TED CRUZ
TEXAS

United States Senate

COMMITTEES:
ARMED SERVICES
COMMERCE
JUDICIARY
RULES AND ADMINISTRATION
JOINT ECONOMIC COMMITTEE

September 10, 2015

The Honorable Mitch McConnell
Senate Majority Leader
The Capitol, S-230
Washington, DC 20510

The Honorable John Boehner
Speaker of the House of Representatives
The Capitol, H-232
Washington, DC 20510

Dear Leader McConnell and Speaker Boehner:

I know that both of you share my profound concerns with the catastrophic consequences of President Obama's Iran nuclear agreement. Republicans are united against this disastrous deal, several prominent Democrats have come out against it, and the American people are solidly with us.

We are all agreed that we should do everything possible to stop this deal from going into effect and to prevent over $100 billion in frozen Iranian assets from being released to the Ayatollah Khamenei, billions of which would in turn go directly to jihadists who would use those funds to murder Americans, Israelis, Europeans, and countless others around the world.

Currently, the Senate is scheduled to vote on a resolution of disapproval, but tragically, 42 Senate Democrats have already come out in favor of the deal. This means, if we hold the vote, and no Democrats switch their votes, we will lose.

We don't have to lose.

I wanted to draw your attention to a course of action that could actually *stop* the release of funds to Khamenei. And each of you could demonstrate tremendous leadership in making it happen.

I believe we should follow a three-step process:

1) Both of you should formally determine that, under the Iran Nuclear Agreement Review Act of 2015, also known as Corker-Cardin, because President Obama has not submitted to Congress the widely reported side deals between Iran and the International Atomic Energy Agency, the President has not yet submitted the Iran agreement as required by Corker-Cardin. Therefore, the 60-day clock for congressional review did not begin to run. And, critically, as a result, *federal law prohibits the Obama Administration from lifting sanctions.*

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2) Leader McConnell should introduce a resolution expressing the sense of the Senate that, if the agreement had been introduced as a treaty, it should not be ratified. This will put everyone on record and will make clear that there is insufficient support in the Senate for approving the agreement as a treaty.

3) We can assume, based on his past practice, that President Obama will simply ignore the law and declare that he is lifting sanctions under the agreement anyway. On that assumption, we should make clear to the CEOs of banks holding frozen Iranian funds that their misplaced reliance on the President's lawlessness would not necessarily excuse them from the obligation to comply with existing federal sanctions laws. And if they release billions in funds to Khamenei, they risk billions in civil (and possibly even criminal) liability once President Obama leaves office. Having spent years advising major corporations in private practice, I can tell you that their general counsels will likely tell them their legal exposure is real, which *could well result in the banks deciding not to release the funds to Iran, the President's lawless waivers notwithstanding.*

In my judgment, this approach is the one way we have to actually stop the deal.

Let me lay out the details of my legal reasoning:

The terms of Corker-Cardin are clear. The President may not waive or otherwise reduce any sanctions on Iran under his agreement with the Iranian regime until he transmits the agreement to Congress and gives Congress an opportunity to review it. The President has not yet transmitted the agreement as that term is defined in Corker-Cardin. Therefore, under federal law, he cannot waive any sanctions against Iran.

No one would dispute that the President was barred from waiving sanctions the moment he entered into his agreement with Iran. That is because Corker-Cardin created a framework that requires a period of congressional review *before* the President is allowed to waive sanctions under the agreement. Corker-Cardin expressly requires the President to transmit "the agreement, **as defined in subsection (h)(1), including all related materials and annexes**," to Congress.[1] The statute says "**shall** transmit," so this is not a discretionary act.[2] The President's transmittal of the agreement sets in motion a 60-day period of congressional review if the agreement is transmitted between July 10, 2015, and September 7, 2015.[3] Otherwise, the congressional review period is 30 days.[4]

It would have made little sense, of course, for Congress to create a review period and nonetheless allow the President to immediately implement the agreement. And indeed, Congress did not do that. To the contrary, Congress expressly provided that, "**prior to** and during **the period for transmission**" of the agreement and "during the period for congressional review," "**the**

[1] 42 U.S.C. § 2160e(a)(1)(A) (emphasis added).
[2] *Id.* (emphasis added).
[3] *Id.* § 2160e(b)(2).
[4] *Id.* § 2160e(b)(1).

