 22, 2014. (<http://www.wsj.com/articles/emanuele-ottolenghi-and-saeed-ghasseminejad-irans-repressive-apparatus-gets-a-raise-1419281552>)

¹²³ Abbas Qidaari, “More Planes, More Missiles, More Warships: Iran Increases Its Military Budget By A Third,” *Al-Monitor*, July 13, 2015. (<http://www.al-monitor.com/pulse/originals/2015/07/khamenei-orders-increase-military.html>)

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the benefits” from the underground economy.¹²⁴

Many IRGC businesses that were involved in the procurement of material for Iran’s nuclear and ballistic missile programs will be de-listed. The European Union will de-list a few of the major IRGC-controlled entities on Implementation Day, and many more after eight years (assuming that these sanctions are even enforced over the next eight years). Europe may increasingly become the economic destination of choice for regime-connected, corrupt, IRGC oligarchs.

Of even greater concern, after eight years, the EU will lift all of its counter-proliferation sanctions on Iran. Notorious Quds Force Commander Qassem Soleimani will remain under EU sanctions terrorism and Syria-related issues,¹²⁵ and the Quds Force itself will also remain under certain Syria-related sanctions.¹²⁶ But despite these few remaining sanctions, after eight years, the only Iran-specific EU sanctions will be those related to human rights.

In short, while the United States is set to maintain its sanctions on the IRGC and the European Union will not de-list most IRGC entities for eight years, once the bulk of Iran sanctions are lifted, the remaining measures against the IRGC will be insufficient to prevent it from expanding its illicit activities. Unless Congress acts to strengthen non-nuclear sanctions against the IRGC, the remaining measure will not isolate it from the economic benefits that the JCPOA will generate.

The JCPOA’s Second Big Winner: Supreme Leader Khamenei’s Network of Corruption

According to the U.S. Treasury, Supreme Leader Ali Khamenei’s financial empire is a “shadowy network of off-the-books front companies.”¹²⁷ The network, headed by an organization known as the Execution of Imam Khomeini’s Order (EIKO), or Setad, is reportedly worth \$95 billion.¹²⁸ EIKO and its subsidiaries will be de-listed by both the EU and United States on Implementation Day.

The U.S. Treasury Department designated this organization and its subsidiaries in June 2013 and noted at the time that the purpose of EIKO was “to generate and control massive, off-the-books

¹²⁴ Saeed Ghasseminejad, “Iran’s Military Budget is Going to Get a Huge Boost From the Nuclear Deal,” *Business Insider*, October 30, 2015. (<http://www.businessinsider.com/irans-military-budget-is-going-to-get-a-huge-boost-from-the-nuclear-deal-2015-10>)

¹²⁵ The Council of the European Union, “Council Implementing Regulation (EU) No 611/2011 of 23 June 2011 Implementing Regulation (EU) No 442/2011 Concerning Restrictive Measures in View of the Situation in Syria,” *Official Journal of the European Union*, June 24, 2011. (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:164:0001:0003:EN:PDF>); The Council of the European Union, “Council Implementing Regulation (EU) 790/2014 of 22 July 2014 Implementing Article 2(3) of Regulation (EC) No 2580/2001 on Specific Restrictive Measures Directed Against Certain Persons and Entities with a View to Combatting Terrorism, and Repealing Implementing Regulation (EU) No 125/2014,” *Official Journal of the European Union*, July 23, 2014. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0790>)

¹²⁶ The Council of the European Union, “Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria,” *Official Journal of the European Union*, June 1, 2013. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D0255>)

¹²⁷ U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>)

¹²⁸ Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, “Khamenei Controls Massive Financial Empire Built on Property Seizures,” *Reuters*, November 11, 2013. (<http://www.reuters.com/investigates/iran/#article/part1>)

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investments, shielded from the view of the Iranian people and international regulators.”¹²⁹ Then-Under Secretary for Terrorism and Financial Intelligence David S. Cohen explained:

“Even as economic conditions in Iran deteriorate, senior Iranian leaders profit from a shadowy network of off-the-books front companies. While the Iranian government’s leadership works to hide billions of dollars in corporate profits earned at the expense of the Iranian people, Treasury will continue exposing and acting against the regime’s attempts to evade our sanctions and escape international isolation.”¹³⁰

My colleagues Emanuele Ottolenghi and Saeed Ghasseminejad have also studied the sanctions relief scheduled to be provided to Supreme Leader Ali Khamenei under the JCPOA. As they explain, the de-listing of these entities “will pump tens of billions of dollars into the supreme leader’s personal coffers, helping him secure his grip on the Iranian people, and bolstering Iran’s ability to promote its agenda abroad.”¹³¹

An overview of the EIKO’s holdings reveals the extent of its control of the Iranian economy. The value of EIKO’s real estate portfolio totals nearly \$52 billion; its stakes in publicly traded companies totaled nearly \$3.4 billion in 2013.¹³² EIKO controls more than five percent of publicly traded companies on Tehran’s Stock Exchange.¹³³

The United States is scheduled to de-list Khamenei’s financial empire on Implementation Day despite the fact that none of these entities were designated for nuclear proliferation.¹³⁴ These entities were sanctioned because they were involved in illicit financial practices, including government corruption. There is no indication that this conduct has changed. They continue to pose risks to the integrity of the global financial system and pose a significant terror financing risk. Yet, the Supreme Leader and his financial empire will be granted a clean bill of health as a result of the JCPOA.

¹²⁹ U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>)

¹³⁰ *Ibid.*

¹³¹ Emanuele Ottolenghi & Saeed Ghasseminejad, “Under Iran Agreement, U.S. Will Delist All Entities Controlled by Supreme Leader,” *Foundation for Defense of Democracies*, July 27, 2015. (<http://www.defenddemocracy.org/media-hit/ottolenghi-ghasseminejad-us-will-delist-entities-controlled-by-khamenei/>)

¹³² Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, “Khamenei Controls Massive Financial Empire Built on Property Seizures,” *Reuters*, November 11, 2013. (<http://www.reuters.com/investigates/iran/#article/part1>)

¹³³ Emanuele Ottolenghi & Saeed Ghasseminejad, “Who Really Controls Iran’s Economy,” *The National Interest*, May 20, 2015. (<http://nationalinterest.org/feature/who-really-controls-irans-economy-12925/>); For more information about EIKO and its investment arms, see Emanuele Ottolenghi & Saeed Ghasseminejad, “The Bank of Ayatollah,” *National Post* (Canada), December 18, 2013. (<http://news.nationalpost.com/full-comment/ottolenghi-ghasseminejad-the-bank-of-ayatollah>)

¹³⁴ Executive Order 13599, “Blocking Property of the Government of Iran and Iranian Financial Institutions,” February 8, 2012. (<http://www.gpo.gov/fdsys/pkg/FR-2012-02-08/pdf/2012-3097.pdf>); U.S. Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>); “New US Sanctions on the Government of Iran and Iranian Financial Institutions,” *Steptoe & Johnson, LLP*, February 7, 2012. (<http://www.steptoelaw.com/publications-newsletter-431.html>)

RECOMMENDATIONS

To prevent the benefits of sanctions relief from flowing to the most dangerous elements of the Iranian regime, Congress should enhance non-nuclear sanctions, increase the enforcement of remaining sanctions, and use the tax code to deny benefits to companies doing business with the most dangerous elements of the Iranian regime.

1. Designate the IRGC for Terrorism

The U.S. Department of State maintains a list of Foreign Terrorist Organizations that pose a threat to U.S. nationals and U.S. national security. The U.S. Treasury Department also issues sanctions and designations under Executive Order 13224 against entities and individuals that engage in the planning or funding of terrorism. There is little doubt that the IRGC has engaged in terrorist activity against U.S. nationals and threatened the national security of the United States. The United States government has repeatedly noted that the IRGC is involved in terrorism and regional aggression. For example, the Defense Department's Unclassified Report on Military Power of Iran in April 2010 stated the following:

“IRGC and IRGC-QF have been involved in or behind some of the deadliest terrorist attacks of the past 2 decades, including the 1983 and 1984 bombings of the U.S. Embassy and annex in Beirut, the 1983 bombing of the Marine barracks in Beirut, the 1994 attack on the AMIA Jewish Community Center in Buenos Aires, the 1996 Khobar Towers bombings in Saudi Arabia, and many of the insurgent attacks on Coalition and Iraqi Security Forces in Iraq since 2003. It generally directs and supports the groups that actually execute the attacks, thereby maintaining plausible deniability within the international community.... Elements of Iran's Islamic Revolutionary Guard Corps (IRGC) have provided direct support to terrorist groups, assisting in the planning of terrorist acts or enhancing terrorist group capabilities.”¹³⁵

Most recently, in testimony before the Senate Banking Committee, Acting Under Secretary of the Treasury for Terrorism and Financial Intelligence Adam Szubin noted that IRGC activities appear to meet the definition of support for terrorism:

“The IRGC is a parent organization, has a number of subsidiaries, and it's involved almost in every bad aspect of what Iran is engaged in. Whether it's the ballistic missile procurement, whether terrorism, whether it's regional destabilization or human rights. We designated the Quds Force, which is their arm that they use to support military activity and terrorist groups, under our terrorism program because it was the most apt element of the IRGC to label with the terrorist brush.... [B]ut, certainly we've seen the activity underneath the IRGC that easily qualifies for terrorist support.”¹³⁶

¹³⁵ U.S. Department of Defense, “Unclassified Report on Military Power of Iran,” April 2010, pages 7-8. (<http://www.foxnews.com/projects/pdf/IranReportUnclassified.pdf>)

¹³⁶ Adam Szubin, “Nomination Hearing,” *Senate Banking, Housing and Urban Affairs Committee*, September 17, 2015. (<http://www.cq.com/doc/congressionaltranscripts-4758134?7&search=nisvDID6>)

To date, the State Department has not designated the IRGC or its “external arm,” the Quds Force, as a Foreign Terrorist Organization (FTO). The U.S. Treasury has, however, designated the IRGC-QF for its role in terrorism¹³⁷ and for supporting the Assad regime’s brutal repression in Syria.¹³⁸ My FDD colleague Ali Alfoneh has been closely studying the IRGC’s activities in Syria and monitoring the reported casualties, noting that among the casualties have been high-ranking IRGC commanders from non-Quds Force units.¹³⁹ He has observed a blurring of the lines between the Quds Force and the IRGC Ground Forces.

The conclusion is clear: the Quds Force is part of the IRGC. If the Quds Force is responsible for terrorism, then the IRGC as a whole should be designated as a terrorist organization under Executive Order 13224 or included on the FTO list, or both. The current distinction between the IRGC and the IRGC-QF is a false separation. Just as the U.S. has included Hezbollah and Hamas on the FTO list and found that neither has a distinct “political wing” and “military wing,” so too are the IRGC and the IRGC-QF intertwined.

Sanctioning the IRGC for supporting terrorism will provide a warning to foreign companies contemplating business in Iran and deter them from engaging with the most dangerous elements of the regime. This is a way for members of Congress—both those who supported and those who opposed the JCPOA—to ensure that the sanctions relief provided under the JCPOA does not unleash even greater Iranian regional aggression.

2. Designate Additional IRGC Entities and Individuals and Foreign Companies that Do Business with the IRGC

The subsidiaries of designated Iranian companies are all under sanctions, and no company or financial institution is likely to risk transacting with an entity on a U.S. or EU sanctions list. In theory, Iranian entities that are not listed may still draw enhanced scrutiny from anti-money laundering and compliance authorities. In practice, however, the global business community looks to the U.S. Treasury for guidance and will assume that what is not explicitly forbidden is permitted.

In its role as a protector of the integrity of the global financial system, the U.S. Treasury has a duty to expose Iranian companies’ connections to the IRGC. This could be implemented through the creation of an “IRGC Watch list,” as my colleague Emanuele Ottolenghi recommends.¹⁴⁰ Even if official government designations do not always follow, exposure can still discourage business ties

¹³⁷ Treasury Department, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/lp644.aspx>)

¹³⁸ Executive Order 13572, “Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria,” April 29, 2011. (<http://www.gpo.gov/fdsys/pkg/FR-2011-05-03/pdf/2011-10910.pdf>)

¹³⁹ Ali Alfoneh, “Shiite Combat Casualties Show the Depth of Iran’s Involvement in Syria,” *The Washington Institute for Near East Policy*, August 3, 2015. (<http://www.washingtoninstitute.org/policy-analysis/view/shiite-combat-casualties-show-the-depth-of-irans-involvement-in-syria>); Ali Alfoneh, “The IRGC Transforms into an Expeditionary Force,” *Foundation for Defense of Democracies*, October 29, 2015. (<http://www.defenddemocracy.org/media-hit/ali-alfoneh-the-irgc-transforms-into-an-expeditionary-force/>)

¹⁴⁰ Emanuele Ottolenghi, “Major Beneficiaries of the Iran Deal: IRGC and Hezbollah,” *Hearing before the House Foreign Affairs Subcommittee on the Middle East and North Africa*, September 17, 2015. (<http://foreignaffairs.house.gov/hearing/subcommittee-hearing-major-beneficiaries-iran-deal-irgc-and-hezbollah>)

and protect the unwitting complicity of foreign companies in the IRGC's illicit behavior. Exposing the links between the IRGC and seemingly legitimate Iranian enterprises can go a long way to reducing the IRGC's ability to fund its illegal activities. As Treasury has stated, "target[ing the] core commercial interests of the IRGC... undermin[es its] ability to continue using these interests to facilitate its proliferation activities and other illicit conduct."¹⁴¹

If the criteria for designation were changed, many of these entities could in fact be sanctioned because of their connections to the IRGC. There is precedent in U.S. law to define "owned or controlled" to include not only a majority equity share, but also a majority of seats on the board of the board of directors or an ability "to otherwise control the actions, policies, or personnel decisions."¹⁴² That is, if one entity controls a majority of the board of directors of another, the former entity is said to own or control the latter. In the case of IRGC ownership, the use of this "board of directors criteria" would expand the number of entities liable for sanctions and more accurately reflect the IRGC's influence in the Iranian economy.

Furthermore, the majority equity stake threshold for designation should be re-examined. Currently, Treasury uses the "50 percent plus one" threshold to determine IRGC ownership; however a 25 percent threshold would better reflect global standards and Treasury's own recommendations. Last summer, the Treasury's Financial Crimes Enforcement Network (FinCEN) proposed a rule that would strengthen due diligence procedures by requiring companies to verify the beneficial owners of their business partners. Treasury proposed that the threshold for beneficial ownership be a 25 percent stake.¹⁴³

The 25 percent threshold also reflects FATF's recommendations which note, "A controlling ownership interest depends on the ownership structure of the company. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25%)."¹⁴⁴ While not specifically requiring the use of the 25 percent threshold, FATF's language implies that 25 percent is a recommended standard. Lowering Treasury's designation threshold from 50 percent plus one to 25 percent would put sanctions designations in line with global anti-money laundering standards.

Additionally, there are numerous IRGC officials who have been designated by the European Union for human rights abuses but have escaped designation by the United States. While these officials are unlikely to have assets under U.S. jurisdiction, their addition to U.S. sanctions lists would have

¹⁴¹ Treasury Department, "Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities," June 23, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

¹⁴² For example, see Legal Information Institute, "U.S. Code § 8725 - Liability of Parent Companies for Violations of Sanctions by Foreign Subsidiaries," *Cornell University Law School*, Accessed October 29, 2015. (<https://www.law.cornell.edu/uscode/text/22/8725>)

¹⁴³ U.S. Department of the Treasury, "Treasury Issues Proposed Rules to Enhance Financial Transparency," July 30, 2014. (<http://www.treasury.gov/press-center/press-releases/Pages/jl2595.aspx>); Samuel Rubinfeld, "Proposed Rule to Force Banks to Identify Beneficial Owners," *The Wall Street Journal's Risk & Compliance Journal*, July 30, 2014. (<http://blogs.wsj.com/riskandcompliance/2014/07/30/u-s-treasury-proposes-rule-forcing-banks-to-identify-beneficial-owners/>)

¹⁴⁴ Financial Action Task Force, "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation," February 2012, page 60. (http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

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symbolic value and emphasize that the United States will continue to highlight Iran's unconscionable record on human rights.

Moreover, the EU has designated IRGC commanders involved in nuclear and ballistic missile-related activities that have not been similarly designated by the United States.¹⁴⁵ Congress should request a report from the President explaining why these individuals have not been sanctioned and should urge Treasury to investigate them with an eye toward imposing sanctions.

Finally, Congress should work with the Treasury Department to ensure that foreign companies that engage in business with IRGC enterprises are banned from the U.S. markets. The rules of the Iran sanctions regime will be the same as they always were: You can do business with the United States or you can do business with the IRGC. If you choose the latter, be prepared to be banished from the world's largest financial market.

3. Sanction the Supreme Leader's Financial Empire for its Use of Funds from Corruption to Support Terrorism

The Supreme Leader of Iran's financial empire, the Execution of Imam Khomeini's Order (EIKO, or Setad) should be targeted with sanctions for its links to terrorism and corruption. EIKO is reportedly worth \$95 billion,¹⁴⁶ and, along with its subsidiaries, will be de-listed by both the EU and United States on Implementation Day. This will give Iran's Supreme Leader the freedom to move billions of dollars in illicit funds through the global financial sector with relative impunity. With the benefit of sanctions relief, and with the aid of the Revolutionary Guards, Khamenei also will be able to tighten his stranglehold on the Iranian people—a side effect of the nuclear deal that has not garnered enough attention. At the same time, he'll be under fewer restrictions to finance terror and bloodshed around the region.

Congress should consider legislation targeting corruption in countries like Iran, Syria, and Sudan that are state sponsors of terrorism. The link between the funds generated from corruption and the sponsorship of terrorism by these regimes is undeniable. New legislation could sanction entities, individuals and sectors involved in generating funds through corruption to support terrorism and other illicit activities. This would have the added benefit of sending a message to the Iranian people and to international companies that, in the words of the U.S. Treasury, the U.S. will identify and punish those who use "a shadowy network of off-the-books front companies...to hide billions of dollars in corporate profits earned at the expense of the Iranian people,"¹⁴⁷ and whose objective is "to generate and control massive, off-the-books investments, shielded from the view of the Iranian people and international regulators."¹⁴⁸

¹⁴⁵ For example, the United States has not sanctioned Mohammad Pakpour, head of the IRGC Ground Forces; Amir Ali Hajizadeh, head of the IRGC Air Force; Ali Ashraf Nouri, deputy commander of the IRGC and chief of the IRGC Political Bureau; Hojatoleslam Ali Saeidi, representative of the Supreme Leader to the IRGC; Behrouz Kamalian, head of Ashiyaneh cyber group; and Mohamed Sadeghi, Colonel and Deputy of IRGC technical and cyber intelligence, among others.

¹⁴⁶ Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, "Khamenei Controls Massive Financial Empire Built on Property Seizures," *Reuters*, November 11, 2013. (<http://www.reuters.com/investigates/iran/#article/part1>)

¹⁴⁷ U.S. Department of the Treasury, Press Release, "Treasury Targets Assets of Iranian Leadership," June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>)

¹⁴⁸ *Ibid.*

4. Prevent Tax Breaks for Companies Doing Business in Iran

This subcommittee has called this hearing in particular to examine the provisions of the tax code related to Iran's support for terrorism. This is an important but less investigated issue, and I applaud this subcommittee for looking into this issue.

There is a provision in the tax code which allows U.S. taxpayers to take a credit against their federal income taxes for any taxes paid to a foreign government. However, this credit is not permitted in certain instances, including in the case where the foreign country has been designated as a state sponsor of terrorism.¹⁴⁹ Prior to the removal of Libya from the State Sponsors of Terrorism List, President Bush waived this restriction, stating this was in U.S. national interests, and permitted companies engaged in business in Libya to claim this tax credit.¹⁵⁰ For its part, at the time the action was taken, Libya had given up its entire nuclear program and had settled all outstanding terrorism cases. Iran most clearly has not.

There are concerns that President Obama could take similar actions to waive this provision and allow companies doing business in Iran to receive this tax credit, arguing that its continuation "adversely affects the normalization of trade and economic relations with Iran,"¹⁵¹ and thus violates the JCPOA. Congress should examine the criteria under which the president could use his waiver authority in this tax provision to prevent any company, U.S. or foreign, from benefitting from tax credits for doing business with a state sponsor of terrorism like Iran.

I am honored to be testifying alongside legal experts specializing in the U.S. tax code who will share other ideas about protecting the U.S. taxpayer from inadvertently supporting the illicit and dangerous activities of the Iranian regime.

5. Prevent Re-Opening of the U.S. Parent-Foreign Subsidiary Loophole

Under the JCPOA, Washington will license foreign subsidiaries to conduct business from which their parent companies are prohibited. According to Annex II, the United States will "[l]icense non-U.S. entities that are owned or controlled by a U.S. person to engage in activities with Iran that are consistent with this JCPOA."¹⁵²

This provision is a reversal of Congress' explicit effort to address the foreign subsidiaries loophole. Section 218 of the Iran Threat Reduction Act of 2012 prohibited any entity "owned or controlled

¹⁴⁹ Legal Information Institute, "U.S. Code § 901 - Taxes of Foreign Countries and of Possessions of United States," *Cornell University Law School*, Section 901 (a) and (j), Accessed October 29, 2015. (<https://www.law.cornell.edu/uscode/text/26/901>)

¹⁵⁰ U.S. Department of the Treasury, "Presidential Determination Concerning Libya and Delegation of Authority to the Secretary of the Treasury; Report of the Secretary of the Treasury to the Congress," *Federal Register* Volume 69, Number 202, October 20, 2004. (<http://www.gpo.gov/fdsys/pkg/FR-2004-10-20/html/04-23563.htm>)

¹⁵¹ "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, paragraph 29. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

¹⁵² "Joint Comprehensive Plan of Action, Annex II – Sanctions-related commitments," Vienna, July 14, 2015,

paragraph 5.1.2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf)

by a United States person and established or maintained outside the United States from knowingly engaging in any transaction directly or indirectly” with Iran if the transaction would otherwise be prohibited if it were conducted by a United States person.¹⁵³

Acting Treasury Under Secretary Szubin has cautioned that this provision is only applicable to “subsidiaries that can independently generate and support trade with Iran.”¹⁵⁴ Reportedly, however, the State Department intends to construe this provision “as broadly as possible.” Congress should request clarity from the administration on its interpretation of this foreign subsidiaries provision and express its objection to re-opening a loophole it specifically closed.

6. Develop a Rehabilitation Program for Designated Iranian Banks that Relies on a Change in Illicit Financial Conduct

On Implementation Day and on Transition Day, the United States is set to de-list nearly all of the Iranian financial institutions designation for illicit financial activities. These “de-designations” will occur despite no evidence of a demonstrable change in the illicit financial practices of these banks. Allowing these institutions back into the global financial system puts the integrity of the system at risk. In order to preserve Treasury’s role as a protector of the global financial systems, the U.S. government needs a financial rehabilitation program for Iranian banks.

This congressionally-mandated rehabilitation program should require Treasury certifications that banks are no longer engaged in financial crimes based on a prescribed set of benchmarks. While certain banks will no longer be designated as a result of sanctions relief in the JCPOA, the absence of a certification from Treasury that these banks are “safe” could have a useful signaling effect to the international financial community.

Long term, the creation of a rehabilitation program would have implications beyond Iranian financial sanctions. This program would provide a framework for financial institutions designated for a range of illicit financial activities to improve their compliance standards and be readmitted to the global financial system as an institution in good standing.

7. Legislate Criteria for Lifting the Section 311 Finding

The suspension of sanctions against the Central Bank of Iran will provide significant relief to Iran and should have been tied to verifiable changes in Iranian behavior. This is one of the major flaws of the JCPOA.

