

House Financial Services Committee
Subcommittee on Oversight and Investigations

Fueling Terror: **The Dangers of Ransom Payments to Iran**

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Chairman Duffy, Vice Chairman Fitzpatrick, Ranking Member Green, and distinguished members of the Committee on Financial Services, and Subcommittee on Oversight and Investigations, on behalf of the Foundation for Defense of Democracies and its Center on Sanctions and Illicit Finance, thank you for the opportunity to testify. I am honored to appear before you to discuss the dangers of cash payments to the Islamic Republic of Iran, including, but not limited to, the cash transferred to secure the release of American hostages.

Introduction

This summer marked the one-year anniversary of the announcement of the Joint Comprehensive Plan of Action (JCPOA). This deal is fatally flawed in that it provides the Islamic Republic of Iran with a patient pathway to nuclear weapons capability by placing limited, temporary, and reversible constraints on Iran's nuclear activities. These nuclear "sunset provisions," which will begin to expire in seven years and mostly disappear over a period of ten to fifteen years,¹ leave Iran as a threshold nuclear power with an industrial-size uranium enrichment and plutonium program, near-zero nuclear breakout capacity, an advanced centrifuge-powered clandestine sneakout capability, advanced ballistic missile and ICBM programs, access to advanced heavy weaponry, greater regional hegemony, and a more powerful economy that could be immune to Western sanctions. Even as Iran temporarily scales back some of its nuclear activities under the JCPOA, the regime's illicit efforts to obtain proliferation-related technology continues while its other non-nuclear malign activities are expanding.

The deal – as well as the interim agreement known as the Joint Plan of Action (JPOA) – provided Iran with substantial economic relief that helped the regime avoid a severe economic crisis and return to a modest recovery path. The lifting of restrictions on Iran's use of frozen overseas assets as part of the interim agreement returned about \$11.9 billion to Iran. The final agreement provided Tehran with access to a further \$100 billion, including over \$50 billion in unencumbered, liquid cash, according to the Obama administration.² These funds gave Tehran badly needed hard currency to settle its outstanding debts, begin to repair its economy, build up its diminished foreign exchange reserves, and ease a budgetary crisis, as well as providing the regime greater resources for the financing of terrorism and other illicit activities.

The nuclear deal did nothing to address the full range of Iran's malign activities, including ballistic missile development, support for terrorism, regional destabilization, and human rights abuses. Iran also still owes American terrorism victims and their families more than \$55 billion in unpaid, outstanding damages awarded by American courts.³ The weakening of missile language in the key UN Security Council Resolution,⁴ the lifting of a conventional arms embargo

¹ Under the JCPOA, restrictions start to lapse on Transition Day which is eight years from Adoption Day (October 18, 2015). Other restrictions related to Iran's enriched uranium stocks and enrichment capabilities begin to lapse after ten and 15 years from Implementation Day (January 16, 2016).

² Adam Szubin, "Written Testimony of Adam J. Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Intelligence United States Senate Committee on Banking, Housing, And Urban Affairs," *Testimony before Senate Committee on Banking, Housing, and Urban Affairs*, August 5, 2015. (<https://www.treasury.gov/press-center/press-releases/Pages/j10144.aspx>)

³ "Total Awards – Iran," *Congressional Research Service*, September 2, 2016. (Available upon request)

⁴ Colum Lynch, "Washington Made It Easy for Iran to Fire Its Ballistic Missiles," *Foreign Policy*, March 16, 2016. (<http://foreignpolicy.com/2016/03/16/washington-made-it-easy-for-iran-to-fire-its-ballistic-missiles/>)

in four years, and lifting the missile embargo in seven years⁵ severely undermines international efforts to combat Iran's illicit activities.

A key driver of these threats remains the Islamic Republic's ability to bankroll and finance a host of terrorist groups, militias, and proxy forces throughout the Middle East,⁶ including Hezbollah, Hamas, Palestinian Islamic Jihad, and designated Iraqi Shiite militias, as well as expanding the existing asymmetric military capabilities of the Islamic Revolutionary Guard Corps (IRGC) and its elite Quds Force. Iran remains the world's largest and most dangerous state sponsor of terrorism, according to President Obama's State Department.⁷

Iran's ability to access cash outside the formal banking system is crucial in supporting these activities. Tehran also uses cash for other malign activities that it aggressively supports: WMD procurement, missile and heavy weaponry procurement, as well as aid to the murderous regime of Bashar al-Assad in Syria, designated Shiite militias, the Houthis in Yemen, and other malign actors.

Given existing U.S. financial sanctions, Tehran remains restricted in how it can fund these forces and activities through the formal financial system. The regime needs cash – liquid, untraceable, convertible, and easy to transfer. Cash is critical for Iran to sustain and expand these activities.

The subject of this hearing is the nature and consequences of the \$400-million cash payment to Iran in connection with the settlement of an outstanding Iranian claim before the Iran-United States Claims Tribunal (the "Tribunal"). We also know that the subsequent \$1.3 billion payment to Iran was made in cash.⁸ Instead of only focusing my testimony on the question of whether the \$400-million and \$1.3-billion cash transfers constituted a ransom, I want to broaden the scope of the inquiry to look at a number of related questions:

- 1) Was the Obama administration's payment of \$1.7 billion in three separate cash shipments a unique occurrence or part of a pattern of cash payments as part of Tribunal settlements and/or sanctions relief?
- 2) If this situation was unique, did the administration agree to a cash payment scheme because it stood to receive a very valuable Iranian concession – the release of hostages, for example?
- 3) How much has Iran received in cash or in gold and other precious metals, in particular, since January 2014, when the interim nuclear agreement came into effect?
- 4) Did these cash transfers include billions of dollars sent to Iran between 2014 and 2016 as part of the administration's push for a nuclear deal?

⁵ United Nations Security Council, Resolution 2231, July 20, 2015, pages 99-100.

(https://www.iaea.org/sites/default/files/unsc_resolution2231-2015.pdf)

⁶ U.S. Department of State, Bureau of Counterterrorism, "Country Reports on Terrorism 2015 Chapter 3: State Sponsors of Terrorism Overview," accessed September 1, 2016. (<http://www.state.gov/j/ct/rls/crt/2015/257520.htm>)

⁷ Justin Siberell, "Special Briefing: Country Reports on Terrorism," *U.S. Department of State*, June 2, 2016.

(<http://www.state.gov/r/pa/prs/ps/2016/06/258013.htm>); U.S. Department of State, "Country Reports on Terrorism 2015," June 2016. (<http://www.state.gov/documents/organization/258249.pdf>)

⁸ Jay Solomon and Carol E. Lee, "U.S. Sent Two More Planeloads of Cash to Iran After Initial Payment," *The Wall Street Journal*, September 6, 2016. (<http://www.wsj.com/articles/u-s-sent-two-more-planeloads-of-cash-to-iran-after-initial-payment-1473208256>)

- 5) Did the administration approve the transfer of billions of dollars in cash to Iran because no formal financial channels existed, or did U.S. officials concede to Iranian demands for this cash?
- 6) Which Iranian entities received the cash payments, and who were the ultimate beneficiaries of these payments – the Central Bank of Iran, the Defense Ministry, the IRGC, the Quds Force, the Ministry of Intelligence, or other state or quasi-state entities?
- 7) Did the Obama administration facilitate a massive and unprecedented cash transfer scheme to the leading state sponsor of terrorism with dangerous illicit finance consequences?

