



April 14, 2022

The Hon. Joseph R. Biden, Jr.
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

The Hon. Anthony Blinken
Secretary of State
United States Department of State
2201 C Street NW
Washington, DC 20520

The Hon. Merrick Garland
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Iran Deal Litigation Hold

Dear President Biden, Secretary of State Blinken, and Attorney General Garland:

America First Legal Foundation (AFL) writes on behalf of American citizens, Members of Congress, and victims of terrorism at the hands of the Islamic Republic of Iran and its proxies, Hamas and Hezbollah.

On May 8, 2018, President Donald J. Trump lawfully terminated the Joint Comprehensive Plan of Action (JCPOA) with the Islamic Republic of Iran—reimposing all sanctions that the Obama Administration had lifted—because the JCPOA failed to protect U.S. national security, enriched the Iranian regime, and enabled international terrorism.¹ At best, the JCPOA merely delayed Iran’s pursuit of nuclear weapons while preserving its nuclear research and development activities.² Consequently, the Iran Nuclear Agreement Review Act of 2015, 42 U.S.C. § 2160e, requires you to submit to Congress, for its review and approval, every “agreement” that is not otherwise a “treaty” under Article II, § 2, clause 2 and Article IV, clause 2

¹ The White House, “Fact Sheet: President Donald J. Trump is Ending United States Participation in an Unacceptable Iran Deal”, (May 8, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-ending-united-states-participation-unacceptable-iran-deal/>.

² *Id.*

of the Constitution, between the Biden Administration and the Islamic Republic of Iran relating to Iran’s nuclear program.³

I. Statutory requirements

The Iran Nuclear Agreement Review Act provides that no later than 5 calendar days after reaching any agreement with Iran, President Biden must transmit to Congress:

- (A) the agreement including all related materials and annexes;
- (B) a verification assessment report of the Secretary of State prepared under 42 U.S.C. § 2160e(a)(2); and
- (C) a certification that—
 - (i) the agreement includes the appropriate terms, conditions, and duration of the agreement’s requirements with respect to Iran’s nuclear activities and provisions describing any sanctions to be waived, suspended, or otherwise reduced by the United States, and any other nation or entity, including the United Nations; and
 - (ii) the President determines the agreement meets United States non-proliferation objectives, does not jeopardize the common defense and security, provides an adequate framework to ensure that Iran’s nuclear activities permitted thereunder will not be inimical to or constitute an unreasonable risk to the common defense and security, **and ensures that Iran’s nuclear activities permitted thereunder will not be used to further any nuclear-related military or nuclear explosive purpose, including for any research on or development of any nuclear explosive device or any other nuclear-related military purpose.**

42 U.S.C. § 2160e(a)(1) (emphasis added).

³ Under the statute:

The term “agreement” means an 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, regardless of the form it takes, whether a political commitment or otherwise, and regardless of whether it is legally binding or not, 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.

42 U.S.C. § 2160e(h)(1).

The Secretary of State’s “verification assessment report,” in turn, must include his assessment of (i) the extent to which he will be able to “verify” that Iran is complying with its obligations and commitments under the agreement; (ii) the adequacy of the safeguards and other control mechanisms and other assurances” to ensure that Iran’s activities permitted by an agreement “**will not be used to further any nuclear-related military or nuclear explosive purpose, including for any research on or development of any nuclear explosive device or any other nuclear-related military purpose.**” 42 U.S.C. § 2160e(a)(2) (emphasis added).

The Biden Administration has spoken about a “a mutual return to compliance with the JCPOA.”⁴ But this is not a route to escape Congressional review or to avoid accountability for enriching and empowering the Iranian regime and its terrorist partners. Key sunset clauses have lapsed, and the regime has irreparably violated many of the JCPOA’s critical provisions. The idea of “return to compliance” is a risible fiction.

II. Liability for businesses and individuals doing business with Iran

Even assuming the Biden Administration may avoid its Constitutional obligation under Article II, § 2, clause 2 to obtain ratification by two-thirds of the U.S. Senate for its promises to Iran,⁵ a Biden-Iran deal that does not fully comply with the Iran Nuclear Agreement Review Act is without legal force or effect. Accordingly, a person who does business with or provides financial services to a currently sanctioned Iranian person will not be sheltered from potential liability for providing material support for terrorism in violation of 18 U.S.C. §§ 2339A, 2339B, and/or 2339C and similar laws. Nor is an officer or employee of the United States who acts under or pursuant to such a deal entitled to the safe harbor protection of 18 U.S.C. § 2337 against personal capacity liability.

III. The Biden Administration cannot be trusted about Iran

The Biden Iran policy is being made by former Obama Administration officials with close ties to the Iranian regime. This raises grave concerns for at least four reasons.

First, the Obama administration systematically deceived Congress and the American people about the measures it was taking to prop up the Iranian dictators. A June 6, 2018, majority report by the Senate Permanent Subcommittee on Investigations documented how multiple Obama officials lied to Congress about

⁴ See *Senior State Department Official on the JCPOA Talks*, U.S. Department of State (Jan. 31, 2022), <https://www.state.gov/senior-state-department-official-on-the-jcpoa-talks/>.

