Center for a New American Security

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Chairman Cruz, Ranking Member Coons, and distinguished members of the Senate Judiciary Committee's Subcommittee on Oversight, Agency Action, Federal Rights, and Federal Courts, I am honored to appear before you today to discuss the sanctions implications of the Joint Comprehensive Plan of Action ("JCPOA") between the P5+1 and Iran, otherwise known as the "Iran nuclear deal." In particular, I would like to focus on how those implications affect claims of U.S. victims of Iranian terrorism.

This Committee has an important role in ensuring that the victims of Iranian terrorism—as well as their families and loved ones—obtain justice. It has also had—and continues to have—an important role in evaluating the JCPOA and the fulfillment of its terms moving forward.

I take this responsibility seriously given the gravity, stakes, and implications of the agreement, but also the pain and suffering that these victims and their families have endured at the hands of Iranian terrorist organizations.

As I will discuss in my testimony, U.S. victims of terrorism are unlikely to be able to satisfy final judgments using the funds currently held by foreign financial institutions and to be returned to Iran pursuant to the JCPOA. However, Congress and the Treasury Department can take a number of steps to compensate these victims, including dedicating a significant portion of future fines related to Iranian sanctions violations to a victims' compensation fund and creating a "compensation bump" in future enforcement actions where sanctions violators must pay additional money to victims if their transactions involved designated Iranian terror organizations.

I will focus my comments today on four main areas. First, I will provide high-level background on how—in a post-September 11th era—the United States has been able to use its financial power to target illicit Iranian activity in the lead up to the JCPOA. Second, I will briefly touch on the sanctions landscape in a post-JCPOA world, with a particular focus on how the unwinding will occur, what sanctions will remain in place, and where the funds to be released to Iran are currently being held. Third, I will discuss whether the JCPOA's proposed release of Iranian funds currently held by foreign financial institutions will frustrate U.S. victims and their families' attempts to recover assets following final judgments against Iranian persons. Fourth and finally, I will address ways to move forward and help ensure that these victims and their families can secure the assets they are due.

Iran and The New Financial Tools

The pressure campaign that brought Iran to the negotiating table over its nuclear program took years to build and was the result of a concerted effort by the Bush and Obama Administrations—as well as Congress—to combat proliferation activity, terrorist financing, and other forms of illicit behavior. This campaign of economic pressure on Iran can broadly be divided into three phases: the creation of sophisticated terrorism-related sanction authorities that were developed following the attacks of September 11th;[1] the development of proliferation-focused sanctions in the mid-2000s, and the more robust banking and oil trade-based sanctions, starting in earnest with the passage of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA").[2]

Following September 11th, the United States Government—in conjunction with international financial bodies such as the Financial Action Task Force ("FATF") and the Wolfsberg Group, as well as the United Nations—established a series of standards and authorities aimed at countering the financing of terrorism. With the passage of the USA PATRIOT Act, and in particular Title III, the United States was able to impose requirements related to anti-money laundering and financial crime compliance on a wide range of new commercial actors and limit the ability of terrorist groups to use licit businesses and financial channels to finance their activities. Similarly, Section 311 of the PATRIOT Act allowed President Bush to designate countries and institutions as jurisdictions of primary money laundering concerns, requiring that U.S. financial institutions impose strict compliance limits when dealing with such jurisdictions.[3] The United States also gave sanctions teeth to these regulatory developments; immediately following September 11th, President Bush signed Executive Order 13224, which allowed U.S. authorities to block assets of designated terrorists and their supporters.[4]

At the international level, the United Nations, the FATF, and the Wolfsberg Group were similarly developing standards to combat terrorist financing.[5] The FATF's 40 Recommendations provided a baseline set of global standards for countries to implement to ensure that their

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[1] Prior to these post-9/11 sanctions, the United States had imposed a comprehensive and blunt trade embargo on Iran following the overthrow of the Shah and the taking of American hostages during the 1979 Revolution.
[2] Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. No. 111-195, 124 Stat. 1312.
[3] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT Act), Pub. L. No. 107-56, 115 Stat. 272 (2001).
[4] Exec. Order No. 13224, 67 Fed. Reg. 128 (Sept. 23, 2001).
[5] The Wolfsberg Group is a group of consisting of major global banks, convened to deal with regulatory issues such as anti-money laundering. The thirteen banks are Banco Santander, Bank of America, Bank of Tokyo Mitsubishi-UFJ, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase, Societe Generale, Standard Chartered, and UBS.

