

FUELING TERROR: THE DANGERS OF RANSOM PAYMENTS TO IRAN

HEARING

BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
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FUELING TERROR: THE DANGERS OF RANSOM PAYMENTS TO IRAN

Thursday, September 8, 2016

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 2128, Rayburn House Office Building, Hon. Sean P. Duffy [chairman of the subcommittee] presiding.

Members present: Representatives Duffy, Fitzpatrick, Mulvaney, Hultgren, Wagner, Tipton, Poliquin, Hill; Green, Capuano, Cleaver, Ellison, Delaney, Beatty, Heck, and Vargas.

Ex officio present: Representatives Hensarling and Waters.

Also present: Representatives Royce, Pittenger, Guinta, and Kildee.

Chairman DUFFY. The Subcommittee on Oversight and Investigations will come to order.

Today's hearing is entitled, "Fueling Terror: The Dangers of Ransom Payments to Iran."

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee may participate in today's hearing for the purposes of making an opening statement and questioning the witnesses.

The Chair now recognizes himself for 2½ minutes for an opening statement.

Today's hearing will examine the Obama Administration's \$1.7 billion cash payment to Iran to settle longstanding claims predating the Iran revolution. While the settlement was disclosed in January, new details about the payments surfaced in August when The Wall Street Journal reported that \$400 million of that payment was converted into Swiss francs and euros and then flown to Iran in cash on the same day that five American detainees were released from the Islamic Republic.

On Tuesday Administration officials were forced to admit that the remaining \$1.3 billion it paid to Iran in interest was also handed over in cold, hard cash. Despite vigorous denials that there was any link between the payment and the release of American prisoners, the evidence presented by the Administration makes it difficult to believe.

Iran officials certainly believe that this was a ransom payment. A Revolutionary Guard commander said on state media that, "Taking this much money back was in return for the release of the Americans," period, end quote. And one of the prisoners, Pastor Saeed Abedini, recalled that while waiting to be freed Iran police told him that, "We are waiting for another plane. So if the plane doesn't come we never let you go." Sounds like ransom to me.

In an effort to corroborate the Administration's claims, this committee requested records about the payment from Treasury and the Department of Justice more than a month ago. And to date, the self-proclaimed most transparent Administration in our history has failed to provide any—not one document—to this committee. And the witnesses here today only agreed to appear under threat of subpoena.

With jurisdiction over terror financing, this committee has a right and a responsibility to understand the facts surrounding this peculiar payment. While there is much that we don't know, we can be sure that Iran is committed to its support for terrorist groups like Hezbollah, the enemy of Israel and the West, whose leader earlier in the year admitted that he virtually gets all of his funding from the Iranian mullahs.

Iran's support also goes to Bashar al-Assad, the Syrian dictator who uses chemical weapons on his own civilian people. I look forward to an explanation from our witnesses why we would make it so easy for Iran to continue to fuel terrorism by U.S. taxpayer expense.

With that, my time has expired, and I yield to the gentlemen from Texas, Mr. Green, the ranking member of the subcommittee, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate greatly the opportunity to bring some clarity to this issue and to a good many other issues. William Cullen Bryant is right: "Truth, crushed to earth, shall rise again."

So today I would like to take the opportunity to resurrect the truth, or resuscitate the truth, if you will. And the truth is this: The genesis of this hearing is a meeting that took place at or near the time President Obama was being sworn in, when a group of very powerful Republicans met and made a conscious decision to do everything they could to block any and everything the President attempted to do.

At that meeting were the top leaders of the House of Representatives to date. At that meeting was a person who sits on this very committee, and people from that day forward have been committed to blocking everything that the President brings forth. And the truth be told, they have done a fairly good job.

So I don't agree with the style of the hearing today. I think that a better style for this hearing would be, "Don't Bother Me with Facts; My Mind is Made Up." I think a better style for the hearing would be, "We Kept Our Word." Because that is exactly what is happening today.

We have a circumstance wherein Americans who were being held prisoner have been brought home. The exchange was money that was owed to the people who were holding the Americans, and we are condemning that. You would think that we would have a pa-

rade; the President would be saluted; the people who negotiated would be applauded.

But this committee chooses to do what it has consistently done, and that is to deny this President any success that they can block. Let's just look at the evidence of what I—of which I speak.

Dodd-Frank: They fought it tooth and nail and are still fighting it and would, if they could, today eliminate the Consumer Financial Protection Bureau.

Obamacare: They have not replaced it. They don't have a replacement for it. They will repeal it, but they don't have a replacement. And we have voted more than 50 times to repeal Obamacare, the Affordable Care Act.

The Ex-Im Bank, something that has traditionally been agreed upon that has been a great benefit to this country: We had to have an unusual process to take place to keep the Ex-Im Bank functioning, and still we cannot make loans over \$10 million because a committee on the Senate side refuses to appoint additional appointees to that Ex-Im Bank board.

We have refused—not we; the Republicans—to even discuss the budget. Usually the budget comes up, there is a hearing, it is discussed, and a decision is made. They have refused to discuss the budget.

And finally, the Supreme Court: Who would have thought that we would hold up the Supreme Court's nomination simply because of an agenda that has been set to make sure that this President does not have a record of success, a track record of success.

So here is where we are, and I am going to keep bringing it up. This won't be the last time today. Here is where we are: We have people on this committee who were at that hearing—at least one person—that meeting that took place. We have two members of the senior leadership in the House who were there and they are honoring their commitment.

That is what this hearing is about today—keeping their word, making sure that they do everything that they can to stop this President.

As a matter of fact, what started out as a simple stop-the-President has gone on steroids now and it is literally an effort to destroy the presidency, it seems to some—not all. This is disgraceful, if you want to know the truth.

I do not believe that this is the conduct in which a committee of the stature of the Financial Services Committee should be engaged. We will become the “Kerfuffle Committee” if we are not careful.

I yield back the balance of my time.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the chairman of the full Financial Services Committee, the gentleman from Texas, Mr. Hensarling, for 2½ minutes.

Chairman HENSARLING. Thank you, Mr. Chairman, for convening an incredibly important hearing today.

Any person here today can take out their iPhone or electronic device and Google Merriam Webster's definition of “ransom.” Quote, “Money that is paid in order to free someone who has been captured or kidnapped.”

The American people want to know, did this Administration pay ransom? Does it meet the legal definition? And if it doesn't, did the actions of this Administration tragically achieve the same end, which is to incent terrorists to kidnap American citizens, and to put a price on the head of every tourist, soldier, sailor, airman, and Marine who serves or visits overseas?

Was the cash transaction legal? My guess is if any private citizen had done what this Administration had done, they would be indicted on money laundering. Instead, the Administration calls it "diplomacy."

Was the cash transaction legal? If so, should it be legal? And if perfectly legal, why did the Administration go to such great lengths to hide it from the American people? Why did it take a Wall Street Journal expose to bring the true nature of this transaction to our attention?

Why did I have to threaten subpoenas to get the Administration to show up in the first place? Did the Iranians demand that this payment be made in cash? We have a Terrorism Financing Task Force here that knows it is cash transactions that fuel terrorism.

And it is the Obama State Department which has labeled Iran, "the world's foremost state sponsor of terrorism." It is the President's Treasury Department that has classified it as, "A jurisdiction of primary money laundering concern."

Then why, Mr. Chairman, why were they given \$1.7 billion, \$1.3 billion of which was taxpayer money that could have gone to the United States Army but instead apparently is going to the Iranian Revolutionary Guard? The American people deserve answers.

Mr. Chairman, thank you for demanding the answers and calling this hearing. I yield back.

Chairman DUFFY. The chairman yields back.

I now want to welcome our panel and witnesses today.

I will now introduce our first panel. Mr. Backemeyer is the State Department's Deputy Assistant Secretary for Iran Affairs, and the former Deputy Coordinator for Sanction Policy.

Ms. Grosh is the State Department's Assistant Legal Advisor in the Office of Internal Claims and Investigative Disputes.

Ms. McCord is the Principal Deputy Assistant Attorney General in the National Security Division of the Justice Department.

And Mr. Ahern is the Assistant General Counsel for Enforcement and Intelligence at the Treasury Department.

Welcome, all of you.

In a moment, the witnesses will be recognized for 5 minutes to give an oral presentation of their testimony. And without objection, the witnesses' written statements will be made a part of the record.

I would note that I don't believe you have provided written statements, but I anticipate those statements will be coming. And so, the Chair intends to submit any witness statements pursuant to general leave for inclusion in the hearing record.

Once witnesses have finished presenting their testimony, each member of the subcommittee will have 5 minutes within which to ask the panel questions.

On your table I would just note there are three lights: green means go; yellow means you have 1 minute left; and red means your time is up.

And with that, Mr. Backemeyer, you are now recognized for 5 minutes for your opening statement.

STATEMENT OF CHRISTOPHER BACKEMEYER, DEPUTY ASSISTANT SECRETARY FOR IRAN, U.S. DEPARTMENT OF STATE

Mr. BACKEMEYER. Thank you, Mr. Chairman. As you said, my name is Chris Backemeyer and I am the Deputy Assistant Secretary of State for Iranian affairs. I am a career State Department official and I have worked on Iran for the better part of the last decade.

I welcome the opportunity to come before the committee as well as the American people and describe and correct some of the misunderstandings about the about The Hague Claims Tribunal settlement that was reached in January of this year.

As you know, President Obama and Secretary Kerry announced the settlement on January 17th. When it was concluded it specifically noted that the settlement involved \$400 million for the FMS Trust Fund that had been established with Iranian funds, as well as \$1.3 billion as a compromise on interest on this sum. This was also posted on the State Department website.

After the announcement we received inquiries from Congress, and in each case we offered to provide closed briefings to members and staff. And one member requested such a briefing, which we did provide.

The Hague Claims Settlement resurfaced in the press again recently, as you have noted. And again we received questions, and again we offered to provide a closed briefing. Two days ago, we provided two such briefings to House staff and to Senate staff.

And we are happy to be here today to continue discussing this issue and all of the things that we have accomplished for the American people through our diplomatic efforts toward Iran.

I should note at the outset that there will be limitations to what I and my colleagues can say in an open setting. As I mentioned earlier, we have previously offered closed briefings because there are a number of litigation and diplomatic sensitivities that could jeopardize U.S. interests if we were to go into too much detail.

Specifically, as my colleague will explain in a minute, the settlement in January addressed a significant part but only one part of a much larger multibillion-dollar claim which is being actively litigated. Iran has a long history of mining the U.S. public record for ammunition to use us against—use against us in claims litigation. This includes statements that have been made in congressional briefings.

As a result, it is important—it is extremely important that we not say anything in a public setting that would jeopardize our defenses to Iran's remaining claims of the tribunal.

With those limitations, though, I will proceed to provide you with as much information as I can. I think the best way to start is to take a moment to summarize the series of events that occurred on the weekend of January 16th and 17th, a weekend where we finalized a number of diplomatic efforts that advanced U.S. interests in significant ways.

As you may be aware, at this time the United States was pursuing multiple lines of effort that we sought to finalize on or around the same time in mid-January. First, we were on the verge of implementing the nuclear deal and the International Atomic Energy Agency, or IAEA, was in the process of verifying that Iran had met all of its commitments under the deal.

On that weekend Iran's breakout timeline went from less than 90 days to over a year and 98 percent its enriched uranium stockpile was removed and extensive transparency measures were implemented.

At the same time, we were pushing to finalize an arrangement to get several wrongly detained American citizens, including Post—Washington Post reporter Jason Rezaian, Christian Pastor Saeed Abedini, and former Marine Amir Hekmati safely out of Tehran, which was a top priority for us and one that I know Congress shared.

We had been pressing the Iranians to release these Americans at every opportunity throughout the negotiations of the nuclear deal and continued our efforts to secure the release over 14 months at separate discussions. These individuals were facing lengthy prison terms if not potentially worse sentences on trumped-up national security and espionage charges.

And lastly, our lawyers were working to finalize the settlement of a longstanding claim that the Iranians had filed at the Iran-U.S. Claims Tribunal regarding the Foreign Military Sales Trust Fund. The issue of settling the large remaining claim a number of times—sorry—the issue of settling the large remaining claims of The Hague, including the trust fund, had been raised by Iran a number of times over the years. The Iranians have been making a push at the tribunal to have a hearing on this case and we knew they were eager to settle the case so that they could address critical economic needs.

As my colleague will describe in a moment, we realized that we could take advantage of the importance that Iran attached to recovering the principle from the FMS Trust Fund in order to drive a bargain on the 37 years of interest.

Now, there has been much—recently much attention paid to the timing of these various issues. So I think it is worth clarifying here today—I think it is worth clarifying some of the mischaracterizations here today.

It is important to remember that for more than 3 decades, we have had no diplomatic relations with Iran and minimal diplomatic contact. As a result, there was significant risk that any one of these efforts could unravel at any time.

The one we were most worried about was the consular dialogue, where we feared that our American citizens would not be freed. We therefore had some pretty—or this process had gone in fits and starts and there were elements inside of Iran extremely opposed to any sort of arrangement in which our citizens would be freed, and we had some pretty significant concerns that it would unravel.

On January 16th and 17th, when after the terms of the consular arrangement had been finalized and the Swiss were just about ready to fly our people out of Tehran, our fears were realized when we were unable to locate the wife and mother of Jason Rezaian. It

was agreed that Jason's wife and mother would also be allowed to leave Iran as part of this deal, so their disappearance was highly concerning.

At this point the IAEA had verified Iran's commitments on the JCPOA and the nuclear deal had begun, and my colleagues at the Treasury Department had begun the necessary arrangements to refund the principal in the FMS Trust Fund, but the payment had not yet occurred. When this uncertainty presented itself we became very concerned and decided to take a pause before finalizing this other line of effort—specifically, the finalization of the payment for settlement of the FMS Trust Fund.

After a stressful night of uncertainty and after several high-level phone calls, including by Secretary Kerry, we were able to confirm the location of Jason's wife and mother, and get them on an airplane so that they could leave Iran. With that resolved we moved forward with the reciprocal humanitarian gesture in which we provided the relief to certain Iranian nationals, including several dual U.S.-Iranian nationals that had primarily been charged with sanctions-related crimes, and we reinitiated our efforts to finalize the outstanding actions that we had agreed to on The Hague Claims Tribunal, including the refund of Iran's FMS Trust Fund principal.

This decision was made out of prudence when the success of our diplomatic efforts was in serious doubt. So we took the prudent step to pause, assess the situation, and resolve our concerns before moving forward.

Through these negotiating tracks we were able to conclude these issues in a manner that advanced our core interests—again, ensuring Iran can never have a nuclear weapon, potentially saving taxpayers billions of dollars on this claim, and freeing wrongfully detained Americans as well as their family members. Again, each of these arrangements was analyzed on its own merits and determined to be in U.S. interests.

The release of several U.S. citizens along with Jason Rezaian's mother and wife by Iran was based on reciprocal humanitarian gesture in which we provided relief to certain Iranian nationals, including several dual U.S.-Iranian nationals. And the release of the FMS Trust Fund monies was based on a settlement of Iran's claim for those monies and for 37 years of interest—a settlement that was highly favorable to the United States.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Backemeyer can be found on page 76 of the appendix.]

Chairman DUFFY. Thank you.

I now recognize Ms. Grosh for 5 minutes.

STATEMENT OF LISA GROSH, ASSISTANT LEGAL ADVISOR, OFFICE OF INTERNATIONAL CLAIMS AND INVESTMENT DISPUTES, U.S. DEPARTMENT OF STATE

Ms. GROSH. Thank you, Mr. Chairman.

I am the Assistant Legal Advisor for International Claims and Investment Disputes of the Department of State, where I have worked to defend the United States against Iran at The Hague Tribunal for nearly 30 years. Over that time we have won some cases, we have lost some, and sometimes we have decided to settle. And

I am here today to explain as best as I can in this setting the settlement that was announced in January.

As my colleague, Mr. Backemeyer, explained, this was only a partial settlement of a very large case. The rest of that case is ongoing at The Hague Tribunal today. Because of that, I am limited in what I can discuss in this public setting.

As he explained, Iran and its lawyers are vigilant in scouring the public record for statements or information that they can use against us in these arbitrations. In fact, I can recall being The Hague Tribunal many times and hearing Iran quote extensively from things that witnesses and Members of Congress said in hearings, trying to use that to their advantage.

These are multibillion-dollar claims against the United States, so for some of your questions I may need to defer the question to a closed setting like the one that we did for House and Senate staff earlier this week.

Now to provide some background, the United States and Iran entered into the Algiers Accords in 1981, which created The Hague's—The Hague Tribunal. And it was primarily created to address claims of U.S. nationals, but also claims between the two governments.

The agreement was entered into by the Carter Administration, it was endorsed by the Reagan Administration, and was debated by both Houses of Congress. And in the end it was determined that the Algiers Accords and the Tribunal process were of great benefit to the United States and U.S. nationals.

In the first 20 years of the tribunal process it focused primarily on resolving claims of U.S. nationals for debt, contract, expropriation, and other measures affecting property rights. U.S. citizens and companies received over \$2.5 billion in awards and settlements from that process.

And there were significant government-to-government claims that were also filed at the tribunal. The majority and certainly the largest were by Iran against the United States, including Iran's large contract claims arriving—arising out of its former—foreign military sales program.

Like of FMS customers, Iran paid money into a trust fund that was used to facilitate prompt payment to the U.S. contractors working on Iranian contracts. But by January 1979 Iran had already been struggling to make the necessary payments on its more than 1,000 outstanding FMS contracts.

In February 1979 Iran and the United States concluded a memorandum of understanding providing for the cancellation of many of the remaining purchases. The two sides worked on implementing the MOU and to wind down Iran's FMS program over the ensuing months.

But as we all know, in November 1979 the hostages were taken and those efforts became to an end. The dispute over the FMS Trust Fund and interest which resulted in the settlement in January of this year was part of Iran's FMS claims that it filed with the tribunal in 1982. So you can imagine the scale of it and the money involved. It is a giant breach-of-contract case covering 1,126 huge FMS contracts.

Before the settlement in January other parts of the FMS claims were decided or settled some time ago. Indeed, settlement discussions over technical legal matters have been held in this channel for decades, typically led by the State Department legal advisor and the Iranian presidential legal advisor.

My estimate is that since the early 1980s, through the Reagan, Bush, and Clinton Administrations, some 40 rounds of claims meetings have occurred at this level. Indeed, the prior settlements with Iran of other portions of the FMS claims occurred during the first Bush Administration.

In 1989, for example, the United States and Iran settled a claim for \$7.5 million for spare parts. It was paid from the Judgment Fund. In 1990 the parties entered into a partial settlement for \$200 million from the trust fund, and this is the same trust fund that was the subject of the final settlement in January.

And in 1991 the parties also settled Iran's claim for titled FMS assets for \$278 million, and this was paid from the Judgment Fund. Apart from the FMS claims there were other significant settlements between the parties, including in 1990, when Iran paid the United States \$105 million from—in settlement of certain U.S. national claims and U.S. Government claims.

These settlements, and in particular the FMS settlements, were reached at key moments in the cases, such as before key hearings or when they were on the verge of going to decision. In the past 2 years, as proceedings of the tribunal have been advancing, we revisited the possibility of settlement of tribunal claims through 2014 and 2015.

These discussions led to settlement of small claims that were the subject of ongoing hearings. They involved architectural drawing and were—that were transferred to the Tehran Museum of Contemporary Art, and for fossils that were transferred to the Ministry of the Environment.

In the spring of 2015, after years of extensive briefing, Iran pressed the tribunal to schedule comprehensive hearings in these remaining FMS claims. The tribunal ordered both parties to file their respective proposals for the structure of hearings, and Iran filed its proposal on November 11, 2015.

Iran was also pressing for a preliminary ruling on issues including the outstanding balance of the FMS Trust Fund and interest since 1979. They sought interest based on a provision in the 1979 memorandum of understanding calling for unexpended FMS funds associated with Iran's FMS program to be placed in an interest-bearing account.

With the settlements over the smaller claims concluded in December 2015 and with the hearings on the FMS claims on the horizon we were able to achieve this most recent settlement, which finally and fully resolved Iran's claim for funds in the FMS Trust Fund as well as interest since 1979.

As we publicly announced in January, pursuant to the settlement, Iran received the balance of \$400 million in the FMS Trust Fund as well as roughly \$1.3 billion, representing a compromise on the interest. The trust fund balance of \$400 million was paid from Iranian funds that were deposited in the FMS Trust Fund itself in connection with the program. The payment for the compromise on

interest was provided out of the Judgment Fund, as was the case for the largest prior settlement of the FMS claims during the Bush Administration.

If Iran's claims for the trust fund balance and interest had gone to decision in The Hague Tribunal the United States could well have faced significant exposure in the billions of dollars. Iran, of course, was seeking very high rates of interest for a period of over 3 decades. We were able to secure a favorable resolution on the interest and avoid the potential for a much larger award against us.

The details of why we settled for this amount is litigation-sensitive and getting into that explanation would get at other issues still pending at the tribunal. Iran's lawyers would try to use my words, or maybe even your words, against us to help their position at the tribunal.

But what I can say here today is that I believe that this settlement was the best thing for the United States. It was the best way to avoid a possible decision from the tribunal ordering us to pay a lot more.

Thank you.

[The prepared statement of Ms. Grosh can be found on page 98 of the appendix.]

Chairman DUFFY. Thank you.

The Chair now recognizes Ms. McCord for 5 minutes.

STATEMENT OF MARY MCCORD, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY, U.S. DEPARTMENT OF JUSTICE

Ms. MCCORD. Good morning, Chairman Duffy, Ranking Member Green, and members of the subcommittee. Thank you for the opportunity to appear before you today to discuss the Department of Justice's role in the settlement of Iran's claim before the Iran-U.S. Claims Tribunal at The Hague for the funds in the foreign military sales or FMS Trust Fund, as well as Iran's associated claim for interest on those funds.

As the attorney general has made clear when the deal was first announced in January, the Department of Justice fully supported the Administration's resolution of several issues with Iran, including the settlement of The Hague Tribunal Claim involving the FMS fund as well as the arrangements that led to the return of U.S. citizens detained in Iran.

With respect to The Hague settlement, when there is a settlement of litigation that is pending against the United States it is generally paid from the Judgment Fund unless there is a separate source of funding for the settlement.

For a payment of a settlement to be made from the Judgment Fund, the attorney general must certify to the Treasury that the payment of the settlement is in the best interests of the United States.

Here, the attorney general approved the settlement and certified payment from the Judgment Fund of the portion of the settlement that resolved the interest dispute. The certification was based on the Department of Justice's typical assessment for a Judgment Fund payment.

Assessment of a settlement payment from the Judgment Fund includes consideration of the exposure that the United States faces from the claim proposed for settlement. It also considers the likelihood of an adverse ruling against the United States, the likely size of such an award, the background of the litigation, the tribunal, relevant legal arguments, relevant facts, and governing legal doctrines.

The Department's certification of this settlement payment from the Judgment Fund was based on the assessment that it was in the best interest of the United States, that the payment was significantly less than the United States' exposure under the claims for the balance in the FMS account and the interest on those funds.

The Department of Justice was also involved in the consular negotiations with Iran and in effectuating the ultimate arrangements that led to the release of the detained American citizens. In this regard, the Department identified certain criminal cases involving Iranian and Iranian-American defendants for which relief could be provided as a reciprocal humanitarian gesture. The defendants in these cases had been charged primarily with violating the U.S. trade embargo. None were charged with terrorist activity of other violent crimes.

As has been noted previously, the ultimate arrangement involved the pardon or commutation of seven defendants who had been convicted or were awaiting trial in the United States and the dismissal of criminal charges against 14 others, all of whom were located outside the United States and for whom our attempts to obtain custody through extradition had failed or were assessed to be likely to fail.

The Department was also responsible for preparing and filing the paperwork related to the pardons, commutations, and dismissals.

Thank you for the opportunity to testify, and I am happy to answer any questions you may have.

[The prepared statement of Ms. McCord can be found on page 124 of the appendix.]

Chairman DUFFY. Thank you, Ms. McCord.

And Mr. Ahern, you are now recognized for 5 minutes.

**STATEMENT OF PAUL AHERN, ASSISTANT GENERAL COUNSEL,
ENFORCEMENT AND INTELLIGENCE, U.S. DEPARTMENT OF
THE TREASURY**

Mr. AHERN. Chairman Duffy, Ranking Member Green, thank you for inviting me to testify this morning.

I am very pleased to be here with my colleagues from the State Department and the Justice Department. My name is Paul Ahern and I am the assistant general counsel for enforcement and intelligence at the Treasury Department.

I am here today to discuss with you the Treasury's role in effectuating the payments related to the January 2016 settlement of the long-outstanding claim at the Iran-United States Claims Tribunal at The Hague. The settlement involved two payments by the United States regarding an account established decades ago with Iranian funds as well as the compromise of its claim for interest on that account.

The Administration publicly announced the \$1.7 billion settlement on January 17th, 2016, and that announcement is publicly available at the State Department's website.

Now, for the first settlement payment Treasury assisted the Defense Finance and Accounting Service, or DFAS, in crafting a wire instruction to transfer \$400 million on January 14th, 2016. The \$400 million came out of what is typically referred to as the Foreign Military Sales Trust Fund, or the FMS account.

It had amounted to about \$600 million until 1990, when the Bush Administration entered into a settlement returning \$200 million to Iran, and since that time the fund has amounted to about \$400 million. Treasury worked with DFAS and the Federal Reserve Bank of New York so that the funds transferred from DFAS to a European bank. The funds were then converted to a foreign currency, were withdrawn as foreign currency bank notes, and physically transported to Geneva.

On January 17th Treasury dispersed the payment to an official from the Central Bank of Iran for transfer to Tehran. The funds were under U.S. Government control until their disbursement, pursuant to the settlement.

The second payment, involving settlement over the dispute over accrued interest, was dispersed out of the Judgment Fund. The Judgment Fund is the source of funding Congress is provided for use generally in paying judgments and settlements of claims against the United States when there is no other source of funding.

Awards and settlements of tribunal claims have been paid from the Judgment Fund in the past, including the \$278 million settlement reached in 1991. Though the payment to settle the dispute over accrued interest was one payment, the Judgment Fund system has a technical limitation that prevents it from processing individual claims in amounts over 10 digits in length. Therefore, the single claim of \$1.3 billion was broken into 13 claims of \$99,999,999.99 and the remainder of \$10,390,236.28.

As in similar prior instances, the system's technical limitation required a claim to be divided into these smaller amounts. These amounts are displayed on Treasury's Judgment Fund website, as is additional information about claims processing through the Judgment Fund.

Treasury dispersed the payment after receiving the appropriate approvals from the Department of Justice. The payment from the Judgment Fund was initiated through a transfer to a European bank. In this circumstance it was held available for disbursement to Iran.

Pursuant to an arrangement between Iran, the home country of the European bank, and the United States, the European bank converted the \$1.3 billion into a foreign currency, withdrew the foreign currency in foreign currency bank notes, and then dispersed the funds as bank notes to an official from the Central Bank of Iran. This process occurred in two installments—one on January 22nd and one on February 5th.

And I would note that the sanctions regime we built with our international partners had effectively cut off Iran from the international financial system. Iran was very aware of the difficulties it would face in accessing and using the funds if they were in any

other form than cash even if—after the lifting of sanctions under the Joint Comprehensive Plan of Action, or JCPOA.

Therefore, effectuating the payment of the funds in the FMS account and the subsequent interest payments in cash was the most reliable way to ensure that they received the funds in a timely manner, and it was the method preferred by the relevant foreign banks.

For both the payments to settle the dispute over principal and the interest, no direct transfer was made from any U.S. account to Iran. In addition, these transactions complied with U.S. sanctions law and did not require a unique license, waiver, or other form of authorization.

Treasury's regulations at Title 31 of the Code of Federal Regulations Section 560.510 explicitly authorize all transactions necessary to payments pursuant to settlement agreements entered into by the United States Government in a legal proceeding in which the United States is a party, such as a settlement of claims before the tribunal.

Thank you again for the opportunity to testify about these issues, and I look forward to your questions.

[The prepared statement of Mr. Ahern can be found on page 74 of the appendix.]

Chairman DUFFY. Thank you, panel.

The Chair now recognizes himself for 5 minutes.

The panel has made a point of noting that you don't want any information coming from this hearing that could jeopardize your negotiations for future settlements—duly noted. But to the panel, any of the \$1.7 billion that has been provided in cash to Iran, is any of that going to be used for terrorism and can you guarantee me that that money won't be used to harm any Americans?

Mr. BACKEMEYER?

Mr. BACKEMEYER. Congressman, thank you for your question. It is our assessment that the vast majority of the money that Iran has gotten from both this settlement as well as other—

Chairman DUFFY. Can you guarantee me that, though? That is my question? Can you guarantee this money won't be used for terrorism or to hurt Americans?

Mr. BACKEMEYER. As I said, it is our assessment the vast majority has gone to the economic—the critical economic needs that Iran has had. Now, I can't speak to every dollar that is going to go in and out of Iran, as you know. But what I can tell you is that we have a variety of tools that we use—

Chairman DUFFY. But I am looking for a guarantee. And so I just want to note that there is a risk that you have taken in providing \$1.7 billion to the lead sponsor of terrorism in the world.

I don't want to be chastised on this committee about information that could hurt your negotiations when I think this deal has endangered the security in the region and for U.S. citizens. But let's set that aside for a moment.

I want to quickly talk on the issue of ransom. On the day of the prisoner-for-cash deal, would the prisoners have been released, in your assessment, if the cash was not sent—the \$400 million?

Mr. BACKEMEYER. Congressman, I cannot speak to that hypothetical situation. And I would make a point, that this was not a prisoner-for-cash deal. These two issues—

Chairman DUFFY. So you don't know. They might not have been released had you not sent the cash. Is that a fair assessment?

Mr. BACKEMEYER. These two issues were settled based on their own merits—

Chairman DUFFY. I am trying to get to the heart of this. You can't tell me that you are guaranteed that our prisoners would have been released had your money not been sent, right? And maybe to put it another way, if the prisoners hadn't been released would have we sent the money?

Mr. BACKEMEYER. As I noted in my statement, Congressman, specifically after we learned that we could not locate the wife and mother of Jason Rezaian we put a pause on making this payment—not because it was linked to that particular transaction, but because it was a prudent step.

Chairman DUFFY. So, prudent step—but you are telling me that you wouldn't have sent the money but for the release of our prisoners, yes? Is that a fair assessment?

Mr. BACKEMEYER. I cannot speak to what we would—had this deal not come together at all in the following week, I cannot tell you that we would not have gone down that path.

Chairman DUFFY. Exactly, which is—

Mr. BACKEMEYER. What I can tell you—

Chairman DUFFY. —which is the point that is—most common-sense Americans look at this and they say, “Hey, this was a payment of \$400 million for the release of five prisoners,” which in everyone's assessment leads us to believe that, as the chairman noted, per Webster's Dictionary, is a ransom payment.

Let's leave that aside. I am sure my colleagues will get to that a little bit later.

Out of the tribunal there have been settlements in the past. And have those settlements all been made in cash?

Ms. Grosh?

Ms. GROSH. Yes, Mr. Chairman, my—

Chairman DUFFY. So every single settlement—

Ms. GROSH. My experience has been that every single one of these settlements has been sui generis. Most of the settlements that were made in the past were before sanctions. And in fact, before—

Chairman DUFFY. I only have 2 minutes. To be clear, when we have had settlements the payments to Iran have been made in cash payments, not wire transfers, not checks, not any other form? It is a cash payment, like what we did with the \$1.7 billion. Is that fair?

Ms. GROSH. I am not aware that they ever have, but they have all been different and been done on their own merits. Some were done by check; some were done by wire transfers.

Chairman DUFFY. Right. That is my point. So this payment did not have to be made in cash. The payment could have been made in the form that others were made, whether it was a check or a wire transfer.

You were not prohibited from using a wire transfer or a check. You didn't have to send cash, is my point. Is that correct?

Ms. GROSH. I can't really, you know, speak to that. I do know that Iran was having very serious banking problems because of sanctions, and I think my colleagues can speak more to that.

Chairman DUFFY. You have used wire transfers and checks in the past, yes?

Ms. GROSH. Well, we have used checks in the past, but to my knowledge Treasury doesn't cut checks anymore.

Chairman DUFFY. So if the President says due to international sanctions against Iran the payment made in euro and Swiss francs and other currencies had to be made in cash, you are telling me that no, that is not true. We have actually made other forms of payment through the tribunal.

Mr. BACKEMEYER. Congressman, I can speak to that.

Chairman DUFFY. Sure.

Mr. BACKEMEYER. These other payments were before the period of the intense international sanctions that we had on Iran, those sanctions that we worked closely with this Congress to implement.

Chairman DUFFY. So you put the handcuffs on yourself at the—I want to make a couple of quick questions.

Did Iran request the money come in cash payment?

Mr. BACKEMEYER. The terms of this deal for Iran were that they would get an immediate refund of the principal. For them the critical need was that they got immediate access so that they could address the critical economic needs that they had. And at the time our people that were facilitating these transactions felt that the only way to provide that immediate payment—

Chairman DUFFY. They didn't ask for cash, but you made sure that they got this money, the \$400 million and the \$1.3 billion. They get immediate access to it. It is untraceable. And per media reports, this money has gone to the military, not for the benefit of the Iranian people.

My time is up.

And I now recognize the ranking member of the full Financial Services Committee, the gentlelady from California, Ms. Waters, for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman.

And I would like to thank our witnesses for being here today.

But the first thing I want to say to our State Department witnesses is this: Much of what happened around this payment is classified information, and I know that holding this hearing puts you in a position where you have to be very careful. And I don't wish you to be intimidated or wish you to make a mistake in trying to answer some of these questions because, as I understand it, every member of Congress has been offered to have classified briefings by the Administration and they could have had any of their questions answered.