According to U.S. Treasury spokeswoman Dawn Selak, it was necessary to pay the \$1.7-billion settlement “in non-U.S. currency, in cash” because of “the effectiveness of U.S. and international sanctions regimes over the last several years in isolating Iran from the international financial system.”⁹ If this is true, it raises serious concerns that Iran received billions of dollars in sanctions relief from the nuclear agreement in cash. Alternatively, if Iran was able to receive sanctions relief through the formal financial system, it would seem that the administration is not being transparent about the real reasons that the \$1.7 billion was paid to Iran in cash.

What do we know about the \$1.7-billion payment and existing legal authorities?

On January 16, 2016, the Obama administration announced that the JCPOA reached in July 2015 had entered its implementation phase.¹⁰ The next day, January 17, the administration announced another deal with Iran: the settlement of a dispute pertaining to a Foreign Military Sales (FMS) Trust Fund dating from before the 1979 Iranian revolution and the U.S. Embassy hostage crisis.¹¹ For several decades, Tehran tried to obtain these funds through the Iran-United States Claims Tribunal.¹²

In the January 17 announcement, Secretary of State John Kerry explained that the United States agreed to pay Iran the balance of the funds in the FMS account, \$400 million plus “roughly \$1.3 billion” in interest.¹³ What the administration failed to mention at that time, and what *The Wall Street Journal* revealed in August, is startling: On January 17, an Iranian cargo plane loaded with euros, Swiss francs, and other non-dollar currencies flew from Geneva to Iran in a sequenced series of events timed with the release of five American hostages.¹⁴ Just this week, *The Wall*

⁹ Jay Solomon and Carol E. Lee, “U.S. Sent Two More Planeloads of Cash to Iran After Initial Payment,” *The Wall Street Journal*, September 6, 2016. (<http://www.wsj.com/articles/u-s-sent-two-more-planeloads-of-cash-to-iran-after-initial-payment-1473208256>)

¹⁰ John Kerry, “Remarks on Implementation Day,” *U.S. Department of State*, January 16, 2016. (<http://www.state.gov/secretary/remarks/2016/01/251336.htm>)

¹¹ John Kerry, “Hague Claims Tribunal Settlement,” *U.S. Department of State*, January 17, 2016. (<http://www.state.gov/secretary/remarks/2016/01/251338.htm>)

¹² Letter to Committee on Foreign Affairs Chairman Edward R. Royce from Assistant Secretary of State for Legislative Affairs Julia Frifield, March 17, 2016. (<https://foreignaffairs.house.gov/wp-content/uploads/2016/08/03.17.16-DOS-Response-Concerns-re-1.7-Billion-Payout-to-Iran.pdf>)

¹³ The statement does not specify how the interest was calculated.

¹⁴ Jay Solomon and Carol E. Lee, “U.S. Sent Cash to Iran as Americans Were Freed,” *The Wall Street Journal*, August 3, 2016. (<http://www.wsj.com/articles/u-s-sent-cash-to-iran-as-americans-were-freed-1470181874>); Jay Solomon and Carol E. Lee, “U.S. Held Cash Until Iran Freed Prisoners,” *The Wall Street Journal*, August 18, 2016. (<http://www.wsj.com/articles/u-s-held-cash-until-iran-freed-prisoners-1471469256>)

Street Journal further revealed that the administration also transferred the \$1.3 billion to Iran in two cash payments through Europe on January 22 and February 5 “in the same manner” as the \$400-million payment.¹⁵

The optics of these cash transfers was reportedly the subject of controversy within the administration. President Obama’s Justice Department raised concerns that the timing of the payment too closely coincided with the release of American hostages.¹⁶ Why the administration concealed – or, at a minimum, failed to note – the cash payments for so long is a question that remains to be answered. But when confronted with the story of the \$400-million cash payment, on August 4, President Obama dismissed its significance: “The reason that we had to give them cash is precisely because we are so strict in maintaining sanctions and we do not have a banking relationship with Iran that we couldn’t send them a check and we could not wire the money.”¹⁷

It is my assessment that President Obama is mistaken on the legalities and practicalities of sending funds to Iran under existing U.S. laws and regulations. According to an analysis by my organization, the administration’s argument is “undercut by the sanctions regulations it supposedly relies upon.”¹⁸ Specifically, the Iranian Transactions and Sanctions Regulations, which stipulate the sanctions and exceptions in financial dealings with Iran, licenses payments and limited dealings between the Iranian and American financial system in order to receive, pay, or settle claims pursuant to the Iran-United States Claims Tribunal.¹⁹

Through this Tribunal-related license, any American or foreign bank facilitating the transfer of any portion of the \$1.7 billion payment to Tehran through the formal financial system would be insulated from sanctions-violations risks and related penalties.²⁰ Even in the absence of this explicit license in the Iranian Transactions and Sanctions Regulations, the president has authority under the International Emergency Economic Powers Act²¹ to authorize banks to facilitate these transactions. Indeed, nearly 3,000 special licenses are granted every year for sales of food, medicine, and other humanitarian-related goods into Iran.²² Thus, the transfer of funds in cash on

¹⁵ Jay Solomon and Carol E. Lee, “U.S. Sent Two More Planeloads of Cash to Iran After Initial Payment,” *The Wall Street Journal*, September 6, 2016. (<http://www.wsj.com/articles/u-s-sent-two-more-planeloads-of-cash-to-iran-after-initial-payment-1473208256>)

¹⁶ Devlin Barrett, “Senior Justice Official Raised Objections to Iran Cash Payment,” *The Wall Street Journal*, August 12, 2016. (www.wsj.com/articles/senior-justice-official-raised-objections-to-iran-cash-payment-1470994380)

¹⁷ Barack Obama, “Press Conference by the President After Meeting with National Security Officials,” *The White House*, August 4, 2016. (<https://www.whitehouse.gov/the-press-office/2016/08/04/press-conference-president-after-meeting-national-security-officials>)

¹⁸ Behnam Ben Taleblu and Annie Fixler, “Settling with Iran: \$1.7 Billion and U.S. Hostages,” *Foundation for Defense of Democracies*, September 2016, page 5. (http://www.defenddemocracy.org/content/uploads/general/Settling_with_Iran.pdf)

¹⁹ Iranian Transactions and Sanctions Regulations, U.S. Department of the Treasury, 31 e-C.F.R. §560.510, December 26, 2012. (http://www.ecfr.gov/cgi-bin/text-idx?SID=24bdea2a7649db1dbe5efd2933b250a5&mc=true&node=se31.3.560_1510&rgn=div8)

²⁰ As noted in: Behnam Ben Taleblu and Annie Fixler, “Settling with Iran: \$1.7 Billion and U.S. Hostages,” *Foundation for Defense of Democracies*, September 2016, page 5. (http://www.defenddemocracy.org/content/uploads/general/Settling_with_Iran.pdf)

²¹ International Emergency Economic Powers, 50 U.S.C. §1701-1708. (<https://www.treasury.gov/resource-center/sanctions/Documents/ieepa.pdf>)

²² Author interview with sanctions attorney on September 2, 2016.

pallets to Iran was legally unnecessary. In fact, as the *Associated Press* reports, there is no precedent for the transfer of such a large quantity of cash in modern American history.²³

There is, however, a clear precedent for using the formal financial system to transfer money pursuant to claims after the 1979 Iranian revolution. One example is the resolution of the case surrounding the accidentally downed Iran Air Flight 655 in July 1988.²⁴ According to the *Associated Press*, although it ultimately took until 1996 for the U.S. to reach a settlement with Iran, “\$61 million was deposited in a Swiss bank account that was jointly held by the New York Federal Reserve and the Iranian Central Bank.”²⁵ Why was the \$1.7-billion settlement different from previous Tribunal-related payments?