financial systems were not being used to fund terrorism.[6] The Wolfsberg Group similarly developed sets of standards to ensure that the world's largest banks would be in compliance with the evolving anti-terrorism and anti-money laundering regime.[7] These international groups' initiatives, combined with new U.S. regulations and an aggressive enforcement posture, bolstered United Nations Security Council Resolution 1267 targeting Al Qaeda and the Taliban, which the Security Council passed in 1999.[8]

This original focus on combating the financing of terrorism began to expand in the mid-2000s, as policymakers recognized both how powerful these financial tools could be and that they could be effective in other contexts. In particular, U.S. and international actors began targeting proliferation activity with these new measures. The first targets of these measures were North Korea and Iran. In the United States, President Bush signed Executive Order 13382, which provided the authority to block assets of persons engaged in the development of weapons of mass destruction or supporting that development.[9] Pursuant to this authority, in 2006 and 2007 the United States designated Islamic Revolutionary Guard Corps ("IRGC") entities and Bank Melli, Bank Mellat, and Bank Saderat as proliferators of weapons of mass destruction. Treasury Department officials also conducted an outreach campaign to European and Asian financial institutions, noting how dangerous it was from a reputational risk perspective to be seen as doing business with such illicit financial institutions and actors.[10]

At the same time as targeting these entities for their proliferation-related activity, the United States continued to aggressively focus on Iranian individuals and organizations engaged in terrorism-related activities, designating a number of IRGC-related entities for their continued support of terrorism, as well as large Iranian banks such as Bank Saderat.[11] In addition, in 2008 the United States revoked the U-turn exception for Iran, which had previously allowed foreign financial institutions to facilitate transactions for Iranian persons in U.S. dollars.[12] This action made it significantly more difficult for Iranian persons to conduct transactions in U.S. dollars.

Building off of these designations and its cooperation with European and Asian financial institutions, in 2010 the United States began significantly expanding the scope of its Iran sanctions program to more comprehensively target Iran's ability to conduct financial transactions

[6] Financial Action Task Force, *The FATF Recommendations* (2012), *available at* http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.
[7] *See, e.g.*, The Wolfsberg Group, *Guidance on a Risk Based Approach for Managing Money Laundering Risks* (2006), *available at* http://www.wolfsberg-principles.com/pdf/standards/Wolfsberg_RBA_Guidance_%282006%29.pdf.
[8] S.C. Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999).
[9] Exec. Order No. 13382, 70 Fed. Reg. 38567 (June 29, 2005).
[10] Peter Feaver and Eric Lorber, "Coercive Diplomacy: Evaluating the Consequences of Financial Sanctions" (Legatum Institute, November 2010) at 28-30.
[11] *See* Juan Zarate, "Harnessing the Financial Furies: Smart Financial Power and National Security," *The Washington Quarterly*, Vol. 32, No. 4 (2009) at 53.
[12] Transactions involving the transfer of funds from a foreign bank that pass through a U.S. financial institution and are then immediately transferred out to a second foreign bank are referred as U-turn transactions. Steven Weisman, "U.S. Puts the Squeeze on Financing in Iran and North Korea," *The New York Times*, October 16, 2006, http://www.nytimes.com/2006/10/16/world/americas/16iht-sanctions.3173938.html?_r=1&.

in non-U.S. markets. Beginning in 2010 with CISADA, the United States threatened to shut off access to U.S. financial markets for those foreign financial institutions conducting business with certain Iranian companies and financial institutions.[13] These so-called secondary sanctions were aimed at closing a key gap in the U.S. effort to prevent Iranian illicit activities and damage its economy. Prior to the imposition of CISADA, non-U.S. persons could conduct certain transactions with designated Iranian persons, assuming the United States had no jurisdiction over the activity. As a way to prevent Iran from engaging in these transactions, the United States put a choice to those non-U.S. persons doing such business: either do business with Iran, or in the United States, but not both. In particular, it threatened to force U.S. financial institutions to close correspondent accounts held by these non-U.S. persons in the United States.[14] Importantly, these secondary sanctions were substantively different from designations that required the blocking or freezing of designated entities; rather, U.S. authorities would simply prevent targeted non-U.S. entities from enjoying access to U.S. markets.