So feel free to resist any questions that will carry you into classified information. Be very, very careful.

In addition to that, I simply want to say to our Administration witnesses that I am concerned that this may be a part of the strategy that is being employed by my colleagues on the opposite side of the aisle to discredit the President of the United States of America. I am reminded that on the night of Barack Obama's inauguration a group of top GOP luminaries quietly gathered in a Wash-

ington steakhouse to lick their wounds and ultimately create the outline of a plan for how to deal with the incoming Administration. And that is a quote.

And so, it appears that this has been a continuing strategy that has been employed by members on the opposite side of the aisle, again, in this attempt to discredit the President.

I could ask you a lot of questions here today, and I suppose a lot of questions will be asked of you about why pay them in cash, wasn't this basically ransom, et cetera, et cetera. But I am not going to do that because any questions that I have I am going to take advantage of the classified hearings—briefings, rather—that are being offered to all of us to answer any of the questions that we may have.

With that, if there is anything you would like to share with us, having been—please do that at this time. I have no questions for you. Would you like to share anything with us? Please do it at this time. That is both of our State Department representatives here.

Mr. BACKEMEYER. Thank you, Congresswoman.

I think we have laid out our remarks in our opening statements, but thank you.

Ms. WATERS. You are certainly welcome. Well, can you help to clarify whether or not the Members of Congress have been offered classified briefings? Do you know about that?

Mr. BACKEMEYER. Yes, I would be happy to clarify that. We have offered since January, when this—when these three lines of effort were concluded, we have offered—with respect to this particular piece we have offered classified briefings to all members in—of Congress. We did have one such offer accepted and we provided that briefing.

We also offered, when this resurfaced recently, to have closed member and staff briefings, and we did have 2 days ago staff briefings in both the House and Senate in a classified setting.

Ms. WATERS. Would you please clarify how many members of this committee have taken advantage of that offer?

Mr. BACKEMEYER. Congresswoman, I am afraid I am not familiar with the one offer that was accepted, so it would be hard for me to say. But as I mentioned, there was one offer—one briefing provided or one briefing accepted, and we provided it.

Ms. WATERS. Are you saying there was a briefing where maybe several members of the committee came or one member was briefed?

Mr. BACKEMEYER. It is my understanding that it was one member.

Ms. WATERS. Only one member. Was that member a member of this committee?

Mr. BACKEMEYER. No, he was not.

Ms. WATERS. So basically, it is correct if I conclude that the offer was made, the staff have been briefed, but not one member of the committee, including myself, have taken advantage of that offer? So all of what will be asked here today could have been asked and they could have had access to classified information in that briefing. Is that correct?

Mr. BACKEMEYER. That is correct. And the full details of this process are best described in a classified setting, given the various diplomatic and—

Ms. WATERS. Is that offer still available to every member of this committee?

Mr. BACKEMEYER. Absolutely.

Ms. WATERS. So today they can only get information that is not classified. But if they are truly interested they can get a classified briefing and get every question that they have answered. Is that correct?

Mr. BACKEMEYER. That is correct.

Ms. WATERS. Thank you very much. I have no other questions.

Chairman DUFFY. The gentlelady's time has expired.

The Chair now recognizes the former Chair of the Terrorism Financing Task Force, and the vice Chair of this committee, Mr. Fitzpatrick from Pennsylvania, for 5 minutes.

Mr. FITZPATRICK. Thank you, Chairman Duffy, for calling this really critical hearing today.

Mr. Backemeyer, my first question is if Saeed Abedini had not disclosed the existence of the second plane which contained the pallet of cash, would either Congress or the American people have ever learned of the existence? And the reason I ask is because I found out about that fact probably the way most of my colleagues did, because he spoke about it when he returned and we saw it on the news.

So how was Congress ever going to find out about how that cash was delivered and why?

Mr. BACKEMEYER. Congressman, thank you for that question. I am glad you raised it.

We have said publicly and we continue to say that—what Mr. Abedini was told was incorrect. The delay in the departure of his flight was due to a variety of complications related to the prisoner release deal, including—

Mr. FITZPATRICK. But it so happened that they all—they occurred simultaneously in the end, did they not?

Mr. BACKEMEYER. The prisoner release deal was held up because we could not locate Jason Rezaian's wife and mother. There were also some complications with respect to some of the Iranian nationals in the United States.

Mr. FITZPATRICK. It was just ironic it all happened the same night? Is that what you are saying?

Mr. BACKEMEYER. As I mentioned in my opening statement, we had a desire to conclude all of our lines of effort—the Iran nuclear deal, the consular deal, and this Hague Tribunal deal, all around—on or around the same time because we believed there was significant diplomatic momentum that allowed us to advance U.S. interests all at the same time, and we believed that there was significant risk that if we allowed one or two of those to lag that we would not be able to achieve all of our core—

Mr. FITZPATRICK. Leaving aside for a moment the issue of the timing of the payment and the release of the hostages—and this is a follow-up on Mr. Duffy's question—who specifically made the decision to make this payment in cash? Who at the State Department? Who at the Department of Justice? Who made that decision?

Mr. BACKEMEYER. I cannot speak to who made the decision to make it in cash. What I can tell you is that it was the determination of the people that had to facilitate this payment that the way to provide—

Mr. FITZPATRICK. Who could tell us who made that decision? If you can't—you are here to testify this subcommittee or this committee—who can tell us? Was it a condition of the Iranian government? Or was it a decision of the United States Department of State?

Mr. BACKEMEYER. The condition of the deal was that there would be immediate payment. We knew that Iran had critical economic needs that it had to address immediately and that would not be addressed by the removal of the broader Iran sanctions—

Mr. FITZPATRICK. Certainly there are other ways to make an immediate payment other than a middle-of-the-night what appears to be a drug drop.

Mr. BACKEMEYER. Congressman, the—

Mr. FITZPATRICK. What are the other ways we could have made an immediate payment?

Mr. BACKEMEYER. Congressman, I understand your concerns about this. But what I will tell you is that the power of the sanctions that we had in place in Iran, and that we still have in place—I will remind that we have a full U.S. embargo on Iran that prohibits transfers of funds through the United States, and there is a great reluctance by global financial institutions, sanctions aside, about doing these sorts of business.

And so we have seen difficulties with global banks being willing to engage in these particular transactions, and this was the way—this was the mechanism that we felt we could guarantee immediate payment. And that immediate payment was critical to getting the favorable settlement that we did. Had we not been able to perform on that obligation we would have likely not gotten such a favorable settlement for the American people.

Mr. FITZPATRICK. Speaking of the favorable settlement, Mr. Backemeyer, I think you mentioned in your opening statement that you don't want to say anything here today that might compromise United States defenses to other remaining claim to the Islamic Republic of Iran. Was that your opening statement?

Mr. BACKEMEYER. That is correct.

Mr. FITZPATRICK. If this is a Joint Comprehensive Plan of Action, if this was a comprehensive settlement, what are the other possible claims that Iran still has? We have made a payment of \$1.7 billion in cash.

Mr. BACKEMEYER. Well—

Mr. FITZPATRICK. What are the other claims that they have that we did not settle as part of this Joint Comprehensive Plan of Action?

Mr. BACKEMEYER. I will let my colleague respond to that, but let me just point out that the Joint Comprehensive Plan of Action is a reference to the nuclear deal. It does not reference all of these lines of efforts. So the JCPOA, the Joint Comprehensive Plan of Action, is the deal that we resolved comprehensively the threat posed by—

Mr. FITZPATRICK. You said in your opening statement there were other claims. Do you know what they are? It was your opening statement, sir. Do you know what those other claims are?

Mr. BACKEMEYER. If you would like more detail my colleague can provide it, but there are a variety of other claims related to foreign military sales—

Mr. FITZPATRICK. Let me move back to the previous question about other ways that you could have made payment other than pallets of cash in the middle of the night. How have we conducted payments with other actors, such as North Korea, who are also cut off from the international financial system? We don't deliver cash.

Mr. BACKEMEYER. Congressman, I am not familiar with any payments of that kind. I couldn't speak to that.

Mr. FITZPATRICK. I have nothing further.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from Massachusetts, Mr. Capuano, for 5 minutes.

Mr. CAPUANO. Thank you, Mr. Chairman.

I would like to thank the panel.

I don't really speak diplomatic. I have trouble whenever I listen to people that are doing it, so I I have to kind of clarify what I think I heard and what I think I know. I am not really sure.

Is there a difference between cash and a check? I guess people in the Treasury would know that. If somebody owes me money and they pay me cash or a check, does it matter?

Mr. AHERN. Sir, there are a variety of ways to effectuate a payment. Cash, check—

Mr. CAPUANO. It doesn't matter. Somebody owes me money, they pay me cash, they pay me check, they pay me transfer, they pay me in S&H Green Stamps if they still have them. It all counts, right?

Mr. AHERN. There are a variety of ways of making payment.

Mr. CAPUANO. I would like to ask—I guess it would be the State Department people—regardless, if there was no hostages, no U.S. hostages, no Iranian prisoners—by the way nobody wants to talk about the fact that we gave up Iranian prisoners, as well. This is a prisoner swap in some ways. But if there weren't any, forget them, would we have still had to pay this money?

Ms. GROSH. Congressman, the State Department has been attempting, as I mentioned, for decades been discussing the FMS claims—

Mr. CAPUANO. No, I am not questioning your judgment on the settlement.

Ms. GROSH. Yes.

Mr. CAPUANO. I think the judgment—the questioning of judgment on any settlement is a fair question.

Ms. GROSH. What I—

Mr. CAPUANO. Questioning the Iran nuclear deal is a fair question. The question I have: Once you made the decision to have a settlement, would we have paid this money whether there were hostages or not? Would we have paid this money to Iran at some point?

Ms. GROSH. It is clear to me that we reached a time when we were able to achieve a settlement, and it is—

Mr. CAPUANO. You are not answering—look, I am trying to help. You don't want me to help? Don't let me. Go ahead, keep speaking.

Very clear question. Forget the hostages. You made a deal at The Hague, which is in the Netherlands, not in Iran. I am not questioning the deal.

I am saying, okay, you made a deal. Once the deal was made would you have had to pay Iran the amount that you agreed to pay? Yes or no? Kind of simple.

Ms. GROSH. Yes, once the deal was made we would have had to.

Mr. CAPUANO. That is what I thought.

So the payment would have been made with or without hostages. And the hostages were a separate item agreed simultaneously.

So it sounds to me like my friends on the other side who are all upset about this would rather we paid Iran the money and not gotten our people back. They would have been happy. Yay. Yippee.

I wouldn't have been.

And by the way, had you done that you would still be here being criticized for not getting Americans home. So you can't win this.

I hope you understand this is a political game to try once again to, number one, trash the Obama Administration; number two, trash the Iran nuclear deal; and number three, somehow make them look like criminals dropping bags of cash in the middle of the night like a drug dealer. This is ridiculous.

And again, I think there are fair and reasonable and thoughtful and tough questions to ask about the Iran nuclear deal. I voted for it. But I think there are questions that are reasonable.

Any legal settlement with the risk of litigation—I was a lawyer back in my previous life when I was actually had some useful function to have. Any legal settlement is a question of negotiations, a question of judgment. It is a judgment call. You are going to save money, or make money, lose money. Fair question. Those are fair questions to say whether your judgment was right or wrong on this one.

It is not fair to say we should have left four Americans in Iran. And if you had done that—let's assume you had paid the money. Do you trust Iran to have lived up to their separate deal to let four Americans go?

Mr. BACKEMEYER. No, Congressman. In fact, as I mentioned, our biggest concern was this particular piece, that they would not follow through on that.

Mr. CAPUANO. I don't trust them either. And actually, it sounds like my friends on the other side trust them more than I do.

It is awfully nice that you trust the Iranians. Good job. Great leadership. Great judgment.

Of course we don't trust them. That is why the nuclear deal had the most invasive, aggressive inspection regime of any deal ever made in the history of this world. Again, I don't trust them.

I am glad the Americans are home. If this was a separate deal, cash-for-Americans, I would be agreeing with my colleagues on the other side. Ransom is unacceptable. But payment—by the way, whose money was this?

Am I wrong to think that this was the money that we grabbed from Iran in 1980 to say, "Everything is on hold. This is money you paid for a contract. We are not giving it back until we negotiate

and we will see you in The Hague?" Is that right? It was their money.

Ms. GROSH. That is exactly right.

Mr. CAPUANO. So we gave them back their money in a form of legal tender that is now very public, and yet people are criticizing it because we got four Americans. Mother of God, thank you. Good job.

Chairman DUFFY. The gentlemen's time has expired.

The Chair now recognizes the chairman of the full Financial Services Committee, the gentleman from Texas, Mr. Hensarling, for 5 minutes.

Chairman HENSARLING. Thank you, Mr. Chairman.

It is clear that perhaps the Administration and certain Democratic Members of the House are the only people in America who believe that ransom was not paid. It is also clear that many believe this is a good U.S. policy. I believe it not to be a good U.S. policy. Otherwise, 4 hostages may lead to 40 hostages, and that may lead to 400 hostages. And that is why I believe in the history of our republic, it has not been the policy of the United States of America to pay ransom for hostages.

The question I have, though, is, again, it is most curious that this payment was made in cash.

Now, some believe this is not a particularly relevant issue. 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."

Cash is the currency of terrorism. We paid cash to the world's foremost state sponsor of terrorism. And the question is, again, why was that done? Was there a legal obligation?

We have heard that some of these payments have been made in other methods that could be more transparent through the normal financial channels. And the tribunal itself states that it has finalized more than 3,900 cases.

So I think one of our witnesses—Ms. Grosh, did you not say that at least some of these were not made in cash? Is that correct?

Ms. GROSH. Congressman, yes. There have been more than 39 cases resolved at the tribunal. The bulk of those payments came from a security account that Iran is obligated to ensure payment of all awards in favor of U.S. nationals and U.S. companies, and that is what resulted in \$2.5 billion being paid to—

Chairman HENSARLING. Let me ask you this question. Again, I am having a little trouble figuring out why this was a cash payment. Isn't it true that under the Iranian Transactions and Sanctions Regulations there are exceptions to financial dealings that license payments between the American and Iranian financial systems in order to receive, pay, or settle claims pursuant to the United States Claims Tribunal, specifically 31 CFR Section 560.510?

Mr. BACKEMEYER. Yes sir. That is the general license I mentioned in my opening statement.

Chairman HENSARLING. Okay, so you didn't have to pay it in cash, but you did pay it in cash. It is, again, still unclear. The question has been asked but it hasn't been answered. Specifically, did someone in the Iranian government ask for the cash payment?

Can anybody on the panel answer the question besides a macro view that Iranians wanted money?

Mr. BACKEMEYER. Congressman, I am trying to be specific. The term of the deal was that they got immediate payment. The reason for cash was not—

Chairman HENSARLING. Are you aware of anybody specifically in the Iranian government asking for a cash payment?

Mr. BACKEMEYER. I am not aware, nor am I aware of all the conversations that took place.

Chairman HENSARLING. Who would be aware? Who could this panel go to to get an answer to that simple question?

Mr. BACKEMEYER. We would be happy to follow up with you on further details in a closed session and we would be happy to discuss that with you in that setting.

Chairman HENSARLING. Are you aware that according to press reports these funds have ended up in the hands of the Iranian military, the Iranian Revolutionary Guard?

Mr. BACKEMEYER. Congressman, I have seen those press reports. As I mentioned, we—it is our assessment that the vast majority of funds that Iran has had access to, whether through the JCPOA or this, continue to be used for its economic needs.

We have seen some press reports of an Iranian budget line item. Our translators and those in the intelligence community have—

Chairman HENSARLING. That item is roughly 10 percent of the entire annual defense budget, the military budget, of Iran. Does this Administration not believe that giving the leading state sponsor of terrorism \$400 million in cash followed by \$1.3 billion—does that not present any serious terrorist financing concerns to you at all?

Mr. BACKEMEYER. Congressman, we have made clear from the very beginning that the deals that we struck on this day do not resolve all of our concerns with Iran and those concerns remain significant. What we resolved was the most imminent and critical, which was the nuclear program. And we were able to resolve two additional pieces of business at the same time.

But we still oppose and object to Iran's destabilizing activities in the region, its support for terrorism—

Chairman HENSARLING. My time has expired.

Thank you, Mr. Chairman.

Mr. BACKEMEYER. —and we continue to counter those activities through the very vigorous tools that we have.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman.

In January I will have been on this committee for 12 years, assuming I am reelected. And so I am always careful—not just here; I am careful everywhere, because I do think words matter, which is why I would not allow my 3-year-old granddaughter to watch the news.

And so I can't tell you how disturbed I am. I am often disturbed, but I am going to start saying things when this happens on both sides. But I think one of my—my colleague, who is a good guy—I know him; I have been to his home and met his family. But when

you drop a word like—words like, you know, a “drug drop” that creates some discomfort.

And I know that the gentleman didn’t mean what could be interpreted to be really awful. And it would be my hope that, you know, that it was, you know, a misstatement and—or sometimes we all say things we would rather pull back. I am assuming that he would rather pull that back.

Because there are a lot of people—I mean, this could mushroom into something that I think would be an embarrassment to the entire committee. We are talking about this 3-hour strategizing meeting; fast forward to this hearing and we are saying, you know, it was like a drug drop.

That is not good. That is a little scary.

And my partisanship doesn’t—or my ideological leanings have to stop at some point. You know, which is—I mean, I wouldn’t say that George Bush, you know, had a drug drop, or hopefully anybody.

So you know, this is maybe a political gathering and we are supposed to do some of this stuff. I can’t do it because I just—I think we are—the whole country is looking at this political process and saying, “You know, Washington stinks.” And we are creating a higher level of stinkativity—yes, it is a word; I made it up—when we do this kind of thing. We are stinking up the political process.

You know, I have some questions but, you know, after that I just decided I got good questions. As Mr. Trump would say, these are very good questions, big questions.

But after that I don’t want to engage in this. So I would like to just yield back the rest of my time.

Mr. GREEN. Would you yield to me, Mr. Cleaver? Mr. Cleaver, would you yield to me?

Mr. CLEAVER. Yes, I would.

Mr. GREEN. Thank you, Mr. Cleaver, and thank you for your thoughtfulness.

A couple of points to be made. We hear people bemoaning the money that was accorded the Iranians. But there have been settlements that inured to the benefit of Americans totaling about \$2.5 billion.

So would we give back the \$2.5 billion that have been accorded Americans in settlements? Not a lot of emphasis is being placed on the fact that people came home.

Thank you, Mr. Capuano.

People came home. Americans were freed. Would you send them back? Would you put them back into harm’s way, incarcerated in Iran? Is that what you are pushing today?

This hearing is about headlines, not headway. Headway could be made by doing—as the honorable Maxine Waters has indicated, classified briefings are available to all of us and we could make headway. Today is about headlines.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from South Carolina, Mr. Mulvaney for 5 minutes.

Mr. MULVANEY. Thank you.

A couple of random questions. First of all, I want to follow up on something.

I think Mr. Hensarling started to ask—I don't know if he asked it this way—a cash payment is in violation of law, isn't it? Cash payment violates 31 CFR 208.3. Is that true?

Mr. AHERN. Sir, the payment was done consistent with all of the appropriate Treasury regulations.

Mr. MULVANEY. Okay. I am reading 208.3 Payment by Electronics Fund Transfer. Subject to 208.4, which is a waiver, which I don't think is relevant here because it deals with checks, and notwithstanding any other provision of law, effective January 2, 1999 all Federal payments made by any agency shall be made by electronic funds transfer.

Didn't this transfer of cash, at least the \$400 million in cash—hard currency—doesn't that violate 208.3?

Mr. AHERN. Sir, if could just for a moment walk through the flow of these transaction, they generally flowed in the same manner. So we will take the \$400 million principal payment.

Mr. MULVANEY. Do it quickly please. I only have 5 minutes.

Mr. AHERN. Generally speaking, that payment was transferred by a wire transfer. It was transferred to the account of a foreign central bank. That foreign central bank then converted it into foreign currency bank notes and dispersed it to the government of Iran. Treasury's regulations speak to that payment to the payee of the claim, not necessarily to the ultimate payment of the claimant, which in this case was the government—

Mr. MULVANEY. So I guess the shorter answer is since the wire transfer went to an escrow agent, the escrow agent paid out the cash, you didn't violate 208.3. Is that the basic argument?

Mr. AHERN. This was consistent with Treasury's regulations, sir.

Mr. MULVANEY. Okay. Why do we pay interest? My understanding is that the FMS Trust Fund does not bear interest.

Ms. GROSH. Congressman, yes that is correct. In the typical situation customers pay their funds into the trust fund and by law that trust fund does not accrue interest.

As I mentioned in the top of my remarks, the United States and Iran entered into a memorandum of understanding in February of 1979 that has express provision for unexpended funds to be placed in an interest-bearing account, and it is on that—based on that language that Iran has brought its claim for interest.

Mr. MULVANEY. Did we put it in an interest-bearing account?

Ms. GROSH. The funds were not placed in an interest bearing account.

Mr. MULVANEY. So we had an agreement with Iran that required us to put that money into an interest-bearing account but we didn't do that?

Ms. GROSH. As a factual matter that is correct. I could have a lot more to say about that but these—some of these matters are still—other issues related to that memorandum of understanding are currently being litigated between the parties.

Mr. MULVANEY. So I guess—

Ms. GROSH. I would be happy to discuss that further in a closed setting.

Mr. MULVANEY. So if either the Carter Administration or the Reagan Administration or both had followed the MOU the interest

would have been paid by the bank into which we put the escrow account—the escrow monies.

Ms. GROSH. All Administrations since the memorandum of understanding in 1979 acted consistently with respect to these funds.

Mr. MULVANEY. No. You just told me they didn't. It said the MOU required us to put it in an interest-bearing and then you, in the next sentence, said that we didn't do that.

Ms. GROSH. That is correct. But what I was saying was that each Administration treated those funds consistently, notwithstanding the language of the MOU. There are legal arguments at stake here that continue to be before the tribunal, and again, I would be happy to discuss that further in a closed setting.

Mr. MULVANEY. All right. We may get that opportunity.

Last question to Mr. Capuano. I think he stepped out.

My understanding of the flow of the funds is that the original \$400 million, which was in the FMS, was indeed a payment by the government of Iran under the FMS program. I get that, okay? Their money, for lack of a better word.

But there was a legal lien against that money, wasn't there, that the 2000—Victims of Trafficking and Violence Protection Act of 2000 specifically placed a lien against that exact amount of money. Is that not true?

Ms. GROSH. Well, if you are talking about a judicial lien that is not true.

Mr. MULVANEY. No, I am talking about a public law, 106—I don't have the U.S. Code in front of me. I have 106-386, and it says that judgments against Iran for purposes of funding payments under section A—we were trying to make sure that victims of terrorism got paid.

In case of the judgments against Iran the secretary of Treasury shall make such payments for amounts paid and liquidated from, and there is a list of things. One of the list includes funds not otherwise made available in an amount not to exceed the total of the amount in the Iran Foreign Military Sales program account. This money was liened by law in 2000.

Ms. GROSH. Yes. I am familiar with that, Congressman. What—

Mr. MULVANEY. Did we repeal this law, or how did we get around this?

Ms. GROSH. What happened was that the judgments were paid from appropriated funds to the extent of \$400 million, which was the balance of the FMS Trust Fund at that time, at the time of enactment—

Mr. MULVANEY. Whoa, whoa, whoa.. So the taxpayers paid \$400 million in claims when we could have taken it out of this fund?

Ms. GROSH. Yes, that is correct. Congress passed legislation that appropriated funds to be paid to those victims to the level of what was in the balance of the trust fund.

Mr. MULVANEY. When did we do that?

Ms. GROSH. Through the very act that you are discussing.

Mr. MULVANEY. Okay. The very act that I am discussing doesn't say that, though. The very act says that for purposes of funding payments we go to the FMS Trust Fund.

Ms. GROSH. Yes, and if you—

Mr. MULVANEY. I am in section 2002, subsection (2)(b).

Ms. GROSH. Right. And if you look at that act, it also provides that the United States shall be fully subrogated to the extent of the payments. Subrogation means that the United States made those payments—

Mr. MULVANEY. I am aware of what subrogation means.

Ms. GROSH. Yes. so the United States was subrogated to those claims. What that means is those claims then become the U.S. Government claims.

Mr. MULVANEY. To Mr. Capuano's piece, at the end of that, after the subrogation they are not Iran's funds anymore. They are the United States Government's funds, aren't they?

Ms. GROSH. No. The funds remained in the trust fund as Iranian monies in the trust fund. The United States Congress appropriated \$400 million to be paid to these individuals—

Mr. MULVANEY. Instead of taking the money out of the FMS Trust Fund.

Ms. GROSH. That is correct.

Mr. MULVANEY. But by doing so we thus own the \$400 million.

Ms. GROSH. No, that is incorrect. I am sorry.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Maryland, Mr. Delaney, for 5 minutes.

Mr. DELANEY. Thank you, Mr. Chairman.

Did the \$400 million actually sit in an account segregated at a separate financial institution or was it just held by the United States Government?

Ms. GROSH. The \$400 million was in what is called the FMS Trust Fund. It sits in the Treasury. All FMS customers pay funds in there and then they are separated through separate holding accounts for each customer.

Mr. DELANEY. But is it kind of fungible cash or is it actually segregated in a separate account? I mean, when you say it is held at the Treasury does that mean it is effectively fungible with all the cash of the United States and it is just tracked as a separate account or is there actually somewhere, the equivalent of a bank account at a large financial institution, where there is a statement that says there is \$400 million in cash sitting in there?

Ms. GROSH. I believe my colleagues at the Treasury could maybe speak to this more but my understanding is that it is an account within the U.S. Treasury.

Mr. DELANEY. Got it. Okay.

So it seems like what effectively happened in the middle of 2015 is three things came together simultaneously: the Iran nuclear agreement, the prisoner exchange swap and then the settlement of this claim. Is that the right way of thinking about it? Three separate transaction or three separate agreements were reached by three separate teams?

Mr. BACKEMEYER. Congressman, that is correct. We thought to finalize all of those issues on the same, or on around the same time to take advantage of the diplomatic moment we had.

Mr. DELANEY. So as it relates to this claim, is it fair to say that a legal obligation of the United States of America was created in mid-2015 to pay \$1.7 billion?

Ms. GROSH. I wouldn't put it exactly that way. These are matters that were under litigation for many years and members of the legal advisors office at the State Department had been looking—had been litigating these FMS claims for a long time.

Mr. DELANEY. Right, but I am talking about—fast—forget about all the history. In the middle of 2015 you said this was settled.

Ms. GROSH. It wasn't settled. What we were facing was we were approaching a hearing date.

Mr. DELANEY. Right.

Ms. GROSH. And Iran wanted to move to—it is like going to trial and they wanted to have this decision not only go to hearing and heard by the tribunal but decided in a preliminary manner.

Mr. DELANEY. And what interest rate were they claiming was owed across the period of time?

Ms. GROSH. Iran was claiming very, very high interest rates.

Mr. DELANEY. What rate?

Ms. GROSH. This is an area that I would prefer not to get into in this—

Mr. DELANEY. It looks like we settled at a slightly higher than 4 percent interest rate. Is that right?

Ms. GROSH. I don't know exactly what that translates into. There was certainly a methodology behind that and I would be happy to go through that in a closed setting.

Mr. DELANEY. Do you know what the average interest rate—Treasury rate across the period of time was?

Ms. GROSH. I do know that in the early 1970s and 1980s the interest rates were around 18, 19, 20 percent.

Mr. DELANEY. Right, they were high. And I haven't done the exact math, but just looking at the chart it looks like the average fed rate across the period of time was about 8 percent and you settled for about 4, and the power of compounding is such that at 8 percent it would have been \$8 or \$9 billion and at 4 percent it was \$1.3 billion. So that is the bargain you thought you negotiated. Is that correct?

Ms. GROSH. We agreed to the disposition and a compromise on interest.

Mr. DELANEY. That is right. And so was it actually a legal obligation, would you say? I mean, you say you agreed and you settled, but was there any kind of formal agreement that was reached where somewhere in the books of the United States of America we entered a \$1.7 billion liability?

Ms. GROSH. I am not sure I understand the question, but we certainly—

Mr. DELANEY. So if someone would have asked the government in the fall of 2015, "How much do we owe Iran," would they have said \$1.7 billion or would they have said \$400 million?

Ms. GROSH. Again, this is, as was referred to by one of your colleagues, this is a matter of litigation risk and these are the kinds of issues we look at like any litigating parties when you are actively litigating claims. We could discuss that—some of that litigation risk in a closed setting.

Mr. DELANEY. So I guess the question, was this settled in mid-2015 or was it still open-ended?

Ms. GROSH. In mid-2015 we were discussing this with Iran and we were—we—there was some urgency because we felt that this was going to go to hearing and then a decision by the tribunal.

Mr. DELANEY. Were you still discussing it in September of 2015?

Ms. GROSH. Yes.

Mr. DELANEY. And December of 2015?

Ms. GROSH. Yes. Iran filed its hearing proposal in November of 2015.

Mr. DELANEY. What day do we think that we actually agreed to the \$1.7 billion—like that number?

Ms. GROSH. Are you speaking to the United States—

Mr. DELANEY. Yes.

Ms. GROSH. —or to Iran?

Mr. DELANEY. Yes. When do we feel like we had an agreement with them as to \$1.7 billion?

Ms. GROSH. Again, I think it would be better to discuss those details in a closed setting.

Mr. DELANEY. Because that date is relevant as to whether this was an obligation of the government or something else. But I assume what you are saying here today is that that agreement for \$1.7 billion was reached before the payment was made.

Ms. GROSH. That is correct.

Mr. DELANEY. How much in advance of the payment would you say?

Ms. GROSH. Again, on issues of timing we certainly had agreed with Iran sometime before the payment was made. I wasn't involved in all the—

Mr. DELANEY. Does “sometime” mean more than 30 days, or more than 60 days, or more than 90 days?

Ms. GROSH. It was less than 30 days.

Mr. DELANEY. Okay. Thank you.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentlelady from Missouri, Mrs. Wagner, for 5 minutes.

Mrs. WAGNER. Thank you, Mr. Chairman.

And thank you, to our panel, for appearing today to answer questions for us, but more importantly, to answer questions for the American people and shed some light, some transparency, on what actually happened with this money transfer to Iran—unmarked cash in foreign currencies strapped on wooden pallets and loaded onto a cargo airplane to be sent to a recognized state sponsor of terror.

It seems more like a scene out of a made-for-TV movie than actual real-life U.S. policy. And as an Army mom whose son is an active duty infantry officer, and as a former United States ambassador, I just have to say I am very concerned with the appearance of our government paying ransoms for captured prisoners and further, in future, endangering our other soldiers and diplomats abroad.

I would like to reference a quote from White House Press Secretary Josh Earnest from earlier August as to why the United States made this settlement payment so quickly, to which he said the Iranians “were eager to try to address the legitimate concerns of the Iranian people about the state of the Iranian economy.”

Is it the opinion of the State Department or the Treasury Department that this money transfer would be used for the Iranian economy?

Mr. Backemeyer?

Mr. BACKEMEYER. Congresswoman, first let me say thank you for the service of your son and thank you for your service. We spend our days at the State Department, I know, as well as the Treasury and the Justice Department, doing our best to advance the U.S. interests and doing our best to protect our men and women overseas, and we are grateful for their service.

With respect to your question, this was a situation, as I said, where the timing was related to the various pieces of business that we were trying to get done. All—

Mrs. WAGNER. Did you believe that it was going to help the Iranian economy?

Either State or Treasury?

Mr. BACKEMEYER. As I said, it is our assessment that the vast majority of the funds that they have received have—

Mrs. WAGNER. What assurances were you given, sir?

Mr. BACKEMEYER. Even if I had gotten assurances from the Iranians, you would not believe those assurances nor would I. And that is why, as I said—

Mrs. WAGNER. Precisely. Let me move on. Reclaiming my time, I have a short—a lot of questions and a short amount of time.

We have since seen that Iran's latest year budget provides for an additional, guess what, \$1.7 billion—the same amount transferred by this Administration to the military establishment to spend as it wishes in Iran.

Ms. Grosh, why did the White House think that this money would be used for the economy when Iran ended up using it for their military?

Ms. GROSH. Congresswoman, I am sorry, that is way out of my league and I am not in a position to decide that. My expertise really involves litigation of these claims at the tribunal and determining the settlement—

Mrs. WAGNER. Let me ask a more relevant question. How do we know that this \$1.7 billion increase did not come as a direct result as the cash transfer from the United States?

Mr. BACKEMEYER. Congresswoman, the press report that you are referring to is one that we have reviewed and had our Persian translators review and we believe that it is inaccurate.

Mrs. WAGNER. National Security Advisor Susan Rice recently admitted that some of the \$150 billion that Iran will receive in sanctions relief from the Iran nuclear agreement would, “support international terrorism.”

Mr. Backemeyer, what assurances do we have that this settlement money will not end up funding terror proxies—units like Hezbollah, considering that they receive support from the Islamic Revolutionary Guard Corps?

Mr. BACKEMEYER. As I have mentioned, Congresswoman, we have serious concerns with Iran's problematic behaviors, including those that you have just referenced—their support for terrorism, their support for proxy groups. We have a variety of tools that we use to counter those activities—

Mrs. WAGNER. Let's talk about those. Does paying Iran in all cash make it more riskier that the money could end up in supporting terrorism?

Mr. BACKEMEYER. Congresswoman, I can't speak to the risk on that but what I can say is that this settlement was made based on its own merits.

Mrs. WAGNER. If this settlement, let's say funding, does in fact end up promoting terrorism, what actions could the United States take to punish Iran for its behavior?