Did the Obama administration have no choice but to transfer the \$1.7 billion in cash?

No legal barriers exist to the settlement of claims of the Iran-United States Claims Tribunal through the formal financial system. But perhaps it was a logistical impossibility to transfer the \$1.7 billion through the formal financial system. Over the past decade, the Treasury Department convinced global banks of the illicit finance risks that Iran poses to the global banking system. These warnings were backed by billions of dollars in fines imposed on some of the largest financial institutions, which still remain wary of returning to Iran.²⁶ Taking the administration at its word, perhaps no banks were willing to wire funds to Iran, no matter what guarantees they got from the administration that the transaction was legal.

Although White House Press Secretary Josh Earnest claimed on January 19 that “the interests of taxpayers were very well served by reaching this settlement,”²⁷ the administration originally did not explain how this interest payment was transferred to Iran. After the press uncovered details about the January 19 payments from the Treasury Department-administered Judgment Fund,²⁸ a mechanism created by Congress in the 1950s to pay claims against the U.S. government not otherwise covered by existing appropriations,²⁹ the administration confirmed the use of this mechanism.³⁰ Previously, administration officials stated that the \$1.3 billion was transferred to

²³ See reference to this lack of precedent, and one notable historic exemption in: Bradley Klapper, “A \$400 Million Cash Payment to Iran Has Little Precedent,” *Associated Press*, August 29, 2016.

(<http://abcnews.go.com/Politics/wireStory/400-million-cash-payment-iran-precedent-41712597>)

²⁴ Bridie McAsey, “The Recent Settlement at the Iran-United States Claims Tribunal: Historical Context, Implications, and the Future – Part II,” *Kluwer Arbitration Blog*, March 21, 2016.

(<http://kluwerarbitrationblog.com/2016/03/21/the-recent-settlement-at-the-iran-united-states-claims-tribunal-historical-context-implications-and-the-future-part-ii/>)

²⁵ Bradley Klapper, “A \$400 Million Cash Payment to Iran Has Little Precedent,” *Associated Press*, August 29, 2016. (<http://abcnews.go.com/Politics/wireStory/400-million-cash-payment-iran-precedent-41712597>).

²⁶ Alanna Petroff, “Europe’s banks too scared to do business with Iran,” *CNN*, May 12, 2016.

(<http://money.cnn.com/2016/05/12/news/iran-banks-europe-john-kerry/>)

²⁷ The White House, “Press Briefing by Press Secretary Josh Earnest, 1/19/2016,” January 19, 2016.

(<https://www.whitehouse.gov/the-press-office/2016/01/19/press-briefing-press-secretary-josh-earnest-1192016>)

²⁸ Claudia Rosett, “Riddle of \$1.3 Billion for Iran Might Relate to 13 Outlays Of Exactly \$99,999,999.99,” *The New York Sun*, August 22, 2016. (<http://www.nysun.com/foreign/riddle-of-13-billion-for-iran-might-be-solved-by/89692/>)

²⁹ U.S. Department of the Treasury, Bureau of Fiscal Service, “Judgment Fund: Background,” accessed August 23, 2016. (<https://www.fiscal.treasury.gov/fservices/gov/pmt/jdgFund/background.htm>)

³⁰ As noted by: @APDiploWriter, “.@statedept confirms 13 Judgment Fund payments of \$99,999,999.99 & 1 of \$10.4M on Jan 19 were for interest on Hague settlement with #Iran.” *Twitter*, August 24, 2016.

Iran through a foreign central bank in a “fairly above-board way”³¹ in non-U.S. currency.³² This week, officials from the State, Treasury and Justice departments reportedly told congressional staffers that the \$1.3-billion payment was made in the same manner as the \$400-million payment – through Europe, in cash (in euros, Swiss francs, and other non-U.S. currencies), and flown by plane to Iran on January 22 and February 5. Treasury confirmed to *The Wall Street Journal* that the subsequent payments were also in cash.³³ Incredibly, it seems the administration considers flying plane-loads of cash to the world’s largest state sponsor of terrorism to be “fairly above-board.”

Since we know that the \$1.7 billion was transferred in cash, it is logical to ask, what other settlements from the Tribunal have been made in cash? The Tribunal itself states that it has “finalized” more than 3,900 cases.³⁴ Were some or all of the awards from these cases paid in cash despite the legal authority to process them through normal financial channels?

For example, the U.S. paid Iran \$848,072.15 on July 27, 2015 as the result of a Tribunal ruling.³⁵ Was this made in cash as well? Conversely, if the \$848,000 was sent to Iran using the formal financial system, why did the administration send the \$1.7 billion in cash? Congress should demand answers.

Did the Obama administration green light more than the \$1.7 billion in cash?

During the negotiations to reach the nuclear deal, the P5+1 permitted Iran to repatriate \$11.9 billion dollars from restricted, overseas oil escrow accounts.³⁶ Taken on average, these payments

(<https://twitter.com/APDiploWriter/status/768483956736000004>); Bradley Klapper, “2 days after cash delivery, US paid \$1.3 billion to Iran,” *Associated Press*, August 24, 2016.

(<http://bigstory.ap.org/article/360619286aeb4e3dbafd5eb29388d93a/2-days-after-cash-delivery-us-paid-13-billion-iran>)

³¹ Bradley Klapper, “U.S. Paid \$1.3 Billion to Iran,” *Associated Press*, August 24, 2016.

(<http://www.usnews.com/news/politics/articles/2016-08-24/2-days-after-cash-delivery-us-paid-13-billion-to-iran>)

³² Jay Solomon and Carol Lee, “U.S. Sent Cash to Iran as Americans Were Freed,” *The Wall Street Journal*, August 3, 2016. (<http://www.wsj.com/articles/u-s-sent-cash-to-iran-as-americans-were-freed-1470181874>)

³³ Jay Solomon and Carol E. Lee, “U.S. Sent Two More Planeloads of Cash to Iran After Initial Payment,” *The Wall Street Journal*, September 6, 2016. (<http://www.wsj.com/articles/u-s-sent-two-more-planeloads-of-cash-to-iran-after-initial-payment-1473208256>)

³⁴ Note, this number is derived from the Tribunal’s own website. See: The Iran-United States Claims Tribunal, accessed August 23, 2016. (<http://www.iusct.net/>)

³⁵ Correction to Award and Decision on Request for Additional Award, DEC 136-A15(IV)/A24-FT, Iran-U.S. Claims Tribunal (March 5, 2015), page 106. ([http://www.iusct.net/General%20Documents/AWARD/7-DEC%20No.%20DEC%20136-A15\(IV\)A24-FT.pdf](http://www.iusct.net/General%20Documents/AWARD/7-DEC%20No.%20DEC%20136-A15(IV)A24-FT.pdf)); Information accessed via the Judgment Fund payment search database. See: U.S. Department of the Treasury, “Judgment Fund Payment Search,” accessed September 1, 2016. (<https://jfund.fms.treas.gov/jfradSearchWeb/JFPymtSearchAction.do>); For more information, see: U.S. Department of the Treasury, Bureau of Fiscal Service, “Judgment Fund: Background,” accessed August 23, 2016. (<https://www.fiscal.treasury.gov/fservices/gov/pmt/jdgFund/background.htm>)

³⁶ U.S. Department of the Treasury, “Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran,” November 25, 2014. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf)

from accounts in foreign banks amounted to roughly \$700 million per month.³⁷ If no mechanism existed in the formal financial system to transfer the \$1.7 billion to Iran, what mechanism was used to transfer the \$11.9 billion? *The Wall Street Journal* reported that a senior administration official admitted that “some” of that money was repatriated in cash. This official claimed, “We had to find all these strange ways of delivering the monthly allotment.”³⁸ What exactly were these “strange ways”?

