

# STATEMENT OF REPRESENTATIVE TED W. LIEU IN OPPOSITION TO THE JOINT COMPREHENSIVE PLAN OF ACTION (JCPOA)

## I. INTRODUCTION

### *A. Whether to support or oppose the JCPOA is a close call. Both supporters and opponents need to tone down the extreme rhetoric—we are all on the same team.*

President Obama has made America better and stronger on a wide range of issues—from establishing health care as a right to aggressively tackling climate change to opening up relations with Cuba. While I believe President Obama is a transformational president, I do not agree with every policy issue advanced by the Administration. I opposed Trade Promotion Authority for the Trans Pacific Partnership and opposed the Administration’s proposal for an Authorization for Use of Military Force (AUMF) that would have authorized additional ground troops in the Middle East.

Because of my profound respect for our President, on every policy issue I give the Administration the benefit of the doubt. I attended multiple classified and unclassified briefings by Administration officials on the JCPOA; analyzed transcripts of congressional hearings and articles by commentators; met with think tank scholars, professors and organizations; considered the views of various foreign countries; discussed the JCPOA with current and former Members of Congress; and engaged in over 100 meetings and conversations with my constituents.

Based on my due diligence, one fact is clear: those who are certain the JCPOA is a good deal, or certain the JCPOA is a bad deal, are misguided in their certainty. The truth is that we will not know for years whether the JCPOA—which is a very complex document—is a good deal, a bad deal, or something in between. This is because the JCPOA has both significant strengths and significant weaknesses, it changes dramatically over time, and its ultimate success or failure will depend on the *future* behavior of Iran,<sup>1</sup> the E3/EU+3,<sup>2</sup> the International Atomic Energy Agency (IAEA), and the countries in the Middle East. Scholars have noted this issue is a “close call.”<sup>3</sup>

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<sup>1</sup> When I use the term “Iran” in this document, I am generally referring to the Iranian regime, not to the people of Iran. I met with members of the National Iranian American Council who support the JCPOA and they presented heart-wrenching stories of the effects that sanctions have had on their family members. I acknowledge the difference between the regime and the people of Iran and I hope one day the aspirations, hopes, and dreams of the Iranian people will no longer be held back by a brutal, theocratic regime.

<sup>2</sup> The E3/EU+3 entities include the United States, China, France, Germany, Russian Federation, United Kingdom and the High Representative of the European Union for Foreign Affairs and Security Policy.

<sup>3</sup> See John Harwood, “Divisions and Inertia in Congress May Hand Obama a Victory on Iran Deal,” *New York Times*, Aug. 18, 2015 (quoting Harvard Professor and former Ambassador Nicholas Burns).

Representative Jerrold Nadler, who supports the Iran deal, wrote a particularly thoughtful statement. I agree with his view that “These decisions are hard, involving close calls and uncertain future predictions. In this situation, it is inevitable that people of good conscience and common goals will come down on different sides of the issue.”<sup>4</sup>

I have yet to meet an organization or person who is clairvoyant. Given the significant number of failures of American foreign policy in the Middle East spanning decades—from diplomatic failures, to intelligence failures, to use of force failures, and everything in between—it is safe to say that American foreign policy has been decidedly *not* clairvoyant in a very complex and volatile region of the world.

The layers of complexity in the Middle East and its ability to continually surprise American policymakers mean that both supporters of the JCPOA and opponents should show some humility and tone down the extreme, over-the-top rhetoric. It is offensive to compare supporters of the Iran Deal to Neville Chamberlain. It is equally offensive to call opponents of the Iran Deal warmongers. As I explain in this document, voting against the JCPOA will not result in war, it will result in more diplomacy. Supporters do not support the JCPOA because they want appeasement and opponents do not oppose the JCPOA because they want war. It is time for both sides to stop using vitriolic rhetoric.

We are all Americans. We are on the same team. The failure of the United States to prevent North Korea from acquiring nuclear weapons is a stark reminder of what happens when we are not on the same team. Like the Iran Deal, the US-North Korea Agreed Framework had international support but was highly controversial in Congress. In hindsight, the US should not have trusted North Korea. Several commentators, however, have argued that the North Korean deal failed not because of the Clinton Administration that negotiated the deal, but because the subsequent Bush Administration and Congress failed to follow through on the agreement.<sup>5</sup>

The bridge-burning rhetoric by both supporters and opponents of the Iran deal is extremely unhelpful to bringing people together the day after the vote on the JCPOA. This will be an extremely consequential vote, but it is a moment in time. Regardless of the outcome of the vote, the hard work of ensuring American national security now and in the future will require constant cooperation between not just this Congress and this Administration, but future Congresses and future Administrations.

