



Center for Strategic and Budgetary Assessments

TESTIMONY

STATEMENT BEFORE THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS SUBCOMMITTEE ON NATIONAL SECURITY AND INTERNATIONAL TRADE AND FINANCE

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Introduction

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

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."ⁱⁱⁱ 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.^{iv}

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.^v

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 eight years nearly 100 Westerners, including 25 more Americans, were taken hostage by Iran and its proxies in Lebanon.^{vi} 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.^{vii}

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."^{viii} Since the cash payments were made in January and February directly undermining long-standing US 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.^{ix}

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

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.^{xi}

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.^{xii} 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.^{xiii}

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.”^{xiv} 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.^{xv}

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 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.^{xvi} 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.^{xvii} 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.^{xviii} Despite that, the Administration committed itself to a series of side agreements that only maintain Iran's "compliance" by weakening the deal further.^{xix}

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.^{xx}

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.^{xxi} 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 foreswear terrorism, end its efforts at regional destabilization and defend our allies – has also lost credibility.^{xxii} 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.^{xxiii}

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.^{xxiv} Earlier this summer, IRGC Commander Qassem Solemani issued the most explicit Iranian threat to date against Bahrain's leaders, warning of their potential overthrow and a subsequent "bloody intifada."^{xxv}

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.^{xxvi}

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.^{xxvii}

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."^{xxviii} Iran's annual defense budget has already grown by \$9 billion, nearly doubling, since sanctions relief took effect.^{xxix}

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.^{xxx}

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.^{xxxii}

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 next Administration is bound to any of the informal or secret pledges made to Iran during JCPOA negotiations or implementation.^{xxxii}

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.

About the Center for Strategic and Budgetary Assessments

The Center for Strategic and Budgetary Assessments (CSBA) is an independent, nonpartisan policy research institute established to promote innovative thinking and debate about national security strategy and investment options. CSBA's analysis focuses on key questions related to existing and emerging threats to U.S. national security, and its goal is to enable policymakers to make informed decisions on matters of strategy, security policy, and resource allocation.

APPENDIX: POSSIBLE U.S. CASH PAYMENTS TO IRAN



Source: Foundation for Defense of Democracies.

ⁱ 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.

ⁱⁱ Lindsay Castleberry, "Freed American Hostage: We Waited All Night at the Airport," FOX Business, August 4, 2016.

ⁱⁱⁱ U.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.

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

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

^{vi} Pierre Razoux, *The Iran-Iraq War* (Cambridge, MA: Belknap, 2015), p. 585n1.

^{vii} U.S. State Department Bureau of Consular Affairs, "Iran Travel Warning," August 22, 2016.

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- viii White House Office of the Press Secretary, “Statement by the President on the U.S. Government’s Hostage Policy Review,” June 24, 2015.
- ix “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.
- x 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>).
- xi 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.
- xii Jay Solomon and Carol E. Lee, “U.S. Sent Cash to Iran as Americans Were Freed,” *Wall Street Journal*, August 3, 2016.
- xiii 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.
- xiv JINSA Gemunder Center Iran Task Force, “The Iran Nuclear Deal After One Year: Assessment and Options for the Next President,” July 2016, p. 7.
- xv JINSA Gemunder Center Iran Task Force, “The Iran Nuclear Deal After One Year: Assessment and Options for the Next President,” July 2016, p. 16.
- xvi Kristina 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.
- xvii President 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.
- xviii According to the *Los Angeles Times*, a government-approved Iranian website 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 website reports U.S. giving ground on nuclear centrifuges,” *Los Angeles Times*, November 4, 2014.
- xix JINSA Gemunder Center Iran Task Force, “The Iran Nuclear Deal After One Year: Assessment and Options for the Next President,” July 2016, p. 9-10.
- xx Jay 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.
- xxi For 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.
- xxii In 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).

^{xxiii} Amir Vahdat, “Iran Fires 2 Missiles Marked ‘Israel Must Be Wiped Out’,” Associated Press, March 9, 2016.

^{xxiv} Nabih Bulos, “Iranian leaders criticize Saudi Arabia over last year’s deadly hajj crush and stampede,” *Los Angeles Times*, September 7, 2016.

^{xxv} Euan McKirdy, “Iran: Bahrain’s Leadership Could fall over cleric’s treatment,” CNN, June 21, 2016.

^{xxvi} Jon Gambrell, “Why Do U.S., Iran Often Face Off in Persian Gulf?” Associated Press, September 8, 2016.

^{xxvii} Jeremy Binnie and Sean O’Connor, “Iran has not deployed S-300 to Fordow as claimed,” *Jane’s*, September 2, 2016.

^{xxviii} 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 non-performing 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.

^{xxix} Eli Lake, “U.S. Taxpayers Are Funding Iran’s Military Expansion,” *Bloomberg View*, June 9, 2016.

^{xxx} 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>)

^{xxxi} 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/?utm_source=Press+List&utm_campaign=17a4594985-WFB Morning Beacon 09 19 169 18 2016&utm_medium=email&utm_term=0_5b0ef94baa-17a4594985-45585509](http://freebeacon.com/national-security/obama-admin-laundered-u-s-cash-iran-via-n-y-fed-euro-banks/?utm_source=Press+List&utm_campaign=17a4594985-WFB+Morning+Beacon+09+19+169+18+2016&utm_medium=email&utm_term=0_5b0ef94baa-17a4594985-45585509).

^{xxxii} 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.