

THE TERROR FINANCING RISKS OF AMERICA'S \$400 MILLION CASH PAYMENT TO IRAN

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY AND INTERNATIONAL TRADE AND FINANCE

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING THE TERRORISM FINANCING RISKS OF ALLOWING THE ISLAMIC REPUBLIC OF IRAN TO GAIN ACCESS TO LARGE AMOUNTS OF HARD CURRENCY AND THE U.S. GOVERNMENT'S PAYMENTS OF \$1.7 BILLION IN FOREIGN CASH TO IRAN

SEPTEMBER 21, 2016

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WEDNESDAY, SEPTEMBER 21, 2016

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON NATIONAL SECURITY AND INTERNATIONAL
TRADE AND FINANCE
Washington, DC.

The Subcommittee met at 10:30 a.m., in room SD-538, Dirksen Senate Office Building, Hon. Mark Kirk, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF CHAIRMAN MARK KIRK

Chairman KIRK. The Subcommittee will come to order.

The subject of today's Subcommittee hearing is the financing dangers of the \$1.7 billion in cash payments to Iran.

In August and September of 2016, the *Wall Street Journal* revealed that the Administration had secretly airlifted \$400 million to Iran in January of 2016, and another \$1.3 billion to Iran weeks later, and the total \$1.7 billion payment was made all in foreign currency. To get a sense of just how much cash we sent to Iran, look at this chart. A stack of \$400 million in 500-euro notes is—would total 264 feet tall. The \$1.3 billion in 500-euro notes equals two stacks that are 430 feet tall. For comparison, the Tribune Tower in my home of Chicago is about 462 feet tall.

Then, last Sunday, we learned that the Administration had made at least two wire transfer payments to Iran prior to January of 2016. In July of 2015, the U.S. wired \$848,000 to Iran to settle a museum dispute involving art and fossils. Then, in April of 2016, the United States wired \$9 million to Iran as part of the deal to move 32 metric tons of heavy water from Iran's nuclear program. These United States wire payments contradict the President's claim that the United States had prevented—was prevented from paying Iran any other way besides cash. These wire transfers also raised questions of why we paid Iran in cash, and when we would have used—when we should have used safer payment methods.

The January of 2016 cash airlift came at the same time as Iran released four illegally detained Americans, including the *Washington Post* reporter, Jason Rezaian, and Amir Hekmati, a former Marine from Arizona, and Pastor Saeed Abedini of Idaho. The American people are obviously relieved that four U.S. citizens have come home after being illegally detained by the Iranian Govern-

ment, and the White House had led us to believe that it had actually released these people solely after the release of seven Iranians convicted, or accused of violating United States sanctions law, and the removal of 14 Iranians from Interpol's Extradition Watch List. We now know that this was not a prisoner for exchange—prisoner for hostage exchange. It was a cash for hostages deal with Iran.

The \$1.7 billion in cash payments that Iran has been—after \$1.7 billion in cash payments, Iran has been emboldened. Iran has taken more American hostages, including Baqr Namazi and Reza Shahini. As this chart shows, on August 22nd, the State Department issued a warning that Iran is looking to seize and detain more American citizens.

Iran conducted multiple ballistic tests on March 8th and March 9th and on April 19th of 2016. On August 20, 2016, Iran announced the formation of its Shiite Liberation Army, a new foreign legion to fight Iran's sectarian wars in Syria and Lebanon and Yemen. On September 6th, Iranian fast-attack boats harassed United States Navy ships in the Persian Gulf, and on September 15th, Iran threatened to shoot down two U.S. reconnaissance planes in the Persian Gulf.

What also worries many Americans is that the White House just handed over \$1.7 billion in cash to the world's biggest State sponsor of terrorism, according to the State Department's June 2016 Terrorism Report, on top of all the cash that the Administration released during and after these negotiations.

Why should we care? We should care because hard cash is the preferred currency of terrorism. As this chart shows, in the worst-case scenario the Foundation for the Defense of Democracies estimates that we released to Iran as much as \$33.6 billion in cash and precious metals to Iran. That is enough cash to circle the Earth four times in \$100 bills. That is enough cash for Iran to fund Hezbollah terrorists for 168 years at the current funding levels.

We should care because Iran and its terrorist proxies have killed more Americans than ISIS has. As this chart shows, on October 23, 1983, Iran-backed terrorists killed 241 Americans in the Beirut bombing, including Marine Sergeant John Phillips of Wilmette, Illinois, that I went to church with. General Joseph Dunford has said that Iran-backed militants have killed some 500 U.S. service men and women in Iraq and Afghanistan. Armed with billions in cash, how much more harm could Iran and its terrorist allies do to Americans in the free world?

For comparison, the *New York Times* estimates that al Qaeda's 9/11 attacks caused \$55 billion in direct physical damage and \$123 billion in the direct economic impact, and that is on top of the 2,996 families that did not have their loved ones returned to them. Six thousand people were also wounded on 9/11. Al Qaeda did all that damage on just a half-million dollar budget. What could Iran and its terrorist allies do with tens of billions in cash, I would ask? How do we lower the terrorism risks of the Administration's billions of dollars in cash payments to Iran?

We welcome three witnesses now who will help us think through some more of these issues. I first want to say this. The Subcommittee invited the Treasury Department to testify on this panel but the Administration declined to send a witness.

I am delighted to have with us today Judge Michael B. Mukasey, who has served as the 81st Attorney General for President George W. Bush; and Ambassador Eric S. Edelman, who was the former Under Secretary of Defense for Policy, who is now a Distinguished Fellow at the Center for Strategic and Budgetary Assessments and Cochair of the Iran Task Force at JINSA; and Dr. Suzanne Maloney, the Deputy Director for Foreign Policy and Senior Fellow at the Center for Middle East Policy at The Brookings Institute.

A housekeeping note, I will follow the early bird rule, alternating by both sides, and we will open it up for five-minute question rounds. I would now recognize the junior Senator for North Dakota, for her opening remarks.

STATEMENT OF SENATOR HEIDI HEITKAMP

Senator HEITKAMP. Thank you, Mr. Chairman, and my great hope is that this Subcommittee hearing can play a constructive role in providing oversight of the Administration's recent actions related to Iran.

I think there is no doubt that an unchecked Iran poses not just a threat but a grave threat to the national security of the United States and our allies. This is why it is so important to implement tough, smart policies related to Iran, whether it is to open up relationships and have a discussion about their nuclear program or whether it is to cutoff financing for its support of terrorism, or to fight back against its actions, which are clearly providing a destabilizing effect in the Middle East.

The Administration's decision to complete a payment owed to Iran, as part of a settlement of a 35-year-old dispute, at the same time that the nuclear deal was being implemented and Iran was releasing five wrongfully detained Americans involves many of these issues and raises many of these questions.

Our focus today should be on whether this decision advances the national security interests of the United States. It should be not on scoring political points. Did the payments comply with the law? Were they in the President's authority to make? Did the Administration's decision contribute, at long last, to the release of innocent Americans? Did the payment to settle the long-standing claims at the Hague Tribunal actually save the U.S. taxpayers money? How can we counter Iranian efforts to fund terrorism or other illicit activity?

These are the questions that we should be asking, and I hope this hearing can shed some light on those answers.

We also need to not lose sight of the actions Congress must take and can take to make Americans and this world safer. With the expiration of the Iran Sanctions Act at the end of the year, it is a legitimate debate whether the Administration needs additional authorities to prevent Iran from backsliding on its nuclear deal and to continue to hold Iranians' feet to the fire on the development of ballistic missiles, support for terrorism, and, importantly, violations of human rights.

But maybe the most important thing that we need to do today, if we were going to take action, would be to confirm Adam Szubin. I think everyone who has ever met Adam Szubin, anyone who has had any interaction, knows that this country is safer if Adam

Szubin is the confirmed—confirmed in the job that he currently occupies. He is an amazing young man. I look at the Adam Szubin problem not just in the context of are we serious about terrorism, are we serious about putting a steady hand in that job, that can, in fact, enforce and understand and build international relationships to maintain the sanction regime, but are we serious about attracting the best and brightest human beings to public service in the most critical jobs? And so I do want to make the point that Adam Szubin's confirmation would go a long way to making me sleep better at night, knowing that this young man feels appreciated.

But I look forward to the testimony. I want to thank you for your time. It is always amazing that we are able to get volunteers to appear, especially volunteers of the stature that we do, and I thank the Chairman for holding this important hearing.

Chairman KIRK. Thank you. We would like to now turn to our three witnesses. I will now recognize our witnesses for their opening statements. Judge Mukasey will go first, and will be followed by Ambassador Edelman, and then Dr. Maloney.

**STATEMENT OF MICHAEL B. MUKASEY, FORMER ATTORNEY
GENERAL OF THE UNITED STATES**

Mr. MUKASEY. Thank you, Mr. Chairman, and thank you, Ranking Member Heitkamp, and thank you for having this hearing, which I think, as the Ranking Member pointed out, helps fulfill a very important function of Congress, which is oversight of the Executive.

I submitted a written statement. I do not want to waste your time by simply going over the substance of it. It is essentially a catalog of questions about this transaction, questions that, many of which are subsumed within a letter that Chairman Ed Royce of the House Foreign Affairs Committee sent to the Secretary of State back in February, questions that I believe have not yet been answered.

What I want to do is focus principally on—not on, necessarily the payment itself, and particularly the form that it took. The Ranking Member asked several questions in her opening remarks, one of which was, was it within the law? I think it was. Was it within the authority of the President? I think it was. Did it result in the release of Americans? There has been a big dispute about whether this has resulted in the release, i.e., payment of ransom, and I am not going to get into that here. There is no doubt that people were released concurrent with the payment, and to the extent that it speeded that release, that release obviously was welcome.

Did it save money? It may very well have saved money, but that, I think, raises an old saying about being penny wise and pound foolish. The question is not whether it saved money. The question is whether it had to be made in the form that it was made, and what is going to result from that.

I suggest to you that what is going to result from that is nothing good. We initially heard that it had to be made in that form because we cannot wire money to Iran. We have no way of getting them money other than in pallets of cash. As the Chairman pointed out, the facts directly rebut that. There have been wire payments

to Iran. It could easily have been transferred to a country that does do business with Iran, and that could have put the money in a bank account. That was not done.

There is only one purpose for which cash in that amount is useful, and that is to do what Iran has been doing around the world, which is acting as a sponsor of terrorism. It is not useful for infrastructure projects, which we were told are very much the concern of the Iranians because of their economy. Iranians do not pay Iranians in euros and Swiss francs. As far as purchasing equipment overseas, paying the money by—paying money that was transferred to Iran, out of Iran, in cash, is not the most economical or the most convenient way to pay for equipment that you need in connection with infrastructure projects. That is much easier to do in a bank account.

The only conceivable purpose for this money is to finance illicit activities, because the cash is untraceable. That is the reason that the Iranians insisted on it, and why we agreed to it is something that I think this Committee ought to probe, because I believe there are no good reasons for having agreed to it.

In addition to the considerations that I pointed out in my statement, I should point out that there is present in the world another rogue State, North Korea, that is cash-starved and that has an active nuclear program. The Iranians, of course, we know have an active missile program—ballistic missile program, a program that is not useful for any purpose other than to deliver a nuclear weapon. So the question then becomes, do they intend to continue their nuclear program, in part, with the use of this kind of money? And when you have a cash-starved country like North Korea, that is conducting nuclear tests—in fact, conducted one this month, that poses a distinct danger.

We know that the North Koreans have proliferated in the past. Back in 2007, they built a reactor in Syria that clearly was not for the Syrians. Syria is and has been an Iranian client State. They built a reactor in Syria. The Israelis were nice enough to demolish it. But clearly the North Koreans have the capacity and the inclination to proliferate, when they think it is worth their while. And when Rouhani and his folks are sitting there with \$1.7 billion in their jeans, it can be made very much worth their while, in addition to which, that kind of money is going to buy a lot of dead Westerners, and I think that we ought to examine why the payment was made in that form, and that is really my principal concern.

And with that I will relinquish the balance of my time. Thank you.

By the way, I should add one more point, and that is you mentioned Adam Szubin. I share your high regard for Adam Szubin. In fact, he was the person who first made the point, in response to a question that I asked him about the usefulness of the Iranian ballistic missile program. He acknowledged that the only conceivable reason for having a ballistic missile program is to deliver a nuclear weapon. And for that candor and for his talent, I agree with you. He is a very able public servant and we are lucky to have him.

Chairman KIRK. Ambassador Edelman, let me ask you a question.

[Pause.]

Chairman KIRK. OK. Go ahead.

STATEMENT OF ERIC S. EDELMAN, COUNSELOR, CENTER FOR STRATEGIC AND BUDGETARY ASSESSMENTS, COCHAIR, IRAN TASK FORCE AT JINSA GEMUNDER CENTER, AND FORMER UNDER SECRETARY OF DEFENSE FOR POLICY

Mr. EDELMAN. Thank you, Mr. Chairman, and thank you, Senator Heitkamp, for giving me an opportunity to be here before the Subcommittee to talk about the \$1.7 billion cash payment to Iran in January and February of 2016.

Normally, the risks of the world's largest—of providing the world's largest State sponsor of terrorism with such funds, concurrent with the release of unfairly and illegally detained U.S. citizens would trigger a pretty robust debate in the United States, but I think given the unusual nature of this election season, there has not been enough attention devoted to this, so I really commend you for holding this hearing.

I want to talk a little bit about the specifics of the transfer and also the larger context in which this took place, and I have got a longer written statement that I have submitted which I hope will be included in the permanent record of the hearing, Mr. Chairman.

The United States negotiated with Iran to repay funds that were originally deposited in—with the United States as part of the FMS sales program back in the Shah's era. So this was something that had been going on for quite some time. The settlement involved not only \$400 million of Iranian money deposited but \$1.3 billion of interest that was calculated as being what might be awarded by the tribunal that has been set up as a result of the Algiers Accord despite the fact that the FMS account itself—we do not let those accrue interest. I know that from my time as Under Secretary of Defense.