The United States continued this campaign to prevent foreign financial institutions and companies from doing business with designated entities in Iran. For example, in 2011, the United States Department of the Treasury designated Iran as a jurisdiction of primary money laundering concern. While this designation was never promulgated as a final rule by the Treasury Department, it put foreign financial institutions on warning that conducting transactions in Iran was risky and could result in being cut off from U.S. markets.

Further, the United States began using these secondary sanctions to target Iran's oil exports and petrochemical industry. With the passage of the National Defense Authorization Act of 2012, Congress provided the Treasury Department with the authority to impose secondary sanctions—including a loss of correspondent access to the U.S. financial system—on foreign financial institutions conducting or facilitating significant transactions with the Central Bank of Iran and other designated Iranian institutions unless the countries with primary jurisdiction over those foreign financial institutions significantly reduced their import of Iranian oil products.[15] This interweaving of financial and oil sanctions proved powerful, as a large number of U.S. partners and other countries reduced their reliance on Iranian oil, which significantly undermined Iran's economy.[16]

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[13] *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

[14] A correspondent account is "an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution." 31 C.F.R. § 1010.605(c)(1)(i). Correspondent banking is a financial relationship in which a bank maintains an account with a financial institution in another country in order to enjoy access to that country's currency or financial sector. In this case, non-U.S. financial institutions have such accounts with U.S. banks in order to transact in dollars. Closing these accounts would make it significantly more difficult for these non-U.S. financial firms to access U.S. dollars or financial markets. *See, e.g.*, Samuel Rubenfeld and Eyk Henning, "Commerzbank Settles Allegations of Sanctions, Money-Laundering Violations," *The Wall Street Journal,* March 12, 2015, http://www.wsj.com/articles/commerzbank-to-settle-u-s-allegations-of-sanctions-and-money-laundering-violations-1426177346.

[15] National Defense Authorization Act for Fiscal Year 2012 (NDAA), H.R. 1540.

[16] *See, e.g.*, *Iran Nuclear Agreement Review Before the Senate Committee on Foreign Relations*, 114th Cong. (2015) (statement of Jacob Lew, U.S. Sec'y of the Treasury), *available at* http://www.foreign.senate.gov/imo/media/doc/07-23-15%20Lew%20Testimony.pdf.

The United States further expanded the scope of these secondary sanctions with the Iran Threat Reduction and Syria Human Rights Act ("TRA").[17] Under the TRA, foreign companies could be subject to U.S. secondary sanctions—including prohibitions on financial transactions subject to U.S. jurisdiction and a ban on importing goods into the United States—if they conducted transactions with Iranian entities in various sectors, including oil, shipping, and insurance.[18] The TRA also expanded prohibitions related to Iran's support for terrorism and its proliferation activities.[19]

In addition, the TRA also specified that for certain permitted transactions—namely purchases of Iranian oil as countries significantly reduced their imports—it would not penalize a foreign financial institution so long as it held the funds owed to the Iranians in an account located in a country with primary jurisdiction over that financial institution.[20] These funds—held in foreign financial institutions—will be returned to Iran upon the lifting of U.S. secondary sanctions on Implementation Day.

These three phases were intricately linked and each built off of the prior one; the terrorism-related sanctions and focus on developing combating the financing of terrorism standards provided the baseline compliance systems necessary to detect proliferation financing and to prevent Iran's illicit financial activity. Similarly, CISADA and follow-on legislation targeted those transactions that prior sanctions had been unable to effectively prohibit by imposing secondary sanctions on foreign financial institutions conducting business with Iran. The result—over more than a decade—was a slowly tightening vice on the Islamic Republic, damaging its economy and preventing it from engaging in illicit activity.