Without contradicting the JCPOA, lawmakers can still require the president to certify to Congress, prior to the lifting of the Section 311 finding against the central bank and the entire Iranian financial sector, that Iran is no longer a “jurisdiction of primary money laundering concern” and

¹⁵³ U.S. House of Representatives, 112th Congress, 2nd Session, H.R. 1905, “Iran Threat Reduction and Syria Human Rights Act of 2012,” *Government Printing Office*, 2012, Section 218. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905enr/pdf/BILLS-112hr1905enr.pdf>)

¹⁵⁴ Michael Gordon, “Sanctions Debate Emerges From Shadow of Iran Nuclear Accord,” *The New York Times*, September 11, 2015. (<http://www.nytimes.com/2015/09/12/us/politics/iran-nuclear-accord-sanctions.html>); James Rosen, “Exclusive: U.S. Officials Conclude Iran Deal Violates Federal Law,” *Fox News*, October 9, 2015. (<http://www.foxnews.com/politics/2015/10/09/exclusive-us-officials-conclude-iran-deal-violates-federal-law/>)

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that the Central Bank of Iran, as the central pillar of Iran's illicit financial activities, is no longer engaged in "support for terrorism," "pursuit of weapons of mass destruction," including the development of ballistic missiles, or any "illicit and deceptive financial activities." Congress should stipulate that Treasury must certify that the entire country's financial system no longer poses "illicit finance risks for the global financial system."

Congress should consider enshrining the Section 311 finding in legislation and making the lifting of the 311 subject to specific termination criteria relating to Iranian illicit conduct. The legislation of termination criteria for the Section 311 finding would prevent a politically motivated lifting of the finding (as occurred in the Banco Delta Asia case).

CONCLUSION

Congress should act now to defend the sanctions architecture originally constructed to address the full range of Iran's illicit activities and use the tax code to deny benefits to those companies doing business with a country that remains a leading state sponsor of terrorism. Even within the confines of the JCPOA, there are significant "non-nuclear" measures that Congress can pass that would mitigate the most significant and most troubling effects of the sanctions relief—namely the enrichment of those in the Iranian regime like the IRGC and the Supreme Leader who continue to engage in activities hostile to U.S. interests.

Thank you for the opportunity to testify today. I look forward to your questions.



Chairman ROSKAM. Mr. Schizer.

STATEMENT OF DAVID SCHIZER, DEAN EMERITUS AND PROFESSOR OF LAW AND ECONOMICS, COLUMBIA LAW SCHOOL

Mr. SCHIZER. Thank you, Chairman Roskam, Ranking Member Lewis, and Members of the Subcommittee. Thank you for inviting me to testify today about terrorism-related provisions in the U.S. tax law. This issue is timely and important, since the JCPOA is supposed to ease nuclear-related sanctions on Iran, but not terrorism-related sanctions. And in announcing the JCPOA, President Obama said, and I am quoting him, "We will maintain all sanctions related to Iran support for terrorism."

Curtailling Iran's support for terrorism, obviously, is an important goal. Congress can use the tax law to pursue it in two ways. First, Congress should discourage U.S. and other businesses from paying tax to Iran since this revenue could be used to fund terrorism.

Second, Congress should raise the tax cost of doing business in Iran since this commercial activity can strengthen extremist groups such as the Revolutionary Guard. Two provisions of the Tax Code pursue these goals under current law. I believe I am the only tax lawyer among the witnesses, so my role is to review how these provisions work. Since both have significant gaps, I will also suggest ways to strengthen them.

The first provision, section 901(j), raises the cost of paying tax to Iran. Ordinarily, when U.S. taxpayers pay tax to a foreign country, every dollar of tax they pay to a foreign country reduces their U.S. tax by a full dollar. But taxes paid to Iran are treated less favorably. A dollar of these taxes reduces U.S. tax by only 35 cents for corporate taxpayers. As the Chairman was observing before, this is instead of the full dollar. The reason is that section 901(j) authorizes only a deduction instead of a credit.

The second provision, section 952(a)(5), accelerates U.S. tax when U.S. multi-nationals do business in Iran. Usually, foreign earnings are not taxed until they are brought back to the U.S. But if this money is earned in a state that sponsors terrorism, the U.S. tax hit right away.

I will now flag some gaps in these provisions and highlight a few possible solutions. First, the rule forcing the U.S. multi-nationals to pay tax immediately is somewhat porous. It applies to income and the statutory test it is derived from, states that sponsor terrorism, but this derived-from standard is imprecise. It applies when a firm is drilling for oil or has operations on the ground, but there is an argument that it doesn't apply when firms sell goods into Iran from the outside. The reason, is that income from the sale of properties sometimes is treated as earned where title passes, instead of where the property ultimately is used. So U.S. taxpayers may argue that income from selling goods into Iran is not derived from Iran, so no current U.S. tax is due as long as title passes in international waters.

To plug these gaps, Congress can direct the Treasury to promulgate regulations that read that derive-from standard more broadly, or Congress can consider legislation. For example, the test can be

whether states that sponsor terrorism are the ultimate destination of the property.

Taxpayers may try another way to shift income away from states that sponsor terrorism in an effort to avoid these provisions. Not just by claiming that the revenue comes from somewhere else, but also by stuffing deductible expenses into these countries, such as interests and royalties. To thwart these income stripping strategies and more generally to raise the cost of doing business in Iran, Congress can consider stopping taxpayers from deducting these and other costs of doing business there. In other context Congress has taken away deductions for bribes, for fines and penalties, and for the cost of drug trafficking. Congress should consider the same treatment for costs of doing business in states that sponsor terrorism.

Finally, perhaps the most daunting gap in these rules is that they don't reach foreign multi-nationals. These firms don't pay tax, U.S. tax, on foreign earnings, so they are immune to the costs imposed by these provisions. Now, even if these provisions just target U.S. firms, they can still weaken states that sponsor terrorism.

If fewer firms are willing to do business with Iran, Iran has less bargaining power and is likely to get less favorable firms. Nevertheless, these rules would be more effective if they also reach foreign multi-nationals. In an important lever here is that these firms do pay U.S. tax on their earnings in the United States. So an extra tax can be imposed on the U.S. earnings of firms that do business in Iran. The size of this extra tax could depend on how much money the firm earns in Iran. To avoid discriminating against foreign firms which would violate our treaties, this extra tax can apply to U.S. firms as well.

So to sum up, section 901(j) and section 952(a)(5) raise the cost of paying tax in Iran and doing business there. All these rules have very useful effects in their current form. Congress can consider ways of strengthening them. Thank you.

Chairman ROSKAM. Thank you.

[The prepared statement of Mr. Schizer follows:]

Embargoed Until Delivery
10:00 a.m. November 4, 2015

Statement of
David M. Schizer¹
Dean Emeritus and the Harvey R. Miller Professor of Law and Economics
Columbia University School of Law
Before
Oversight Subcommittee of House Committee on Ways and Means
Hearing on Iran Terror Financing and the Tax Code
November 4, 2015

Chairman Roskam, Ranking Member Lewis and members of the Subcommittee, thank you for inviting me to testify about terrorism-related provisions in U.S. tax law.² This issue is timely and important, since the Joint Comprehensive Plan of Action (or “JCPOA”)³ is supposed to ease *nuclear-related* sanctions on Iran, but not *terrorism-related* sanctions.⁴ In announcing

¹ I am testifying in my individual capacity at the invitation of the Subcommittee. The views I am expressing are my own and do not reflect those of Columbia University or any organization with which I am affiliated.

² Section 901(j)(2)(A)(iv) (targeting nations that “repeatedly provid[e] support for acts of international terrorism”).

³ The JCPOA was negotiated among the Islamic Republic of Iran and the “E3/EU+3” (China, France, Germany, the Russian Federation, the United Kingdom and the United States, along with the High Representative of the European Union for Foreign Affairs and Security Policy). The JCPOA and appendices contain reciprocal commitments that outline a step-by-step framework, which is intended to limit Iran’s nuclear program in exchange for the lifting of a range of UN Security Council, multilateral and national sanctions relating to Iran’s nuclear program. The JCPOA is dated July 14, 2015. The JCPOA has five Annexes (I – V). See <http://www.state.gov/e/eb/tfs/spi/iran/jcpoa>.

⁴ The JCPOA enumerates the nuclear-related sanctions that will be lifted if Iran honors its commitments. JCPOA, Annex II.B, para. 4 (“The United States commits to cease the application of, and to seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, all nuclear-related sanctions as specified in Sections 4.1-4.9 below, and to terminate Executive Orders 13574, 13590, 13622 and 13645, and Sections 5-7 and 15 of Executive Order 13628, in accordance with Annex V.”). The JCPOA explicitly provides that it does not lift sanctions other than those specifically listed in the agreement. See, e.g., JCPOA, Annex II.B., para. 7.1, fn. 14 (“Unless specifically provided otherwise, the sanctions lifting described in this Section . . . is without prejudice to sanctions that may apply under legal provisions other than those cited in Section 4.”). In paragraph 29 of the JCPOA, the U.S. and EU pledge to “refrain from any policy specifically intended to directly and adversely affect the normalisation of trade and economic relations with Iran,” but this commitment is merely to refrain from such policies that are “inconsistent with their commitments not to undermine the successful implementation of this JCPOA.”

the JCPOA, President Obama said that “we will maintain our own sanctions related to Iran’s support for terrorism.”⁵

Curtailing Iran’s support for terrorism obviously is an important goal. While the tax law is not the only way to pursue this objective,⁶ Congress can use the tax law to do so in two ways. First, Congress should discourage U.S. and other businesses from paying tax to Iran, since this revenue could be used to fund terrorism. Second, Congress should raise the tax cost of doing business with (or in) Iran or with Iranian businesses, since this commercial activity can strengthen extremist groups, such as the Revolutionary Guard.

Two provisions of the tax code pursue these goals under current law. I will explain how these provisions operate. Since both have significant gaps, I also will suggest ways to strengthen them.

I. Application of Section 901(j) and Section 952(a)(5)

The first provision, Section 901(j), raises the cost of paying taxes to Iran and other states that sponsor terrorism.⁷ Ordinarily, when U.S. taxpayers pay tax to a foreign country, every dollar they pay of foreign tax reduces their U.S. tax by a dollar.⁸ But taxes paid to states that sponsor terrorism are treated less favorably: a dollar of these taxes reduces U.S. tax by only 35 cents (for corporate taxpayers), instead of by a full dollar.⁹ The reason is that Section 901(j) authorizes a deduction, instead of a credit.¹⁰

⁵ Statement by the President on Iran, July 14, 2015, www.whitehouse.gov; see also White House, The Iran Nuclear Deal: What You Need to Know About the JCPOA, https://www.whitehouse.gov/sites/default/files/docs/jcpoa_what_you_need_to_know.pdf (“we will continue to aggressively enforce sanctions against Iran’s support for terrorism. . . .”); *Id.* (“Meanwhile, we will be keeping in place other unilateral sanctions that relate to non-nuclear issues, such as support for terrorism and human rights abuses.”).

⁶ Indeed, other policy instruments could be more effective in some circumstances, for instance, because they would be administered by government experts with more expertise about Iran’s role in supporting terrorism.

⁷ The Secretary of State has also designated Sudan and Syria as state sponsors of terrorism. http://taxmap.ntis.gov/taxmap/pubs/p514-004.htm#en_us_publiclink100024444. These provisions also apply to U.S. taxpayers doing business in countries that do not have diplomatic relations with (or are not recognized by) the United States but, as a shorthand, I refer to nations covered by these provisions as “states that sponsor terrorism.”

⁸ For example, if U.S. taxpayers pay a \$33 French tax, their U.S. tax bill usually is reduced by \$33. Instead of paying a \$35 U.S. tax on \$100 of income in France, a U.S. corporation would pay only \$2. For credits to have this effect, certain requirements need to be satisfied.

⁹ Section 901(j) also imposes another tax cost on firms doing business in Iran: they cannot use income earned there to claim more credits for taxes paid to *other* nations. In general, having more foreign income allows U.S. taxpayers to use more foreign tax credits, but Section 901(j) prevents them from using income from Iran to do so. This is accomplished by creating a separate “basket” of income derived from 901(j) countries. See 901(j)(1)(B) (“subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income attributable to such a period from sources within such country.”). For example, assume an energy company earns \$100 million in Iran (and pays a 25% tax of \$25 million), and earns \$200 million of income from Saudi Arabia (and pays a 40% income tax of \$80 million). The U.S. generally allows foreign tax credits of up to 35% (the U.S. tax rate). If the firm can take into account the income from Iran in computing this limitation, it can claim a foreign

The second provision, Section 952(a)(5), accelerates U.S. tax when U.S. multinationals do business in states that sponsor terrorism. Usually, foreign earnings are not taxed until they are brought back to the U.S.¹¹ But if this money is earned in a state that sponsors terrorism, the U.S. taxes it right away.¹²

Both of these tax penalties are currently in effect, although the President has authority to waive them after giving Congress 30 days' notice.¹³

III. Gaps in These Provisions

While these provisions block some types of transactions, they have significant gaps. So I will now flag some of them and highlight a few possible solutions.¹⁴

A. Income "Derived From" States That Sponsor Terrorism

First, the rule forcing U.S. multinationals to pay U.S. tax immediately is porous. It applies to income "derived from" states that sponsor terrorism, but this "derived from" standard is imprecise.¹⁵ This test should be satisfied when firms extract oil or have real estate in these countries.¹⁶

tax credit for a total of .35*(300 million) or \$105 million in foreign tax. However, because the Iranian income is in a separate "basket," the company can claim a credit for only .35* (200 million), or \$70 million of the Saudi tax. In this example, putting the income from Iran in a separate basket prevents the taxpayer from claiming a credit for all the Saudi tax – and, in particular, the Saudi tax that is in excess of the U.S. tax. Note, however, that the separate Iranian basket actually is a *benefit* when firms have *losses* in Iran, since these losses do not reduce overall foreign income – and thus the general limitation – if they are in a separate basket. Since the goal here is to discourage firms from paying taxes and doing business in Iran, a tougher approach would be to source *losses* in the general basket, and to source only *net gains* separately.

¹⁰ Section 901(j) expressly permits this deduction. Section 901(j)(3). As an example, assume a U.S. energy company (or its foreign subsidiary) earns \$100 drilling for oil in Iran, and pays a \$25 Iranian tax. With a foreign tax credit of \$25, it would pay only \$10 of U.S. tax. But if it deducts the \$25 of Iranian tax from the \$100 it earns in Iran, the company has only \$75 of U.S. taxable income, and pays a 35% U.S. tax of \$26.25. When added to the \$25 of Iranian tax, the firm pays a total of \$51.25 of tax on \$100 of income, instead of a total of \$35 of tax on \$100 of income.

¹¹ Specifically, when foreign subsidiaries of these multinationals earn money abroad, the U.S. does not tax these foreign profits until they are distributed as a dividend to the U.S. parent.

¹² Section 952(a)(5) (defining as subpart F income "the income of such corporation derived from any foreign country during any period during which section 901 (j) applies to such foreign country").

¹³ Section 901(j)(5).

¹⁴ The goal of this testimony is to suggest options for Congress to consider, not to make a definitive recommendation.

¹⁵ A somewhat different formulation – "income . . . from sources within such country" -- is used to describe income that has to be assigned to a separate basket for purposes of the foreign tax credit limitation. See 901(j)(1)(B) ("income attributable to such a period from sources within such country").

¹⁶ See generally Section 862(a); Treas. Reg. 1.862-1.

Yet this penalty arguably can be avoided when a firm has no people or facilities “on the ground.”¹⁷ For example, income from the sale of property sometimes is treated as earned where *title passes*,¹⁸ instead of where the property *ultimately is used*. So U.S. taxpayers may argue that income from selling goods to Iran is not “derived from” Iran – so no current U.S. tax is due – as long as title passes in international waters. Another strategy to avoid treating profits as “derived from” Iran is to sell to an intermediary (such as an independent agent) in another country, which then resells the property in Iran.¹⁹

To plug these gaps, Congress can direct Treasury to promulgate regulations that read “derived from” more broadly in this context,²⁰ or Congress can consider legislation. For example, the test should reach any property that is “sold for use, consumption or disposition” in states that sponsor terrorism if that country is “the ultimate destination of the property,” regardless of where title passes.²¹ “Derived from” also should reach any income of a subsidiary organized under the laws of a state that sponsors terrorism. Congress also can consider an anti-abuse rule to reach independent agents used as intermediaries to sell in states that sponsor terrorism.²²

B. Expenses of Doing Business in States That Sponsor Terrorism

¹⁷ This sort of argument draws strength from Treasury guidance indicating that general source rules should be used in interpreting this provision. See Treas. Reg. 1.863-6 (“The principles applied in sections 861 through 863 and section 865 and the regulations thereunder for determining the gross and the taxable income from sources within and without the United States shall generally be applied in determining the gross and the taxable income from sources within and without a particular foreign country when such a determination must be made under any provision of Subtitle A of the Internal Revenue Code, including section 952(a)(5).”).

¹⁸ See Treas. Reg. 1.861-7(c) (“For the purposes of part I (section 861 and following), subchapter N, chapter 1 of the Code, and the regulations thereunder, a sale of personal property is consummated at the time when, and the place where, the rights, title, and interest of the seller in the property are transferred to the buyer.”)

¹⁹ Section 901(j)(4) provides regulatory authority to treat income as “derived from” a country even if it was paid through “one or more entities” but, to my knowledge, there are no regulations on this issue.

²⁰ The Treasury has regulatory authority to prescribe specific rules for these provisions. See Section 901(j)(4).

²¹ Similarly, services could be deemed to be performed in a state that sponsors terrorism where that state is the end product of the services, regardless of where the services are actually performed. These sorts of broad formulations are used in regulations on foreign base company sales income, see Treas. Reg. 1.954-3(a)(3), as well as in rules penalizing participation in certain international boycotts, see Treas. Reg. 7.999-1(b)(6). Likewise, H.R. 1 from the last Congress has a broad definition of when income should be treated as derived from the U.S. or abroad (for purposes of the deduction for net imputed intangible income).

²² For example, the rule could reach “arrangements or understandings, including with independent agents, by which goods and services are resold” in states that sponsor terrorism. Cf. Treas. Reg. 1.954-3(a)(3) (“if at the time of a sale of personal property to an unrelated person the controlled foreign corporation knew, or should have known from the facts and circumstances surrounding the transaction, that the property probably would not be used, consumed, or disposed of in the country of destination, the controlled foreign corporation must determine the country of ultimate use, consumption, or disposition of the property or the property will be presumed to have been used, consumed, or disposed of outside the country under the laws of which the controlled foreign corporation is created or organized.”). Although there would be challenges in enforcing this sort of anti-abuse rule, and it does not offer certainty to taxpayers, taxpayers would think twice about gaming the rule.

Taxpayers may try another way to shift income away from states that sponsor terrorism: not just by claiming the *revenue* comes from somewhere else, but also by stuffing deductible *expenses* into these countries, such as interest and royalties.²³

To thwart these familiar “income stripping” strategies – and, more generally, to raise the costs of doing business in states that sponsor terrorism – Congress can consider stopping taxpayers from deducting these (and other) costs of doing business there. In other contexts, Congress has taken away deductions for bribes,²⁴ fines and penalties for violating the law,²⁵ and costs of trafficking in controlled substances.²⁶ Congress should consider the same treatment for costs of doing business in states that sponsors terrorism.

C. Treatment of Foreign Taxes

1. Third Country Taxes

Taxpayers can use income-stripping (and transfer pricing generally) not just to avoid U.S. tax, but also to avoid Iranian tax. At one level, this is good news, since Iranian taxes could fund terrorism. But the bad news is that these strategies can lower the cost of doing business in Iran, encouraging firms to be more active there. Unfortunately, Section 901(j) does not reach this situation, since it applies only to foreign taxes paid to *sponsors of terrorism*.²⁷ To cover taxes paid to other countries, Congress can consider broadening the provision to cover taxes on *profits earned* directly or indirectly from doing business with customers from countries that sponsor terror.

2. Deduction of Taxes Paid to States That Sponsor Terror

In any event, if Congress wishes to make taxes paid to *sponsors of terrorism* more costly, it can disallow not only the credit for these taxes, but also the deduction.²⁸ Then, the U.S.

²³ Section 952(a) (last sentence) references deductions that taxpayers will use to reduce the income they otherwise would accelerate. See Section 952(a) (“For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.” One way to read this language is that these deductions are not authorized absent regulations, but another is simply that Congress intended the Treasury to give guidance about deductions. Under either reading, Treasury has authority to impose some limits on these deductions.

²⁴ Section 162(c).

²⁵ Section 162(f).

²⁶ Section 280E. Similarly the IRS has asserted the right to deny other business deductions that are against public policy. While the Supreme Court curtailed the IRS’ ability to do so without specific statutory authority, see *Commissioner v. Tellier*, 383 U.S. 687 (1966), the Court allows deductions to be disallowed when they would frustrate sharply defined national or state policies. 383 U.S. at 694. Footnote 10 of the *Tellier* decision lists other circumstances where Congress has enacted specific legislation denying deductions that violate public policy.

²⁷ For example, if the Swiss subsidiary of a U.S. firm earns money in Iran – but pays tax to Switzerland, instead of Iran – a foreign tax credit is still available for the Swiss tax, since Section 901(j) reaches only Iranian tax.

²⁸ Section 901(j)(3) expressly allows the deduction under current law. Notably, for some taxpayers, a deduction actually can be more value than a credit. For example, an energy company paying taxes that are higher than the U.S. rate will be limited in its ability to use more credits, but can still use a deduction.

Treasury would no longer shoulder 35% of these taxes (as it does now when the tax is paid by a U.S. corporation).²⁹

D. Foreign Multinationals

Finally, perhaps the most daunting gap is that these rules do not reach foreign multinationals. Since these firms do not pay U.S. tax on foreign earnings, they are immune to the costs imposed by these provisions: after all, these firms have no need for a U.S. foreign tax credit, and no U.S. tax (on foreign earnings) to accelerate.

Although these provisions do not reach foreign multinationals, they still can weaken states that sponsor terrorism. By reducing the number of firms willing to do business with them, these rules reduce these countries' bargaining power, so they may get less favorable terms.

Nevertheless, these rules would be much more effective if they reached foreign multinationals. To do so, a potential lever is that these firms *do* pay U.S. tax on earnings *in the U.S.* Therefore, an extra tax can be imposed on the *U.S. earnings* of firms that do business in countries that sponsor terrorism.³⁰ The size of this extra tax should depend on how much a firm earns in these countries.³¹ To avoid discriminating against foreign firms, this extra tax should apply to U.S. firms as well.

E. Conclusion

To sum up, Section 901(j) and 952(a)(5) raise the cost of paying tax in Iran and doing business there. While these rules have useful effects in their current form, Congress should consider strengthening them, for instance, with a broader definition of income "derived from" Iran, limits on deductions for costs of doing business there, as well as rules that reach foreign multinationals.

²⁹ A credit, by contrast, would reduce U.S. tax by \$100.

³⁰ For instance, some U.S. deductions or treaty benefits can be disallowed, or a withholding tax or higher rate can apply to a portion of their income. *Cf.* Section 891 (doubling the tax rate on citizens and corporations from nations that apply discriminatory tax rates to U.S. taxpayers).

³¹ There are administrative challenges in determining how much they earn in these countries. Firms would have to report how much this income is, and guidance (and strict penalties) would be needed to discourage misleading reporting (*e.g.*, which relies on creative sourcing of income, independent agents, and so forth).

Chairman ROSKAM. Mr. Feith.

STATEMENT OF DOUGLAS FEITH, SENIOR FELLOW, HUDSON INSTITUTE, FORMER UNDER SECRETARY OF DEFENSE FOR POLICY

Mr. FEITH. Thank you, Mr. Chairman.