The thing that is important about this transaction, in my view, is that both U.S. and Iranian officials acted as though the initial \$400 million payment was crucial to getting the Americans to safety. Despite having readied the hostages for release the day before, we now have testimony from one of the hostages himself that they were kept overnight at the airport as an assurance that the plane-load of money was on its way. Conversely, we now know, from statements by—public statements by State Department spokesman, John Kirby, that the Administration was also using the delivery of the money as “leverage.”

So if both sides of the transaction believed that the money was crucial to the return of the hostages, I can only say—not as a lawyer, because I am not a lawyer and I do not play one on TV—but as a diplomat, it looks and sounds like ransom to me.

Fundamentally, the United States should never pay ransom for hostages. My old boss, George Schultz, stated this problem clearly when he wrote in his memoirs, “We should always be willing to talk to any credible person about our hostages. Hostages should know we would never cease our efforts to gain their release. But we owe the millions of Americans at risk throughout the world that they will not be turned into targets by the known willingness of our Government to pay money, sell arms, pressure another Govern-

ment to pay money, or in any other way make it profitable to take Americans hostages.”

This is particularly a problem, I would say, in a regime like—with a regime like Iran’s, where hostage-taking and ransom-seeking are a core element of statecraft, going back to the 1979 hostage crisis, which was the occasion, of course, for the suspension of foreign military sales to Iran to begin with. And this is something, I think, that as the Chairman noted in his opening statement, the State Department itself has taken recognition of by issuing a travel advisory, reiterating the risks of unjust arrest and detention to U.S. citizens traveling in Iran.

The manner in which the payment was made should also raise concerns. The use of an unmarked cargo plane filled with pallets of cash, apparently accompanied by U.S. officials, and kept secret for a long time by the Administration certainly supports the impression that this was ransom. Apparently some participants in the interagency deliberations about this, as reported in the press, were, you know, concerned about this as well, and expressed opposition to the transaction taking place in this way. I know, if I were still in Government, and had been participating in the interagency transactions, I would have seen this as providing continued support to Iran’s militarily disruptive and destabilizing activities throughout the region.

Moreover, since cash is fungible, the payment could obviously be used, as General Mukasey was just discussing, to subsidize Iran’s ongoing support for terror.

My time is running out so let me just make one more point. This issue, to me, is symptomatic of something broader, that goes beyond the release of the hostages and the return of the money from the FMS account. It is that Iran has been holding U.S. policy hostage with regard to the JCPOA, and it has done that because the Administration has been willing to allow, you know, Iran to hold the fact that the Administration regards the JCPOA as so important to demand more and more concessions from the United States, whether it has to do with transparency, or whether it has to do with payments in cash. And by bending over backwards to fulfill Iran’s demands, the Administration has lost all credibility in its statements that it will maintain pressure on Iran to forswear terrorism and stop its efforts at regional destabilization, something that Senator Heitkamp was adverting to in her comments.

I will not go through the list—it is in my statement of the various instances of bad behavior that the Chairman mentioned. I would add to what he said, the harassment of U.S. naval forces in the Gulf, the taking of the U.S. Marines hostage—or Navy sailors hostage, at gunpoint in January, which a Navy investigation subsequently determined was illegal.

And, finally, let me end on a note that Senator Kirk, in his opening statement as Chairman, touched on, which is what we do not know—and this goes to, I think, the issue of oversight for the Subcommittee—what we do not know is exactly how much cash has now been transferred. Clearly there were some wire transfers. Clearly there were some cash transfers. And I think given the risks that General Mukasey has outlined, that I have outlined in my statement, it is imperative for the Committee, in its oversight re-

sponsibilities, get to the bottom of exactly how much cash has been transferred, why it was done, and to have a really clear conversation with the American people of what the risks are.

Chairman KIRK. Dr. Maloney.

STATEMENT OF SUZANNE MALONEY, DEPUTY DIRECTOR, FOREIGN POLICY, AND SENIOR FELLOW, CENTER FOR MIDDLE EAST POLICY, ENERGY SECURITY AND CLIMATE INITIATIVE, THE BROOKINGS INSTITUTE

Ms. MALONEY. Chairman Kirk, Ranking Member Heitkamp, and Subcommittee Members, thank you so much for the opportunity to appear today.

The January 2016 release of five Americans from months, and even years, of unjust detention in Iran prompted celebrations here and around the world, precisely because the detention of these individuals, as well as many other innocents, underscores the threats to basic rights and freedoms in Iran today. That the detained Americans released was timed to coordinate with the settlement of a nearly 40-year-old financial dispute between the two countries, and that this settlement included payments made via airlift of foreign currency, has prompted allegations that the Obama administration paid a ransom to Tehran.

I would like to make four points, quickly, in the time I have available.

First, I do not believe that this was ransom. A ransom is, by definition, a payment made to secure the release of a detained person. The January 2016 transactions and subsequent related payments were, in fact, made to satisfy a legitimate debt that the United States owed to Iran. I have gone into detail in my written statement about the history of the claim against the United States. But to describe the settlement of this claim as a ransom is not consistent with the well-established history, and its arbitration, over the course of several decades, in a forum specifically established for that purpose. The word “ransom” also obscures the source and purpose of the payment, which provided Tehran with nothing other than its own funds.

Second, while the timing has clearly stoked controversy, the Obama administration’s coordination of the settlement to facilitate other American priorities with respect to Iranian behavior is neither unusual nor surprising.

Indeed, since 1979, each American President has sought to use economic leverage, both penalties and incentives, as a central component of the strategy for addressing the challenges posed by Iran. This broad blueprint has remained in place over the past 37 years. The hostage crisis ended only as part of a carefully crafted set of diplomatic and financial arrangements, and Presidents Reagan, Bush, Clinton, and George W. Bush, as well as President Obama, have each used various measures of transactional diplomacy with Iran to secure American interests. These have never precluded the intensification of sanctions or the use of military force or other coercive measures. These are not mutually exclusive policy approaches.

Third, I believe that the settlement of this claim and the broader diplomacy toward Tehran have advanced the United States’ na-

tional interest. Further delaying the settlement would not have obviated its eventual conclusion and might have resulted in a higher judgment. And while the mechanics of these payments have generated controversy, had the method of payment differed, the beneficiary would still have been the same. Washington's limitations and constraints on the ability to track these funds would have been similar, irrespective of the mode of payment.

It is galling to settle a debt that provides a benefit to a regime that remains fundamentally dangerous actor toward the region and its own citizenry. But the discomfiting reality of the international system is that the United States has and must engage with a variety of Governments whose interests conflict with our own. It is short-sighted to view the settlement of a largely forgotten financial dispute with Iran's post-revolutionary Government as a real victory for Tehran or its leadership. The price that Iran has paid, and notably will continue to pay, for its recalcitrance on the nuclear issue, its support for terrorism, destabilizing actions around the region, and its treatment of its own citizens, including dual nationals, vastly outstrips the repayment of this debt.

Finally, I want to speak to the issue and the concern that this settlement will provoke additional hostage seizures by the Iranians. I understand why such inferences have been drawn, and the appeal of imputing a kind of rational calculus to Iran's treatment of its dual nationals. In my view, this reflects an inaccurate assessment of the drivers of Iranian politics. I see no evidence that Iran's long-standing patterns of human rights abuses, inadequate rule of law, and exploitations of individuals are subject to the logic of financial incentives.

Even after the prisoner release in January, Americans remain missing or detained in Iran: Robert Levinson, a retired U.S. Government employee who has been missing since 2007; my good friend, Siamak Namazi and his 80-year-old father, lured back to Tehran in February; Robin Shahini and U.S. permanent resident, Nizar Zakka, who was recently apparently sentenced to a 10-year term on trumped-up charges of espionage. Add to that list many other dual nationals, and I would surely exhaust my time before you today.

But in these arrests, I would assert that there is no attempt to extort, to method to the madness. Only one factor drives the detention and seizure of Americans and other dual nationals: the deep-seated paranoia of the Islamic Republic.

Finally, these detentions and Iran's other policies may be tempting to see an indictment of the Obama administration's policy toward Tehran. The rewards of diplomacy with the Islamic republic, while as yet limited, should not be dismissed out of hand. Tehran's pathway to a nuclear weapons capability has been extended significantly for at least a decade, and an onerous inspections and verifications regime has been put in place.

Five Americans were able to leave the confines of Iran's most notorious prison and are with their families today. It is possible to see in other developments, including recent efforts to comply with multilateral counterterrorism financing requirements, as evidence of a creeping recognition among the Iranian leadership that meaningful rehabilitation on the world stage will require adherence to

the norms of the international system. It is not an end but it is a beginning.

Thank you.

Chairman KIRK. Thank you. I think we will begin questioning. I wanted to ask Ambassador Edelman a question.

Do you see any irony in the decision by the European Union, made this year, to cancel the printing of the 500-euro note? This is a stack of 75,000 euros worth of 500-euro notes, what I would urge you to never ever spend anywhere near North Dakota.

Do you see any irony in the European Union canceling—discontinuing the 500-euro note because it was so involved in money laundering and terrorism?

Mr. EDELMAN. Well—

Chairman KIRK. I would say that in the case of \$400 million, that—if you do the math it is 800,000 500-euro notes—

Mr. EDELMAN. Right.

Chairman KIRK. —that have just been discontinued because the EU itself feels that those notes are very useful in money laundering and terrorism.

Mr. EDELMAN. Yeah. I was aware, Senator Kirk, that the EU was taking that step, and for the reasons that you have outlined, which is that it has been a problem for the European Union in terms of money laundering. So, yes, it is certainly an irony that we sit here today talking about the use of, you know, of 500-euro notes in order to pay off this debt.

I do want to take issue, if I might—I mean, I have great respect for Dr. Maloney and her expertise on the Iranian economy, in which she is unsurpassed. But I do not think it is completely correct to say that the money that was returned to Iran was all Iranian money. Yes, the \$400 million that was paid back were Iranian monies that went into the FMS account. The \$1.3 billion, however, was U.S. taxpayer money from the judgment fund, and it was—you know, it was essentially imputed interest that the Administration concluded it should pay because it would avoid a potentially larger payment if this went to the tribunal. And it is really for the Administration to answer the question of why they believed that, why they believed it in this timeframe, et cetera, after, you know, 35 years of this discussion going on.

Chairman KIRK. I wanted to ask Judge Mukasey a question here.

Ambassador Edelman has—American—has Americans as victims of terrorism, recovered a roughly \$55 billion judgment under U.S. court agreements. Do you think that maybe, that we should have satisfied that judgment prior to providing \$33 billion in cash to the Iranians?

Mr. MUKASEY. I think there is lively case to be made for balancing whatever our obligations were to the Iranians, based on their deposit, with the judgments—numerous judgments—outstanding against them, that they have bobbed and weaved and avoided satisfying. And from what I understand, that was not even a talking point in these discussions.

There are hordes of deserving U.S. plaintiffs who have not recovered money, simply because the Iranians are very adept at keeping sovereign funds out of the reach of U.S. courts. But certainly the

leverage, whatever leverage we had, might have been exercised in favor of satisfying some of that obligation as well.

Chairman KIRK. Senator Heitkamp.

Senator HEITKAMP. Thank you, Mr. Chairman, and thank you all for your testimony. I do want to note, kind of for the record, we know that Mr. Szubin was invited to attend, would have attended, probably, if he were not traveling today, and doing the important work that he has, in terms of maintaining our sanctions regime.

And thank you for your kind comments, Attorney General. I like calling people attorney general because I think it is a very high calling, as the former attorney general from North Dakota.

You know, and I hate to do this, because I am going to talk about a series of hypotheticals, and I want to ask what if, and you are obviously both very critical of the action the Administration took. What if the Administration had made this payment but it were in wire transfers? Would you feel any differently about this payment? And if you can just do yes or no, that would be great.

Attorney general?

Mr. MUKASEY. Yes.

Mr. EDELMAN. Yes.

Senator HEITKAMP. So if the wire—if they were—if this was not a cash transfer you would feel differently about the payments. I think we have confirmed that.

If, in fact, we were ordered, or lost the case in front of the Hague Tribunal, would you have thought it was appropriate to make a payment without at least discussing, and without—you know, we can talk about whether it is ransom. Obviously we are settling a claim. But one of the criticisms of the nuclear deal was that we did not get more concessions on missiles, we did not get more concessions on hostages, you know, that this went on without those discussions.

And so now we are in this ironic place of having settled a long-term financial claim that was pending before an international tribunal, with the criticism that we did work a side deal—and that is my assessment of it—for release of hostages.

So if, in fact, we had been ordered by the tribunal to make payment, and that payment included an interest component, do either of you believe that we should have made that payment?

Mr. MUKASEY. If awarded by a tribunal, to which—I mean, you are—

Senator HEITKAMP. Right. I am saying, let us say that instead of settling the claim—

Mr. MUKASEY. Right.

Senator HEITKAMP. —in the Hague Tribunal, we actually took this to full litigation and there was an—

Mr. MUKASEY. And we lost.

Senator HEITKAMP. We lost.

Mr. MUKASEY. Right. If we are ordered by a tribunal, to whose jurisdiction we have agreed to do something, then we have to do it.

Senator HEITKAMP. Right. So frequently, as you know, as the former attorney general, and your whole life in the legal arena, when we are looking at a large claim and we are able to settle it

for much less, that is not necessarily a bad thing to engage in the settlement.

Mr. MUKASEY. Correct.

Senator HEITKAMP. Correct. Ambassador?

Mr. EDELMAN. Senator Heitkamp, I agree with what my colleague just said, but I think the issue here is the conflation of that settlement with the release of the hostages, and I think that is why even members of the Administration, according to the *Wall Street Journal*, thought that this looked like a ransom, and therefore were opposed. People in the Justice Department, reputedly, were opposed to this, and I would have agreed with them.

Senator HEITKAMP. Yeah. I think that we are in that spot where we are looking at motivation as opposed to kind of looking at it from a legal standpoint. Obviously, there is legitimacy to the argument that there was a claim pending in front of the Hague Tribunal, that claim had been pending for a numbers of years, we settled the claim, and, oh, by the way, we also were able to secure the release of the hostages.