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<sup>4</sup> Representative Jerrold Nadler, “Statement on the P5+1 Joint Comprehensive Plan of Action,” Aug. 21, 2015.

<sup>5</sup> See, e.g., Glenn Kessler, “Cotton’s Misguided History on the North Korean Nuclear Deal,” *Washington Post*, March 13, 2015; Robert Gallucci and Joel Wit, “North Korea’s Real Lessons for Iran,” *New York Times*, April 10, 2015.

This is a long document. My remarkable constituents have been very engaged and very passionate on both sides of this extraordinarily complex issue.<sup>6</sup> Ultimately I view this vote as a vote of conscience. Whether my constituents agree or disagree with my vote, they have the right to know what facts I relied upon, what assumptions I used, and my reasoning process.

### ***B. Why I will be opposing the JCPOA***

Soon I will be voting on the JCPOA. Based on the totality of information I have considered, I will be opposing the JCPOA because I believe it is more likely than not that the JCPOA will turn out to be a bad deal.

It is with a heavy heart that I come to this conclusion because the JCPOA has significant strengths. I commend the Administration for rolling back Iran's nuclear breakout time from approximately two or three months to approximately one year at the implementation date of the JCPOA. I also commend the Administration for negotiating snapback sanctions that can be imposed unilaterally if Iran were to cheat. Those are major accomplishments.

There is also a high cost, which is that Iran—instead of getting gradual sanctions relief based on performance over time—will instead receive a massive, upfront cash infusion of somewhere between \$50 billion and \$100 billion that the regime can spend to further its funding of terrorist networks and brutal proxy regimes. The regime will also receive hundreds of billions of dollars more over the course of the JCPOA that otherwise would have been frozen under sanctions.

*Nevertheless, if this was the basic contour of the deal—that we roll back Iran's nuclear program to a one-year breakout time in exchange for sanctions relief with snapback sanctions as an enforcement mechanism—I would vote yes on the deal.* Unfortunately, this is not the entirety of the deal. The rollback of Iran's nuclear program under the JCPOA is *temporary*. After 8.5 years, Iran's nuclear breakout time starts coming back down, and after year 15 the nuclear breakout time diminishes to just a few weeks or near zero.<sup>7</sup> In addition, the snapback sanctions expire after year 10.

*I would, however, even vote yes on a deal with temporary provisions if the relative status of Iran and the United States were roughly the same after the provisions expired.* Unfortunately, that is not the deal either. Instead, as a direct result of following the JCPOA, Iran will likely be (1) far stronger than it is today in terms of both its military and economy, (2) at a very short

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<sup>6</sup> Since July 1, 2015, we have received thousands of constituent contacts, ranging from phone calls to emails to petitions to letters to meetings regarding the Iran Deal.

<sup>7</sup> See JCPOA, Annex I, Section G, and Robert Einhorn “Debating the Iran Nuclear Deal,” *Brookings*, Aug. 2015 (“[A]s Iran becomes free to increase the number of operating centrifuges and introduce more advanced types (after 10 years) and to increase its enrichment level and stocks of enriched uranium (after 15 years), breakout time will decrease and eventually shrink to a matter of weeks”); see also Transcript of *NPR* interview, Apr. 7, 2015 (President Obama stated “What is a more relevant fear would be that in year 13, 14, 15, they have advanced centrifuges that enrich uranium fairly rapidly, and at that point the breakout times would have shrunk almost down to zero”).

breakout time not just for one nuclear weapon, but many nuclear weapons and (3) capable of delivering nuclear weapons long range, potentially onto our homeland.<sup>8</sup>

Another way of looking at this issue is the following: Should the US agree to a deal that gives Iran massive and continuing sanctions relief but has no restrictions on the number or type of centrifuges that Iran can spin, no snapback sanctions, no arms embargo, and no ballistic missile ban? That's what this deal looks like after year 10.

By lifting the arms embargo in year five and the ballistic missile ban in year eight, the deal allows Iran to significantly build up its military, export more terror, and acquire or develop advanced ballistic missile technology. The JCPOA also allows Iran, when the nuclear rollback provisions expire, to have a vast nuclear infrastructure. Iran can legally spin an unlimited number of advanced centrifuges and stockpile an unlimited amount of enriched uranium. The situation caused by the JCPOA likely increases the chances of war and conflict, both in the short term and long term, and could fuel an arms race in a volatile region of the world.

Avoiding war has always been one of my two central guiding principles, with the other principle the protection of US national security. That's why I opposed the Administration's request for an AUMF to send ground troops to the Middle East;<sup>9</sup> voted for an amendment to this year's National Defense Authorization Act offered by Representatives Barbara Lee, Jim McGovern, and Walter Jones to withdraw US forces from Iraq and Syria; and opposed the Administration's airstrikes in Syria.

