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Chairman Fitzpatrick, Ranking Member Lynch, it is my honor to testify before this task force. I am here today to discuss my experiences combating Iranian-sponsored terrorism as a private litigator. Though the efforts of my firm on behalf of victims of Iranian terrorism are certainly relevant to the current nuclear deal with Iran, I have neither the technical nor the foreign policy experience to evaluate the quality of that agreement. Rather, on behalf of my clients I would like to present this Task Force with my experiences gleaned from 20 years of reconstructing terrorist attacks in federal court. These experiences may help the task force understand the impact of the nuclear agreement on terrorism finance. I would also like to propose a few ways in which the U.S. government can combat Iranian terrorism and compensate its victims, regardless of what kind of nuclear deal is reached.

Since the early 1990s, I have represented victims of Iranian-sponsored terrorism in federal court. Over my career, my clients have won over \$17 billion in judgments against Iran, Sudan, Syria and Libya for their support of international terrorism. These victories were made possible by the support of ten consecutive Congresses. In 1996, Congress passed the Flatow Amendment¹ which granted U.S. citizens the ability to seek monetary damages against state sponsors of terrorism, such as Iran. Congress has consistently demonstrated strong support for private antiterrorism litigation through several subsequent amendments, and the passage of the Terrorism Risk Insurance Act,² which includes a powerful tool for enforcing judgments against state sponsors of terrorism.

¹ Flatow Amendment, Pub. L. No. 104-208 § 589, 110 Stat. 3009-172 (1996) (codified at 28 U.S.C. § 1605 (Supp. 2002)).

² Terrorism Risk Insurance Act of 2002 (“TRIA”), Pub. L. No. 107-297, 116 Stat. 2322 (2002) (codified at 28 U.S.C. § 1610 note).

In several cases proceeding under this statutory framework, my firm has provided federal judges with sufficient evidence to prove that Iran has sponsored the murder of hundreds of U.S. citizens. While collecting this evidence, I gained considerable insight into how Iran conducts its foreign policy through financing terrorism and proxy militia groups. Additionally, given the decades of experience my firm has in enforcing federal court judgments against Iran, we and several collaborating firms are the leading private-sector experts on detecting Iranian money launderers and attaching hidden Iranian assets. At this committee's request, I am pleased to share my experiences and discuss how I expect Iran will allocate the estimated \$100 billion in overseas assets that will become unfrozen should the current nuclear deal come into effect.

Moreover, given the close relationship between our work and the regulatory functions of OFAC (U.S. Department of Treasury's Office of Foreign Asset Control), my clients have made several requests for assistance from various administrative agencies to—among other things—enforce financial sanctions against institutions actively laundering money for Iran. In one recent instance, OFAC ignored my clients' (and a federal judge's) request; in another recent instance DOJ promised action and then began a study instead. While I have credited and will always credit OFAC and DOJ for the heroic antiterrorism activities that they have carried out, these agencies' recent failures to use every antiterrorism tool legally available to them not only denies justice to my clients, it ultimately encourages Iran to sponsor further terrorism.

I. Iran Accomplishes its Foreign Policy Objectives through Proxy War on the United States

First, no one will be surprised to hear that Iran is virtually certain to spend a portion of whatever money is released to it by sponsoring the murder of United States citizens. Though I lack the expertise to determine whether those deaths are a fair price to pay for a nuclear deal,

there is ample evidence that this is a cost we will suffer. Indeed, Iran's Supreme Leader Ali Khamenei has reiterated that Iran's support for Syria, Hezbollah and Hamas will not change as a result of the nuclear deal. As Iran lacks the force projection capabilities of the United States, it conducts its foreign policy through training, financing and supplying proxy groups such as Hezbollah, which in turn fight Iran's overseas wars. For example, I represent the families of three U.S. soldiers who in 2007 were abducted from the Provincial Joint Command Center (PJCC) in Karbala, Iraq by Iranian trained and financed militants, then shot to death while handcuffed in the back of their abductors' SUVs. These soldiers, who received posthumous prisoner-of-war medals, were extrajudicially executed while under POW status by members of an Iranian-trained and directed terrorist cell. The story of these murdered prisoners of war perfectly captures Iran's toxic brand of foreign policy.