So I think we need to be—if the answer is we should have settled the claim and not tried to get Americans home, I think there would be a lot of people on the other side equally critical of that decision, even though it appears, or there is an appearance of impropriety as it relates to payment of ransom.

Would you agree with that?

Mr. EDELMAN. No, Senator Heitkamp, I do not agree with that. I think the issue here is not that no one wanted to get Americans back. People did, obviously, want to get Americans back. The issue is what means you use to get them back. And if the means you use is paying the Iranian Government off, in anticipation of a judgment that has not yet been rendered, and which—I mean, if it were rendered I agree with General Mukasey; we would obviously have to abide by it. But it had not been rendered. The Administration has made the argument that it was imminent and it was going to happen soon, and it was going to lead to larger cost—possibly. I would like to know the rationale for that statement, because I do not think it has ever been provided.

Senator HEITKAMP. I think having been someone who was—have been historically involved in some pretty high-profile settlements, hindsight is always 20/20 and there is always judgment on whether we could have done better, whether we should have held out. I think that this is a judgment that was made by the Administration that they were actually saving taxpayer dollars. We will never know because we will never see the ultimate litigation.

But, I mean, I think it is important to get your opinion, that the troublesome piece of this really has been the cash transfer and not necessarily the payment, had the payment been ordered by the court or the payment—had the payment been done with a wire transfer.

So thank you for your comments. Maybe in a second round we will get a chance to talk about what the future looks like, in terms of Iranian policy, which I think is one of the great opportunities that we have in this hearing today.

Chairman KIRK. Mr. Toomey.

Senator TOOMEY. Thank you, Mr. Chairman, and thank you to the witnesses for being here.

A question for Dr. Maloney. Is it your view that if that unmarked cargo plane carrying pallets of stacked cash had never landed at its destination that the Americans would, nevertheless, have been released at that time by the Iranians? Is it just a coincidence?

Ms. MALONEY. I do not believe it is a coincidence. I believe, in fact, that the timing of three rounds of diplomacy, three different channels of diplomacy, one focused on the implementation of the nuclear deal, one focused on the settlement of this long-standing dispute, and one focused on the efforts to release Americans unjustly detained in Iran was deliberately converged in order to try to expedite the set of American priorities—

Senator TOOMEY. So—OK.

Ms. MALONEY. —that were intended at all.

Senator TOOMEY. So if the cash had not landed, the Americans would not have been released but we should not understand that to be a ransom payment. That is interesting.

Let me ask a question about the fund from which this money—the account from which this money was released. It is my understanding that the Foreign Military Sales account held the roughly \$400 million that the Iranians had paid for some F-14s back in the 1970s. However, it is my understanding that in 2000, Congress passed the Victims of Trafficking and Violence Protection Act, and that that law prevented the U.S. from paying Iran the money—I think it was \$377 million at that time, in the FMS account—prevented that money from going to Iran unless and until outstanding judgments were first paid. My further understanding is that President Clinton authorized the Treasury to pay out something like \$380 million at the end of 2000, to settle several outstanding judgments.

Now, if this is the case, then what money was left in the FMS account? Ambassador Edelman, do you have—can you shed any light on this, because it is not clear to me that there was \$400 million of Iranian money anymore, since, by U.S. law, it was used to settle judgments.

Mr. EDELMAN. Senator Toomey, I cannot shed any light on that, really. That would be someone from DSCA would have to, you know, let you know what was in that account. I do not know. What I do know is what I have read in the *Wall Street Journal* article about how this all transpired.

Senator TOOMEY. General Mukasey, does—can you—

Mr. MUKASEY. I cannot shed any light on it. I do not—it is obviously the people who administer that account, who are either in the Treasury Department or the Defense Department—I am not sure which—Defense Department—would be expert on what was there and what was not.

Senator TOOMEY. I think it would be interesting to find out.

Mr. MUKASEY. I should think it would be, and that is one of the questions that I think, in the catalog of questions, that bears exploration.

Senator TOOMEY. Another question that comes to mind is, did the—JPOA, as I understand it, authorized the release of \$700 million per month to Iran, from various escrow accounts held by var-

ious foreign nations. Did that money have to go by cash, or was that money money that was sent by wire transfer? Do we know? General Mukasey.

Mr. MUKASEY. I believe there is—there has been money sent by wire transfer. Whether it was that money or other money, I do not know. But certainly the JCPOA does not—I have read the JPOA and it does not specify cash.

Senator TOOMEY. Ambassador.

Mr. EDELMAN. Yeah. Senator Toomey, I do not know the answer to that question and I think that, really, that is something that Senator Kirk adverted to at the outset, which is we do not know how much cash has actually been transferred to Iran and it would be an interesting question to get an answer to from the Administration.

Senator TOOMEY. And the other question that comes to mind is, if this money were transferred by wire transfer, then why was it necessary for the Administration to transfer funds exclusively in cash, subsequently?

This is—does this make sense, to—Ambassador Edelman to you, or—

Mr. EDELMAN. The President has said, on—you know, in his press conference, that there was no mechanism to get cash, or get money to Iran through the regular international financial system, but we know, just from stories in Politico the other day, that, in fact, there have been wire transfers of money, and we have had settlements under the tribunal. So it does not appear to me that cash was the only mechanism available. It was the mechanism that was decided upon for this transaction and that is one of the issues which I think, again, the Committee is well within its rights to get, you know, a more detailed answer from the Administration.

Senator TOOMEY. Well, and further to that point, didn't the Administration recently admit that they sent electronic fund transfers to order—to Iran, when they decided to pay Iran for—

Mr. EDELMAN. The heavy water.

Senator TOOMEY. —complying with the agreement, the terms that they already were obligated to comply with, without having had to be paid to comply with it. Was not that done by wire transfer?

Mr. EDELMAN. That is my understanding, Senator Toomey. It is something I mentioned in my written statement.

Senator TOOMEY. Well, this continues to be very mysterious and I think the American people deserve to get some answers here. Thank you very much to the witnesses for helping out.

Chairman KIRK. Mr. Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman, and to Ranking Member Heitkamp for holding an important hearing and the invitation to attend, even though I am not a Member of the Subcommittee, but as a Member of the full Committee I very much appreciate the opportunity. And I certainly want to salute you, Mr. Chairman, for your long-term interest in Iran and your partnership with me for some time, in pursuing Iran's nefarious desires for nuclear power but not for domestic consumption but for nuclear weapons. So I appreciate your work in that regard.

I have focused a lot of attention, both on this Committee and on the Senate Foreign Relations Committee, on taking steps to stop Iran's ability to finance terrorist organizations and operations, and I am disappointed that we do not have a representative from the Administration here today, because some of these questions are—can be speculated by our private and distinguished panel but they cannot be spoken to with authority unless we had somebody from the Administration.

Today's hearing, focusing on cash payment to Iran for claims relating to unresolved arms sales during the time of the Shah, these payments were made at the exact same time we exchanged Iranian prisoners for Americans unjustly held in Iran. And while I rejoice in the fact, whenever an American who should not have been a hostage in the first place can be released and brought back safely, I am always concerned about what our policy is in the world as it relates to how we deal with achieving the release of hostages, because once one is paid for the purposes of releasing a hostage, that is a precedent with almost unlimited consequences, because you just simply, in essence, put, you know, a target on the back of Americans to say, acquire them, and then they—you can get money for them, or other concessions.

And that is a risk, which is why, if the Administration has good answers to this, that is fine, but there are legitimate policy questions that are raised by the nature of the concern of what happened in that regard.

Let me just say, I want to take an opportunity to reiterate my concern for Robert Levinson, an American citizen who mysteriously disappeared in Iran almost 10 years ago. Robert's daughter, Sarah, is a constituent of mine, as is her 3-year-old son, who has never met his grandfather. In fact, Robert has not met five of his six grandchildren. Throughout various revelations about this prisoner exchange we have learned the State Department repeatedly raised concerns about American citizens wrongfully detained in Iran, and I would urge the State Department, who I hope is listening, and anyone here who might be able to help, to continue to press the Government of Iran to fully cooperate in our efforts to find Robert and bring him home.

Now, there are a lot of moving pieces to the underlying essence of the purpose of this hearing, and I certainly am as concerned as anyone else about what exactly took place and for what purposes. That there was a pending tribunal and claim is fine. I am dismayed that when I was the Chairman, and the Ranking Member, and as a senior Member of the Senate Foreign Relations Committee, and as a senior Member of this Banking Committee, that not once did the Administration ever share that this was a pending item and/or that it was in the midst of a potential negotiation. Not once. Not once.

And maybe that would have taken, you know, some of the sting out of the gall but it is just interesting to note that there was never once sharing with either the committee of jurisdiction or the committee of jurisdiction with sanctions, which is this Committee. So, to me, that already creates a concern.

But I would like to ask our witnesses, to the extent that they know, did we put any type of mechanism in place, to your knowl-

edge, from what you have been able to review, to track these funds, the actual monies that were paid to see how, in fact, they might be used?

General Mukasey.

Mr. MUKASEY. Well, the attraction of cash, particularly from the Iranian viewpoint, is that it cannot be traced, so that unless we put physical traces on the bundles of money, which I seriously doubt, or put tracking devices on them, there is no way to trace it, and that is the—

Senator MENENDEZ. You could have marked the bills, right?

Mr. MUKASEY. Pardon?

Senator MENENDEZ. You could have marked the bills.

Mr. MUKASEY. Sure, you could have marked the bills. On the other hand, that is not going to tell you anything until they come back to the source. They can circulate for n years, n being a large number, before we find out what happened to them, if we find out then. Once they are in the hands of the Iranians they can use it for any purpose they want, anywhere they want, and we are not going to find out about it unless and until it comes back, and we get to examine the funds again. So the notion of keeping track of numbers, I think, is just—is a diversion.

Senator MENENDEZ. One other area that I am concerned about, that does not seem to have been dealt with, Section 2002 of the Victims of Trafficking and Violence Protection Act contains the provision that essentially says that the President may not make payments in connection with a foreign military sales program account until claims made against Iran from American victims of terrorism have "been dealt with to the satisfaction of the United States."

Now, again, I recognize there are no Administration witnesses here, which is a question I would have put to them, but are any of you aware of such a determination being made, and if so, would this—is this notification made in public, or would it have been made in public? And would it have gone to the State Department or the Department of Justice, who ultimately approves payments out of the judgment fund?

Can any of you speak to that?

Mr. MUKASEY. I do not know of any such determination that was made. The closest thing is the certification of the attorney general, that the payment was in the interest of the United States. One might question a witness from the Administration as to whether that determination included a determination that the United States was satisfied with the record of the Iranians in paying these judgments. That is not a judgment that could conceivably have been made by the attorney general. She would have had to have gotten that information from somebody else.

Senator MENENDEZ. And to our knowledge, do we know if the State Department made such a determination?

Mr. EDELMAN. Senator, I am not aware of any such determination, and again, I agree with you. This is something that it would be particularly interesting to know from the Administration.

The question that General Mukasey just raised, in answer to your other question about tracing the money or tracking the money, there are press reports that U.S. officials accompanied the pallets of cash and turned them over to the Iranians. It would be

interesting to know, since the money, as I understand it, again, from the *Wall Street Journal*, came from the Central Bank of Switzerland and the Netherlands, whether these euro notes and other denominations—I am not even sure we know exactly what other currencies might have been used here—whether there was any effort to put some physical tracking device on those.

I mean, these are all questions, some of which would obviously have to be—

Senator MENENDEZ. Mr. Chairman, thank you.

Mr. EDELMAN. —answered in a closed session.

Senator MENENDEZ. I am just going to close by saying that I have concerns. I have often either sponsored or advocated for victims of terrorism to have the ability to have the opportunity to make their case in court, and if they get a judgment to be able to have that judgment attached to the funds of those who committed the acts of terrorism. This action took place so precipitously, and I do not think this section of the law that I cited was dealt with, that those victims of terrorism who have outstanding claims and have not been satisfied, in the case of Iran, were cheated out of the opportunity to have that opportunity and to attach that judgment.

And so I will look forward to, hopefully, at some point, having the Administration come before the Committee and explaining these issues, because beyond the moment of this, there will be a moment tomorrow, and I just want to understand whether we are going to pursue the law, and if there are interpretations of the law that are different, then we need to know them because I, for one, might want to create a more hermetic opportunity for the victims of terrorism to have the opportunity to pursue an attachment against those who they get judgments of.

Thank you very much.

Chairman KIRK. Mr. Moran.

Senator MORAN. Mr. Chairman, thank you very much. I, too, as Senator Menendez indicated his gratitude to you and to the Ranking Member. I am a Member of the full Committee but not a Member of this Subcommittee, and I appreciate the opportunity to join you here today.

I want to follow up on what Senator Menendez was indicating. I have introduced legislation—it is Senate Bill 2452—that would prohibit the further transfer of any money to Iran until the judgments are satisfied. But let me ask a question that would precede that legislation, which is, is there any law on the books currently, today, that would prohibit what transpired here, until the judgments are satisfied? What we know is there is at least 80 terrorism cases against Iran under the terrorism exception to the Foreign Sovereignty Immunities Act, totaling some \$46 billion. And it seems to me that, among other problems with what has transpired here, the failure to satisfy any of those claims with the money being held by the United States is one that is significant.

But Senator Menendez indicates there is current law that may have been violated without a specific finding. Is there—what is the state of the law today? Anything violated when this happened in the—other than what was just described by Senator Menendez? General.

Mr. MUKASEY. I do not know of any law that was violated. I have written on the subject and my initial view was that no law was violated. But what is legal ain't necessarily right, and this ain't right.

Senator MORAN. It seems to me that the law should be compatible with what is right and wrong. It sometimes is and often is not. Again, I would highlight the legislative effort and ask my colleagues. Both Senator Kirk and Senator Toomey are sponsors of that legislation. But it seems to me we have missed a tremendous opportunity to satisfy the claims of American citizens against the Iranian Government that are legitimate and have gone to judgment.