President may not waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran under any provision of law or refrain from applying any such sanctions pursuant to [the agreement]."[5] In short, "prior to and during" transmission of the agreement to Congress, the President is affirmatively barred by statute from eliminating, suspending, or otherwise reducing any sanctions against Iran pursuant to the agreement.

To be sure, the President transmitted *an* agreement to Congress on July 19, 2015, but he did not transmit *the* agreement "as defined in subsection (h)(1), including all related materials and annexes."[6] Subsection (h)(1) of Corker-Cardin expressly defines the agreement broadly as any "agreement related to the nuclear program of Iran that includes the United States, commits the United States to take action, or pursuant to which the United States commits or otherwise agrees to take action," "**including** any joint comprehensive plan of action entered into or made between Iran **and any other parties**," and "any additional materials related thereto, including annexes, appendices, codicils, **side agreements**, implementing materials, documents, and guidance, technical or other understandings, and any **related agreements**, whether entered into or implemented prior to the agreement or to be entered into or implemented in the future."[7] This definition thus makes clear that the agreement that must be submitted to Congress must include any "related" materials, including "side agreements," and any "related agreements."

Although President Obama has given Congress much reason to doubt his good faith over the years, Congress oftentimes has no choice but to rely on the representations of the President in determining whether he has complied with his statutory obligations. It is therefore understandable that Congress was misled into believing at the time the President made his July 19 submission to Congress that he was transmitting all the materials required by Corker-Cardin. But we now know—by sheer fortuity no less—that he did not. It has been publicly reported that Iran and the IAEA have entered into at least two side agreements that bear directly on the inspections regime that is at the heart of the Administration's agreement with Iran.[8] Yet the President has not submitted those side agreements to Congress.

Because the side agreements qualify as "related" materials, "side agreements," or "related agreements," they clearly fall within Corker-Cardin's definition of an "agreement" and should have been transmitted to Congress. The statutory requirement that the President submit all "related" materials and agreements is critical because, otherwise, Congress would not be able to make an informed decision about whether to disapprove the agreement. The fact that the undisclosed side agreements have not been submitted to Congress means that the agreement "as defined in subsection (h)(1), including all related materials and annexes," has not been transmitted and that, as a consequence, the President may not waive any sanctions under the agreement.

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[5] *Id.* § 2160e(b)(3) (emphasis added).
[6] *Id.* § 2160e(a)(1)(A).
[7] *Id.* § 2160e(h)(1) (emphasis added).
[8] *See* Letter from Leader Mitch McConnell et al. to President Barack Obama, July 22, 2015, http://www.cotton.senate.gov/sites/default/files/IAEASideAgreementLetter.pdf; Associated Press, Text of draft agreement between IAEA, Iran, August 20, 2015, http://bigstory.ap.org/article/bedd428e26924eed95c5ceaeec72d3a4/text-draft-agreement-between-iaea-iran.

The law could not be any clearer. Corker-Cardin explicitly prohibits the President from removing any sanctions "prior to" the transmittal of the Iran agreement to Congress. Because the President has not transmitted the agreement as it is defined by Corker-Cardin, he cannot waive any sanctions under the agreement. To do so would be unlawful.

We are all agreed that we must do everything possible to stop implementation of President Obama's deal with Iran. As the elected Republican leaders in both Houses of Congress, you have it in your legal authority to *stop* the release of over $100 billion to Iran.

I ask you to use that authority. I urge you both to declare that the President has failed to submit the agreement to Congress as required by Corker-Cardin and to make clear that any sanctions relief granted under the agreement would therefore be illegal and directly contrary to federal law.

Sincerely,

Ted Cruz
U.S. Senator