Mr. BACKEMEYER. We have a variety of tools—through sanctions, through other means—that we can use to enforce our sanctions against Iran. These include authorities that go against individuals and entities like the IRGC, the Quds Force, and those that are involved in terrorism. That includes activities that are operational in nature that we use—

Mrs. WAGNER. I am running out of time.

Ms. Grosh, what incentive or gain did the United States receive in return for structuring the payments so favorably in cash to Iran?

Ms. GROSH. I am not aware. I know that this settlement was in the interest of the United States—

Mrs. WAGNER. Mr. Ahern, did Iran insist that the settlement money be delivered in cash? We are going to try one more time at this.

Mr. AHERN. Ma'am, I wasn't part of the negotiations. I can't speak to that. What I can say is that my understanding is that settling this claim at this time in this manner—

Mrs. WAGNER. When was it agreed upon that it would be cash?

Mr. AHERN. —saved the United States Government potentially from paying billions of dollars more to Iran.

Mrs. WAGNER. My time has expired.

I appreciate the indulgence of the chair. I have many more questions and I will submit them for the record. Thank you, Mr. Chairman.

Chairman DUFFY. The gentelady's time has expired.

The Chair now recognizes the gentelady from Ohio, Mrs. Beatty, for 5 minutes.

Mrs. BEATTY. Thank you, Mr. Chairman.

And thank you, to our ranking member.

And a big thank you to our witnesses who are here today.

Mr. Chairman, I just have a few brief statements, and more so for clarification for me and for all of those who are watching this.

So let me start by thanking you for advising us to get the real answers that we need. If we want it to move forward then our leadership and others, including myself, had I known about it, would be doing this in a classified briefing. That is number one.

We are often chastised on this side of the aisle if we are a little late for complying with some rules. And so I am going to assume, since it is my understanding that the title of today's hearing is picked by the Majority and the title is, "Fueling Terror: The Dangers of Ransom Payments to Iran." So if they really thought that this was a problem, seems like you would want to be more armed by being in a classified setting where you could get real information.

If you don't want real information and you just want to showboat then you do—or you get what we are seeing here today.

There has been a lot of opening statements in your opening statements. Let's go back to the opening statement that our chairman made of the Financial Services—the chairman mentioned—when he said it was the Iranian officials who said this was really a ransom.

Now, our President—I am not saying my President, let's get something clear. The President of the United States is our President. So our President is telling us that it was not. He was trying to save lives and bring them back home.

So let's figure out who the real enemy is here. If I am sitting here listening to this, as many Americans are, it almost seems like my colleagues are pitting our President against the individuals that they are now chastising us for bringing our individuals home.

So we have been intense in here. We have been somewhat humorous in here. So let me be very abstract in here.

Since this has been a lot about money, let's just say I wanted to say, since they are expecting you after you have actually said in one of your statements that you thought the money went for economic needs, but yet you keep being badgered over the cash and badgered over where the dollars are going, and more specifically that they are going to fund terrorism.

So what if I would say to my colleagues: There is something called the RNC, and monies that they give go into the RNC. So would they remember or know if their monies to the RNC that went to the presidential candidate Donald Trump, who I believe excites terrorism—would they be able to then say back to me why they did?

Let's assume most of them didn't give to him. Interesting, isn't it? But we know their dollars will go in to fund a presidential candidate who excites terrorism, a presidential candidate who is not about saving lives, who makes fun of those who are disabled, who degrades women.

And yet, they stand here wanting to question our President for going back and giving the money that belonged to them already. It was their money he gave them back.

Now, I also think you would use words like, "It was incredibly brilliant that our President cared so much about those individuals who were being held there that he wanted to do one thing. And if he is guilty of something it was to make sure that the timing of the transaction"—it was already done that he was giving the money. That wasn't a secret.

We knew he was giving it. We even know how they lined up the foreign currency to be put on the pallets to give to them. So that is not a secret.

If you are trying to do something that is not legal or fair, you don't publicize and describe it and you say it. So it was the timing that he wanted to do to make sure that people were returned safely.

So I want to thank you for trying to be helpful. I want to thank you for your answers. But I think you said it best when you said

you are not there knowing how the dollars are transferred or what we did, but you do believe that it went for economic needs.

Thank you, and I yield back.

Chairman DUFFY. The gentlelady yields back.

The Chair now recognizes the gentleman from California, the Chair of the House Foreign Affairs Committee, Mr. Royce, for 5 minutes.

Mr. ROYCE. Well, thank you, Mr. Chairman.

The reason we are concerned with cash going to Iran, especially \$1.7 billion in cash, is because Iran is in the process, with the Iranian Revolutionary Guards Corps, of funding terrorism in the region. And specifically what they are trying to do is get their hands on hard currency.

So when they are trying to develop, for example, for Hezbollah the capability to use GPS in order to be able to equip the missiles and rockets in the inventory with this special capability to be able to hit the tallest buildings in Tel Aviv or be able to get around the Iron Dome, this needs two things: the transfer of the missiles from Iran to Hezbollah—they already have transferred 100,000 of these rockets and missiles; and second, it needs the capability of being able to switch this over to this GPS capability.

For that kind of terrorism they need hard currency. That is why we are interested in the \$1.7 billion cash payment, because by insisting that it was the only way to get the money to Iran we are strict in maintaining banking sanctions. This is hugely misleading, and let me explain why.

The sanction system was designed with tribunal payments in mind. The Iran transaction sanctions regime contains a number of exemptions from the rule so that certain transactions can go forward. And in this case, transactions for tribunal settlements are explicitly authorized and would shield any entity involved in such a transaction from liability under U.S. law if this had been done the proper way without use of cash.

No. It was the Iranians that wanted the cash. They wanted the cash because they are trying to fund terror.

That is what the IRGC does. It is the number one state sponsor of terrorism in the world today.

So the Administration chose not to license a transaction within the international financial system. They chose to deliver \$1.7 billion in untraceable assets, which was the demand on the part of Iran. And if everything was on the up and up and there is no connection to hostages, why not go through the process laid out in law?

This is a state sponsor of terrorism. So you are right that banks don't want to do business with a country that is backing the slaughter of hundreds of thousands of innocents and those in Syria, and developing missiles—ballistic missiles, by the way, aimed at us because they are intercontinental ballistic missiles. But the truth of the matter of is that if you wanted to pay through a bank you could have.

The primary example here is North Korea and Banco Delta Asia. No one was more toxic than North Korea and the BDA, not even Iran today. But when the last Administration wanted to get North Korea—wanted to give the funds back to North Korea it found a

way using the New York Fed and the Russian Central Bank. It found a way through legitimate financial channels, which you certainly could have done.

Likewise, you found a way during the interim agreement to facilitate \$700 million back to Iran each month through international banking relationships. Yes, it would have taken longer, but the dispute this payment was supposed to settle was over 35 years old. What is a couple more months?

The only way that I see timing coming into play if this was a ransom for the release of Americans and if this didn't drive the capture of three more Americans—and remember, that is what the Department of Justice said at the time: Don't do this; it will be perceived as ransom and we will have more Americans captured.

The heavy water payment, another \$10 million. Now that is not much compared to the \$1.7 billion, but was this paid in cash, too? I would certainly like to know, because the danger I see here is that cash is going to become the new normal for the Iranians.

And lastly, I just bring up pursuant to the Victims of Trafficking and Violence Protection Act of 2000, \$400 million in taxpayer dollars was supposed to go to U.S. citizens to settle judgments against Iran for terrorist attacks. It looks to me like part of this understanding is letting Iran off the hook for those terrorism claims that was part of that settlement. Is that correct?

Ms. GROSH. With respect to the victims of terrorism claims, as I was speaking—as I answered one of your colleagues' questions, those judgments were paid in 2000; with the Victims of Trafficking Act Congress appropriated \$400 million to pay them. So their judgments were paid.

Mr. ROYCE. But what about the interest on that that should have come out of this account?

Ms. GROSH. Those claims were then subrogated to the United States, so they became U.S. Government claims and they were factored into the overall settlement.

Mr. ROYCE. And in terms of my question on the situation of how this was handled with North Korea, why was it not handled the same way with respect to Iran?

Mr. BACKEMEYER. Congressman, I am not familiar with North Korea, but what I can tell you is this: We share your concerns with respect to Iran's troubling activities. We have a variety of tools that we use to counter those activities including robust sanctions, including sanctions that continue with respect to Hezbollah in legislation that was passed in this body. We continue to use those and intend to aggressively enforce those as we go forward.

With respect to the mechanism of the payment, all I can say is that Iran did not—regardless of the legal prohibitions, Iran did not have the international relationships, did not have the accounts because of the sanctions that were so strongly imposed by this Congress. Accounts were not allowed during the sanction period, and as a result Iran did not have those relationships.

So it was difficult to do anything else in an immediate way. And the immediate payment of these funds is what allowed us to get favorable terms that were in the interest of the United States.

Mr. ROYCE. The immediate payment is what managed to coincide with the exact exchange for all four hostages.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Washington, Mr. Heck, for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman.

And this question is for either Mr. Backemeyer or Ms. Grosh. My understanding is that the most recent settlement at The Hague Tribunal before January 2016 was in 1991, when Washington and Tehran agreed to a \$278 million payment as compensation for military equipment that the shah paid for but was undelivered at the time of the revolution.

The final negotiations on that settlement coincided with the release, as you will recall, of two Western hostages, including one American, by Iranian-backed Shiite Muslim militants over in Lebanon. According to a New York Times article dated November 28th, 1991, Bush Administration officials at the time denied that the deal was linked in any way to the fate of the hostages in Lebanon.

The State Department's legal advisor then, as now, under President Bush said in the Times that, with respect to the arms deal, "It is pure coincidence that it is coming together at the same time the hostages are being released."

In your view, is there any reason to doubt the Bush Administration's claim that the hostages' release had anything to do with the arms deal settlement, which they claim had been under discussion for a long time?

Ms. GROSH. Congressman, I am familiar with those. I recall those reports at the time. I wasn't involved in that particular settlement, but our practices that we—in looking at all of these cases we assess litigation risk and we decide these settlements on their own merit.

Mr. HECK. I will take that as there is no reason to have doubted the Bush Administration's claim.

I would ask you if you recall any public outcry at the time over that. Fact was, there was none from Congress. I will save you the time.

I would ask you if you recall any hearings being held by any relevant committee of jurisdiction regarding that issue, as we are today? I will save you the time. There were none.

And I will also remind you that in the wake of the original Iranian hostage crisis back in 1981 we, in fact, signed a deal to transfer nearly \$8 billion—a transfer which was authorized by incoming President Reagan. And once again there were no Congressional hearings on the legality of those nor an indication from the members of the then-majority party, as now, that it constituted a ransom.

So one of my favorite expressions is "consistency is the hobgoblin of small minds." Congratulations. Evidently there are no small minds here today because there certainly isn't a lot of consistency.

You know, ordinarily we have hearings often on subjects which I don't agree with or with such incendiary titles as is today's hearing. But I almost always find a way to thank the Chair because I think it at least unlocks the door or opens the door for a constructive dialogue and questions and answers that can help illuminate.

That is not the case today. There is no legitimate reason to be holding this discussion other than to dissemble the facts and to engage in propaganda. None whatsoever.

Indeed the only thing I want to say, and not further legitimize this hearing, is that for the four of you and your colleagues, however directly or indirectly you were involved in the return of those four Americans, you have our thanks.

I yield back the balance of my time, Mr. Chair.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from Colorado, Mr. Tipton, for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman.

Ms. Grosh, what is the policy of the United States when it comes to ransom for putting out payment for hostages?

Ms. GROSH. Congressman, my understanding, as stated by the President, that it is the United States Government's policy not to pay ransom.

Mr. TIPTON. We don't pay ransom.

Mr. Backemeyer, you made the comment that there was desire to be able to conclude all of our lines of effort when payments were made of ultimately \$1.7 billion cash sitting on pallets going in the middle of the night to Iran. Were the hostages part of that line of efforts that you were talking about?

Mr. BACKEMEYER. Congressman, as I described, there were multiple lines of effort. There was the implementation of the nuclear deal that we—

Mr. TIPTON. Was there a tie between the cash and the hostage release?

Mr. BACKEMEYER. There was not a tie between the cash and the hostage release. The tie—

Mr. TIPTON. How does that go back to your comment that it was all of the lines being tied together to be able to achieve the end?

Mr. BACKEMEYER. I don't believe I said the lines tied together, sir. I believe what I was trying to convey was that we thought we had a unique opportunity and diplomatic momentum where we could achieve multiple U.S. objectives, including implementing the nuclear deal that extended Iran's breakout timeline from less than 90 days to over a year, including bringing home American citizens that had been unjustly detained and arrested on bogus and trumped-up charges—

Mr. TIPTON. So there was tie.

Mr. BACKEMEYER. —and settling a longtime outstanding claim that we would have paid one way or another.

So this was not a question with respect to The Hague claim tribunal—or Hague Tribunal claim of whether to pay \$1.7 billion or zero; it was a question of whether to pay \$1.7 billion or much more.

Mr. TIPTON. So there was a tie with no connection. I would like to be able to get into the terrorism end of this, in terms of the agreements that were put forward

Ms. Grosh, during the negotiations for the settlement purposes of the agreement with Iran in payments, did anyone in the Administration ever bring up the issue could these funds be used for terrorism? Was that raised as a concern?

Ms. GROSH. Again, my expertise in all of this is very narrow. It really is to litigating claims, assessing litigation risks, and in any of these settlements, whether it is this one or the ones that we have entered into prior, to give advice about what is a good settlement for the United States Government.

Mr. TIPTON. Mr. Backemeyer, can you maybe answer that? Were any concerns raised by the Administration?

Mr. BACKEMEYER. Congressman, as I said, we have multiple concerns with the Iranian government and multiple concerns with their activity—

Mr. TIPTON. What overrode those concerns?

Mr. BACKEMEYER. Congressman, as I have noted, we have tried to take step-by-step on multiple lines of effort areas where we think we can advance U.S. interests.

We do so in a concerted and thoughtful way and we have done that with respect to the most immediate threat, which is the Iranian nuclear program. We have done that with respect to one of our top priorities of bringing home our American citizens. And with respect to this claim, we did so in a way that saved taxpayer dollars.

We are obviously concerned about any potential—

Mr. TIPTON. Okay. You are talking about saving the taxpayer dollars. You know, if we look at National Security Advisor Susan Rice, she admitted that some of the Iranian money could be used for terrorism. Is that a concern that you took into consideration?

Mr. BACKEMEYER. We are constantly concerned with what Iran might do with respect to its support for terrorism and we have a variety of tools that we use to counter that. That includes robust sanctions that were passed in this very House; that includes designations of individual entities like the IRGC, the Quds force, other entities in Iran that support terrorism. We have a robust intelligence effort to—

Mr. TIPTON. Mr. Backemeyer, maybe you could give me a little bit of clarity on this. The \$1.7 billion settlement where you sent over cash in the middle of the night on pallets to Iran that went into their possession, you have said that the majority of this has gone to infrastructure programs so we are left assuming that they are filling potholes over there.

Since you are able to track that money, what happened to the rest of it? Did a little bit of it go to terrorism funding? You were able to track the infrastructure program.

Mr. BACKEMEYER. Sir, what I am speaking to is our assessment of the vast majority of funds Iran has gotten access to with respect to the multiple lines of effort that we have. I cannot get into specific details about where any those are going as I can speak in a general matter.

But it does not change the fact that we have serious concerns about what Iran does do with its money, and we have—

Mr. TIPTON. We are talking about in a general matter it is going to infrastructure. Where did the other money go to?

Mr. BACKEMEYER. Congressman, I don't think I said infrastructure. I believe I—

Mr. TIPTON. No, I think you did. You said infrastructure programs.

Mr. BACKEMEYER. If I did I—what I recalled saying was it was going to domestic economic needs. But I have made the point again and again that we have concerns about where Iran does send its money and its support and we have a variety of tools that are in place in order to try to counter that. That is an ongoing effort of our government—

Mr. TIPTON. Did they give you any guarantees that the money wouldn't be used for terrorism?

Mr. BACKEMEYER. I am not aware of any guarantees, but our—the way we approached this is from what the U.S. Government can do with respect to our intelligence capabilities, with respect to our operational capabilities, and respect to our diplomatic capabilities to try to track and deter those sorts of activities.

We have a vigorous effort to both deter and disrupt shipments to Hezbollah, other proxies in the region. That is an active effort that is ongoing. We have active efforts with respect to our sanctions, which is intended to degrade the potential for those actors.

And we have, as you know, ultimately other diplomatic lines of effort where we are trying to resolve other issues of concern and other threats to the United States.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Michigan, Mr. Kildee, for 5 minutes.

Mr. KILDEE. Thank you, Mr. Chairman. And to you and the ranking member, thank you for agreeing to my participation.

I am not on the subcommittee but I am here because there is probably not a subject since I have been in Congress for the last 4 years that I have spent more time on than the issue of the U.S. relationship with Iran, specifically because one of those Americans that people continue to refer to is a young man who lives about a mile from me now, a young man named Amir Hekmati, from Flint, Michigan, my hometown, who, gratefully, thankfully, as a result of the great work of the agencies represented here, our secretary of state, President of the United States, is now a free man at home pursuing the rest of his life.

The reason I make that point is that there were very many Members of Congress, including some Members who have expressed their outrage today in this hearing based on their assumption that there was some connection between these three distinct negotiations that took place, that one was a quid pro quo for the other.

There were many members of the House of Representatives who took time at the point that the JCPOA was enacted, agreed to, that the release of these Americans should have been a part of that transaction and that it wasn't.

So I have a bit of concern with what I see as some duplicity here, that on one hand when it fits the political narrative the Administration is criticized for not making these separate negotiations all combined into one, and when it fits the political narrative a month or 2 before a presidential election suddenly we are criticizing the fact that they assume that they were.

Well, they can't have it both ways. So, you know, this does not make these negotiations—these agreements do not make—does not make Iran a good player on the global stage. There are still a lot

of unresolved issues—certainly some regarding their terrorist activities or their support of terrorist activities fits that category.

The fact that we still haven't had information about the status of Robert Levinson is another cause of great concern. Many of us continue to press Iran for information regarding his status.

But to hear the same voices say that the release of these Americans should have been part of these separate negotiations now say that they were a part, coming out of the same voices, makes it obvious that what is going on here is simply politics, sadly, especially when we consider the gravity of not just the relationship between the United States and Iran and Iran and the rest of the world, particularly in that region, but to bring in the release—the happy release of these Americans into that conversation, I think is unfortunate.

So let me just ask, at what point since 1979 did the United States have any direct negotiations with Iran? Was there any point in time before President Obama and President Rouhani spoke by telephone during the General Assembly? Was there any direct negotiations, face-to-face negotiations officially between the United States and Iran between the revolution and that moment in 2013?

Mr. BACKEMEYER. Congressman, I wouldn't want to speak to the entire history, but let me summarize and I think we will answer your question. Diplomatic contact was basically cut off for that entire period.

Mr. KILDEE. I guess the better way to put it: Was there ever an opportunity that presented itself to resolve these longstanding disputes through direct negotiation, whether it is the release of the Americans or this dispute that resulted in the payment that is the subject of this hearing? Was there a moment that occurred prior to the JCPOA negotiations that took place that allowed for another track of negotiations to occur simultaneously?

Mr. BACKEMEYER. Well, with respect to The Hague Tribunal, as my colleague has noted, we have had ongoing conversations in that tribunal to settle claims. But with respect to the consular issues that you raised that we do agree are so important, our first real, tangible opportunity to raise those was in the context of the JCPOA, and we took every opportunity in those negotiations, as you note, to raise these particular cases. And it was that channel that allowed us to continue discussions on their ultimate release.

Mr. KILDEE. Thank you for that.

My point is that it should come as no surprise to anybody observing the relationship between the United States and Iran that for the first time in a very long time the ability to have bilateral discussion suddenly occurred outside the context of tribunal action. This was bilateral discussion that was able to take place as a result of the JCPOA negotiation.

I know that that opened the door for discussions regarding the disposition of the Americans, and I know that it opened the door for discussion regarding the resolution of these longstanding disputes.

So the fact that these all took place in a period of time which was coincidental is as a result not of just sudden coincidence, but as a result of a change in the nature of relationship between the two governments.

With that, I know I have exceeded my time. Thank you very much. Mr. FITZPATRICK [presiding]. The gentleman's time has expired. The gentleman from Maine, Mr. Poliquin, is recognized for 5 minutes.

Mr. POLIQUIN. Thank you, Mr. Chairman, very much. I appreciate it.

Ms. Grosh, I believe you stated in your opening statement you have been at the State Department dealing with these claims, settlement process, for about 30 years?

Ms. GROSH. Yes, that is correct.

Mr. POLIQUIN. Okay, about 30 years, thank you. And you have been involved in a number of different transactions. How many of them have been settled in cash?

Ms. GROSH. To be clear, I am not involved in the exact financial transactions but I have—

Mr. POLIQUIN. Okay, well to the best of your knowledge—to the best of your knowledge of the settlements that you have been involved with, is it common for these settlements to be disposed of in cash?

Ms. GROSH. Again, I think as I raised, Congressman, with one of your colleagues, there have been various pretty large settlements over time, some small. Each one has been sui generis and there has been a difference in the way many of those settlements have been paid.

Mr. POLIQUIN. Okay. Since you are not going to answer me the question how common it is to use cash let's just move on.

I have to be very honest with you, I am very concerned about this. And I think all kinds of Americans across our great land are concerned about this. I certainly know the people that I represent up in Maine are very concerned about this.

Let's step back for a minute. We have a government that is—has vowed to wipe our major ally in the Middle East—really the only one that we trust, I think—Israel, off the face of the earth. And they vowed to kill as many Americans as they can and they have blood on their hands right now.

And you have been working on a claim settlement here that dates back 37 years. And you testified, Ms. Grosh, earlier today that because of the sanctions in place back in January that there was an inability to transfer \$1.7 billion from America to Iran because the banking system problems because of the sanctions, which we now know is not true.

So all of a sudden we have a wire transfer going from this country to a bank account in Europe somewhere, Switzerland I presume, where it is then converted into cash. \$400 million of principal payments and \$1.3 billion in cash. And that is transferred to a pallet or a series of pallets and put on a cargo plane in Europe before it is flown to Tehran.

So my question to you is, since we don't want any of this cash to land in the hands of terrorists who are trying to kill Americans in the Middle East, who at the other end of that transaction, Ms. Grosh—you worked on this transaction for a long time—who in Europe when that cash was put on wooden pallets before it was sent over to Tehran, what top-ranking American official was there to see that cash? Who?

Ms. GROSH. I am really not in a position to answer that because I was involved in the settlement. I believe some of my colleagues here today discussed those—

Mr. POLIQUIN. Ms. McCord, do you know who it was? Who was the top-ranking American official who was on the ground in Europe when that cash was put on a pallet before it was flown over to Tehran? Who was it?

Ms. MCCORD. I am also not—

Mr. POLIQUIN. Okay, so you don't know.

Mr. Ahern, do you know? You work for Treasury.

Mr. AHERN. Sir, as I stated in my—

Mr. POLIQUIN. Okay, you weren't involved.

Mr. Backemeyer, do you know somebody? Do you have a name for me?

Mr. BACKEMEYER. Congressman, let me address your particular question.

Mr. POLIQUIN. Do you have a name for me who was the top-ranking U.S. official who was on the ground when the cash was put on the pallet?

Mr. BACKEMEYER. Congressman, I would be happy to brief you in closed setting on all the details—

Mr. POLIQUIN. Okay.

Ms. Grosh, let's go back to you since you are not going to answer me. Okay, do we know, when the cash was transported from this airport in Europe to Tehran, who was the top-ranking Iranian official who was in receipt of that cash?

Ms. GROSH. I was not there.

Mr. POLIQUIN. Does anybody know?

Ms. GROSH. I negotiated the—

Mr. POLIQUIN. Okay. Does anybody know? We are going to have the same stalling here. Does anybody know?

Mr. AHERN. Sir, as I mentioned in my opening statement, the cash was eventually dispersed to a representative of the Central Bank of Iran.

Mr. POLIQUIN. Okay. Was this someone who represented the military or was this someone who represented economic development of Iran? Who was it? What is his name?

Mr. AHERN. It was an official of the Central Bank of Iran.

Mr. POLIQUIN. Okay, do you have a name for me?

Mr. AHERN. I don't recall his name, sir.

Mr. POLIQUIN. Oh, but you do have name, you just don't recall it now, correct?

Mr. AHERN. Sir, there were a variety of people.

Mr. POLIQUIN. Okay, so you do—there is a person, though, correct? And you have that name. You just told me—I think you just referred, you don't recall who it is. That means there is someone and there is a name, correct?

Mr. AHERN. There were a variety of officials involved in this transaction. I would have to take that question back.

Mr. POLIQUIN. So if our office got in touch with yours, Mr. Ahern, you could tell us who that individual was or those individuals were, couldn't you?

Mr. AHERN. We will take that inquiry back, sir.

Mr. POLIQUIN. Say it again?

Mr. AHERN. I will take that inquiry back, sir.

Mr. POLIQUIN. I didn't hear you. My ears are bad.

Mr. AHERN. I will take your inquiry back, sir.

Mr. POLIQUIN. You will take my inquiry back. No, I don't want the inquiry back; I want the answer. I want to know who was in receipt of that cash when that—when those pallets of cash landed in Tehran.

Here is why. Here is the problem, Mr. Ahern: We don't have any idea where this cash went. We don't know who received it. We don't know what it was used for, and it is untraceable, and it is with the a country that is the state sponsor of terrorism—one of the three state sponsors of terrorism in this world.

Don't you think that is a problem Mr. Ahern? We don't even know who received the cash.

Mr. AHERN. A couple of points, sir. One, to carry on the comments of my colleague, I would commend to you the testimony of Acting Undersecretary Szubin, who has testified about the funds freed up by the JCPOA and has testified about the deep economic hole that Iran was in, to the tune of half a trillion dollars. And so I would commend that testimony to you.

Mr. POLIQUIN. Cash is the currency of terrorism.

Chairman DUFFY. The gentleman's time has expired.

Mr. POLIQUIN. This is a state sponsor of terrorism that received \$1.7 billion of cash on a pallet in Tehran. Our office will be in touch with yours, Mr. Ahern, so we can find out who the Iranian officials were who received that cash.

Thank you.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Minnesota, Mr. Ellison, for 5 minutes.

Mr. ELLISON. Thank you, Mr. Chair and ranking member.

You know, Mr. Chair, I just want to say that I think that this—we always have to understand that all of the things we talk about in this committee take place within a certain context, and I would like just to remind folks January 15, 2013—no, actually that is the date that this document I am reading from was cited, but actually it was on the night of Barack Obama's inauguration, group of top GOP luminaries gathered together in a Washington steakhouse and pledged to each other that they would make President Obama a one-term President, oppose every single thing he did.

I am telling you that since that time we have seen committee after committee, issue after issue, relentlessly trying to make anything—anything—into a scandal or something like that. And I only want to say to my friends who are part of this, you literally are shaking the American people's faith in the institutions of this nation by pursuing that strategy. You said Obama was going to be a one-term President. Well, you lost.

And you know what? I wish that people would just come to their senses and do what was right for the American people, and I am going to keep on hoping that we do that.

Now let me just say this, also: I have read reports in the press that the Treasury Department worked with foreign partners to effectuate the transfer of funds as part of The Hague Tribunal settlement payment.

First of all, this money that we have been talking about, was this—were these funds that were always Iranian funds that we froze? That is a question to anybody on the panel.

Ms. GROSH. Congressman, the \$400 million that was paid immediately, that came—those were Iranian funds in the FMS Trust Fund that is held in the Treasury.

Mr. ELLISON. And why were they Iranian funds? What made them Iranian funds?

Ms. GROSH. These were funds that were paid into the FMS Trust Fund during the course of the Iranian Foreign Military Sales program. And as I noted earlier, that was—

Mr. ELLISON. What year?

Ms. GROSH. This would have been from the—throughout the 1970s and up through 1979, when we had the memorandum of understanding.

Mr. ELLISON. So back in the 1970s, they paid us the money for some items and we froze that money after the seizure of our embassy?

Ms. GROSH. There was a blocking prior to the—sorry, following the taking of the embassy. The 1981 Algiers Accords addressed issues that had been taken in response to the hostage taking

The trust fund had always been there. There was a memorandum of understanding and Iran pointed to that as a basis for its claim that those funds were to be returned to Iran.

Mr. ELLISON. Okay. So reports indicate that you worked with both the Dutch as well as the Swiss Central Bank. Can you confirm that?

Mr. AHERN. Sir, we did work with a variety of partners in this transaction.

Mr. ELLISON. Okay, fair enough.

Now, it was reported in the press that at least one member of the Congress said that the U.S. flew pallets of U.S. dollars to Tehran. Would you say that that statement would be accurate? Pallets of U.S. dollars. Is that what happened?

Mr. AHERN. That is inaccurate, sir.

Mr. ELLISON. Inaccurate?

Mr. AHERN. Inaccurate.

Mr. ELLISON. Okay, so you said inaccurate.

Mr. AHERN. That is correct. As I mentioned in my opening statement, in both transactions the funds were converted to a foreign currency. They were then withdrawn as foreign currency bank notes—

Mr. ELLISON. Right, but you should understand that the whole country is watching this. This is sort of like a theatrical performance and I don't want to be inarticulate about this, the claim that there was some pallet of U.S. dollars flown from America to Tehran is a false statement. You used the term inaccurate, right?

Mr. AHERN. That is correct. U.S. dollars were not dispersed to Iran.

Mr. ELLISON. Right, right.

So can you mention what foreign financial institutions were involved? Weren't these major institutions? I mean, there is some implication that there is some shady, obscure stuff going on. Were

these major, reputable institutions that we are talking about who helped facilitate the transfer?

Mr. AHERN. Sir, what I can say is that our partners in both transactions were different central banks, national central banks. In the first transaction it was the Swiss National Bank. In the second transaction it was the National Bank of the Netherlands, the Dutch National Bank.

Mr. ELLISON. Now look, in my 38 seconds remaining, I just want to pursue this. I have seen some of my colleagues demanding names of individuals who have somehow played some role in facilitating the whole transaction. As just a Member of Congress who has rules around classified information and who has a general commitment to protect and safeguard the lives, interests, and the means and methods of U.S. engagement, particularly with foreign power, I mean, how would you regard that?

Is that appropriate to disclose the names of individuals? And would it jeopardize U.S. national interest to do so in a public open hearing like this?

Mr. BACKEMEYER. Congressman, it is certainly our preference to discuss those details in a closed setting.

Mr. ELLISON. For the interest of the United States Government.

Mr. BACKEMEYER. Exactly.

Mr. ELLISON. And people.

Mr. BACKEMEYER. Exactly.

Mr. ELLISON. All right.

I yield back.

Chairman DUFFY. The Chair now recognizes the gentleman from Arkansas, Mr. Hill, for 5 minutes.

Mr. HILL. Thank you, Mr. Chairman.

Thank the panel for being here.

And, of course, we are not here to talk about Obamacare. We are not here to talk about Donald Trump. We are here in an open hearing to try to give some clarity to this transaction that has been I think inadequately disclosed by the Administration.

So the fact that we are doing part of this not in a classified setting is for the benefit of the American people so that they have more clarity about this transaction and all the details around it, and I thank the chairman for scheduling it.

I am confused because my friend from South Carolina began talking about President Clinton's signing of the Victims Act back in 2000, and that is sort of related also to my friend's comments from Minnesota. I am used to gap accounting and not government doublespeak and double-counting, but I am trying to understand that if, as you said, Ms. Grosh, that the \$400 million was—in that 2000 act was appropriated by Congress, did we release Iran, then, from their \$400 million obligation?

Because we keep talking about it as if we froze this account in 1979 and then, pursuant to the Algiers Accords, that money was still sitting there and we paid interest on it. But in fact, we, in that act, paid out \$400 million of appropriated money.

So is the \$400 million then remaining in the FMS account not the United States' money? In other words, was Iran released from that obligation?

Ms. GROSH. Congressman, if I could try to clarify that, under the Victims of Trafficking Act Congress appropriated \$400 million. This would be in subsection (b) of that act that was referred to earlier. Funds not otherwise made available in an amount not to exceed the total amount in the foreign military sales account at the date of enactment, which was \$400 million.

Then in a subsequent provision of that act the United States Government—because those were appropriated funds the United States Government was then subrogated to those claims, meaning that they became the claims of the U.S. Government. And the U.S. Government was then in a position to pursue those claims against Iran.

And so in the overall settlement we factored in those claims in reaching the settlement that we did in January.

Mr. HILL. You both used that term, “factored into the overall settlement,” but it just seems in conflict with that law to me, in my reading of it.

It says, “No funds shall be paid to Iran or released to Iran from property blocked under the International Emergency Economic Powers Act or from the Foreign Military Sales Fund until subrogated claims have been dealt with to the satisfaction of the United States.” And so in my view the satisfaction of the United States includes the people of the United States and the people’s representatives here in Congress.

So whose signature, whose wet signature authorized this settlement? Did Secretary Lew approve this settlement and make the recommendation to President Obama?

Ms. GROSH. I am really not in a position to know at what level, but I believe—

Mr. HILL. Mr. Ahern, can you shed light on that? I know the State Department led the negotiations, but who approved this transaction and its structure? Did Secretary Lew approve it?

Mr. AHERN. This settlement was the subject of a number of inter-agency discussions, as you can imagine. Secretary Lew, Acting Undersecretary Szubin were part of those discussions. I don’t know the answer to your question beyond that.

Mr. HILL. And Secretary Lew, of course, was the director of OMB in 2000, so I assume he knows the details of this Public Law 106-386 and this particular paragraph, since he was the director of the Office of Management Budget at that time.

I want to give you another shot at explaining how it factored into the overall settlement, though, because the way I take it is we released them and, in fact, we, the taxpayers, ought to get \$400 million plus accrued interest. And yet we have paid it out as a part of this overall settlement, and that is double counting to me. I just am not clear on your point.