Iran viewed the U.S. invasion of Iraq as an opportunity to gain influence over its neighbor and former enemy by sponsoring proxy paramilitary cells to operate in Iraq. These cells are known as "Special Groups." The Iranian Revolutionary Guard Corps' Quds Force is responsible for the training, direction and maintenance of these groups. According to the April 30, 2008 U.S. Department of State Report on State Sponsors of Terrorism:³

Despite its pledge to support the stabilization of Iraq, Iranian authorities continued to provide lethal support, including weapons, training, funding, and guidance, to some Iraqi militant groups that target Coalition and Iraqi security forces and Iraqi civilians.

Specifically, the State Department reported that the IRGC-Quds Force:

continued to provide Iraqi militants with Iranian-produced advanced rockets, sniper rifles, automatic weapons, mortars that have killed thousands of Coalition and Iraqi Forces, and explosively formed projectiles (EFPs) that have a higher lethality rate than

³ DEP'T OF STATE, STATE SPONSORS OF TERRORISM OVERVIEW (Apr. 30, 2008), available at <http://www.state.gov/j/ct/rls/crt/2007/103711.htm>.

other types of improvised explosive devices (IEDs), and are specially designed to defeat armored vehicles used by Coalition Forces.”⁴

Additionally, in an April 2008 statement to the Senate Committee on the Armed Forces,⁵ the U.S. Commander of the Coalition Forces in Iraq echoed this sentiment noting that “Iran has fueled the violence [in Iraq] in a particularly damaging way, through its lethal support to these Special Groups.” Though reports on fatalities from Iranian EFPs vary, at his Joint Chiefs of Staff Chair confirmation hearing, Gen. Joseph Dunford estimated that Iranian activity in Iraq has resulted in the deaths of at least 500 U.S. servicemen.⁶

When United States forces arrested several Iranian agents operating covertly in Iraq in an effort to deter these activities, Iran retaliated by carrying out the attack on the Karbala PJCC. In this attack, one U.S. soldier was killed in combat, while four others were abducted and executed. According to a 2012 Treasury press release,⁷ the local commander of the Karbala attack was Ali-Mussa Daqduq, an Iranian-trained Hezbollah commander tasked by Iran with creating Iraqi “Special Groups.” The local militants who carried out the attack were members of the Khazali Network, an Iraqi “Special Group,” commanded by Qais and Laith Khazali.

The subsequent detention of Daqduq and Qais Khazali, and evidence obtained at the scene of their arrest removed all doubt that Iran had organized this attack. According to Gen. Petraeus, the interrogation of Daqduq and Khazali “revealed that Iran provided the network

⁴ *Id.*

⁵ *The Situation in Iraq and Progress Made by the Government of Iraq in Meeting Benchmarks and Achieving Reconciliation: Hearings Before the S. Comm. on the Armed Services*, 110th Cong. 7–20 (statement of Gen. David H. Petraeus, USA, Commander, Multi-National Force–Iraq) Report to Congress on the Situation in Iraq (April 8, 9, and 10, 2008), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg45666/html/CHRG-110shrg45666.htm>.

⁶ Andrew deGrandpre and Andrew Tilghman, *Iran Linked to Deaths of 500 U.S. Troops in Iraq, Afghanistan*, MIL. TIMES (July 15, 2015), <http://www.militarytimes.com/story/military/capitol-hill/2015/07/14/iran-linked-to-deaths-of-500-us-troops-in-iraq-afghanistan/30131097/>.

⁷ Press Release, U.S. Dep’t. of the Treasury, Treasury Designates Hizballah Commander Responsible for American Deaths in Iraq (Nov. 19, 2012), <http://www.treasury.gov/press-center/press-releases/Pages/tg1775.aspx>.

substantial funding, training on Iranian soil, advanced explosive munitions and technologies as well as arms and ammunition, and in some cases advice and even a degree of direction.” Gen. Petraeus added that “there's no question, again, that Iranian financing is taking place through the Quds force of the Iranian Republican Guards Corps.”⁸ Shockingly, both Daqduq and Khazali were turned over to the Iraqi government, which released both of them.