*After considerable thought and study, I have concluded the JCPOA increases the chances of more regional conflict and US entanglement in the Middle East in the short term, and a lengthy, difficult and more deadly war with Iran in the long term. Specifically, my predictions are that the JCPOA will likely result in at least the following three consequences:*

1. In the short-term (years 1 to 4), regional wars and conflict will likely increase because Iran will use part of the upfront infusion of \$50 to \$100 billion to fund terrorist networks and violent proxy regimes in a volatile region of the world during a particularly volatile time. This will fuel an even larger arms race in the Middle East and cause Iran's enemies to retaliate. Our allies in the Middle East have already asked the US to provide more assistance, which could increase American entanglement in the Middle East. Keep in mind the US is currently bombing in Syria (which I oppose); has ground troops in Iraq (which I oppose); and is helping Saudi Arabia bomb Yemen (which I oppose).

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<sup>8</sup> See Testimony of Vice Admiral J.D. Syring, USN Director, Missile Defense Agency Before Senate Committee on Armed Services, Subcommittee on Strategic Forces, Mar. 25, 2015, Transcript p. 31 ("The DIA's assessment is that Iran is capable of flight testing an ICBM in 2015"). If the Defense Intelligence Agency believes Iran has the capability to test ICBMs now, imagine where Iran will be after the JCPOA lifts the ballistic missile ban.

<sup>9</sup> Ben Kamisar, "Rep. Ted Lieu Becomes First Democrat to Oppose Obama's ISIS request," *The Hill*, February 11, 2015.

2. In the medium term (years 5 to 8), regional wars and conflict could get even more lethal. Iran can considerably build up its military—including ground, air and missile capabilities—because the deal specifically lifts both the arms embargo in year five and the ballistic missile ban in year eight. (The surprise lifting of these two arms control provisions makes the JCPOA weaker than the framework announced at Lausanne). Iran can also seek to provide advanced conventional weapons and missiles to its terrorist networks and proxy regimes. Moreover, Iran can more easily acquire technology that will allow it to develop intercontinental ballistic missiles.
3. In the long term (years 8.5 to 15+), the chances increase of a more protracted, difficult, and deadlier war. That’s because Iran’s nuclear breakout time goes down to a few weeks or near zero not just for one nuclear weapon, but rather for *many* nuclear weapons along with the potential ability to *deliver* those weapons onto American soil with intercontinental ballistic missiles. With Iran building up its military and snapback sanctions expiring, options to the American president become more limited. If Iran were to race to build nuclear weapons when the JCPOA’s nuclear rollback provisions expire, the US might not be able to take out Iran’s nuclear facilities with just airstrikes. The JCPOA thus exposes America to a grave, potentially existential threat that would be unlikely to occur but for this deal.

The above consequences occur if Iran complies with the JCPOA. Opponents of the agreement have raised many issues related to what happens if Iran does not comply or cheats, since Iran has previously violated numerous international agreements.

Opponents are concerned about a number of verification and compliance issues, including: the lack of anytime, anywhere inspections at suspected sites;<sup>10</sup> the confidential agreement—which I and other Members of Congress are not allowed to see—between the IAEA and Iran on inspections at the Parchin facility;<sup>11</sup> the all-or-nothing nature of the snapback sanctions mechanism that make it difficult to use;<sup>12</sup> and the difficulty of verifying what a closed regime may be hiding in a country that is larger than Germany, France, and Spain combined.<sup>13</sup>

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<sup>10</sup> See Eli Lake and Josh Rogin, “Everyone but Kerry Expected ‘Anytime, Anywhere’ Inspections,” *Bloomberg*, July 22, 2015 (“Under the terms of the final deal, Iran will have at least 24 days before it would be compelled to allow an inspector physical access to a suspected site”).

<sup>11</sup> See David Sanger, “Prospect of Self-Inspections by Iran Feeds Opposition to Nuclear Deal,” *New York Times*, Aug. 2015 (stating that “it now appears that Iranian officials may be allowed to take their own environmental samples at the [Parchin] site and turn them over to inspectors”).

<sup>12</sup> See JCPOA, paragraphs 37 and 38. The JCPOA does not allow for a portion of the sanctions to snapback—it would have to be either all the sanctions or none of the sanctions. Opponents argue that the US would not snapback all the sanctions if Iran cheats a little, or even somewhat, since that would terminate the deal.

<sup>13</sup> See *Encyclopedia of the Nations*, Islamic Republic of Iran (Iran covers an area of “1.648 million square kilometers” which is 636,296 square miles).