Ms. GROSH. Maybe I could give you an example. At the top of my remarks I mentioned that in 1990 we entered into a settlement with Iran. It settled both U.S. Government claims and U.S. national claims for \$105 million.

In my experience in claims practice, it is not unusual to settle multiple claims together at the same time. And if those are the claims of the U.S. Government we take all those into account, just as we could counterclaims.

And so in the negotiation of this claim settlement with Iran we had discussions about those claims and they were settled along with the trust fund issues.

Mr. HILL. Well, thank you for that answer.

But, Mr. Chairman, I remain confused that this is somehow double counting, and I urge our committee staff to try in discussions to get to the bottom of that.

Last question I have for the Treasury official: Were there any IRGC members on the IranAir flight that picked up this money and took it back to Tehran?

Mr. AHERN. As I said, the money was disbursed to a representative of the Central Bank of Iran. As I understand it, there were no specially designated nationals involved.

Mr. HILL. Thank you.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the ranking member of this subcommittee, the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Witnesses, I thank you and I compliment you for being truthful and forthright.

This hearing today has taken us back 35 years thereabout, maybe a little bit more, to the Algiers Accords. And I think it was appropriate that we do this.

But I also think it appropriate for us to go back to the inauguration of President Obama because it was around that time that persons met and concluded—in fact, pledged—that they would do everything that they could to stop the President. That is what POLITICO reported: Stop the President.

But I have in my hands what I would like to place in the record, an article styled, “The Republicans’ Plan for a New President.”

Mr. GREEN. And this article addresses the notion that on the night of Obama’s inauguration a group of top GOP luminaries, as was indicated by another member, quietly gathered in a Washington steakhouse.

They were there to lick their wounds. But ultimately they created this plan on how to deal with the incoming Administration. This is a furtherance of the plan.

And for those who are curious as to persons in attendance, without going through all of the luminaries, I think it appropriate to say that the current Speaker of the House was in the house.

I think it fair to say, as reported in this article—and by the way, there are other reports. CNN has reported on this. It has been reported widely. But it is fair to say that the current majority leader had a leadership role. He was there, too.

So with this kind of pledge made to each other it just seems appropriate that the style of this hearing would be, “We Kept Our Word, and We Are Keeping Our Word, and Anything That This President Brings Up, We Will Oppose It.” And that has been the record. The record is replete with specific examples of how they have opposed everything this President has brought forth.

But I will be very candid with you. I did not believe that it would get to this point.

There are families—I have two—who have relatives who are being held hostage. Can you imagine what these families have to

conclude when they hear people saying that somehow giving—returning money to people that belonged to them, and seeing our people come home, that there is something inappropriate about this?

These families are suffering. I meet with them regularly. I know their pain. They want their loved ones to come home.

We ought to be proud of the fact that we didn't give a ransom, and we did bring them home. This was the money that belonged to the Iranians. It was a prisoner swap. We have Americans who were brought home.

My God, can we not credit the President with something? He has made a difference in the lives of these people.

But this is not about this specific transaction. It is really about a deal that was cut on the night of the inauguration thereabout to do everything to disenfranchise this President.

Who would have thought that Members of Congress would say that the President wasn't born in the United States of America? The President of the United States of America not born—not an American? It has continued, it has been consistent, and they have been persistent.

But we have to stand by the truth.

Remember William Cullen Bryant: "Truth, crushed to earth, shall rise again."

Remember Carlyle: "No lie can live forever."

Remember Martin King: "The arc of the moral universe is long, but it bends toward Justice."

History will not be kind to these who would do what they are doing to this President, pursuant to a deal that was made. You are keeping your word.

I yield back.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from North Carolina, Mr. Pittenger, for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman, and thank you for calling this very important hearing.

Mr. Ahern, are you old enough to know the TV show, "Dragnet?"

Mr. AHERN. I am, sir.

Mr. PITTENGER. You are. Sergeant Friday?

Mr. AHERN. He is one of my favorite characters, sir.

Mr. PITTENGER. Then you recall, "Just the facts, ma'am, just the facts."

Mr. AHERN. Yes, sir.

Mr. PITTENGER. He was renowned for that line, and I think that is all I would request today. I am going to ask a series of questions, and I would like your response, just the facts, if I could.

Mr. Ahern, what—who exactly was in charge in gathering the \$400 million in currency? What level of staff is tasked to gather the \$400 million in cash, place it on a plane, and send it to a foreign government? How were these dollars packaged?

Was the military used to fly the plane, to fly the money to Iran? How did Iran receive the cash? Please take a moment and articulate the exact process of the money exchange from the money the State Department went to the bank and withdrew the cash to the moment Iran received the money.

Mr. AHERN. Sir, as I said, there were two payments. They flowed in generally the same manner, but I will break them down into two payments and walk through the flow, how they each worked.

With respect to the \$400 million principal that was held in the FMS account, that—those funds were transferred to the—an account of the Swiss National Bank.

Mr. PITTENGER. Who was in charge of gathering that money?

Mr. AHERN. I am sorry, sir?

Mr. PITTENGER. Who was in charge of gathering the \$400 million?

Mr. AHERN. It was a wire transfer to that account. Once in that account, the foreign national bank converted those funds—

Mr. PITTENGER. And who initiated the wire transfer?

Mr. AHERN. That was initiated by the, as I said in my opening statement, the Defense Finance and Accounting Service.

Mr. PITTENGER. I am sorry I missed that. But just kindly convey that.

Mr. AHERN. It was a Department of Defense-controlled account, and so the Defense Finance and Accounting Service, DFAS, was the one to initiate that wire payment. We helped them build the wire instruction to do that.

The funds were then transferred to the foreign central bank, which converted them into Swiss francs. Those francs were then withdrawn as bank notes. They were transported from one location in Switzerland to Geneva, and there they were disbursed to a representative of the Central Bank of Iran.

With respect to the second payment, the \$1.3 billion that represented the compromise of interest pursuant to the settlement agreement, that money was transferred, again, from the Judgment Fund, which is the fund that Congress has authorized for the payment of judgments and settlements when there is no other appropriated fund. It was transferred to the account of another central bank, again, the Central Bank of the Netherlands.

It was converted into euros at that stage. It was withdrawn as bank notes, pursuant to an arrangement between the United States, the home government of that central bank, and Iran. That bank then disbursed those funds to representatives of the Central Bank of Iran.

Mr. PITTENGER. Was there a receipt for all these fund transfers? Was a receipt given?

Mr. AHERN. For which leg, sir?

Mr. PITTENGER. Well, when the funds were received—when money is transferred there is acknowledgment and there is a receipt. Was there a receipt given for the transfers? Do we have access to those receipts?

Mr. AHERN. I am not familiar with the answer to that question, sir. I would have to take that back.

Mr. PITTENGER. Well, I would like to know what type of receipt was received, in what manner, from Iran to the United States for the \$400 million.

Mr. AHERN, considering the funds that were received, what confidence do you have that this money was not diverted immediately toward terrorist interests and organizations?

Mr. AHERN. Again, to carry on some of the comments that my colleagues have made in the past, and also I would commend to you the testimony of our Acting Assistant Secretary Szubin recently with respect to the funds that were released pursuant to the JCPOA, and he has testified in detail about the deep hole that the Iranian economy was in to the tune of half a trillion dollars. And so while we can't track any particular bank note, we do know that Iran had a very significant domestic need for funds.

I can also say that the Treasury Department is committed to identifying and countering terrorist financing, its facilitators, its networks. We have an entire office, the Office of Terrorism and Financial Intelligence, that combines all the national security functions of the Department under one roof. That office's primary mission, in fact the reason it was established, was to counter terrorist financing, and we continue to be focused on countering terrorist financing and its networks.

Mr. PITTINGER. These negotiations are scripted and very well thought through in an effort to make sure that there are no mistakes intentionally. How could this be done without recognizing that \$400 million would be transferred simultaneously that the hostages were being released? Was there not a full recognition that that would be taking place, and at least the perception of that reality?

Mr. BACKEMEYER. Congressman, if I may interject to answer your question, as I have mentioned, it was a fact that we tried to resolve multiple lines of business all—on or around the same time. That included the Iranian nuclear deal, which we were implementing, and the IEA verified that weekend that Iran had met its commitments under that deal. We were trying to resolve the prisoner release and the return of our American citizens back to the United States.

And as I mentioned previously, that was—there was a reciprocal humanitarian gesture with respect to Iranian nationals that were in the United States.

And we were trying to resolve this particular issue with respect to the settlement of the claims because we thought that this judgment was in the interest of the United States. And we did so all at the same time because there was a momentum that did not exist for the past 3 decades and we were fearful that if we let one or two of these lines of effort drag out and we did not conclude them all at the same time that we would jeopardize our—

Mr. PITTINGER. My time has ended. I will just say that I was there to receive Pastor Abedini in Germany and he heard the conversation between—with one of the guards that they were waiting for a plane to come in with the cash. He has made already a public statement on that. Thank you very much.

Chairman DUFFY. The gentleman's time has expired.

I would note that we are going to move to a second round of questionings of the panel. I am going to yield to the ranking member for a brief moment to voice an objection.

Mr. GREEN. Thank you, Mr. Chairman. I do object. And I will be more explicit with my objection with the 5 minutes that I will consume in the second round. But I do object and would ask that we not have another round of this.

Chairman DUFFY. And duly noted, and it is in the prerogative of the Chair to go to a second round.

So the Chair now recognizes himself for 5 minutes.

I want to go to a few points of clarification.

Again, who authorized the payment? That question has been asked for numerous times.

Mr. Ahern, I think you indicated that at least Mr. Lew was involved in knowledge of this agreement. Correct?

Mr. AHERN. Sir, think it is unsurprising that with a transaction—

Chairman DUFFY. Agreed.

Mr. AHERN. —of this nature it would involve discussions—

Chairman DUFFY. Mr. Backemeyer, was Mr. Kerry apprised of this?

Mr. BACKEMEYER. Secretary Kerry has been deeply involved in all of our discussions with Iran. This has been subject to a vigorous debate within our interagency—

Chairman DUFFY. And the President was aware of this, as well?

Mr. BACKEMEYER. —and the cabinet of the United States.

Chairman DUFFY. I am going through some quick cleanup. President was aware of—as well, of this deal? Absolutely correct?

Mr. BACKEMEYER. President was aware.

Chairman DUFFY. Highest levels. Okay.

When these deals in the tribunal are resolved there is a settlement agreement that is put out. A settlement agreement in regard to this deal has not been released. Is a settlement agreement forthcoming?

Ms. GROSH. I believe I could ask—answer that question, Congressman. Typically what happens at the tribunal if there is a settlement—and this would have applied to U.S. national settlements as well as government settlements—they are affirmed as an award on agreed terms and they would be attached to—

Chairman DUFFY. Is there a settlement agreement forthcoming?

Ms. GROSH. The parties in this situation, because there are—it was—there are pending claims at the tribunal the parties asked the tribunal not to record it as a—

Chairman DUFFY. There have been pending claims at the tribunal for 37 years and a settlement agreement has been released. I would expect that a settlement agreement, so the American people can see what the deal truly was, should be forthcoming, and it is of concern to this committee that it is—it has not been released and appears, by your testimony, is not forthcoming.

Ms. GROSH. Yes, there are claims continuing. In fact, today my office is filing a submission in the FMS claims with the Iran-U.S. Claims Tribunal, and there is a lot of concern about the fact that those claims are ongoing and we do not want to undermine any U.S. positions.

Chairman DUFFY. And Iran knows of this deal. It is just that we, the American people, want to know about it as well. And I am sure if you share it with us you don't undermine your negotiating position with Iran because they were part of it.

In regard to the \$400 million, I think you all indicated there was a claim by the victims of Iranian terror lien on that \$400 million. You all agreed to that?

Has that lien been released now that that \$400 million has been paid?

Ms. GROSH. The statute really doesn't provide for a lien, so I am not sure what you are really talking about, but—

Chairman DUFFY. There is a claim to the money. Mr. Mulvaney read that to you and you agreed that there was a claim or a lien, however you want to phrase it, per statute on the money.

Ms. GROSH. It was subrogated to the United States Government. That is correct. That—

Chairman DUFFY. So now that that \$400 million has been released to Iran, who is going to pay the claims to the victims of Iranian terror?

Ms. GROSH. The victims of Iranian terrorism who had those judgments were already paid in 2000.

Chairman DUFFY. So there is no outstanding claims?

Ms. GROSH. There are outstanding claims.

Chairman DUFFY. So who is going to pay those outstanding claims?

Ms. GROSH. Those individuals have pursued litigation in U.S. courts. They have received judgments, and as far as I am aware they are pursuing—

Chairman DUFFY. They are not going to get—

Ms. GROSH. —they are pursuing attachments to—

Chairman DUFFY. So is the U.S. Government going to be responsible for those claims?

Ms. GROSH. They are the claims of the U.S. nationals and they do not become the claims of the U.S. Government unless they are subrogated or unless the U.S. Government formally exercises diplomatic protection.

Chairman DUFFY. I want to go quickly here. As part of the Iran nuclear deal assets were unfrozen, or thawed, if you will. As part of that deal were any of those assets transferred or converted into cash and also transferred back to Iran?

Mr. BACKEMEYER. Congressman, the sanctions relief in the JCPOA, the Joint Comprehensive Plan of Action, was quite different. You are correct that the sanctions were lifted that had previously restricted those funds. And those sanctions were lifted and Iran then was—it was up to Iran to access those funds.

Chairman DUFFY. And were they able to access those funds in cash?

Mr. BACKEMEYER. At that point, once those sanctions restrictions were lifted it would be up—between them and whatever bank they had their funds in—

Chairman DUFFY. So are you aware, did they get large transfers of hard currency back to Iran that you are aware of?

Mr. BACKEMEYER. I am not aware of how Iran is ultimately—or how any funds were ultimately disbursed to Iran. What we know is that—

Chairman DUFFY. Were any disbursed to Iran? So they got the \$1.7 billion in cash. Did they get any other cash payments by way of us unfreezing their assets?

Mr. BACKEMEYER. Well, Congressman, it is worth remembering that these were—

Chairman DUFFY. Yes or no? I got limited time. Yes or no? Did they get more cash?

Mr. BACKEMEYER. These were Iranian funds in Iranian accounts overseas—

Chairman DUFFY. I know that. So did—

Mr. BACKEMEYER. —and they used those funds to buy and trade and do things like that—

Chairman DUFFY. So is it fair to say they got more cash shipments in with hard currency because we unfroze their assets? Yes, right?

Mr. BACKEMEYER. No, I am not sure that it is. I don't know how Iran would have sought the disposition of its assets overseas.

Chairman DUFFY. One last question: This deal that you say is so great—was a determination from the tribunal imminent?

So I was a prior prosecutor. Before the jury comes back—the jury is about to come in or the judge is about to rule, the parties settle. Was the judge about to rule? Was there an imminent settlement of this deal that was pending that made you have to act and settle for \$1.7 billion?

Ms. GROSH. As I mentioned in my opening, the—Iran was pressing very hard to go to hearings.

Chairman DUFFY. That is not my question. I didn't act if they are pressing you. I asked you if a settlement or a determination by the tribunal was imminent, not whether they were pressing you. They have probably been pressing for 37 years. Was there a determination imminent?

Ms. GROSH. At that point in time it was our judgment that there was going—that there was a possibility of a judgment coming very soon.

Chairman DUFFY. So the hearings had been had? All of the evidence was with the tribunal and they were about to make a decision. Is that your testimony?

Ms. GROSH. My testimony is that Iran was pressing for a preliminary determination about this issue regarding the disposition of the trust fund and interest.

Chairman DUFFY. So there was no—

Ms. GROSH. It was our determination that it was much better to have a decision made to resolve this for a much smaller amount than what we thought the tribunal could have rendered.

Chairman DUFFY. So there was no imminent determination on the horizon. My time has expired.

And I will now recognize the ranking member, Mr. Green, for 5 minutes.

Mr. GREEN. Mr. Chairman, thank you.

I am a former judge and I can say to you from experience that when the litigants sense what the ruling of the court will be it becomes imminent at that point. You don't have to say it for it to become imminent. But when they sense that there is a ruling that may be adverse to their best interest it is not unusual for those who are litigating to act.

Mr. Chairman, I want you to know that we are displeased with the hearing, and I want to thank all of my colleagues who have appeared and who are prepared to return, but this really has become now about more than oversight; it is about micromanaging the

presidency—more specifically, micromanaging President Barack Obama.

The President should have the latitude to negotiate international affairs. It is inherent in the power of the executive branch. But we want to micromanage this President.

A deal was made, and to the extent that the deal can be consummated we would go this far. I think that it would be a disservice for us on this side to legitimize a continuation of this fiasco.

There are some things that you just don't do. You don't participate in your own demise. You don't allow people to create a petard to which you can be hoist. There are some things you just don't do.

To continue with this is a disservice to the committee itself because this has become about nothing more than confusion and an attempt to honor a commitment that was made when the President was inaugurated.

So I thank you for allowing me to, pursuant to the rules, of course, make this comment, and I am going to ask that all of the members on our side make a—make better use of your time. This has gone too far already and we are not going to take it any further.

With that, not only do I yield back my time but I will make my departure.

Chairman DUFFY. Thank you.

The Chair now recognizes the gentleman from Arkansas, Mr. Hill, for 5 minutes.

Mr. HILL. Thank you, Mr. Chairman.

On the issue of the ransom topic, I know that the Department of State and the U.S. Government has been—expressed displeasure in the past when Germany paid 5 million euros in Mali, and when France paid 25 million euros in Mali for—to Al Qaeda, and it was something we tried to enforce through all of our diplomatic channels and our leadership channels as the United States.

And public reports say that Al Qaeda has between 2008 and 2014 gotten about 125 million euros in paid ransom for tourists or captives that have been returned to their countries.

So my concern is no matter what it is called, you have an appearance problem. And I think that is something that was poor judgment in the process of the negotiating effort.

And secondly, to Chairman Royce's point, this issue of cash is really disturbing to me, and I think it is to anyone who has been a former Treasury official, as I have on my resume. You just don't provide cash to the number one state sponsor of terrorism.

And as Chairman Royce pointed out, the tribunal regulations permit it, and clearly this was an Iranian request and we acceded to it. And it was, in my view, not the right decision in the best interest of the American people because we know what is done with cash in the hands of the number one state sponsor of terrorism.

You also have testified today that it is—I think Mr. Backemeyer, you commented on the state of the Iranian economy.

And whether you are the desk officer at the assistant secretary for international economic policy at State or over in Oasia, sure people write estimates of the state of our friends and foes around the world, but with an \$800 million approximately purchase price

parity in GDP, taking the midpoint of the public number of what was freed up in the JCPOA of \$100 billion, that is 20 percent of GDP. So if they want to help the Iranian people maybe they can cut down on a \$20 billion defense budget and not be looking to that as a reason in negotiations to be, you know, kind-hearted and settling for a higher interest payment than you think perhaps they should have received.

So I really think if we want the Iranians to have a better economy and take care of their “domestic infrastructure needs,” they ought to rearrange how they spend their money and not spend so much money threatening their neighbors, threatening the United States, threatening the people of Israel.

With that, Mr. Chairman, I yield back.

Chairman DUFFY. The gentleman yields back.

I would just like to note as we are going to wrap up this portion of the hearing, I thank the panel for their service to our country. I know how hard all of you work. I know that you have gotten tough questions today. But do know that the Congress and this committee respects your work, though we might have some disagreement with what has taken place in regard to this deal.

I would just note that you may get follow-up questions from committee members that I would ask you to answer in a reasonable amount of time.

I would also note specifically to State and to Treasury, we have sent over written requests for documentation. It has been over a month. There has been zero production from either State or Treasury—documents that we are entitled to.

I would ask you to take that message back to your superiors and please provide those documents that are duly owed to the Congress.

With that, again, thank you.

Our committee is now going to stand in recess for 5 minutes as we switch out panels.

[brief recess]

Chairman DUFFY. I want to welcome our second panel, and first off apologize to the panel that the first panel took so long, but I thought it was worthy of a lengthy discussion. I hope you all do, as well.

Let me introduce our second panel: Mr. Dubowitz is the executive director of the Foundation for Defense of Democracies; Dr. Rubin is a resident scholar at the American Enterprise Institute, AEI; Mr. Lorber is a senior associate at the Financial Integrity Network; and Ms. Maloney is the deputy director of foreign policy, and a senior fellow at the Center for Middle East Policy at the Brookings Institution.

Each of the four of you will be recognized for 5 minutes to give an oral presentation of your testimony. And without objection, each of your written statement will be made a part of the record.

Once the witnesses have finished their testimony, each member of the subcommittee will have an opportunity to ask each of you questions for a period of 5 minutes.

Again, you probably all know this, but on your table you have your three lights: green means go; yellow is you have a minute left; and red means your time is up.

I would just note that the Democrats know we are doing this second panel. We may get some more of them back in the room as we proceed, but they know we are going to proceed without any of them here.

With that, Mr. Dubowitz, you are recognized for 5 minutes.

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

Mr. DUBOWITZ. Thank you, Chairman Duffy, Vice Chairmen Fitzpatrick, Ranking Member Green, Congressman Hill, and distinguished members of the subcommittee. On behalf of FDD and its Center on Sanctions and Illicit Finance it is an honor to testify today.

And we have talked about Iran's malign activities and they pose a severe threat to U.S. national security. These activities include support for terror groups, Shiite militias, proxy forces, and rogue states.

As has been discussed today, to expand these illicit activities the regime needs cash because it is liquid, it is untraceable, it is convertible, and it is easy to transfer. And according to the Financial Action Task Force, cross-border cash transfers are one of the main methods used to move illicit funds, launder money, and finance terrorism.

Now, instead of focusing my testimony only on the question of whether the \$1.7 billion was a ransom, I want to broaden the inquiry. The key question I want to ask today, which is best illustrated in the handout that you have before you as well as on the screen, is did Iran, in fact, get tens of billions of dollars of cash, maybe up to \$33.6 billion?

So let's start with this: President Obama has said, "The reason that we had to give them cash is precisely because we are so strict in maintaining sanctions. We could not wire the money."

Well, as we have discussed, legally the President is wrong. Existing regulations permit transactions.

The President may also use his special authority under IEEPA to authorize banks to facilitate these transactions.

In short, there are no legal barriers. The tribunal has settled about 4,000 claims. I find it hard to believe they were all done in cash.

Now, it is certainly possible that banks were unwilling to not wire the funds no matter what guarantee they got because they have a healthy fear of sanctions after so many years. But if so, it raises a troubling question: How did Iran receive the billions of dollars in sanctions relief under the JPOA and JCPOA?

During the JPOA negotiations we know that Iran was granted \$700 million a month, or \$11.9 billion, from its restricted overseas oil escrow accounts. If no mechanism existed to transfer the tribunal funds through the formal financial system, what mechanism was used to transfer the \$11.9 billion?

Now, a senior official has admitted to The Wall Street Journal that, "Some of that money was sent in cash," and that, "We had to find all these strange ways of delivering the monthly allotment." What exactly were these strange ways? Did they include cash, or

gold, other precious metals? Or was there a formal financial channel?

Now, it doesn't end there. In July, U.S. officials estimated that Iran had repatriated "less than \$20 billion from previously frozen overseas assets of \$100 to \$125 billion." Were those funds also repatriated in cash and gold? Was this in addition to the \$11.9 billion or inclusive?

If the White House could only send cash to Iran from the start of the JPOA period through the tribunal payment, that could amount to a grand total of \$33.6 billion. Did any of this money go through the formal financial system?

If so, the Administration is not being truthful about the \$1.7 billion. If many billions of dollars arrived in Iran on pallets, this would be a pretty astounding revelation.

Now to the question of ransom.

If Iran was able to receive some or all of the sanctions relief through the formal financial system, why was the \$1.7 billion paid in cash? For example, in February 2014 the Bank of Japan reportedly wired \$550 million to an Iranian Central Bank account in Switzerland as part of the interim agreement. There is no reason that the Administration couldn't have wired the \$1.7 billion immediately to that same account rather than sending cash.

So perhaps Iran simply wanted cash. As one senior official said to *The Wall Street Journal*, "Sometimes the Iranians want cash because it is so hard for them to access things in the international financial system."

Is this an admission that cash was an Iranian demand and not a logistical impossibility? The \$400 million cash delivery in January was part of a tightly scripted exchange timed to the release of the American hostages. If Washington needed Iran to receive the funds immediately in order to keep to the script, was cash the only way or could they have wire-transferred that money immediately to the same Central Bank of Iran account, Swiss Central Bank?

Now, the Administration calls it leverage, but Iranian officials call it a ransom. And it is really that Iranian opinion that I think matters. This might explain one of the reasons why the IRGC has arrested more Americans and other dual nationals, to cash in again.

So let me conclude by summarizing my concerns with these two key questions. Number one: Did the Administration authorize the cross-border transfer of as much as \$36 billion in cash and perhaps gold, or some portion thereof? If so, the White House provided Iran with unprecedented and untraceable funds to fuel Iranian regime terror and other nefarious activities.

Or, question two: If the Administration never before authorized the transfer of cash and gold to Iran, did they send this \$1.7 billion as a unique cash delivery to satisfy Iranian demands? And did they do this because it was the only way to get our hostages back? Well, this suggests ransom.

It just seems to me that the Administration can't have it both ways.

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

[The prepared statement of Mr. Dubowitz can be found on page 80 of the appendix]

Chairman DUFFY. Thank you.

Dr. Rubin, you are recognized for 5 minutes.

**STATEMENT OF MICHAEL RUBIN, RESIDENT SCHOLAR,
AMERICAN ENTERPRISE INSTITUTE**

Mr. RUBIN. Chairman Duffy, Ranking Member Green, and honorable members of the subcommittee, thank you for the opportunity to testify today about the Obama Administration's willingness to provide Iran with \$400 million in cash on the same day Iran released all but one of the American hostages it held. In subsequent days the United States delivered an additional \$1.3 billion.

At issue is whether the payment was proper, whether it was ransom, how Iran used the money, and whether the fact that the payment was made in cash might fuel greater terrorism.

I have gone into detail in my written testimony, utilizing Iranian sources and Iranian government journals, with regard to how Iranian figures perceived the payment, how they might launder it, what their strategy is, and how the Islamic Revolutionary Guard Corps corrupts the Iranian economy. For the sake of brevity, let me summarize.

When Secretary of State John Kerry says the \$1.7 billion was Iranian money, there is no reason it needed to be paid now. After all, successive Administrations, both Democratic and Republican, have delayed repayment so as to avoid funding Iranian terrorism. Likewise, if the United States freezes accounts linked to Al Qaeda or Hamas, releasing it and saying, "It is their money anyway," would not be a tenable explanation.

Cash payments are highly irregular. The closest precedent was the 1848 treaty ending the Mexican-American War. There is no critical economic need in Iran for which they have used the cash.

The White House and State Department might perform intellectual somersaults to avoid calling the payment a ransom, but despite initial denials, the State Department has now acknowledged the linkage between the cash paid and the release of the hostages. We have had repeated diplomatic dialogue over the years, so to say that this is just a confluence of events is absolute nonsense.

And Undersecretary of State William Burns, for example, met directly with the Iranians in 2008, I believe it was; Ryan Crocker in 2007. The whole arms-for-hostages scheme during the Reagan Administration was, at its core, about diplomatic dialogue.

Regardless, Washington's spin is irrelevant. Iranians perceive the payment to be a ransom and said so. "Taking this money back was in return for the release of American spies," a senior Islamic Revolutionary Guard Corps general said.

Not only has delivery of the millions of dollars been perceived as a ransom, providing an incentive to seize more hostages—and indeed, they have been seized—but because the money was delivered in cash the payment bolstered the strength of the Islamic Revolutionary Guard Corps and augmented its ability to finance and conduct terrorism.

I should say that reliance on the Iranian defense budget or their line items—it shouldn't be done. They are fictional. Iran's budget is opaque.

After the Flatow verdict back in 1999 or 2000, where the judge assigned damages based on the line item for resistance, the line item simply disappeared in subsequent budgets. That didn't mean that the Iranians stopped conducting terrorism.

Every time the United States Government has offered Iran incentives in the face of terrorism the Iranian response has been more terrorism and hostage-taking. That was the case with the Reagan-era arms-for-hostages scheme. It should be no surprise that the Iranians have seized more than a half-dozen Western hostages in the months since.

The problem isn't just incentivizing bad behavior. Rather, the problem is that the IRGC continues to dominate the Iranian economy. Allowing the IRGC to have custody of the money is to allow the group to launder cash for its own purposes.

Even Iran's Justice minister just a month ago has said that 50 million bank accounts in Iran are opaque or their ownership unclear. That is a country of 80 million people—50 million bank accounts the Justice minister in Iran says are basically bogus.

In my written testimony I also highlight how the IRGC often uses the Tehran Stock Exchange to launder money and play a shell game with companies to evade proliferation and terrorism sanctions. So this is another danger of making the payments in cash.

Payment in cash is especially problematic as it hampers the ability of the intelligence community and the Treasury Department to trace it. Remember, the Iranian plot to murder the Saudi ambassador in Washington, D.C. was exposed because the United States was monitoring specific bank accounts. Also remember that a suicide bomb belt can cost as little as \$1,500.

This hearing may be about Iran, but the issue is broader. What happens in Tehran doesn't stay in Tehran. Exposing U.S. rhetoric about refusal to pay ransom as empty has put a target on every American's back and convinced terrorist leaders and rogue regimes that kidnapping and ransoming pays.

Thank you for the opportunity to testify.

[The prepared statement of Dr. Rubin can be found on page 126 of the appendix.]

Chairman DUFFY. Thank you.

Mr. Lorber, you are now recognized for 5 minutes.

**STATEMENT OF ERIC B. LORBER, SENIOR ASSOCIATE,
FINANCIAL INTEGRITY NETWORK**

Mr. LORBER. Thank you.

Chairman Duffy, Vice Chairman Fitzpatrick, Ranking Member Green, and distinguished members of the subcommittee, I am honored to appear before you today to discuss the dangers of ransom payments to Iran. In particular, I would like to focus my testimony on the legality of the \$400 million cash payment, as well as the subsequent \$1.3 billion cash payments; the risks that such payments pose; and how, most importantly, we could have structured these payments to limit Iran's ability to use these funds to support terrorism, weapons proliferation, and regional instability.

With the recent 1-year anniversary of the JCPOA it is as important as ever to ensure that Iran is limited in its ability to support terrorist forces and corrupt the international financial system. Make no mistake: Though Iran has signed and implemented the JCPOA, it has not changed the underlying criminal activity that has led respectable financial institutions across the world to refuse to do business there.

Iran's unwillingness to change its destabilizing conduct is one of the reasons the payment of the \$1.7 billion to the Islamic Republic raises serious concerns that this money will be or already has been used to support the IRGC, the Iranian military, and Iran's proxy terrorist forces throughout the region.

To be clear up front and as discussed, this payment does appear permitted under U.S. law. Pursuant to 31 CFR 560.510(d)(2), which is part of the ITSR, U.S. persons are authorized to conduct all transactions necessary to payments related to settlement agreements in a legal proceeding between the United States and Iran. The provision permits U.S. Government officials and foreign financial institutions to transfer these funds to Iran after a settlement agreement at the United States-Iran Claims Tribunal, even if such transfers are done in cash, though I will point out that, as Representative Royce noted, that means you could use the formal financial system to transfer these payments. You do not have to go through cash.

Despite the likely legality of the transfer, however, the payment of this money to Iran, particularly without preconditions to ensure that it was not used to support Iran's terrorism-related activities, is both troubling and a missed opportunity. It is troubling because in providing funds to Iran without controls on how it would use that money, we allow the country to disperse these funds to the Iranian military and other nefarious actors.

In addition, the very nature of the payment reportedly led IRGC officials to conclude that it amounted to a ransom. While the payment itself may not have been a prohibited ransom payment under U.S. law, Iran's perception of that payment matters.

A principal purpose of the United States' no-ransom policy is to deter hostage-takers from compromising the safety of American citizens abroad. If terrorist groups and rogue countries do not think the United States will pay for hostages, those bad actors will be less likely to take them. Because of the particular nature of these payments, Iran believed this to be a ransom and consequently may be more inclined to seize Americans in the future, as Mr. Rubin noted.

It is a missed opportunity because the United States could have set up payments stemming from the settlement agreement in a way that conditioned providing the funds on ensuring they would not be able to support terrorism or be given to the Iranian military or sanctioned parties. By releasing these funds in such a way rather than in unrestricted cash, the Administration could have outmaneuvered the Islamic Republic.

Moving forward, Congress should take specific steps to ensure that any funds given to Iran are subject to certain conditions. First, Congress could pass legislation that modifies 31 CFR 560.510 and requires that any funds to be sent to Iran pursuant to a settlement

agreement be placed in an escrow account and released only upon meeting certain conditions, including that the funds not be provided to a sanctioned party and must be released in tranches with a certification provided by the secretary of the Treasury and relevant U.S. Government agencies that the prior released amount has not gone to designated parties or to entities engaged in a number of proscribed activities.

Second, Congress could take steps, including passing legislation, to ensure that any payments made to Iran would present reduced risks of diversion by setting up a so-called white list, where Western banks could process legally permissible transactions to vetted and monitored Iranian banks with no connections to the IRC or to the government or Iran. Such a white list would create a specified channel for processing transactions, including settlement agreements like this one, in a way that would limit Iran's ability to channel the funds to the IRGC and designated parties.

As Iran continues to support terrorism and foment regional instability, the United States should ensure that we play no role in inadvertently funding such activities or putting U.S. citizens at risk. These proposals, I believe, are a step in that direction. I look forward to discussing them with you during the remainder of the hearing.

Thank you for your time.