According to a July 2007 statement by Brig. Gen. Kevin J. Bergner, Iran provided between \$750,000 and \$3,000,000 per year in funding to Iraqi Special Groups. Considering that this was during the height of financial sanctions against Iran, and appeared not to include the cost of training and arming these groups, I expect these numbers to rise once they regain access to billions of dollars in frozen assets.

The Karbala attack is just one example of Iran pursuing its foreign policy objectives by sponsoring terrorist attacks on U.S. citizens. When Iran opposed the presence of Western peacekeepers in Lebanon, it sponsored and directed the 1983 Beirut Barracks Bombing. In this attack on a U.S. Marine barracks, Hezbollah detonated the largest non-nuclear bomb in history, killing 241 unarmed U.S. servicemen. We represent the Beirut Marines and their families, and established Iran’s role in financing and directing this attack in the U.S. District Court for the District of Columbia.⁹ In 2004 Iran erected a monument to the martyred truck bomb driver, which depicts U.S. troops picking up dead bodies.

Similarly, when Iran opposed the Oslo Peace Process it sponsored bus bombings in Israel on routes known to be frequented by young, American tourists. The Oslo I Accord was signed in 1993, and Oslo II in 1995. My firm established in federal court that Iran sponsored the separate

⁸ Sgt. Sara Wood, *Petraeus: Interrogations Reveal Iranian Influence in Iraq*, DOD NEWS, Apr. 26, 2007, <http://www.defense.gov/news/newsarticle.aspx?id=32963>.

⁹ *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46 (D.D.C. 2003).

attacks that killed U.S. citizens Alisa Flatow in 1995, and Sara Duker and Matthew Eisenfeld in 1996, as a means of disrupting the Israeli-Palestinian peace process.¹⁰ Secretary Kerry has publicly stated that he intends to pursue further negotiations between Israel and the Palestinian Authority. If history is any indication, Iran will view whatever success Secretary Kerry enjoys in the peace process as a threat and therefore sponsor further attacks on Americans in Israel to disrupt the negotiations. Because of Iran's perverse influence, the more successful Secretary Kerry is, the more dangerous Israel will become for Americans. Furthermore, this deadly dynamic will seriously threaten the stability of whatever U.S.-Iran nuclear deal ultimately emerges from the various reviews underway.

Since the 1980s Iran has accomplished its foreign policy objectives—and undermined those of the U.S. by sponsoring the murders of U.S. citizens abroad. Providing additional funding to a state that is actively waging proxy warfare against the United States will certainly lead to the death of Americans. The last time the United States released billions of dollars of frozen assets to Iran was in accordance with the 1981 Algiers Accords. Iran spent the next 33 months creating and then building up Hezbollah as a proxy army, which included the financing and construction of the largest non-nuclear explosive device ever constructed, and then using that weapon to kill 241 unarmed U.S. Marines in Beirut, Lebanon in 1983. Again, I take no position, nor claim any expertise, on whether or not this is a cost we should bear in order to obtain a nuclear deal with Iran. I, on behalf of my clients, merely wish to ensure that this cost is taken into account by our policy makers.

¹⁰ *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1 (D.D.C. 1998); *Eisenfeld v. Islamic Republic of Iran*, 172 F. Supp. 2d 1 (D.D.C. 2000).

II. Iran Continues to Launder Money through the United States in Violation of U.S. Financial Sanctions

Clearstream, SA, an international financial institution based in Luxembourg and owned by the Deutsche Börse Group of Germany, has been investing Iranian government funds in New York in violation of U.S. law. According to a 2014 settlement between Clearstream and the Department of the Treasury's Office of Foreign Asset Control ("OFAC"), Clearstream was found to have illegally carried out financial services for the Iranian Central Bank. OFAC found that the apparent violations "were reckless and constitute[d] an egregious case" of money laundering.¹¹ Clearstream had reportedly told OFAC that it no longer conducts business with the Iranian Central Bank.