I do not address the above verification and compliance issues because it would not change my vote. I oppose the JCPOA based on my analysis of the existential consequences to the US if Iran simply followed the JCPOA for fifteen years. If Iran were to cheat, then the potential existential threat to America would occur sooner.

I also freely admit that my predictions could be wrong. And if the JCPOA is put into effect, I hope I am wrong. I note, however, that the arms race and more US entanglement in the Middle East are already starting to happen, and the long term problems I identified have also been recognized by others in the foreign policy establishment.

For example, Dennis Ross and David Petraeus, both of whom served in the Obama Administration, wrote “[T]he deal places no limits on how much the Iranians can build or expand their nuclear infrastructure after 15 years. Even the monitoring provisions that would continue beyond 15 years may prove insufficient as the Iranian nuclear program grows. And Iran’s ability to dramatically increase its output of enriched material after year 15 would be significant, as Iran deploys five advanced models of centrifuges starting in year 10 of the agreement.”<sup>14</sup>

The remainder of this document will discuss how I arrived at my conclusions. I will discuss the two competing narratives of Iran that animate supporters and opponents of the deal; how the JCPOA worsens over time; and alternatives if Congress rejects the JCPOA.

## **II. Two Competing Narratives of Iran**

### ***A. The Narrative Upon Which the JCPOA is Based***

There are two very different narratives of Iran that appear to be causing supporters and opponents to come to very different conclusions on the JCPOA. One narrative is that this is an epochal moment, similar to what President Nixon did with China and what President Reagan did with the Soviet Union.<sup>15</sup> Supporters argue the JCPOA will show Iran the benefits of becoming a more normal country. Businesses will invest in Iran, more connections will occur between Iran and other countries, and the Iranian people will push the regime to start moderating.

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<sup>14</sup> Dennis Ross and David Petraeus, “How to Put Some Teeth Into the Nuclear Deal with Iran,” *Washington Post*, Aug. 25, 2015. *See also* Richard Haas, “How to Live With the Iran Nuclear Deal,” *Huffington Post*, July 17, 2015 (“A bigger problem has received much less attention: the risk of what will happen if Iran does comply with the agreement. Even without violating the accord, Iran can position itself to break out of nuclear constraints when the agreement’s critical provisions expire. At that point, there will be little to hold it back except the Nuclear Nonproliferation Treaty, a voluntary agreement that does not include penalties for non-compliance”). I note that Mr. Haas believes Congress should approve the JCPOA. Throughout this document I will be citing sources from both thoughtful supporters and thoughtful opponents of the deal. I want my constituents to see that there are a variety of opinions on this complex issue and that I have considered the views of both supporters and opponents.

<sup>15</sup> Brent Scowcroft, “The Iran Deal: An Epochal Moment that Congress Shouldn’t Squander,” *Washington Post*, Aug. 21, 2015.

After complying with the JCPOA for about eight and a half to 10 years, Iran would have moderated and earned the confidence of the international community. At that point, Iran can start down the path of a civilian nuclear program and, after year 15, can have an industrial scale civilian nuclear program. If this is the narrative that one believes, then it is easy to vote yes on the deal.

The belief that Iran will moderate is the narrative upon which the entire JCPOA is based. The third paragraph of the JCPOA states: “The E3/EU+3 envision that the implementation of this JCPOA will progressively allow them to gain confidence in the exclusively peaceful nature of Iran’s programme.”<sup>16</sup> The JCPOA defines “Transition Day” as “8 years from Adoption Day or upon a report from the Director General of the IAEA to the IAEA Board of Governors and in parallel to the UN Security Council stating that the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities, whichever is earlier.”<sup>17</sup>

The JCPOA further defines “Termination Day” as 10 years from Adoption Day and, on that day, “the UN Security Council would no longer be seized of the Iran nuclear issue.”<sup>18</sup> The design of the JCPOA after the nuclear rollback provisions expire is based on the view that Iran can be trusted with a vast nuclear infrastructure.

The JCPOA’s design only makes sense if one believes Iran will moderate. The US does not believe Iran should be able to spin an unlimited number of advanced centrifuges today, tomorrow, or eight years from now. The only logical reason the US would agree to change this view in year ten would be based on the belief that the Iranian regime will moderate. As the *Washington Post* editorial board noted: “If the transformation of Iranian behavior the president hopes for does not occur, the deal on its nuclear program may ultimately prove to be a poor one — a temporary curb that, when it lapses, will enable a dangerous threshold nuclear state that poses a major threat to the United States and its allies.”<sup>19</sup>

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<sup>16</sup> JCPOA, Preface, par. 3. Throughout the document I try to cite to specific language in the JCPOA. I believe it is important for my constituents to see what the JCPOA actually says, rather than what others say it says.