If some money could be transferred using the formal financial system, why were any funds sent back to Iran outside the system in cash? Was the entire \$11.9 billion or significant portions of it repatriated to Iran in cash or in gold and other precious metals? This is a legitimate line of questioning to pursue given the enormous illicit financial risks of sending billions of dollars in cash to the world’s foremost state sponsor of terrorism.

The Foundation for Defense of Democracies and Roubini Global Economics estimated that Tehran had about \$90-\$120 billion in foreign assets prior to the implementation of the JCPOA in a combination of liquid and illiquid assets.³⁹ In his testimony less than one month after the JCPOA was reached, Acting Under Secretary of the Treasury Adam Szubin estimated that “total Central Bank of Iran (CBI) foreign exchange assets worldwide are in the range of \$100 to \$125 billion. Our assessment is that Iran’s usable liquid assets after sanctions relief will be much lower, at a little more than \$50 billion. The other \$50-70 billion of total CBI foreign exchange assets are either obligated in illiquid projects (such as over 50 projects with China) that cannot be monetized quickly, if at all, or are composed of outstanding loans to Iranian entities that cannot repay them.”⁴⁰

Nearly four months after the implementation of the JCPOA, both Secretary of State John Kerry and State Department Spokesman John Kirby assessed that Iran had only repatriated an estimated \$3 billion dollars.⁴¹ In July, the *Associated Press* cited U.S. officials who estimated that Iran “brought home less than \$20 billion.”⁴² Were these funds repatriated to Tehran in cash or in gold and precious metals? Through the formal financial system? Or through some

³⁷ As noted in: Carol E. Lee and Jay Solomon, “Critics of Iran Nuclear Deal Attack U.S. Cash Payment,” *The Wall Street Journal*, August 3, 2016. (<http://www.wsj.com/articles/critics-of-iran-nuclear-deal-attack-u-s-cash-payment-1470255592>)

³⁸ Carol E. Lee and Jay Solomon, “Critics of Iran Nuclear Deal Attack U.S. Cash Payment,” *The Wall Street Journal*, August 3, 2016. (<http://www.wsj.com/articles/critics-of-iran-nuclear-deal-attack-u-s-cash-payment-1470255592>)

³⁹ See: Mark Dubowitz, Annie Fixler, and Rachel Ziemba, “Iran’s Mysterious Shrinking Reserves: Estimating the Value of Tehran’s Foreign Assets,” *Foundation for Defense of Democracies and Roubini Global Economics*, September 11, 2015. (http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)

⁴⁰ Adam Szubin, “Written Testimony of Adam J. Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Intelligence United States Senate Committee on Banking, Housing, And Urban Affairs,” *Testimony before Senate Committee on Banking, Housing, And Urban Affairs*, August 5, 2015. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0144.aspx>)

⁴¹ See: John Kerry, “Remarks at J Street’s National Gala Dinner,” April 18, 2016. (<http://www.state.gov/secretary/remarks/2016/04/255951.htm>); John Kirby, “Daily Press Briefing,” *U.S. Department of State*, April 19, 2016. (<http://www.state.gov/r/pa/prs/dpb/2016/04/255961.htm#IRAN>)

⁴² Bradley Klapper, “A year later, Iran nuclear deal is holding but fragile,” *Associated Press*, July 13, 2016. (<http://bigstory.ap.org/article/f0b8663354114adb8d26c21f54df5e1e/year-later-iran-nuclear-deal-fragile-holding>)

combination? The administration should also clarify if the \$20 billion dollars is inclusive of the \$11.9 billion in JPOA funds, or if the \$20 billion was in addition to the \$11.9 billion. Either way, it is important to understand how funds were sent.

The worst-case scenario here is that Iran may have received as much as \$33.6 billion in cash or in gold and other precious metals.⁴³ This raises major illicit financial concerns: According to the Financial Action Task Force, “the physical cross-border transportation of currency ... [is] one of the main methods used to move illicit funds, launder money and finance terrorism.”⁴⁴

Perhaps the Iranians demanded cash because they could not repatriate any of the JPOA, JCPOA, and Tribunal funds through the formal financial system because of the stifling sanctions environment. The JPOA and JCPOA funds may also have limited Iran to paying for imports, for example, but the regime could not bring the money home to pay for their domestic needs. Perhaps Iran needed hard currency to pay foreign companies for domestic projects, and this money had to be repatriated first before payments were made. Perhaps financial restrictions made it possible for Iran to receive money from abroad in only rials when it was repatriated but not in convertible, hard currency. These are all plausible explanations for why the White House sent such a large amount of cash to a state sponsor of terrorism.

There is an alternative explanation, too: Iran needed hard currency to fund its malign activities because the regime wanted those transactions to be untraceable.

Were formal financial channels available to the Obama administration?

If a workable formal financial channel could have been used, why did the Obama administration send cash?

The White House could have worked through a European intermediary for the entire transaction involving the electronic transfer of money to the Iranian financial system and not, as it reportedly did, through Swiss and Dutch central banks only for the electronic transfer of the funds from the U.S. to Europe. Even at the height of the U.S. sanctions regime (2010-2013), sizable trade continued between Iran and the European Union. In 2013, when U.S. and EU sanctions were at their peak, total EU-Iran bilateral trade was 6.2 billion euros.⁴⁵ This was sharply down from 27.8 billion euros in 2011 and 13 billion euros in 2012, but still significant.⁴⁶

⁴³ \$400 million Tribunal principal payment + \$1.3 billion Tribunal interest payment + \$11.9 billion JPOA relief + \$20 billion JCPOA relief

⁴⁴ Financial Action Task Force, “Operational Issues Financial Investigations Guidance,” June 2012, page 23.

(http://www.fatf-gafi.org/media/fatf/documents/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf)

⁴⁵ For instance, it should be noted that European imports from Iran dropped rapidly (but did not zero-out) in 2012, likely due to the passage and implementation of oil sanctions. But Tehran continued exporting goods to Europe from 2012-2015, raising questions as to how Iranian entities were paid for their exports. See graph in: European Commission, Directorate-General for Trade, “European Union, Trade in goods with Iran,” June 21, 2016, page 3.

(http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113392.pdf)

⁴⁶ Ibid.

Are we to believe that no European company in those years was able to send or receive payments to Tehran through the formal financial system? It is well known that some Iranian banks remained free of U.S. and European sanctions, and that these banks continued to access the SWIFT financial messaging system, even when 17 other banks were barred from it. Even at the height of the sanctions regime, Obama administration officials rejected a complete financial and commercial embargo of Iran. They justified these open financial channels to process unlimited volumes of humanitarian transactions with Iran, as well as non-sanctionable commercial transactions with those countries holding oil escrow funds.⁴⁷ Iran also could use any funds not subject to the oil escrow restrictions or frozen pursuant to judicial order. It is unclear why the Obama administration could not use these financial channels.

