

# United States Senate

WASHINGTON, DC 20510

August 12, 2016

The Honorable John F. Kerry  
Secretary of State  
United States Department of State  
2201 C Street, NW  
Washington, DC 20520

The Honorable Jacob J. Lew  
Secretary of the Treasury  
United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Loretta E. Lynch  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20230

Dear Secretary Kerry, Secretary Lew, and Attorney General Lynch:

The unusual circumstances surrounding the administration's payment of \$400 million to the Government of the Islamic Republic of Iran have raised serious concerns not only about the propriety of the transaction, but about its legality as well.

Much of the concern, of course, has focused on the appearance that the payment—the initial installment of a \$1.7 billion settlement resolving a 37-year-old dispute with Iran<sup>1</sup>—was made in exchange for the release of four American hostages held by Iran. Although the administration has denied there was any quid pro quo, the close temporal proximity of the payment to the release of the hostages suggests otherwise. As the Justice Department is never remiss to point out in court, an illicit quid pro quo can be inferred from the timing of the quid and the quo.<sup>2</sup> It can also be inferred from the suspicious nature of the surrounding circumstances, and in this case, there is much to be suspicious about. If the payment was authorized by law and not otherwise intended as a ransom, then why undertake the laborious task of transferring the funds to the central banks of the Netherlands and Switzerland, converting the dollars into euros, Swiss francs, and other currencies, and then secretly transporting the cash in an unmarked cargo plane to Iran?<sup>3</sup> Indeed, it has been reported that senior officials in the Justice Department “raised alarms” over the “timing and manner of payment.”<sup>4</sup> The suspicious timing and circumstances, combined with reports of Iranian officials describing the transaction as a ransom payment,<sup>5</sup> are

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<sup>1</sup> Jay Solomon & Carol E. Lee, *U.S. Sent Cash to Iran as Americans Were Freed*, *The Wall Street Journal* (Aug. 3, 2016), <http://www.wsj.com/articles/u-s-sent-cash-to-iran-as-americans-were-freed-1470181874>.

<sup>2</sup> *Cf.* Department of Justice, Criminal Resource Manual § 2044 (explaining in the context of a bribery prosecution that a quid pro quo can be established “by proof of a pattern of payments and official acts”).

<sup>3</sup> Jay Solomon & Carol E. Lee, *U.S. Sent Cash to Iran as Americans Were Freed*, *The Wall Street Journal* (Aug. 3, 2016), <http://www.wsj.com/articles/u-s-sent-cash-to-iran-as-americans-were-freed-1470181874>.

<sup>4</sup> Devlin Barrett, *Justice Department Officials Raised Objections on U.S. Cash Payment to Iran*, *The Wall Street Journal* (Aug. 3, 2016), <http://www.wsj.com/articles/justice-department-officials-raised-objections-on-u-s-cash-payment-to-iran-1470262789>; *see also* Devlin Barrett, *Senior Justice Official Raised Objections to Iran Cash Payment*, *The Wall Street Journal* (Aug. 12, 2016), <http://www.wsj.com/articles/senior-justice-official-raised-objections-to-iran-cash-payment-1470994380>.

<sup>5</sup> Jay Solomon & Carol E. Lee, *U.S. Sent Cash to Iran as Americans Were Freed*, *The Wall Street Journal* (Aug. 3, 2016), <http://www.wsj.com/articles/u-s-sent-cash-to-iran-as-americans-were-freed-1470181874>.

strong evidence that the administration did indeed agree or at least understand that the decades-long dispute was settled in exchange for the return of American prisoners in violation of longstanding United States policy against the payment of ransom for hostages.

While we are deeply concerned about the national security implications of the administration's cash-for-hostages scheme, especially in light of reports that Iran has already arrested additional Americans,<sup>6</sup> the purpose of this letter is to inquire about the legality of the payment.<sup>7</sup>

As you know, Iran has long been designated by the State Department as a state sponsor of terrorism.<sup>8</sup> This designation is still in effect, notwithstanding the administration's recent agreement with Iran over its nuclear program. As a state sponsor of terrorism and a country engaged in destabilizing activities across the region and beyond—including developing ballistic missiles and brutally suppressing human rights—Iran is subject to a wide array of economic sanctions. One such sanction prohibits “the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran.”<sup>9</sup> This prohibition may not be circumvented by providing the goods, technology, or services to “a person in a third country” when there is “knowledge or reason to know that” such things “are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran.”<sup>10</sup> In addition, any transaction that “evades or avoids,” “has the purpose of evading or avoiding,” or “attempts to violate” any sanction is also prohibited.<sup>11</sup>

The administration's \$400 million cash payment to Iran appears to violate these provisions. The administration “suppl[ied]” a “good” or “service”—in this case, \$400 million<sup>12</sup>—to a “person in a third country”—the Dutch and Swiss central banks—with “knowledge” that the money is “intended specifically for supply” to the Iranian government—the beneficiary of the payment. That the dollars were not provided directly to Iran, but were instead routed through the Netherlands and Switzerland and converted into other currencies for transportation to Iran, is irrelevant since the law prohibits providing any good or service either “directly” or “indirectly” or with the “purpose of evading or avoiding” the prohibition.<sup>13</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., Andrew C. McCarthy, *President Obama Violated the Law with His Ransom Payment to Iran*, National Review (Aug. 6, 2016), <http://www.nationalreview.com/article/438744/>.