<sup>17</sup> JCPOA, Annex V, par. 19.

<sup>18</sup> JCPOA, Annex V, par. 24.

<sup>19</sup> Editorial Board, “Mr. Obama’s Complex and Costly Deal with Iran,” *Washington Post*, July 14, 2015.

## ***B. The Narrative Presented by Opponents of the JCPOA***

A starkly different narrative presented by opponents of the deal is that the Iranian regime—which is deeply anti-American and anti-Semitic—will not change and cannot be trusted.<sup>20</sup> Opponents note that the regime is religiously based, which makes it difficult if not impossible for the regime to compromise on core beliefs. The regime negotiated a deal that results in massive sanctions relief while preserving Iran’s nuclear infrastructure and its ability to enrich uranium. Opponents argue that multiple countries in the world have civilian nuclear programs without enriching uranium, so there was no policy or scientific reason to allow Iran to enrich an unlimited amount of uranium.<sup>21</sup>

Opponents believe part of the sanctions relief will be used to further Iran’s ability to wreak havoc as the world’s leading state sponsor of terrorism. The regime will also build up its economic and military might in the next 10 to 15 years and after the JCPOA’s nuclear provisions start expiring, the regime will be well-positioned for a quick breakout with enough highly-enriched uranium for multiple nuclear weapons and the potential ability to deliver them onto US soil. If this is the narrative that one believes, then it is easy to vote no on the deal.

I am neither as optimistic as many supporters nor as pessimistic as many opponents of the deal. I do, however, agree with opponents that there is no current evidence the Iranian regime intends to moderate.

Internally, under President Hassan Rouhani, executions have actually gone up. According to the Iran Human Rights Documentation Center, there were 773 executions during President Rouhani’s first year in office (Aug. 2013 to Aug. 2014), compared with 530 executions during President Mahmoud Ahmadinejad’s final year in office.<sup>22</sup> During the first six months of 2015, Amnesty International found an “unprecedented spike in executions,” with 694 executions. Said Boumedouha, Amnesty International’s Deputy Director for the region, wrote “Iran’s staggering

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<sup>20</sup> I find it interesting that Iranian deception starts as soon as the third sentence of the JCPOA, which states “Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.” The use of the word “reaffirm” is incorrect because Iran was previously seeking nuclear weapons. No country builds an undisclosed, secret underground facility to enrich uranium for benign reasons. The US and other countries put sanctions on Iran because we knew Iran was seeking nuclear weapons. I am not going to quibble with the incorrect “reaffirms” term in the JCPOA; I highlight it merely to show the Iranian regime has a flexible relationship to the truth.

<sup>21</sup> See Foundation for Defense of Democracies, “Nuclear Programs of the World” (18 countries have civilian nuclear programs without uranium enrichment or plutonium reprocessing).

<sup>22</sup> Alessandria Masi, “Iran Execution Rate: Number of Iran Executions Higher Under President Hassan Rouhani Than Ahmadinejad,” *International Business Times*, Oct. 30, 2014.

execution toll for the first half of this year paints a sinister picture of the machinery of the state carrying out premeditated, judicially-sanctioned killings on a mass scale.”<sup>23</sup>

Externally, the Iranian regime continues to say “Death to America.” The groups funded by Iran have killed many Americans.<sup>24</sup> Iran continues to be the world’s number one state sponsor of terrorism.

The 2014 US State Department’s Country Reports on Terrorism found that in Syria, “Iran continued to provide arms, financing, training, and the facilitation of primarily Iraqi Shia and Afghan fighters to support the Assad regime’s brutal crackdown that has resulted in the deaths of at least 191,000 people in Syria, according to August UN estimates.”<sup>25</sup>

In Iraq, the Iranian regime has “increased its assistance to Iraqi Shia militias, one of which is a designated Foreign Terrorist Organization (FTO).”<sup>26</sup> In addition, “Many of these groups, such as Kata’ib Hizballah (KH), have exacerbated sectarian tensions in Iraq and have committed serious human rights abuses against primarily Sunni civilians. The IRGC-QF, in concert with Lebanese Hizballah, provided training outside of Iraq as well as advisors inside Iraq for Shia militants in the construction and use of sophisticated improvised explosive device (IED) technology and other advanced weaponry.”<sup>27</sup>

In Lebanon, “Iran has also assisted in rearming Lebanese Hizballah, in direct violation of UNSCR 1701. General Amir Ali Hajizadeh, head of the IRGC Aerospace Force stated in November that ‘The IRGC and Hezbollah are a single apparatus jointed together,’ and Lebanese Hizballah Deputy Secretary General Naim Qassem boasted that Iran had provided his organization with missiles that had “pinpoint accuracy” in separate November public remarks. Iran has provided hundreds of millions of dollars in support of Lebanese Hizballah in Lebanon and has trained thousands of its fighters at camps in Iran.”