After January 2014, when the interim agreement was implemented, the administration authorized Iranian access to \$700 million monthly, on average, in these escrow funds. Tracking the first payment, *Reuters* reported that on February 1, 2014, the Bank of Japan transferred \$550 million “to an Iranian Central Bank account in Switzerland, a U.S. Treasury spokeswoman said.”⁴⁸ This raises a further question: If the Bank of Japan made an electronic transfer for the first payment, was cash ever used for any of the other payments?

Moreover, couldn’t the administration have put the \$1.7 billion in Tribunal settlement funds in the CBI account at the Swiss bank so that Iran could access them for legitimate commercial purposes? Banks monitor their accounts to prevent money laundering and terrorism financing. Transferring the funds to a Swiss bank would be clearly preferable than the cash transfer because once the funds are in cash, the money is untraceable. Even if it was more difficult to use formal channels, it appears that they did exist.

The transfer of cash to Iran sets a dangerous precedent for future Tribunal settlements or other fund transfers to Iran, and legitimizes the kind of financial activities that the U.S. government is vigilantly warning the private sector to avoid. The private sector looks to the U.S. Treasury for guidance about financial integrity and learns just as much by example as through lengthy notifications and regulations. By transferring cash to Iran, the U.S. government undermined the very anti-money laundering protections that Washington demands of all private actors.⁴⁹

Even if there were no formal financial conduits available for the administration to authorize the transfer of funds to Iran, why didn’t the Obama administration create one? There was a clear need for a formal channel that could have better protected against Iranian abuse. As an example, in 2007, the United States used a complicated system involving the Federal Reserve Bank of New York and a North Korean account in a Russian bank to enable North Korea, under

⁴⁷ For an explanation of the restrictions that came into effect in February 2013 requiring oil revenues to be deposited in escrow accounts, see Kenneth Katzman, “Iran Sanctions,” *Congressional Research Service*, May 18, 2016, page 22. (<http://fas.org/sgp/crs/mideast/RS20871.pdf>)

⁴⁸ Hirofumi Takemoto and Takaya Yamaguchi, “Exclusive: Japan makes first oil payment to Iran in a year: sources,” *Reuters*, February 5, 2014. (<http://www.reuters.com/article/us-iran-nuclear-transfer-idUSBREA140SB20140205>)

⁴⁹ Author interviews with former Department of Justice prosecutors on September 6, 2016.

punishing financial sanctions, to repatriate \$25 million in frozen assets held in Macau's Banco Delta Asia.⁵⁰ None of this involved flying pallets of cash to Pyongyang.

If a formal mechanism did exist, why wasn't this mechanism used for the \$400-million and \$1.3-billion payments? This only underscores the importance of an investigation into why the \$400 million (and likely the \$1.3 billion) needed to be transferred in cash in January.

Cash as "leverage"

We know from public reporting that American officials were aware of the Iranian need for cash. "Sometimes the Iranians want cash because it's so hard for them to access things in the international financial system... They know it can take months just to figure out how to wire money from one place to another,"⁵¹ a senior official stated to *The Wall Street Journal*. Is this an admission that cash transactions were not the only way to deal with Iran but rather an Iranian demand? If Iran demanded cash when formal channels were open, and the administration complied with this demand, Congress has a right to know why.

What we also know from *The Wall Street Journal's* subsequent reporting is that the delivery of cash to Iran was "a tightly scripted exchange specifically timed to the release of several American prisoners held in Iran."⁵² Does this choreography provide clues for why Washington agreed to provide the funds in cash?

If the United States needed Iran to receive the funds on the same day as the U.S. made the payment in order to keep to the script, then perhaps cash was the only way to guarantee that Iran received immediate access to the money. If this was the case, what was it that was so valuable about providing Iran immediate access to money from a FMS account belonging to a regime that was deposed more than three decades ago? Why was the resolution of this decades-long dispute so critical that the administration decided to process it outside the formal system when more transparent electronic transfer mechanisms existed?

State Department Spokesman Kirby has repeatedly denied that the \$400 million was a ransom payment to Iran, yet he admitted that the choreography was designed "to retain maximum leverage until after American citizens were released."⁵³ When questioned further by the press corps, Kirby admitted that "the events came together simultaneously. But obviously, when you're inside that 24-hour period and you already now have concerns about the endgame in terms of getting your Americans out, it would have been foolish, imprudent, irresponsible, for us

⁵⁰ Glenn Kessler, "North Korea Gets \$25 Million Frozen by U.S. Probe," *The Washington Post*, June 15, 2007. (<http://www.washingtonpost.com/wp-dyn/content/article/2007/06/14/AR2007061400181.html>)

⁵¹ Jay Solomon and Carol Lee, "U.S. Sent Cash to Iran as Americans Were Freed," *The Wall Street Journal*, August 3, 2016. (<http://www.wsj.com/articles/u-s-sent-cash-to-iran-as-americans-were-freed-1470181874>)

⁵² See: Carol E. Lee, "U.S. Held Cash Until Iran Freed Prisoners," *The Wall Street Journal*, August 18, 2016. (<http://www.wsj.com/articles/u-s-held-cash-until-iran-freed-prisoners-1471469256>)

⁵³ John Kirby, "Daily Press Briefing," *U.S. Department of State*, August 18, 2016. (<http://www.state.gov/r/pa/prs/dpb/2016/08/261128.htm>)

not to try to maintain maximum leverage. So if you're asking me was there a connection in that regard at the endgame, I'm not going to deny that."⁵⁴

To date, the administration denies that the "maximum leverage" afforded by the transfer of the \$400 million amounted to a ransom. The subsequent \$1.3 billion appears to be the second half of the administration's "leverage." Kirby's admission and the timing of the first payment suggest that the reason the administration was willing to take on the illicit finance risks inherent in a cash transfer was to get the hostages released. The payments were leverage, but the leverage would only work if Iran got immediate access to the funds, and so it had to be in cash. This is the common-sense definition of a ransom payment: a quid pro quo where one party provides something of value to the other party in order to facilitate the release of hostages.

In a recent research memo by FDD, we described how persons and entities⁵⁵ in Iran, including a senior IRGC official who is in charge of the organization's paramilitary Basij forces, explicitly linked the payment and the release of the American hostages.⁵⁶ Clearly, some Iranian officials see this as a ransom whether or not the administration acknowledges it as such.

How will Iran spend the money?

If there was no mechanism through the formal financial system to send Iran the \$1.7 billion in settlement money, the \$11.9 billion in JPOA sanctions relief funds from its oil escrow accounts, and the \$20 billion from Iran's total liquid, unencumbered assets following the implementation of the JCPOA, Iran received as much as \$33.6 billion in cash. Even using the Obama administration's estimate from July 2016 that Iran repatriated no more than \$20 billion, the amount of untraceable cash may still be staggering. It is worth recalling that, prior to November 2013, Iran only had \$20 billion in fully accessible foreign exchange reserves.⁵⁷

Officials in Iran have already announced that the repatriated \$1.7 billion in FMS principal and interest will go to the defense budget. In an interview with *Fars News* on July 7, an Iranian parliamentarian claimed that the money from the settlement must be "allocated to the armed forces."⁵⁸ The final budget passed weeks later ended up containing this allocation.⁵⁹ This could

⁵⁴ John Kirby, "Daily Press Briefing," *U.S. Department of State*, August 18, 2016.