Under what is referred to as a "friendly subpoena" from my clients, OFAC shared the location of nearly \$2 billion dollars in Iranian bonds held on Clearstream's books and maintained in an account with Citibank with the victims of the 1983 Beirut Barracks Bombing. Based on their judgment against Iran, my clients obtained a turnover order for those bonds from the U.S. District Court for the Southern District of New York, which was upheld by the U.S. Court of Appeals for the Second Circuit. Clearstream and Citibank both settled the case after losing at the district court, but Bank Markazi, Iran's central bank, continued the appeal and lost. Bank Markazi has now raised a frivolous constitutional challenge to a U.S. antiterrorism statute at the U.S. Supreme Court. After receiving Bank Markazi's petition for review, the Supreme Court invited the Solicitor General to comment on the constitutionality of this important antiterrorism statute. That was in April. The Solicitor General failed to respond before the end of the Supreme Court's session, leaving my clients in indefinite stasis, continuing into next year.

¹¹ Press Release, U.S. Dep't of the Treasury, Treasury Department Reaches Landmark \$152 Million Settlement with Clearstream Banking, S.A. (Jan. 23, 2014), <http://www.treasury.gov/press-center/press-releases/Pages/jl2264.aspx>.

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While I understand that the Solicitor General is busy, getting compensation for the families of unarmed marines killed in an Iranian terrorist attack more than 30 years ago should be a top priority.

Additionally, the victims of the 1983 Beirut Barracks Bombing and their families, approximately 1,350 U.S. citizens, have filed a second suit against Clearstream in federal court in New York. These Marines and their families discovered that between 2008 and 2012, Clearstream intentionally processed through its New York account at JPMorgan Chase more than 60 U.S.-dollar transactions totaling \$1.67 billion. These transactions consisted of interest and principal redemption payments on the same bonds, owned by Iran, that were the subject of Clearstream's 2008 settlement with OFAC. Despite that settlement, Clearstream never reported these transactions to OFAC, and JPMorgan only reported them after we filed suit against them. Clearstream has admitted that it made these payments for the sole benefit of the Central Bank of Iran. However, Clearstream argued in Court that it can skirt the prohibitions of U.S. sanctions by an internal Clearstream book entry: "[t]he only transfer to Luxembourg is the book entry, and it is not a transfer. It is just a simultaneous book entry."

Clearstream conceded in federal court that the bond payments owned by Iran were transferred from New York to Luxembourg by an internal "simultaneous book entry" to avoid the prohibitions on the provision of services to the Iranian government contained in the Iranian Transactions and Sanctions Regulations ("ITSRs") and Executive Order 13599 (Blocking Property of the Government of Iran and Iranian Financial Institutions).¹² On December 9, 2014

¹² *Peterson v. Islamic Republic of Iran*, Case No. 13-9195, DE 166 at 4-5 (Feb. 20, 2015) ("The parties do not contest that the Remaining Assets exist in approximately the amount alleged, that Bank Markazi is the Central Bank of Iran, that it was also the beneficial owner of the Remaining Bonds and is now the beneficial owner of the Remaining Assets.")

the District Court publicly requested OFAC's views on whether Clearstream's positions exposed a "hole" in U.S. sanctions against Iran, but OFAC has not responded.¹³ In the Administration's silence, the District Court adopted Clearstream's fiction that \$1.67 Billion dollars of Iran's money was transferred from New York to Luxembourg despite the prohibitions in the ITSRs and Executive Order 13599, stating that plaintiffs "have no private right of action for a violation of this Executive Order."¹⁴

Clearstream's transfer by book entry appears to be nothing more than the world's largest "electronic hawala" banking operation. In the past, OFAC prosecuted small grocers for their use of hawala practices to support terrorists, but in this case OFAC has remained silent. Under Clearstream's interpretation of OFAC's regulations, a financial institution with a substantial presence in the U.S is free to provide services to the Iranian government (or any other sanctioned entity) by processing funds transfers for such entities as long as that financial institution adopts the fiction of maintaining its account records exclusively outside the United States. If true, this position would allow Iran, or any other sanctioned entity, to bypass all financial sanctions imposed by Congress and the President.