In Yemen, Iran is threatening US allies. State Department official and former US Ambassador to Yemen Gerald Feierstein told Congress that “Iran provides financial support, weap-

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<sup>23</sup> Amnesty International, “Iran’s ‘Staggering’ Execution Spree: Nearly 700 Put to Death in Just Over Six Months,” July 23, 2015.

<sup>24</sup> See Andrew deGrandpre and Andrew Tilghman, “Iran Linked to Deaths of 500 US Troops in Iraq, Afghanistan,” *Military Times*, July 15, 2015; see also “Iran’s Bloody Hands,” *Wall Street Journal*, Aug. 27, 2015 (“In 2006, US District Judge Royce C. Lamberth ruled the Iranian government financed the Khobar bombing and ordered Tehran to pay \$254 million to the victims. He also concluded that Iran’s Supreme Leader, Ayatollah Ali Khamenei, had approved the attack. Last year the same judge ordered Iran to pay \$454 million to relatives of victims of the Marine barracks bombing in Lebanon”).

<sup>25</sup> US Department of State, “State Sponsors of Terrorism Overview,” *Country Reports on Terrorism* (2014).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

ons, training and intelligence to Houthis.” He stated, “We believe that Iran sees opportunities with the Houthis to expand its influence in Yemen and threaten Saudi and Gulf Arab interests.”<sup>28</sup>

With regard to the JCPOA, the Iranian regime continues to undermine key provisions of the Iran deal before the ink has even dried. President Rouhani stated Iran will not abide by either the arms embargo or the ballistic missile ban currently in effect. In recent comments broadcast on state television, President Rouhani stated: “We will buy weapons from anywhere we deem necessary. We won’t wait for anybody’s permission or approval and won’t look at any resolution. And we will sell weapons to anywhere we deem necessary.”<sup>29</sup>

Foreign Minister Mohammad Javad Zarif told the Iranian parliament that Iran can deny IAEA inspectors access to Iran’s military sites.<sup>30</sup> The head of Iran’s elite Revolutionary Guard, Gen. Mohammad Ali Jafari, stated that despite the nuclear deal, the US is still the “Great Satan.”<sup>31</sup> Ayatollah Mohammad Yazdi, the head of the powerful Iran’s Experts Assembly, said “The Islamic Republic of Iran considers the US its No. 1 enemy.”<sup>32</sup> These are not the words or actions of a regime looking to moderate.

On the other hand, I believe in the capacity of countries to change. That is why I support the Administration’s engagement with Cuba. I realize that Iran is not Cuba, but international relations are unpredictable and opponents cannot say for certain that Iran will never change.

### *C. My Approach*

Rather than solely rely on either narrative, I take a more straightforward approach. *I look at what the JCPOA allows Iran to do and then I assume Iran does it.* For example, when the ban on testing multiple advanced centrifuge machines expires at year 8.5, I assume Iran will start testing multiple advanced centrifuge machines. When the cap on centrifuges expires in year 10, I assume Iran will start spinning a lot of centrifuges. When the cap on uranium enrichment expires in year 15, I assume Iran will enrich a lot of uranium. I do not believe Iran bargained for these sunset dates with no intent of taking advantage of the benefits.

The next section shows that if Iran simply follows the JCPOA, it can end up in the following position: (1) economically and militarily far stronger than it is today, (2) at a very short breakout time with enough highly-enriched uranium for an arsenal of nuclear weapons and (3)

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<sup>28</sup> Alex Vatanka, “Shadow Boxing: Will Saudi Arabia and Iran Take Fight Into the Open?,” *CNN*, Apr. 21, 2015.

<sup>29</sup> Ali Akbar Dareini, “Iran Unveils New Solid Fuel Precision Ballistic Missile with Longer Range and More Accuracy,” *US News and World Report*, Aug. 22, 2015.

<sup>30</sup> Paul Richter and Ramin Mostaghim, “Iran Can Deny Access to Military Sites, Foreign Minister Says,” *Los Angeles Times*, July 22, 2015.

<sup>31</sup> Nasser Karimi, “Iranian Guard Chief Says US ‘Still the Great Satan,’” *Associated Press*, Sep 1, 2015.