[The prepared statement of Mr. Lorber can be found on page 102 of the appendix.]

Chairman DUFFY. Thank you.

And Ms. Maloney, you are now recognized for 5 minutes.

STATEMENT OF SUZANNE MALONEY, DEPUTY DIRECTOR, FOREIGN POLICY, AND SENIOR FELLOW, CENTER FOR MIDDLE EAST POLICY, THE BROOKINGS INSTITUTION

Ms. MALONEY. Chairman Duffy, Vice Chairman Fitzpatrick, Ranking Member Green, and distinguished subcommittee members, thank you for the opportunity to appear before you today.

When five Americans returned home in January after months, or in some cases even years, of unjust imprisonment in Iran we all rightly celebrated. The detention of these individuals, including a Washington Post reporter, a Christian pastor, and a former U.S. Marine, as well as many, many other innocents, underscores the threats to basic rights and freedoms in Iran's Islamic Republic.

That this release was timed to coincide with the settlement of a nearly 40-year-old financial dispute between the United States and Iran and that this payment included an airlift of foreign bank notes to Tehran has prompted the allegations of ransom that have brought us here today.

I want to speak first to the question of ransom. I do not believe the facts of the case support the use of the word.

As Chairman Hensarling noted at the outset of the hearing, a ransom is a payment made specifically to secure the release of a detained person. This sum, by contrast, was made to satisfy a legitimate debt that the United States owed to Iran.

The payment provided Tehran with nothing other than its own funds—money that was due to Iran as part of the adjudication of an old settlement. Further delay in settling this claim would not

have obviated its reimbursement. In fact, we benefitted, as the prior panel discussed, from an expeditious resolution of the remainder of the Iranian claims before the tribunal.

Let me move beyond the specifics of the payment to emphasize a point that I think has been lost in the controversy. The coordination of the two separate tracks of negotiation to expedite American priorities and advance the American national interest with respect to Iranian behavior is neither unusual nor surprising. Since the 1979 seizure of the U.S. embassy in Tehran, each American President has sought to utilize economic leverage, both penalties and incentives, as a central component of a strategy designed to address the challenges posed by revolutionary Iran.

This is the point of the sanctions, after all. It is the logic of the deal that was made to release the hostages in 1981, and it was the toolbox that was used by each of President Obama's predecessors. Presidents Reagan, George H. W. Bush, William Clinton, and George W. Bush each utilized sanctions as well as economic incentives in order to try to gain cooperation from Iran on various priorities.

Using economic leverage has never precluded the intensification of sanctions or the use of military force for other coercive measures against Iranian actors or their proxies in the region. These are not mutually exclusive policies.

Let me close by speaking to the issue of the unjust detention of Americans and other dual nationals in Iran. There have been a number of critics of the Administration who have warned that the linkage that appears to be present in this settlement might induce Iran to seize more Americans and increase the risks to Americans in Iran.

I understand why such inferences have been made and I appreciate the rationale of imputing a kind of rational calculus to Iran's treatment of its own citizens and of its dual nationals. Unfortunately, in my view this reflects a naive understanding of the drivers of Iranian politics.

I simply see no evidence that Iran's longstanding patterns of human rights abuses, inadequate rule of law, and exploitations of individuals to advance an ideological narrative are subject to the logic of financial incentives. There is no attempted extortion here.

In these arrests I think that there is no method to the madness other than the obnoxious realities of authoritarian power. There is one factor that drives the detention and seizure of Americans and other dual nationals, and that is the DNA of the Iranian State includes and emphasizes a paranoia that is deep-seated toward external actors and external states. The jailing of Americans has always been motivated by a sense of a conspiracy, American-led, of regime change that is facilitated by these individuals.

In that respect, let me conclude my remarks with an appeal to Congress to devote at least as much time and energy to seeking ways to facilitate the release of those Americans who remain behind bars, missing, or detained in Iran today—first and foremost, Bob Levinson, who was sent to Iran by his own government; also Siamak and Baquer Namazi, who have been in prison for as long as a year, in one case; and Nizar Zakka, who is a U.S. permanent resident. There are a number of other dual nationals who are

seized in Iran today, and this is at a—the center point of the legitimacy of the Iranian regime.

Thank you.

[The prepared statement of Ms. Maloney can be found on page 118 of the appendix.]

Chairman DUFFY. Thank you.

The Chair now recognizes himself for 5 minutes.

Ms. Maloney, you talk about prior presidents using sanctions and incentives in the past, and I wouldn't dispute that point. But can you give me an example of one prior President that has, in essence, given \$400 million of Iranian cash back to them, \$1.3 billion of taxpayer money back to them in the form of interest, and the fact that we have unfrozen billions of dollars in assets? What other President has given that much to Iran?

Ms. MALONEY. President Ronald Reagan sold arms to Iran while it was in an existential war with Iraq. President George H. W. Bush provided Iran with settlements at a time where—under the very similar conditions of the U.S.-Iran—

Chairman DUFFY. To the tune of how many billions of dollars? How many billions of dollars?

Ms. MALONEY. —Claims Tribunal.

Chairman DUFFY. How many billions?

Ms. MALONEY. Hundreds of millions of dollars in that case, and they—

Chairman DUFFY. Did you say a hundred or—

Ms. MALONEY. —were intended to help to facilitate the release—

Chairman DUFFY. Hundreds of millions or hundreds of billions?

Ms. MALONEY. —of American hostages and other Westerners in—

Chairman DUFFY. Listen, don't talk over me. Hundreds of millions or hundreds of billions?

Ms. MALONEY. Hundreds of millions.

Chairman DUFFY. Hundreds of millions. So it is fair to say not to the tune of \$33.6 billion. I think that is what is important to note here, the size of this—

Ms. MALONEY. I don't believe that figure is part of the transaction that is under the consideration—

Chairman DUFFY. I am just going to note that I—

Ms. MALONEY. —of this hearing today.

Chairman DUFFY. I yielded to you for 5 minutes for your testimony. This is my 5 minutes, and I will ask questions and hope you will answer them. And I will reclaim my time, but please don't talk over me.

I would just ask the panel, is there any significance to the fact that this money wasn't wired or sent by way of a check, but instead was—it was wired and then converted to cash and sent into Iran? Is there any significance to the cash component of this?

Mr. Rubin?

Mr. RUBIN. Very briefly, it makes it much easier to launder and much easier to use for nefarious purposes.

Chairman DUFFY. And why is it? Why is it easier to use cash to launder or use for nefarious purposes?

Mr. RUBIN. We often monitor bank accounts, and banks also have various structures and, in theory, transparency requirements,

which make it hard to conduct terrorism or drug dealing or any other nefarious activity through the banks. That is why organized crime uses cash.

Chairman DUFFY. Mr. Dubowitz, did you have an answer to that? You look like you were going to say something.

Mr. DUBOWITZ. No, I absolutely agree. And the example I quoted in my opening testimony is we facilitated or green-lighted the transfer of \$550 million by wire transfer in 2014 as part of the JPOA sanctions relief. It instantaneously hit the Central Bank of Iran's accounts in Switzerland, at the Central Bank of Switzerland.

So the question then is, Mr. Chairman, why send \$400 million in cash if, as Mr. Backemeyer said, they were seeking immediacy? They had to provide an immediate payment. That is what he said in his testimony.

Well, we could have provided immediate payments by wire transferring. I mean, you have seen those films—those scenes in movies where the hostage-taker is on the phone with his banker in Switzerland and he says to him, “The money has hit the account,” and he says, “Great,” and they release the hostages. So there are ways to do this.

And I think the \$33.6 billion is at issue in this hearing because how did that money get repatriated to Iran? How much got repatriated to Iran? And did they send billions of dollars of cash—so we are not just talking about \$1.7 billion; we may be talking about \$8 billion, \$10 billion, \$15 billion of cash?

Chairman DUFFY. And my concern with this is that this is the lead sponsor of terrorism in the world. And frankly, if you look at successful terrorist attacks, whether in our country or other places, it is cheap. It doesn't cost a lot of money. And you look at the amount of terror that can be financed with—if we just use the \$1.7 billion, it is a lot of really bad activity that can be financed with that taxpayer money.

One other question I want to ask the panel. There is a dispute, and you have all heard it: Was this ransom?

Now, I am going to tell you I believe if it walks like a duck and it quacks like a duck it is not a rooster. It is a duck. Some are trying to say it is a rooster.

Let's leave that aside for a second because we could debate that all day. What do you perceive the rest of the world—Iran and other rogue regimes and rogue actors—how do they, do you think, perceive what happened with this \$400 million for five prisoners?

Anyone on the panel?

Mr. RUBIN. It is perceived as a ransom and we should expect that other groups are going to play, “look at me,” to try to do better than the Iranians have done once they are in need of cash, as well.

Chairman DUFFY. Can anybody tell me on the panel—and even you, Ms. Maloney—that the money that has been paid, that this will not be used for terrorism or funding terrorist purposes as seen fit by the Iranian regime?

Ms. MALONEY. I can make no assurances about how the Iranians spend their money. What I can tell you is the long history of Iran's involvement in terrorism demonstrates no correlation between the amount of revenues available to Iran and its nefarious activity abroad.

Chairman DUFFY. My time has expired.

I am now going to yield to the Vice Chair of this subcommittee, the gentleman from Pennsylvania, Mr. Fitzpatrick, for 5 minutes.

Mr. FITZPATRICK. Thank you, Mr. Duffy.

For the past almost 2 years a task force of this committee—bipartisan task force—had a series of hearings where we investigated, reviewed, debated, and ultimately put together some bipartisan legislation that passed the House of Representatives recently. It is now sitting over in the Senate. We investigated how to deny resources, specifically cash, to international terrorist organizations that want to kill Americans and kill citizens of our allies.

As we have heard many times during the course of those hearings and even here today, cash is—it is the preferred currency of terrorism. So imagine our surprise in the middle of a 2-year investigation that we find out that the United States Government, in negotiating with the Islamic Republic of Iran, reaches a settlement that provides \$400 million to be delivered in the middle of the night to Iran in cash. It was the first payment.

I haven't heard a lot about the second. I guess the second payment was the interest that taxpayers paid, maybe \$1.3 billion.

Is there any indication as to how those second payments were made? Were they also made in cash?

Any of the panelists that may wish to comment?

Mr. DUBOWITZ. Yes. The Wall Street Journal reported that it was made in cash and Administration officials have confirmed that. It sounded like the same kind of financial scheme where it was wire-transferred to a central bank in Europe, withdrawn, and then provided to the Iranians. And then, again, flown on an Iranian plane to—presumably to Iran, or perhaps it stopped in Damascus or Beirut to give money to Assad or Hezbollah. One doesn't know.

Mr. FITZPATRICK. Mr. Dubowitz, do you know on what airline the cash—at least the initial cash—was delivered to Tehran?

Mr. DUBOWITZ. So again, The Wall Street Journal reported that the money was picked up by an Iran Air plane, which is controlled by the Revolutionary Guard but was designated in 2011 because it was controlled by the IRGC and regularly flies routes from an IRGC resupply base in Abadan, Iran to Damascus and on to Beirut. So good plane to use if you want to send that cash to Hezbollah or Assad.

Mr. FITZPATRICK. One of the more frustrating things with the previous panel is with all the Government witnesses from the Department of the Treasury, the Department of State, and the Department of Justice, nobody could tell us who specifically requested that the delivery be made in cash. Was it a condition of Iran? Was it a suggestion of the United States Government?

Is there any open-source information out there as to how that decision was made or light that you can provide to us so that we can get that information back?

Mr. DUBOWITZ. So Mr. Backemeyer said that the reason they used cash is because they needed an immediate payment. Now, presumably the Iranians demanded an immediate payment if they were going to release the hostages, and he suggested that only—the only immediate payment that they could actually think of was cash.

And what I have tried to suggest in my testimony is that there are other ways to transfer money immediately. It is an electronic transfer that takes a millisecond and that could hit the Central Bank of Iran's account in Switzerland.

Now, as Mr. Rubin said, you want to use the formal financial system because the Swiss Central Bank is not going to give the Iranians hundreds of millions of dollars without knowing who the end beneficiary of that transaction is. And so it is good to keep things in the formal financial system.

It provides transparency and checks and balances against money laundering and terror financing, and it is precisely why the Iranians don't want the money in the formal financial system. They wanted it in cold cash that they can then ship to Hezbollah, to Assad, and to their other surrogates.

Mr. RUBIN. If I may, sir, according to reporting in The Wall Street Journal and elsewhere, the negotiations to release the hostages culminated around Christmas time in 2015 with this idea of a swap between the hostages that Iran held and many Iranian-American and Iranian prisoners who had been found guilty of trying to smuggle nuclear parts and other prohibited components.

At that point in time the Iranians demanded an additional \$400 million, and to put it simply, they were utilizing as leverage the desire—the overwhelming desire of the Administration to come back with an agreement. I mean, simply put, if we don't want to call it a ransom we can call it a bribe in order to maintain—figuratively—in order to maintain the notion that this agreement was working.

Mr. FITZPATRICK. Mr. Lorber, you suggested that there were other ways you could have structured the payments to essentially outmaneuver Iran. What—

Mr. LORBER. Exactly. So going to the question of immediacy, we actually had a mechanism set up to provide Iran with funds under the JPOA, the precursor to the JCPOA. There was a humanitarian finance channel that had been specifically set up to allow foreign financial institutions to give funds—wire-transfer funds directly into Iran for that purpose. And so the argument that it needed to be in cash for immediacy purposes I don't think holds that much water.

Mr. FITZPATRICK. Thank you.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Arkansas, Mr. Hill, for 5 minutes.

Mr. HILL. Thanks, Mr. Chairman.

Can anyone report to me on a transaction under a tribunal-type settlement, legal settlement, or in any other case where the United States Government has made a payment in cash?

Mr. DUBOWITZ. There is no evidence of that. In fact, I mean, we found a 2015 tribunal settlement for \$848,000 that was owed to Iran, and it seems to have been wire-transferred. And so of the 4,000 tribunal settlements we see no evidence that any of those tribunal settlements were paid in cash.

Mr. HILL. Further, in your testimony, since the JCPOA has been put in place and sanctions have been lifted you cited the government of Japan wiring money to Tehran, I presumed is a part of the

freed frozen accounts. So there has been evidence of SWIFT wire-transfer since the completion of the JCPOA. Is that your general understanding?

Mr. DUBOWITZ. Congressman, in fact, not only since the completion of the JCPOA, but since the completion of the interim agreement. And Mr. Backemeyer seems to suggest that there was a financial embargo in Iran and that is the reason that we couldn't send electronic funds.

But the reality is is that Iranian banks remained on SWIFT even at the height of sanctions. As Mr. Lorber says, there is a humanitarian channel where over 3,000 humanitarian transactions are settled every year. We gave the Iranians access to \$11.9 billion and \$700 million a month was sent from the Bank of Japan and other banks to these accounts that Iran could use.

And that is really the heart of my testimony, which is the Administration is trying to have it both ways. Either there is a financial embargo, which is why they had to send \$1.7 billion in cash. If that is the case then they have sent many billions of dollars in cash, including the \$11.9 billion and the \$20 billion that they admit to repatriating. Or there is no financial embargo; it is just difficult, but there are other ways to actually send the money besides cash, and they used cash in this case because it was an Iranian demand.

The Administration can't have it both ways.

Mr. HILL. It seems to me that there is no legal basis for cash other than the request of the negotiating party, that they sought cash. So I think that is what we have heard both from the government witnesses today and from our private sector panel.

Mr. Lorber, you talk about this idea of Iran certifying that the funds aren't used for terrorism. You used a couple of examples.

To me that was one of the biggest weaknesses in sanctions relief under the JCPOA because it was a cliff vesting. They got all their money held—frozen abroad back immediately with no ability to let it out over time if they maintained compliance with this agreement.

I am not sure your white list idea would hold a lot of clout with me because I am not sure we know what goes on inside Iran. But this idea that we let money out over time and we have Iran certify a pledge to the payment that it be certified not be used for terrorism might be useful.

Have we used that in any settlement before—that kind of settlement over time basis with certifications from the recipient?

Mr. LORBER. I am not familiar with any circumstance, particularly in the Iranian case, where we have used a sort of tranching approach with intermediate certification. But I agree that it would be a way to at least ensure that there could be some limitations.

And indeed, we have proposed this in other contexts, as well, before this committee. Mr. Dubowitz and I have both suggested something along these lines when structuring the Boeing and Airbus deal to Iran as a way to structure those contracts.

Mr. RUBIN. If I may, sir, the PLOCCA legislation required that there be regular certification, I believe biannual, that none of the monies which are given to the Palestinian authority or the Palestine Liberation Organization are used for terrorism. So there is precedent in which such certifications can occur.

Mr. HILL. Thank you. That is helpful.

Can you think of any legitimate justification why in January—in the 17 January announcement by the Administration about the release of the—our hostages, our American citizens, which we are all thrilled to have back—we want Robert Levinson back, as well; we need to keep that pressure up—and the decision about this claim settlement matter, can you think of any legitimate justification of why the Administration kept the fact that they paid all this money in cash secret from the American people? What would be the basis for that?

Mr. DUBOWITZ. Well, I think there are two reasons. One is the concerns that everybody is raising about how cash is used by money launderers and terror financiers.

I think the second reason is I think the Administration is loath to admit that they may have transferred many billions of dollars to Iran. And we are not just talking about \$1.7 billion, but we are talking all of that money that is on the screen there, some or all of the \$33.6 billion.

If they had admitted that it was cash, Congress would then rightly be asking questions about all the other money that Iran has repatriated over the past 3 years and then you would be very concerned that it is perhaps billions if not tens of billions that the Iranians have gotten in cash to finance not only terrorism but to support their military, to support Bashar Assad, and all the other malign activities.

Mr. HILL. Thank you.

I want to conclude, Mr. Chairman, by reading from the distinguished former member of the Senate, Joseph Lieberman his—in his op-ed today in *The Wall Street Journal*: “On the 15th anniversary of 9/11 the United States should not be rewarding Iran for its deadly actions with gifts of sanctions relief and the easing of arms embargoes and ballistic missile restrictions. It is time to hold the regime accountable for its reckless aggression and support of terrorism.”

I yield back.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from New Hampshire, Mr. Guinta, for 5 minutes.

Mr. GUINTA. Thank you very much, Mr. Chairman.

Thank you all for being here today.

Ms. Maloney, I wanted to actually start with you. I have listened to your comments and I have read earlier testimony. Am I correct in making the statement that you don't believe this was either a ransom or an exchange for prisoners, the \$400 million?

Ms. MALONEY. What I believe is that the timing of the release of the prisoners was coordinated with the timing of the resolution of this long-held financial dispute between the two countries. I do not believe it was a coincidence.

Mr. GUINTA. You do not believe it was a coincidence.

Ms. MALONEY. I do not. And I believe that that is, in fact, consistent with exactly what the Bush Administration—the George H. W. Bush Administration—did in seeking the release of Americans who were held hostage and other Westerners held hostages in Lebanon in the late 1980s and early 1990s. This is the sort of diplo-

macy that the United States has engaged in time and time again with Iran.

It doesn't always pay off. It didn't pay off as we had hoped in the—with the release of hostages in—from Lebanon. It did, in this case, clearly pay off with the release of the four Americans and a fifth American who had been held at the same time.

Mr. GUINTA. At a cost of \$400 million?

Ms. MALONEY. At a cost of resolving a debt that we would have had to resolve irrespective of the release of those Americans. I would rather clear the underbrush, as President Bush said when he talked about very similar actions back in the late 1980s, and see the return of Americans who are being held unjustly than to resolve a debt and not see the return of these same Americans.

Mr. GUINTA. Do you believe that there was any discussion of the prisoner exchange in the JCPOA?

Ms. MALONEY. I believe what I have read in the media consistently, which is that Secretary Kerry and those officials who were engaged in the negotiations raised the case of these Americans time and time again on every occasion when they met with their Iranian counterparts.

Mr. GUINTA. So it is likely as part of that Iran deal there is discussion about a return of prisoners; and there also, coincidentally, at the same time is a discussion about \$400 million or \$1.3 billion payment.

Ms. MALONEY. The negotiations that go on at the U.S.-Iran Claims Tribunal are very much separate and distinct, I think, from the broader diplomatic—

Mr. GUINTA. I thought you just said Secretary Kerry brought it up at every single—

Ms. MALONEY. At the nuclear negotiations, yes.

Mr. GUINTA. Okay. So that is—

Ms. MALONEY. He brought up the status of American prisoners in Iran.

Mr. GUINTA. Okay. So that is my question. While Secretary Kerry, under the direction of President Obama, is negotiating with Iran on the JCPOA they brought up at every moment, as you said, every possible option and chance to release prisoners. And it sounds like as a result of that agreement there was a \$1.7 billion payment made.

Now, I understand that you are saying there is a tribunal that has to be addressed, so that is the—that is their justification for a ransom payment.

Ms. MALONEY. The deliberations at the tribunal have been going on now for 35 years. They occur through very separate channels—

Mr. GUINTA. So, okay—

Ms. MALONEY. —very separate personnel from those who were involved in the negotiations over the nuclear deal or those who were involved with the negotiations of the—

Mr. GUINTA. So 35 years of negotiations and this is the moment that Secretary Kerry and President Obama decide to make a \$1.7 billion transfer?

Ms. MALONEY. We have paid out judgments as part of the U.S.-Iran Claims Tribunal for 35 years—

Mr. GUINTA. Do you think there was a judgment that was imminent with—

Ms. MALONEY. —as the Iranians have paid to us.

Mr. GUINTA. Do you think there has—there was a judgment that was going to be imminent?

Ms. MALONEY. The previous panel debated the use of the word “imminent.” I don’t have any way to gauge whether it was or was not.

What I do believe is what the State Department legal advisor’s office testified at the previous panel, which was that they believe that this compromise agreement was in the interest of the American people, that it was, in fact—represented a lower figure than what the Iranians had been demanding, and that it was worthwhile to get the—

Mr. GUINTA. I have heard their—

Ms. MALONEY. —claim resolved.

Mr. GUINTA. No, I appreciate that. Reclaiming my time, I have heard their excuse and I have heard their rationale. I just don’t believe it, nor do the American people.

Do you know what the President Obama’s Administration position is on private citizens paying ransom internationally?

Ms. MALONEY. I am very familiar with the prohibitions, long-standing policy against payment of ransom for release of hostages abroad, and I think it is a wise policy that ought to be defended. I do not believe in this case that a ransom was, in fact, paid. I believe that economic leverage was used as part of a broader diplomatic engagement—

Mr. GUINTA. What economic leverage?

Ms. MALONEY. —with an adversarial state.

Mr. GUINTA. I mean, when you look at this screen, \$33.6 billion in cash. What economic leverage?

Ms. MALONEY. I don’t believe that we have evidence that \$33.6 billion was paid in cash to Iran.

Mr. GUINTA. Okay. So what evidence do—what dollar amount do we have evidence of that was paid to Iran, in your opinion, if it is not \$33.6 billion?

Ms. MALONEY. We have evidence and we know from The Wall Street Journal that a payment was made in foreign currency cash to Tehran in the case of the resolution of this financial dispute in January and early February of this year and that that was a total of \$1.7 billion.

Mr. GUINTA. Thank you very much.

Chairman DUFFY. The gentleman’s time has expired.

The Chair now recognizes the gentleman from Colorado, Mr. Tipton, for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman.

And, Mr. Dubowitz, maybe if you would speak to this, I just listened to Ms. Maloney’s comments in regards to policy of the United States not to be paying ransom for hostages. In fact, Ms. Grosh from the Department of State said that, indeed, was not the policy of the United States.

Would you speak, is there a distinction with a difference when we deliver \$400 million on pallets in the dead of night to Iran? Is that a ransom?

Mr. DUBOWITZ. Steve Sotloff, who was executed by ISIS, used to be an adjunct fellow at my organization, and I know the Sotloff family tried to privately raise money to free Steve and that the Obama Administration threatened the family with criminal prosecution if they moved forward.

I think there has been some modification of that policy now under President Obama, but it is—what is clear to me is that the Administration saw an opportunity to use leverage, as State Department Spokesman John Kirby has admitted, to use leverage. The money was leveraged to get the hostages back.

So Dr. Maloney admits lots of presidents have used leverage to try and get hostages back. I think other Administrations have also paid ransom. This may not be the first time.

I think what we do is try to—we try to create a cover story so that we don't violate our prohibition against ransom payments in order to pay ransom so that we can get hostages back, and that is exactly what has happened. I think the Administration doesn't want to admit it, because they don't want to admit we paid a ransom after they have threatened the prosecution of the Sotloff family.

I think they don't want to admit it because they don't want to admit how much cash has actually gone to Iran. I don't think it is \$33.6 billion, but I do think it is probably in the neighborhood of \$8 billion to \$10 billion based on conversations I have had with former Administration officials.

I think we are talking about at least \$8 billion to \$10 billion of cash that has gone to Iran since the JPOA period, and the Administration does not want to admit that because that \$8 billion is going to be used to fund terrorism, to fund the Iranian military, to fund missile procurement, to fund illicit nuclear procurement in Germany. And there is no way that our intelligence community, once it is in cash, can trace and to figure out and confirm that that money is actually being used for economic development and not for malign activities.

Mr. TIPTON. Could you maybe expand just a little bit? Because when we listened to Mr. Backemeyer and he said the desire to be able to conclude all of our lines of effort effectively it falls in with what you just described.

What is going to be the outcome with other rogue nations when they are now looking at the United States, given what we know now, and daylight being shown on this Administration's policies, this Administration's actions in delivering cash to Iran? What can we expect out of other rogue players?

Mr. DUBOWITZ. Look, the Iranians have been taking American hostages for decades. American Presidents have been trying to get hostages back. Fictions have been created in order to pay ransom payments to the Iranians in order to get those hostages back. We have seen in other situations with this where a fiction has been created to try and pay a ransom.

If I were the Iranians, I would do exactly what they are doing now. They are taking more hostages.

If I were other rogue actors, my inference from all of this would be the Obama Administration pays ransoms, and so I am going to take more hostages. They will create some elaborate fiction to pre-

tend that they are not, but I am going to take more hostages in order to get hundreds of millions if not billions of dollars back from the United States. I mean, that would be my interpretation if I were a rogue actor.

Mr. TIPTON. Would you maybe speak, because I know you were in—listening to the testimony that Mr. Backemeyer commented that the vast majority of the \$400 million in cash had gone to infrastructure programs in Iran. Is there any way, given your comments now on cash—how can we—

Mr. DUBOWITZ. Look, I agree with Dr. Rubin. I think that is ridiculous. I think there is no way that they can confirm whether \$400 million in cash, in unmarked bills, delivered to the Iranians ends up in an infrastructure project rather than in either the Iranian defense budget, which is then sent along to the Revolutionary Guards and the Quds Force, or doesn't go to the defense budget, ends up in some hidden line item which goes directly to Qasem Soleimani so that he can continue to fund his bloodshed in Syria. I mean, I don't know how our intelligence community can continue to make these claims that they know for sure that most of the money received is going to infrastructure.

Mr. TIPTON. Dr. Rubin?

Mr. RUBIN. If I may, sir, first of all, Mark is absolutely correct that there is no way of knowing and it would be very useful to press the Administration on how they know. Second of all, remember that Khatam-al Anbiya, which is the economic wing of the Islamic Revolutionary Guard Corps, according to some estimates dominates up to 40 percent of the Iranian economy, including major infrastructure projects.

Now, the official budget of the Islamic Revolutionary Guard Corps is about \$5 billion per year. If you factor in the cross-Persian Gulf smuggling you add another \$11 billion or \$12 billion per year.

Now, according to open sources, just in the South Pars oil field, which is the Iranian oil field in the Persian Gulf, the IRGC infrastructure programs have gotten up to \$50 billion in no-bid contracts, which means if you were to zero out the official budget of the Islamic Revolutionary Guard Corps, proportionately they would be facing less of a budget cutback than the U.S. military is through sequestration.

Mr. TIPTON. Thank you.

And I yield back, Mr. Chairman.

Chairman DUFFY. The gentleman's time has expired.

I just want to note that thank goodness, through these kind of payments from our Government to Iran, we have now bought peace with the Islamic State. Or not so much.

I want to thank the panel for your patience, for taking the time to testify, and for sharing your insight with this committee. We are very grateful for that.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And this hearing is adjourned.
[Whereupon, at 1:33 p.m., the hearing was adjourned.]

A P P E N D I X

September 8, 2016

EMBARGOED FOR DELIVERY

Paul Ahern, Assistant General Counsel for Enforcement and Intelligence
U.S. Department of the Treasury
Hearing on Iran Payment, "Fueling Terror: The Dangers of Ransom Payments to Iran"
House Committee on Financial Services, Subcommittee on Oversight and Investigations
September 8, 2016

Chairman Duffy, Ranking Member Green, thank you for inviting me to testify today. I am pleased to be here alongside my colleagues from the State Department and the Justice Department. My name is Paul Ahern and I am the Assistant General Counsel for Enforcement and Intelligence at the Treasury Department.

I am here today to discuss with you Treasury's role in effectuating the payments related to the January 2016 settlement of the long outstanding claim at the Iran-United States Claims Tribunal in The Hague.

The settlement involved two payments by the United States regarding an account established decades ago with Iranian funds, as well as its claim for interest on that account.

The Administration publicly announced the \$1.7 billion settlement on January 17, 2016, and that announcement is publicly available at the State Department's website.

The Settlement Payments

For the first settlement payment, Treasury assisted the Defense Finance and Accounting Service in crafting a wire instruction to transfer \$400 million on January 14, 2016.

The \$400 million came out of what is typically referred to as the Foreign Military Sales Trust Fund. It had amounted to about \$600 million until 1990, when the Bush Administration entered into a settlement returning \$200 million to Iran, and since that time the fund has amounted to about \$400 million.

Treasury worked with DFAS and the Federal Reserve Bank of New York so that the funds transferred from DFAS to a European Bank. The funds were then converted to a foreign currency and physically transported to Geneva.

On January 17, Treasury disbursed the payment to an official from the Central Bank of Iran, for transfer to Tehran. The funds were under U.S. government control until their disbursement pursuant to the settlement.

The second settlement payment, involving settlement of the dispute over accrued interest, was disbursed out of the Judgment Fund.

The Judgment Fund is the source of funding Congress has provided for use generally in paying judgments and settlements of claims against the United States when there is no other source of funding.

Awards and settlements of Tribunal claims have been paid from the Judgment Fund in the past, including a \$278 million settlement reached in 1991.

Though the payment to settle the dispute over accrued interest was one payment, the Judgment Fund system has a technical limitation that prevents it from processing individual claims in amounts over ten digits in length.

Therefore the single claim of \$1.3 billion was broken into 13 claims of \$99,999,999.99, and the remainder of \$10,390,236.28. As in similar prior instances, the system's technical limitation required a claim to be divided into smaller amounts.

These amounts are displayed on Treasury's Judgment Fund website, as is additional information about claims processed through the Judgment Fund.

Treasury disbursed the payment after receiving the appropriate approvals from the Department of Justice. The payment from the Judgment Fund was initiated through a transfer to a European Bank.

In this circumstance, it was held available for disbursement to Iran. Pursuant to an arrangement between Iran, the home country of the European Bank, and the United States, the European Bank converted the \$1.3 billion into a foreign currency and then disbursed the funds as banknotes to an official from the Central Bank of Iran.

This process occurred in two installments, one on January 22 and the other on February 5.

The Payments were Consistent with Existing Sanctions

The sanctions regime we built with our international partners had effectively cut off Iran from the international financial system. Iran was very aware of the difficulties it would face in accessing and using these funds if they were in any form other than cash, even after the lifting of sanctions under the Joint Comprehensive Plan of Action.

Therefore, effectuating the payment of the funds in the FMS account and the subsequent interest payments in cash was the most reliable way to ensure that they received the funds in a timely manner, and it was the method preferred by the relevant central banks.

For both the payments to settle the disputes over principal and the interest, no direct transfer was made from any U.S. account to Iran. In addition, these transactions complied with U.S. sanctions law and did not require a unique license, waiver, or other form of authorization.

Treasury's Iranian Transactions and Sanctions Regulations, at 31 C.F.R. 560.510, explicitly authorize "[a]ll transactions necessary to payments pursuant to settlement agreements entered into by the United States Government" in a legal proceeding in which the United States is a party, such as settlements of claims before the Tribunal.

Thank you again for the opportunity to testify about these issues. I look forward to answering your questions.

**Statement of
Christopher Backemeyer, Deputy Assistant Secretary for Iran
Bureau of Near Eastern Affairs
U.S. Department of State
House Financial Services Subcommittee on Oversight and Investigations
September 8, 2016**

Chairman Duffy, Ranking Member Green, and Members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Chris Backemeyer and I am the Deputy Assistant Secretary of State for Iranian Affairs. I am a career State Department official and I have worked on Iran for the better part of the last decade. I welcome the opportunity to come before the committee as well as the American people and describe and correct some of the misunderstandings about the Hague Claims Tribunal Settlement that was reached and announced in January of this year – a settlement that we concluded was clearly in the U.S. national interest and which saved the U.S. taxpayer potentially billions of dollars.

As you know, President Obama and Secretary Kerry announced the settlement on January 17, when it was concluded, and specifically noted that the settlement involved \$400 million for the FMS Trust Fund that had been established with Iranian funds, as well as \$1.3 billion as a compromise on interest on this sum. This was also posted on the State Department website.

After the announcement, we received inquiries from the Congress, and in each case we offered to provide a closed briefing to members and staff, and one member requested such a briefing, which we provided.

The Hague claim settlement resurfaced in the press again recently, and again we received questions from the Congress, and again we offered to provide a closed briefing to members and staff. And two days ago, we provided two such briefings – one for House staff and one for Senate staff.

And, we are happy to be here today to continue discussing this issue and all of the things that we have accomplished for the American people through our diplomatic efforts toward Iran.