Let me ask an additional question in regard to the conversation that has taken place. I want to make certain and perhaps this has been made clear to others, but I want to know the distinction between cash and wire transfers. Both of the witnesses, the Ambassador and the general, indicated they would reach a different conclusion if this was not a transaction that occurred in cash.

Why is—for the record, why is cash such a desirable outcome on the part of Iran, I suppose, and why—what are we giving up when we make a payment in cash as compared to a wire transfer?

Mr. MUKASEY. I think what we are giving up is our ability to detect the use of the money. You transfer something into an account. We can monitor that in various ways—some known, some not known, and it is a lot easier to monitor the use of money that is transferred that way than it is—if I say easier, it is impossible to monitor the use of cash once it passes into the hands of the person who is going to use it.

As I said before, we do not find out where that money is until it, for some reason, it comes through the bank again or it comes through our hands again and we can look and see if we can keep track of the serial numbers or whatever.

Senator MORAN. And the reason that we, the United States, would want to monitor the use of those—the proceeds of that transfer, or the delivery of cash, is to ensure that Iran is not violating some agreement, or a set of agreements?

Mr. MUKASEY. Right, and is not using it to finance terrorism, which it has a long record of doing. It is one of the States that is considered a State sponsor of terrorism. They have a branch of the Iranian Revolutionary Guard Corps, the Quds Force, that is devoted specifically to that activity. The Quds Force—I mean, this is a bonanza for them.

Senator MORAN. First of all I would say, General, that while it would be useful to know whether Iran is using these proceeds to fund terrorism, the fact that Iran uses its capabilities, its financial capabilities to fund terrorists, as you say, is known. So it is almost as if we are oblivious to that circumstance.

Is there part of the agreement related to the nuclear capabilities of Iran? Are they restricted from using these proceeds in some way that we, therefore, should be following how the proceeds are used?

Mr. MUKASEY. The short answer to that is I do not know. I mean, I have read the agreement. I have not—I mean, I do not have it in front of me. But regardless of whether it is in the agreement or not, Iran violates agreements with abandon and impunity all the time. The question is what would we do about it if we knew, and

we would certainly be in a position at least to decide that, whether we are going to do something, and, if so, why. If we do not know, obviously we cannot decide to do anything.

Senator MORAN. Anyone else?

Ms. MALONEY. If I might interject very briefly, I understand the rationale and the distinction between cash payments and wire transfers in terms of the capacity to track, but I do think that it is worth noting that, in fact, any funds that go into the Iranian system, given the opacity of the financial system there, and given the well-honed capacity for smuggling and evasion of financial scrutiny, it effectively puts money in the hands of a very bad actor. I noted almost no concern about the method of payment when objections were expressed to payments that were made to Iran, or sanctions relief, that was facilitated to Iran under the interim deal or the final nuclear deal.

Fundamentally, the form of the payment is less important than the fact that it is a payment. We recognize that it is a payment to a bad actor. We have made this payment with the determination that ultimately it serves the American interests in satisfying a debt, and conceivably also contributing to the expedited release of Americans.

Senator MORAN. Doctor, thank you for that. I would say that, in many ways other than I understand the traceability issue, I do not know that I care a lot about whether the money is wire transferred or it is delivered in cash. My opposition is to deliver it in any form. You make the case that we apparently have the opportunity for benefits to our country and its citizens and world security that outweigh—in my view, you see this as a positive and an overall scheme of developing a relationship with Iran.

I see the transfers of money, regardless of how they arrive there, as one more means by which Iran can perpetuate its terrorism around the globe.

Mr. Chairman, thank you very much.

Chairman KIRK. Mr. Cotton.

Senator COTTON. Thank you all for joining us this morning to explore the implications of paying a ransom in cold, hard cash to the world's worst State sponsor of terrorism.

Judge Mukasey, I just want to be sure I am clear about your legal assessment on these matters. As you wrote in the *Wall Street Journal*, you believe that the cash transfer was legal, though not right.

Mr. MUKASEY. Correct.

Senator COTTON. It has been reported there were at least two wire transfers to Iran in the last year-plus. One was in the summer of 2015, to settle some claims about architectural drawings, fossils, maybe some other artifacts. One was over our purchase of heavy water earlier this year.

Do you believe those wire transfers were legal?

Mr. MUKASEY. Yes. I mean, I do not see—I do not—the short answer is I do not know the circumstances surrounding those transfers, but I know nothing that challenges their legality.

Senator COTTON. So if they are both legal, transferring cash in a wire transfer, then do you know why the Administration would

have chosen to pay this \$400 million in cash, as opposed to making a wire transfer?

Mr. MUKASEY. I do not know. I think it is a sensible conclusion that that term was insisted upon by the Iranians.

Senator COTTON. So it was a policy decision then, not a legal decision?

Mr. MUKASEY. Definitely not a legal decision.

Senator COTTON. Judge Mukasey, Ambassador Edelman, you have both sat in NSC meetings and principal committee meetings, and deputy committee meetings. At what level of our Government would you expect that kind of policy decision to be made?

Mr. EDELMAN. Well, I would expect it to at least gone to a Principals Committee meeting, and probably a full NSC with the President in attendance.

Mr. MUKASEY. Likewise. I mean, I would expect it to go to the highest level.

Senator COTTON. And Ambassador Edelman, you have spent some time dealing with Iran and in the Middle East throughout your career. If Judge Mukasey surmises correct, and it was a demand of the Iranian Government that that \$400 million be transferred in cash, not over wires, do you have any estimates over which element of the Iranian Government would have requested that cash payment?

Mr. EDELMAN. You know, it would be pure speculation, Senator Cotton, but presumably you could imagine it would be the IRGC, which may have played a role in the transfer. We do not know. Again, it is one of the details that would be good to find out.

Senator COTTON. Not the Ministry of Health?

Mr. EDELMAN. I somehow doubt that.

Senator COTTON. Or the Ministry of Transportation?

Mr. EDELMAN. Well, we actually know that after the payments were made that the Iranian military budget was plussed up, interestingly, by \$1.7 billion. Now, whether that money stays with the military budget, which was just finalized in August, or whether that money, you know, is made available to the IRGC in some fashion, we just do not know.

Senator COTTON. Judge Mukasey has explained it is very hard to track cash, almost impossible, and you might only discover, years later, in whose hands it was found, and you do not know whose hands it has passed through. Would you be surprised to find some of that cash in the hands of, say, Lebanese Hezbollah in a year or 2 or 3 years, Ambassador Edelman?

Mr. EDELMAN. Not in the least.

Senator COTTON. Would you be surprised to find it in, say, the hands of Doctors Without Borders, or other international NGO's, performing humanitarian work?

Mr. EDELMAN. That would be a first in my experience.

Senator COTTON. Thank you.

Since you have spent a lot of time in the Middle East, Ambassador, is this a region where leaders of States understand and depend upon power and will, or do they respect law and rhetoric?

Mr. EDELMAN. Well, I would say power is at a premium in this region, and one of my concerns is that we should always, in dealing with countries in this region—and it goes beyond Iran. I, you know,

would say the same of Turkey where I was Ambassador—by emphasizing our own clear adherence to the rule of law in how we conduct ourselves.

Senator COTTON. A common phrase in communications, whether it is politicians or businessmen, negotiators, is it is not what you say, it is what people hear.

Many U.S. Government officials, from our President down to low-level functionaries, have repeatedly said that this was not a ransom payment. That is what they are saying. What do you think the Ayatollahs in Tehran, and, for that matter, every other bad actor throughout the Middle East or around the world, hear whenever they hear that we transferred \$400 million on the same weekend that we received American hostages?

Mr. EDELMAN. Well, again, it requires one to make a surmise, Senator Cotton, but my surmise, as I stated in my written statement, is that on the Iranian side there was clearly a belief that this payment was being made in exchange for the hostages, and that was articulated by at least one commander of the IRGC, who was quoted to that effect in the press.

Senator COTTON. Thank you all.

Chairman KIRK. I want to thank our witnesses and Senator Heitkamp for coming. Do you have any closing remarks?

Senator HEITKAMP. No, just that it is enormously important that the discussion about national security issues take the level that we have taken today, where we can have reasonable disagreement. Hopefully we learned a little from each other and that we can move forward. This is one of the gravest threats facing our national security and the security of our allies, and I want to thank everyone for their volunteering today. Sometimes, especially when you come with a minority opinion, it is a little tougher, so thank you, Dr. Maloney, for appearing.

And I look forward to better understanding how we can move forward in a very nonpartisan way to address the concerns that every member of the U.S. Senate, and hopefully anyone who has awareness—situational awareness of what is happening in the Mideast, the concerns that they have about protecting our allies and protecting our national security against the Iranian regime.

And so thank you so much for coming.

Chairman KIRK. Well, I want to thank our witnesses and Senator Heitkamp. The record will remain open until the close of business Wednesday, September 28th, and we stand adjourned.

[Whereupon, at 11:47 a.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF MICHAEL B. MUKASEY

FORMER ATTORNEY GENERAL OF THE UNITED STATES

SEPTEMBER 21, 2016

Chairman Kirk, Ranking Member Heitkamp, Members of the Subcommittee. I am grateful to the Subcommittee for inviting me to participate in this important hearing, which addresses the circumstances surrounding the payment in January 2016 of \$1.7 billion in cash—euros and Swiss francs—to Iran, of which \$1.3 billion represented U.S. taxpayer funds—a payment said to have been in settlement of a \$400 million claim by Iran against the United States, plus interest. That claim, which was or is pending before the Iran claims tribunal in the Hague, relates to a deposit during the 1970s on a military equipment purchase in that principal amount by the Iranian Government then headed by the Shah.

I know that this payment has generated a good deal of discussion, and of controversy, corresponding as it did with the release of four Americans unjustifiably imprisoned by Iran. Obviously, like most people, I have views about the payment of ransom and its long term effect on the security of Americans, and some knowledge of the unbearable pressure on families and on people unjustifiably held. I am not here to talk about those issues, but rather about the transfer of cash to Iran in the amounts at issue here, and under the circumstances present here, and the questions raised by such a transfer, that we should know the answers to—and certainly that Congress should know the answers to, and that I think have not as yet been answered.

The reason why a cash payment raises serious questions should be obvious. Iran is a designated State sponsor of international terrorism. There is simply no legitimate reason why such an entity should want cash other than to pursue terrorism.

It has been said that Iran is in need of resources to pay for infrastructure projects. No doubt that is true. However, payments within Iran to contractors would be in Iranian rials, not in euros or Swiss francs. Payments outside Iran for equipment and the like would far more conveniently be made from banks located outside Iran, than in cash transported from Iran to other countries. The only reason to insist that cash in the form of euros and Swiss francs be provided to Iran—in Iran—is to permit that money to be distributed outside its borders in a way that cannot be traced. The activity that Iran pursues outside its borders that requires untraceable funds is terrorism.

Indeed, there is a branch of the Iranian Revolutionary Guards Corps—the Quds Force—that focuses exclusively on promoting terrorism abroad. That is the unit that financed a plot in 2011 to assassinate the Saudi ambassador to the United States in Washington, DC, and has been responsible for numerous other violent acts.

The President said initially, when the only cash payment that was known was the \$400 million of principal, that a cash payment was necessary because the United States has no banking relationship with Iran. Indeed, he mocked those who suspected the cash transfer as enthusiasts of adventure fiction. In recent days, we have learned that what was obvious at the time of the initial transfer—that the United States could have made payments to Iran through conventional banking channels with the help of third parties that do have banking relationships with Iran—in fact was done on other occasions.

Given Iran's record of financing deadly terrorist attacks in Latin America, Europe, and the Middle East—including but not limited to Israel, as well as the repeated statements by its leaders that their goal is to destroy Israel and cripple the United States and its allies, it is obvious that we have paid \$1.7 billion toward the destabilization of Governments friendly to the United States in the Middle East and elsewhere, and the murder of many in those countries, in Europe, and in the United States.

The following questions, among others, present themselves. Was the settlement of this claim documented; if so, where are the documents? Was there any legal analysis of the claim and likely outcomes; is that analysis contained in a memorandum; where is that memorandum? Was there any factual analysis of the likely use of cash as opposed to other forms of payment? Was it the Iranians who insisted on cash? What consideration was given to other forms of payment? Who negotiated that settlement, and who in the chain of command up to and including the President approved it?

Funds for the settlement were taken in part from a settlement fund maintained by the Treasury Department that reflects that the settlement was certified by the Attorney General as in the interests of the United States; is there any documentation of that certification; is there any writing setting forth the elements that led the

Attorney General to reach that conclusion; with whom did the Attorney General consult in order to reach that conclusion?

I recognize that answers to some of these questions might conceivably elicit an objection based on executive privilege, which is a valuable and important governance tool for the executive. Nonetheless, the questions should be asked; if they elicit such an objection, it can be evaluated. Some of the information—including the fact of the Attorney General’s certification—has already been disclosed, which could impact the validity of any privilege claim.

Before the full extent of this payment became known, I wrote on this subject in a newspaper column and indicated at the time that I saw no reason to believe that any laws were violated in the making of this payment. I still believe that. I wrote also at the time that I thought the people of this country, some of whom may suffer the physical effects of Iranian terrorism, and all of whom will suffer its political effects, deserved an explanation of why such a payment was deemed to be in the national interest. That belief has been strengthened by the evidence that alternatives to cash payment existed but were not used.

PREPARED STATEMENT OF ERIC S. EDELMAN

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SEPTEMBER 21, 2016

Mr. Chairman, Ranking Member Heitkamp, Members of the Committee, thank you for the opportunity to appear before you today on the dangers of the Administration’s decision to transfer \$1.7 billion cash to Iran in January and February 2016. At the outset this morning I want to make clear that I am not a lawyer and I am not an expert on sanctions. However, I have followed Iran closely for more than a decade, both as Ambassador to Iran’s neighbor Turkey, and then as Under Secretary of Defense for Policy. I have continued working on the challenges that Iran presents to regional order since retiring from Government service in 2009, including as chair of a bipartisan Iran Task Force sponsored by the Gemunder Center for Defense and Strategy.¹ We have issued a range of detailed reports that among other issues raise serious concerns about providing Iran the wherewithal to continue destabilizing U.S. interests and our allies, but I want to stress that my views expressed here today are my own.