(<http://www.state.gov/r/pa/prs/dpb/2016/08/261128.htm>)

⁵⁵ Additionally, a semi-official media-outlet close to the IRGC put out a video vindicating the Iranian narrative of the money transfer. See: Amir Toumaj, "The Iran Money Transfer: Unanswered Questions," *Foundation for Defense of Democracies*, August 5, 2015. (<http://www.defenddemocracy.org/media-hit/amir-toumaj-the-iran-money-transfer-unanswered-questions/>)

⁵⁶ See reference to Iran's Basij Commander (Mohammad-Reza Naqdi) in: Behnam Ben Taleblu and Annie Fixler, "Settling with Iran: \$1.7 Billion and U.S. Hostages," *Foundation for Defense of Democracies*, September 2016, page 4. (http://www.defenddemocracy.org/content/uploads/general/Settling_with_Iran.pdf)

⁵⁷ Mark Dubowitz and Rachel Ziemba, "When Will Iran Run Out of Money?" *Foundation for Defense of Democracies and Roubini Global Economics*, October 2, 2013.

(http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

⁵⁸ "بودجه ۵ هزار میلیاردی متعلق به نیروهای مسلح است/ ماجرایی گزارش به رهبری درباره بودجه دفاعی/ دولت چه برداشتی از فضای مجلس؟" (The 5 Thousand Billion [Toumans] Belongs to the Armed Forces / The Story Behind Informing the Leader About the Defense Budget / What Takeaway Does the Government Have from the Tenth Parliament That it Seeks to Slice the Defense Budget?), *Fars News Agency* (Iran), July 7, 2016.

(<http://www.farsnews.com/13950417000304>)

mean that the funds will be used to pay for Iran's conventional armed forces, procure advanced weaponry in contravention of the arms embargo, support the activities of the IRGC and Quds Force in Syria, Iraq, Lebanon, Yemen and elsewhere, and/or provide direct support to Hezbollah, Hamas, Palestinian Islamic Jihad and other Iranian-assisted terrorist organizations.

But this does not account for the additional billions of dollars that Iran repatriated.

The administration may try to downplay the significance of this estimated \$20 billion by arguing that Iran needs hundreds of billions of dollars in foreign direct investment over the next decade to modernize its aging energy sector as well as its domestic infrastructure. This is the same argument the administration used to dismiss concerns about the amount of Iranian overseas assets that the JPOA and JCPOA unfroze. But even Secretary of State Kerry admitted, "Some of [Iran's unfrozen assets] will end up in the hands of the IRGC or other entities, some of which are labeled terrorists."⁶⁰

But Kerry sidesteps a central question: How much easier will it be for Iran to distribute those funds if they arrive in the form of cash in euros, Swiss francs, or other easy-to-use hard currencies?

To put the \$20 billion in perspective: \$20 billion is one billion more than Iran's entire \$19 billion defense budget for 2016-2017, which already amounts to a near doubling of its military budget compared to the previous year.⁶¹ The \$20 billion also represents more than five percent of Iran's total GDP,⁶² and more than 20 percent of Iran's total government budget.⁶³ Access to \$20 billion in cash is about \$4 billion greater than Israel's entire 2015 defense budget.⁶⁴ The \$20 billion also provides Iran with significant resources to fund one of Israel's most deadly enemies: Iran provides Hezbollah with as much as \$900 million annually, according to Israeli intelligence

⁵⁹ Saeed Ghasseminejad, "Iran Gives Green Light to Direct \$1.7 Billion from U.S. to Military," *Foundation for Defense of Democracies*, September 1, 2016. (<http://www.defenddemocracy.org/media-hit/saeed-ghaseminejad-iran-gives-green-light-to-direct-17-billion-from-us-to-military/>)

⁶⁰ Elise Labott, "John Kerry: Some sanctions relief money for Iran will go to terrorism," *CNN*, January 21, 2016. (<http://www.cnn.com/2016/01/21/politics/john-kerry-money-iran-sanctions-terrorism/>)

⁶¹ Saeed Ghasseminejad, "Iran Doubles Down on its Military Budget," *Foundation for Defense of Democracies*, June 3, 2016. (<http://www.defenddemocracy.org/media-hit/saeed-ghaseminejad-iran-doubles-down-on-its-military-budget/>)

⁶² The World Bank, "Iran," April 1, 2016. (<http://www.worldbank.org/en/country/iran/overview>)

⁶³ Amir Vahdat, "Iran's parliament approves \$97 billion budget," *Associated Press*, April 19, 2016. (<http://bigstory.ap.org/article/686b227530b243039a59863aa7c25cdb/irans-parliament-approves-97-billion-budget>)

⁶⁴ See 2015 figures in: Sam Perlo-Freeman, Aude Fluerant, Pieter Wezeman, and Siemon Wezeman, "Trends in World Military Expenditure, 2015," *Stockholm International Peace Research Institute*, April 2016, page 2. (<http://books.sipri.org/files/FS/SIPRIFS1604.pdf>)

estimates.⁶⁵ UN officials estimate that Iran provides \$6 billion to Syrian President Assad annually⁶⁶ – less than a third of what Iran may have repatriated in cash and gold.

Tehran could take that \$20 billion in cash and continue its illicit procurement of material needed to produce and test ballistic missiles. Despite the warnings of numerous experts,⁶⁷ reductions in Iran's ballistic missile arsenal were not required under the JCPOA. Iran has tested ballistic numerous times since the inking of the JCPOA last summer, and almost all of these platforms it tested were nuclear capable.⁶⁸ By allocating cash to this program, Tehran could refine its existing missile arsenal and make its missiles more precise,⁶⁹ work on space-launch vehicles under the guise of a satellite program,⁷⁰ as well as test missiles that previously failed to launch.⁷¹

Tehran also could use the \$20 billion in cash to further its illicit procurement attempts, some of which were detailed in a recent report by German domestic intelligence services.⁷² In its annual report released at the end of June, Germany's domestic intelligence agency found that Iran engaged in a "quantitatively high level" of attempts to acquire nuclear, missile, biological, and chemical weapons-related technology and equipment.⁷³ While the report only covered 2015, the intelligence agency concluded, "It is safe to expect that Iran will continue its intensive

⁶⁵ Yaakov Katz, "Security and Defense: The fly in the spider web?" *The Jerusalem Post* (Israel), July 1, 2011. (<http://www.jpost.com/Defense/Security-and-Defense-The-fly-in-the-spider-web>). Also, note that in 2013, *Reuters* reported: "A regional security official with access to current intelligence assessments put Hezbollah's annual income at between \$800 million and \$1 billion, with 70-90 percent coming from Iran, the amount partly depending on the price of oil." See: Samia Nakhoul, "Special Report: Hezbollah gambles all in Syria," *Reuters*, September 26, 2013. (<http://www.reuters.com/article/us-syria-hezbollah-special-report-idUSBRE98P0AI20130926>)

⁶⁶ Eli Lake, "Iran Spends Billions to Prop Up Assad," *Bloomberg*, June 9, 2015. (<http://www.bloombergvie.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>)

⁶⁷ For an example, see: Behnam Ben Taleblu, "Don't Forget Iran's Ballistic Missiles," *War on the Rocks*, August 25, 2014. (<http://warontherocks.com/2014/08/dont-forget-irans-ballistic-missiles/>); "Including Ballistic Missiles in Negotiations with Iran," *Iran Task Force*, September 2014. (http://taskforceoniran.org/pdf/Ballistic_Missiles.pdf)