My firm also represents a number of victims of the simultaneous 1998 Al Qaeda bombings of the U.S. Embassies in Nairobi, Kenya and Da es Salaam, Tanzania. These individuals were Kenyan or Tanzanian national employees of the U.S. government who helped run the Embassies. On behalf of these U.S. government employees and their family members, my firm proved that Iran and Sudan were jointly responsible for the attack, and won a judgment in federal court.¹⁵ Based in part upon the testimony of my clients, DOJ pressured BNP Paribas

¹³ *Peterson v. Islamic Republic of Iran*, Case No. 13-9195, DE 160 (Dec. 09, 2014).

¹⁴ *Peterson v. Islamic Republic of Iran*, Case No. 13-9195, DE 166 at 15 (Feb. 20, 2015)

¹⁵ *Amduso v. Republic of Sudan*, 826 F. Supp. 2d 128 (D.D.C. 2011)

SA, a French Bank and money launderer for Sudan and Iran, to pay a \$9 billion settlement for violating U.S. sanctions by laundering countless billions of dollars for Sudan and Iran prior to the bombings and for many years after. When asked by the sentencing judge what they would do with the money, DOJ attorneys responded that they would “remit” some of the funds to victims of crimes. When we contacted DOJ, we received similar assurances.

On the day of BNP Paribas’ sentencing, my clients filled the back of the courtroom, waiting to hear what kind of remission program DOJ would implement. Instead, they listened to DOJ attorneys explain why they would receive nothing until after the government conducted a study of indefinite scope and duration. Under the DOJ study, any party, of any nationality, anywhere in the world, can submit an application to a DOJ website¹⁶ if they believe they have been harmed by Sudan, Iran or Cuba. An Iranian baker living in Iran who had his bakery seized, or any of the millions of victims of Sudanese genocide have just as much right to submit a claim as my clients, employees of the U.S. government killed or injured in that service. Meanwhile, we wait indefinitely as the DOJ conducts its study. At least twenty five victims of the embassy bombing have passed away since we filed this lawsuit. Some of these individuals died from survivable illnesses or injuries because they could not afford to treat them. Further delay is simply unacceptable. Nonetheless, DOJ explicitly stated to us that the study will take “many years.”

DOJ would likely argue that regardless of whether or not we get justice for government employees killed in the line of duty, they have still taken money away from Iran’s money launderers. This is true, but misses the point. Private antiterrorism litigation is a powerful tool

¹⁶<http://www.usvbnpp.com/>.

for rooting out hidden assets. As mentioned above, my firm and co-counsel found \$1.67 billion dollars in Iranian assets that Clearstream never reported to OFAC. Additionally, information garnered on behalf of my clients, the Flatows, led to the DOJ's investigation of the Iranian puppet organization, the Alavi Foundation. Through the efforts of private litigants, Iran's ownership of the Manhattan skyscraper at 650 Fifth Avenue was discovered, among other assets. Even DOJ's victory in the BNP Paribas case relied in part upon the testimony of my clients. In other words, encouraging private litigation, which is the cornerstone Congressional purpose underlying the numerous amendments enacted during the course of ten successive Congresses, is in the interest of the United States. Thus, disregarding the needs of private antiterrorism litigants is shortsighted, as it discourages one of the government's most active and effective sources of information on hidden Iranian assets.

Certainly, OFAC and the Department of Justice deserve credit for the wide variety of enforcement proceedings they have carried out against sanctions violators. However, various administrative agencies have made recent decisions that raise concerns about their continuing willingness to carry out their legal obligations to enforce antiterrorism sanctions against Iran after nuclear sanctions are removed:

- OFAC's allowing a gaping loophole in U.S. sanctions to persist after at least \$1.67 billion dollars of Iranian money is publicly funneled through it.
- The Solicitor General's silence as Iran's central bank raises constitutional challenges to U.S. antiterrorism statutes before the Supreme Court.
- The DOJ's decision to renege on its promise to remit laundered money to the victims of the Iran and Sudan-sponsored East Africa Embassy Bombings.