Normally, the risks of providing the world’s largest State sponsor of terrorism with such funds, especially concurrent with Iran releasing illegally detained U.S. citizens, would dominate headlines and trigger uneasy memories of Americans taken hostage in Tehran. Unfortunately, these matters have been overshadowed by a tumultuous Presidential campaign that has drawn attention elsewhere, and has not been notable for any serious discussion of these issues by either Mr. Trump or Secretary Clinton.

I therefore applaud the Subcommittee’s efforts to examine this matter and its implications for national security.

The Pitfalls of Paying Ransom

I defer to my fellow witness Attorney General Mukasey about whether the \$400 million payment to Iran on January 17 meets the legal definition of “ransom.” The United States negotiated with Iran to repay these funds, originally deposited by the Shah to purchase U.S. weapons, to resolve a legal dispute unrelated to American hostages in Iran in early 2016. The settlement included an additional \$1.3 billion in interest transferred to Iran in cash on January 22 and February 5, despite the fact this account was not interest bearing.

Nevertheless, events show that both U.S. and Iranian officials acted as though the initial \$400 million payment in this transaction was crucial to getting the Americans out safely. Despite having readied the hostages for release the day before, Iran kept them overnight at the airport as an assurance the planeload of money was on

¹ The Gemunder Center Iran Task Force, <http://www.jinsa.org/gemunder-center-iran-task-force>. I would like to thank Jonathan Ruhe, Associate Director of the Gemunder Center, for his assistance in preparing this statement and Mark Dubowitz and Annie Fixler of the Foundation for Defense of Democracies for their extremely valuable comments and suggestions.

its way. Conversely, American officials withheld delivering that money until the hostages took off from the airport in Tehran.²

After the payment method became public this summer, State Department spokesman John Kirby said flatly, “With concerns that Iran may renege on the prisoner release . . . we, of course, sought to retain maximum leverage until after American citizens were released.”³ A commander of Iran’s Revolutionary Guard Corps (IRGC), which detained several of the U.S. hostages, said that “taking this much money back was in return for the release of the American spies.” Speaking not as a lawyer but a career diplomat, this definitely looks and sounds like ransom to me.⁴

Fundamentally, the United States should never pay ransom for hostages. In his memoirs, my old boss former Secretary of State George Shultz stated the problem clearly when he wrote:

We should always be willing to talk to any credible person about our hostages. The hostages should know that we would never cease our efforts to gain their release. But we owe the millions of Americans at risk throughout the world that they will not be turned into targets by the known willingness of our Government to pay money, sell arms, pressure another Government to pay money, or, in any other way, make it profitable to take Americans hostage.⁵

Simply put, paying for hostages only incentivizes more hostage taking.

This is particularly problematic with a regime like Iran’s, where hostage taking and ransom seeking is a core element of statecraft. In 1981, amid the upheaval of the Iran–Iraq War, the fledgling regime received billions in unfrozen assets and much-needed military equipment in exchange for freeing the 52 U.S. embassy hostages in Tehran. Over the next 8 years nearly 100 Westerners, including 25 more Americans, were taken hostage by Iran and its proxies in Lebanon.⁶ History is now repeating itself: since January, Iran has detained three more Iranian Americans and four other Western dual-nationals. Once reports of the cash transfer surfaced last month, the State Department reiterated the risks to U.S. citizens of unjust arrest and detention if traveling in Iran.⁷

The payment is also particularly problematic because it reinforces Iran’s belief that it benefits by crossing U.S. redlines. Shortly before the Joint Comprehensive Plan of Action (JCPOA) on Iran’s nuclear program was announced last summer, President Obama asserted publicly “the United States Government will not make concessions, such as paying ransom, to terrorist groups holding American hostages.”⁸ Since the cash payments were made in January and February directly undermining longstanding U.S. policy against paying ransom, Iran’s Former President Mahmud Ahmadinejad has demanded that more of the money in frozen U.S. accounts be returned to Iran. This includes \$2 billion that the U.S. Supreme Court ruled should go to American victims of Iranian-backed terrorism.⁹

The manner in which the payment was made also should raise concerns. The use of an unmarked cargo plane filled with pallets of cash, apparently accompanied by U.S. officials and kept secret by the Administration certainly supports the impression this was a ransom. So does the Administration’s ex post facto defense, including personally by President Obama, that sanctions prohibit direct contact between U.S. and Iranian financial systems. In reality, it would appear that an electronic transfer was perfectly legal under regulations that permit such transactions as part of settlements pursuant to the Iran–United States Claims Tribunal, and many claims have been settled through that mechanism. Furthermore, the Administration had no

²Lindsay Castleberry, “Freed American Hostage: We Waited All Night at the Airport”, *FOX Business*, August 4, 2016.

³U.S. Department of State, “Daily Press Briefing”, August 18, 2016; see also: David Sanger, “U.S. Concedes \$400 Million Payment to Iran Was Delayed as Prisoner ‘Leverage’”, *New York Times*, August 18, 2016.

⁴Jay Solomon and Carol E. Lee, “U.S. Sent Cash to Iran as Americans Were Freed”, *Wall Street Journal*, August 3, 2016.

⁵George P. Schultz, “Turmoil and Triumph: Diplomacy, Power, and the Victory of the American Ideal” (New York: Scribner, 1993), p. 857.

⁶Pierre Razoux, “The Iran-Iraq War” (Cambridge, MA: Belknap, 2015), p. 585n1.

⁷U.S. State Department Bureau of Consular Affairs, “Iran Travel Warning”, August 22, 2016.

⁸White House Office of the Press Secretary, “Statement by the President on the U.S. Government’s Hostage Policy Review”, June 24, 2015.

⁹“Iran officially Sues U.S. for ‘Asset Verdict’”, *Mehr News Agency* (Tehran), June 16, 2016; Louis Nelson, “Former Iranian President to Obama: Return Seized \$2 Billion”, *Politico*, August 8, 2016.

problem wiring Iran \$9 million in April as part of a separate agreement to buy Iran's excess heavy water.¹⁰

Had I been participating in the interagency deliberations reported in the press, I would have stressed the dangers of dealing in cash, since it clearly could be used for continued support of the Iranian military's disruptive and destabilizing activities, as appears to be the case here. Moreover, because cash is fungible, this payment could free up funds in Iran's Government budget to subsidize its ongoing support for terrorism.

Indeed, without a paper trail it becomes much harder to ensure that Iran cannot use these funds to circumvent the U.N. arms embargo or illicitly procure ballistic missile or nuclear technology. In May, Iran's Guardian Council allocated an additional \$1.7 billion—the same as the total cash payment—to the military for the upcoming annual budget that was finalized in August. At one level, this seems understandable from an Iranian perspective, since the FMS monies were originally intended for military procurement, but the Administration should be candid with Congress and the American public about this. Although the \$400 million is arguably Iranian money, the interest payment of \$1.3 billion is actually a U.S. taxpayer subsidy to the Iranian military.¹¹

The timing of this transaction was problematic from another perspective as well. Arbitration of the money owed Iran was initially separate from discussions about swapping Americans detained illegally in Iran for Iranians charged or convicted legally in the United States. Shortly before JCPOA implementation, however, Iran also demanded immediate repayment of the \$400 million plus interest, to which President Obama acceded.¹² Therefore as a result of poor U.S. negotiating, the JCPOA was inaugurated with an uneven prisoner release—seven Iranians charged or convicted of sanctions violations, in exchange for four Americans detained on trumped up charges—with the United States appearing to subsidize Iran for the privilege.¹³

Iran Holds U.S. Policy Hostage

In far too many respects, this incident embodies the deeper failures of the Administration's Iran policy. As we stated in our recent Gemunder Center Iran Task Force report on the JCPOA, "the agreement made public last July, and the policy decisions attending its implementation, show a clear pattern of unilateral Iranian demands being met by unforced U.S. concessions."¹⁴ Though we issued this report before the cash payments were revealed, we argued that Iran is holding the success of the JCPOA hostage in a much broader sense.

Indeed, years of unenforced redlines by the Obama administration—including the one on ransoms—have created a disturbing asymmetry in U.S.–Iran relations, where both countries behave as though the United States is too invested in the JCPOA to risk angering Iran. We've reached a point where the Administration bribes Iran not to violate the letter or the spirit of the agreement too egregiously or too publicly.¹⁵

Thus we have seen U.S. officials praising Iran for releasing the 10 U.S. Navy sailors it took hostage at gunpoint in January, actions that a U.S. Navy investigation

¹⁰ On the issue of U.S. electronic transactions with Iran's banking system, see: Louis Nelson, "U.S. Wire Payments to Iran Undercut Obama", *Politico*, September 18, 2016. On the issue of sanctions exemptions for such transactions with Iran, see: Behnam Ben Taleblu and Annie Fixler, "Settling With Iran: \$1.7 Billion and U.S. Hostages", *Foundation for Defense of Democracies* (September 2016), p. 5. On the issue of U.S. officials' involvement in the transfer, see: Adam Kredo, "Congress Suspects Obama Admin Delivered Billions in Cash to Iranian Revolutionary Guard Corps", *Washington Free Beacon*, September 12, 2016. The funds were under U.S. Government control until their disbursement pursuant to the settlement: U.S. Treasury Department response to Rep. Duffy, p. 2 (<http://freebeacon.com/wp-content/uploads/2016/09/Treasury-Response-to-Rep-Duffy-September-9-2016.pdf>).

¹¹ Eli Lake, "U.S. Taxpayers Are Funding Iran's Military Expansion", *Bloomberg View*, June 9, 2016; Saeed Ghasseminejad, "Iran Gives Green Light To Direct \$1.7 Billion From U.S. to Military", *Foundation for Defense of Democracies*, September 1, 2016; Annie Fixler, "\$1.3 Billion of the Cash to Iran Was Taxpayer Money", *Foundation for Defense of Democracies*, September 13, 2016.

¹² Jay Solomon and Carol E. Lee, "U.S. Sent Cash to Iran as Americans Were Freed", *Wall Street Journal*, August 3, 2016.

¹³ In addition to the seven Iranians charged or convicted of sanctions violations, the United States also dropped charges and Interpol notices against another 14 Iranians, including two connected to Mahan Air. See: Josh Rogin, "Prisoner Swap May Help Iran Arm Assad", *Bloomberg View*, January 17, 2016.

¹⁴ JINSA Gemunder Center Iran Task Force, "The Iran Nuclear Deal After One Year: Assessment and Options for the Next President", July 2016, p. 7.

¹⁵ JINSA Gemunder Center Iran Task Force, "The Iran Nuclear Deal After One Year: Assessment and Options for the Next President", July 2016, p. 16.

found to be a violation of international law. We also have witnessed the Administration pledging to be a better partner whenever Tehran insists on further sanctions relief.¹⁶ In this light, it is unsurprising that they went to extraordinary lengths to provide incentives to Iran to free hostages in time for JCPOA Implementation Day.

Because the Administration's announcement of the settlement in January neglected to mention any aspects of the transaction that make it look uncannily like a ransom—specifically, the cash payments and the actual sequencing of events—the whole incident points to another core flaw in U.S. Iran policy.¹⁷ This Administration, which pledged to be the most transparent in history, argued that the core bargain underpinning the JCPOA would be unprecedented transparency in exchange for allowing Iran to maintain a sizable enrichment capacity, far greater than even supporters of the JCPOA initially argued would be prudent.¹⁸ Despite that, the Administration committed itself to a series of side agreements that only maintain Iran's "compliance" by weakening the deal further.¹⁹

These arrangements in Iran's favor—self-inspection of Parchin, less reporting from inspectors, buying Iran's excess heavy water, exemptions for uranium stockpiles and heavy water in overseas storage—make a mockery of the Administration's promise.²⁰

So too does the Joint Commission that oversees Iran's compliance, since its work is confidential. Meanwhile, IAEA reporting on Iran's nuclear program is now far less detailed than the reporting prior to the JCPOA.²¹ Combined, these factors allow Iran's nuclear program to become more advanced than was publicly agreed, and more opaque. And like the claims payment in January, we now pay Iran for the privilege of its "adherence" to a heavily watered-down deal.

By bending over backward to fulfill Iran's demands, the Administration's other promise—that it will maintain pressure on Iran to forswear terrorism, end its efforts at regional destabilization and defend our allies—has also lost credibility.²² Tehran is wasting no time exploiting this through an increasingly aggressive foreign policy.

Since the JCPOA was adopted last October, it has tested a series of nuclear-capable ballistic missiles in defiance of the U.N. Security Council Resolution endorsing the deal. These can reach all U.S. allies in the region, a point Iran drove home by stamping "Israel must be wiped out" in Hebrew on two of the missiles it tested in March.²³

This parallels Tehran's growing effort to undermine other U.S. allies, evidenced recently by Supreme Leader Ali Khamenei accusing Saudi Arabia of murdering hajj pilgrims and questioning Riyadh's right to manage Islam's holiest sites.²⁴ Earlier this summer, IRGC Commander Qassem Solemani issued the most explicit Iranian

¹⁶Kristina Wong, "Navy Investigation Concludes Iran Broke International Law by Detaining Sailors", *The Hill*, June 30, 2016. For an examination of U.S. efforts to accommodate Iranian demands, see: JINSA Gemunder Center Iran Task Force, "The Iran Nuclear Deal After One Year: Assessment and Options for the Next President", July 2016, p. 10–11.

¹⁷President Obama said the prisoner exchange "reflects our willingness to engage with Iran to advance our mutual interests," while also implying that the settlement of the \$400 million was both separate from, and subsequent to, the prisoner exchange: "With the nuclear deal done, prisoners released, the time was right to resolve this dispute as well." See: White House Office of the Press Secretary, "Statement by the President on Iran", January 17, 2016.

¹⁸According to the *Los Angeles Times*, a Government-approved Iranian Web site claims the U.S. negotiating position for the number of permissible Iranian operating centrifuges under a nuclear agreement climbed from an initial 500 to 1,500, then 4,000 and ultimately 6,000. See: Paul Richter and Ramin Mostaghim, "Iranian Web site reports U.S. giving ground on nuclear centrifuges," *Los Angeles Times*, November 4, 2014.