⁶⁸ Michael Elleman, "Iran's Ballistic Missile Program," *Testimony before the Senate Banking, Housing, and Urban Affairs Committee*, May 24, 2016. (http://www.banking.senate.gov/public/_cache/files/f64d023a-d6fc-4dc4-84a7-ea10ba8192cf/90DC029490361D182584B92FCAD76111.052416-elleman-testimony.pdf)

⁶⁹ As exemplified by the Emad missile. For more on that missile see: "Emad," *Military Edge*, accessed September 2, 2016. (<http://militaryedge.org/armaments/emad/>). Also, analysts almost uniformly concur that Iran is seeking to refine the accuracy of its missiles. For example, see: Anthony H. Cordesman, "Iran, Missiles, and Nuclear Weapons," *Center for Strategic & International Studies*, December 9, 2015. (<https://www.csis.org/analysis/iran-missiles-and-nuclear-weapons>)

⁷⁰ Adam Kredo, "Iran Satellite Launch Prompts Fear of Long Range Ballistic Missile Attack," *The Washington Free Beacon*, August 31, 2016. (<http://freebeacon.com/national-security/iran-satellite-launch-prompts-fear-long-range-ballistic-missile-attack/>)

⁷¹ This depends a great deal on if analysts believe Iran has platforms like the BM-25, for instance. For analysis of its recent reported test, see: Behnam Ben Taleblu, "Iran's Latest Test Shows It Is Doubling Down on Ballistic Missiles," *Foundation for Defense of Democracies*, July 20, 2016. (<http://www.defenddemocracy.org/media-hit/behnam-ben-taleblu-irans-latest-test-shows-it-doubling-down-on-ballistic-missiles/>)

⁷² See reference to this report in: Benjamin Weinthal, "Post-JCPOA, Iran Revs Up Nuclear, Missile Procurement in Germany," *Foundation for Defense of Democracies*, July 8, 2016. (<http://www.defenddemocracy.org/media-hit/benjamin-weinthal-post-jcpoa-iran-revs-up-nuclear-missile-procurement-in-germany/>)

⁷³ Benjamin Weinthal, "German intel report charges Iran seeking illegal nuke, missile tech," *Fox News*, July 7, 2016. (<http://www.foxnews.com/world/2016/07/07/german-intel-report-charges-iran-seeking-illegal-uke-missile-tech.html>)

procurement activities in Germany using clandestine methods to achieve its objectives.”⁷⁴ Tehran is also reportedly trying to do the same thing in Latin America.⁷⁵

Just recently, Iran’s Supreme Leader Ayatollah Ali Khamenei said, “In order to secure our population, our country and our future we have to increase our offensive capabilities as well as our defensive capabilities.”⁷⁶ Billions of dollars in cash, which is easier to hide, exchange and launder, and more difficult to trace, would go a long way in helping the supreme leader realize that goal.

Policy Recommendations

Congress is rightly concerned about the delivery of pallets of untraceable cash to the world’s leading state sponsor of terrorism when other methods were both available and feasible under U.S. law. Congress should consider legislation to prevent Iran from receiving any additional cash transfers. Congress should also consider applying the lessons learned to future ways in which sanctions may be unwound in ways that better protect U.S. national security and global financial standards.

1. Pass legislation requiring the administration to be fully transparent on details surrounding its transfer of cash to Iran

Congress should pass legislation to force the administration to answer a series of questions that until now it has refused to address. These include:

- 1) Was the Obama administration’s payment of \$1.7 billion in three separate cash shipments a unique occurrence or part of a pattern of cash payments as part of Tribunal settlements and/or sanctions relief?
- 2) If this situation was unique, did the administration agree to a cash payment scheme because it stood to receive a very valuable Iranian concession – the release of hostages, for example?
- 3) How much has Iran received in cash or in gold and other precious metals, in particular, since January 2014, when the interim nuclear agreement came into effect?
- 4) Did these cash transfers include billions of dollars sent to Iran between 2014 and 2016 as part of the administration’s push for a nuclear deal?
- 5) Did the administration approve the transfer of billions of dollars in cash to Iran because no formal financial channels existed, or did U.S. officials concede to Iranian demands for this cash?

⁷⁴ German Federal Ministry of the Interior, “2015 Annual Report on the Protection of the Constitution Facts and Trends,” English Summary, June 28, 2016, page 30. (<https://www.verfassungsschutz.de/embed/annual-report-2015-summary.pdf>); “Verfassungsschutzbericht 2015 vorgestellt (The Federal Office for the Protection of the Constitution’s 2015 report),” *Bundesamt für Verfassungsschutz* (Germany), June 28, 2016. (<https://www.verfassungsschutz.de/de/aktuelles/meldungen/me-20160628-vorstellung-vsb-2015>)

⁷⁵ See documentation and reference to an original Brazilian report in: Emanuele Ottolenghi, “Iran looks to Latin America to revive missile infrastructure,” *The Hill*, August 29, 2016. (<http://thehill.com/blogs/pundits-blog/international/293632-iran-looks-to-latin-america-to-revive-missile-infrastructure>)

⁷⁶ “Iran’s Khamenei says need to boost offensive military capabilities,” *Reuters*, August 31, 2016. (<http://www.reuters.com/article/us-iran-politics-khamenei-idUSKCN1162CJ>)

- 6) Which Iranian entities received the cash payments, and who were the ultimate beneficiaries of these payments – the Central Bank of Iran, the Defense Ministry, the IRGC, the Quds Force, the Ministry of Intelligence, or other state or quasi-state entities?
- 7) Did the Obama administration facilitate a massive and unprecedented cash transfer scheme to the leading state sponsor of terrorism with dangerous illicit finance consequences?

2. Prohibit large cash and precious metals transfers to and withdrawals by state sponsors of terrorism

As an immediate and practical stopgap measure, Congress should consider legislation to restrict cash and precious metals transfers to actors with a history of significant terror financing, money laundering, proliferation financing, and other illicit financial conduct. Specifically, the legislation should prevent all U.S. and foreign banks from facilitating large cash withdrawals for countries 1) designated as a state sponsor of terror; 2) designated as a jurisdiction of primary money laundering concern under the USA PATRIOT Act Section 311; or 3) included on the Financial Action Task Force's black list or designated as a jurisdiction with strategic anti-money laundering and counter-financing of terrorism deficiencies.

This restriction should extend to settlement claims for the Iran-United States Claims Tribunal. It is important for the United States to uphold its commitment to that tribunal and pay settlements and awards, but they should not be in cash or gold. Additionally, the legislation should prohibit the U.S. Treasury from providing licenses or comfort letters allowing foreign financial institutions to facilitate cash withdrawals for designated state actors. Any foreign financial institution that facilitates large cash withdrawals should be subject to sanctions.