This ever-tightening constriction campaign—in conjunction with an aggressive enforcement posture adopted by the Office of Foreign Assets Control ("OFAC") at the United States Department of the Treasury, the Department of Justice, the District Attorney of New York, and the New York State Department of Financial Services—also reduced Iran's assets in the United States, as well as its ability to access U.S. markets. Foreign financial institutions—fearing enforcement actions from U.S. regulators and increasing sanctions pressure—cut off business with many designated and non-designated Iranian entities. This was precisely the point of the U.S. pressure campaign; by compelling foreign financial institutions to cease maintaining relationships with Iranian banks, companies, and individuals, the United States was able to bring significant economic pressure to bear on the Islamic Republic. In addition, this aggressive campaign also meant that U.S. companies and financial institutions—as well as non-U.S. institutions—no longer hold massive Iranian assets or conduct significant transactions with Iranian institutions.

[17] Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905.
[18] *See, e.g.*, United States Dep't of State, "Iran Sanctions Contained in the Iran Threat Reduction and Syria Human Rights Act," (Sept. 28, 2012), *available at* http://www.state.gov/e/eb/rls/fs/2012/198393.htm.
[19] *Id*.
[20] Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, Sec. 504.

The Impact of the JCPOA and the Sanctions Unwinding

These three components of the Iran sanctions program—the terrorism-focused component, the anti-proliferation component, and the broader "secondary" component—all proved important in bringing Iran to the table over its nuclear program, but also in frustrating the Islamic Republic's ability to support terrorism. Upon implementation of the JCPOA, the United States will unwind most of the third phase of its pressure campaign on Iran, namely the secondary sanctions. In particular, the United States has promised to terminate Executive Orders 13574, 13590, 13622, 13645, and sections 5–7 of Executive Order 13628. In addition, it will lift restrictions against non-U.S. persons involved in the following activities:

- Financial and banking transactions with Iranian banks and financial institutions, including the Central Bank of Iran and entities identified as Government of Iran by OFAC;
- Bilateral trade limitations on Iranian revenues abroad, including limitations on their transfer;
- Efforts to reduce Iran's crude oil sales;
- Investment, including participation in joint ventures, goods, services, information, technology and technical expertise and support for Iran's oil, gas and petrochemical sectors; and
- Transactions with Iran's energy sector.[21]

In addition, funds held in foreign financial institutions pursuant to Section 504 of the TRA—totaling from $50 to $150 billion—will be released to Iran.[22]

While a significant component of the United States' program will be unwound, many key elements of the sanctions regime—particularly relating to Iran's support for terrorism—will remain in place. First, with limited exceptions, U.S. persons will continue to be prohibited from engaging in economic activities in Iran, with Iranian persons, and with Specially Designated Nationals ("SDNs"). Second, key sanctions on Iran will remain, such as those targeting Iran's support for human rights abuses and terrorism. Entities that are designated pursuant to multiple such authorities—such as the IRGC—will remain designated and off-limits for any business interactions as long as one of the sanctions designations still applies.[23] In particular, terrorism-related sanctions that will remain in place include CISADA Section 104(c), TRA Section 221, and Executive Order 13224, among others. Human rights-related sanctions that will remain in place include CISADA Section 105 and TRA Title IV. Finally, Executive Order 13382, Iran Sanctions Act ("ISA") Section 5(b) and the Section 311 designation of Iran as a jurisdiction of primary money laundering concern will all remain in place.

[21] *See* Annex II of the JCPOA. Note that this list is not exhaustive.
[22] According to Mark Dubowitz, "[a]n estimated $100 billion in Iranian oil revenues have accumulated in semi-restricted escrow accounts and can only be spent on non-sanctionable goods in the countries where they are accumulating or on humanitarian goods from a third country." *The Iran Nuclear Deal and Its Impact on Terrorism Financing Before the House Financial Services Committee*, 114th Cong. 18 (2015) (statement of Mark Dubowitz, Executive Director, Center on Sanctions and Illicit Finance, Foundation for Defense of Democracies), *available at* http://financialservices.house.gov/uploadedfiles/hhrg-114-ba00-wstate-mdubowitz-20150722.pdf.
[23] For a listing of which entities will be de-designated—and which will remain sanctioned—see the Attachments to Annex II of the JCPOA