¹⁹JINSA Gemunder Center Iran Task Force, "The Iran Nuclear Deal After One Year: Assessment and Options for the Next President", July 2016, p. 9–10.

²⁰Jay Solomon, "Uranium Provides New Clue on Iran's Past Nuclear Arms Work", *Wall Street Journal*, June 19, 2016; George Jahn, "Secret Document Lifts Iran Nuke Constraints", *Associated Press*, July 18, 2016; David Albright and Andrea Stricker, "JCPOA Exemptions Revealed", Institute for Science and International Security, September 1, 2016.

²¹For an assessment of the lack of critical information in IAEA reporting on Iran's nuclear program, see: David Albright and Andrea Stricker, "Analysis of the IAEA's Third Iran Deal Report: Filling in Missing Details", Institute for Science and International Security, September 9, 2016.

²²In August 2015 President Obama wrote a letter to Congress outlined his options to maintain pressure to deter Iranian aggression (Jonathan Weisman, "In Letter, Obama Tells Congress U.S. Will Still Press Iran", *New York Times*, August 20, 2015); Secretary of State John Kerry, on September 2, 2015, said: "we will maintain international pressure on Iran" (U.S. State Department, "Remarks by Secretary Kerry on Nuclear Agreement with Iran", September 2, 2015).

²³Amir Vahdat, "Iran Fires 2 Missiles Marked 'Israel Must Be Wiped Out'" *Associated Press*, March 9, 2016.

²⁴Nabih Bulos, "Iranian Leaders Criticize Saudi Arabia Over Last Year's Deadly Hajj Crush and Stampede", *Los Angeles Times*, September 7, 2016.

threat to date against Bahrain's leaders, warning of their potential overthrow and a subsequent "bloody intifada."²⁵

In case those messages were too subtle or indirect, IRGC naval forces are stepping up their dangerous harassment of U.S. forces in the Persian Gulf. In the first half of this year alone, the U.S. Navy recorded more unsafe interactions with Iranian forces than in all of 2015. The week before taking our sailors hostage in January, Iranian ships fired unguided rockets less than a mile in front of a U.S. aircraft carrier. In just the past month they have come even closer, swarming U.S. warships to the point our forces had to veer out of the way and fire warning shots at the Iranians in separate incidents.²⁶

At the same time, Tehran has steadily ramped up cooperation across the region with Moscow—another avowed U.S. adversary. Shortly after the JCPOA was announced, Iran escalated its support for the Assad regime in Syria in coordination with Russia, and the two countries worked against the United States to stymie the U.N. plan for a transition of power in Syria. Iran has also hosted Russian strategic bombers and taken possession of the advanced S-300 air defense system, which it claims to have deployed to Fordow (although commercially available overhead imagery seems to belie this), despite the supposedly peaceful nature of this facility under the JCPOA.²⁷

All of these actions are fueled by another form of ransom: Iran's windfall "signing bonus" for implementing the JCPOA. Like the \$1.7 billion cash on cargo planes, once back in Iran these funds cannot be recaptured, despite Administration promises that sanctions can "snap back."²⁸ Iran's annual defense budget has already grown by \$9 billion, nearly doubling, since sanctions relief took effect.²⁹

One particularly troubling aspect of this entire episode is that it may not be the only instance in which sanctions relief was realized via cash transactions. The Administration argument that cash was the only mechanism to transfer the \$1.7 billion raises questions about how much other money was transferred to Iran in cash. In a worst-case scenario, it may be more than \$30 billion. We simply don't know, and the Administration has not been very forthcoming.

This matter is clearly a question where the Subcommittee's oversight responsibilities cry out for a greater degree of transparency by the Administration, so that Senators and members of the House can better understand the risks to national security that these cash transactions incur.³⁰

Because Iran received this money as part of sanctions relief at the outset of the deal, and because the Administration did whatever it could to help, Iran has no incentive to discontinue the dangerous behavior that ultimately led to it being paid in the first place. Sadly, therefore, it was only half-jokingly that a reporter asked the State Department spokesman last month whether the United States still owed Iran 13 cents in interest and was it holding onto the small change for leverage.³¹

Due to the Administration's actions, that may be the only leverage they have left. It therefore falls to Congress, and hopefully the next President, to redirect U.S. policy. As we noted in our latest Gemunder Center report, neither Congress nor the

²⁵ Euan McKirdy, "Iran: Bahrain's Leadership Could Fall Over Cleric's Treatment", CNN, June 21, 2016.

²⁶ Jon Gambrell, "Why Do U.S., Iran Often Face Off in Persian Gulf?" *Associated Press*, September 8, 2016.

²⁷ Jeremy Binnie and Sean O'Connor, "Iran Has Not Deployed S-300 to Fordow as Claimed", *Jane's*, September 2, 2016.

²⁸ The U.S. Treasury Department and Congressional Research Service estimate Iran had \$100–150 billion foreign exchange assets worldwide at the time the JCPOA was announced, of which roughly half were usable liquid assets (the remainder being committed previously to creditors or in the form of nonperforming loans). Iranian officials have stated they intend to keep some of their usable liquid assets abroad for cash management purposes. See: U.S. Department of the Treasury Press Center, "Written Testimony of Adam J. Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Intelligence to U.S. Senate Committee on Banking, Housing, and Urban Affairs, August 5, 2015; Ken Katzman, "Iran Sanctions", Congressional Research Service, May 18, 2016.

²⁹ Eli Lake, "U.S. Taxpayers Are Funding Iran's Military Expansion", *Bloomberg View*, June 9, 2016.

³⁰ Mark Dubowitz, "Fueling Terror: The Dangers of Ransom Payments to Iran", Testimony before the House Financial Services Committee, September 8, 2016. (<http://www.defenddemocracy.org/testimony/fueling-terror-the-dangers-of-ransom-payments-to-iran>)

³¹ U.S. Department of State, "Daily Press Briefing", August 23, 2016; a recent letter from the Treasury to Congressman Mike Pompeo clarifies the breakdown of payments and the 13 cents may not be an actual issue because the payment may have been over 1.3 billion dollars, "Obama Admin 'Laundered' U.S. Cash Via New York Fed, Euro Banks", *Washington Free Beacon*, September 19, 2016 at <http://freebeacon.com/national-security/obama-admin-laundered-u-s-cash-iran-via-n-y-fed-euro-banks/>.

next Administration is bound to any of the informal or secret pledges made to Iran during JCPOA negotiations or implementation.³²

The Administration should simply stop caving to Iran's demands and stop indulging its continual reinterpretation of what it is owed. A stronger stance here can do much to restore U.S. leverage while still upholding the JCPOA, flawed as it is.

I thank you Mr. Chairman for my time, and I look forward to the Committee's questions.

APPENDIX: POSSIBLE U.S. CASH PAYMENTS TO IRAN



Source: Foundation for Defense of Democracies.

PREPARED STATEMENT OF SUZANNE MALONEY

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SEPTEMBER 21, 2016

Chairman Kirk, Ranking Member Heitkamp, and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am very pleased to offer my views, although I must emphasize that I represent only myself before you today. The Brookings Institution does not take any institutional positions on policy issues.

The January 2016 release of five Americans after months or even in some cases years of unjust imprisonment in Iran prompted celebrations and relief among many Americans and the rest of the world. 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 40-year-old financial dispute between the United States and Iran—and that this settlement included payments to Tehran that were transacted via the airlift of foreign currency—has prompted allegations that the Obama administration paid a “ransom” to Tehran.

³² JINSA Gemunder Center Iran Task Force, “The Iran Nuclear Deal After One Year: Assessment and Options for the Next President”, July 2016, p. 19–20.

The Payments Do Not Constitute Ransom

I would strongly assert that 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.” A ransom is—by definition—“a payment made to secure the release of a detained person.” And yet, as William and Mary Law Professor Nancy Combs, who formerly represented the United States at the U.S.–Iran Claims Tribunal, emphasizes, the January 2016 transactions and subsequent related payments were “made to satisfy a legitimate debt that the U.S. owed to Iran.”¹

Specifically, the payment derived from 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 helped spur the private settlement of many more. The Tribunal has worked to the benefit of U.S. individuals and corporations whose holdings in Iran were jeopardized or harmed as a result of the turmoil that led up to the revolution itself, the change in the Government that ensued, and the subsequent rupture of diplomatic relations between Washington and Tehran.

Among the relatively small number of outstanding claims were those that related to the robust sales of arms and related military materiel to Iran’s pre-revolutionary Government—a trade that approached \$6 billion in 1977.² As part of the Iran Foreign Military Sales program, payments were made into a trust fund to facilitate prompt and reliable compensation of U.S. contractors. In February 1979, after the collapse of Iran’s monarchy and the assumption of authority by Iran’s Provisional Government, Tehran immediately sought to end its security relationship with the United States. At that time, Washington and Tehran concluded a Memorandum of Understanding (MoU) that specified the FMS programs to be voided and halted payments, some of which had already been disrupted by revolutionary turmoil. Over the next several months, more than \$10 billion in undelivered military sales were either cancelled by Tehran or reduced by the U.S. Department of Defense.³ The MoU also stipulated that all unexpended FMS payments should be deposited in an interest-bearing account established by Washington specifically for the purpose of accruing interest on the outstanding balance.⁴ After Iran’s November 1979 seizure of the U.S. Embassy and the detention of its personnel for what would become a 15-month ordeal, the remainder of Iran’s FMS Trust Fund was frozen by the Carter administration, along with all other U.S.-based Iranian assets.

In 1982, Tehran filed a claim before the U.S.–Iran Claims Tribunal related to the FMS Trust Fund, which Lisa Grosh, Assistant Legal Advisor in the Office of International Claims and Investment Disputes at the U.S. Department of State, has described as “a giant breach of contract case covering 1,126 huge FMS contracts.”⁵ Over the ensuing decades, Grosh estimated that 40 rounds of formal negotiations between State Department lawyers and Iranian representatives aimed at resolving this claim took place, with some portions of the claim settled a number of years earlier.

Efforts to advance a resolution of the remaining FMS claims apparently intensified in recent years, and as with previous components of the claim, the expectation of hearings and a prospective judgment prompted efforts to reach a negotiated resolution that included a compromise on the amount of interest that Tehran was seeking. That settlement included a \$1.3 billion total for accumulated interest, a figure that Administration officials have said was considerably lower than Iran’s original claim. The original \$400 million sum was paid from the FMS Trust Fund, whereas

¹Lauren 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/>.

²Kate Gillespie, “US Corporations and Iran at the Hague”, *Middle East Journal* 44:1 (Winter, 1990), p. 18–36.

³“Financial and Legal Implications of Iran’s Cancellation of Arms Purchase Agreements”, U.S. General Accounting Office, July 25, 1979, U.S. GAO 109986, <http://www.iranwatch.org/sites/default/files/us-gao-cancellationagreement-072579.pdf>.

⁴The United States of America and Iran Memorandum of Understanding Concerning the Revisions of Foreign Military Sales (FMS) Letters of Offer and Acceptance, February 3, 1979, <https://treaties.un.org/doc/Publication/UNTS/Volume%201168/volume-1168-I-18582-English.pdf>.

⁵Lisa Grosh, Assistant Legal Advisor, Office of International Claims and Investment Disputes, U.S. Department of State, testifying before the Subcommittee on Oversight and Investigations, Committee on Financial Services, U.S. House of Representatives, “Fueling Terror: The Dangers of Ransom Payments to Iran”, September 8, 2016, <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400971>.

the \$1.3 billion in interest was disbursed from the Judgment Fund, under the auspices of the U.S. Department of the Treasury.

As announced in January, the settlement “finally and fully resolves Iran’s claim for funds in the FMS Trust Fund” and the associated outstanding interest.⁶

To describe such a settlement as a ransom is simply not consistent with the well-established history of this claim and its arbitration over the course of several decades in a forum specifically designated for that purpose. Such a description also obscures the source and purpose of the payment, which provided Tehran with nothing other than its own funds.

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 return of \$400 million to Tehran as well as the subsequent transactions related to the \$1.3 billion in interest, even in their unorthodox form, are 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.⁷

We do not yet have complete information about processes and personnel engaged in the different channels of dialogue with Iran during the lead-up to the January 2016 settlement. However, the official remarks made by several U.S. officials with the Departments of State, Justice, and Treasury challenge the caricature presented by some media outlets of a simplistic transaction in which money was provided in explicit exchange for the release of imprisoned Americans. This episode appears to have involved a much more complex array of diplomatic interaction between the United States, the Islamic Republic, and several other countries and international institutions. The convergence of three distinct diplomatic channels in January 2016 surrounding the FMS claims, the prisoner release, and the certification of the implementation of the Joint Comprehensive Plan of Action does not, in and of itself, establish a direct linkage in their specific outcomes.

Finally, based on the information released publicly to date, the only clear linkage between the return of \$400 million to Iran and the release of imprisoned Americans was the Administration’s decision to halt the transaction until Tehran had complied with its commitments to free those who had been unjustly detained as well as several relatives. In other words, the transactions related to the FMS claim were utilized not as a carrot, but as a stick. It is difficult to imagine that anyone in this forum would have condoned the fulfillment of the settlement of the FMS claim in January had the Americans not been released.

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 with 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

⁶ Grosh, September 8, 2016, <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400971>.

⁷ 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/fr77_64664.pdf.

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 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."⁸
- 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.⁹
- 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 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

⁸ 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.

⁹ 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>.

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.¹⁰

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 . . .”¹¹ 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.”¹²

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.
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.

Diplomacy Ultimately Advances American Interests

Many have questioned the advisability of resolving the outstanding pre-revolutionary FMS claim at this time. However, further delay in a settlement would not have obviated its eventual conclusion, and State Department lawyers have insisted that the Tribunal’s decision in this particular claim might have resulted in a higher judgment if a compromise had not been reached between U.S. and Iranian officials.¹³ Such an assessment is reasonable and consistent with the position articulated 7 years earlier, by John B. Bellinger III, State Department legal advisor during the George W. Bush administration. Bellinger argued that the United States would benefit from an expeditious resolution of all the remainder of the Iranian claims before the Tribunal, precisely because judgments in outstanding cases could entail such significant payments to Tehran.¹⁴

¹⁰ 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): 165–176.