Chairman ROSKAM. Your mike is not on.

Mr. FEITH. Thank you. Chairman Roskam, Ranking Member Lewis, and Members of the Subcommittee, it is an honor to speak with you about Iran's sanctions.

I have been asked to discuss a specific question, how Iran's situation now, under the new nuclear deal, compares to Libya's situation in late 2003, after the Qadhafi regime renounced its nuclear and chemical weapons programs. I dealt with the Libya matter when I was Under Secretary of Defense for policy, working for Secretary Rumsfeld from July 2001 until August 2005.

The question is, does President Bush's waiver of section 901(j) sanctions regarding Libya, argue for a waiver now by President Obama regarding Iran. I see significant differences between the cases. The Libyan regime made an unequivocal decision, not only to stop its WMD programs, but to invite American and British engineers into Libya to dismantle those programs facilities and to take the equipment out of the country.

When the Americans and others entered Libya, they were let into all the locations they wanted to inspect. They were given far more information than they already had. Libyan officials didn't play the game of saying that they will confirm data if the foreigners will tell them what they know.

Libya's dictator, Muammar Qadhafi, had resolved to get out of the WMD business. His government announced the decision without qualifications or ambiguity. Qadhafi himself publicly confirmed it. Qadhafi, horrible dictator though he was, was serious about permanently ending Libya's WMD programs. His words were clear and categorical, and his actions were consistent with his words. This is not, however, the case with the words and actions now of Iran's leaders.

In the JCPOA, the Iranian regime reaffirms that under no circumstances will Iran ever seek, develop, or acquire any nuclear weapons. But that simply restates its essential nuclear non-proliferation treaty obligation, which Iran accepted in 1970 and then in recent years violated.

Iran's various nuclear activities violate that obligation, which is why the U.N. Security Council supported economic sanctions against Iran and why there has been all the Iran-related diplomacy for years. Iran has never admitted that its uranium enrichment, ballistic missile, and other nuclear programs, aimed to create a weapons capability.

It has never admitted that they violated the nonproliferation treaty; it has never apologized for those programs and doesn't, in the nuclear deal, promise to end them permanently. So Iran's new reaffirmation that it won't seek to develop or acquire nuclear weapons is not valuable. Just as some clothing stores sell pre-torn jeans, the Iranians have sold President Obama a pre-broken promise.

Iran has not made an open book of its nuclear weapons-related secrets as Libya did. It hasn't given inspectors free reign to visit anywhere in Iran. On the contrary, it demanded restrictions, making it difficult, and perhaps impossible, for inspectors to prove violations even if they somehow learn of them. The JCPOA inspection regime focuses mainly on declared facilities, but it is not reasonable to assume that Iran would choose to violate the deal in a declared facility.

The issue of undeclared facilities is important. Iran, over the years, built large nuclear facilities that it managed to conceal from foreign eyes for long periods of time. A former top IAEA official commented a couple of years ago, if there is no undeclared installation today, it will be the first time in 20 years that Iran doesn't have one.

Unlike Libya, Iran has not invited American and other foreign engineers to come in and dismantle its nuclear facilities. Iran, under the JCPOA, is allowed to continue to enrich uranium, to continue nuclear research and development, to increase eventually the quality of centrifuges used for enrichment, and to continue to improve its technology for long-range ballistic missiles that have no purpose other than to deliver nuclear warheads.

As I mentioned, section 901(j) sanctions can be based on the country's support for terrorism, and it bears noting that when President Bush lifted them for Libya, the Qadhafi regime was showing that it was moving away from such support. The Iranian regime, however, appears intent on continuing to finance, arm, train, and aid Hezbollah and other terrorist organizations.

Chairman ROSKAM. Mr. Feith, so if you can just bring your remarks to a close now, and then we will have an opportunity to continue to engage.

Do you have like another paragraph or so?

Mr. FEITH. Sure. What I would say in conclusion, is that the basic reason we have—

Mr. CROWLEY. Mr. Feith, just a moment. How much more do you have to read or go through?

Mr. Chairman, if you don't mind me asking.

Do you have a lot more to go through?

Mr. FEITH. Well, I can end now if you would like.

Mr. CROWLEY. I am interested in hearing his full text if that is okay. If it is not prolonged, I would be interested in hearing it.

Chairman ROSKAM. I have got the capacity to foreshadow, and I think he has more to say than we have. So trust me on this.

Why don't you just wind it up, and we will get back. And we will have plenty of opportunity to have a discussion.

Mr. FEITH. Sure. Thank you, Mr. Chairman.

There is an incentive that the Iranians had to enter into this agreement, was to lift sanctions and get the enormous economic benefits of potentially hundreds of billions of dollars for doing so. The incentive that the Obama administration had to enter into this deal changed.

Initially, the Obama administration aimed to end the Iran nuclear program. When it became clear that that was not achievable, the administration changed its goal without admitting as much. And its goal shifted from ending the Iran nuclear program to delay-

ing it. And that is all they have managed to accomplish. And they can delay it only if the Iranians comply with the agreement. But it is not clear that the Iranians will comply with the agreement. It is not clear that we will be able to detect violations, and it is not clear that even if we detect violations, that we could do anything effective to enforce the agreement. And those are my main concerns about the situation that we find ourselves in.

Chairman ROSKAM. Thank you.

[The prepared statement of Mr. Feith follows:]

“ENDING SANCTIONS: CONTRASTING THE IRAN AND LIBYA CASES”

**TESTIMONY
OF
DOUGLAS J. FEITH
BEFORE
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
NOVEMBER 4, 2015**

Chairman Roskam, Ranking Member Lewis, members of the Oversight Subcommittee, it's an honor to speak with you about Iran sanctions.

I've been asked to discuss how Iran's situation now, under the new nuclear deal, compares to Libya's situation in late 2003, after the Qadafi regime renounced its nuclear and chemical weapons programs. I dealt with the Libya matter when I was Under Secretary of Defense for Policy, working for Secretary Don Rumsfeld, from July 2001 until August 2005.

The comparison of Iran and Libya comes up before this Subcommittee because Iran is subject to sanctions under 26 U.S.C. 901(j). That law says that U.S. taxpayers can't get credit for taxes paid to countries with which the United States has severed diplomatic relations or which the Secretary of State has designated as a supporter of terrorism. The President has the authority to waive that measure "in the national interest." President Obama may be considering such a waiver, now that Iran has entered into the nuclear deal formally known as the Joint Comprehensive Plan of Action (JCPOA).

Over ten years ago, in January 2005, President Bush waived the same measure on foreign tax credits regarding Libya, after the Libyan government relinquished its weapons-of-mass-destruction programs and cut its support for terrorism.

The question is: Does President Bush's waiver regarding Libya argue for a waiver now by President Obama regarding Iran?

I see material differences between the cases.

The Libyan regime made an unequivocal decision not only to stop its WMD programs, but to invite American and British engineers into Libya to dismantle the programs' facilities and to take the equipment out of the country. When the Americans and others entered Libya, they were let into all the locations they wanted

to inspect. They were given far more information than they already had. Libyan officials didn't play the game of saying that they'll confirm data if the foreigners will tell them what they know.

Libya's dictator, Muammar Qaddafi, had resolved to get out of the WMD business. His government announced the decision on television without qualifications or ambiguity. Qaddafi himself publicly confirmed it. The open, cooperative way that Libyan officials worked with Americans and others to disclose and dismantle the WMD programs persuaded everyone involved that Qaddafi was serious about permanently ending Libya's WMD programs. His words were clear and categorical and his actions were consistent with his words.

This is not, however, the case with the words and actions now of Iran's leaders.

In the JCPOA, the Iranian regime "reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons." But that simply restates its essential Nuclear Non-Proliferation Treaty obligation, which Iran accepted in 1970 and then, in recent years, violated. Iran's various nuclear activities are all violations of that obligation. That's why the United Nations Security Council supported economic sanctions against Iran. That's why there's been all the diplomacy for years between Iran, on the one hand, and the IAEA and the so-called EU-3 and the P-5-plus-one, on the other.

Iran has never admitted that its uranium enrichment, ballistic missile and other nuclear programs aim to create a weapons capability. It has never admitted that they violate the Non-Proliferation Treaty. It has never apologized for them and doesn't, in the nuclear deal, promise to end them permanently. So Iran's new reaffirmation that it won't seek to develop or acquire nuclear weapons is not valuable. Just as some clothing stores sell "pre-torn jeans," the Iranians have sold President Obama a pre-broken promise.

Consider other words and actions of the Iranian government. Iran has not made an open book of its nuclear-weapons-related secrets, as Libya did. It has not given international inspectors free rein to visit anywhere in Iran. On the contrary, it demanded restrictions on inspectors, making it difficult and perhaps impossible for them to prove violations, even if the inspectors somehow learn of them.

The JCPOA inspection regime focuses mainly on *declared* facilities – that is, those that the Iranian government declares are open for inspection. It's not reasonable to assume, however, that Iran would choose to violate the deal in a declared facility. The key to deterring or detecting violations is the power to inspect *undeclared* facilities promptly. But the JCPOA ensures that the Iranian government can block inspections of undeclared facilities, or at least defer them for over three weeks. As a practical matter, it will likely be able to defer inspections far longer than that. This undercuts the inspection regime. If Iran were challenged by a demand for inspection

of an undeclared facility, it would have substantial time to conceal or destroy evidence.

The issue of undeclared facilities is important. Iran over the years built large nuclear facilities that it managed to conceal from foreign eyes for long periods of time. A former top IAEA official, Olli Heinonen, now at Harvard University, commented a couple of years ago, "If there is no undeclared installation today . . . it will be the first time in 20 years that Iran doesn't have one."

Among the most notorious flaws of the JCPOA inspection regime is that it may permit the Iranians, in effect, to inspect themselves. At the Parchin military facility, for example, the IAEA agreed that Iranians rather than IAEA personnel could gather necessary soil samples and turn them over to the IAEA. This too undermines the inspection regime and shows that Iran has an entirely different approach from that of Libya a decade or so ago.

Unlike Libya, Iran has not invited American and other foreign engineers to come in and dismantle its nuclear facilities. Under the JCPOA, Iran preserves its nuclear facilities, including for enriching uranium and for building nuclear-capable ballistic missiles. Under UN Security Council sanctions resolutions, Iran was required to give up uranium enrichment entirely, but it's not required to do so under the JCPOA. Iran under the JCPOA is allowed to continue to enrich uranium, to continue nuclear research and development, to increase eventually the quality of the centrifuges used for enrichment and to continue to improve its technology for long-range ballistic missiles that have no purpose other than to deliver nuclear warheads.

As I mentioned, Section 901(j) sanctions can be based on a country's support for terrorism. It bears noting that, when President Bush lifted them for Libya, the Qadafi regime was showing that it was moving away from such support. The Iranian regime now, however, has made no such showing. On the contrary, it appears intent on continuing to finance, arm, train and aid Hezbollah and other terrorist organizations. President Obama has had to explain to critics that such support for terrorism does not violate the JCPOA and is a separate matter entirely.

To understand the differences between the Libyan and Iranian cases, it's helpful to recall why Libya renounced its WMD programs and why Iran agreed to the JCPOA.

The Qadafi regime in Libya grew anxious about its WMD programs. It had created them to bolster its security, but it came in time to view them as excessively costly. Ultimately, it feared that those WMD programs, rather than making Libya stronger, were putting the Qadafi regime in America's crosshairs. After the United States overthrew both the Taliban and Saddam Hussein regimes, Qadafi decided that it was simply too risky to persist with his WMD programs.

Economic sanctions were damaging Libya's economy. To obtain relief from UN Security Council sanctions, the Qadafi regime negotiated a deal to pay compensation to the families of victims of Pan Am 103, the plane from New York that Libyan agents in 1988 blew up over Lockerbie, Scotland. When the Security Council lifted sanctions in September 2003, the U.S. representative explained why America abstained rather than voting yes.

He cited Libya's involvement in terrorism and "most important—its pursuit of weapons of mass destruction and their means of delivery." Specifying that "Libya's continued nuclear infrastructure upgrades raise concerns" and that Libya was "actively developing biological and chemical weapons," he warned that the United States would "intensify its efforts to end Libya's threatening actions," and that this included keeping U.S. bilateral sanctions on Libya in force.

The United States demonstrated knowledge and resolve when it intercepted a ship carrying centrifuges from Malaysia to Libya in October 2003. Then, on December 13, 2003, U.S. forces in Iraq captured Saddam Hussein, who was humiliated on televisions around the world when he emerged disheveled and powerless from the "spider hole" in which he had been hiding. One can only imagine how those images of Saddam's degradation affected Qadafi. It was only six days later, on December 19, 2003, that the Libyan government announced that it would cooperate with the United States and Britain to disclose and dismantle its nuclear weapons program, end its work on chemical weapons, rid itself of advanced ballistic missiles and prove that it was not working on biological weapons.

The story of Iran and the JCPOA is different in important respects, though its roots also emerge from the American post-9/11 war on terrorism. Iran became willing to make concessions to get nuclear negotiations underway with the EU-3 (Britain, France and Germany) in 2003, only after U.S.-led forces had overthrown the regimes to Iran's right (in Afghanistan) and left (in Iraq). Iranian leaders, however, soon stopped worrying that America might also strike them militarily. As U.S. military problems in Iraq grew in 2004 and beyond, the Iranian regime evidently concluded that Western diplomacy was not backed by a credible threat of force.

Iranian officials wanted a deal to lift economic sanctions against their country, but they didn't negotiate under the pressure or fear felt by Qadafi. After President Obama came to office in 2009, they saw that the United States had no intention to prevent them militarily from acquiring nuclear weapons, despite President Obama's occasional *pro forma* declaration that "all options are on the table." They saw further that the United States, through official public statements and otherwise, was doing what it could to preclude Israeli military action against Iran.

President Obama agreed to direct U.S. participation in nuclear talks with Iran in 2013 and then to bilateral talks with Iran in 2014. This gave prestige to the Iranian regime, gratifying its leaders, who had long resented U.S. efforts to isolate them. For

a while, President Obama's team apparently tried to persuade them to renounce nuclear weapons, but the Iranian regime proved unpersuadable.

President Obama then radically changed U.S. policy without publically announcing as much. He continued to say he would block Iran from obtaining a nuclear weapon, but he dropped his previous insistence that Iran end and dismantle its nuclear program. The new policy, simply, was to delay Iran. It became clear that his chief goal went beyond the nuclear issue; it was forging a new U.S.-Iranian relationship that could blossom into a partnership on the basis of shared interests, including opposition to the Sunni Islamist extremism of ISIS.

President Obama evidently reasoned as follows: Continuing to press Iran for a renunciation of nuclear weapons would be vain. It would kill prospects for improved U.S.-Iranian relations. So, rather than fruitlessly insist on solving the nuclear problem once and for all, the nuclear talks should paper the problem over. The JCPOA needed only to delay Iran, not block it. The deal would serve its purpose if it allowed President Obama to argue that it was better than war, which was its sole alternative and was unacceptable. So much for the pretense that "all options are on the table." Iranian leaders seem in any event to have discounted that bluff long ago.

To achieve the paper deal, U.S. officials made concession after concession – regarding enrichment, anytime-anywhere inspections, the timing of lifting sanctions, missiles and so on. President Obama's new approach empowered Iran's leaders. They flaunted their leverage in various ways, through diplomatic inflexibility, disrespectful public statements about President Obama and America, and contemptuous treatment of American political prisoners. The U.S. concessions eventually brought everyone to common ground.

That, I believe, is how we reached the current juncture. Iran's nuclear program is not dead, as Libya's program was after Qadafi dropped it in December 2003. The main justifications for dropping foreign-tax-credit sanctions against Libya were that Qadafi had utterly abandoned his pursuit of WMD and cut support for terrorism. Neither of these justifications applies to Iran at present. Nor has the Iranian regime, to put it mildly, made America whole for having seized the U.S. embassy in 1979 and held U.S. diplomats hostage for over a year. Those outrages were why the U.S. severed diplomatic relations with Iran thirty-five years ago, which is essential to the rationale for Section 901(j) sanctions.

The JCPOA came into being mainly for two reasons. First, it served the Iranian regime's interest in removing economic sanctions. Iran will promptly receive hundreds of billions of dollars in unfrozen assets, oil revenues and other benefits of expanded trade and investment. And second, it served the Obama administration's

interest in a plausible way to claim that the Iranian nuclear problem is resolved. The key word here is "plausible," for the problem is in fact not at all resolved.

The administration and its supporters rely on the JCPOA's length, obscure wording and technical complexity to hide the reality that Iran remains committed and able to become a nuclear-weapons state in the near future, even if it complies with its obligations. It could have a nuclear weapon even sooner if it violates the deal.

Given its record, there's no good reason to assume Iran will comply. Given the verification regime's weaknesses, there's no reason to assume we'll detect, let alone be able to prove, violations when they occur. And given the long history of unpunished arms control violations by non-law-abiding regimes, there's no reason to expect that America or anyone else will enforce the JCPOA if and when we do detect Iranian violations.

In fact, Iran has wasted no time in making a mockery of the whole exercise by announcing that it has tested a new nuclear-capable ballistic missile called the Emad. The test flouts U.N. Security Council Resolution 2232, which prohibits Iran from undertaking "any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology." Resolution 2232 is the Security Council's vehicle for implementing the JCPOA; it is part and parcel of the Iran nuclear deal. But Iran claims that it's not bound to comply with Resolution 2232. In refraining from contradicting Iran on this point, President Obama has shown Iran that it can violate its nuclear obligations with impunity. We can expect more violations in the future with the same impunity.

Chairman ROSKAM. Mr. Stethem.

STATEMENT OF KENNETH STETHEM, CHAIRMAN & CEO, AEGIS INDUSTRIES, LLC

Mr. STETHEM. Thank you, Chairman Roskam, and Ranking Member Lewis for the opportunity to be here today and discuss the presidential authority to waive the antiterrorism provisions in the Tax Code with regards to Iran.

Before I start, I would like to recognize Representative Meehan and the others on the committee who supported H.R. 3457, the justice for victims of Iran terrorists. Thank you, sir.

The question of the day, my remarks can probably be distilled down to two or three questions. The first question is, will Congress side with Iran and their terrorist activities or with America?

I would like to give you all a brief introduction into my family, the Stethem family, which is a family of service. Between my father, my mother, and three brothers, we have 105 years in the Navy. I have got two brothers who served as Navy seabee divers, and one of my younger brothers, Robert, was the Navy diver that was killed on the TWA flight 847 in 1985 in Beirut, by Hezbollah terrorists which were sponsored by Iraq.

And I was fortunate enough to serve as a SEAL and as an EOD technician. I am here today for two reasons. The first is to discuss the provisions I mentioned earlier and why I think that supporting the antiterror provisions with respect to the Tax Code in regard to Iran is a sound policy.

The second reason I am here is duty and honor. My brother cannot be here, and many other victims cannot be here. So I would like to take a moment, a brief moment, and recognize my brother, the other victims of Iran terrorism, and also our fallen vets, and vets who sacrificed their lives and limbs in the war on terror.

Thank you. My experience with terrorism began in 1985. I have seen it on a personal level; I have seen it on a professional level, and I have seen it on a policy level for the last 30 years. During the hijacking in 1985, it was my, my family, and our Nation's really first huge terrorist incident that played out over TV and over CNN for a long period of time.

For those who don't know the story, I would just like to share it briefly. Basically, my brother was beaten and tortured, and dragged out front and asked to yell into a mike because Hezbollah wanted to refuel a plane and the amal militia didn't want them to leave; they were getting too much press. So Hezbollah said, we are going to kill—told the tower, we are going to kill an American if you don't send out a truck. They put a gun to my brother's head, and they said, yell.

And he had already told one of his fellow teammates on the plane that was up there with him, we can't yell, because if there is a rescue attempt, the plane has to be on the ground. And John Testrake said it best, the pilot, when he said, he was beaten and not a sound was heard to come from him. He was shot and then just dumped on the tarmac as if his life had no value.

So I have seen terrorism on a personal level; I have seen it on a professional level, and I have seen it on the policy level. And I will just share a few things that I have learned along the way. Ter-

rorism must be fought on multiple levels simultaneously. Not sequentially, simultaneously.

And this fight, this strategy against terrorism, must be based on sound strategy. It must be based on sound strategy and not simply on a military action. There is an absolute truth in the military, goes something like this, military operations are only as good, effective, and successful as the political policies and strategies they support. Far too long our countries and our administrations have depended on the military for quick ops and quick success when it is sound policy that is needed for peace.

A common misconception among Americans is the opposite of war is peace, and this isn't true. The word "war" is an ancient German word. It means to confuse. When you make warfare, you make confusion on the enemy. The opposite of war is our word of war or aware. It is clarity. The opposite of confusion is clarity. The opposite of war is awareness. It is sound policy. It is clarity. Peace comes from clarity.

Look at World War II. The war didn't end and all of a sudden there is peace and prosperity. There was a Marshall Plan in Europe and we had another plan for Japan. The peace came—for Japan, the peace came out of clarity of policy, and we don't have it today.

I have heard the comment made over and over again, Americans are tired of war. That is a projection. Let me tell you something, Americans aren't tired of war. I don't know any of my friends in the military that I served with, SEALS or not, they are willing to fight for freedom. I don't know how many American who doesn't want the military to fight for freedom. Americans aren't tired of war; Americans are tired of war that is not based on sound strategy, sound policy. Wars that are being fought to fight and not win.

Political strategies and policies against terrorism, they need to be simple, they need to be sound, they need to be sustainable, and there needs to be accountability.

I would just briefly mention in accountability, the topic of the JCPOA and the flagrant violations by Iran, there is no accountability. There has already been flagrant violations. There is no accountability. So how good is this policy? If the minor violations—they aren't held accountable to by the parties, why do we think the major ones will be?

Specifically, on Iran and terrorism, everybody here wants peace. If we could have one thing, we would want peace. I believe that. The question I haven't heard asked since 1979, since the Islamic jihad was declared, and I just—it blows my mind. I have never heard anybody ask Iran, the Ayatollah, are you still at Islamic jihad, a holy war, with the United States? That question hasn't been answered, because it hasn't been asked. And that is the first question that should have been asked before we started negotiating about nuclear power with them.

Americans have been asked to separate the nuclear issue from the terrorism issue. I would ask has Iran been asked the same? Has Iran renounced the Islamic jihad? Has Iran renounced their terrorist acts on the Beriut barracks bombing, on the TWA flight, on the USS Cole? Chairman, I am almost done. Thank you.

I believe, I strongly believe that separating the radical fundamentalist Islamic regime from their terrorist activities is like trying to separate heat from a flame or light from a candle. It can't be done. The failure of the current administration to develop a sound security strategy policy for the Middle East should not preclude Congress from developing one against this menace of mankind. The first step in developing a sound security strategy for the Middle East is asking Iran, are you jihad? Another one might be to actually define what war means and what combat means.

Congress has a great opportunity before it, and this subcommittee is laying the cornerstone. And if you miss this opportunity, it is going to be like shooting an arrow from a bow, and you are not going to be able to call it back.

In closing, I would like to share two quotes that resonate deeply within me. And they are as true and timeless as when they were first spoken—today as when they were first spoken. The first one, “I love the man that can smile in danger, that can gather strength from distress and grow brave by reflection, since the business of little minds to shrink, but to he whose conscious approves his conduct will pursue his principles onto death.” My brother pursued his principles onto death for everyone here.

The last quote is written on a plaque outside of his team in Virginia Beach: “We will always remember. We will always be proud. We will always be prepared so we can always be free.” Thank you.

Chairman ROSKAM. Thank you, Mr. Stethem.