The JCPOA and Final Judgments

U.S. victims of Iranian terrorism have secured judgments worth over $21 billion in compensatory damages and an additional $18 billion in punitive damages.[24] From Iran's role in the Beirut Embassy bombing in 1983 to its active support of Hamas, Hezbollah, and Palestine Islamic Jihad, multiple U.S. federal courts have concluded that Iran should pay damages for its role in supporting and in certain cases directly perpetuating these attacks.[25] These victims need to be compensated for their suffering, and those parties found responsible—including the Islamic Republic of Iran—should be held to account.

Despite this need for justice, preventing foreign financial institutions from releasing the approximately $50-$150 billion held in frozen accounts pursuant to the JCPOA would be unlikely to assist these victims in securing compensation for their suffering.[26] Because these funds are not blocked assets under U.S. law, victims of Iranian terrorism seeking to attach these assets to satisfy final judgments will be unlikely to do so under the Terrorism Risk Insurance Act ("TRIA"). In other words, regardless of whether these foreign financial institutions release these funds to Iran pursuant to the JCPOA or continue to hold them in escrow accounts, U.S. victims would be unlikely to have access to them.

These funds—because they are being held by foreign financial institutions pursuant to Section 504 of the Threat Reduction Act and not by U.S. persons or in U.S. accounts—are unlikely to be subject to the state sponsor of terrorism exemption to the Foreign Sovereign Immunities Act ("FSIA").[27] Read in conjunction with the state sponsor of terrorism exemption, Section 201 of the Terrorism Risk Insurance Act provides U.S. persons who have obtained a judgment against a state sponsor of terrorism with the opportunity to attach blocked assets of that sponsor.[28] Section 201 defines a blocked asset as, "any asset seized or frozen by the United States under section

[24] These numbers come from an internal compilation of the final judgments against Iranian entities for terrorism-related activities. *See also* Sumner Park, "Iran Deal Neglects US Terror Victims," *The Daily Caller*, Aug. 3, 2015, *available at* http://dailycaller.com/2015/08/03/iran-deal-neglects-us-terror-victims/.

[25] *See, e.g.*, Nicole Hong, "Terror Victims Eye Thawing with Iran," *Wall Street Journal*, Aug. 2, 2015, *available at* http://www.wsj.com/articles/terror-victims-eye-thawing-with-iran-1438556669?cb=logged0.04620659846690889&mod=e2tw.

[26] Mark Dubowitz, Annie Fixler, and Rachel Ziemba, "Iran's Mysterious Shrinking Reserves: Estimating the Value of Tehran's Foreign Assets," *Foundation for Defense of Democracies* (Sept. 2015), *available at* http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf.

[27] *See* 28 U.S.C. § 1605A ("(1) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.").

[28] *See* 28 U.S.C. § 1610 ("in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under [the FSIA terrorism exception], the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.").

5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act."[29] Thus, a U.S. person who has obtained a final judgment against Iran for its support of terrorism can attach assets frozen by the United States to satisfy that judgment.

A good example of such a circumstance would be if an entity owned or controlled by the IRGC Qods Force attempted to move illicit funds through a financial institution registered in the United States and the financial institution detected and froze those funds in accordance with U.S. regulations on Iran (which require U.S. persons to hold assets of Specially Designated Nationals, such as IRGC entities, in blocked accounts). In such a case, because those funds had been frozen in the United States, pursuant to U.S. authorities, U.S. victims of Iranian terrorism would have a strong case for attaching the funds to satisfy final judgments.

The funds held pursuant to Section 504 of the TRA and to be returned to Iran are unlikely to be considered assets seized or frozen by the United States, however. These funds are currently being held by foreign financial institutions—not U.S. financial institutions—and are not frozen under U.S. law. Rather, foreign financial institutions are holding the funds in escrow because the United States has effectively put a choice to those institutions and their home countries: either they can continue conducting financial and oil-based transactions with Iran, or they can enjoy access to U.S. markets, but not both. As a result, these financial institutions and their home countries have complied with U.S. sanctions targeting Iran's oil and financial industry. But there is a difference between not providing these funds to Iran for fear of losing access to U.S. financial markets and having those funds being frozen or seized by the United States.