<sup>32</sup> *Id.*

potentially capable of delivering a nuclear arsenal on intercontinental ballistic missiles that can strike America. The scenario I predict is not based on some worst case scenario that involves Iran cheating or taking other extraordinary actions; rather it flows from Iran simply doing what the JCPOA allows it to do.

These consequences give rise to a third possible narrative. Perhaps elements of the Iranian regime are trying to moderate over time, but if the Supreme Leader is looking at a vast nuclear infrastructure with a very short breakout time to a large nuclear weapons arsenal on advanced ballistic missiles, the temptation to try to weaponize the uranium may be too great to overcome.

### III. LIKELY CONSEQUENCES OF THE JCPOA OVER TIME

There are two fuel sources for a nuclear bomb: plutonium or uranium. I commend the Administration for largely dismantling Iran's plutonium pathway to a nuclear weapon. The JCPOA requires the Arak heavy water reactor to be redesigned and rebuilt so that it will not "produce weapon-grade plutonium in normal operation."<sup>33</sup> The reactor vessel, also known as the calandria, "will be made inoperable by filling any openings in the calandria with concrete such that the IAEA can verify that it will not be usable for a future nuclear application."<sup>34</sup>

This type of dismantlement is what many were led to believe was the purpose of sanctions and the purpose of any agreement to lift sanctions.<sup>35</sup> Unfortunately, the JCPOA would not dismantle Iran's uranium pathway to the bomb. Instead, the JCPOA temporarily rolls back Iran's uranium pathway, but then legitimizes Iran's uranium enrichment activities and lets Iran come back down to a very short nuclear breakout time should it decide to weaponize the uranium. Below I discuss how the JCPOA worsens over time.

#### A. *The Short Term (Years 1 to 4)*

I commend the Administration for negotiating terms that would roll back to approximately one year Iran's pathway to a nuclear bomb at the beginning of the JCPOA. The agreement does this through provisions such as the following:

1. "Iran will not engage in producing or acquiring plutonium or uranium metals or their alloys, or conducting R&D on plutonium or uranium (or their alloys) metallurgy, or casting, forming, or machining plutonium or uranium metal;"<sup>36</sup>

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<sup>33</sup> JCPOA, Annex I, par. 2.

<sup>34</sup> JCPOA, Annex I, par. 3.

<sup>35</sup> See Testimony of Secretary Kerry before House Foreign Affairs Committee, Dec. 10, 2013 ("I don't think that any of us thought we were just imposing these sanctions for the sake of imposing them. We did it because we knew that it would hopefully help Iran dismantle its nuclear program").

<sup>36</sup> JCPOA, Annex I, par. 24.

2. “Iran will not produce, seek or acquire separated plutonium, highly enriched uranium (defined as 20% or greater uranium-235), or uranium-233, or neptunium-237 (except for use as laboratory standards or in instruments using neptunium-237);”<sup>37</sup>
3. “Iran will keep its enrichment capacity at no more than 5060 IR-1 centrifuge machines in no more than 30 cascades in their current configuration in currently operating units at the Natanz Fuel Enrichment Plant (FEP);”<sup>38</sup>
4. “Iran will install gas centrifuge machines, or enrichment-related infrastructure, whether suitable for uranium enrichment, research and development, or stable isotope enrichment, exclusively at the locations and for activities specified under this JCPOA;”<sup>39</sup>
5. Iran cannot “continue testing of the IR-6 on single centrifuge machines and its intermediate cascades;”<sup>40</sup>
6. Iran cannot, with regard to the IR-8, “commence the testing of up to 30 centrifuge machines;”<sup>41</sup>
7. “Iran will not conduct any uranium enrichment or any uranium enrichment related R&D and will have no nuclear material at the Fordow Fuel Enrichment Plant (FEFP);”<sup>42</sup>
8. “Iran will maintain no more than 1044 IR-1 centrifuge machines at one wing of the FEFP;”<sup>43</sup>

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<sup>37</sup> JCPOA, Annex I, par. 25.

<sup>38</sup> JCPOA, Annex I, par. 27.

<sup>39</sup> JCPOA, Annex I, par. 31.

<sup>40</sup> JCPOA, Annex I, par. 37.

<sup>41</sup> JCPOA, Annex I, par. 38.

<sup>42</sup> JCPOA, Annex I, par. 45.

<sup>43</sup> JCPOA, Annex I, par. 46.