[The prepared statement of Mr. Stethem follows:]

**Testimony of Kenneth J. Stethem before the
House of Representative's Committee on Ways and Means
Subcommittee on Oversight**

Chairman Roskam, Ranking Member Lewis, thank you for the opportunity to join you and the other committee members here today to participate in this hearing on the presidential authority to waive anti-terror provisions in the tax code with respect to Iran. But more importantly, thank you for recognizing and addressing what I believe is one of the greatest threats to both our nation and national security: Iranian state sponsored terrorism. Now is the time members of this Congress must decide whether they are going to support and fund Iran, a state sponsor of terrorism, or not.

By way of introduction, our family, the Stethem family, is one that has proudly served our Navy and our nation. Between my father, mother, two younger brothers and myself, we have over 105 years of service to the U.S. Navy. Both of my younger brothers were Seabee divers attached to Underwater Construction Team One (UCT-1) and I served as a SEAL and an explosive ordnance disposal (EOD) technician.

One of my brothers, SW2(DV) Robert Dean Stethem, was murdered by Hezbollah terrorists during the hijacking of TWA Flight 847 in June 1985.¹ He was 23-years old when he was killed. The Navy has commissioned a destroyer, the USS STETHEM (DDG-63), in Rob's honor. He has posthumously been awarded a Bronze Star, Purple Heart, and POW medal due to his actions during this hijacking. His is a legacy of honor, courage, and commitment to our Navy and our nation. Robert is buried in Arlington, in the section designated for terrorism victims. My other younger brother was actually inside the Pentagon when it was struck on September 11, 2001. Fortunately, he survived that attack.

During my career I have seen and dealt with terrorism and terrorism related issues on personal, professional, and policy levels. I have seen many promises made and many promises broken. And I know that my family is not alone. There are others. And I believe that if Iranian terrorism is not checked there will be many more families like ours.

My remarks this morning will be brief but before I continue I feel that it is important to share with you exactly why I am here today: First, to recognize and remember my younger brother, Robert Dean Stethem, the other victims of Iranian terrorism, and their families.

Many times these victims had no warning of the terrorist acts before they happened. No chance to say goodbye to their fathers, mothers, brothers, sisters, sons, and daughters before they are gone forever. In other instances, such as my brother's tragedy, there is a little time to stop and reflect on the fact that the end of life has come. In these cases where death is delayed, their opportunity to reflect upon life and their situation is often interrupted as they are held captive, beaten, and tortured, often without mercy, for

¹ See attachment 1, Articles about Robert Dean Stethem

minutes, hours, days, weeks, months, and in some cases, even years.

My second reason for being here is to share with you why I believe that legislation should be established that prevents U.S. companies and their foreign subsidiaries from receiving any U.S. tax credits or benefits and from business conducted with Iran or Iranian companies. This includes closing tax loopholes that still exist for some of these U.S. companies. I believe that establishing this type of legislation is critical for several reasons.

- 1) Iran has been found guilty of financially supporting and committing acts of terrorism against America and Americans.
- 2) Iran is designated by the Department of State as a State Sponsor of Terrorism.
- 3) Iran has not had a fundamental change in its leadership.
- 4) Iran has not renounced the use of, or support for, terrorism.
- 5) Iran has not provided credible assurances that it will not continue to support terrorism in the future.
- 6) Iran has not been held accountable for the terrorist acts that resulted in the loss of life for many Americans.

It is past time for American politicians and American citizens to realize that our failure to properly address Iranian terrorism has only emboldened the radical fundamentalist Islamic regime of Iran. One of the first major terrorist acts the government of Iran committed was the sacking and overthrow of the U.S. Embassy in Tehran. This regime has been committing terrorist acts ever since. And, until recently, Iran has irrefutably been the most destabilizing factor in the Middle East (ME) since 1979.

So I sincerely hope that before any member of this Committee considers opposing the restriction of tax credits, benefits, or closing loopholes for U.S. companies and subsidiaries doing business with Iran, they will ask themselves the following question as it is fundamental to the Iranian terrorism issue threatening our national security and our national security interests today:

Has the radical fundamental Islamic regime of Iran retracted their "Islamic Jihad" or "Holy War" they declared against America in 1979?

If the answer is no, then the Iranians must still be in a state of declared war with the U.S. In this case, not only should companies that do business with Iran not receive tax credits or benefits from the U.S. government but they should, in fact, be punished with severe penalties.

If the answer is yes, then I would ask you, where is the proof? Has Iran declared "peace" with America? Has Iran showed any good will by renouncing their terrorism tactics or rejecting their terrorist strategy? Has peace and prosperity broken out in the ME since the signing of the Joint Comprehensive Plan of Action (JCPOA) this past July?

Multiple and flagrant violations of several United Nations sanctions immediately following the signing of the JCPOA should have sent this Congress a clear message:

Not only is Iran willing to violate U.N. sanctions, but the lack of any protests by the P5+ “partners” show that none of these nations, including the Obama administration, are willing to hold Iran accountable for these violations. And, if none of the P5+ nations are willing to hold Iran accountable for violating these sanctions where is the motivation for Iran to forego its support and involvement in terrorist operations?

The answer is there is none.

In fact, there is plenty of evidence to the contrary. Trying to separate the radical fundamental Islamic regime of Iran from its terrorist policies and support is like trying to separate heat from a fire or light from a flame. It cannot be done. Terrorism is not just a matter of policy or strategy for the radical fundamentalist Islamic regime but it is justified in this regime’s core belief, values, dogma, and very nature. Consider that the radical fundamentalist Islamic regime’s interpretation of the Koran is that Islam is a religion of war and not peace. Their belief is that it is also permissible to lie in order to defeat infidels.

Consider that Iranian Foreign Minister Mohammad Javad Zarif, Secretary of State John Kerry’s partner in the nuclear talks, has actually paid homage at the Beirut tomb of Imad Mugniyah, the terrorist who masterminded the Beirut Barracks bombing, the TWA Flight 847 hijacking and many other deadly terror attacks. Imad Mugniyah was not only the Hezbollah security chief when he was killed in a 2008 bomb blast but was also the terrorist coordinator between Iran, Syria, and Hezbollah. Mugniyah is remembered by Iran and honored by Zarif as a “heroic martyr.”²

So the support for Iranian terrorist and terrorism operations reaches into even the highest levels of Iranians participating in the JCPOA.

I would submit to everyone here that there is much more evidence to believe that Iran will continue to fund and finance terrorism in the future than to stop it.

Although the intentional killing of a member of a state’s armed forces is an act of war, which requires a response from that nation state, the United States took no action against the Iranians in response to my brother’s death.³ As we have seen, the result has been an emboldened Iran in supporting mass terrorist attacks, resulting in decades of Americans dead at the hands of terrorism.

² House Passes Bill Banning Sanctions Relief Until Iran Pays Damages to U.S. Terror Victims available at <http://cnsnews.com/print/400358>

³ Iran’s support of Hezbollah resulting in the death of Robert Dean Stethem would be considered an illegal act of aggression under international law. See U.N. Resolution 3314 (XXIX) (Dec. 13, 1974) available at <http://www.un-documents.net/a29r3314.htm>

Another example is on October 12, 2000, the U.S. Navy destroyer the *U.S.S. Cole* was attacked by a suicide boat bombing in the harbor of Aden, Yemen.

Seventeen American service members were killed and thirty-nine others were wounded. Our ship was seriously damaged. The attack has been widely characterized as a "boat bomb" adaptation of the truck-bomb tactic used by Hezbollah, with the support of Iran, to attack the U.S. Marine Corps barracks in Beirut in 1983 and the Khobar Towers U.S. military residence in Saudi Arabia in 1996.⁴ Al Qaeda claimed responsibility for the attack, but as a federal judge has found, it could not have done so without the support of Iran, including through the provision of weapons training and facilitation of travel.⁵ And again, although the attack on a U.S. warship is no doubt an act of war, the U.S. did not respond.

Less than a year later, on September 11, 2001, 3,000 Americans lost their lives in the greatest terrorist attack of our time. And as the 9/11 Commission has found, Iran's involvement in that attack cannot be questioned. Yet, the U.S., although declaring a "war" on terrorism and recognizing Iran as an "Axis of Evil," did not confront Iran. As a result, Iran has continued to support terrorist groups and activities in both Afghanistan and Iraq.

For example, Dr. Patrick Clawson, Director of Research of the Washington Institute for Near East Policy, has explained that Iran has continued to provide significant support, including cash, weapons, and safe haven to several terrorist groups, including Hezbollah, HAMAS, al-Qaeda, and armed insurgents in Iraq and Afghanistan, including the predecessors of ISIS. Dr. Clawson opines that Iran spends **at least \$300 to \$500 million dollars a year on funding terrorism against the West.**⁶

This Subcommittee on Oversight has an excellent opportunity to work together in a non-partisan way and effectively discourage U.S. companies from doing business with Iran until such a time that there is a change in its government leadership and/or policies.

Time is not and never has been America's friend regarding Iran's support for terrorism. The increase in Iran's boldness and success in its de-stabilizing operations in the ME are proof enough of this. And now that the Obama Administration is opening the way for Iran to become a nuclear nation there is a greater, not lesser, threat of nuclear terrorism taking place.

The failure of the current Administration to have a coherent security strategy for the ME should not preclude the U.S. Congress from developing one. Our failure to fight radical Islamic terrorism properly, effectively, and thoroughly, when it first took place in recent times (1979) has allowed it to grow from a single source in a single place, with limited means, to having to deal with multiple proxies and places, including the possibility of nuclear terror.

⁴ CRS Report for Congress Terrorist Attack on U.S.S. Cole, Background and Issues for Congress (Jan. 30, 2001) available at <http://nsarchive.gwu.edu/NSAEBB/NSAEBB55/crs20010130.pdf>

⁵ *Flanagan v. Isl. Rep. of Iran*, 87 F.Supp.3d 93 (D.D.C. 2015)

⁶ See *Affidavit*, Dr. Patrick Clawson, *Flanagan v. Islamic Rep. of Iran* (Aug. 5, 2014).

I am extremely concerned that if we do not start now developing comprehensive and coherent strategies against this menace of mankind, not only on the battlefield but also financially and socially, we will unnecessarily suffer the effects of radical fundamental Islamic terrorism for generations to come. This need not be so. We should be careful to not allow political opinions, agendas, or personal legacies to replace political science and the natural laws of compensation and accountability.

I would humbly remind you all that peace does not come through confusion but through clarity. And when dealing with an enemy we must be clear. Iran has, is, and will continue to support and participate in terrorist activities as long as we allow them to do so without any accountability. We must hold the radical fundamental Islamic regime of Iran accountable on every front, on every quarter, and in every way. Failure to do the right thing at this critical time in our history will only result in more lives lost, more chaos, and lead us further down a destructive path that we need not and should not go.

I hope that Congress will seize this leadership opportunity to do the right thing and not simply the easy or convenient thing. Americans are watching you, our Congressional leaders. The world is watching as well. Will the U.S. Congress fund the single largest sponsor of terrorism in the world today or not? I sincerely hope that you will show Americans everywhere and people throughout the world that the United States Congress has its own will and resolve. That America will no longer tolerate terrorism or support for terrorist activities on any level, in any way, including business and banking operations.

I would like to close with two quotes that are very special to me. These statements ring as true today as when they were spoken so long ago. The first captures the very essence of my brother, "I love the man that can smile in danger, gather strength from distress, and grow brave by reflection. 'Tis the business of little minds to shrink, but he whose heart is firm, and whose conscience approves his conduct, will pursue his principles unto death."⁷ And the second accurately reflects our duty to those who have gone before us and to our posterity. "We will always remember. We will always be proud. We will always be prepared, so we may always be free."⁸

Thank you very much.

11.04.15

⁷ Thomas Paine, "The American Crisis" Philadelphia, Pa. 1776

⁸ Ronald Reagan, "D-Day Speech" Normandy, France, 1984



**SW2(DV) Robert Dean Stethem November 17, 1961 to June 15, 1985
American Hero**

Chairman ROSKAM. Mr. Walsh.

STATEMENT OF DR. JIM WALSH, RESEARCH ASSOCIATE, MASSACHUSETTS INSTITUTE OF TECHNOLOGY'S SECURITY STUDIES PROGRAM

Mr. WALSH. Mr. Chairman, Mr. Ranking Member, Members of the Committee, it is an honor to be here with you today to discuss the implementation of the nuclear agreement with Iran and our P5+1 international partners.

In my testimony, I want to directly address the central question raised by this hearing: What are the policy implications of providing tax-related sanctions relief. For example, will such relief result in an increase in Iran State sponsored terrorism? Before addressing the issue of possible tax-related sanctions relief, it make sense to step back and consider the agreement itself and what it accomplishes.

My professional judgment is that this agreement is the strongest, most intrusive nonproliferation agreement ever negotiated. This positive assessment is not mine alone, but rather, shared by American nuclear weapons scientists, retired diplomats, including three former U.S. Ambassadors to Israel, and retired military officers. Support for the agreement has included a broad and bipartisan cross-section of the U.S. national security establishment, including Republican national security luminaries, such as Brent Scowcroft and Colin Powell.

In addition, Israel's atomic energy agency and more than 40 retired Israeli defense and the government officials have endorsed the agreement, as well as, our European allies. This agreement reduces Iran's stockpile of uranium by 98 percent. It restricts Iran's enrichment levels. It reduces Iran's installed centrifuges by two-thirds and goes beyond the additional protocol, the current gold standard, for IAEA verification. This agreement provides for 24/7 monitoring of Iran's declared nuclear facilities and a first ever expedited procedure for investigating any suspicious undeclared facilities.

Many of its provisions, including snapback sanctions, are unprecedented. The agreement quadruples the number of inspectors over what had been operating in Iran prior to November 2013, and it is difficult to think of a simpler but more powerful measure of the difference that this agreement makes. If one were to ask virtually anyone, whether increasing the number of IAEA inspectors in Iran by 400 percent is a good thing? The answer would undoubtedly be yes.

With that in mind, I want to shift to the issue of tax related sanctions relief. And by way of background, it should be remembered that the U.S. imposes two broad categories sanctions on Iran, primary sanctions, are those that prohibit American individuals and entities from engaging in business with Iran. Secondary sanctions prohibit foreign individuals from interactions with Iran. This agreement provides relief primarily from secondary sanctions not primary sanctions. With limited exceptions, sanctions prohibiting American trade investment in Iran will remain in place for years to come.

Now let me focus on the policy implications of providing tax-related sanctions relief in particular. Based on a review of the evidence, I judge that even a full waiver of U.S.-owned—a full waiver of tax penalties on foreign-owned subsidiaries as unlikely and ill-advised as that may be, will not, by itself, generate new trade or investment in Iran.

One, American primary and other sanctions will remain in force. In addition, the architecture created by CISADA and ILSA, particularly as it relates to money laundering, terrorism, and other issues, continues on the books and with enforcement.

Number two, few subsidiaries of U.S. companies will want to do business in Iran. American-affiliated companies are not welcome in Iran and the supreme leader has made that clear in his recent letter to President Rouhani. In addition, the recent arrest of an Iran-American businessman will further dampen interest by American firms and their subsidiaries.

Finally, let me address the broader issue of sanctions relief and terrorism. There is this larger critique offered by some opponents of the agreement suggesting that it will lead to an increase in state sponsor terrorism by Iran. In my judgment both the assumptions of this critique and its conclusions are deeply problematic.

First, the intelligence community has assessed that new funds will be devoted to rebuilding Iran's economy, not to terrorism. The L.A. Times reported that, quote, "A U.S. intelligence assessment predicts that Iran's Government will pump most of the expected funds into the country's slacking economy and won't significantly boost funding for militants," close quote.

Number two, Iran received some \$16 billion in sanctions relief during the 2 years of the interim nuclear agreement, yet, there is no evidence pointing to an upsurge in Iran state-sponsored terrorism.

Number three, the U.S. continues to enjoy a wide variety of tools to combat terrorism with or without an agreement.

Number four, no American wants Iran to support terrorism, to oppress human rights, or to engage in any number of those objectionable activities. But the only thing worse than Iran that does these things, is an Iran that does these things and has nuclear weapons. And absent sanctions relief, there will be no agreement, and Iran's nuclear program will be unconstrained.

In conclusion, this agreement represents a historic achievement that is arguably the strongest multi-lateral nonproliferation agreement ever negotiated. It will advance the national security of the United States as well as the security of our friends and allies for decades to come. And nothing related to tax-related sanctions relief alters that conclusion.

I thank the Committee for providing me the opportunity to share these views.

Chairman ROSKAM. Thank you, Mr. Walsh.

[The prepared statement of Mr. Walsh follows:]

**Committee on Ways and Means
Subcommittee on Oversight
U.S. House of Representatives**

"Iran Terror Financing and the Tax Code

Wednesday, November 4, 2015

**Statement of Dr. Jim Walsh
MIT Security Studies Program**

Mr. Chairman, Mr. Ranking Member, and Members of the Committee:

It is an honor to be with you today to discuss the implementation of the nuclear agreement with Iran and our P5+1 international partners.¹ I want to personally thank you for your efforts to address the Iranian nuclear issue, and I can say with confidence that sustained Congressional leadership is a one reason we have a historic and precedent-setting nuclear agreement. Absent Congressional leadership, we would not be here today, and absent Congressional leadership in the future we will not be where we need to be in the future.

I come to today's hearing as someone who has provided assessments to Republican and Democratic presidents, as well as to Republican and Democratic Members of Congress, as they have wrestled with these policy challenges. As regards the subject of your hearing today, I have studied Iran, its role in the regional, sanctions, and terrorism for more than 15 years. I have written extensively on Iran and its foreign policy,² edited a book series on terrorism,³ testified before Congress on issues related to terrorism⁴ and to Iran's nuclear program,⁵ and currently oversee a major project on North Korean sanctions.

¹I would like to thank the many people who helped with my testimony, including Aaron Arnold, Richard Nephew, Daniel Waltz, Hamid Biglari, Angela Nichols, Max Walsh, Corie Walsh, William Luers, Frank Wisner, and Michelle Lee. Of course, my comments are mine alone and are not intended to represent the views of the MIT Security Studies Program or individuals I have consulted in the preparation of this testimony.

² See, for example, "Rivals, Adversaries, and Partners: Iran and Iraq in the Middle East." In *Iran and Its Neighbors*. London: Palgrave Macmillan. [Forthcoming.]

³ *Terrorism: Documents of International and Local Control*. Vols. 37-41. Dobbs Ferry, N.Y.: Oceana Law Publications.

⁴ "Nuclear Regimes and Nuclear Terrorism." Testimony before the Subcommittee on International Security, Proliferation and Federal Services of the Senate Governmental Affairs Committee. *Multilateral Non-proliferation Regimes, Weapons of Mass Destruction Technologies and the War on Terrorism*. February 12, 2002, pp. 1-12.

⁵ In addition to this current project on North Korea sanctions, I have contributed to reports on Iran sanctions in particular, and met repeatedly with the members of the Executive Branch and

In my testimony, I want to directly address the two central questions raised by this hearing, as suggested by former Chairman Ryan in his September 22, 2015 letter to the President.⁶

- 1) Will the Executive Branch waive tax code-related sanctions for the purposes of implementing the JCPOA?
- 2) What are the policy implications of providing or not providing tax code-related sanctions relief? For example, will such relief result in an increase in Iranian state sponsored terrorism?

My summary judgment is that while the President has the authority to issue tax code-related waivers, it is premature to judge whether such authority will be exercised or speculate as to the scope of any possible relief.

As for the potential policy consequences, I judge that any tax code-related relief will have little or no effect on Iran's sponsorship of terrorism. I reach that conclusion for two main reasons. First, the effect of tax code-related relief—whatever its scope—is likely to be trivial compared to other sanctions relief that is unrelated to the tax code and provided for in the JCPOA. Second, the assertion that sanctions relief will result in increased levels of terrorism is both empirically questionable and logically problematic.

Background: The JCPOA

Before addressing the issue of possible tax-related sanctions relief, it makes sense to step back and consider the agreement itself, and what it accomplishes.

I have spent most of my adult career working of the issue of nuclear proliferation, including the assessment of nonproliferation agreements, from the Nuclear Nonproliferation Treaty (NPT) to the agreement with Libya. My professional judgment is that this agreement is the *strongest, most intrusive nonproliferation agreement ever negotiated*.

The JCPOA is obviously stronger than the wildly successful NPT, which had no enforcement clause and no controls on nuclear materials. It is stronger than the Libyan nonproliferation agreement, which did not have verification procedure beyond the Additional Protocol. The JCPOA is 159 pages long in addition to the UN Security Council resolution. The Agreed

Congress on the issue of Iran sanctions. See for example, “Weighing the Benefits and Cost of International Sanctions against Iran.” New York: The Iran Project. December, 2012, pp. 1-86.

⁶ Letter from Rep. Paul Ryan, Chairman of the Committee on Ways and Means, U.S. House of Representatives, to President Barack Obama, September 22, 2015. See also, Scott Greenberg, “Sometimes, Tax Policy is Also Foreign Policy,” Tax Foundation, September 24, 2015, <http://taxfoundation.org/blog/sometimes-tax-policy-also-foreign-policy>.

Framework with North Korea was three-pages long, as was President Bush's Moscow agreement with President Putin – the latter having no verification provisions whatsoever.

This positive assessment of the JCPOA is not mine alone but rather one shared by American nuclear weapons scientists, retired diplomats (including three former U.S. Ambassadors to Israel), and retired military officers. Support for the JCPOA has included a broad and bipartisan cross-section of the US national security establishment. In addition, Israel's Atomic Energy Agency and more than 40 retired Israeli defense and government officials have endorsed the agreement, as have our European allies.

The JCPOA reduces Iran's stockpile of uranium by 98%, to a level of less than one bomb's worth of material in the form of 3.67% Low Enriched Uranium (LEU). It restricts Iran's enrichment levels and its centrifuge research and development. It reduces Iran's installed centrifuges by two-thirds, includes adherence to Code 3.1, and goes beyond the Additional Protocol (e.g., access to mines, centrifuge production facilities, and the materials/tools required for centrifuge production, as well as a dedicated procurement channel). Iran's plutonium path to the bomb via the Arak heavy water reactor is blocked, as the reactor will be replaced and no reprocessing will be allowed. The agreement provides for what is tantamount to 24/7 monitoring of Iran's declared nuclear facilities and a first ever expedited procedure for investigating any suspicious undeclared sites. Many of its provisions, including snapback sanctions, are unprecedented. Indeed, few experts believed the agreement's provisions were achievable.

Under the agreement, Iran's so-called breakout time – the time required for a state to accumulate one bomb's worth of material-- will have gone from roughly 2 months to 12 months, a 600% improvement over the pre-JPOA status quo. In addition, since the agreement was announced, the International Atomic Energy Agency (IAEA) has suggested that the expanded mandate for verification would entail an additional 150 inspectors, more than doubling the level of the inspectors under Joint Plan of Action (JPOA), which itself had doubled the number of inspectors over what had been operating prior to November 2013. It is difficult to think of simpler but more powerful measure of the difference this agreement makes. If one were to ask virtually anyone whether quadrupling the number of IAEA inspectors and strengthening their verification mandate was a good thing, the answer would undoubtedly be "yes."

Since the JCPOA, some critics have lamented the fact that the agreement does not address terrorism, Iran's activities in the region, the Americans being held in Iran, and other important issues. That is because it is a nuclear agreement, and preventing Iran from acquiring nuclear weapons is the uncontested first priority in US-Iranian relations. Past nuclear agreements did not end Soviet gulags or prevent Colonel Gaddafi from threatening Israel, but they advanced US national security by preventing bad actors from acquiring nuclear weapons. The absence of the JCPOA would do nothing to solve any of these other problems and would likely make them worse. Moreover, there is nothing in this agreement that prevents the US from pursuing policies that would advance American objectives in these other areas. The only thing the JCPOA does is block Iran from acquiring nuclear weapons, and that is the only thing it has to do.