I should note at the outset that there will be limitations to what I and my colleagues can say in an open setting. As I mentioned earlier, we have previously offered closed briefings because there a number of litigation and diplomatic sensitivities

that could jeopardize U.S. interests if we were to go into too much detail. Specifically, as my colleague will explain in more detail, the settlement in January addressed a significant part – but only one part – of a much larger, multi-billion dollar claim, which is being actively litigated, including filings this week.

Iran has a long history of mining the U.S. public record for ammunition to use against us in claims litigation. This includes statements that have been made in Congressional briefings. As a result, it is extremely important that we not say anything in a public setting that would jeopardize our defenses to Iran's remaining claims at the Tribunal. There will also be limitations to what we can say about certain diplomatic discussions we have had with foreign partners, whose cooperation we rely on to address the myriad of security and diplomatic issues around the world.

With those limitations, I will proceed to provide you with as much information as I can today. I think the best way to start is to take a moment to summarize the series of events that occurred on the weekend of January 16-17, a weekend where we finalized a number of diplomatic efforts that advanced U.S. interests in significant ways. As you may be aware, at this time, the United States was pursuing multiple lines of effort that we sought to finalize on or around the same time in mid-January.

First, we were on the verge of implementing the nuclear deal, and the International Atomic Energy Agency (IAEA) was in the process of verifying that Iran had met all of its commitments under the deal for reaching Implementation Day. On that weekend, the breakout time for Iran's nuclear program went from less than 90 days to at least one year. 98 percent of its enriched uranium stockpile was removed, and extensive transparency measures – the most comprehensive to be negotiated in the non-proliferation context – were implemented.

At the same time, we were pushing to finalize an arrangement to get several wrongly detained American citizens, including Washington Post reporter Jason Rezaian, Christian Pastor Saeed Abedini, and former U.S. Marine Amir Hekmati, safely out of Tehran, which was a top priority for us and one that I know Congress shared. We had been pressing the Iranians to release these Americans at every opportunity throughout the nuclear negotiations and continued our efforts to secure their release over 14 months of separate discussions. These individuals were facing lengthy prison terms – if not potentially worse sentences – on trumped-up national security and espionage charges. Absent the resolution we were able to

reach during this period of intense diplomatic effort, we may not have been able to secure their freedom and reunite them with their families anytime soon.

And, lastly, our lawyers were working to finalize the settlement of a long-standing claim that the Iranians had filed at the Iran-U.S. Claims Tribunal at The Hague regarding the Foreign Military Sales (FMS) Trust Fund. The issue of settling the large remaining claims at the Hague Tribunal, including the FMS Trust Fund, had been raised by Iran a number of times over the years. The Iranians had been making a push at the Tribunal to have a hearing on this case and we knew they were eager to settle the case so that they could address critical economic issues, such as their weakening currency. As my colleague will describe in a moment, we realized that we could take advantage of the importance that Iran attached to recovering its principal from the FMS Trust Fund in order to drive a bargain on the 37 years of interest Iran claimed on that principal, which would greatly benefit U.S. taxpayers and protect the United States against the potential risk of a large adverse judgment.

There has recently been much attention paid to the timing of these various issues, which has led to some mischaracterizations that I welcome the opportunity to clarify here today. It's important to remember that for more than three decades we have had no diplomatic relations with Iran and minimal diplomatic contact. As a result, there was a significant risk that any one of these efforts could unravel. It was our assessment at the time that by taking advantage of the diplomatic momentum and trying to finalize all of these issues on or around the same time, we could maximize the likelihood that we would achieve all of our priorities.

The priority that we were the most worried might not succeed was the release of our American citizens. This process had gone in fits and starts, and there were elements inside Iran extremely opposed to any sort of arrangement in which our citizens would be freed. We therefore had some significant concerns that it would unravel. And, those fears escalated over January 16th and 17th when, after the terms of the consular arrangement had been finalized and the Swiss were just about ready to fly our people out of Iran, we were unable to locate the wife and mother of Jason Rezaian. It was agreed that Jason's wife and mother would also be allowed to leave Iran as part of this deal, so their disappearance was highly concerning. At this point, the IAEA had verified Iran's commitments and implementation of the nuclear deal had begun. And my colleagues at the Treasury Department had begun the necessary arrangements to pay the principal in the FMS trust fund, but the payment had not yet occurred.

When this uncertainty presented itself we became very concerned and decided to take a pause before finalizing this other line of effort, specifically the finalization of the payment for settlement of the FMS Trust Fund claim. After a stressful night of uncertainty, and after several high-level phone calls to Iranian officials, including by Secretary Kerry, we were able to confirm the location of Jason's wife and mother and get them on the airplane so that they could leave Iran. With that resolved, we moved forward with a reciprocal humanitarian gesture in which we provided relief to certain Iranian nationals – including several dual U.S.-Iranian nationals – who had primarily been charged with sanctions-related crimes, and we also reinitiated our efforts to finalize the outstanding actions that we had agreed to, including the payment of Iran's FMS Trust Fund principal. This decision was made out of prudence when the success of our diplomatic efforts was in serious doubt. So, we took the prudent step to pause, assess the situation, and resolve our concerns before moving forward.

Through these negotiating tracks we were able to conclude these issues in a manner that advanced our core interests – again, ensuring Iran can never have a nuclear weapon, potentially saving taxpayers billions of dollars on this claim, and freeing wrongfully detained Americans as well as ensuring the return of their family members from Iran.

Again, each of these arrangements was analyzed on its own merits and determined to be in U.S. interests: The release of several of our U.S. citizens along with the safe return of Jason Rezaian's mother and wife by Iran was based on a reciprocal humanitarian gesture in which we provided relief to certain Iranian nationals – including several dual U.S.-Iranian nationals – who had primarily been charged with sanctions-related crimes. And the release of the FMS Trust Fund monies was based on a settlement of Iran's claim for those monies and for 37 years of interest, a settlement that was highly favorable to the United States.

CONGRESSIONAL TESTIMONY: FOUNDATION FOR DEFENSE OF DEMOCRACIES

House Financial Services Committee
Subcommittee on Oversight and Investigations

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

MARK DUBOWITZ

Executive Director
Foundation for Defense of Democracies
FDD's Center on Sanctions and Illicit Finance

Washington, DC
September 8, 2016



www.defenddemocracy.org

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/jl0144.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=24bdea2a7649db1dbce5efd2933b250a5&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/isservices/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/360619286acb4e3dba1d5eb29388d93a/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/jfundSearchWeb/JFPmtSearchAction.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/fsservices/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_fa_q_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/i10144.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 Ziembra, "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/ اجرای 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-ghasseminejad-iran-gives-green-light-to-direct-1.7-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-ghasseminejad-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.bloombergview.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-ca10ba8192cf/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 Kredon, "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-nuke-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-vs-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#axzz4J2pOe8J7>)

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 UFI, 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/>)

**Statement of
Lisa Grosh, Assistant Legal Advisor for
International Claims and Investment Disputes
U.S. Department of State
House Financial Services Subcommittee on Oversight and Investigations
September 8, 2016**

Chairman Duffy, Ranking Member Green, and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am the Assistant Legal Adviser for International Claims and Investment Disputes at the Department of State, where I have worked to defend the United States against Iran at the Hague Tribunal for nearly 30 years. Over that time we have won many cases. We lost some. And sometimes we decided to settle. I am here today to explain as best I can in this setting the settlement that was announced in January.

As Mr. Backemeyer explained, this was only a partial settlement of a very large case. The rest of that case is ongoing at the Hague Tribunal. Because of that, I am limited in what I can discuss in this public setting. As he explained, Iran and its lawyers are vigilant in scouring the public record for statements or information that they can use against us in these arbitrations. In fact I can recall being in the Hague Tribunal many times and hearing Iran quote extensively from things that witnesses and members of Congress said in hearings, trying to use that to their advantage. These are multi-billion dollar claims against the United States. So for some of your questions, I may need to defer the question to a closed setting, like the one we did for House and Senate staff earlier this week.

To provide some background, the United States and Iran entered into the Algiers Accords in 1981, which created the Iran-U.S. Claims Tribunal at The Hague to address claims of nationals and the governments. The agreement was entered into by the Carter Administration, it was endorsed by the Reagan Administration, and it was debated by both houses of Congress. In the first 20 years of the Tribunal process, it focused primarily on resolving claims of U.S. nationals for debt, contract, expropriation and other measures affecting property rights. U.S. citizens and companies have received over \$2.5 billion in awards and settlements through that process.

Significant government-to-government claims were also filed at the Tribunal. The majority and certainly the largest were by Iran against the United States,

including Iran's large contract claims arising out of its former Foreign Military Sales ("FMS") Program.

Like other FMS customers, Iran paid money into a Trust Fund that was used to facilitate prompt payments to the U.S. contractors working on Iranian contracts. By January 1979, Iran had already been struggling to make the necessary payments on its more than 1,000 outstanding FMS contracts. In February 1979 Iran and the United States concluded a Memorandum of Understanding (MOU) providing for the cancellation of many remaining purchases. The two sides worked to implement the MOU and wind down Iran's FMS program over the ensuing months. After the hostages were taken at the U.S. Embassy in November 1979, these efforts essentially ceased.

The dispute over the FMS Trust Fund and interest, which resulted in the settlement in January of this year, was part of Iran's FMS claims that it filed with the Tribunal in 1982. So you can imagine the scale of it and the money involved: it is a multi-billion dollar breach-of-contract dispute covering 1,126 huge military sales contracts.

Before the settlement in January, other parts of the FMS claims were decided or settled some time ago. Indeed, settlement discussions over technical legal matters have been held in this channel for decades, typically led by the State Department Legal Adviser and the Iranian Presidential Legal Adviser. My estimate is that since the early 1980s, through the Reagan, Bush and Clinton Administrations, some 40 rounds of claims meetings occurred at this level. Indeed, the prior settlements with Iran of other portions of the FMS claims occurred during the first Bush Administration.

For example, in 1989, the United States and Iran settled an Iranian claim for military spare parts for \$7.5 million, which was paid from the Judgment Fund. In 1990, the Parties entered into a partial settlement for \$200 million from the Trust Fund; this is the same Trust Fund that was the subject of a final settlement in January. And in 1991, the Parties settled Iran's claim for titled FMS assets for \$278 million, which was paid from the Judgment Fund. Apart from the FMS claims, there were other significant settlements between the parties, including in 1990 when the United States received \$105 million from Iran in settlement of certain U.S. national claims and U.S. government claims. These settlements, and in particular the FMS settlements, were reached at key moments in those cases – such as before key hearings or when they were on the verge of going to decision.

In the past two years, as the proceedings at the Tribunal have been advancing, we revisited the possibility of settlement of Tribunal claims through 2014 and 2015. These discussions led to settlement of small claims that were the subject of ongoing hearings. They involved architectural drawings, which were transferred to the Tehran Museum of Contemporary Art, and for fossils, which are now in the possession of Iran's Ministry of the Environment.

In the spring of 2015, after years of extensive briefing, Iran pressed the Tribunal to schedule comprehensive hearings in these remaining FMS claims. The Tribunal ordered both Parties to file their respective proposals for the structure of hearings. Iran filed its proposal on November 11, 2015. Iran was also pressing for a preliminary ruling on issues including the outstanding balance of the FMS Trust Fund and interest since 1979. They sought interest based on a provision in the 1979 MOU calling for unexpended FMS funds associated with Iran's program to be placed in an interest-bearing account.

With the settlements over the smaller claims concluded in December 2015, and with hearings in the FMS claims on the horizon, we were able to achieve this most recent settlement, which finally and fully resolves Iran's claim for funds in the FMS Trust Fund, as well as its claim for interest since 1979. As we publicly announced in January, pursuant to this settlement, Iran received the balance of \$400 million in the FMS Trust Fund, as well as roughly \$1.3 billion representing a compromise on the interest. The Trust Fund balance of \$400 million was paid from Iranian funds that were deposited in the Trust Fund itself in connection with the FMS Program. The payment for the compromise on interest was provided out of the Judgment Fund, as was the case for the largest prior settlement of the FMS claims during the Bush Administration.

If Iran's claim for the Trust Fund balance and interest had gone to decision in the Hague Tribunal, the United States could well have faced significant exposure in the billions of dollars. Iran was of course seeking very high rates of interest for a period of over three decades. We were able to secure a favorable resolution on the interests and avoid the potential for a much larger award against us. The details of why we settled for this amount are litigation-sensitive: getting into that explanation would get at other issues still pending at the Tribunal. Iran's lawyers would try to use my words, or maybe even some of your words, against us to help their case.

But what I can say here today is that I believed that this settlement was the best thing for the United States. It was the best way to avoid a possible decision from the Tribunal ordering us to potentially pay a lot more.



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Testimony before the
**House Committee on Financial Services,
Subcommittee on Oversight and Investigations**

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

September 8, 2016

¹ The views expressed in this testimony are my own and do not represent the views of any institution with which I am affiliated.

Eric Lorber
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September 8, 2016

Introduction

Chairman Duffy, Vice Chairman Fitzpatrick, Ranking Member Green, and distinguished members of the Committee on Financial Services, Subcommittee on Oversight and Investigations, I am honored to appear before you today to discuss the dangers of ransom payments to Iran.

In particular, I would like to focus my testimony on what we know about the \$1.7 billion payment to Iran, including the \$400 million cash payment that was tied to the release of U.S. hostages, the legality of such a payment, and most importantly, why such a payment was a missed opportunity by the Administration to limit Iran's ability to use these funds to support terrorism, weapons proliferation, and human rights abuses.

With the recent one-year anniversary of the signing of the Joint Comprehensive Plan of Action ("JCPOA") between Iran and the P5+1, it is as important as ever to carefully examine the consequences of that agreement and Iran's continued destabilizing activities in the region, and to remain vigilant in ensuring that Iran is limited in its ability to support terrorist forces and corrupt the international financial system.

While the JCPOA has arguably curbed Iran's nuclear activities in the short run, the Islamic Republic continues to send fighters to Syria, develop ballistic missiles in violation of United Nations Security Council Resolutions, and openly support Hezbollah, which is well known to have killed Americans and remains designated as a Specially Designated Global Terrorist, as well as other terrorist groups and militant proxies.² Iran has also continued to take American citizens hostage, in particular dual-citizens who have traveled to the country following the partial relaxation of U.S., EU, and UN sanctions on Implementation Day of the JCPOA. In short, Iran remains a threat to American citizens, our key allies such as Israel, and regional stability in the Middle East.

In addition—and of particular importance to this Committee—Iran poses a special threat to the global financial system. Beginning in the early 2000s, the United States and the international community more broadly recognized this threat and began actively cutting Iranian banks out of global financial markets and limiting Iran's ability to use the international financial system to finance its proliferation and terrorist activities.

Make no mistake: while Iran has signed the JCPOA and begun implementing it, Iran has not changed the underlying criminal activity that has led respectable financial institutions across the world to refuse to do business in Iran or with clients doing substantial business there. Indeed, one marked development in the past year has been the international financial community's unwillingness to re-enter the Iranian market, even if legally permitted to do so.

Iran's unwillingness to change its destabilizing conduct is one of the reasons the payment of the \$1.7 billion to the Islamic Republic raises serious concerns that this money will be—or already

² For an overview of Iran's terrorism-related activities, see U.S. Department of State, Bureau of Counterterrorism, "Chapter 3: State Sponsors of Terrorism Overview," accessed Sept. 1, 2016, *available at* <http://www.state.gov/j/ct/rls/crt/2015/257520.htm>.

has been—used to support the Islamic Revolutionary Guard Corps (“IRGC”), the Iranian military, and its proxy terrorist forces throughout the region—and that any future payments will similarly go towards such activities. While those on both sides of the aisle will debate whether the \$400 million, paid upon the successful release of American hostages immediately following Implementation Day, amounted to a ransom, one thing is certain: The way in which the money was paid—in cash, in the middle-of-the-night, delivered to Iran Air (an entity formerly designated by the Office of Foreign Assets Control (“OFAC”) at the United States Department of the Treasury for supporting the IRGC and supplying goods and services to Hezbollah and Syrian President Bashar al-Assad)—was both troubling and a missed opportunity.

The \$1.7 billion payment was troubling in large part because, in providing funds to Iran—including cash—without controls on how Iran would use that money, we allowed the country to disburse these funds to the Iranian military and other nefarious actors. In addition, the very nature of the payment led Iranian officials to conclude that it amounted to a ransom payment; for example, on January 20, 2016, the commander of the IRGC paramilitary Basij unit reportedly said the reclaiming of \$1.7 billion in blocked Iranian assets “had nothing to do the [nuclear] negotiations and was the . . . price that America paid to free its spies.”³ While the payment itself may not have been a ransom under U.S. law, Iran’s perception of the payment matters; a principle purpose of the United States’ no ransom policy is to deter hostage takers from compromising the safety of American citizens abroad—if terrorist groups and rogue countries do not think the U.S. will pay for hostages, those bad actors will be less likely to take hostages.⁴ Because of the particular nature of this payment, Iran believed this to be a ransom and consequently may be more inclined to seize Americans in the future.

The payment is also a missed opportunity because the United States could have set up payments stemming from the settlement agreement struck between Iran and the United States related to outstanding legal issues in a way that conditioned providing the funds on ensuring they would not be used to support terrorism or be given to the Iranian military or other sanctioned parties. By releasing these funds in a way that limited Iran’s ability to use them to support its destabilizing activities, the Administration could have out-maneuvered the Islamic Republic.

I will focus my comments today on four main areas. First, I discuss the \$400 million and subsequent \$1.3 billion payments, including a factual narrative of what we know about the payments. Second, I assess the legal case concerning whether the Administration’s actions violated any relevant sanctions regulations or underlying U.S. laws. Third, I detail why—while the Administration was on solid legal footing in facilitating these payments—the way these payments were sent to Iran raises serious concerns. Fourth and finally, I discuss why the Administration’s approach was a missed opportunity and identify ways that this Committee can help ensure that, in the case of any future payments made to Iran—either by the United States or

³ Behnam Ben Taleblu and Annie Fixler, “Settling with Iran: \$1.7 Billion and U.S. Hostages,” *Foundation for Defense of Democracies*, Sept. 2016, available at http://www.defenddemocracy.org/content/uploads/general/Settling_with_Iran.pdf.

⁴ See, e.g., David S. Cohen, “Why the U.S. Does Not Pay Ransoms for Americans Kidnapped by Terrorists,” *Newsweek*, Aug. 23, 2014, <http://www.newsweek.com/why-us-does-not-pay-ransoms-americans-kidnapped-terrorists-266315>.

the private sector—we are able to reduce the risks that Iran uses the funds to support terrorism and other destabilizing activities.

I. The \$400 Million and Subsequent \$1.3 Billion Payments to Iran

On January 16, 2016, otherwise known as Implementation Day, the U.S., European Union, and United Nations lifted a number of key economic sanctions against Iran pursuant to the JCPOA.⁵ On January 17, the Obama Administration also announced an agreement for the release of five American hostages held in Iran.⁶ In exchange for the hostages' release, the U.S. pardoned or commuted the sentences of seven Iranians charged with a number of sanctions-related violations of U.S. law, including sanctions evasion.⁷ The Administration also dropped the charges and withdrew Interpol detention requests against a number of Iranians abroad.⁸

Also on January 17, the Obama Administration announced a \$1.7 billion settlement with the Islamic Republic regarding an outstanding claim against the Foreign Military Sales ("FMS") Trust Fund.⁹

Iran's claim dated to the period before the 1979 revolution, when Iran was a significant recipient of U.S. military equipment. As part of the FMS program, which was designed to provide Iran with a mechanism for purchasing U.S. military equipment, Tehran deposited funds in an account held by the United States Department of Defense.¹⁰ When Iranians stormed the U.S. embassy and took Americans hostage at the time of the Islamic Revolution, the United States cut off military sales and froze the funds in the account—funds that Iran had placed there in anticipation of purchasing American military equipment.

As part of the Algiers Accord of 1981 that resolved the Iranian hostage crisis, the United States and Iran agreed to create the Iran-United States Claims Tribunal ("the Tribunal") to resolve certain legal issues related to, *inter alia*, these claims. According to Secretary of State John Kerry, the January 17 settlement for \$1.7 billion, divided into \$400 million in principal and \$1.3 billion in interest that had accrued in the years since the Iranian revolution, addressed the final case related to foreign military sales.¹¹

⁵ See, e.g., "Remarks on Implementation Day," *U.S. Department of State*, Jan. 16, 2016, available at <http://www.state.gov/secretary/remarks/2016/01/251336.htm>.

⁶ See, e.g., Jay Solomon and Asa Fitch, "Iran Releases Americans in Prisoner Swap," *The Wall Street Journal*, Jan. 16, 2016, available at <http://www.wsj.com/articles/iran-releases-four-unnamed-american-prisoners-state-tv-says-1452955793>.

⁷ U.S. Department of Justice, Press Release, "List of Individuals Receiving Pardons/Commutations," Jan. 17, 2016, available at <https://www.justice.gov/opa/pr/list-individuals-receiving-pardonscommutations>.

⁸ Joel Schectman and Yeganeh Torbati, "Factbox - Iranians granted clemency by Obama in prisoner exchange," *Reuters*, Jan. 17, 2016, available at <http://www.reuters.com/article/uk-iran-nuclear-prisoners-usa-idUSKCN0UV11G>.

⁹ John Kerry, Press Statement, "Hague Claims Tribunal Settlement," *U.S. Department of State*, Jan. 17, 2016, available at <http://www.state.gov/secretary/remarks/2016/01/251338.htm>.

¹⁰ Letter to Committee on Foreign Affairs Chairman Edward R. Royce from Assistant Secretary of State for Legislative Affairs Julia Frifield, Mar. 17, 2016, available at <https://foreignaffairs.house.gov/wp-content/uploads/2016/08/03.17.16-DOS-Response-Concerns-re-1.7-Billion-Payout-to-Iran.pdf>.

¹¹ John Kerry, Press Statement, "Hague Claims Tribunal Settlement," *U.S. Department of State*, Jan. 17, 2016, available at <http://www.state.gov/secretary/remarks/2016/01/251338.htm>.

The Obama Administration settled the case in part because it was reportedly concerned that the Tribunal would reach a decision in the coming weeks and months that would be unfavorable to the United States and require the United States to pay a significantly greater amount of money than the \$1.7 billion it ended up providing to Iran.¹² At the time of the announcement of the settlement agreement, the mechanism of the payment was not made public.

In early August, however, *The Wall Street Journal* broke the story that the \$400 million principal payment was provided to Iran in cash.¹³ In particular, Swiss and Dutch central banks, at Washington's request, loaded \$400 million in euros, Swiss francs, and other currencies onto an Iran Air plane in Geneva that then flew to Iran.¹⁴ Notably and according to follow up reporting by *The Wall Street Journal*, the cash was only permitted to leave Geneva until after a Swiss Air Force plane carrying the five American hostages had taken off from Iran.¹⁵ In defending the decision to send this cash to the Islamic Republic, President Obama noted that "[t]he 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."¹⁶

The Administration has denied any connection between the legal settlement and the release of these American hostages. However, State Department Spokesman John Kirby did assert that "[i]t would have been foolish, imprudent, irresponsible, for us not to try to maintain maximum leverage [once it was decided that the hostages were going to be released around the same time as the first settlement payment would be sent to Iran]. So if you're asking me was there a connection in that regard at the endgame, I'm not going to deny that."¹⁷ In effect, the Administration has argued that while the settlement and the release of the hostages were not linked, the Administration did link the actual transport of the payment with the physical release of the hostages to ensure that if Iran did not allow the hostages to go, it would not provide them with the first settlement payment.

In addition to the \$400 million dollars in cash, the United States also paid Iran the remaining \$1.3 billion from the Judgment Fund, which is a permanent appropriation created by Congress to pay Judgments against the United States which otherwise lack a funding source.¹⁸ According to

¹² The White House, "Press Briefing by Press Secretary Josh Earnest, 1/19/2016," Jan. 19, 2016, available at <https://www.whitehouse.gov/the-press-office/2016/01/19/press-briefing-press-secretary-josh-earnest-1192016>.

¹³ Jay Solomon and Carol E. Lee, "U.S. Sent Cash to Iran as Americans Were Freed," *The Wall Street Journal*, Aug. 3, 2016, available at <http://www.wsj.com/articles/u-s-sent-cash-to-iran-as-americans-were-freed-1470181874?mod=ST1>. The cash payment has been confirmed by Administration officials.

¹⁴ *Id.*

¹⁵ Jay Solomon and Carol E. Lee, "U.S. Held Cash Until Iran Freed Prisoners," *The Wall Street Journal*, Aug. 18, 2016, available at <http://www.wsj.com/articles/u-s-held-cash-until-iran-freed-prisoners-1471469256?mod=ST1>.

¹⁶ Barack Obama, "Press Conference by the President After Meeting with National Security Officials," *The White House*, Aug. 4, 2016, available at <https://www.whitehouse.gov/the-press-office/2016/08/04/press-conference-president-after-meeting-national-security-officials>.

¹⁷ John Kirby, "Daily Press Briefing," *U.S. Department of State*, Aug. 18, 2016, available at <http://www.state.gov/t/pa/prs/dpb/2016/08/261128.htm>.

¹⁸ @Price44, "@Kredo0 @sremkusrenner The payment was provided out of the Judgment Fund, which previous Administrations have used for similar settlements," *Twitter*, Jan. 20, 2016. <https://twitter.com/Price44/status/689859745088278529>.

journalist Claudia Rosett and research by analysts at the Foundation for Defense of Democracies, 13 payments—each approximately \$100 million and totally \$1.3 billion—were made to the State Department out of the Judgment Fund on January 19.¹⁹ The State Department has since confirmed that these payments from the Judgment Fund were part of the \$1.7 billion settlement with Iran.²⁰ Senior Administration officials have told the press that the remaining roughly \$1.3 billion was transferred to Iran in an “above-board way” through an unnamed foreign bank, however the exact mechanism of transmission, and whether it was done in cash, remains unknown.²¹

II. The Legal Bases for the Payments

Given the broad prohibitions on U.S. persons conducting transactions with Iran or Iranian persons after Implementation Day, Senators and Representatives have rightly questioned whether the \$400 million cash payment to Iran, as well as the subsequent \$1.3 billion payments, violated U.S. law. In short, such violations appear unlikely, either under the International Emergency Economic Powers Act (“IEEPA”) and the regulations promulgated pursuant to IEEPA, as well as criminal provisions related to material support for terrorism.

First, under U.S. law, it is generally prohibited for U.S. persons to export goods or services, directly or indirectly, to Iran or the Government of Iran.²² Likewise, pursuant to IEEPA, U.S. persons may not facilitate transactions by third parties that would be prohibited if the U.S. person engaged in such activity.²³ These prohibitions, contained in the Iranian Transactions and Sanctions Regulations (“ITSR”), make it illegal for a U.S. person—including a U.S. Government official—to send good or services—including cash or financial services—directly or indirectly to Iran or the Government of Iran. Likewise, if a U.S. Government official facilitates such a transaction, for example by asking a foreign financial institution engage in such activity, such facilitation would be prohibited.

Despite this blanket prohibition, however, the ITSR contains a number of regulatory carve-outs, known as General Licenses, that permit certain classes of transactions that would otherwise be prohibited. For example, U.S. law permits U.S. persons to send certain humanitarian goods to Iran. In this case, a particular General License codified at 31 C.F.R. § 560.510(d)(2) explicitly authorizes “all transactions necessary to . . . payments pursuant to settlement agreements entered into by the United States Government in [] a legal proceeding [involving Iran].” Because sending Iran the \$1.7 billion was arguably necessary to the payment of the settlement agreement entered into by the United States and Iran to settle a claim before the U.S.-Iran Claims Tribunal in The Hague, the \$400 million and subsequent \$1.3 billion payments likely fall under this carve-out and are therefore permitted under U.S. law.

¹⁹ Behnam Ben Taleblu and Annie Fixler, “Settling with Iran: \$1.7 Billion and U.S. Hostages,” *Foundation for Defense of Democracies*, Sept. 2016, available at http://www.defenddemocracy.org/content/uploads/general/Settling_with_Iran.pdf.

²⁰ Bradley Klapper, “2 days after cash delivery, US paid \$1.3 billion to Iran,” *Associated Press*, Aug. 24, 2016, available at <http://bigstory.ap.org/article/360619286aeb4e3dbafd5eb29388d93a/2-days-after-cash-delivery-us-paid-13-billion-iran>.

²¹ *Id.*

²² 31 C.F.R. § 560.204.

²³ 31 C.F.R. § 560.208.

It is worth noting here, however, that 31 C.F.R. § 560.510(d)(2) is a broad allowance for both the type and form of transactions related to settlement payments. For example, if the United States wired the money to a European Central Bank, which in turn wired the funds to a small European bank (or a Russian or Chinese bank for that matter) that subsequently wired the funds to Iran, all entities in that transactional chain would likely be insulated from liability under U.S. law. In other words, U.S. law likely permits payment mechanisms other than providing the Islamic Republic with \$400 million in pallets of cash.

Indeed, recent U.S. sanctions history makes clear that the United States has developed financial workarounds that do not require the large-scale distribution of cash. In a well-known recent example, the United States designated Banco Delta Asia (“BDA”)—a Macau-based bank known to hold significant assets of the North Korean leadership—as a jurisdiction of primary money laundering concern under Section 311 of the USA PATRIOT Act.²⁴ As in the case of Iran from 2008-2016, North Korea was almost completely cut off from the international financial system, with just a handful of banks in China and Russia providing the country and its leadership banking services outside of the peninsula. The BDA 311 designation—in addition to carrying a risk of serious penalties for any legitimate financial institutions that continued to do business with the bank—also carried a heavy reputational taint; few financial institutions wanted to do any business with BDA for fear of being seen as cooperating with a bank that was well-known to engage in illicit activity.

This taint created a particular challenge when the United States and its negotiating partners decided to facilitate the release of the North Korean leadership’s funds held by BDA—approximately \$25 million—as a carrot to restart the stalled Six-Party Talk’s over the Hermit Kingdom’s nuclear weapons program in 2007. The problem was that—like Iran prior to and immediately following Implementation Day—no legitimate bank wanted to facilitate the transfer from BDA to accounts in North Korea, for fear of sanctions and reputational liability. As a result, the United States Federal Reserve stepped in to assist. In the end, BDA transferred the \$25 million to the Macau Monetary Authority (Macau’s central bank), which in turn transferred it to the United States Federal Reserve. The Federal Reserve then sent it along to the Russian Central Bank, which passed it to Far Eastern Bank, a Russian bank in Vladivostok that held accounts on behalf of the North Korean Foreign Trade Bank.²⁵ Through this system, the United States was able to facilitate the delivery of North Korean funds back to the regime through legitimate financial channels.

This transmission chain shows that, when necessary, the United States Government has found ways to return funds to sanctioned countries where almost no banking ties to the legitimate financial system exist. In the case of Iran and as mentioned above—particularly given the General License legal cover for transactions necessary for the payment of settlements—it seems likely that the United States could have found a way to provide these funds to Iran other than in \$400 million in cash. Indeed, the Administration has hinted that such pathways do exist when senior officials have reported that the remaining \$1.3 billion was transferred to Iran in an “above-

²⁴ Juan Zarate, *Treasury’s War* (New York: Public Affairs, 2013), pp. 249-254.

²⁵ *Id.* at 264.

board way.”²⁶

Second, Administration officials likely did not violate other criminal offenses related to money laundering, support for terrorism, and paying ransoms. As former U.S. Attorney General and federal judge Michael Mukasey has recently noted, while it is prohibited for a U.S. person to transfer monetary instruments (such as cash) with the intent to promote specified unlawful activity pursuant to 18 U.S.C. § 1956, in this circumstance it would be difficult to prove that Administration officials intended to promote specified unlawful activity.²⁷ In particular, because it is unclear whether the Administration knew where the funds were going—or whether they were going directly for specific unlawful activity such as support for a designated terrorist organization—it would be difficult to make a legal case that the requisite intent existed.

Similarly, and as Judge Mukasey points out, because U.S. officials were acting in their official capacity, they are likely insulated from criminal prosecution.²⁸ This doctrine—combined with the lack of intent—also undercuts arguments that these officials could be culpable under 18 U.S.C. § 2339, which prohibits knowingly providing material support for a foreign terrorist organization.²⁹ Likewise, under U.S. law, it is prohibited to receive, possess, or dispose of any money or property that has been delivered as ransom or reward in connection with certain kidnappings.³⁰ In this case, it does not appear that U.S. officials are receiving, possessing, or disposing of money that has been delivered as a ransom, and therefore very likely did not run afoul of 18 U.S.C. § 1202.

III. Concerns Raised by the Payments

Though the payments to Iran may have been legal, they raise serious policy concerns and questions about whether the United States could have found a better way to ensure that these funds did not end up in the hands of the Iranian military and sanctioned parties. The primary risks raised by these payments are twofold. First, giving the Government of Iran \$1.7 billion (\$400 million of which was provided in untraceable assets) assisted a state sponsor of terror to promote destabilizing activities. Second, the nature of this transaction, i.e. cash delivered in the middle-of-the-night to a formerly-designated airline known to fly routes in support of the IRGC, Hezbollah, and Syrian President Bashar al-Assad’s regime (Iran Air),³¹ for all intents and purposes looked like a ransom payment.

²⁶ Bradley Klapper, “2 days after cash delivery, US paid \$1.3 billion to Iran,” *Associated Press*, Aug. 24, 2016, available at <http://bigstory.ap.org/article/360619286aeb4e3dbafd5eb29388d93a/2-days-after-cash-delivery-us-paid-13-billion-iran>.

²⁷ Michael Mukasey, “The \$400 Million: Legal but not Right,” *The Wall Street Journal*, Aug. 4, 2016, available at <http://www.wsj.com/articles/the-400-million-legal-but-not-right-1470353025>.