⁵ A treaty is a contract with a foreign nation. *Bond v. United States*, 572 U.S. 844, 875 (2014) (Scalia, J., concurring); *Whitney v. Robertson*, 124 U.S. 190, 194 (1888).

opening the U.S. financial system to the regime. At the same time, Obama officials pressured European banks and firms to invest in Iran *despite* U.S. sanctions. A senior State Department official was quoted in the report acknowledging that such transactions “are prohibited by U.S. sanctions,” yet immediately after, he affirmed that the official and his colleagues were providing assistance to the Iranian regime “as a gesture of support.”⁶

Second, both John Kerry, President Biden’s climate “czar”, and Robert Malley, his Special Envoy for Iran, played key roles in negotiating the JCPOA. During the Trump Administration, these individuals advocated for the Iranian regime, obstructing Trump Administration policies that strengthened American national security and protected our regional allies by crippling the regime’s ability to spread terrorism; choking off the corrupt trade between foreign businesses and the regime’s principals; and freeing the Iranian people to live with their neighbors, including Israel, in peace. Neither Mr. Kerry nor Mr. Malley nor any of the other former Obama officials have been investigated and held accountable for their actions.⁷

Third, following President Obama’s blueprint, the Biden Administration team has kept Congress, the American people, and our regional allies in the dark about its support for the regime. All indications suggest that you are being less than forthcoming with Congress precisely because the Biden Administration insists on making extraordinary efforts to appease the Iranian regime, contrary to American interests. Three top U.S. diplomats have quit the negotiations because, according to a whistleblower, the Biden Iran deal is “much, much worse” than the Obama deal.⁸ Published reports indicate that you support allocating billions in International Monetary Fund special drawing rights to Iran (and to China and to Russia), which may be exchanged for U.S. dollars and other major currencies, to help the regime and to avoid Congressional oversight.⁹ And Congress has been forced to take

⁶ U.S. Senate, Permanent Subcommittee on Investigations, “Majority Report: Review of U.S. Treasury Department’s License to Convert Iranian Assets Using the U.S. Financial System,” pp. 2, 5-7, 11-14, 20, 33, 43-45 (June 6, 2018), <https://www.hsgac.senate.gov/imo/media/doc/2018-06-06%20PSI%20Majority%20Staff%20Report.pdf>.

⁷ Ben Wolfgang and Guy Taylor, “John Kerry held backchannel talks with Iran, Javad Zarif”, The Washington Times (Feb. 21, 2021), <https://www.washingtontimes.com/news/2021/feb/21/john-kerry-held-backchannel-talks-iran-javad-zarif/>.

⁸ Gabriel Noronha, “This isn’t Obama’s Iran deal. It’s much, much worse”, TabletMag.com (Mar. 7, 2022), <https://www.tabletmag.com/sections/news/articles/this-isnt-obamas-iran-deal-its-much-much-worse>.

⁹ Zachary Halaschak, “Kennedy presses Biden on support for IMF currency for Russia, Iran, and China”, The Washington Examiner (Apr. 6, 2022), <https://www.washingtonexaminer.com/policy/economy/kennedy-presses-biden-on-support-for-imf-currency-for-russia-iran-and-china>.

extraordinary measures to obtain information about your activities,¹⁰ precisely the kind of situation the Iran Nuclear Agreement Review Act was enacted to avoid.

Finally, we note that you have entrusted Russia to negotiate the terms of the Biden-Iran deal, despite its actions in Ukraine. Reportedly, Secretary Blinken has renewed a series of sanctions waivers to allow Russia to perform \$10 billion of Iranian nuclear work as part of a package of concessions intended to entice both countries into signing your new accord.¹¹ This is, at best, senseless.

IV. You must preserve all records of your activities

Please be advised that AFL intends to take legal action to block any Biden-Iran deal that is not submitted to Congress in full compliance with the Iran Nuclear Agreement Review Act. To prevent concealment and spoliation, and in addition to your general obligations under the Presidential Records Act and the Federal Records Act, this letter notifies you to segregate and preserve all records, including all electronically stored information, copies, data, and backup as defined by Fed. R. Civ. P. 34, and any paper files you maintain, that might be relevant to this matter. In addition, you are on notice to cease and desist from deleting or destroying all records, including but not limited to emails, whether under an agency document destruction policy or otherwise. AFL considers these records to be valuable and irreplaceable sources of discoverable information.

Sincerely yours,

/S/ _____
Reed D. Rubinstein
America First Legal Foundation

¹⁰ Elizabeth Elkind, “Republicans and Democrats join forces to demand Biden answer questions about 'concerning' new Iran nuclear deal that could lift the Ayatollah's sanctions and Revolutionary Guard's terrorist tag”, The DailyMail.com (Mar. 10, 2022), <https://www.dailymail.co.uk/news/article-10599363/Republicans-Democrats-demand-Biden-answer-questions-concerning-new-Iran-nuclear-deal.html>.

¹¹ Adam Kredo, “Exposed: The Russian Companies That Will Get Billions From New Iran Nuclear Deal”, The Washington Free Beacon.com (Apr. 8, 2022), <https://freebeacon.com/national-security/exposed-the-russian-companies-that-will-get-billions-from-new-iran-nuclear-deal/>.