Critics have been unable to offer a plausible alternative that comes close to preventing an Iranian nuclear weapon for 15 years. Saying we should “get a better deal” is not a serious alternative. Many of the same critics who say it is possible to do better (without specifying how) are also the same people who said that the grueling two years of negotiations was taking too long. Moreover, history suggests that unilaterally walking away from the agreement will precipitate Iran’s return to centrifuge construction, reduce IAEA inspections, and result in higher levels of enrichment -- as happened after the collapse of the 2005 EU3 negotiations.

Other analysts have expressed the concern that a nuclear agreement that leaves Iran with any centrifuges will spur countries in the region to develop their own enrichment capabilities and following that, nuclear weapons. This outcome appears unlikely for several reasons.

First, in 70 years of nuclear history, there is not a single case of proliferation caused by a safeguarded enrichment program. There have been 10 nuclear weapons states. Some weapons programs began in response to another country’s nuclear weapons program, others not until nuclear tests, but none to a safeguarded enrichment program. Governments tend to be reactive by nature -- not proactive -- and nuclear weapons are not a small undertaking. Non-nuclear weapons states that have safeguarded enrichment programs, like Japan and Brazil, have not caused neighboring countries to acquire nuclear weapons.

Second, if a limited enrichment infrastructure was viewed as a grave, proliferation-tripping threat, then why have the countries in the region failed to do anything for the last 10 years. Iran has had centrifuges since 2003, but Saudi Arabia and others have done virtually nothing. It is difficult to believe that after curtailing its centrifuge program and submitting to new and rigorous verification, the governments in the region would *then* decide to respond.

Third, the set of countries cited as potential proliferation threats -- Saudi Arabia, Turkey, and Egypt -- appear far from a nuclear weapons option.⁷ There are many reasons for this

⁷ On Turkey see, Mark Hibbs, “The IAEA’s Conclusion About Turkey,” *Arms Control Wonk*, April 16, 2015, <http://carnegieendowment.org/2015/04/16/iaea-s-conclusion-about-turkey/i799>; On Saudi Arabia, see Colin H. Kahl, Melissa G. Dalton, and Matthew Irvine, “Atomic Kingdom: If Iran Builds the Bomb, Will Saudi Arabia Be Next?,” Center for New American Security, February 2013, http://www.cnas.org/files/documents/publications/CNAS_AtomicKingdom_Kahl.pdf; Zachary Keck, “Why Pakistan Won’t Sell Saudi the Bomb,” *National Interest*, November 18, 2013, <http://nationalinterest.org/commentary/why-pakistan-wont-sell-saudi-the-bomb-9416>. On Egypt, see Dina Esfandiary and Ariane Tabatabai, “Why Nuclear Dominoes Won’t Fall in the Middle East,” *Bulletin of Atomic Scientists*, <http://thebulletin.org/why-nuclear-dominoes-wont-fall-middle-east8236>; Jessica C. Varnum, “Middle East Nuclear Race More Rhetoric Than Reality,” *World Politics Review*, May 14, 2015,

conclusion, not least being that since the Iran-Iraq War, many countries have come to believe that a strong military alliance with the United States is their preferred route to security. A bomb program would put that directly at risk.

In sum, the JCPOA provides a robust and intrusive set of tools to prevent Iran from acquiring nuclear weapons. It is a nuclear agreement – not a terrorism human rights or other agreement. It must be judged first and foremost on that basis, namely, on its nonproliferation bona fides. Based on those principles of assessment, it is clear that it advances both US national security and global nonproliferation.

Sanctions Background: Primary versus Secondary Sanctions

Before addressing the three central questions posed by this hearing, it is important to be clear about the kind of sanctions relief the US government will provide under the JCPOA. Currently the United States imposes two broad categories on sanctions on Iran. *Primary sanctions* are those that prohibit American individuals, companies, and other entities from engaging in business and other transactions with Iran. *Secondary sanctions* prohibit foreign individuals, companies and other entities from commercial and other interactions with Iran, e.g., our European allies.

Of central relevance is the fact that the *JCPOA provides relief primarily from secondary sanctions, not primary sanctions*. With limited exceptions, American primary sanctions will remain in place under the JCPOA for years to come. These prohibitions extend to foreign incorporated US subsidiaries, insofar as American nationals working for those companies will still be prohibited from doing business in or with Iran.

Question 1: Will the Executive Branch waive tax code-related sanctions for the purposes of implementing the Joint Comprehensive Plan of Action (JCPOA)?

It is premature to say whether such waivers will be granted, as the Executive branch has offered no statements of intent, nor issued any relevant regulations. Indeed, a search of the recent, relevant literature turns up no references whatsoever to tax code related sanctions relief for Iran.

More telling perhaps is that last month, when the State Department released the language of its proposed waivers in accordance with the JCPOA's "Adoption Day," there was no reference to tax code-related waivers. Additionally, a search of the text of the 159-page JCPOA produces no references to tax code waivers.⁸

<http://www.worldpoliticsreview.com/articles/15769/middle-east-nuclear-race-more-rhetoric-than-reality#>; Jim Walsh, "Egypt's Nuclear Future: Proliferation or Restraint?", In *Forecasting Proliferation*, William Potter, ed, Palo Alto: Stanford University Press, 2010.

⁸ Using the search terms "tax" and "tax code." It is worth noting parenthetically that the text of the JCPOA does refer, in Annex II 4.B.5.1.2, to sanctions relief with regard to "non-US entities that are owned or controlled by a U.S. person to engage in activities with Iran that are consistent

Obviously, the President could decide to provide no waivers whatsoever, provide a broad, blanket waiver, or alternatively, offer limited waivers based on a number of different parameters.

It would seem prudent, therefore, to wait until the President, the Treasury Department, or other agencies actually declare a policy rather than to speculate about what might or might not be the case. I would be happy to submit additional written testimony or appear before the committee, if and when the administration issues a statement or regulations on this topic.

Question 2: What are the policy implications of providing or not providing tax code-related sanctions relief? For example, will such relief result in an increase in Iranian state sponsored terrorism?

Concern that tax code-related sanctions relief might directly or indirectly fund Iranian policies that are contrary to American national interests or international law, including but not limited to the sponsorship of terrorism, are worthy of consideration. Nevertheless, based on a review of the evidence, I judge that even the unlikely scenario of the issuance of broad waivers of tax code-related sanctions is unlikely to result in increased rates of terrorism.

A full waiver for U.S. owned foreign subsidiaries is, by itself, unlikely to generate new trade with or investment in Iran for a variety of reasons.

1. American primary and other sanctions remain in force.

The JCPOA leaves in place U.S primary sanctions that prohibit US nationals and firms from engaging Iran. These sanctions continue to be enforced and have the effect of prohibiting direct involvement by U.S. nationals, regardless of where they are employed. In addition, the architecture created by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) and Iran Freedom Support Act (ILSA) -- particularly as it relates to money laundering, terrorism, and other issues -- continues on the books and with enforcement.

2. Few subsidiaries of U.S. companies likely to engage Iran.

2a. American affiliated companies are unlikely to be welcomed in Iran.

Iranian politics are deeply factional and often pit conservative hardliners who hew to the ideology of the Islamic Republic's founder (Ayatollah Khomeini) against more centrist and pragmatic elements in the political elite who favor engagement with countries outside the region. The former group is especially suspicious of the U.S. and is inclined to see every interaction with the U.S. as an attempt to infiltrate and eventually overthrow the "values of

with the JCPOA." (p. 67 of the PDF). This would not be through waiver but rather via the OFAC licensing authority, and here again, the U.S. government has issued no statements or regulations regarding its plans related to this provision.

the revolution” as well as the Iranian government itself. In addition, this hardline faction wants to deprive its political adversaries the ability to claim any political victories.

Perhaps it is not surprising, therefore, that Supreme Leader Khamenei’s October 22 letter to President Rouhani endorsed the JCPOA but simultaneously emphasized the need for a “resistance economy” and warned that American firms and their wares would not be welcome in Iran.

“...the resolution of current challenges will not be easy unless the Resistance Economy is taken seriously and is completely implemented. ...You must also be vigilant that the lifting of sanctions is not followed by the unrestrained importation [of goods]. In particular, the importation of any kind of consumer materials from America must be seriously avoided.”⁹

2b. The recent arrest of an Iranian-American businessman will likely further dampen interest by American firms and their subsidiaries.

As if the warning of the Supreme Leader were not enough, the recent arrest of businessman Siamak Namazi is already having an effect on businesses considering projects in Iran. As reported in the Wall Street Journal,

“Everyone is now hitting the pause button,” said an Iranian businessman in London. “If they don’t want the benefit of our knowledge, money and network then that’s fine. We will take our business elsewhere.”¹⁰

2c. Even absent these recent developments, American affiliated firms would likely have been wary of getting involved with Iran.

In the modern world of corporate compliance, Americans, American firms, and most especially American banks, tend to be risk averse and avoid even the possibility of becoming the target of sanctions enforcement. For example, despite clearly stated exceptions in U.S. sanctions laws with respect to medicines, medical devices, and humanitarian assistance, few American firms and no banks have participated in the provision of such goods.

3. Even with full waivers and the absence of any Iranian discouragement or business wariness, the effects of tax code-related sanctions relief would be quite modest, if not irrelevant.

⁹ Caitlin Shayda Pendleton, “In Letter to Rouhani, Supreme Leader Khamenei Approves the Implementation of the JCPOA,” <http://www.irantracker.org/nuclear/pendleton-khamenei-letter-approves-implementation-of-jcpoa-october-22-2015>

¹⁰ Farnaz Fassihi and Jay Solomon, “Iranian-American Executive Arrested in Iran,” Wall Street Journal, Oct. 29, 2015, <http://www.wsj.com/articles/iranian-american-executive-arrested-in-iran-1446164677>. See also, Michael Kaplan, “After Arrest Of Iranian-American Businessman In Iran, International Business Optimism Turns To Worry Ahead Of Nuclear Deal Sanction Relief,” *International Business Times*, October 30 2015, <http://www.ibtimes.com/after-arrest-iranian-american-businessman-iran-international-business-optimism-turns-2163427>.

The economic impact tax code-related relief – even at maximum levels – is marginal compared with the *non*-tax code related sanctions relief provided for under the JCPOA. It is simply a drop in the proverbial bucket and too small in relative terms to matter. Put another way, if one is getting \$100 of sanctions relief, the impact will derive from the first \$99.95, not the last 5 cents.

For these and other reasons, some of which are delineated below, it would seem likely that even under “maximum” scenarios, any tax code-related sanctions relief will generate little in the way of new trade or investment in Iran and therefore produce little or no new funds for the Iranian government.

The Broader Issue of Sanctions Relief and Terrorism

The jurisdiction of this committee is such that its focus is the impact of tax code-related sanctions relief, a very small, if not theoretical, piece of the broader sanctions relief picture. For the reasons offered above, I assess that this particular aspect of sanctions relief is likely to have little or no impact on the resources available to the Iranian government.

It is worth noting, however, that this concern is part of a larger critique offered by opponents of the JCPOA suggesting that the agreement will lead to an increase in state sponsored terrorism by the government by Iran. Indeed, former Chairman Ryan’s letter contends that the JCPOA will provide “Iran \$100 billion to \$150 billion of previously frozen funds, not to mention hundreds of billions of dollars of increased investment and trade flows” and that this will mean “more resources to increase its support of terrorism.”

In my judgment, both the assumptions of this critique and its conclusions are deeply problematic.

1) The “\$100 to \$150 billion” dollar figure is flawed.

According to a Harvard University assessment of the JCPOA, the figure for Iranian funds frozen abroad is approximately \$115 billion, but about half of that is *already* obliged as payments to other countries for goods and services already delivered or for non-performing loans. That leaves roughly \$56 billion.¹¹ Moreover, after one subtracts funds that Iran will likely keep in foreign banks for currency reserves, the figure is actually closer to 25 billion, rather than the \$150 billion figure frequently cited.¹²

2) The Intelligence Community (IC) has assessed that most of those remaining funds and/or new financial resources will be devoted to rebuilding the economy, not terrorism. The Los Angeles Times reported that the

“...U.S. intelligence assessment predicts that Iran’s government will pump most of an expected ...windfall from the lifting of international sanctions into the country’s

¹¹ *The Iran Nuclear Deal: A Definitive Guide*, Belfer Center for Science and International Affairs, Harvard University, August 2015, p. 59.

¹² Cyrus Amir-Mokri and Hamid Biglari, “A Windfall for Iran?,” *Foreign Affairs*, November/December 2015, p. 25.

flagging economy and won't significantly boost funding for militant groups it supports in the Middle East."¹³

Indeed, after decades of sanctions and the mismanagement of the Iranian economy by President Ahmadinejad, Iran will need something on the order of \$1 trillion over the next decade to rebuild its economy – of which \$25 billion is but a small piece.¹⁴

3) Iran received more than \$16 billion of sanctions relief during the two years of the interim nuclear agreement (the Joint Plan of Action), yet there is no evidence pointing to an upsurge in Iranian state sponsored terrorism.

4) When it comes to state sponsored terrorism, money is not the limiting factor. Governments, unlike non-state actors, are sovereign entities with the ability to tax and raise revenues. Terrorism is, in relative terms, an extremely low cost endeavor, and so it would be rare for money to be the limiting factor that determines whether the rate of terrorism increases or decreases. Instead, state sponsored terrorism is more likely to be affected by domestic and international political constraints and pressures rather than simply the availability of funds.

5) For many firms, Iran will not be an attractive investment opportunity, thus limiting whatever economic returns it hopes to gain from sanctions relief. There are a number of factors that affect business decisions regarding trade and investment. As discussed above, these are particularly acute for American foreign subsidiaries considering doing business with Iran, both because of the ongoing sanctions against Iran and because of the hostile attitude of some in Iran's leadership toward anything American.

Yet even for firms with no ties to the U.S., some will be cautious even in the face of new opportunities. As experts have pointed out...

But the end of the sanctions alone will not be enough to attract investors. Although lifting the sanctions will remove a substantial impediment to Iran's economic recovery, it will not automatically create the legal and regulatory framework necessary for sustained investment. Iran's lackluster attempts at market liberalization and its undistinguished record on issues such as corruption and intellectual property rights will continue to give pause to global investors. ...[I]t will need to implement a broad spectrum of reforms, including strengthening property rights, transferring state-owned assets to the private sector, and granting independence to its central bank. Only then can Iran reap the full economic benefit of the nuclear deal.

¹³ Brian Bennett, "Iran Unlikely to Spend Most of Its Post-sanctions Funds on Militants, CIA Says," *Los Angeles Times*, July 16, 2015, <http://www.latimes.com/world/la-fg-iran-intel-20150716-story.html>

¹⁴ Cyrus Amir-Mokri and Hamid Biglari, "A Windfall for Iran?," *Foreign Affairs*, November/December 2015, pp. 25-26.

In addition to issues related Iran's domestic financial and investment infrastructure, there are impediments having to do with international efforts to combat money laundering and counter-terrorism. For example, the 30-plus member countries of the international Financial Action Task Force (FATF) represent most of the major economies in the world. The FATF evaluates individual countries regarding their domestic rules and practices to prevent money laundering and other activities. Banks, particularly in an era of "de-risking," are loath to provide financing for projects in countries that receive a poor score. Iran, along with North Korea and Sudan, receives a particularly poor rating. Thus, even if firms find a way to overcome economic infrastructure obstacles to doing business in Iran, they may still have trouble finding a bank willing to support those projects.

6) The U.S. maintains a variety of policy tools to combat terrorism, with or without the JCPOA.

There is nothing in the JCPOA that inhibits the U.S. government from continuing its aggressive counter-terrorism strategy. The government employs a variety of tools, from intelligence, to interdiction, to special operations forces, and more to combat terrorism. Washington will continue to use those instruments in concert with friends and allies.

7) None of the unwanted practices Iran engages in somehow get better, if Iran has an unconstrained nuclear program.

The logic of agreement critics appears to suggest that one can have no agreement with Iran, if that risks that it would spend a dollar of sanctions relief on terrorism or other objectionable activities. The logical implication of that position is that no nuclear agreement should include sanctions relief. If that is the case, then there will be no nuclear agreement, and Iran's nuclear activities will be left completely unconstrained. This is an odd logic, indeed. No American wants Iran to support terrorism, oppress human rights, or engage in any number of other unsavory activities, but the only thing worse than an Iran that does those things is an Iran that does those things *and has nuclear weapons*.

Conclusion

The JCPOA represents an historic agreement that is arguably the strongest multi-lateral nonproliferation agreement ever negotiated. It has unprecedented features (e.g., snapback sanctions, procurement channel, upstream verification, etc.) and closes off Iran's path to nuclear weapons. It is supported by our negotiating partners, including Britain, France, and Germany.

Of course, it makes sense to be attentive to the possibility that sanctions relief may afford Iran more resources for activities we oppose. The U.S. government and its partners can prepare for that possibility and design policies to prevent or minimize those risks. On the other hand, policymakers also need to be clear about the singular achievement of the JCPOA – preventing Iran from acquiring nuclear weapons. It is difficult to imagine a more important policy achievement.

In my professional judgment, as someone who has studied and sought to reduce the dangers of proliferation for more than 2 decades, I judge that the JCPOA is a huge win for

nonproliferation, one that will advance the national security of the United States -- as well as the security of our friends and allies -- for decades to come.

I thank the Committee for providing me the opportunity to share my views.

Chairman ROSKAM. And thank all the witnesses. It is obvious that you have more knowledge and more experience than we have time in your presentations, so it is our hope and expectation now to be able to engage in questions to you. And I will recognize Mr. Kelly.

Mr. KELLY. Thank you, Chairman. Thank you, all, for being here.

Mr. Stethem, thanks so much. I mean, there is an old saying that time heals all wounds. It is absolutely false. The wound may heal, but it leaves a deep scar that is there forever. Your loss and the show of patriotism and courage from your brother is an incredible lesson for all of us to look at.

And I do appreciate people's concern over this. I will say one thing, I note there is nobody I think, that would ever opt for a war. But let me just read something from President Reagan that I think is pretty good on this subject. It says, now let's set the record straight, there is no argument over the joys between peace and war, but there is only one guaranteed way you can have peace, and you can have it in the next second. Surrender.

When we talked about the agreement with Libya, and now we look at in the new Iran agreement, there is a huge difference between the two outcomes; is there not? I look now where there is— we are sending billions and billions of dollars of American money over—it is getting distributed through Iraq into Iran's hands; a lot of it going to ISIS and other terroristic entities, there is just no doubt in my mind, they have already violated the agreement.

So, Mr. Dubowitz, Mr. Schizer, Mr. Feith, if you can, there is a huge difference right? I mean, the stark difference of this is the difference between day and night where you have one person, Qadhafi, who was ready then to say, okay, fine, we are going to give into this. And then you have the situation now where it is almost like we are the laughing stock of any type of a peace agreement, like yeah, we are going to go ahead and do what we want to do anyways. First of all, I don't believe you can ever have an agreement with anybody unless both parties agree that they want to get to a common end. Ours was to keep Iran from getting nuclear agreements, their purpose was to go ahead and progress on the path that they were on.

So it went from never getting to for sure getting them. If you can tell me, when it came to Libya, there were stark differences, and the behavior was completely different. What would make anybody think, just after a month or so of this agreement being signed that somehow this is going to have a positive effect? I don't get it. Is there something I am missing?

Mr. Feith, if you would.

Mr. FEITH. Representative Kelly, I think that you are correct that there is a world of difference between the cases. One of the main differences is, it is clear from the history that led to Qadhafi's decision to get rid of his WMD. What happened was the United States had reacted to 9/11 in a fierce fashion. There was an intense commitment on the part of the U.S. Government to deal with the problem of countries that supported terrorism and pursued weapons of mass destruction. And what Qadhafi saw was that the United States had overthrown the Taliban regime in Afghanistan and had overthrown the Saddam Hussein regime in Iraq. The timing is quite significant.

Qadhafi, like the Iranians, wanted to get rid of the economic sanctions on his country. When he saw the United States taking that kind of military action, he became very fearful that he was next on the list. And the timing is quite interesting that Saddam Hussein was captured and appeared in his disheveled, humiliated state on international televisions, on televisions all over the world, on December 13, 2003. And it was 6 days later that the Libyan Government announced we are getting out of the WMD business, and Libya invited in the American and British inspectors to come in and—

Mr. KELLY. If I can, and I understand where you are coming from, but I think it really comes down to, Libya knew there were consequences if they didn't stop what they were doing. Iran has absolutely no respect for this agreement and doesn't feel any consequences from it, neither militarily or financially, so why should they follow the agreement? There is no reason for them to follow the agreement. I just would suggest that in any type of agreement, in any type of treaty that you come to—this is not a treaty—that if there are no consequences for bad behavior, and they have already violated this agreement, why in the world would they suddenly say, you know what, I think we will start going along with the intent of what was trying to be done.

From the very onset we have done nothing but give, give, give and they take, take, take. We talked about the people that have been held hostage. That never came into it. We talk about now they are testing missiles. They are not going to deliver care packages. They are delivering nuclear warheads. And there is absolutely no retribution for this. There is no consequences for this, so why in the world would we think that somehow, even as tax consequences, we have become so vanilla. We have become so soft. We have become so weak that nobody respects us anymore. Our friends don't trust us, and our enemies don't respect us. I would just suggest, and, Mr. Stethem, I got to tell you, what your brother did in that airplane is the America that I remember. That is the America that the world remembered. All of a sudden we are not that America anymore. We are an America that turns its back on its friends and encourages its enemies to go with bad behavior because there are absolutely no consequences at any level for any bad behavior on the Iranian side. This is absolutely pathetic.

Chairman, thank you for calling this meeting, but I will tell you what. The sanctions are fine. We should have increased them. We shouldn't have backed them off, and we should have demanded other concessions before we even sat down at the table with these

people because they are not on the same page with us. Their objective is to wipe us out. It is not to come up with an agreement. Thank you.

Chairman ROSKAM. Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman. Let me thank all of the witnesses for being here. Thank you and your families for serving. But I must tell you that I still believe that American people are tired and sick of war and violence. Peace is not the absence of tension and conflict. Peace is the presence of justice.

Dr. Walsh, thank you for being here. You are a native of Atlanta, and I want to welcome you for being here. Is there anything that you would like to add to your testimony or clarify for the record, for clarification, what you said or wanted to say?

Mr. WALSH. Thank you, Mr. Ranking Member, and thank you for calling attention to my Georgia roots. I would like to extend my remarks because I argued that this is the most robust and intrusive nonproliferation agreement in the 70 years of the nuclear age. And I included in that a comparison to the Libya agreement. I would like to spend a moment talking about Libya, if I may.

The Iran agreement is clearly more robust than the Libyan agreement, and I supported the Libyan agreement, by the way. The Libyan agreement had no snapback sanctions. It had no dedicated procurement channel. It had no IAEA access beyond the additional protocol, all of which are features of the Iranian agreement. Now it has been said that Libya dismantled what it had while Iran gets to keep some of its enrichment capability. And while I think that is technically true, it simply reflects the huge differences in the two circumstances.

The Iran agreement came and was negotiated after Iran built 19,000 centrifuges, almost half of which were built under the Bush administration. Libya's nuclear efforts consisted largely of boxes of centrifuge parts, not an industrial-scale centrifuge program. Obviously it is easier for a country to give up what it wants rather than what it already possesses. The administration took Qadhafi's word that it would not reconstitute the program, start an undeclared program. The Iran agreement is not based on trust. It is based on verification. As we talk about human rights and terrorism and other concerns, it seems odd to me to point to the Libya agreement. It was just a few years after the Libya nuclear agreement, that the U.S. and its European allies were bombing the supposedly trustworthy and reformed Qadhafi because of allegations he was massacring his own people. Now as it stands, I still think it was a good agreement because it was better, as with Iran, to have a bad actor that is doing bad things but doesn't have nuclear weapons.