²⁸ *Id.*

²⁹ 18 U.S.C. § 2339A-B.

³⁰ 18 U.S.C. § 1202.

³¹ “Fact Sheet: Treasury Targets Commercial Infrastructure of IRGC, Exposes Continued IRGC Support for Terrorism,” United States Department of the Treasury Press Release, June 23, 2011. Available at <https://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>. See also Emanuele Ottolenghi, “The Risks of The Iran-Boeing Deal,” *The Hill*, June 21, 2016. <http://www.defenddemocracy.org/media-hit/emanele-ottolenghi-the-risks-of-the-iran-boeing-deal/>.

1. Concerns About Providing Funds to the Government of Iran

First, it is well-documented that Iran is both a leading state sponsor of terrorism and continues to engage in such activities post-JCPOA.³² In recent months, Iran has flouted international norms and threatened U.S. interests in a number of ways:

- Iran has conducted repeated ballistic missile tests in violation of United Nations sanctions;³³
- Qassem Soleimani, the head of the Iranian Revolutionary Guard Corps' Qods Force ("IRGC-QF"), an entity designated by the United States for its support of—and direct engagement in—terrorism, traveled on multiple occasions to Moscow in contravention of international travel bans to coordinate military cooperation with the Russian government, including the delivery of the S-300 anti-aircraft missile system to Iran and defense of the Assad regime in Syria;³⁴
- Iran remains the leading state sponsor of terror and has continued its direct support to terrorist proxies throughout the region, including Hezbollah's activities in Lebanon and Syria, as well as Iraqi Shi'ite militias who have been responsible for the deaths of hundreds of Americans and are now deployed in Syria to fight for the Assad regime. In some cases, this support is intended to destabilize governments allied with the United States. In recent months, international naval forces have interdicted Iranian arms shipments likely headed to Houthi rebels in Yemen;³⁵
- Iran has deployed troops to Syria to fight for the Assad regime, with reports of thousands on the ground;³⁶
- Iran has continued to engage in human rights abuses and restrict democratic norms. Iran has disqualified thousands of individuals from recent elections and continues to detain opposition leaders;³⁷

³² See U.S. Department of State, Bureau of Counterterrorism, "Chapter 3: State Sponsors of Terrorism Overview," accessed Sept. 1, 2016, available at <http://www.state.gov/j/ct/rls/crt/2015/257520.htm>.

³³ "Iran Should Pay a Price for Its Ballistic Missile Tests," *The Washington Post*, Apr. 6, 2016, available at https://www.washingtonpost.com/opinions/iran-should-pay-a-price-for-its-ballistic-missile-tests/2016/04/06/a85ef152-fc1c-11e5-80e4-c381214de1a3_story.html?utm_term=.1b2581ef50fe.

³⁴ Lidia Kelly and Parisa Hafezi, "Iran's Soleimani in Russia for Talks on Syria, Missiles," *Reuters*, Apr. 15, 2016, available at <http://www.reuters.com/article/us-russia-iran-soleimani-idUSKCN0XC0TR>.

³⁵ See, e.g., Matthew Levitt, "Iran's Support for Terrorism Under the JCPOA," *Washington Institute for Near East Policy Policywatch*, July 8, 2016, available at <http://www.washingtoninstitute.org/policy-analysis/view/iran-support-for-terrorism-under-the-jcpoa>.

³⁶ See, e.g., J. Matthew McInnis, "How Many Iranian Forces are Fighting and Dying in Syria?" *Newsweek*, Oct. 28, 2015, available at <http://www.newsweek.com/how-many-iranian-forces-are-fighting-and-dying-syria-388004>.

³⁷ Sam Wilkin, "Iran excludes most candidates in elite assembly election," *Reuters*, Jan. 26, 2016, available at <http://www.reuters.com/article/us-iran-election-candidates-idUSKCN0V419V>.

- Iran detained two Iranian-American citizens, a father and son, in October 2015 and February 2016, and continues to hold them. In addition, Robert Levinson remains missing after disappearing on Kish Island on March 9, 2007.³⁸
- On January 12, 2016, Iranian naval forces arrested American sailors at gunpoint, broadcasting the video of their detention, and subsequently mocking the sailors through a reenactment at a rally commemorating the anniversary of the Iranian Revolution.³⁹

Iran's support for such activities has not abated. The IRGC in particular remains committed to threatening American interests throughout the region. The IRGC is actively engaged in—and often times the driving force behind—Iran's most destabilizing activities, with responsibilities related to the development of weapons of mass destruction, missile systems, and overseas operations. It and its affiliates have been responsible for all the activities—weapons proliferation, terrorist support, and militant activity—for which Iran was sanctioned in the past.

Providing any funds to the Government of Iran raises serious risks that this money will be used to support these activities. Indeed, as Secretary of State John Kerry has suggested, some of the funds returned to Iran pursuant to the JCPOA will go to support terrorist and militant groups like Hezbollah, Hamas, Iraqi Shi'a militias, and the Houthis in Yemen.⁴⁰

In this particular case, however, evidence suggests that the Government of Iran has already earmarked this \$1.7 billion for use by the Iranian military. According to research by analysts at the Foundation for Defense of Democracies, Tehran recently finalized its fiscal year budget and included the \$1.7 billion from the settlement of foreign legal disputes as an earmark for the Iranian military.⁴¹ This episode illustrates the clear risks associated with providing funds directly to Iran, particularly when the release of those funds is not conditioned in any way on ensuring that they will not be used by the Iranian military or designated entities within Iran.

While in this case we know—largely because the Government of Iran made it clear in their annual budget—that the \$1.7 billion ended up in the coffers of the Iranian military, in general providing these types of payments in cash raises the risk that the United States will be unable to trace the ultimate beneficiaries of the cash. Indeed, in large part because of its fungibility, once the United States or European Central banks, working on behalf of the United States, loaded the \$400 million in cash pallets onto the Iran Air flight in January, we lost visibility into how those funds would be used by Iran. In addition, once we released the \$1.7 billion to Iran without conditions—such as specifying that we would only release the funds to parties without ties to the Iranian military or the IRGC—the U.S. gave up all leverage it had to ensure that the money

³⁸ Barry Meier, "Seeking Robert Levinson, the C.I.A. Consultant Who Vanished," *New York Times*, May 13, 2016, available at <http://www.nytimes.com/2016/05/15/nyregion/seeking-robert-levinson-cia-consultant-who-vanished.html>.

³⁹ Helene Cooper and David Sanger, "Iran Seizes U.S. Sailors Amid Claims of Spying," *New York Times*, Jan. 12, 2016, available at <http://www.nytimes.com/2016/01/13/world/middleeast/iran-holds-us-navy-boats-crew.html>.

⁴⁰ Rebecca Kheel, "Kerry: Some Iran Sanctions Relief Will Go to Terrorists," *The Hill*, Jan. 21, 2016, available at <http://thehill.com/policy/defense/266619-kerry-some-iran-sanctions-relief-will-go-to-terrorists>.

⁴¹ Saeed Ghasseminejad, "Iran Gives Green Light to Direct \$1.7 Billion from U.S. to Military," *Foundation for Defense of Democracies*, Sept. 1, 2016, available at <http://www.defenddemocracy.org/media-hit/saeed-ghasseminejad-iran-gives-green-light-to-direct-17-billion-from-us-to-military/>.

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was not used to support terrorism or related activities, or would not go directly into the coffers of the Iranian military.

2. *Concerns About How the Funds Were Provided to the Government of Iran*

Second, the \$400 million cash payment to Iran that was timed in conjunction with the release of U.S. hostages—while unlikely to be a prohibited ransom payment under U.S. law—raises serious concerns about whether Iran will be more likely to take additional Americans hostage in the future. As a matter of policy, the United States Government does not pay kidnappers to secure the release of hostages.

The logic behind this policy is straightforward. According to Deputy Director of the Central Intelligence Agency (and at the time of these statements, Undersecretary of the Treasury for Terrorism and Financial Intelligence) David Cohen, “Ransom payments lead to future kidnappings, and future kidnappings lead to additional ransom payments. And it all builds the capacity of terrorist organizations to conduct attacks. Refusing to pay ransoms or to make other concessions to terrorists is, clearly, the surest way to break the cycle, because if kidnappers consistently fail to get what they want, they will have a strong incentive to stop taking hostages in the first place. There is empirical evidence to support this.”⁴²

Key to breaking this cycle and deterring would-be hostage takers from seizing American citizens is making clear that the United States is not paying ransom for the release of hostages. In the case of the \$400 million payment, however, the Administration muddied these waters in order to maintain leverage and ensure the release of the five Americans. Indeed, as State Department Spokesman John Kirby noted, “[i]t would have been foolish, imprudent, irresponsible, for us not to try to maintain maximum leverage [once it was decided that the hostages were going to be released around the same time as the first settlement payment would be sent to Iran]. So if you’re asking me was there a connection in that regard at the endgame, I’m not going to deny that.”⁴³

While the Administration’s contention that it wanted to maintain maximum leverage at the time of the prisoner release is understandable, it raises serious concerns that the resulting transfer of funds looked like a ransom payment to Iran. For example, on January 20, 2016, the commander of the IRGC paramilitary Basij unit reportedly said the reclaiming of \$1.7 billion in blocked Iranian assets “had nothing to do the [nuclear] negotiations and was the . . . price that America paid to free its spies.”⁴⁴ If Iranian military and IRGC commanders perceived the payment as ransom, they may be more likely to take Americans—particularly dual U.S.-Iranian citizens who travel to Iran frequently—hostage.

⁴² David S. Cohen, “Why the U.S. Does Not Pay Ransoms for Americans Kidnapped by Terrorists,” *Newsweek*, Aug. 23, 2014, <http://www.newsweek.com/why-us-does-not-pay-ransoms-americans-kidnapped-terrorists-266315>.

⁴³ John Kirby, “Daily Press Briefing,” *U.S. Department of State*, Aug. 18, 2016, available at <http://www.state.gov/r/pa/prs/dpb/2016/08/261128.htm>.

⁴⁴ Behnam Ben Taleblu and Annie Fixler, “Settling with Iran: \$1.7 Billion and U.S. Hostages,” *Foundation for Defense of Democracies*, Sept. 2016, available at http://www.defenddemocracy.org/content/uploads/general/Settling_with_Iran.pdf.

Further, the nature of the payment likely exacerbated the Iranian perception that this was ransom. A middle-of-the-night, all cash payment in the amount of \$400 million loaded onto pallets and flown to Iran looks more like a ransom payment than does a wire transfer from an escrow account, held at a European Central Bank or another legitimate financial institution, that is going to an Iranian financial institution that has been vetted for any ties to illicit Iranian actors. This was likely why Assistant Attorney General for National Security John Carlin—along with other senior Justice Department officials—objected to the \$400 million payment on the grounds that Iranian officials were likely to view it as a ransom and thereby undercut the longstanding U.S. policy.⁴⁵

IV. Missed Opportunities and Policy Recommendations

While the \$400 million cash payment and the subsequent \$1.3 billion transfers raise serious concerns that the money will be—or already has been—used to support the Iranian military, this episode also represents a missed opportunity to continue to pressure Iran to stop supporting terrorism and to clean up its financial act. These payments—and other related payments under the Joint Plan of Action (“JPOA”) in the lead-up to the JCPOA as well as many types of future payments—could have been structured in such a way that reduced Iran’s perception that they were a ransom and, more importantly, limited Iran’s ability to use these funds to support its destabilizing activities throughout the region.

If—instead of providing the funds in cash or in other ways where once the United States released the money it lost control of how the Islamic Republic would use the funds—we conditioned the release of these settlement agreement funds on a number of important triggers, the risks of Iran using this money for illicit purposes could have been mitigated. In particular, these risks could have been mitigated by using escrowed accounts for settlement funds or by requiring any funds transfers to pass through “white listed” banks deemed to present a low risk of funds being diverted to illicit.

1. Escrowed Accounts for Settlement Funds

Instead of providing \$400 million in cash to Iran, followed by sequential payments of approximately \$100 million, the United States could have put these funds into escrowed accounts, held by European financial institutions, including certain Central Banks. Once the settlement agreement was reached, the United States could have worked with these foreign financial institutions (and likely additional third party European or Asian banks that maintained ties to the Iranian financial system) to understand who the recipients of these funds would be within Iran.

At the same time, the United States could have put conditions on the release of these funds to ensure that they were not being released to designated Iranian banks, or to actors within Iran who would use the funds for illicit purposes. As discussed below, such an approach would reduce the risk of precisely what happened; that the funds ended up in the coffers of the Iranian military.

⁴⁵ Devlin Barrett, “Senior Justice Official Raised Objections to Iran Cash Payment,” *The Wall Street Journal*, August 12, 2016. (<http://www.wsj.com/articles/senior-justice-official-raised-objections-to-iran-cash-payment-1470994380>)

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While arbitrarily refusing to return the funds to Iran could be grounds for renegeing on a settlement agreement, it is reasonable for the United States to specify that it will not return funds to Iran that will go to designated parties or in support of terrorism or regional instability, in contravention of U.S. law. Such conditions could include provisions specifying that, among others:

- The funds cannot be directly provided to a designated person under U.S. or EU law;
- The end recipient of the funds must be identified; and
- The funds must be released in tranches, with a certification provided by the Secretary of the Treasury and relevant U.S. Government agencies that the prior released amount has not gone to designated parties or to entities engaged in a number of proscribed activities. If the Secretary of the Treasury cannot certify this information, the remaining payments must be suspended until such time as the Secretary can certify.

Moving forward, Congress could pass legislation that modifies 31 C.F.R. § 560.510(d) and requires that any funds to be sent to Iran pursuant to a settlement agreement between the United States and Iran be placed in an escrow account and released only upon meeting the conditions laid out above.

Another benefit of this approach would be that, even if funds were returned to Iran at approximately the same time that the Islamic Republic was set to release hostages, such a payment looks far less like ransom. Providing Iran funds out of an escrowed account with conditions on the end-recipient is far less likely to be perceived as ransom than \$400 million in cash pallets loaded onto Iran Air in the middle-of-the-night and time to ensure the release of U.S. hostages. While we cannot fully control Iran's perceptions of whether such payment would constitute ransom, this mechanism would certainly reduce that risk.

2. *"White List" of Vetted, Approved Iranian Banks*

More broadly, Congress could take steps to ensure that any payments made to Iran—either by the United States or by the private sector in accord with U.S. and EU law—would present reduced risks of diversion. For example, if the United States set up a halfway house system where a limited number of legitimate Western banks (likely European, given the broad remaining restrictions on U.S. banks doing business in Iran) with robust anti-money laundering ("AML") and countering the financing of terrorism ("CFT") policies, procedures, and programs could process legally permissible transactions to Iran (including the payment of settlement agreements), and the United States and its Western partners heavily monitored transactions and receiving parties to ensure these funds were not used for illicit purposes, this would limit Iran's ability to use these funds (and other funds) to support terrorism.

In particular, the United States and its partners could select a small number of Iranian banks that could serve as monitored-and-approved counterparties to facilitate these settlement and other payments. Requirements for joining the group of approved Iranian banks would include, among others:

- Banks would be subjected to enhanced due diligence ("EDD") requirements, with the

Financial Action Task Force (“FATF”) Recommendations for high-risk counterparties, clients, and services acting as a floor for ensuring that the Iranian banks were not engaging in any illicit activity and had no ties to illicit actors;⁴⁶

- Banks would be subjected to frequent and updated EDD checks to ensure adherence to proper rules and regulations, and EDD would be conducted on each transaction and customer;
- Banks could not have been designated by OFAC for any activities related to Iran’s support for terrorism, ballistic missile development, human rights abuses, or fomenting regional instability;
- Banks could not have any current ties to Specially Designated Nationals (“SDNs”), including members of the IRGC;
- Banks have no record of engaging in deceptive financial practices; and
- Banks must submit upon request information about their clients to Western financial institutions using this “white list” (i.e., Know Your Customer’s Customer, (“KYCC”).

In addition, and related to particular transactions, “white list” Iranian banks would need to provide information about the ultimate end recipient of the funds, including whether the recipients were Government of Iran entities. In the case where such funds would end up in the coffers of the Iranian military or other actors engaged in specified destabilizing activity, the transactions would be prohibited. Further, any bank on the “white list” that returns to illicit activity should face harsh penalties, including a permanent ban from SWIFT access, permanent designation by OFAC, and, for any foreign banks continuing to do business with that bank, secondary sanctions.

This type of specific financial channel has precedent; during the JPOA and as a way to facilitate the purchase of, and payment for, the export of food, medicine, and medical devices to Iran, the P5+1 and Iran established a specific banking channel between Iran and foreign financial institutions. This channel was reportedly limited to this humanitarian function, however.⁴⁷

Such a broader “white list” would create a specified channel for processing transactions—including settlement agreement transfers—in a way that would limit Iran’s ability to channel the funds to the IRGC and designated parties. Such a channel would also address one of the most intractable issues encountered following Implementation Day: the unwillingness of reputable financial institutions to return to Iranian markets and begin banking Iranian clients in ways that are permissible under U.S. and EU law.

This unwillingness is understandable and justified; while the JCPOA has relaxed certain sanctions related to the development of Iran’s nuclear program, the underlying risks of illicit conduct remain. In particular, the nature of the Iranian economy and the role of the government within the economy present serious risks related to bribery and corruption, money laundering, and illicit financing. Iran ranked 130 of 175 countries in Transparency International’s

⁴⁶ Financial Action Task Force, *The FATF Recommendations* (2012), available at http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

⁴⁷ See, “Frequently Asked Questions Relating to the Continuation of Certain Temporary Sanctions Relief Pursuant to the JPOA Prior to Implementation of the JCPOA,” *Office of Foreign Assets Control*, Aug. 7, 2015, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_fa_q_20150807.pdf.

Corruption Perceptions Index as of 2015.

In 2011, the U.S. identified Iran as a state of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act. The Financial Action Task Force first raised concerns over Iran's lack of a comprehensive anti-money laundering/countering the financing of terrorism framework in 2007, and it still urges Iran to meaningfully address AML/CFT deficiencies. For example, as recently as February 19, 2016, the FATF issued a statement warning that Iran's "failure to address the risk of terrorist financing" poses a "serious threat ... to the integrity of the international financial system."⁴⁸ The international community continues to recognize that Iran—regardless of the status of its nuclear program—poses a real and serious threat to the integrity of the global financial system. Indeed, the FATF, while suspending the imposition of mandatory countermeasures for one year to try to coax Iran into reforming its decrepit jurisdictional AML and CFT controls, recently decided to keep Iran on its so-called "Black List" to ensure that financial institutions around the world understand the serious risks that exist with doing business in Iran.⁴⁹ This concern is justified: in the past week Iranian revolutionary and military forces have pushed back on any attempts to reform Iran's corrupt financial system.⁵⁰ OFAC also has made it clear that activity inconsistent with a wide range of Executive Orders imposing sanctions on Iran (including for providing support to terrorism, undermining the stability of Yemen, and other behaviors) could still subject U.S. and non-U.S. persons to sanctions.

In short, Iran has not changed the underlying criminal activity that has led respectable financial institutions across the world to refuse to do business in Iran or with clients doing substantial business there. Indeed, one marked development in the past year has been the international financial community's unwillingness to re-enter the Iranian market, even if legally permitted to do so. At the same time, smaller financial institutions, including some in Eastern Europe and Asia, have begun to fill the void.⁵¹ These institutions often lack proper AML/CFT controls and the capabilities and will to ensure robust compliance when dealing with Iranian counterparties. As a result, Iran is slowly regaining access to Western financial markets, but in a way that may not effectively force its compliance with global standards prohibiting money laundering, terrorist financing, and illicit activity.

Establishing a "white list" would help remedy this situation. By specifying which Iranian banks present reduced risks, the United States could achieve a number of goals. First, it would force any Iranian financial institutions wanting to be part of the "white list" to clean up their financial crimes compliance ("FCC") act. While corruption and FCC risk permeate Iran's financial sector,

⁴⁸ "FATF Public Statement," *Financial Action Task Force*, Feb. 19, 2016, available at <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html>.

⁴⁹ Mark Dubowitz and Toby Dershowitz, "Risky Business in Iran," *Forbes*, June 28, 2016, available at <http://www.forbes.com/sites/realspin/2016/06/28/risky-business-in-iran/#95318072a37d>.

⁵⁰ Golnar Motevalli, "Top Iran Banks Dragged into Rouhani Tussle with Hardline Rivals," *Bloomberg*, Sept. 5, 2016, available at <http://www.bloomberg.com/news/articles/2016-09-05/top-iran-banks-dragged-into-rouhani-tussle-with-hardline-rivals>.

⁵¹ See, e.g., Tom Arnold and Bozorgmehr Sharafedin, "Small Banks Help Iran Slowly Restore Foreign Financial Ties," *Reuters*, June 15, 2016, available at <http://in.reuters.com/article/iran-banks-idINKCN0Z115J>.

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September 8, 2016

incentivizing Iranian banks to come back in from the cold and cease their intentional and unintentional FCC-related activities would be a significant step in the right direction.

Second, it would reduce Iran's ability to access Western financial markets and services in a less-than-complaint way. As discussed, Iran is currently using banks that often lack effective FCC controls. By creating a "white list" whereby reputable European financial institutions could provide banking services to Iran, the United States and its partners could introduce a higher degree of due diligence and compliance into the financial relationship with Iran. In addition, any such banks doing business outside of this channel would immediately be viewed by the private sector as suspect, and would therefore have a more difficult time conducting business both in Iran and elsewhere. As a result, the "white list" approach would have a powerful market impact that would nudge financial relationships to more legitimate channels.

Third and finally, if Iran balked at allowing its banks to join such a "white list", it would expose the regime as recalcitrant and unwilling to live up to global standards for anti-money laundering and countering the financing of terrorism. Such a refusal would further strengthen the argument both to the private sector and our international partners that Iran remains a rogue regime that presents serious risk, even in the post-JCPOA context.

To be clear, both of these approaches will not totally eliminate risk. It would be very difficult to be certain that no funds provided to Iran—even if done through this "white list" mechanism—end up helping the regime fund terrorism and regional adventurism. Likewise, even conditioning the release of settlement funds from an escrow account on verified certification that they not be provided to any sanctioned parties or other actors engaged in illicit activity is not foolproof. At the same time, however, these mechanisms would certainly be less risky than providing Iran with money without strings attached, particularly in cash.

V. Moving Forward

This episode illustrates the need for more sophisticated thinking on how to effectively use economic pressure to limit our adversaries' abilities to threaten our interests, even in the context of sanctions unwinding. In this case, the United States gave up much of its ability to ensure that this \$1.7 billion was not used for illicit or nefarious purposes.

Moving forward, Congress should consider ways, including legislative changes, to limit Iran's ability to access future settlement funds without condition as well as to establish specific and authorized channels for legitimate and legal financial transactions. Such solutions would have limited Iran's ability to use the \$1.7 billion in settlement funds for its defense budget and the Islamic Republic's ability to use much of the funds it was granted access to under the JPOA and the JCPOA to support terrorist activities. While Iran now has access to much of this money, Congress should still act to ensure that United States maintains its ability to pressure the regime over its continued illicit conduct.

Thank you for your time. I look forward to your questions.

“Fueling Terror: The Dangers of Ransom Payments to Iran”
Testimony before the Subcommittee on Oversight and Investigations
Committee on Financial Services
U.S. House of Representatives

Suzanne Maloney
Deputy Director, Foreign Policy and Senior Fellow, Center for Middle East Policy
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Chairman Duffy, Ranking Member Green, and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am very pleased to offer my views, but I must emphasize that I represent only myself before you today. The Brookings Institution does not take any institutional positions on policy issues.

When five Americans returned home in January 2016 after months or even in some cases years of unjust imprisonment in Iran, Americans and the world rightly celebrated. Tehran’s detention of these individuals—including a *Washington Post* reporter, a Christian pastor, and a former U.S. Marine—as well as many, many other innocents underscores the threats to basic freedoms in Iran’s Islamic Republic.

That the detained Americans’ release was timed to coordinate with the settlement of a nearly forty-year-old financial dispute between the United States and Iran—and that this settlement included an airlift of foreign banknotes to Tehran—has prompted allegations that the Obama administration paid a “ransom” to Tehran.

Such charges have no basis. While the administration erred in initially suggesting that the settlement and the prisoner release were wholly unrelated, the facts of the case do not support the use of the word ‘ransom.’ The January 2016 transaction came as part of the legal framework established as part of the resolution of Iran’s 1979 seizure of the U.S. Embassy in Tehran, codified under the 1981 Algiers Accord. That Accord established the U.S.-Iran Claims Tribunal, which has since settled thousands of financial claims and has worked to the benefit of U.S. individuals and corporations whose holdings in Iran were jeopardized or harmed as a result of the revolution and subsequent breach in diplomatic relations.

The settlement of a pre-revolutionary Iranian claim provided Tehran with nothing other than its own funds—money that was due to Iran as part of the adjudication of one of the Iranian government’s claims before the Tribunal. As William and Mary Law Professor Nancy Combs, who formerly represented the United States at the Tribunal, has explained, “a ransom is a payment made to secure the release of a detained person. This sum, by contrast, was made to satisfy a legitimate debt that the U.S. owed to Iran.”¹

The Iranian claim of \$400 million dates back to a payment for U.S. military equipment that was purchased by Iran’s former monarchical government but never delivered as a result of the change in government and eventual rupture in the bilateral relationship. Further delay in settling that claim would not have obviated its reimbursement; in fact, as John B. Bellinger III, State

¹ Lauren Carroll, “Donald Trump’s Mostly False claim that \$400 million payment to Iran was ‘ransom,’” *PolitiFact*, August 24, 2016, <http://www.politifact.com/truth-o-meter/statements/2016/aug/24/donald-trump/donald-trump-calls-400-million-payment-iran-ransom/>

Department legal advisor during the George W. Bush administration has argued, the United States would benefit from an expeditious resolution of the remainder of the Iranian claims before the Tribunal, since judgments in outstanding cases could entail significant payments to Tehran.²

In the weeks since the revelations about the arrangements surrounding the transfer of the \$400 million, there has been an intense debate about its propriety, legality, and wisdom. However, insinuations that the payment or its modalities entailed a violation of existing sanctions laws are unfounded. In fact, it appears that the \$400 million payment to Tehran, even in an unorthodox form, is consistent with the existing sanctions regime. The Iranian Transactions and Sanctions Regulations (ITSR) provide explicit authorization for licensing of transactions related to the resolution of disputes between the United States and Iran.³

U.S. Policy toward Iran and Economic Leverage

While the legal justification for treating the settlement and the January payment to Tehran as ransom is shaky or even nonexistent, the timing—in tandem the release of unjustly detained Americans—has clearly stoked the controversy. However, the Obama administration’s use of this settlement to help facilitate and/or expedite other Americans priorities with respect to Iranian behavior is neither unusual nor surprising.

Indeed, since the 1979 seizure of the U.S. embassy in Tehran, each American president has sought to utilize economic leverage—both penalties and incentives—as a central component of a strategy to address the challenges posed by revolutionary Iran. The U.S. policy framework was established in the earliest hours after the embassy staff was taken hostage. As a former senior State Department official recalled, “almost as soon as policy discussions began on [the day after the embassy was overrun], the members of the crisis team in both the White House and the State Department focused on a two-track strategy.” The objective then was to “open the door to negotiation” while also “increas[ing] the cost to Iran of holding the hostages.”

Since then, the U.S. formula for influencing Iran via a combination of pressure and incentives has remained fundamentally intact, and each U.S. administration, Republican and Democratic, has utilized the same toolbox, applying sanctions and other forms of economic pressure while also testing the possibilities of diplomatic dialogue and direct engagement with the Iranian government. Each iteration has varied, according to circumstances and presidential style, but the broad blueprint for American policy on Iran has proven remarkably consistent over the past 37 years.

This dual-track American approach toward the Islamic Republic has imparted a persistently transactional dimension to the interaction between Washington and Tehran. The formative skirmish between Washington and revolutionary Iran—when Iranian students seized the U.S. Embassy in Tehran and held its personnel as hostages for more than 15 months—ended only as

² John B. Bellinger III, “The Iran talks we should stop: an outmoded U.S.-Iran Claims Tribunal,” *The Washington Post*, October 22, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/21/AR2009102103222.html>; Bellinger, “U.S. Settlement of Iran Claims Tribunal Claim was Prudent but Possible Linkage to Release of Americans Is Regrettable,” *Lawfare*, January 18, 2016, <https://www.lawfareblog.com/us-settlement-iran-claims-tribunal-claim-was-prudent-possible-linkage-release-americans-regrettable>

³ Department of the Treasury Foreign Assets Control Office 31 CFR Part 560 Iranian Transactions Regulations; Final Rule, Federal Register 77:204, October 22, 2012, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ft77_64664.pdf

part of a carefully crafted set of diplomatic and financial arrangements that included a coordinated release of the hostages in concert with the transfer of \$7.956 billion in previously frozen Iranian overseas assets to an escrow account.

Since that time, Washington has utilized transactional diplomacy with Iran repeatedly, and notably with quite mixed results:

- President Ronald Reagan authorized the sale of arms to Tehran as part of the now-infamous Iran-contra scandal. This complicated and controversial exchange was premised on the President's intense desire to elicit the freedom of American and other Western hostages in Lebanon, as well as the expectation among senior U.S. officials that a covert opening would strengthen opposition within the post-revolutionary system to Iran's then supreme leader, Ayatollah Ruhollah Khomeini, and more broadly to the Islamic regime.
- President George H.W. Bush reached out to Tehran in his inaugural address, famously promising that goodwill begets goodwill, and during his presidency, Washington sought to make clear through multiple avenues that cooperation would be rewarded. After his inaugural rhetoric, Bush authorized multiple channels to reiterate his appeal for cooperation and specifically for assistance on the issue of Western hostages in Lebanon. This included the settlement of several outstanding financial claims in 1989, 1990, and 1991, as well as intensified efforts to compensate families of victims of the 1988 shooting down of an Iranian passenger plane by the USS Vincennes. Several of the settlements were timed to correspond to the release of American hostages, and while the Bush administration dismissed any linkage as "pure coincidence," a senior State Department official acknowledged at the time that "there was no doubt whatsoever that what we were doing was helping to aid Iran in the release of the hostages."⁴
- President Bill Clinton undertook the most dramatic series of overtures toward Tehran since 1979 at the time, including a number of symbolic measures, broader sanctions reform, and the lifting of existing sanctions on caviar, carpets, and pistachios. That move came as part of a historic speech by then-Secretary of State Madeleine Albright, in which she announced the rescission and expressed formal regret on behalf of the U.S. government for America's role in the bilateral estrangement and for specific past U.S. policies toward Tehran. These specific incentives were proffered in recognition of apparent shifts in Iran's internal political dynamics—the election of a president and a majority of parliamentarians who openly advocated for political and social reform of the Islamic system. None of the Clinton-era overtures were coordinated in advance with Tehran, although U.S. officials predicted that the lifting of sanctions on caviar, carpets, and pistachios would generate reciprocal Iranian moves.⁵
- President George W. Bush also utilized incentives as a means of seeking to induce Iran to modify its most problematic policies. While the Bush administration initially resisted European diplomacy on the nuclear issue, U.S. officials gradually accepted that a direct American role in that dialogue would offer greater leverage in dealing with the issue. In

⁴ Elaine Sciolino, "U.S. Near Deal To Settle Claims By the Iranians," *New York Times*, November 21, 1991. <http://www.nytimes.com/1991/11/21/world/us-near-deal-to-settle-claims-by-the-iranians.html> See also Elaine Sciolino, "Bush Hopes to Settle Iranian Assets Issue," *New York Times*, November 8, 1989.

⁵ Phillip Shenon, "Major Overture toward Iran Expected in Speech by Albright," *New York Times*, March 17, 2000, <http://www.nytimes.com/2000/03/17/world/major-overture-toward-iran-expected-in-speech-by-albright.html>

an attempt to provide incentives for Iranian cooperation on the nuclear talks, in May 2005, Washington dropped its objections to Iran's application to begin accession talks with the World Trade Organization and announced that it would consider licensing sales of spare parts for aircraft on a case-by-case basis.

Notably, the January 2016 settlement was not the first such use of the body of claims associated with the U.S.-Iran Claims Tribunal as a means of incentivizing Iranian cooperation. In none of these cases did Tehran receive undue benefit as a result of the discharge of specific claims. Most analyses of the Algiers Accords have indicated the ultimate resolution of that tragic episode can be considered favorable to American interests, viewed broadly, and to American financial claims more specifically.⁶

Roberts B. Owen, the State Department legal adviser who helped craft the settlement, explained that "we gave away nothing of value that was ours; we simply returned a relatively small part of what was theirs..."⁷ And with respect to later actions at the Tribunal and the diplomatic aspirations attached to them, Abraham D. Sofaer, who served as State Department legal advisor from 1985-1990, underscored that these settlements should not be interpreted as confirmation that "the United States was negotiating a settlement for hostages or that anyone is giving them more money than they deserve."⁸

In this sense, the Obama administration's decision to coordinate the resolution of the outstanding claim with the release of the Americans in January is perfectly consistent with the approach undertaken by each of its predecessors.

There are several broad points about the use of economic leverage and transactional diplomacy in influencing Iran's regional and domestic policies:

- 1) It is important to emphasize that throughout the past 37 years, the various endeavors in transactional diplomacy by each U.S. administration did not preclude the intensification of sanctions or the use of military force and other coercive measures against Iranian actors or their proxies in the region. These are not mutually exclusive policy approaches.
- 2) It should also not be forgotten that the Iranians themselves frequently view diplomacy explicitly in transactional. This was particularly acute throughout the long history of the nuclear negotiations; Iran approached the talks from 2003 onward with the expectation of a reciprocal—and at least equivalent—exchange. Understandably, Iran's long pattern of deception and transgressions meant that Washington and its European partners saw no such equivalence. The very efficacy of sanctions and Iran's internal debate surrounding the negotiations and the deal only exacerbated this disconnect. The painful toll of sanctions and the hyperbole deployed to gain elite and popular buy-in for the nuclear agreement has upped the ante in Tehran.