Additional considerations make clear that these funds are not "seized or frozen by the United States" under the terms of Section 201 of TRIA. For example, foreign financial institutions are not required to produce regular reports to OFAC on the status of these funds, which they would need to do if these funds were blocked. Similarly, if these foreign financial institutions released these funds, they would not be subject to U.S. civil or criminal liability, whereas a U.S. financial institution releasing frozen funds without a license would be. Rather, if a foreign financial institution released these funds, the United States could instruct U.S. financial institutions to close any correspondent accounts held at their banks on behalf of these foreign financial institutions.[30]

The resulting picture is that the funds currently being held by foreign financial institutions—and slated to be released to Iran pursuant to the JCPOA—are unlikely to be considered assets seized or frozen by the United States under Section 201 of TRIA. While there are important equity considerations favoring the compensation of the victims of Iranian terrorism, the successful attachment of these assets would be very difficult.

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[29] *Id*.

[30] Note that if, when releasing the funds, the foreign financial institutions had to process the funds through U.S. financial institutions or accounts based in the United States, these U.S. financial institutions would likely need to block these funds and the funds would be considered seized or frozen by the United States. Even if this occurred however, these funds would still be considered property of the owners and providing them as compensation to U.S. victims could be legally difficult.

U.S. victims of terrorism would therefore not be able to use the state sponsor of terrorism exemption to FSIA—in conjunction with TRIA—to attach these assets to satisfy final judgments, even if they were still held by foreign financial institutions and not released to Iran pursuant to the JCPOA.

In addition to FSIA and TRIA, Congress has also passed limited legislation related to *Bank Markazi v. Peterson*, a case regarding a 2013 mega-judgment allowing plaintiffs to collect billions from the Central Bank of Iran for its role in the 1983 bombing of the American embassy in Beirut that will be heard by the Supreme Court in the next year.[31] That case deals with 22 U.S.C. § 8772, which specifies that a financial asset held in the United States for a foreign securities intermediary doing business in the United States equal in value to a financial asset of Iran that the intermediary holds abroad would be subject to execution or attachment in order to satisfy certain judgments. For example, if a European bank held assets in the United States and frozen Iranian assets in Europe, U.S. victims could attach the European bank's assets in the United States in an amount equivalent to the Iranian funds held abroad in order to satisfy their judgments. This regulation only applies in the context of this particular case, and the Supreme Court will hear arguments that legislation targeting a single case violates separation of powers issues.

Depending on the Supreme Court's decision, such an approach could be used to satisfy judgments by collecting assets from foreign financial institutions holding equivalent Iranian assets. However, this approach also faces significant obstacles to providing compensation to victims of Iranian terrorism. First, it is unclear whether the Supreme Court will conclude that such an approach does not violate separation of powers issues.

Second, legislation allowing U.S. persons to attach equivalent funds held by foreign financial institutions in the United States that applies to all cases where final judgments have been obtained, *i.e.*, not simply in the case of *Peterson*, would penalize many of our partners in the fight against Iranian terrorism and proliferation activity by forcing them to pay compensation for freezing Iranian assets. In effect, these foreign financial institutions—many of whom cooperated with the United States and held Iranian funds in escrow—would now be forced to pay compensation to U.S. victims for activities in which they likely played no part. While these financial institutions could appropriate the equivalent Iranian assets to make up for their payments, such appropriation would likely lead to significant litigation *and* would prevent them and their home countries from fulfilling their obligations under the JCPOA. Given the effort and difficulty the United States had in convincing these institutions and countries to cooperate with the U.S. pressure campaign, penalizing these firms by appropriating their assets could potentially damage U.S. sanctions efforts in the future.

[31] For the Second Circuit's opinion in this case, see *Peterson v. Islamic Republic of Iran*, No. 13-2952-cv (2d Cir. July 9, 2014).