If we were going after Qadhafi as we did with our European allies, and he had had nuclear weapons, that would have been worse, but I don't know that I would cite the Colonel as a particularly good figure in support of trust rather than verification.

Now, I know you are getting which wildly different assessments of the agreement and predictions about what will happen in the future, and as a policymaker, I am sure that is hard to evaluate. Obviously you should look at the evidence. You should look at the history. Are there internal contradictions in the arguments we are making to you? Do we really get the history right? But I would say

in addition to that, one way to judge who to believe and what to believe going in the future, is to look at the track record of the prognosticators, of us here. In the past, have we been accurate in our predictions of what would happen?

Take for example, predictions around the Joint Plan of Action, the interim nuclear agreement that preceded the JCPOA. Now we have had critics and some on this panel who said arriving at the interim agreement would lead to the collapse of sanctions, that the sky was going to fall, that all these terrible things were going to happen, and none of it did. Those predictions were wrong. In fact, many of the fiercest critics of the interim agreement found themselves 2 years later arguing it should be extended, rather than having an alternative comprehensive agreement.

So, again, it is fair to look at the evidence. It is fair to look at the logic, and it is fair to look at the track record of whether people have been right or wrong in the past about their predictions. So, let me pause there in case you have additional questions.

Mr. LEWIS. Dr. Walsh, going forward, if Iran cheats or violates the terms of the agreement, can the United States and allies reimpose sanctions?

Mr. WALSH. Absolutely. I don't think people really appreciate the miracle of the snapback sanctions. At any point, any member of the P5 on the Security Council for any reason—doesn't have to wait for IAEA; doesn't have to wait for anyone else. If the United States thinks that Iran is in material breach of the agreement, it goes to the Security Council and says Iran is cheating, and at that moment, bang, the clock starts. A 30-day clock starts ticking, and those sanctions snap back in 30 days unless the Security Council passes a resolution to extend them.

So you might say, well, maybe the Europeans or the Russians will try to extend that and prevent the snapback, and yet the U.S. has a veto power. That is the beauty of the new snapback sanctions. If Russia tries to block, the Chinese try to block, the Europeans try to block, our ability to reimpose sanctions, we veto it, and those sanctions take effect.

Mr. LEWIS. Thank you, Dr. Walsh. I yield back, Mr. Chairman.

Chairman ROSKAM. Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman. I don't know where to begin. The miracle or the myth of snapback sanctions is really the place that I would begin that inquiry, but that is not my line of inquiry right now. I have been struggling with a number of aspects of this, not the least of which is the recognition that in excess of \$100 billion worth of assets are ready to be returned to Iran in preparation for the conclusion of this agreement, most of which, again the myth that these are going to flow somehow to the government, which is largely run by the Quds Forces and the Iranian Guard to begin with, who are going to benefit from that, and we know it is going directly to terrorism.

So as opposed to sending excess dollars that are going to support terrorism around the globe, I also appreciate that as a matter of law, families like Mr. Stethem's, law created by this Congress who enticed the families like Mr. Stethem's to see some measure of justice to hold those countries accountable. And I found that there were 87 such lawsuits filed in Federal courts and an excess of \$46

billion worth of judgments against Iran directly associated to Iranian-sponsored terror.

Now let's begin with the fact of precedent. Mr. Feith, you were there in Libya in a similar situation when the congressional opportunity created by the Foreign Sovereign Immunities Act gave victims of the Lockerbie bombing the same opportunity. Prior to concluding that agreement, is it not accurate that you also negotiated that Libya would pay in full the reparations responsible for the terror created by Libya?

Mr. FEITH. Yes, sir. In the period before the Libyans decided—the Qadhafi regime in Libya decided to get rid of its WMD, it for several years tried to get out from under the economic sanctions by offering a compensation package to the families of the victims of Pan Am 103, and it concluded that arrangement. It is interesting that what happened was it concluded an arrangement with the families. The issue then went to the U.N. for the lifting of sanctions, and the position of the U.S. Government was we abstained on that resolution, to lift the economic sanctions from Libya, because we said that we were still troubled by Libyan support for terrorism and Libyan WMD, and so our position was very threatening to the Qadhafi Government.

Mr. MEEHAN. But the point was, we assured, that those victims were compensated before the conclusion of the agreement.

Mr. FEITH. Right. But we didn't let them off the hook merely for that. In other words, we kept the pressure on, even when our pressure was successful to get them to compensate the families, we kept the pressure on.

Mr. MEEHAN. Mr. Dubowitz, it is a matter of law, and, again, that the families are entitled, including extensions of this under the Terrorism Risk Insurance Act and other things which gave us access to even more of these assets. Now, is this something that can just be unilaterally overrun by the President because he reached an agreement, or are there requirements on the President with respect to certifications of Congress before this kind of agreement can be reached in violation of the congressionally mandated opportunities for victims like Mr. Stethem's families?

Mr. DUBOWITZ. Well congressman, unfortunately the President is using his national security interest waiver to unilaterally release this \$90 to \$150 billion that is sitting in these oil escrow funds in six countries. And money is going back to Iran. Not a dime is going back to the victims of Iranian terrorism. And I think it is quite an interesting conversation with Dr. Walsh here. The notion that somehow this Iranian regime is not going to be using this money for terrorism and hasn't been using the money that it has already received since the Joint Plan of Action for terrorism.

I think we have all noticed that there has been a massive expansion of Iranian terror activity and regional aggression in Syria led by Qasem Soleimani of the Quds Force. I mentioned the budget of 2015, 2016. President Rouhani is giving the revolutionary guards and the Quds Force a 50 percent increase in their budget. So the fact that he is anticipating all this money that is going to be coming and he is giving the revolutionary guards and Soleimani and the Quds Force a 50 percent increase.

Mr. MEEHAN. The point of it is though, that he has used this power without certifying why it is in the best interests of the United States to return \$100 billion to Iran to continue to pursue terror.

Mr. STETHEM, let me just close my questions by asking you something very, very specific. Families like yours who are entitled to see some measure of justice, this isn't about the money. It is about the opportunity to see some measure of justice, and I know from my time as a prosecutor, every time a victim replays the circumstances in a courtroom, it is as if the incident happened fresh again.

Now this administration has explicitly stated that they continue to assure that they are going to do everything possible to assure that the pursuit of the rights of the victims are going to be taken into consideration. Do you believe this administration is doing that?

Mr. STETHEM. No. I believe the administration has done a better job representing Iran and their terrorist ways than the American people. This isn't about the money. If I had to put my finger on what this is really about, this is about another family not going through a loss like our family had. This is about another American man, woman, child, being beaten, tortured, and blown up because we happen to believe in a different way.

I really do believe the administration has represented Iran better than it has represented American interests in the Middle East.

Mr. MEEHAN. Thank you, Mr. Stethem.

Chairman ROSKAM. Mr. Crowley.

Mr. CROWLEY. Thank you, Mr. Chairman. Mr. Stethem, you and I actually have something in common that is unwelcome. The fact is you lost your brother, and I remember the day your brother was assassinated or was killed, and I was heartbroken.

Mr. STETHEM. My condolences.

Mr. CROWLEY. And my first cousin, you may know, was killed on 9/11. He was battalion chief in the fire department and he found himself in Tower 2. His last known words were, I want to try and make a difference. And unfortunately, the only problem we have is that we both know that America will continue to lose men and women, unfortunately, in the future in defense of freedom because we know there are enemies out there that want to take that away from us.

But I do appreciate that. My condolences to you and to your family and for the history of support to this great Nation, that they have lent to this great Nation, so thank you, sir, for your appearance today, and for your testimony.

Mr. STETHEM. Thank you, sir.

Mr. CROWLEY. You mentioned specifically sound strategies, sound politics. Under Secretary Feith, I think it is fair to say that Americans have some questions about the strategies and the policies and, particularly your judgment, on the matters of war and peace. It is interesting that you are here today to talk about Iran because you are universally acknowledged as having been an important proponent of the war in Iraq. I know there is a difference between Iran and Iraq. One ends in N. The other ends in Q. In between there is an O and P, and I think that stands for oops. We

made a mistake here. But having said that, you did that while serving in the Defense Department.

In your book you defend the decision to go to war in Iraq, and as late as 2008, you still were justifying the war in Iraq as a good decision, and you said, and I quote, "I think the President made the right decision given what he knew and given what we knew and to tell you the truth, even given what we have learned since," end quote.

Do you still really believe all that given the terrible cost of the conflict in Iraq, and was the decision to go to war and your prodding to go to war, the right thing to do?

Mr. FEITH. I think the world is better off without the Saddam Hussein regime. The Saddam Hussein regime represented a serious threat to the United States and to our interests, and I think that after 9/11 when the President looked at the vulnerability of the United States that had been exposed on 9/11 and he looked at the nature of the Iraqi regime and the kinds of activities it was involved in, he came to the conclusion that after years of trying to deal with that problem—

Mr. CROWLEY. In the interest of time, I think the answer is yes. You believe that it was the right move to make. Is that correct?

Mr. FEITH. I think the President made the right decision—

Mr. CROWLEY. I asked you, did you think, your terms, it was the right move to make. I take it by the answer the answer is yes. I can see that that is the same judgment with which you are approaching the deal with Iran. Under Secretary Feith, many people were deeply disturbed by the previous administration's attempts to play up the ties between Iraq and Al Qaeda. This was such a serious problem that the Pentagon's inspector general carried out a report of your office's work. The inspector general said your office drew, and I quote, "conclusions that were not fully supported by the available intelligence," end quote. They also said that your office, quote, "did not provide the most accurate analysis of intelligence," end quote, to senior decisionmakers. That sounds fairly serious considering what it all led to.

My question is, did you at that time do anything that was inappropriate in the run-up to the Iraq war? Yes or no? Do you think you did anything inappropriate leading up to the Iraq war.

Mr. FEITH. No and—

Mr. CROWLEY. Mr. Feith, the Pentagon's inspector general specifically described the work of your office as inappropriate.

Mr. FEITH. Mr. Crowley, you are not doing justice to the issues that you are raising.

Mr. CROWLEY. I have the time, Mr. Chairman. It is running out. I am asking you to answer the questions.

Mr. CROWLEY. Do you not agree with the independent Pentagon inspector general, yes or no?

Mr. FEITH. No. And I wrote an article—by the way if you are interested, I wrote an article in the Washington Post that addresses—

Mr. CROWLEY. Answer the question. No, and I am following—

Chairman ROSKAM. No, listen, you are controlling the time.

Mr. CROWLEY. I am. Thank you. Do you still believe today that Iraq and Al Qaeda were as close as implied at that time? Many Americans, most Americans, distinctly recall the administration making a connection between Al Qaeda and Saddam Hussein. Do you believe that was the case and still is the case?

Mr. FEITH. As I have said, I believe that the best information on that was the information that ultimately the director of the CIA released in a letter to the Senate Intelligence Committee chairman.

Mr. CROWLEY. Mr. Feith, your office was responsible for the post-invasion planning of the Defense Department. Is that correct?

Mr. FEITH. We were one of the many offices in the government that played a role in that.

Mr. CROWLEY. Do you believe you did a good job in post-invasion planning in Iraq? Do you believe you correctly anticipated the scale of the insurgency that would arise and last for so many years afterwards?

Mr. FEITH. You are asking a question that is essentially an intelligence question, and my office is not intelligence.

Mr. CROWLEY. I am asking, do you believe that you foresaw and planned adequately for what would happen in the aftermath of the invasion of Iraq, that empowered not Iraq obviously, but Iran while we were sleeping, while the administration back then was sleeping, to further develop nuclear weapons?

Mr. FEITH. It is a large question you are asking; some of the planning was good. Some of the planning was less good.

Mr. CROWLEY. The failure to adequately plan for post-combat operations led directly to the chaos and instability that roils Iraq and the region today. You were one of the architects of our current chaos. Why should we have any confidence—I know, Mr. Chairman, my time is just about up. Why should we have any confidence that you have any ability to accurately assess the situation in the Middle East today, given your track record in advocating maybe the biggest strategic blunder the U.S. has ever made, why should any American ever again follow your advice?

Mr. FEITH. Calling it the biggest strategic blunder the United States ever made I think undermines your credibility, not mine.

Mr. CROWLEY. How is that, Mr. Feith?

Chairman ROSKAM. The gentleman's time is expired.

Mr. CROWLEY. No, no, Mr. Chairman. He questioned my character. So why is that, Mr. Feith?

Chairman ROSKAM. The gentleman's time is expired.

Mr. CROWLEY. Mr. Feith, why is that? Please, please, Mr. Chairman, you have to allow him to further that comment.

Chairman ROSKAM. Listen, he laid a——

Mr. CROWLEY. I would like to know why he thinks that falls on me.

Chairman ROSKAM. Mr. Holding.

Mr. CROWLEY. Mr. Chairman, with all due respect. He made an comment——

Chairman ROSKAM. Listen, I have got nothing but respect for you. Your time is expired. Mr. Holding? And we have gone well over.

Mr. CROWLEY. No, but you haven't gone nearly as over as you have with the other members, Mr. Chairman.

Chairman ROSKAM. Listen, the gentleman's time is expired.

Mr. CROWLEY. Mr. Chairman, Mr. Feith made a direct comment to me about my responsibility. I accept, but I would like for him to further explain what he meant by that.

Chairman ROSKAM. The gentleman's time is expired. Regular order. Mr. Holding.

Mr. CROWLEY. Thank you, Mr. Chairman.

Mr. HOLDING. Thank you, Mr. Chairman. I would like to draw our attention back to the tax provisions that we are discussing today which relate to Iran's support for terrorism. The Obama administration has made clear that the JCPOA only addresses Iran's nuclear activities and doesn't affect the ability of the United States to impose sanctions to address Iran's support for terrorism. So tax provisions, terrorism.

Now there are some who maintain, argue that the tax provisions have little impact on whether companies can invest in Iran because the sanctions still in place prohibit doing very much business with Iran. I want to dig just a little bit deeper. So Mr. Schizer, do you think it is correct that the current tax provisions impact whether companies invest in Iran in all circumstances?

Mr. SCHIZER. Absolutely. In fact, I can tell you because I know lots of tax directors at many multi-national companies, they are very focused on the details of the tax law—it will not surprise this committee at all to learn that—and the idea that the tax costs would be higher pursuing opportunities in Iran would have a very significant impact.

One of the points that I have made earlier is that there are ways in which this committee can consider strengthening those rules so that the deterrent would be even greater, but certainly these rules could be effective in many circumstances.

Mr. HOLDING. Now to the degree that the tax provisions are ineffective, do you think there are ways that we could strengthen these tax provisions to have a more meaningful impact on whether companies will invest in Iran, and how would you propose we do that?

Mr. SCHIZER. Absolutely. So I think one of the things we have to consider is broadening the definition of the kind of income that is going to be picked up here. We wouldn't want people to make technical, very legalistic arguments about how they are making profits with Iranian customers, but it is not really in Iran. And that is very much a doable mission for this committee or for the Treasury.

I think another consideration is trying to sweep in foreign multinationals, because the truth is, these provisions at the moment really don't affect them very much. They affect American companies but not foreign companies. But this committee could propose legislation that would reach them as well.

Mr. HOLDING. Indeed it is clearly within the orbit of this committee and with Congress that we could strengthen these provisions and say any company, foreign or domestic, considering their options in Iran, it has to have in the back of their mind, you know, will the tax laws change, and they can certainly change in a way that would be incredibly detrimental to their business activities in Iran. Correct?

Mr. SCHIZER. Absolutely, sir. And the truth is, if you think about the calculation that a company could make, they could think well, we could make some money in Iran. It is a market that we might like to explore. But if there is a consequence in the U.S. market, that would vastly overwhelm any interest they would have in making profit in Iran because the American market is the largest in the world.

Mr. HOLDING. Mr. Dubowitz, do you really think that it is clear the administration isn't going to allow the American companies to invest in Iran through foreign subsidiaries?

Mr. DUBOWITZ. You are asking me, sir?

Mr. HOLDING. Yes.

Mr. DUBOWITZ. Congressman, I think it is actually clear that that is exactly what is going to happen, that foreign subsidiaries of U.S. companies are eager to do business in Iran, and as long as there is no U.S. person who is actually in the foreign subsidiary, and as long as that foreign subsidiary satisfies the specific regulations that OFAC lays out, then that foreign subsidiary will be engaging or will be permitted to engage not only in business in Iran, but business with the revolutionary guards and the supreme leaders, \$95 billion terrorist slush fund, which as I have been trying to emphasize, are the dominant economic players in Iran.

Mr. HOLDING. But the laws could change?

Mr. DUBOWITZ. The laws can change. I think the laws should change.

Mr. HOLDING. You don't think that Iran is going to suddenly overnight become something other than the largest state sponsor of terrorism in the world, do you?

Mr. DUBOWITZ. Well, there was a New York Times story just today actually which I thought was interesting from Thomas Erdbrink, who is the New York Times Tehran bureau chief; and the point of the story is to show that, in fact, post-deal Iran has become even more aggressive, even more anti-American. It is funding even more terrorism. It is cracking down even more viciously on its own citizens. In fact, I see no indication that this deal is going to lead to the sort of transformative impact that many of the deal supporters believe.

And I would just say one other point. I know we don't want to get into the nuclear physics of this, but Mr. Walsh has talked about this at great length. Understand that the deal's restrictions are set to expire beginning in 8 years' time. Within 10 years, Iran will be able to install an unlimited number of centrifuges in its Natanz enrichment facility. After 15 years, most of these restrictions will go away, and Iran will have an industrial-size nuclear program with near zero nuclear weapons breakout capability. That is the Iran you need to imagine. That Iran, in my estimation, is not going to transform into a moderate, responsible player.

Mr. HOLDING. Mr. Stethem, one quick question for you. Do you think the Congress should use the Tax Code to discourage investment in Iran?

Mr. STETHEM. Yes. I think our administration, our Congress, our Federal Government, should use every means available in every way to fight them until, until we know the jihad is over or that regime is replaced.

Mr. HOLDING. Thank you for your resolve.

Chairman ROSKAM. Mr. Doggett.

Mr. DOGGETT. I yield 30 seconds and only 30 seconds to Mr. Crowley.

Mr. CROWLEY. Mr. Feith, will you please expound upon what you said to me at the end of your testimony. I believe you suggested responsibility was on me. Is that correct?

Mr. FEITH. I said that I don't agree with you on your characterization of how—

Mr. CROWLEY. I appreciate that but, what do you mean by your last sentence when you said the responsibility is on me?

Mr. FEITH. No, no. I didn't say the responsibility was on you. I said that the assertion that Iraq was the worst disaster in American history undermines your credibility.

Mr. CROWLEY. How does it undermine my credibility?

Mr. FEITH. Because I disagree with you on your characterization of the—

Mr. CROWLEY. It has nothing to do with my credibility. You called into question—

Mr. DOGGETT. I reclaim my time.

Mr. CROWLEY. It is your judgment, Mr. Feith, is what is being called into question before this committee today.

Chairman ROSKAM. Mr. Doggett is recognized.

Mr. DOGGETT. Mr. Stethem, I honor your service as much as I completely disagree with your policy recommendations and honor your brother, and share the outrage that all of us feel at what happened to him. Indeed, I feel outrage about the lost lives of over 4,000 Americans from cherry picked intelligence from the Bush administration that led us into a totally unnecessary war in Iraq.

The scheduling of today's vote as an anniversary of the embassy takeover, like the scheduling of the vote on the Iranian nuclear agreement on 9/11, demonstrates that this is all about showmanship, not legislative draftsmanship.

Indeed it is the most slender of reeds that even connects anything within the jurisdiction of this committee to the Iranian nuclear agreement. No President in American history has ever waived these provisions, no President other than President George W. Bush on one occasion. And to suggest that Mr. Obama is considering the waiving of these provisions, and that there is some intelligence to that effect is about like the quality of the intelligence, Mr. Feith, that you and Mr. Rumsfeld and Mr. Cheney relied upon to get us into the disaster in Iraq of which we are continuing to pay a very dear cost.

There is a serious earnings-stripping, subsidiary abuse by multinationals, and, Mr. Chairman, if you are interested in exploring under existing law, since this committee won't do anything about that problem worldwide, if you want to explore what pharmaceutical companies in the United States can sell to Iran under existing law, whether they charge the Iranians lower prices than they do Americans and whether they paid a dime on their profits, I would be eager to join you.

But today is not about legislation. It is about catch up. It is about catch up because we have attempted—we have had attempts to repeal the ObamaCare provisions 61 or 62 times, and we have

only had one effort so far in the form of H.R. 3457 to repeal and undermine the Iranian nuclear agreement. And so today we are on that program. As with the attempts to repeal ObamaCare, there is much missing information. Where was the concern with the Iranian centrifuges when President Bush was the President? Fox News' own Chris Wallace finally got Dick Cheney to admit that when he was Vice President, Iran's number of centrifuges went up from zero to more than 5,000. That was the effective anti-Iranian policy of the last administration.

Mr. Chairman, there are over 4,000 American lives that have been lost, hundreds of thousands of lives of Iraqis, and over \$2 trillion in United States funds. I think an apology is called for. I would like to see an apology from those who forced us into that unnecessary war, jeopardized our economy, and continue to place the lives of young Americans in danger today because they engaged in the greatest foreign policy disaster in American history.

And if we can do a little before we use military force to secure our families, our allies, in Israel, and the rest of the world from an Iranian nuclear bomb through using negotiation rather than putting those young Americans on the line first before we have tried to use negotiation, we must do it, and that is why I so vigorously support efforts to fully and effectively implement this agreement rather than to see it undermined with stunts like today. I yield back.

Chairman ROSKAM. Thank you. Just to give you a little editorial feedback, today is no stunt. Today is an attempt to draw the attention of what is a possibility of the administration. So Chairman Ryan on September 22 wrote to the President and asked him the question, are you going to waive these things? And so there has been no answer.

And I understand the nature, the real difficulty that I have and I think that all the members on the committee have, of separating out the nuclear deal from the other terror activities, and it is very hard for us to keep these apart. And I think we have got to be disciplined in how we do it. It is not an admonition against anybody on the committee. These things tend to conflate.

But what our challenge is, and the effort before this committee is, how do these tax provisions relate? We are talking about huge commercial enterprises. And so, Mr. Doggett, I would rest easy if the President said I agree with you and I have no intention of waiving these things. And then, that would be a good thing. He has not said that. He has not answered the chairman of the Ways and Means Committee, now the Speaker.

And we can interpret that one way or we can interpret that another way. But I think that there is a real opportunity for us because what you have noticed is, there is nobody here that is defending Iran, nobody. There is bipartisan recognition that Iran is a bad actor killing people and being despicable. So since I used your name in debate, I will yield to you.

Mr. DOGGETT. Thank you very much. There has not been the slightest indication that this administration attempted to do what no other administration has ever done, what this administration has ever done, with the exception of the action of President Bush in Libya. I think if you want to explore what is being sold to Iran

today by American pharmaceutical companies and others under exception, what they are charging, what they are getting, that is a legitimate line of inquiry.

But to have Mr. Feith, who has so much experience with intelligence, tell us he thinks the President might be considering doing something here that we have got to stop, well it is really a stretch. It is really unfortunate.

Chairman ROSKAM. Well, reclaiming my time. Reclaiming my time. It is not Mr. Feith that is making that assertion. It is the chairman of the Ways and Means Committee that is making that assertion, and we have not heard from the administration—

Mr. DOGGETT. Based on what? I mean, Mr. Feith says he might be considering it. What is the basis for this letter—

Chairman ROSKAM [continuing]. To a letter from this committee.