¹¹ 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.

¹² Sciolino, NYT, November 21, 1991.

¹³ Grosh, September 8, 2016, <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400971>.

¹⁴ 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/up86-dyn/content/article/2009/10/21/AR2009102103222.html>; Bellinger, “U.S. Settlement of Iran Claims

In addition, it is hardly surprising that the mechanics of these payments—via wire transfers to European financial institutions that were then converted to cash and airlifted to Tehran—have generated concern and controversy. The relevant U.S. officials who approved this transaction have yet to fully explain the rationale for what appears to be a deviation from prior practices of financial transfer to Tehran. The unusual mechanism of the payments warrants further clarification, in a closed setting if necessary.

However, had the manner of payment differed, it is not clear to me that the outcome would be manifestly different from the perspective of U.S. interests. If the payments had been effected fully by wire transfer rather than the headline-grabbing “pallets of cash,” the ultimate beneficiary would have been the same. And, once the settlement was effected, Washington would have had no greater capacity to constrain Tehran’s ability to utilize these funds for its own purposes, irrespective of the mode of payment.

Unease among the general public and here in Congress about the wisdom of expanding the coffers of one of the world’s worst actors is perfectly reasonable. And it cannot be fully, or even significantly, assuaged by the assurances of State Department officials that Tehran is likely to use these funds for “critical economic needs.”¹⁵ There can be no doubt in the existence and even the urgency of domestic economic priorities for Iran’s leadership; after years of debilitating sanctions and domestic mismanagement, economic rehabilitation ranks at the top of Tehran’s agenda. Iranians are eager to see the “peace dividend”—jobs, opportunities, and growth—that they have been promised for years. Unfortunately, these priorities do not negate the possibility, even the likelihood, that Tehran will utilize some or all of the funds provided as a result of this transaction for more destabilizing purposes: arms procurement, support for regional proxies, and other malign activities.

Still, the long-term track record is clear: neither Iran’s support for terrorism nor the development of its nuclear and missile programs have been driven primarily or even substantially by resource availability. In fact, Iran’s most destructive regional policies have been undertaken and sustained even at times of epic constraints. Economic pressures—whether related to sanctions or declines in oil prices—did not produce corresponding abatements in Iran’s efforts to extend its influence through nefarious activities and allies, its substantial investment in fueling conflicts in Iraq and Syria, or its illicit nuclear program.

For the same reasons, it is unlikely that the repayment of a prolonged pre-revolutionary financial claim will manifestly exacerbate these policies. And the continuing U.S. capacity to isolate those entities and individuals within Iran who remain engaged in terrorist activities will be crucial to shaping the decisions of its leadership and the trajectory of its economic recovery.

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. While it is unfortunate that Tehran has benefited from this transaction, the tradeoffs here, and in the broader intensification of diplomatic engagement with Iran including the conclusion of the comprehensive nuclear deal, meaningfully advance U.S. national security by deferring Iran’s pathway to nuclear weapons capability.

In the same vein, 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

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>.

¹⁵ Chris Backemeyer, Deputy Assistant Secretary of State, Bureau of Near East Affairs, U.S. Department of State, testifying before the Subcommittee on Oversight and Investigations, Committee on Financial Services, U.S. House of Representatives, “Fueling Terror: The Dangers of Ransom Payments to Iran”, September 8, 2016, <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400971>.

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 naive and inaccurate assessment of the drivers of Iranian politics and policy. I simply see no evidence that Iran's long-standing 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.

Even after the prisoner release in January, Americans remain missing and unjustly detained in Iran: first and foremost, Robert Levinson, a retired U.S. Government employee missing since a 2007 trip to Iran's Kish Island. Also: my good friend Siamak Namazi, an Iranian-American entrepreneur and analyst whose interest in Iran's development has always been paramount; his 80-year-old father Baqr Namazi, a long-time United Nations diplomat; Robin Shahini, who was visiting his sick mother in Iran when he was arrested earlier this year; and U.S. permanent resident Nizar Zakka, who attended a conference in Tehran as part of his work on information technology issues for a U.S. Government contractor.

Add to that list an array of others: Canadian academic Homa Hoodfar; British NGO staffer Nazanin Zaghari-Ratcliffe, whose 2-year-old daughter has been stranded in Iran as a result of her detention; and many more British, French, and Canadian citizens. These names are just the tip of the iceberg; press reports have suggested that other cases have been deliberately suppressed in hopes of a quiet resolution.¹⁶

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.¹⁷

For Tehran, jailing Americans has never been never motivated by the prospect of a payoff. Rather, the center of gravity within Iran's ruling elite remains convinced

¹⁶ Carol Morello, "Relatives of Western Prisoners in Tehran Try To Lobby Iranian President at the U.N.," *Washington Post*, September 20, 2016, https://www.washingtonpost.com/world/national-security/relatives-of-western-prisoners-in-tehran-try-to-lobby-iranian-president-at-the-un/2016/09/20/4bb7c4cd-c4ee-4807-8809-66228e9c7283_story.html.

¹⁷ 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>.

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.

Conclusion

Despite the Administration's careful, almost reflexive hedging, the public campaign to win support for the nuclear deal relied upon an expectation that the agreement both evidenced and advanced a nascent process of political change within Iran. The July 2015 conclusion of the JCPOA and its subsequent implementation seemed to validate the Administration's underlying presumption that Iran's leaders could be persuaded to alter their most dangerous policies. As a result, what was once mostly hypothetical—the proposition that Iran can be moderated—seems temptingly inevitable.

However, as the ensuing months demonstrated, the end of the negotiations themselves did not bring about any durable conclusion to the controversy over Iran's nuclear program, nor did it usher in anything like a denouement in the Islamic Republic's most destabilizing policies. For this reason, it is tempting to view Tehran's continued harassment and detention of Americans, other foreign travelers, and Iranian citizens, along with a host of other abuses and dangerous policies, as an indictment of the Obama administration's approach to Iran.

And yet the rewards of diplomacy with the Islamic Republic, while as yet limited, should not be dismissed out of hand. Tehran's prospective pathway to nuclear weapons capability has been extended significantly for at least a decade, and the most onerous inspections and verifications regime in the history of the nuclear non-proliferation regime has been erected to ensure this. Five Americans were able to leave the confines of Iran's most notorious prison and are with their families today. And it is possible to see in other developments, such as Tehran's recent efforts to demonstrate compliance with multilateral counterterrorism financing requirements,¹⁸ as evidence of a creeping recognition among the Iranian leadership that meaningful rehabilitation on the world stage requires adherence to the norms of the international system. That is not an end, but it is a beginning, and after 37 years of frustrated and largely unsuccessful American efforts to moderate Iran's most dangerous policies, it is a welcome beginning.

I thank you for the opportunity to testify here today and look forward to the Committee's questions.

¹⁸ Najmeh Bozorgmehr, "Iranian Banks Give Revolutionary Guards the Cold Shoulder", *The Financial Times*, September 18, 2016, <http://www.ft.com/cms/s/0/1eb9e41a-7b16-11e6-ae24-f193b105145e.html#axzz4KtH3QCE3>.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR SASSE
FROM MICHAEL B. MUKASEY**

Q.1. Why, in your opinion, would the Government of Iran prefer cash payments over wire transfers?

A.1. I believe the Government of Iran would prefer cash payments over wire transfers because the subsequent use of cash is impossible to monitor or trace, whereas the subsequent use of the proceeds of wire transfers can be monitored, at least to a limited extent. Thus, cash can more easily be used to finance terror operations without detection than wire transfers. There is no other possible use the Government of Iran would have for cash in foreign currency; it does not pay workers or suppliers in Iran in foreign currency; legitimate payment to suppliers or others outside Iran is far easier to make from bank accounts outside Iran than from cash that must be transported from Iran to another jurisdiction.

Q.2. If you were considering this request for a cash in your former position as Attorney General of the United States, what concerns would you have about such a payment? How do you think you might advise the President on such a request?

A.2. My concern would be that the cash would go not to finance projects within Iran, for which it is virtually useless, but rather to finance the activities of the IRGC, specifically the Quds Force—that branch of the IRGC that conducts and finances terrorism operations outside Iran. I would advise the President not to provide cash to Iran but rather to pay purported obligations, if any, by wire transfer.

Q.3. Do you have any concern that U.S. payments to Iran might ultimately benefit the Revolutionary Guard Corps or other terrorist groups? What is the impact of such support on U.S. homeland security?

A.3. I have substantial concern that U.S. payments in the form in which they were made would benefit the IRGC's Qods Force, for the reasons outlined above. The effect can only be to damage the security of this country, whether through direct strikes here or through activities overseas.

Q.4. Are these groups—the IRGC or Iranian-sponsored terrorist groups—actively plotting against the United States at home or abroad?

A.4. Of course, I do not have access to classified intelligence information relating to particular activities by the IRGC or its affiliates, but the whole purpose of that entity is to promote Iranian interests throughout the world by violence and subversion. Iran has already shown that it will not hesitate to engage in plots in Latin America and, as in the case of the plot to assassinate the then-Saudi ambassador to this country, in the United States. Thus, I believe that Iran continues to pursue activities hostile to U.S. interests both abroad and, if possible, in this country.

Q.5. How many Americans have been illegally detained in Iran since the Iranian Revolution? How many since the President's payment of \$400 million in exchange for our detained personnel?

A.5. I do not know the total of Americans detained since the Revolution, although it would certainly include all those detained when our embassy was stormed, the four released recently, and others—including an FBI agent—Robert Levinson—of whom the Iranians disclaim knowledge, and at least four people detained since the President authorized the \$1.7 billion cash payment.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