The legislation should address a number of outstanding issues relating to victims of terrorism. First, Iran still owes American terrorism victims and their families more than \$55 billion in unpaid, outstanding damages awarded by American courts.⁷⁷ Congress should consider legislation that requires the administration to force Iran to settle these judgments before any further Tribunal claims or any other payments from the Treasury Department's Judgment Fund are released to Iran.⁷⁸

Second, in 2000, Congress passed the Victims of Trafficking and Violence Protection Act which allowed the U.S. government to compensate Iran's terrorism victims out of frozen or seized Iranian assets.⁷⁹ *Newsweek* revealed in January that the U.S. government compensated victims in amounts approximating \$400 million but never deducted, as promised to Congress and these victims, the funds from Iran's assets back in 2000. With the return of the \$400 million to Iran,

⁷⁷ "Total Awards – Iran," *Congressional Research Service*, September 2, 2016. (Available upon request)

⁷⁸ For example, Office of Senator Marc Rubio, Press Release, "Rubio Introduces Legislation to Prohibit Ransom, Stop Obama Administration's Payments to Iran," September 6, 2016. (<http://www.rubio.senate.gov/public/index.cfm/press-releases?ID=0F4AB24C-3B53-4211-90DF-092E13E5A10A>)

⁷⁹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1543, codified as amended at 22 U.S.C. §7101. (<https://www.congress.gov/106/plaws/publ386/PLAW-106publ386.pdf>)

U.S. taxpayers, rather than the Iranian regime, compensated the victims.⁸⁰ Congress could require the administration to explain the series of decisions that allowed Iran to skirt justice and left the American taxpayer to foot the bill for Iranian acts of terrorism.

3. Create a legal mechanism to move escrow funds to a global bank in a country where Iran wants to shop

The JPOA and JCPOA unfroze more than \$100 billion in Iranian oil escrow accounts and other overseas assets.⁸¹ Much of this money is likely in oil escrow accounts⁸² in countries including China, Turkey, India, South Korea, Japan, and Taiwan because they received exemptions to purchase Iranian oil during the height of U.S. sanctions. Prior to the JCPOA, Iran could only use these escrow funds on non-sanctionable goods in the countries where they were accumulating or to finance humanitarian transactions anywhere in the world. Tehran did not find enough goods to buy despite China's large consumer industries, Japan's world-class pharmaceuticals industry, India's large generic drug industry, and South Korea and Japan's sophisticated medical equipment. As a result, much of these funds accumulated before Iran could spend down the existing money.

During the nuclear negotiations, the P5+1 authorized Iranian access to \$11.9 billion from these oil escrow accounts. At the time, I recommended that, instead of repatriating the funds to Iran, they should be transferred to a select few qualified foreign banks in Europe that could enable Iran to pay for approved goods and services.⁸³ Iran would have had access to these oil revenues for the purposes of purchasing unlimited amounts of non-sanctionable goods – and there would be no logical reason for Iran to demand the payments in cash. The P5+1 could have authorized the funds to be transferred to whichever European bank was most convenient for Iran's commercial sector. The advantage of this structure was to deny the regime funds that it could use for illicit purposes.

The problem is exacerbated now that the JCPOA has unfrozen all of Iran's assets. During the congressional debate about the agreement, I recommended that instead of simply unfreezing the assets, a payment plan for the JCPOA could have been tied to verifiable implementation of specific commitments under the agreement to cease Iran's illicit financial activities. This

⁸⁰ Jonathan Broder, "Exclusive: U.S. Taxpayers, Not Tehran, Compensated Victims of Iranian Attacks Against Americans," *Newsweek*, January 22, 2016. (<http://www.newsweek.com/iran-nuclear-deal-terrorism-victims-families-stephen-flatow-barack-obama-418770>)

⁸¹ Mark Dubowitz, Annie Fixler, and Rachel Ziemba, "Iran's Mysterious Shrinking Reserves: Estimating the Value of Tehran's Foreign Assets," *Foundation for Defense of Democracies and Roubini Global Economics*, September 2015. (http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)

⁸² Kenneth Katzman, "Iran Sanctions," *Congressional Research Service*, May 18, 2016, page 22. (<http://fas.org/sgp/crs/mideast/RS20871.pdf>)

⁸³ Mark Dubowitz, "Examining What a Nuclear Iran Deal Means for Global Security," *Testimony before the House Foreign Affairs Subcommittee on the Middle East and North Africa*, November 20, 2014. (http://www.defenddemocracy.org/content/uploads/documents/Dubowitz_Testimony_Nov20_2014.pdf); Mark Dubowitz and Richard Goldberg, "Smart Relief After an Iran Deal," *Foundation for Defense of Democracies*, June 2014. (http://www.defenddemocracy.org/content/uploads/documents/Final_Smart_Sanctions_Report.pdf)

mechanism would have made it more difficult for Iran to fund terrorism, missile development, and other malign activities.

The JCPOA, however, simply unfroze the assets. Last August, the U.S. Treasury estimated that about \$50 billion of the \$100 billion were liquid, unallocated, and could be used by Iran.⁸⁴ But global banks do not want to reengage with Iran given its illicit finance activities – which Iranian officials readily admit.⁸⁵ Meanwhile, Iran’s leadership complains that Washington is preventing it from accessing its own money.⁸⁶ The Obama administration has acquiesced to these complaints in the past and allowed Iran to withdraw at least some of the funds in cash. Congress should be concerned that this could happen again. Might Iran demand a lump-sum withdrawal of its remaining overseas assets in cash?

To preempt this, Congress should work with the Treasury Department to provide licensing language for the transfer of the escrow funds to a Wolfsberg Group bank,⁸⁷ which could serve as the hub of a financial “white channel” for Iranian access to the remaining escrow funds and Tribunal-related payments. Alongside Treasury licensing, Congress should also legislate that none of Iran’s overseas assets can be repatriated in cash until Treasury certifies that Iran is no longer a “primary money laundering concern” or a state sponsor of terrorism.

Conclusion

The illicit financial consequences of cash transfers to Iran warrant further congressional investigation beyond whether such a payment was a ransom. It is important to investigate the possibility that the Obama administration authorized the movement in cash of many billions of dollars related to JPOA and JCPOA sanctions relief as well as Tribunal claims. The transfer of this cash, which is untraceable, easy to hide, and valuable to a regime like Iran’s with billions of dollars in illicit activities, would have severe consequences for American national security and that of our regional allies. If the administration refuses to answer fundamental questions about the nature and extent of the movement of cash to Iran, Congress needs to pass legislation to force much-needed transparency and disclosure.

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

⁸⁴ Adam Szubin, “Written Testimony of Adam J. Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Intelligence United States Senate Committee on Banking, Housing, And Urban Affairs,” *Testimony before the Senate Committee on Banking, Housing, And Urban Affairs*, August 5, 2015. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0144.aspx>)

⁸⁵ Najmeh Bozorgmehr, “Iran’s ‘outdated’ banks hamper efforts to rejoin global economy,” *Financial Times* (UK), January 19, 2016. (<http://www.ft.com/cms/s/0/39ebfc92-b4a0-11e5-b147-e5e5bba42e51.html#axzz4J2pOc8J7>)

⁸⁶ For example, Jay Solomon, Asa Fitch, and Benoit Faucon, “Iran’s Central Bank Chief Warns Banking-Access Issues Jeopardize Nuclear Deal,” *The Wall Street Journal*, April 15, 2016. (<http://www.wsj.com/articles/irans-central-bank-chief-warns-banking-access-issues-jeopardize-nuclear-deal-1460745930>)

⁸⁷ The Wolfsberg Group banks include: Banco Santander, Bank of America, Bank of Tokyo-Mitsubishi UFJ, Barclays, HSBC, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, J.P. Morgan Chase, Societe Generale, Standard Chartered, and UBS. These banks have developed robust standards and practices to combat money laundering. “Global Banks: Global Standards,” *The Wolfsberg Group*, accessed September 1, 2016. (<http://www.wolfsberg-principles.com/>)