Mr. DOGGETT. What is the basis for inquiring at all other than to thwart and undermine the agreement?

Chairman ROSKAM. Mrs. Noem is recognized.

Mrs. NOEM. Thank you, Mr. Chairman. I think the chairman made several of the points that I wanted to make today as well. I don't understand why the President hasn't clarified for us exactly what his intentions are. I would think the security of the United States is in question with this agreement, and that is why as much clarity and light as he can shed on the situation would be extremely helpful and help us rest easy, that we know which side we are on on this agreement.

And I guess under that kind of discussion, Mr. Dubowitz, I would like to ask you in particular, we know that Iran endangers Americans, abroad and here at home, and that their actions have been to spend billions of dollars to fund terrorism over the years. We know on this committee that the Tax Code can incentivize or de incentivize actions. That is what this hearing is about today. It is to talk about what provisions are in the Tax Code that can either be used to encourage Iran to take action or discourage them from taking action. And that can have a powerful impact on decisions that are made into the future. It can be a critical tool for punishing Iran's behavior.

When trying to modify Iran's behavior in the past, what works better, concessions, giving them concessions or giving them penalties for how their actions go forward? Mr. Dubowitz?

Mr. DUBOWITZ. Well, Congresswoman, first of all, thank you for redirecting the focus to what this hearing is about. I think you are exactly right in that we have got a track record, a bipartisan track record, of demonstrating that the use of sanctions, both nuclear and nonnuclear sanctions, has been very successful in actually getting Iran to agree to a nuclear deal. Whether you agree with the deal or not, the coercive tools that Congress, that you and your colleagues put in place primarily between 2010 and 2013, had a major impact not only on Iranian behavior but most importantly as you have identified, on market behavior.

And so these non-nuclear sanctions, which I included the tax provisions under, are actually a tool that the President has said he still has and will still use but is not using.

Mrs. NOEM. And do you agree these sanctions are what actually brought Iran to the negotiating table?

Mr. DUBOWITZ. Oh absolutely. The Iranians were facing economic collapse in a severe balance of payments crisis in 2013 as a result of Central Bank sanctions, Swiss sanctions, oil sanctions, CISADA financial sanctions, that brought Iran to the table.

Mrs. NOEM. So tell me what has happened since the deal has been finalized as far as concessions. Do we see a change in behavior by Iran? Do we see them complying with international law?

Mr. DUBOWITZ. Well, quite the contrary. We see them violating U.N. Security Council Resolution 1929 in testing a long-range ballistic missile capable of carrying a warhead.

Mrs. NOEM. Have they been required to dismantle their missile systems or weapons systems at all?

Mr. DUBOWITZ. Well, certainly the agreement itself unfortunately doesn't deal with ballistic missiles. The administration promised it would, and then midway through the negotiation exempted that from the agreement.

Mrs. NOEM. And then what has happened since then? Have they done anything to deal with their weapons systems, or do they remain intact?

Mr. DUBOWITZ. No. Their ballistic missile program, in fact, is expanding, and it is expanding in the direction of an ICBM program, which obviously from an Iranian perspective, they need an industrial-sized nuclear capacity on the enrichment side, they need a warhead, and they need a long-range ballistic missile and ICBM to have a full-blown nuclear weapons program. And they are able to proceed patiently down those three pathways in ways that I think are going to be of deep concern to all of us.

Mrs. NOEM. So tell me about their change in behavior, if there has been any, as far as being a regional actor since the negotiations have been finalized.

Mr. DUBOWITZ. Well, Iran has increased its regional expansion. It is obviously implicated in substantial bloodshed in Syria, in Iraq, in Yemen. They are continuing to ship heavy weaponry to Hezbollah via Assad, and they are threatening our ally Israel. If anything, Qasem Soleimani, the Quds Force, and the Revolutionary Guards itself have become more aggressive and are going to be better funded in order to engage in that kind of regional expansion, support for terrorism and sectarian bloodshed.

Mrs. NOEM. So are our allies in that region safer since the negotiations have been finalized?

Mr. DUBOWITZ. Well, certainly my assessment is no. Their assessment, as they have expressed I think publicly and privately, to Members of Congress is that they are deeply fearful of what this Iranian nuclear deal and more importantly Iran's regional breakout has actually meant for them.

Mrs. NOEM. Thank you. I would firmly believe from what we have seen in Iran's previous behavior and their behavior today is that certainly concessions do not work to change their behaviors. Penalties, sanctions, certainly do. And that when we look at our Tax Code, that we should keep those kind of things in mind when we make sure that we are going to have an impact to keep our al-

lies in the region safer and our people here at home safer as well. With that I will yield back.

Chairman ROSKAM. Mr. Renacci.

Mr. RENACCI. Thank you, Mr. Chairman. I want to thank the witnesses for their testimony today. I also want to get back to the Tax Code and whether really the current tax provisions relating to Iran work, and whether they should be strengthened. Knowing that there are really two hammers here, one is that companies do not get the benefit of the tax credit; and, number two, they don't get the no deferral of their income.

Mr. Schizer, you said in your testimony that denying the benefit of deferral, which is the second hammer as I call it, is porous and suggests that it will be interpreted more broadly by the Treasury, so I kind of want to get into the weeds a little bit. Can you explain what types of investments and business transactions would likely escape the provisions if companies engaged in careful tax planning?

Mr. SCHIZER. Absolutely, Congressman. That is an excellent question. I think the ones that we are likely to catch under current law involve activities in Iran, drilling for oil, opening a factory there; but a great deal of economic activity won't involve that. If a company wanted to sell scientific equipment, for example, or other types of equipment and ship it into Iran, what they would then do is two strategies, neither of which I think are fully stopped by the law currently.

One would be to sell it to an intermediary, perhaps in Dubai, and then rely on that intermediary to sell it into Iran, and then that company would simply say we just made money in Dubai.

The other possibility is they could even ship it directly to Iran, but if the title passes in the Mediterranean before you get to Iranian territory, then the taxpayer could take the position that actually this money doesn't derive from—the phrase is derive from Iran, and so the penalties don't apply.

I think technically this committee is very well positioned to change the relevant language to capture those activities. Treasury could do it through regulations also, but unfortunately under current law, taxpayers would have an argument that they could do that.

Mr. RENACCI. It is interesting. It sounds like you could actually set up a shell company unrelated to yours and actually ship through that company and not have the effect of the deferral?

Mr. SCHIZER. Right. You could form a relationship with some independent entity in another country and rely on them to sell at a very small margin, so most of the profit remains with you, but as long as that agent wasn't in Iran, you could argue that this didn't apply.

Mr. RENACCI. The other thing you talked about which I believe is important is, you testified that tax provisions only impact companies headquartered in the United States but not their foreign counterparts with U.S. operations, which does concern me. You know, we have to have a general level playing field. We don't want American headquartered companies at a disadvantage. Can you tell us what policies we might consider to level the playing field and impose negative tax consequences on more companies with U.S. earnings doing business with Iran?

Mr. SCHIZER. So the challenge here is that the U.S. does not assert tax jurisdiction over the foreign earnings of companies that are not incorporated in the United States. So we couldn't directly tax the profits that Siemens or a company like that was making in Iran.

On the other hand, they are earning lots of money here in the United States. We are emphatically permitted to tax that, and the point is we could introduce some added tax costs on their U.S. earnings as a penalty for the fact that they have economic activity in Iran, and that could involve either a higher tax rate, or it could involve disallowed deductions. I think technically it could be done, and the focus would have to be on tax they would be paying to the United States anyway.

Mr. RENACCI. And one other thing. In your testimony you talked about—I am a CPA and I have done tax planning and tax counseling—companies could shift a lot of their deductions on that income in Iran and actually reduce the penalty there too. You would agree with that?

Mr. SCHIZER. Right. And so really even if they admitted that the income was earned in Iran, if they were able to offset that income with deductions that they said were in Iran, then they would get to the same place of avoiding these penalties. And it is fully consistent with this committee's approach and our tax laws' approach to disallow deductions for activity that is public policy matter we don't like.

So you can't get a deduction for making a bribe. You can't get a deduction for penalties for violating the law. There are no deductions allowed for people who make their living selling illicit drugs. And in the same spirit, this committee and Congress could decide that they wanted to disallow those deductions as well.

Mr. RENACCI. Thank you for your insights. I really believe this committee needs to continue to explore tax measures which discourage business with Iran while continuing, especially while Iran continues to fund terrorism. Mr. Chairman, I yield back.

Chairman ROSKAM. Thank you. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. I definitely appreciate you holding this hearing today. This is clearly an important issue. Back whenever I was serving in the Missouri State House, I worked to pass some legislation that would prevent the State of Missouri to invest in countries that support terrorism. And Iran was one of the countries within that parameter.

We have heard a lot of testimony here today that the waiver of sanctions will especially help Iranian entities closely tied to the regime, including those supporting terrorism. It seems to me that the tax provisions are that much more important with this agreement.

And, Mr. Schizer, if the President were to waive these tax provisions, how would that impact companies looking to do business with Iran?

Mr. SCHIZER. The waiver of the tax provisions would eliminate the penalties that we have been describing. What it means is that when an American company pays tax to Iran, it can reduce its American tax dollar for dollar, by the amount of tax that it is paying to Iran. And a way to think about that is a transfer from the

U.S. Treasury to the Government of Iran. To me that seems like an extremely unappealing proposition.

The other point is that American companies could then benefit from the same deferral that they now benefit from when they do business elsewhere in the world. But although we might have reasons why we want them to have that deferral when they do business in other countries, we really shouldn't, I think, want to encourage this economic activity in Iran. So a waiver would eliminate the penalties that exist under current law.

Mr. SMITH. So it would promote more companies doing more business in Iran, paying more taxes in Iran, creating more revenue for the Iranian Government, and the result, allowing more resources to help direct terrorism activities. Would you agree with that?

Mr. SCHIZER. It could, yes.

Mr. SMITH. And it all comes from the cost to our taxpayers. Isn't it right that the foreign tax credits are paid from the Treasury?

Mr. SCHIZER. It is a way to reduce your tax to the Treasury dollar for dollar, so yes.

Mr. SMITH. And a lot of people refer to these types of credits of the Tax Code as a subsidy by U.S. taxpayers. Do you agree that that is quite common?

Mr. SCHIZER. I think it is clearly a tax benefit.

Mr. SMITH. Okay. Isn't it fair so say that if the President had waived these provisions, U.S. taxpayer would effectively be subsidizing Iranian-sponsored terrorism?

Mr. SCHIZER. Resources that otherwise would go to our government would end up going to their government, yes.

Mr. SMITH. So subsidizing, using our resources to help another country?

Mr. SCHIZER. Uh-huh.

Mr. SMITH. Especially a country who is not our friend. I would like to ask Mr. Stethem, what do you think about giving tax breaks for doing business with Iran, and also do you think that this kind of tax policy Americans expect from their government?

Mr. STETHEM. So the first question you asked, what do I think—

Mr. SMITH. About giving tax breaks for doing business with Iran?

Mr. STETHEM. I would like to be clear to everybody on the committee. My first choice isn't war. It is peace. But you can't have peace unless the other side wants peace too. And I hate to keep beating this drum, but it needs to be beat.

Is Iran at Islamic jihad with us, a holy war or not? If they are, we fight them on every street on every corner in every way possible, in the banks, in the businesses, and if they want, on the battlefield. We do not advance to the rear. So I do support it. Your second question?

Mr. SMITH. So, let me get this right. You said that you do support tax breaks to companies that do business with Iran?

Mr. STETHEM. Excuse me. Excuse me, sir. No, I don't support the tax breaks. My apology. No.

Mr. SMITH. Okay. So you would clearly think that this kind of tax policy is not the kind of tax policy that Americans would expect from their government?

Mr. STETHEM. Our government should be representing the interests of America and Americans and not funding terrorists and not supporting companies that do business with state sponsors of terrorism.

Mr. SMITH. I would agree. Thank you. Mr. Chairman.

Chairman ROSKAM. Mr. Dold.

Mr. DOLD. Thank you, Mr. Chairman, and I certainly appreciate your leadership on this issue and for calling this hearing, and I want to thank our panelists for coming.

One of the things that I try to do is try to figure out what unites us. What do we agree on across the Congress, across our country? And one of the things is we want to make sure we are protecting our country. The other thing I think is, does anybody disagree that Iran is the greatest state sponsor of terror in the world today? Any of our panelists disagree with that statement? You are going to disagree that they are not a—

Mr. WALSH. I would say Pakistan and Saudi Arabia are competitors, but they are in the top three.

Mr. DOLD. Okay. But we can certainly agree that Iran is a great sponsor of terror, and there is no question about it, and I would argue probably the greatest state sponsor out there and probably widely written on both sides of the aisle. I would argue that they are certainly plotting to kill Americans each and every day. They are funding terrorist organizations, Hezbollah and Hamas, Assad. And so really what we want to try to do is how do we stop the terror?

And Mr. Dubowitz, I know that you have written extensively, and the Supreme Leader Khomeini's public letter on October 21 stated that the imposition of any sanctions at any level under any pretext by any of the negotiating countries will be considered a violation of the JCPOA. Well, frankly, do you think that the Supreme Leader is going to abide by the JCPOA?

Mr. DUBOWITZ. It is an interesting question actually. If the Supreme Leader does abide by the JCPOA, then he has a patient pathway to a nuclear weapon. I think that he has an irresistible impulse to cheat, as he has in the past, so I think he will. I think he will cheat incrementally, perhaps not egregiously, but the sum total of those incremental cheating will be egregious.

Mr. DOLD. Has Iran in previous agreements ever kept their word or ever abided by the agreement?

Mr. DUBOWITZ. Iran has a track record of nuclear mendacity which is decades long.

Mr. DOLD. Obviously we are very concerned by the recent testing of the ballistic missile and that certainly puts not only our allies in the region, but I would argue all over the world at risk. And again taking a long range approach, and as we look at the tax provisions and the sanctions relief, do you doubt that Iran came to the table because crippling sanctions were in place?

Mr. DUBOWITZ. I have no doubt that was exactly the reason they came to the table.

Mr. DOLD. And the sanctions relief that is going to happen because of the Joint Plan of Action, is roughly between, I think you have written between \$90 and \$120 billion. We have seen estimates of \$150 billion. Can you give me some sort of an idea as we look at that kind of how that is going to play out, and what do you think they are going to do with those resources vis-à-vis terrorism?

Mr. DUBOWITZ. That is just the upfront payment, \$90 and \$120 billion. Then Iran will be able to sell its oil in an unrestricted way. The IMF and World Bank predict that Iran's economy will grow about 5 to 6 percent in GDP annually, which compared to 2013 there was a loss of 6 percent. So the sanctions relief is far greater than the initial \$90 to \$120 billion in initial oil escrow release.

But to answer your second part of your question, there is no doubt. When you look at the Iranian open books budget, their transparent declared budget, they are going to give a 50 percent increase to the entity, the Revolutionary Guards, responsible for carrying out terrorism. So they have actually even signalled to us publicly that they are increasing terrorism, not to mention the off-the-books money of tens of billions of dollars that is sitting in these holding companies and shadow entities that they use to fund their terror techniques.

Mr. DOLD. Can you give us some sort of an idea today how much Iran is sending in terms of liquid assets to Assad in Syria?

Mr. DUBOWITZ. So according to the U.N. Special Repertoire on Syria, the Iranian regime gave \$6 billion in cash in kind to the Assad regime last year.

Mr. DOLD. And how much do you anticipate after sanctions relief will go to Assad?

Mr. DUBOWITZ. Well, certainly the Iranians have made it very clear that the survival of the Assad regime is their number one strategic priority in the region, so one would assume that there is going to be a double-digit increase in that.

Mr. DOLD. So I guess as we look at kind of the increase of funding of terror, which again I would argue, puts Americans at greater risk. We have seen people that have been kidnapped in Iran as recently as just this week. You know, President Obama has repeatedly stated that he will continue sanctions on Iran for terrorism. Yet he has not indicated any support for increasing sanctions, particularly against the IRGC.

Can you give me some sort of an indication as people are looking at this saying why in the world would we not want to sanction Iran?

Mr. DUBOWITZ. Well, this is why this hearing is so critical because what you are talking about is the tax provision which effectively amounts to a nonnuclear sanction. And so you have got to basically today, you have got to call the supreme leader's bluff. He threatened 2 weeks ago that the imposition of nonnuclear sanctions on Iran would lead to the Iranians walking away from the agreement.

If we don't test the Iranians today, by imposing the nonnuclear sanctions that the President of the United States promised, the longer we wait, the more difficult it will be to impose nonnuclear sanctions to stop terrorism, human rights abuses, and ballistic missile tests. And so we have got to choose nonnuclear sanctions early

on that will inflict cost on the Iranian regime, and we have to do it early because the longer we wait, the more difficult it will be. We will be self-deterred from using coercive measures to respond to Iranian aggression.

Mr. DOLD. And Mr. Chairman, my time is expired, but I do welcome the opportunity to work with you all as we look forward on how do we make sure we hold them accountable. Thank you.

Chairman ROSKAM. Thank you. I just want to follow up, Mr. Dubowitz, on that point, and I think it is really important for the purposes of today, to take away sort of some of the heat and the anxiety and sort of the discussion to get back to this crucial point. JCPOA as negotiated by the administration allows for nonnuclear sanctions. That is right, isn't it?

Mr. DUBOWITZ. Correct.

Chairman ROSKAM. Now in light of that, it is completely germane and completely appropriate for us as a committee based on our jurisdiction to be thinking, all right, what role do we play? And what we are saying is, look, we have posed this question to the administration, that is the committee has, and we have not heard from the administration about what the President's plans are as it relates to these two important provisions. That is, the foreign tax credit as it relates to Iran, and deferral as it relates to Iran.

So some people can interpret it one way. Some people can interpret it another way. In the words of my son, Steve, I am just sayin,' and I am just sayin' that President Obama has done many things that no American President has done before, and simply because a President has not done something before doesn't mean that it is off the table for President Obama. Am I being reasonable in how I am looking at the world right now?

Mr. DUBOWITZ. Chairman Roskam, it is entirely reasonable and would have been a very simple response from the administration to Speaker Ryan's letter, which is to say, Mr. Chairman at the time, Mr. Speaker, we have said repeatedly that we will be using nonnuclear sanctions on Iran to respond to terrorism, ballistic missile tests, human rights abuses; and the tax provisions of the U.S. Tax Code are a nonnuclear sanction, and we will be using those, and we will be not waiving those. I mean that would have been a very simple answer.

I have to say from my professional assessment, I remain deeply concerned that the President will use nonnuclear sanctions to respond to Iranian misbehavior and illicit activity. And I think it is incumbent upon your committee and incumbent upon the U.S. Congress, to get a clear answer from the President and from the U.S. Treasury Department whether those sanctions, those nonnuclear sanctions, completely consistent with the JCPOA, will or will not be imposed.

Chairman ROSKAM. So I want to thank all of you today. I want to thank the panel of witnesses for your time and your expertise. Mr. Stethem, particularly you because it is obvious to all of us that walking this journey with us today churns up a lot within you, and because we value you and your brother's sacrifice and the journey that your family has gone through, it churns up a lot in us to see you reflecting this. So don't assume that that is lost on us today. And I just want to let you know I am very appreciative. Go ahead.

Mr. STETHEM. Thank you very much, sir. I would like to say, thank the committee again, thank you; but I will tell you something. I am so fortunate to have been born into the family I was and the family I have, and nobody needs to feel sorry for our family because we are proud Americans who love to serve.

Chairman ROSKAM. Thank you. There is an audience today that is important for us, and I know I am speaking on my behalf. I wouldn't presume to speak on behalf of the entire committee.

Chairman ROSKAM. But to those companies that are contemplating a rush to do business with a terrorist regime. I urge caution, because I am telling you what, we are interested, and we are particularly interested in making it difficult to do that. And I think there are a lot of people in Congress that are going to try and extract a very high price for American companies or anybody else that is trying to do business and be complicit with the type of activity that robs the life of an American hero on and on and on and on.

If they just think this Committee's going to lay back and not be a challenge to that, they are sorely mistaken. So we are going to be looking at tax credits; we are going to be looking at deferral; we are going to be looking at the definitions within the Tax Code; we are going to work to build a bipartisan approach on this, because this is a donkeys and elephants issue. This is an issue where the majority of Congress should come together around this, and it is an issue that the administration itself has said in the JCPOA, these sanctions are fair game. And they are absolutely fair game, and we intend to be forthright about it.

And so unless some of these companies think they can just go in and make a quick buck and let the Iranians get more money, they are going to have a lot of conflict on their hands. So on that happy note, I yield back.

And all members are given the requisite number of time to submit written questions to be answered later in writing. Those questions and your answers will be made part of the formal hearing record. And with that, the meeting is adjourned.

[Whereupon, at 12:06 p.m., the subcommittee was adjourned.]

Public Submission for the Record

Committee on Ways and Means
Subcommittee on Oversight
U.S. House of Representatives

“Iran Terror Financing and the Tax Code”

Additional Written Comments for the Hearing Record

Dr. Jim Walsh
MIT Security Studies Program

Wednesday, November 17, 2015

Mr. Chairman, Mr. Ranking Member, and Members of the Committee:

Thank you for inviting me to testify before your committee on November 4, 2015. The hearing’s oral testimony and question period raised a number of important issues, and so I would like to offer these additional written comments for the record.

I. The Role of Sanctions

The use and value of sanctions was a central concern of the hearing, and so it is worth noting important points that were not addressed in the brief time we had for discussion.

Unilateral sanctions tend to be ineffective; they must be pursued in concert with other countries. The United States has had sanctions on Iran for decades to little or no effect. It was only when the US was able to build an international sanctions coalition that included dozens of countries that sanctions began to bite. The same would be true for any *new* sanctions, including those related to the tax code. This would be especially relevant regarding sanctions advocated by one witness that would penalize not just US firms but foreign firms headquartered in foreign countries. Congress should be cautious about marching off to impose unilateral sanctions without the consultation and support of US allies. Going it alone may very well backfire.

Sanctions are a useful policy tool, not a magic wand, and by themselves do not explain Iranian behavior.

There appears to be an emerging narrative that it was sanctions alone that forced Iran to the negotiating table, and if the US had only kept up the pressure, rather than negotiating, it could have forced Iran to capitulate. This view ignores both history and the rather large body of scholarly evidence on the effects of sanctions. There is little doubt that US-led international sanctions were an key factor that led to the nuclear negotiations, but it was not the only factor, nor by itself a sufficient cause.

The effect of sanctions was strengthened by President Ahmadinejad’s 8-year mismanagement of the Iranian economy. Ahmadinejad is gone, and his departure alone will result in a modest improvement in Iran’s economic fortunes over what they would have been. The effect of

sanctions was further deepened by the precipitous drop in the price of oil. Perhaps even more important was President Rouhani's election. Of the many candidates running, he was the only one who advocated ending Iran's international isolation (i.e., entering nuclear negotiations). The other candidates advocated a continuation of the so-called "resistance economy." If any one of those candidates had triumphed in the elections, there likely would have been no negotiations.

The social science research on sanctions suggests that sanctions can be useful, having "worked" in roughly a third of the cases studied. Put another way, they did not work two-thirds of the time. The field of sanctions research is a complex one, as it is difficult to compare different kinds of sanctions imposed for different reasons over different time periods in support of different policy objectives. Still, the broad generalization captures the core truth: sanctions can be useful, but they are not a magic wand.

Tax code-related sanctions or sanctions relief is unlikely to matter very much to the investment decisions of US owned foreign subsidiaries.