⁶ Warren Christopher and Richard M. Mosk. "The Iranian Hostage Crisis and the Iran-U.S. Claims Tribunal: Implications for International Dispute Resolution and Diplomacy." *Pepperdine Dispute Resolution Law Journal* 7:2 (2007): 165–76.

⁷ Roberts B. Owen, "The Final Negotiation and Release in Algiers," in Warren Christopher et al., *American Hostages in Iran: The Conduct of a Crisis* (New Haven: Yale University Press, 1985), p. 324.

⁸ Sciolino, *NYT*, November 21, 1991.

- 3) Finally, as the historical anecdotes cited here suggest, the use of incentives as bargaining chips in negotiations has demonstrated a relatively mixed track record. Proffering sanctions relief incrementally—either in retrospective fashion, to reward constructive policy shifts or prospectively to encourage the same—has typically failed to generate the intended results. The long history of utilizing economic pressure suggests that the use of sanctions relief as an incentive often entails missed cues for both the sanctioning state and the target state. In past efforts to use sanctions relief to encourage changes in Iranian policies, Washington has overestimated the value of its hand, while Tehran has persistently undervalued any incentives put on offer.

It is understandably galling to settle a debt that provides a benefit to a regime that remains a fundamentally dangerous actor within the region and toward its own citizenry. However, a discomfiting reality of the international system is that the United States has and must engage with a variety of governments whose interests conflict with its own, occasionally in ways that work to the immediate advantage of hostile actors. That the United States upholds its obligations, even in dealing with regimes that routinely violate such norms, is neither objectionable nor worthy of censure. Americans interests have always been best defended and advanced by bolstering the rules and institutions of the liberal international order. American leadership in an increasingly dangerous world requires Washington to adhere to higher standards than those of its adversaries.

It is deeply short-sighted to view the settlement of a largely forgotten financial dispute with Iran's post-revolutionary government as a consequential victory for the Iranian leadership or their attachment to objectionable policies. The price that Iran has paid—and will continue to pay—for its recalcitrance on the nuclear issue, its support for terrorism and destabilizing actions around the region, and its treatment of its own citizens vastly outstrips the compensation that is the subject of this hearing.

Addressing the Unjust Detention of Americans and Other Dual Nationals in Iran

Several critics of the Obama administration and the handling of this episode have warned that the linkage between the financial settlement and the release of detained Americans in January may exacerbate the risks to American citizens in countries such as Iran. The theory seems to be that Tehran will see financial incentives in the seizure and bartering of American lives, and thus engage in additional spurious arrests, imprisonment, and/or harassment of dual nationals in hopes of eliciting additional financial benefits.

I understand why such inferences have been drawn and I appreciate the appeal of imputing some kind of rational calculus to Iran's treatment of dual nationals. Unfortunately, however, in my view this reflects a naïve and inaccurate assessment of the drivers of Iranian politics and policy. I simply see no evidence that Iran's longstanding patterns of human rights abuses, inadequate rule of law, and exploitation of individuals to advance ideological narrative are subject to the logic of financial incentives.

Washington must pay particular attention whenever one of our own is seized in the sole country on earth where the United States has no direct diplomatic presence. When an Iranian-American is seized by the Islamic system, the world's sole superpower is forced to fall back on the least satisfying instruments of diplomatic influence: eloquent statements from the podium, third-party consular inquiries, and quiet efforts through cooperative interlocutors.

And in this search for responses, there tends to be an almost irresistible pursuit of an explanation. Why was this individual seized at this particular moment in time? What message are Iranian authorities trying to send with this arrest? The conventional wisdom often searches for explanations in Iran's fierce factionalized struggle, while some now wonder if Tehran will see individual dual nationals as a ready source of leverage in eliciting financial benefits.

All these theories are perfectly reasonable. However, any attempt at surmising intent from the actions of a repressive government tends to over-intellectualize. In these arrests, I would assert that there is no hidden message, no method to the madness other than obnoxious realities of authoritarian power. The reality is that there is only one factor that drives the detention and seizure of Americans and other dual nationals. The Islamic Republic's foundational moments have internalized a combination of deep-seated paranoia toward external actors and state together with a readiness to utilize official and semi-official violence against individuals within the DNA of the Iranian state and its leadership. What the esteemed historian Ervand Abrahamian has described as the "paranoid style of Iranian politics" has deep roots and broad appeal within today's Iran.⁹

For Tehran, jailing Americans has never been motivated by the prospect of a payoff. Rather, the center of gravity within Iran's ruling elite remains convinced that there is an American-led conspiracy of regime change, facilitated by dual nationals such as those who were arrested.

Finally, it is essential to understand the broad context of Iranian behavior. The history of the Islamic Republic has only rarely recorded cases in which the leadership of this state serviced Iran's economic interests as its foremost priority. The notion that the January 2016 settlement will provoke a new wave of harassment or detention fails to appreciate how routinely Tehran has acted against its own economic betterment, or how modest the recent settlement is within the overall financial flows and assets available to the Islamic Republic.

And this presumption fails to account for the relative durability of these patterns of behavior in Iran. The arrest of innocents and the routine violation of human rights in Iran are a function of this ruling system. Despite the sophistication of its society, the vibrancy of its debates, the trappings of competitive and representative politics, at the heart of the Islamic Republic is a police state. If its agents want to grab you, they can and they will and they need no excuse. Multiple intelligence and security organizations control a prison system whose reaches are not known to even its parliament and whose abuses are infamous. No one, not the most innocuous Western tourist or the most well-connected Iranian power-broker, is immune to its reach.

That this police state can coexist with institutions that lend the system some measure of popular legitimacy is the Islamic Republic's secret strength and an explanation for its endurance; that these instruments of surveillance and repression have withstood episodic confrontations by an educated and engaged citizenry remains the real tragedy of the revolution.

⁹ Ervand Abrahamian, *Khomeinism: Essays on the Islamic Republic* (University of California Press, 1993); see also Abrahamian, "The Paranoid Style of Iranian Politics," *Frontline: Tehran Bureau*, August 27, 2009, <http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2009/08/the-paranoid-style-in-iranian-politics.html>

Prepared Remarks of Mary McCord, Principal Deputy Assistant Attorney General for National Security, before the House Financial Services Subcommittee on Oversight and Investigations

September 8, 2016

Good morning Chairman Duffy, Ranking Member Green, and members of the subcommittee. Thank you for the opportunity to appear before you today to discuss the Department's role in the settlement of Iran's claim before the Iran-U.S. Claims Tribunal at the Hague for funds in the Foreign Military Sales (or "FMS") trust fund, as well as Iran's associated claim for interest on these funds.

As the Attorney General made clear when the deal was first announced, the Department of Justice fully supported the Administration's resolution of several issues with Iran, including the settlement of the Hague Tribunal claim involving the FMS fund, as well as the arrangements that led to the return of U.S. citizens detained in Iran.

With respect to the Hague settlement, when there is a settlement of litigation that is pending against the United States, it is generally paid from the judgment fund unless there is a separate source of funding for such a settlement. For a payment of a settlement to be made from the judgment fund, the Attorney General must certify to the Treasury that the payment of the settlement is in the best interests of the United States.

Here, the Attorney General approved the settlement and certified payment from the judgment fund of the portion of the settlement that resolved the interest dispute. The certification was based on the Department of Justice's typical type of assessment for such judgment fund payments. Assessment of a settlement payment from the judgment fund includes consideration of the exposure that the United States faces from the claims proposed for settlement. It also considers the likelihood of an adverse ruling against the United States; the likely size of such an award; the background of the litigation, the tribunal, relevant legal arguments, relevant facts, and governing legal doctrines.

The Department's certification of this settlement payment from the judgment fund was based on the assessment that it was in the best interests of the United States -- that the payment was significantly less than the United States's exposure under the claims for the balance in the FMS (foreign military sales) account and the interest on those funds.

The Department of Justice also was involved in the consular negotiations with Iran, and in effectuating the ultimate arrangements that led to the release of American citizens. In this regard, DOJ identified certain criminal cases involving Iranian and Iranian-American defendants for which relief could be provided as a reciprocal humanitarian gesture. The defendants in these cases had been charged primarily with violating the U.S. trade embargo. None were charged with terrorist activity or other violent crimes.

As has been noted previously, the ultimate arrangement involved the pardon or commutation of seven defendants who had been convicted or were awaiting trial in the United States, and the

dismissal of criminal charges against 14 others, all of whom were located outside the United States and for whom our attempts to obtain custody had failed or were likely to fail.

DOJ was also responsible for preparing and filing the paperwork related to the pardons, commutations, and dismissals.

I thank you for the opportunity to testify. I am happy to answer any questions you might have.



Statement before the Committee on Financial Services
Subcommittee on Oversight and Investigations
On "Fueling Terror: The Dangers of Ransom Payments to Iran"

Why Payments to Iran Always Backfire

Michael Rubin
Resident Scholar

September 8, 2016

The American Enterprise Institute for Public Policy Research (AEI) is a nonpartisan, nonprofit, 501(c)(3) educational organization and does not take institutional positions on any issues. The views expressed in this testimony are those of the author.

Chairman Duffy, Ranking Member Green, and Honorable Members, thank you for the opportunity to testify today about the Obama administration's decision to settle for a \$1.7 billion Iranian claim before the US-Iran Claims Tribunal regarding a frozen \$400 million account in the United States established by the shah of Iran in 1979 to fund the purchase of military equipment. The administration delivered the \$400 million principle in cash on the same day that Iranian authorities released four American hostages. The episode raises many questions of policy and judgment: Was it necessary to make the payment in January 2016? Was the method of payment legal given existing sanctions? Was it wise to provide Iran with such an amount in cash?

The controversy regarding the payment rests in both its irregularity and the suspicion that it was tied directly to Iran's release of US hostages and was therefore a ransom. Partisan debate may obfuscate any consensus within American political circles about whether to recognize the \$400 million as a ransom, but the Iranian officials most involved in the seizure of American and other Western hostages perceive the payment to be a ransom. Not only has delivery of millions of dollars provided incentive to seize more hostages, but because the money was delivered in cash, the payment bolstered the strength of the Islamic Revolutionary Guard Corps and augmented its ability to finance and conduct terrorism.

Was delivery of the \$400 million proper?

The first question Congress should consider is whether the payment was necessary and proper. The White House and State Department's explanation that the United States needed to settle the dispute now out of fear that the claim's tribunal in The Hague might issue an adverse judgment is not credible. It is true that the shah of Iran had created a \$400 million fund in the United States and that the Carter administration subsequently froze that account after the 1979 Islamic Revolution overthrew the shah and established a regime openly hostile to the United States. It is also true that, for 35 years, successive US administrations—both Democratic and Republican—had successfully stymied any judgment at The Hague. Simply put, had the White House and State Department wanted to do so, they might have first delayed any judgment for years and then slow-rolled payment until a time when Iranian officials no longer invested in the export of revolution or terrorism. They might also have used any award as counterterrorism leverage, given that terrorism sanctions prevent direct payment to the Islamic Republic in US dollars.

The White House has further said that there was nothing untoward in paying the \$400 million in a mix of foreign currencies stacked on wooden pallets in a cargo plane. "There's actually not anything particularly unusual about the mechanism for this transaction," White House Press Secretary Josh Earnest remarked.¹ Earnest, however, is wrong. The State Department's own Office of the Historian could provide no similar examples of a cash payment. According to diplomatic historians, the closest corollary was the 1848 Treaty of Guadalupe Hidalgo, which ended the Mexican-American War. In exchange for California and much of the American southwest, the United States agreed to pay Mexico \$15 million, including a first installment of \$3 million in gold or silver coins.² That payment occurred as part of a final peace agreement after years of hostilities

¹ White House, "Press Briefing by the Press Secretary Josh Earnest," August 22, 2016.

² Bradley Klapper, "Little Precedent for \$400 Million Cash Payment to Iran," Associated Press, August 27, 2016.

had ended and with the United States the clear victor. Years later, President Ulysses S. Grant declared the payment “conscious money.”³

Was it a ransom?

The \$400 million has mostly become so controversial because of the accusation that the money was a ransom payment to the Islamic Republic to free American hostages. There is ample circumstantial evidence to support that accusation. All but one of the American hostages were freed on the same day that the United States delivered the payment.⁴ The administration, however, initially dismissed such accusations as neither new nor newsworthy. After the *Wall Street Journal* refocused attention on the issue with new revelations, President Barack Obama expressed surprise that the issue was again in the news cycle. “We announced these payments in January—many months ago. There wasn’t a secret,” he said.⁵ What was unknown at the time, however, was that the United States and Iran had secretly negotiated a swap or release of Iranians and Americans detained in each country and that, in December 2015, the Iranian team augmented their demands with an insistence on a cash payment, which the Obama administration approved so the Iranian team could say they achieved “something tangible.”⁶

Obama flatly denied that the \$400 million was a ransom. “We do not pay ransom. We didn’t here. And we don’t—we won’t in the future—precisely because if we did, then we would start encouraging Americans to be targeted,” he told the press.⁷ State Department spokesman John Kirby implied that the timing of the payment was coincidental and could not be a quid pro quo. “Negotiations over the settlement of an outstanding claim . . . were completely separate from the discussions about returning our American citizens home,” he said. “Not only were [the] two negotiations separate, they were conducted by different teams on each side, including, in the case of The Hague claims, by technical experts involved in these negotiations for many years.”⁸

Freed hostage Saeed Abedini, however, later revealed that the American hostages were unable to leave until a separate plane landed, presumably with the money Iranian officials had demanded.⁹ In subsequent days, the Obama administration admitted that there was a quid pro quo:¹⁰ Swiss officials would not allow the Iranian cargo plane to depart Geneva until American hostages were in the air.¹¹ While this implied linkage, the White House and State Department seemed to suggest that the payment was “leverage” and not a ransom because the money technically arrived after the hostages had departed Iran.

³ Marvin Meyers, *Sources of the American Republic*, Volume 1 (New York: Addison-Wesley, 1996), 363.

⁴ Jay Solomon and Carol E. Lee, “U.S. Sent Cash to Iran as Americans Were Freed,” *Wall Street Journal*, August 3, 2016.

⁵ White House, “Press Conference by the President After Meeting with National Security Officials,” August 4, 2016.

⁶ Solomon and Lee, “U.S. Sent Cash to Iran.”

⁷ White House, “Press Conference by the President.”

⁸ Elise Labott, Nicole Gaouette and Kevin Liptak, “US Sent Plane with \$400 Million in Cash to Iran,” CNN.com, August 4, 2016.

⁹ Fox Business News, “American Hostage: Forced to Wait for 2nd Plane Before Iran Release,” August 5, 2016.

¹⁰ John Kirby, Daily Press Briefing, State Department, August 18, 2016.

¹¹ Jay Solomon and Carol E. Lee, “U.S. Held Cash Until Iran Freed Prisoners,” *Wall Street Journal*, August 17, 2016.

Was it wise?

White House and State Department explanations might split legal hairs, but outside of Washington, such semantics are irrelevant. Iranian officials' perception is that the United States paid a ransom. Iran believed it to be ransom. "Taking this much money back was in return for the release of the American spies," the Islamic Revolutionary Guard Corps' Brigadier General Mohammad Reza Naghdi, commander of the paramilitary Basij, said, a claim subsequently repeated in the Iranian press over subsequent weeks.¹²

While it appears the Obama administration knowingly paid a ransom, President Obama's statement that payment of ransoms incentivizes terror and encourages targeting of Americans is true, especially with regard to Iran. For example, every time the Carter administration offered new incentives to Iranian negotiators holding American hostages at the US Embassy in Tehran, the Islamic Republic increased rather than compromised its demands.

Perhaps the best corollary, however, is the Reagan-era "Arms for Hostages" scheme. Beginning in the mid-1980s, Iranian proxies in Lebanon kidnapped two dozen Americans. While senior Reagan administration officials had criticized President Carter for negotiating under fire,¹³ once in power, Reagan's team convinced itself that maintaining a black-and-white approach to terrorism was not pragmatic. On January 17, 1986, President Reagan signed an order authorizing the sale of guided missiles to Iran. Under terms negotiated by senior national security aides, once Iran received the missiles, it would order Hezbollah and other proxy groups to release American hostages.

At first glance, Reagan's approach to Iran seemed to work. For 15 months beginning in June 1985, no Americans were kidnapped in Lebanon. After Iranian proxies released Father Lawrence Jenco, who had been in captivity for 564 days, the United States delivered additional spare parts to Iran. No sooner had American officials offloaded the last shipment of military equipment, however, then kidnapers seized three more Americans.¹⁴ Simply put, the ability to restock its military gave Iran an incentive to seize hostages.

While Iran may not officially receive weaponry as part of the Joint Comprehensive Plan of Action (JCPOA) and the subsequent agreements to release American hostages and repatriate Iranian cash frozen in the United States, in reality it does. Shortly after inking their agreements, Iranian authorities embarked on a massive military shopping spree in both Russia and China.¹⁵ US diplomats might say that the JCPOA and the corollary UN Security Council Resolution (UNSCR)

¹² "Bazpeshgiri 107 Milyard Dollar az Emval-e Iran dar Qobal-e Azadi Jasus-e Amrikaye Bud," Fars News Agency (Tehran), January 20, 2016; and "Afshagari Jadid Sardar Naghdi az Jasus-e Amrikahayi," Tnews.ir (Tehran), February 6, 2016.

¹³ See, for example, Alexander Haig in *Department of State Bulletin* 81, no. 2048 (March 1981), 17, as quoted in Roberts B. Owen, "The Final Negotiation and Release in Algiers," in Warren Christopher, ed. *American Hostages in Iran* (New Haven: Yale University Press, 1985), 298.

¹⁴ John Tower et al., *The Tower Commission Report* (New York: Times Books, 1987), 47–48.

¹⁵ "Didar va Goftegu-ye Farmandehan-e Niru-ye Hava-ye Artesh-e Iran va Chin dar Peken," Fars News Agency, November 2, 2015; and Associated Press, "Iran to Purchase Sukhoi-30 Fighter Jets from Russia," February 10, 2016.

2231 prevent Iran from importing “offensive” arms and systems, but because the UNSCR 2231 relies on the definitions of the UN Register of Conventional Arms,¹⁶ definitions that some Iranian officials dispute or dismiss, and because Moscow offers Tehran diplomatic cover at the United Nations, such a prohibition has little meaning.

Regardless of any aspect of military relief as a direct or second-order effect of recent US deals with Iran, the Iranian perception that the Obama administration was willing to incentivize hostage taking has led to additional Iranian hostage taking. In the days and weeks after the delivery of the \$400 million, Iranian security forces seized at least a half dozen more American, Canadian, and European hostages in Iran, leading the US State Department to issue a new travel warning for Iran highlighting the heightened risk of detention. “Foreigners, in particular dual nationals of Iran and Western countries including the United States, continue to be detained or prevented from leaving Iran. . . . Iranian authorities continue to unjustly detain and imprison U.S. citizens, particularly Iranian-Americans, including students, journalists, business travelers, and academics, on charges including espionage and posing a threat to national security,” it declared.¹⁷ Iranian American Siamak Namazi, his father Baquer Namazi, American businessmen Robin Shahini, Canadian academic Homa Hoodfar, British charity worker Nazanin Zaghari-Ratcliffe, British businessman Kamal Foroughi, Frenchman Nazak Afshar, and Lebanese businessman Nizar Zakka, a permanent US resident, all have ended up in Iranian prison on spurious charges in the wake of the prisoner release that Obama and Secretary of State John Kerry claimed was the result of a newfound working relationship rather than the \$400 million ransom.

Do cash payments hamper counterterrorism?

The US government paid its initial \$400 million transfer to Tehran in cash and likely paid the remaining \$1.3 billion in cash as well, although White House and State Department officials refuse to detail the method of the latter transfer. The purpose of cash payment in foreign currency was to sidestep current prohibition on doing business with Iran and Iranian banks in US dollars. Unfortunately, the cost to US security and the difficulties to US counterterrorism efforts may be extraordinarily high.

The State Department continues to designate Iran as a leading state sponsor of terrorism.¹⁸ Iran not only continues to sponsor terrorist groups in the Gaza Strip and West Bank, Lebanon, Syria, and Iraq, but has also provided shelter and protection to senior al Qaeda operatives. For both the George W. Bush and Obama administrations, the Treasury Department has been at the frontline of the fight against terrorism. The US government managed to break up Iran’s 2011 plot to murder the Saudi ambassador to the United States because it was monitoring bank accounts utilized by the Islamic Revolutionary Guard Corps.¹⁹ The problem with cash payments—especially in multiple

¹⁶ UNSCR 2231, Annex B, Paragraph 5.

¹⁷ US Department of State, “Iran Travel Warning,” August 22, 2016.

¹⁸ US State Department, “Chapter 3: State Sponsors of Terrorism Overview,” Country Reports on Terrorism 2015, June 2, 2016.

¹⁹ US Department of Justice, Federal Bureau of Investigation, “Two Men Charged in Alleged Plot to Assassinate Saudi Arabian Ambassador to the United States,” October 11, 2011; and Charlie Savage and Scott Shane, “Iranians Accused of a Plot to Kill Saudis’ U.S. Envoy,” *New York Times*, October 11, 2011.

currencies—is that they allow the Islamic Revolutionary Guard Corps and other terror-sponsoring organizations to avoid detection.

That terrorist attacks are relatively cheap to execute once cash is in hand simply augments the danger. Take Hamas, for example, one of Iran's chief clients. A 2001 shooting attack on the Afula bus station in Israel that killed two and wounded 48 cost the group only \$31,000.²⁰ Likewise, an attack the following year in a Hebrew University cafeteria that killed five Americans cost only \$50,000.²¹ A suicide bomb belt can cost as little as \$1,500.²²

In the Islamic Republic, possession is ten-tenths of the law. The Islamic Revolutionary Guard Corps controlled the aircraft to which the \$400 million was delivered. Because the Islamic Revolutionary Guard Corps controls its own banks, it is unlikely that it transferred the \$400 million to central coffers. Even if the ransom did end up in Iran's central bank, this does not guarantee transparency. On August 14, 2016, the Iranian press reported that Iranian Justice Minister Mostafa Pour-Mohammadi commented that "approximately 50 million bank accounts" in Iranian banks either have no name listed or have been manipulated and that "such statistics put the country's banking system under question."²³ If 50 million bank accounts in a country of 80 million people are irregular or opaque, there is ample reason to question their use.

Does money moderate Iran?

Whether the United States delivers \$1.7 billion to Iran as cash or by any other mechanism, there is a broader problem: reducing sanctions and bolstering trade disproportionately helps those elements within the Islamic Republic most hostile to the United States and most willing to sponsor terrorism.

Put aside the false assumption embraced by many in the White House that President Hassan Rouhani is a moderate. While he certainly projects a more moderate image to the outside world, across the Islamic Republic's political system, Iranians have always understood Rouhani to be a loyalist to the ideals espoused by revolutionary leader Ayatollah Ruhollah Khomeini. Before his 2013 election, for example, Rouhani's campaign commercials bragged about how Rouhani was the first person in the Islamic Republic to refer to Khomeini as an "Imam," in effect likening him to the Shi'ism's Messianic figure. And, as chairman of Iran's Supreme National Security Council, Rouhani outlined a strategy of surprise in which he would lull the United States into complicity with dialogue while advancing strategies to defeat it.²⁴

²⁰ Matthew Levitt, *Hamas: Politics, Charity, and Terrorism in the Service of Jihad* (New Haven: Yale University Press, 2007), 55.

²¹ *Ibid.*

²² *Ibid.*

²³ "Pour-Mohammadi: 50 Milyon Hisab-e Banki Mokhdush va Majhul Al-Hawiya Darim," Islamic Students' News Agency (Tehran), August 14, 2016.

²⁴ Hassan Rouhani, "Iran's Measures Rob the Americans for Foresight," (speech, Ferdowsi University Hall, February 9, 2015), *Rahbord* (Journal of the Expediency Council's Center for Strategic Studies, Tehran), Spring 2005.

Alas, for Rouhani, this did not appear merely to be bravado or rhetoric. Beginning in the early 1990s and accelerating after the election of Mohammad Khatami to Iran's presidency, European officials led by German Foreign Minister Klaus Kinkel argued that greater trade might lead the Islamic Republic to abandon its rogue behavior.²⁵ Strengthening Iran's economy would not only bolster the position of moderates in the Islamic Republic's domestic political context but also augment Western diplomats' ability to engage productively with Iran on issues of concern ranging from terrorism to human rights.

The 1997 election of President Mohammad Khatami and his calls for a "dialogue of civilizations" were exactly what Western leaders wanted to hear. Between 1998 and 2005, the European Union almost tripled its trade with Iran on the philosophy that the "China model" might work and greater ties between Iran and the West might lead to political liberalization. At the same time, the price of oil—and therefore Iran's income—nearly quintupled. Iran took its hard currency windfall and invested it in its ballistic missile program and its then-covert nuclear enrichment facilities. Khatami's spokesman later bragged that the purpose of dialogue was not to compromise but rather to build confidence and avoid sanctions. "We had an overt policy, which was one of negotiation and confidence building, and a covert policy, which was continuation of the activities," he explained.²⁶ Meanwhile, the official directing the money into the military was none other than Hassan Rouhani, who, in his capacity as chairman of the Supreme National Security Council, was fulfilling his strategy of surprise.

It's not just a matter of political will, but rather the structure of Iran's economy. Here again, the problem is the Islamic Revolutionary Guard Corps. The Revolutionary Guards' stature grew against the backdrop of the 1980–88 Iran-Iraq War. When revolutionary leader Ayatollah Ruhollah Khomeini finally accepted a ceasefire in 1988, putting a damper on the Revolutionary Guards' declared goal of liberating not just Baghdad but marching straight through to Jerusalem, the IRGC was loath to return to their barracks and forfeit the privileges they had acquired. Instead, they decided to seek independence from the politicians and bean counters in Tehran by creating their own independent financial base, which they called "Construction Base of the Seal of the Prophets" (*Gharargah Sazandegi-ye Khatam al-Anbiya*).

To understand what *Khatam al-Anbiya* is like inside the Iranian economy, and without moral equivalence, picture the US Army Corps of Engineers combined with Bechtel, Halliburton, KBR, Shell, Exxon, Boeing, and Northrop-Grumman, all rolled up into one entity. Today, *Khatam al-Anbiya* controls all heavy industry, construction, manufacturing, electronics, oil production and refining, shipping, and even large chain stores. To do business with Iran means working with Islamic Revolutionary Guard Corps front companies; there simply is no way to avoid it.

Under President Mahmoud Ahmadinejad, *Khatam al-Anbiya* received upward of \$50 billion in no-bid contracts in the South Pars Oil Field alone. In addition, the Islamic Revolutionary Guard Corps

²⁵ European Council, "Conclusions of the Presidency," Part D, External Relations, p. 100, Edinburgh, December 12, 1992; and Klaus Kinkel (speech, Bundestag debate on policy toward Iran, Bonn, April 17, 1997).

²⁶ "Ramezanzadeh: Siyasat-e Post Perdeh Dawlat-e Khatami Adameh-e Fa'liyatha-ye Hasteha-ye Bud," Fars News Agency (Tehran), June 14, 2008.

reaps an estimated \$13 billion annually in oil smuggling.²⁷ This means that even if President Hassan Rouhani were to take the Revolutionary Guards' official budget to zero, they would face less of a cutback proportionately than the US military has through sequestration. The IRGC may be the ideological guardians of Khomeini's views, but they can be quite pragmatic when it comes to making money.

The Tehran Stock Exchange only adds to the problem. Founded in 1967 but suspended as a result of the 1979 Islamic Revolution, the Tehran Stock Exchange has gained renewed prominence in the years after Khomeini's 1989 death. In 2010, the exchange ranked as the best performing in Europe, Africa, or the Middle East.²⁸ Between 2008 and 2011, the value of its listed shares almost tripled, to \$108.4 billion.²⁹ By 2013, its market capitalization exceeded \$170 billion.³⁰

The problem from an American security and counterterror perspective is that the Tehran Stock Exchange has become a primary tool by which the Iranian government and especially the Islamic Revolutionary Guard Corps can launder cash. When the Iranian government talks about privatizing state-run industries in the name of economic reform, the Tehran Stock Exchange hosts the initial public offering. In most cases, the firms that purchase a controlling or complete interest in the "privatized" companies are Revolutionary Guards-owned operations or banks. This has led over the past couple decades to three-card monte countersanctions, in which the US Treasury Department or United Nations designates companies engaged in proliferation or other illicit activities, only to have the Revolutionary Guards shift their operations to new shell companies faster than redesignation can occur. To provide Iran with cash under the current regime and with the current *Khatam al-Anbiya* domination of the economy simply allows the Revolutionary Guard, which took possession of the cash, to inject it into its shell game and perhaps finance or catalyze operations of the companies about whose activities the US Treasury Department and intelligence community are most concerned.

Conclusion

In the Middle East, perception means more than reality, and the perception among those who hold the reins of power inside Iran is that the \$400 million payment—one opposed by the US Justice Department—was very much a ransom. Unfortunately, rather than resolve a crisis and ameliorate relations, the Obama administration and State Department's willingness to make such a payment may actually undercut any chance of rapprochement. Even diplomats who still believe they are engaging sincere regime reformists rather than being ensnared in an elaborate game of good

²⁷ Ali Alfoneh, "How Intertwined Are the Revolutionary Guards in Iran's Economy?" AEI Middle East Outlook, October 22, 2007; "Vagozari-ye 850 Melyoun Dolar Prozehpye Jadid-e Nafti Be Khatam al-Anbiya," *Abrar* (Tehran), March 16, 2010; "Gharargah-e Khatam al-Anbia Jaygozin-e Torkiyeh Dar 3 Faz-e Pars-e Jonoubi Mishavad," *Abrar* (Tehran), April 19, 2010; and "Jaygozinan-e Dakheli-ye Shell va Repsol Dar Pars-e Jonoubi," *Pol* (Tehran), June 5, 2010; "Vagazari bidun nashrifat 2 pirouzeh-i nafti beh qirargah Khatam al-Anbia," *Mehr* (Tehran), February 26, 2011.

²⁸ F. Milad, "Tehran Stock Exchange Main Index Hits New Record," Trend News Agency (Baku), December 2, 2012.

²⁹ "Iran Stock Official Says Market's Value 'Very Far' From International Standards," Tehran Vision of the Islamic Republic of Iran Network 5, Tehran Provincial TV in Persian, January 11, 2012, 1138 GMT.

³⁰ Tehran Stock Exchange, "CEO Message," <http://new.tse.ir/cms/page564.html>.

cop/bad cop should be worried, for the taking of new hostages is as good a barometer of where power lays in Iran as any.

It is bad enough that not only Iranian officials but also other rogue regimes and terrorists groups can conclude that the United States is susceptible to blackmail and that its condemnation of ransom payments is only rhetorical. That the Obama administration blessed a cash payment and allowed the Islamic Revolutionary Guard Corps to take possession of it augments the possibility that it will be used to catalyze terrorism across the globe and blinds the intelligence community and Treasury analysts who have dedicated their careers to keeping America safe.

**Questions for the Record Submitted to
Lisa Grosh and Chris Backemeyer by
Representative French Hill (#1-5)
House Financial Services Committee
September 8, 2016**

Question:

During testimony of the hearing you were questioned about provisions in the Victims of Trafficking and Violence Protection Act of 2000 (PL 106-386), which was signed into law by President Bill Clinton on October 28, 2000. The \$400 million paid to U.S. victims of Iranian terrorism under this act was appropriated money by Congress. Please answer the following questions:

1. Did the United States formally release Iran from the \$400 million obligation under this Act?
2. Why did the U.S. Government not pursue the subrogation against the Iran Foreign Military Sales (FMS) account?
3. Why did the U.S. Government not recover the \$400 million from the FMS account as it was directed to do under the Act?
4. Please furnish physical copies of justification from the Administration for why it believed that satisfaction of the subrogation requirement did not involve Congress?
5. Whose wet signature authorized the decision to forfeit collection of the subrogation requirement?

Answer:

As you know, under the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Congress directed the use of appropriated funds to pay the claims of certain victims of terrorism holding judgments against Iran at that time.

While Section 2002 limited the total amount of payments from appropriated funds to the then-existing balance of the FMS account, the VTVPA neither directed nor authorized the use of FMS funds themselves to pay the judgment holders. Accordingly, pursuant to the terms of the statute, the funds paid out to Americans under the VTVPA originated with appropriated funds, not FMS funds. The amount paid in this manner was approximately \$400 million.

Pursuant to the VTVPA, the underlying claims of victims receiving compensation, once paid, were “subrogated” to the United States, meaning they became claims of the United States against Iran. Section 2002(c) of the VTVPA provides that “[t]he President shall pursue these subrogated rights as claims or offsets of the United States in appropriate ways,” and that no funds shall be released from the FMS account “until such subrogated claims have been dealt with to the satisfaction of the United States.”

In reaching the January 2016 settlement over Iran’s remaining Foreign Military Sales Trust Fund claim before the U.S-Iran Claims Tribunal in The Hague, we were also able to settle these claims subrogated to the U.S. under the VTVPA. The settlement amount that was reached beyond the \$400 million in the Trust Fund amounted to a lower amount of interest than would otherwise have been agreed, in order to reflect settlement for those subrogated claims. The United States thus fully pursued its subrogated rights and did not forfeit those claims. By

achieving a significant financial benefit for the U.S. through foreclosing a higher amount, the settlement fully recognized the VTVPA.