This Task Force could strengthen antiterrorism sanctions against Iran and help obtain justice for the victims of Iranian terrorism by encouraging OFAC, DOJ and the Solicitor General to take swift action on these issues. Indeed, the Task Force should think of terror victim compensation as a form of targeted sanction against Iran. By cooperating with private litigants, these agencies can increase the cost of terrorism for Iran and its money launderers, thereby decreasing the likelihood that Iran will spend any of its nuclear deal windfall on terrorism.

III. In Our Experience, Iran has Not Conducted Itself as a Reliable Negotiating Party

A few years ago, my firm reached a settlement agreement with Iran on behalf of my clients, the Flatows, Dukers and Eisenfelds. As mentioned above, these families all had children killed in Iran-sponsored bus bombings in the late 1990s meant to interfere with the Oslo Peace Accords. While conducting enforcement of their judgments in Italy, the Italian government arranged for mediation between my clients and Iran through a professional diplomat from a moderate Arab state. Through this process the final terms of a settlement were reached; my clients agreed to sign releases in exchange for a lump sum payment to be made by wire transfer. While our European co-counsel carried the executed releases to this moderate Arab state and met with the designated intermediary as planned, Iran never showed up and never made the wire transfer. Iran had negotiated with us for months and then abandoned our final agreement without any stated reason, or any communication at all. I am not a diplomat by training, and my interactions with the Iranian government are obviously limited, but this experience has left me with the impression that Iran's word is not to be trusted. I lack the expertise to determine whether the current nuclear deal has enforcement mechanisms sufficient to the task of dealing with Iran's duplicity. Nor do I have any information regarding the likelihood of Iran honoring

the current nuclear deal. However, I hope that our policy makers are not operating under the assumption that Iran has necessarily negotiated this agreement in good faith.

Moreover, it appears that the nuclear agreement has already has an adverse effect on my firm's discussions with the Assad family in Syria. Until recently, my firm was engaged in negotiation with the Maklouf side of the Assad family (the Assad regime's business managers headed by President Bashar al-Assad's maternal uncle) on behalf of the families of two beheading victims. As the nuclear negotiations with Iran progressed, Maklouf became increasingly recalcitrant, knowing that the Assad regime would receive an infusion of cash when Iran regained access to its overseas assets. Syria is under no pressure to negotiate with my clients because it now has substantially less financial incentive to pursue normalization of relations with the United States. Syria seems not to care that my firm is seizing their assets hidden across the United States—we recently collected more than \$80 million dollars in Syrian assets hidden in Chicago—because Iran will provide them with financial support.

In contrast, in 2008 Libya settled the claims of all U.S. victims of Libyan terrorism, including a great number of my clients, through the U.S. Libya Claims Settlement Agreement, an executive agreement. Before that agreement normalized diplomatic relations between the U.S. and Libya, my firm had been in active negotiations with the Qaddafi regime while applying financial pressure through enforcement actions in U.S. federal courts. Indeed, it was arguably pressure from private antiterrorism litigants that motivated Libya to normalize relations with the U.S. To give the State Department credit where it is due, they stepped up and closed that deal, settling all antiterrorism litigation against Libya.

IV. Conclusion

Again, this statement is meant only to inform the Task Force of my experiences in litigating against and negotiating with Iran. I offer no opinion on, nor have expertise to evaluate, the current nuclear deal with Iran. Rather, I suggest various ways in which administrative agencies could support the victims of Iranian terrorism so as to mitigate the inevitable human cost of increasing funding to Iran.

In preparing these remarks I spoke with my client, Stephen Flatow, the father of Alisa Flatow. Alisa was killed at age 20 in a 1995 Iranian-sponsored bus bombing in Israel meant to disrupt the Oslo Peace Process. Stephen and I have spent recent decades taking money away from Iran under the theory that increasing the cost of financing terrorism will discourage Iran from killing Americans. There is no question that returning frozen assets to Iran will increase Iran's capacity to carry out terrorism against American targets. Stephen wished me to convey to you his hope that our policy makers consider the human cost of any deal with Iran. While policy makers must often weigh terrible consequences in the pursuit of a greater good, we hope that the lives of American terrorism victims, past and future, are given proper consideration.

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Respectfully submitted,

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