ADDITIONAL MATERIAL SUBMITTED BY CHAIRMAN MARK KIRK

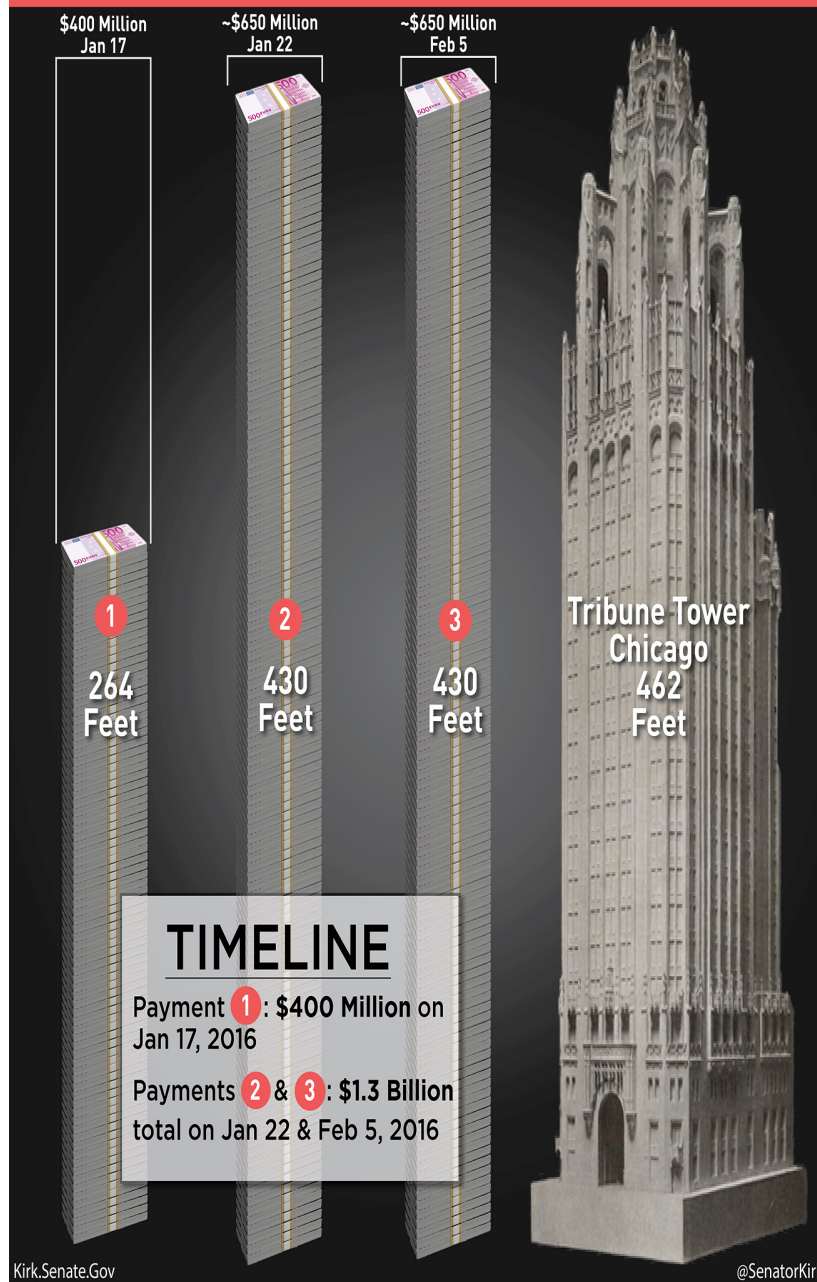


IRAN-SPONSORED HEZBOLLAH TERRORISTS HAVE MURDERED MORE THAN 290 AMERICAN CITIZENS

ALABAMA (8) HN Jimmy R. Cain, USN Cpl Terry Lee Hudson, USMC PFC James C. Price, USMC LCPJ Bill J. Stelflug, USMC Cpl Leonard W. Walker, USMC Capt William E. Winter, USMC Cpl Henry Townsend, Jr., USMC Cpl Shannon Biddle, USMC	ILLINOIS (Cont'd) Cpl Joseph R. Livingston, USMC Sgt John A. Phillips, Jr., USMC PFC Eric A. Pulliam, USMC Cpl Gary R. Scott, USMC 1stLt William S. Sommerhof, USMC LCPJ Eric D. Stungill, USMC Cpl Eric R. Walker, USMC	NEW JERSEY (7) PFC William F. Barley, USMC PFC Sean F. Estler, USMC WO1 Paul G. Innocenzi, III, USMC LCPJ James J. Langon, IV, USMC Sgt Jeffrey D. Young, USMC Sgt Manuel A. Cox, USMC LCPJ George L. Drannis, USMC	NORTH DAKOTA (1) Cpl Todd A. Kraft, USMC	VIRGINIA (Cont'd) LCPJ Nicholas Bales, USMC LCPJ Richard E. Barrett, USMC LCPJ James R. Baynard, USMC HM3 William B. Foster, Jr., USN Cpl Michael D. Fuchner, USMC LCPJ Warner Gibbs, Jr., USMC LCPJ Douglas E. Haski, USMC LCPJ James Kniggle, USMC LCPJ Jeffrey B. Owen, USMC Sgt Joseph A. Owens, USMC Cpl Eric G. Washington, USMC William L. Stanforth (USAID)
ARIZONA (2) LCPJ David M. Randolph, USMC Cpl John E. Wolfe, USMC	IOWA (1) GySgt Edward E. Kimm, USMC	NEW MEXICO (2) PFC John R. Allman, USMC Cpl Alex Munoz, USMC	OHIO (14) Kenneth E. Haas (CIA) Cpl Terry W. Abbott, USMC Cpl John B. Buckmaster, USMC Cpl Paul Callahan, USMC PFC Marc L. Cole, USMC HN Bryan L. Earle, USN LCPJ George M. Gangur, USMC LCPJ Virgel D. Hamilton, USMC LCPJ Bruce A. Hollingshead, USMC Cpl Edward A. Johnston, USMC	WASHINGTON (1) Terry Lee Gilden (FSO)
CALIFORNIA (7) SSG Mark E. Salazar, USA LCPJ Randall I. Garcia, USMC LCPJ Luis A. Nava, USMC LT James F. Surch, Jr., USN LCPJ Donald Vellone, Jr., USMC SFC James G. Varber, USA Malcolm H. Kerr (AUB)	INDIANA (4) LCPJ Danny R. Estes, USMC ETC Michael W. Gorchinski, USN HM2 George N. McVicker, II, USN SSG Thomas P. Thorstad, USMC	NEW YORK (24) Frank J. Johnston (FSO) SSG Alexander M. Ortega, USMC Capt Michael J. O'Leary, USMC Capt Joseph Borcia, Jr., USMC LCPJ Jeffrey L. Boulos, USMC Cpl Bert D. Corcoran, USMC Sgt Kevin P. Coulman, USMC LCPJ Harold F. Gratton, USMC LCPJ John J. Ingalls, USMC Cpl James J. Jackowski, USMC LCPJ John McCall, USMC	OKLAHOMA (2) CW03 Richard C. Ortiz, USMC 1stLt Donald E. Woollett, USMC	WEST VIRGINIA (5) Sgt Mecott E. Camara, USMC LCPJ David L. Cosme, USMC Cpl Russell Cysick, USMC Cpl Timothy J. Dunnigan, USMC HM2 Marlon E. Kees, USN
COLORADO (2) Deborah M. Hixon (CIA) Thomas R. Blacka (USAID)	LOUISIANA (2) LCPJ Lyndon J. Hise Pvt Lee D. Trahan, USMC	MAINE (1) Cpl Bruce L. Howard, USMC	PENNSYLVANIA (21) Robert C. Ames (CIA) Phyllis Nancy Faraci (CIA) Albert Volav (USAID) Cpl Moses Arnold, Jr., USMC Cpl John Bork, Jr., USMC LCPJ Curtis J. Cooper, USMC HM3 William D. Elliot, Jr., USN PFC Richard A. Fluegel, USMC	WISCONSIN (5) LCPJ Randy W. Clark, USMC LCPJ Jesse Ellison, USMC LCPJ David B. Gandler, USMC LCPJ Walter V. Kingsley, USMC Charles Hegra (USAID)
CONNECTICUT (6) MAJ Randall A. Carlson, USA LCPJ Thomas A. Dibenedetto, USMC SSG Thomas G. Smith, USMC LCPJ Devon L. Sundar, USMC PFC Stephen D. Tingley, USMC LCPJ Dwayne W. Wigglesworth, USMC	MARYLAND (9) LCPJ C. Keith Bailey, USMC Pvt Nathaniel G. Dorsey, USMC LCPJ Davin M. Green, USMC LCPJ Jeffrey W. James, USMC LCPJ Ulysses G. Parker, USMC HM3 George W. Piery, USN LCPJ Horace R. Stephens, USMC HM3 David Worley, USN SW2 Robert D. Stethem, USN	NORTH CAROLINA (44) Maj Harley S. Warren, USAF 2ndLt Donald G. Losey, USMC 1stSGT David Battle, USMC PFC Stephen Bland, USMC Sgt Richard L. Blankenship, USMC Cpl Leon Bohannon, Jr., USMC 1stLt John N. Boyett, USMC LCPJ Bobby S. Buchanan, Jr., USMC Cpl Charles D. Cook, USMC LCPJ Johnny L. Copeland, USMC Maj Andrew L. Davis, USMC MSgt Roy L. Edwards, USMC Cpl Steven M. Forrester, USMC SSG Ronald J. Garcia, USMC SSG Harold D. Gumm, USMC LCPJ William Hart, USMC Capt Michael S. Haskell, USMC Cpl Stanley G. Hester, USMC GySgt Donald W. Hildreth, USMC 2ndLt Maurice E. Hukill MSgt Richard L. Lemmah, USMC Maj John W. Macropoulou, USMC Cpl Samuel McIliland, USMC SSG Charlie R. Martin, USMC Pvt Joseph Mattacchione, USMC LCPJ Timothy D. McNeely, USMC Sgt Michael D. Mercer, USMC LCPJ Ronald W. Meurer, USMC Cpl Harry D. Myers, USMC 1stLt David J. Naim, USMC Cpl Connie Ray Page, USMC GySgt John L. Pearson, USMC GySgt Charles R. Ray, USMC 1stLt Charles J. Schnorf, USMC Capt Peter J. Scialabba, USMC Capt Vincent L. Smith, USMC LCPJ Thomas D. Stowe, USMC 1stSGT Tandy W. Wells, USMC GySgt Lloyd D. West, USMC SSG John R. Weyl, USMC Cpl Burton D. Wierland, Jr., USMC LCPJ Johnny A. Williamson, USMC 1stLt Michael Ray Wagner, USN SSG John Hendrickson, USMC	PUERTO RICO (1) LCPJ Louis Melendez, USMC	OTHER (5) SFC Richard Twine, USA Cpl Pedro J. Valle, USMC HM3 Diomedes Quirante, USN Monique N. Lewis (CIA) Koby Mandell (13-Year-Old Civilian)
DELAWARE (1) PFC Michael A. Hastings, USMC	MASSACHUSETTS (9) PFC Bradley J. Campa, USMC PFC Michael J. Devlin, USMC SSG Maj Frederick B. Douglas, USMC LCPJ Richard J. Gordon, USMC LCPJ Sean R. Gallagher, USMC Sgt Steven B. Lariviere, USMC LCPJ Thomas S. Penno, USMC Cpl Edward J. Gerao, USMC William Francis Buckley (CIA)	MICHIGAN (11) William R. McIntyre (USAID) Janet Lee Stevens (Journalist) LCPJ Johansen Banks, USMC Cpl David R. Bossum, USMC Sgt Anthony K. Brown, USMC HM2 Michael H. Johnson, USN Sgt Michael R. Massman, USMC Sgt William H. Pollard, USMC 1stLt William Zimmerman, USMC LT Mark A. Lange, USN WO2 Kenneth V. Welch, USA	RHODE ISLAND (9) Cpl Rick R. Crudale, USMC Cpl Timothy R. Giffin, USMC LCPJ Edward F. Jacovino, Jr., USMC PFC Thomas A. Julian, USMC Cpl David S. Massa, USMC Cpl Thomas A. Shipp, USMC LCPJ James F. Silvia, USMC LCPJ Edward Soares, USMC LCPJ Stephen E. Spencer, USMC	SOUTH CAROLINA (5) HW1 Ronny K. Bates, USN Sgt Freddie Haltiwanger, Jr., USMC SSGT Richard H. Holberton, USMC LCPJ Michael C. Sauls, USMC GySgt Scipio Williams, Jr., USMC
DISTRICT OF COLUMBIA (1) Sgt Gilbert Hanton, USMC	FLORIDA (22) LCPJ Clemon S. Alexander, USMC HN Jesse W. Beamon, USN LCPJ John W. Blocker, USMC PFC Juan M. Comas, USMC Sgt Robert A. Conley, USMC LCPJ Brett A. Craft, USMC HM3 James E. Faulk, USN Cpl William Gaines, Jr., USMC LCPJ Ferrandy D. Henderson, USMC LCPJ Nathaniel W. Jenkins, USMC LCPJ Freas H. Kreischer, III, USMC Sgt Michael S. Lariviere, USMC LCPJ Paul D. Lyon, Jr., USMC PFC Jack L. Martin, USMC 1stLt Clyde W. Phymel, USMC SSG Patrick K. Prindle, USMC Sgt Juan C. Rodriguez, USMC LCPJ Guillermo San Pedro, Jr., USMC LCPJ Kirk H. Smith, USMC LCPJ Rodney J. Williams, USMC Capt Alfred Butler, III, USMC PFC Jeffrey T. Hattaway, USMC	MINNESOTA (4) LCPJ Kevin Custard, USMC LCPJ Thomas G. Lamb, USMC Cpl John A. Olson, USMC LCPJ John J. Tishmack, USMC	TENNESSEE (2) SSGT John R. Bohnet, Jr., USMC Cpl Marvin H. Perkins, USMC	TEXAS (9) LCPJ David W. Brown, USMC LCPJ Johnnie D. Cessar, USMC SPC Marcus E. Coleman, USA LCPJ Michael S. Fulton, USMC LCPJ Steven Jones, USMC SSGT Leland E. Gann, USMC GySgt Montile Hernandez, Jr., USMC LCPJ Timothy R. McMahon, USMC LCPJ Rodolfo Hernandez, USMC
GEORGIA (6) LCPJ Benjamin E. Fuller, USMC LT John R. Hudson, USN Sgt Val S. Lewis, USMC Cpl Victor M. Pruitt, USMC LCPJ Jerry D. Shropshire, USMC Cpl Jeffrey G. Stokes, USMC	MISSOURI (1) Cpl Joseph P. Moore, USMC	MONTANA (1) Cpl Thomas A. Evans, USMC	VIRGINIA (15) Cpl David L. Reagan, USMC SSG Ben H. Maxwell, USA Cpl Robert V. McMaugh, USMC	
ILINOIS (13) James F. Lewis (CIA) William R. Shell (CIA) GySgt Alvin Belmer, USMC LCPJ David D. Gay, USMC CAPT Paul A. Hein, USMC PFC Melvin D. Holmes, USMC	NEBRASKA (1) LCPJ Mark A. Helms, USMC	NEW HAMPSHIRE (1) SSG Alan H. Sollitt, USMC		

DATA SOURCES: State Department's U.S. Embassy Beirut Memorial; Beirut Memorial Online; and staff research and interviews. Updated: 03/22/15.

What Would Obama's \$1.7 Billion Cash Payments to Iran Look Like Stacked in One Place?





Iran Travel Warning

LAST UPDATED: AUGUST 22, 2016

The Department of State warns U.S. citizens of the risks of travel to Iran. This replaces the Travel Warning for Iran dated March 14, 2016, to reiterate and highlight the risk of arrest and detention of U.S. citizens, particularly dual national Iranian-Americans. Foreigners, in particular dual nationals of Iran and Western countries including the United States, continue to be detained or prevented from leaving Iran. U.S. citizens traveling to Iran should very carefully weigh the risks of travel and consider postponing their travel. U.S. citizens residing in Iran should closely follow media reports, monitor local conditions, and evaluate the risks of remaining in the country.

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. Iranian authorities have also prevented the departure, in some cases for months, of a number of Iranian-American citizens who traveled to Iran for personal or professional reasons. U.S. citizens traveling to Iran should very carefully weigh the risks of travel and consider postponing their travel. U.S. citizens residing in Iran should closely follow media reports, monitor local conditions, and evaluate the risks of remaining in the country.

The U.S. government does not have diplomatic or consular relations with the Islamic Republic of Iran and therefore cannot provide protection or routine consular services to U.S. citizens in Iran. The Swiss government, acting through its Embassy in Tehran, serves as protecting power for U.S. interests in Iran. The range of consular services provided by the Foreign Interests Section at the Swiss Embassy is limited and may require significantly more processing time than at U.S. embassies or consulates.

Since the administration claims that cash is the only method for delivering payments to Iran

Did Iran get \$33.6 billion in cash?

**\$400
MILLION**

The WSJ confirmed that the US transferred \$400 million cash to Iran on January 17.

**\$1.3
BILLION**

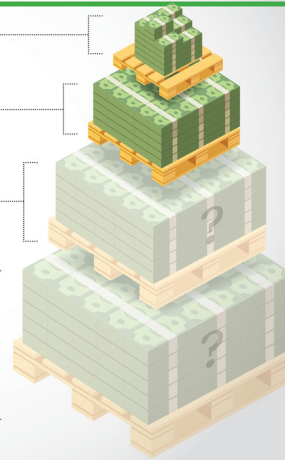
The WSJ later confirmed that the US also transferred \$1.3 billion cash in two shipments to Iran on January 22 and February 5.

**\$11.9
BILLION**

During the negotiating period (Jan 2014-July 2015), the P5+1 allowed Iran to repatriate \$11.9 billion from its overseas escrow accounts.
How much of this was sent in cash?

**\$20
BILLION**

In July 2016, administration officials said that Iran has repatriated up to \$20 billion from its overseas accounts.
How much of this was sent in cash?



FOUNDATION FOR DEFENSE OF DEMOCRACIES