<sup>8</sup> See U.S. Department of State, State Sponsors of Terrorism, <http://www.state.gov/j/ct/list/c14151.htm>.

<sup>9</sup> 31 C.F.R. § 560.204.

<sup>10</sup> *Id.* § 560.204(a).

<sup>11</sup> *Id.* § 560.203(a).

<sup>12</sup> 31 C.F.R. § 560.427(a)(1) makes clear that the prohibition on the supply of services in § 560.204 applies to the “transfer of funds, directly or indirectly, from the United States or by a U.S. person, wherever located, to Iran or the Government of Iran.”

<sup>13</sup> Insofar as the Government of Iran has an interest in the \$400 million, the payment also violates 31 C.F.R. § 560.211(a), which prohibits the transfer of “[a]ll property and interests in property of the Government of Iran . . . that are in the United States.” But there is an exception to this sanction, which would presumably apply here, for “transactions for the conduct of official business of the Federal Government.” 31 C.F.R. § 560.210(e). This official business exception does not apply, however, to 31 C.F.R. § 560.204. See 31 C.F.R. § 560.210(e).

If the transaction was explicitly permitted under another regulation—for instance, the regulation authorizing “[a]ll transactions necessary ... to payments pursuant to settlement agreements entered into by the United States Government”<sup>14</sup>—then why did the administration structure the transaction as a cash payment in non-United States currency? That would have been entirely unnecessary.

It is imperative that the administration provide a full accounting of its conduct with respect to the \$400 million cash payment to Iran. If the administration violated the law, then Congress and the American people should be made aware of it so that they can hold the appropriate officials accountable and take whatever steps necessary to strengthen the law and prevent any reoccurrence. If the transaction was legally permissible, then it is important for Congress and the American people to know that as well so that they may consider whether to enact legislation to prevent the United States Government from providing funds in similar circumstances in the future to the leading state sponsor of terrorism. To that end, we respectfully request that you provide the following information:

- (1) Describe in detail each step of the transaction that resulted in the payment of \$400 million in cash to the Government of the Islamic Republic of Iran, including the account from which the funds were drawn, how the funds were transferred, converted, and transported to Iran, and who specifically received the funds on behalf of Iran.
- (2) Identify the United States and Iran officials responsible for negotiating, authorizing, and carrying out the transaction.
- (3) Since the payment was reportedly made in cash, explain what steps the administration has taken to track Iran’s use of the funds and to ensure the funds will not be used to finance Iran’s terrorism operations.
- (4) Provide a detailed explanation of whether the transaction violated 31 C.F.R. § 560.204.
- (5) Even if the transaction violated § 560.204, it may nevertheless be permissible under § 560.510(d)(2), which authorizes “[a]ll transactions necessary ... to payments pursuant to settlement agreements entered into by the United States Government” in a legal proceeding to which the United States Government is a party.
  - (a) Did the United States Government pay the \$400 million in satisfaction, or partial satisfaction, of a settlement agreement with the Iranian government?
  - (b) If so, was the settlement agreement entered into in a legal proceeding in which the United States was a party? Please identify the legal proceeding, including the court or tribunal and case number, the relevant claims, and provide a copy of the settlement agreement as well as confirmation that Iran has dismissed its claims with prejudice.

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<sup>14</sup> 31 C.F.R. § 560.510(d)(2).

- (c) If the \$400 million payment only partially satisfied the settlement, how much more does the United States Government owe and how does the administration intend to make payment?
- (d) Is it the administration's position that the transaction was authorized under § 560.510(d)(2) as a "payment[]" pursuant to [a] settlement agreement"?
- (6) Is it the administration's position that the transaction was authorized pursuant to a law or regulation other than, or in addition to, § 560.510(d)(2)? If so, specify the law or regulation and provide a detailed explanation of the administration's position.
- (7) If the transaction was authorized under § 560.510(d)(2) or any other law or regulation, explain why it was necessary to pay the Iranian government in cash in a non-United States currency.

Please provide the requested information as soon as possible, but no later than **5:00 p.m. on Monday, August 22, 2016**. We appreciate your cooperation in this important matter and look forward to your response. If you have any questions, please contact Ryan Newman for Senator Cruz at (202) 224-5922 or Will Levi for Senator Lee at (202) 224-5444.

Sincerely,



Ted Cruz  
U.S. Senator



Mike Lee  
U.S. Senator