Perhaps it is not surprising that a tax lawyer thinks that tax provisions are a the most important variable for business investment decisions, as a hammer looks out to the world and sees only nails, but a broader business perspective would yield a different conclusion. Tax advantages, or the lack thereof, will only matter if firms are confident their employees won't be arrested, that they can get bank financing, and the like. As the footnotes in my written testimony suggest, firms will have to be satisfied on a variety of fronts well in advance of considering tax issues, and currently at least, there is not a great deal of business confidence about investment in Iran – not least because the Iranian government has made clear that it does not want American firms there.

II. The Timing of Sanctions

Sanctions Allowed under the Joint Comprehensive Plan of Action (JCPOA)

The JCPOA allows the US and other countries to impose sanctions for behavior outside the scope of the nuclear agreement (e.g., for terrorism, human rights, or other causes), as well as re-constitute sanctions for violations of the agreement.

Sanctions Not Allowed under the JCPOA

But here is what the JCPOA does not allow: a sanctions shell game, that is, simply re-establishing what were previously nuclear sanctions by scratching out the word "nuclear" and substituting another word. It is not only that Iran would reject that as American bad faith, so would our international partners, including our European allies.

The international community might understandably suspect that if the US –after decades of objections to Iran's support for Hezbollah and other organizations -- suddenly passes new sanctions in the immediate aftermath of the nuclear agreement, that it is not a coincidence. Instead, it may be seen an attempt to subvert the agreement. And one could hardly blame analysts for arriving at that conclusion, justified or not, as many of the same lawmakers who vigorously advocate new sanctions are the very same people who condemned the agreement and worked to defeat it.

Even harder to explain will be the fact that these are essentially *prospective* sanctions, that is, sanctions passed in *anticipation* that new acts of terrorism might be carried out, rather than in response to actual incidents of terrorism.

The Alleged Need for “Immediate” Sanctions and the Dangers They Pose

One witness argued that Congress should impose sanctions as soon as possible or the US will be self-deterred from doing so later. On what basis is this conclusion drawn? I see no actual evidence supporting what is little more than asserted speculation. Indeed, it contradicts the historical record on Iranian sanctions. Our international partners have, against all predictions, not only imposed unprecedented sanctions on Iran but remained unified despite other differences with US foreign policy. Indeed, no one imagined that Russia and China would support US-led sanctions, let alone present a united front during negotiations. And here again, it is worth noting that critics of the agreement, including that witness, have a poor record at prediction. As I pointed out in my oral testimony, these critics made all kinds of dire warnings about the interim nuclear agreement (JPOA) that turned out to be incorrect.

If Congress insists on passing new sanctions without specific evidence of Iranian sponsored terrorism, if it sanctions Iran alone and not along with other states that also support terrorism (see below), our allies may very well reject those sanctions. It would also raise the risk that the world will blame the US for a breach of the agreement.¹ Iran might get off scot-free, and any future sanctions cooperation in cases where it is actually warranted could become more difficult.

III. The Logic of Nonproliferation Agreements: All Parties Must Benefit

Agreements work in the first place and are sustainable over time, if all the parties realize benefits from an agreement and thus see the arrangement as in their national interest. That is true as much for the United States as for any other country. One-sided agreements are doomed to fail.

Yet some lawmakers, as well as certain NGOs, would appear to prefer that Iran receive no real sanctions relief from the nuclear agreement. One NGO, for example, is taking out ads in Europe in an attempt to scare European firms from doing business with Iran.

That view is shortsighted and fails to grasp the logic of nonproliferation agreements, if not all agreements more generally.

If Iran does not receive sanctions relief or other benefits from this agreement, it will see no reason to keep its end of the bargain. If the agreement were to collapse as a consequence, we could again find ourselves in a situation where Iran has an unconstrained nuclear program, a two-month break-out time, Iranian hardliners in ascendance, but a less resolute international community, particularly if the US is perceived as having been the reason for the collapse. That

¹ Alireza Nader, “The Impact of Sanctions Relief on Iran,” Testimony presented before the House Oversight and Governmental Reform Committee, Subcommittee on National Security on November 5, 2015, RAND Corporation, pp. 1-8, <http://www.rand.org/pubs/testimonies/CT442.html>

is the worst of all possible worlds, one in which Iran comes out ahead and the US comes out behind.

IV. The JCPOA and Concerns about Terrorism

I stand second to none in my opposition to terrorism. It is a topic I have written about and one that has touched my city. The violence of Boston Marathon Bombings included not only the attack on the finish line but the murder of an MIT police officer blocks from my office and a bloody manhunt through the streets of Watertown close to my home.

No country – including Iran—should support terrorism. And as I suggested in my oral testimony, “No American wants Iran to support terrorism, oppress human rights, or engage in any number of other objectionable activities, but the only thing worse than an Iran that does these things is an Iran that does these things and has nuclear weapons. And absent sanctions relief, there will be no agreement, and Iran’s nuclear program will be unconstrained.”

The recent tragic attacks in Paris provide all the more reason to make sure we understand the nature of the threat we face and to devise policies that actually address the challenge.

Defining Terrorism

It is worth remembering, first, what terrorism is, and what it is not. Terrorism is a tactic used by individuals, non-state actors, and states that seeks to create fear and to alter behavior through the use of attacks on innocent civilians or non-combatants. It is to be distinguished, therefore, from other forms of violence, for example those employing regular military forces used in traditional conventional wars.

Not every act of violence is terrorism, and we do ourselves a disservice and inhibit our ability to combat terrorism when we use sloppy definitions that label everything we do not like as terrorism. If everything is terrorism, then the word has no actual content. Murky concepts can lead to misguided policymaking.

During the hearing, it appeared as if several witnesses conflated Iran’s support for Hezbollah and other groups that have employed terrorism with anything and everything that Iran does in the region. At one point, one of the witnesses cited Iran’s plans for increased defense spending, seeming to suggest that all of it would be for terrorism. That is a logical and empirical error.

Iran’s Support for Terror Groups Versus Its Conventional Military Efforts in the Region

It is worth remembering that in Iraq, Iran is fighting Daesh (also known as ISIL). Iran is employing regular military forces to support the Kurds and the Iraqi army, as it battles this terrorist group. Indeed, in Iraq, the US and Iran are on the same side. It would seem odd, therefore, to suggest that an increase in Iran’s defense budget is simply going to terrorism, when that portion going to the war in Iraq is actually intended to fight terrorists.

In addition to supporting regular forces, Iran supports some Iranian militias, who are also fighting Daesh. I have grave concerns about the use of militias, both because of their propensity to engage in revenge attacks and atrocities, and because they will likely pose a direct threat to the

future of Iraqi governance. But to be clear, the government of Iraq has supported and fought alongside Iraqi militias.

In Syria, Iran (and Russia) are aiding the Assad regime. Assad's Syria offers a case of a state, rather than a non-state actor, that employs both traditional applications of military force and the use of terror. Beyond that, in my view, Assad and other Syrian leaders are war criminals, having used chemical weapons and barrel bombs –among other heinous acts- to indiscriminately kill civilians.

Still, it is hard to ignore that in Syria, the groups that Iranian regular forces are battling include (but are not limited to) Daesh and Al Qaeda.

The picture is further complicated by the fact that the US, through the CIA, is assisting the Free Syrian Army (FSA). The FSA has in its ranks violent Islamist extremists.² In addition, the FSA directly coordinates with terrorist groups in its military campaigns against Assad, particularly in south. If the US supports the FSA, and the FSA cooperates with terrorist groups, is the US supporting terrorists? It is a question that is rarely asked.

American Allies' Support for Terror Groups

A similar question comes from Yemen, where the US has joined a Saudi coalition to push back Houthi rebels who had overrun the country. As the *Wall Street Journal* has reported, Saudi-backed forces are fighting alongside and in cooperation with Al Qaeda.³ If the US is supporting Saudi Arabia, and Saudi Arabia is fighting with Al Qaeda, is the US supporting Al Qaeda?

The war in Yemen points to a broader issue. As much as people want to cite Iran as the leading state sponsor of terrorism because of its support for Hezbollah and Hamas, two other countries vie for the title: Saudi Arabia and Pakistan. Saudi Arabia's role goes beyond its partners in Yemen. It provided guns and money to extremist rebels in Syria long before the US got involved in that country. Turkey has also materially supported extremist groups in Syria.⁴ More centrally, Saudi Arabia is the leading promoter of a school of thought in Islam, Wahabism, that provides a religious and intellectual justification for violent extremism.

² On the CIA's assistance to the Free Syrian Army, see Adam Entous, "Covert CIA Mission to Arm Syrian Rebels Goes Awry," *Wall Street Journal*, January 26, 2015, <http://www.wsj.com/articles/covert-cia-mission-to-arm-syrian-rebels-goes-awry-1422329582>. On the participation of extremists in the Free Syrian Army, see Elizabeth O'Bagy, *The Free Syrian Army*, Middle East Security Report No. 9, Institute for the Study of War, March, 2013, pp. 29-31, <http://www.understandingwar.org/sites/default/files/The-Free-Syrian-Army-24MAR.pdf>

³ Maria Abi-Habib and Mohammed Al-Kibsi, "Qaeda Fights on Same Side as Saudi-Backed Militias in Yemen," *Wall Street Journal*, July 16, 2015, <http://www.wsj.com/articles/al-qaeda-fights-on-same-side-as-saudi-backed-militias-in-yemen-1437087067>

⁴ On Saudi Arabia and Turkey's support of Al Qaeda allied groups in Syria, see Jennifer Cafarella and Genevieve Casagrande, *Syrian Opposition Guide*, Backgrounder, Institute for the Study of War October 7, 2015, http://understandingwar.org/sites/default/files/Syrian%20Opposition%20Guide_0.pdf

For its part, Pakistan not only supported terror groups that have carried out attacks against India but sponsored the Taliban and the Haqqani network, both of which employed terrorism and both of which killed American military personnel in Afghanistan. Pakistan is also alleged to have provided refuge for Osama Bin Laden and other members of Al Qaeda.

Saudi Arabia and Turkey, to a lesser extent, Pakistan are all considered American allies, but if lawmakers are serious about the issue of terrorism and intent on imposing new sanctions on the state sponsors of terrorism, then it would be hard to justify a focus on Iran to the exclusion of Saudi Arabia, Turkey, and Pakistan.

In sum, the issue of terrorism is not as simple as some would suggest. Progress against terrorism requires clear definitions that do not mix different problems, a coherent logic, and an objective eye that holds all parties accountable.

Sanctions Relief and Terrorism: a Tenuous Connection

A central theme of the hearing was the concern that sanctions relief would generate funds that would be used to support state sponsored terrorism.

I address these claims in my written testimony, including reference to an assessment by the US intelligence community (IC) that casts doubt on the notion that sanctions relief will mean a sudden boon for militants.

The IC is not the only group to reach this conclusion. Both scholars and work done at the RAND Corporation also dispute the claims that sanctions relief will result in billions of dollars for terrorism.⁵

Nevertheless, one witness cited a *New York Times* article as supporting the claim that:

...Post deal, Iran has become more even aggressive, even more anti-American, and has funded even more terrorism....⁶

A review of the actual *New York Times* report indicates that it does not make the claim that Iran "...has funded more terrorism...." Indeed, the word "terrorism" does not appear in the article.⁷

⁵ Eric Lob, "What Iran Will Really Do with Its Sanctions Relief Windfall," November 4, 2015, <https://www.washingtonpost.com/news/monkey-cage/wp/2015/11/04/what-iran-will-really-do-with-its-sanctions-relief-windfall/?postshare=1321446651691790>; Alireza Nader, "The Impact of Sanctions Relief on Iran," Testimony presented before the House Oversight and Governmental Reform Committee, Subcommittee on National Security on November 5, 2015, RAND Corporation, pp. 1-8, <http://www.rand.org/pubs/testimonies/CT442.html>

⁶ See the 1:17 time mark. Committee on Ways and Means, Subcommittee on Oversight, U.S. House of Representatives, "Iran Terror Financing and the Tax Code," Wednesday, November 4, 2015, <https://www.youtube.com/watch?v=4krOIP28wus&app=desktop>

⁷ Thomas Erdbrink, "Backlash Against U.S. in Iran Seems to Gather Force After Nuclear Deal,"

Instead, the article describes the domestic crackdown by Iranian hardliners who fear that the Iran nuclear deal will strengthen President Rouhani and the pragmatists in Iran. It should be noted that if there is any telling evidence that the JCPOA may have a moderating effect on Iranian policy, it is this crackdown by hardliners who opposed the deal. They clearly fear the Iran agreement will lead to moderation and are desperately trying to prevent that.

V. Missiles

The issue of Iran's missile development was discussed at the hearing, and it might be useful to describe Iran's missile program and place it in a proper context.

Iran has had a committed program of ballistic missile development for years, and possesses one of the larger and more advanced programs in the region. Still, Israel's missiles are more advanced, as are some of the Gulf states' tactical missile programs and missile defense initiatives.⁸

Iran's interest in ballistic missiles is not surprising given the "War of the Cities" during the Iran-Iraq War, when Saddam Hussein lobbed missiles and other munitions at Iranian urban areas in an attempt to demoralize the population. In addition, Iran's defense planners likely view ballistic missiles as an instrument of asymmetric deterrence, given Iran's poor air power capabilities and its limited capacity to project conventional military force. Put another way, Iran may think of ballistic missiles as a useful, if not completely effective, deterrent to air and missile attacks on Iranian territory.

In none of the UN Security Council resolutions is there a requirement that Iran abandon its missile program. The pre-Iran agreement UN Security Council resolutions, notably Resolution 1929 required that governments refrain from the transfer of missile technology to Iran until such time as it entered into negotiations on its nuclear program.⁹ These missile-related sanctions, together with restrictions on the sale of conventional weapons were --like economic sanctions-- a punishment for Iran's nuclear program, with the implied expectation that they would be removed after Iran resolved the nuclear dispute. In other words, the missile sanctions were not about missiles per se but rather important only as it related to Iran's nuclear program. The one exception in this case was any ballistic missile development that might be *directly* related to nuclear weapons as a delivery platform.

New York Times, November 3, 2015,

http://www.nytimes.com/2015/11/04/world/middleeast/backlash-against-us-in-iran-seems-to-gather-force-after-nuclear-deal.html?_r=1

⁸ Michael Elleman, "Gulf I: Iran's Power in the Air," *The Iran Primer*, Michael Elleman's Blog, United Institute of Peace, March 11, 2013,

<http://csis.org/publication/iran-nuclear-agreement-and-iranian-missile-developments>

⁹ United Nations Security Council, Resolution 1929 (2010), June 9, 2010,

https://www.iaea.org/sites/default/files/unsc_res1929-2010.pdf

Put another way, the JCPOA is a nuclear agreement, not a missile agreement.

Under UNSCR 2231, which implements the JCPOA, the moratorium on missile technology transfers is extended for eight years and Iran is called upon not to carry out ballistic missile tests of nuclear capable missiles.¹⁰ The concept of “nuclear capable” is a murky one, insofar as any missile could, in theory, carry a nuclear payload if the country had the capacity to produce a sufficiently small warhead. (For its part, the US during the Cold War produced nuclear warheads that could be fired from a bazooka -- the Davy Crockett.) But the resolution also permits missile technology transfers during this eight-year period on a case-by-case basis.

Iran, for its part, does not believe that the international community has the right to restrict its missile program outside of its direct relevance to nuclear weapons, and it did not agree to those provisions in UNSCR 2231 (thus the language that Iran is “called upon....”). As such it is not bound in the legal sense.¹¹

When it comes to assessments of Iran’s ballistic missiles, one sometimes reads breathless warnings about Iranian capabilities and its “ICBM program.” One should treat these assessments with skepticism. Iran has never flight-tested an ICBM. Its missile program continues to grapple with issues of accuracy, and while it has made progress over the years, recent assessments point to delays and challenges.¹² To be sure, it is a well established and now a largely indigenous program, but its trajectory points to incremental progress over time. Recently, Adm. Bill Gortney, head of U.S. Northern Command, testified that it would be years before Iran would be able to flight-test an ICBM, and that US assessments were pushing back the estimated projected progress in Iran’s long-range missile efforts.¹³

¹⁰ United Nations Security Council, S/RES/2231 (2015), July 20, 2015, <http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>

¹¹ My thanks to longtime SFRC and SSCI staffer Ed Levine for his help in decoding this language.

¹² Greg Thielmann, “Addressing Iran’s Ballistic Missiles in the JCPOA and UNSC Resolution,” Arms Control Association, Issue Briefs, Volume 7, Issue 8, July 27, 2015, <http://www.armscontrol.org/Issue-Briefs/2015-07-27/Addressing-Irans-Ballistic-Missiles-in-the-JCPOA-and-UNSC-Resolution>; Barbara Salvin, “Sanctions, Sabotage, Science Delay Iran’s Missile Program,” *Al Monitor*, December 17, 2014, <http://www.al-monitor.com/pulse/originals/2014/12/iran-missile-development-slow.html#>

¹³ Jason Sherman, “Senior Military Officer Says Iranian ICBM Threat Delayed until Later this Decade at 'Earliest',” *Inside Defense*, November 10, 2015, <http://insidedefense.com/daily-news/senior-military-officer-says-iranian-icbm-threat-delayed-until-later-decade-earliest> Inside Defense

VI. Conclusion

I thank the Committee for providing me the opportunity to address these issues. Conceptual clarity and a reliance on facts and evidence rather than assertion and speculation will be important, as we navigate the future.

As I indicated in my testimony, the JCPOA is arguably the most robust multi-lateral nonproliferation agreement ever negotiated in the 70-year history of the nuclear age. It will require wisdom, prudence, and the support of international partners to see that the agreement is successfully realized.

I believe that Congress has an important role to play in the JCPOA's implementation. On the other hand, rash or shortsighted actions by the legislative branch could undermine the US position and leave Iran free to pursue its nuclear program. I stand ready to work with the Committee to make sure we achieve our common goal and first priority: insuring that Iran never acquires nuclear weapons.

November 3, 2015

Honorable Peter Roskam
Chairman, Subcommittee on Oversight
House Committee on Ways and Means
2246 Rayburn House Office Building
Washington, DC 20515

Honorable John Lewis
Ranking Member, Subcommittee on Oversight
House Committee on Ways and Means
343 Cannon House Office Building
Washington, DC 20515

Dear Chairman Roskam and Ranking Member Lewis:

Thank you for undertaking this important investigation and for the opportunity to submit material for the record on your hearing on presidential authority to waive anti-terror provisions in the tax code with respect to the Islamic Republic of Iran. The case to change the status of Iran under the tax code is premised on the notion that the regime has in some meaningful respect "changed" in light of the recently-concluded Iran nuclear deal. We can assure that recent events demonstrate conclusively that the regime has not changed, but remains a pervasive sponsor of terrorism.

On October 29, 2015, Iranian-sponsored Shiite militia members lobbed their trademark Katyusha rockets at the unarmed residents of Camp Liberty (also known as Camp Hurriya) in a brazen assault that Secretary of State John Kerry himself labeled a "terrorist attack." Twenty-four people died, and dozens were injured from rocket fire in an attack carried out by elements of the Iranian regime in the Iraqi ruling establishment.

This was the seventh such attack on the residents since 2009, in which 140 have died and more than 1400 wounded. The residents of Camp Liberty are not mere incidental casualties. The Subcommittee should understand that the residents who were attacked are under the explicit protection of the U.S. government and military, which granted "Protected Persons" status under the Fourth Geneva Convention in July 2004. The U.S. Department of State has committed "...to support safety and security of the residents until the last of the residents leaves Iraq." U.S. military officials including General David Petraeus, General David Phillips and Retired Colonel Wesley Martin (the latter two in charge of protecting the residents as part of Operation Iraqi Freedom), are on record regarding America's obligations to protect this vulnerable population. Camp Liberty's residents even carry a "Protected Person" card with the telephone numbers of the U.S. 89th Military Police Brigade to be dialed "should an incident occur..."

A bipartisan array of your colleagues in the U.S. Congress has condemned the attack on Camp Liberty. In the U.S. Senate, Sen. John McCain issued a very strong statement, as did Senator Robert Menendez. Messages shared by Sen. Roy Blunt and Sen. Jeanne Shaheen on social

media, also condemned the attack. In the House of Representatives, Minority Leader Nancy Pelosi made a statement on the attack, as did Foreign Affairs Committee Chairman Ed Royce and ranking member Rep. Eliot Engel. The Chairman of the Subcommittee on the Middle East and North Africa, Ileana Ros-Lehtinen, also issued a strong statement of condemnation, as well as Rep. Dana Rohrabacher, Rep. Ted Poe, Rep. Loretta Sanchez, Rep. Judy Chu and Rep. Sheila Jackson-Lee, among others.

The bottom line: it is starkly clear that the Iranian regime has not changed. Even before the ink was dry on the nuclear agreement, the regime had sponsored an attack on political opponents that had the explicit promise of protection from the U.S. government. There is simply no basis for changing the treatment of Iran under the anti-terrorism provisions of the Internal Revenue Code.

We look forward to working with you as you move forward with this vital investigation and intend to supplement the docket with information before it closes on November 18, 2015.

Sincerely,

A handwritten signature in cursive script that reads "Soona Samsami". The signature is written in black ink and is positioned above the typed name and contact information.

Soona Samsami
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Friday, November 13, 2015

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The Glasshouse Policy Team
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Good day parties involved. Welfare reform as well as job stability and the health of our American economy are correlated. For this reason I'd like to share my perspective regarding the manner that welfare reform should be considered. As it stands the, the Current Population Survey (CPS), which comes from the Bureau of Labor Statistics, has noted that jobless rate has remained unchanged at 5.0% (<http://www.bls.gov/cps/>). With this in mind, we can look at the future where the Government Accountability Office has found that an approximation of 706,000 households headed by someone 65 years of age or older is carrying student loan debt (see American Student Assistance Retirement Delayed: The Impact of Student Debt on the Daily Lives of Older Americans page 5: http://www.asa.org/site/assets/files/3680/retirement_delayed.pdf). Student loan debt is rising, the jobless rate remains unchanged as of October 2015 and according to the U.S. Federal Budget the actual amount spent during fiscal year 2015 on welfare is upwards of \$366 Billion (http://www.usfederalbudget.us/federal_budget_estimate_vs_actual).

Our challenge is to improve America, maintain our security, work on infrastructure, keep America running through employment. For this we need a healthy and educated work force. I am for the income percentage plan to pay back student loans. Doing it this way will motivate individuals to really consider their education and see the cost directly affect their way of life. It is known amongst all that have attended higher learning that you can receive your financial aid

and also receive government assistance. This is tapping into our economy and debt. We are paying for students to receive their education in the form of a loan then we are paying to keep them sustaining themselves while in school. What is bad is this ties into rising tuition costs and, as pointed out previously, the cycle of our retirees and those that should be retired turning to public assistance at a time in their lives when they should be sitting on their accomplishments.

Looking at our current state we find that there are educated individuals who are living with school debt, unemployed and turning to the government for assistance to sustain themselves. This is a nasty cycle that is being perpetuated. Can we please look at changing this narrative? I propose we bolster apprenticeships (for those that find it suits their lifestyle), and this would be apprenticeships other than in the labor field, as we do not have a strong apprenticeship program at least in Texas beyond the labor field. We implement the income percentage to pay for the respective Degrees that are attained, as individuals will typically change careers in their lifetime. There does not seem to be any statistics on the amount of times that individuals have changed careers but let's look at some of our politicians who came into politics after getting degrees in finance, law, economics, psychology and such. Then look at the average American who has changed careers to adjust to their interests and needs in life. The cost of the degree changes with that. Some experience a loss in income but we also have those that receive a substantial increase in income. This would alter their lifestyle and would lead to paying their school debts as well as not joining the population that are on government assistance in any form. I ask for this respectfully, in hopes of effecting change regarding welfare and our governmental economy,

Respectfully,

Marvin Gil