Sanctions and Securing Justice

While U.S. victims may be unable to secure Iranian funds held by foreign financial institutions—regardless of whether they are returned to Iran pursuant to the JCPOA—there are at least five ways we can work to compensate them.

First, last week Republican and Democrat Members of the House of Representatives introduced the September 11th VCF Reauthorization and U.S. Victims of State Sponsored Terrorism Compensation Act (H.R. 3858). This Act creates a fund to compensate U.S. victims of state sponsored terrorism. Relying on funds secured from enforcement actions for sanctions violations—and in particular in the case of this legislation from the $8.9 billion fine imposed on BNP Paribas for such violations—the Act creates a mechanism by which U.S. victims can receive a portion of the final assets they are owed. While a positive first step towards compensating these victims, the Act may not go far enough. For example, U.S. victims are owed more than twice the fine imposed on BNP Paribas, and so even if the entire fine went towards the fund, it would be insufficient to compensate these victims. Similarly, while the fund would help secure assets for victims, it would not directly punish Iran for its activities, which is an important part of securing justice.

Second and relatedly, Congress could pass legislation—or the executive branch could take proactive measures such as setting policy—that would dedicate a significant portion of future fines related to Iranian sanctions violations to a victims' compensation fund. For example, if another financial institution was penalized for engaging in prohibited transactions with Iran or Iranian persons, the Treasury Department or the Department of Justice, among others, could set aside a certain amount of that fine specifically for compensation purposes.

In addition, the Treasury Department and other agencies could create a "compensation bump" when considering enforcement penalties. Currently, OFAC takes into account a range of factors when assessing the appropriate fine for sanctions violations, such as whether the violation was voluntarily disclosed and if the violating company had a compliance program. In addition to these factors, for violations involving designated Iranian entities such as elements of the IRGC, the Treasury Department could increase the fine and dedicate a proportion of the total funds for victim compensation. Like the proposed September 11th VCF Reauthorization Act Fund, however, these mechanisms would help secure assets for victims but would not directly punish Iran for its activities. Further and in the case of the compensation bump, it may not be equitable to increase the penalty on an entity that, while engaged in sanctions violations, did not have a role in the terrorist acts that impacted the U.S. victims.

Third, Congress could impose a tax on U.S. firms that will allow their foreign subsidiaries to operate in Iran. Pursuant to the JCPOA, foreign subsidiaries of U.S. persons will be licensed to conduct business in Iran that is consistent with the JCPOA. As a cost of entering Iranian markets, the United States could impose a tax on these activities, the proceeds of which would go to compensate victims of Iranian terrorist activities who have obtained final judgments. Such a tax would have the dual impact of compensating victims but also imposing some—albeit limited—

pain on Iran; depending on the size of the tax, it could deter foreign subsidiaries of U.S. persons from investing much-needed capital and technology into the Iranian economy.

Fourth, as the secondary sanctions are unwound and Western companies begin to conduct more transactions in Iran, there will likely be an increase in the amount of Iranian funds that inadvertently come into the possession of U.S. persons. To the extent that these funds are discovered and blocked pursuant to U.S. law, the relevant authorities could consider earmarking them for victim compensation. This approach has certain downsides, however, such as if an Iranian entity whose assets were blocked and subsequently distributed to victims is un-designated. Similarly, it is not clear whether, after blocked, these funds could be seized and provided to victims.

Fifth, the U.S. Government can work with foreign governments holding Iranian assets to consider honoring these victims' final judgments, either in the context of the JCPOA or if Iranian assets come into the possession of those countries' institutions in the future.

Moving Forward

U.S. victims of Iranian terrorism deserve to be made whole again. But the JCPOA—and the funds it releases back to Iran—has little impact on their quest to attach property and receive compensation for the crimes that have been committed against them. Those funds would likely be unavailable to these victims under U.S. law regardless of whether they were given to Iran. These victims can receive just compensation for the pain they've suffered through a number of alternate means, and while none of these mechanisms is perfect, each offers a way to secure much-deserved recompense. Moving forward, we will need to consider these claims and our strategy in the context of not only compensating these victims, but also seeking to hold Iran to account for its past behavior and ongoing adventurism.

Thank you for your time. I look forward to your questions.