9. “Iran will maintain a total enriched uranium stockpile of no more than 300 kg of up to 3.67% enriched uranium hexafluoride (or the equivalent in different chemical forms);”<sup>44</sup>
10. “Iran will permit the IAEA to implement continuous monitoring, including through containment and surveillance measures, as necessary, to verify that stored centrifuges and infrastructure remain in storage, and are only used to replace failed or damaged centrifuges.”<sup>45</sup>

I believe the above provisions will, in fact, roll back Iran’s pathway to the bomb to approximately a year. Unfortunately, *every single one* of the above provisions expires, some in 8.5 years, some in 10 years, and some in 15 years. The main enforcement mechanism for the JCPOA—namely the snapback sanctions—also expires in 10 years.<sup>46</sup>

There is a substantial cost associated with this temporary roll back. Rather than a gradual easing of sanctions based on performance over time, the JCPOA gives Iran massive sanctions relief upfront.<sup>47</sup> Estimates vary, but upon the JCPOA’s implementation date, Iran will receive somewhere between \$50 billion and \$100 billion.<sup>48</sup> Iran will also get hundreds of billions more over time as a result of the continuing sanctions relief.

Regardless of the exact number, this is a massive amount of money for the Iranian regime. The JCPOA, unfortunately, does not require Iran to change its terrorist behavior. There is nothing stopping Iran under the JCPOA from giving part of this cash infusion to terrorist groups, such as Hamas and Hizballah, and brutal proxy regimes, such as the Bashar al-Assad regime in Syria.

Currently, the US is bombing in Syria, has ground troops in Iraq, and is helping Saudi Arabia bomb Yemen (I oppose all of these US policies). The immense cash infusion Iran will be receiving could significantly complicate US efforts in these countries, potentially result in deaths of more US service members, and further entangle the US in Middle East conflicts.

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<sup>44</sup> JCPOA, Annex I, par. 56.

<sup>45</sup> JCPOA, Annex I, par. 70.

<sup>46</sup> JCPOA, Annex V, par. 24.

<sup>47</sup> JCPOA, Annex II and Annex V.

<sup>48</sup> See, e.g., Jackie Northam, “Lifting Sanctions Will Release \$100 Billion to Iran. Then What?,” *NPR*, July 15, 2015; Rick Gladstone, “Value of Iran Sanctions Relief is Hard to Measure,” *New York Times*, Aug. 5, 2015.

Iran has managed to cause tremendous death and chaos in the Middle East even though it has been weakened economically by sanctions. Imagine what Iran will do with the giant cash infusion it will receive under the JCPOA.

Other countries in the Middle East are imagining this very scenario and are building up their arms arsenals to respond. They are also requesting US assistance, both for arms and for military support. This is already happening. For example, the US State Department recently approved “a \$5.4 billion sale of 600 Lockheed-made PAC-3 missiles to Saudi Arabia, alongside an additional half billion dollars in ammunition for various smaller weapons.”<sup>49</sup>

By increasing assistance to Saudi Arabia to counter an Iran flush with cash, the US is getting more entangled in places such as Yemen. The *Los Angeles Times* reported the US is helping Saudi Arabia and others bomb Yemen by “providing intelligence, munitions and midair refueling to coalition aircraft.”<sup>50</sup> The *Times* also stated that “US warships have helped enforce a blockade in the Gulf of Aden and southern Arabian Sea intended to prevent weapons shipments from Iran to the Houthis.”<sup>51</sup> Human rights groups say the blockade “cuts Yemen off from imports of basic commodities, including food and fuel, adding to the nation’s miseries.”<sup>52</sup>

The Pentagon is now finalizing *another* arms sale to Saudi Arabia, this time for \$1 billion.<sup>53</sup> The *New York Times* reports this “pending weapons sale to the Saudis is already coming under criticism from human rights activists who say the administration is supplying arms to Saudi combat operations in a conflict in Yemen that has taken an enormous toll on civilian lives. Last month Doctors Without Borders said that Saudi-led airstrikes on a residential district in Yemen’s southwestern city of Taiz had killed more than 65 civilians, including 17 people from one family.”

In addition to the increased regional conflict and conventional arms race that will likely increase as a result of the JCPOA, there is also the possibility of a nuclear arms race in the Middle East caused by the agreement. A senior member of the Saudi royal family has stated that “a deal on Iran’s nuclear programme could prompt other regional states to develop atomic fuel.”<sup>54</sup>

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<sup>49</sup> Clay Dillow, “US Greenlights Sale of 600 Patriot missiles to Saudi Arabia,” *Fortune*, Aug. 1, 2015.

<sup>50</sup> W.J. Hennigan, Laura King and Zaid Al-Alayaa, “US Boosts Support Role in Saudi-Led Airstrikes on Yemen,” *Los Angeles Times*, Aug. 17, 2015.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Helene Cooper and Gardiner Harris, “An Arms Deal Is Aimed at Saudis’ Iran Worries,” *New York Times*, Sept. 3, 2015.

<sup>54</sup> Barbara Plett Usher, “Iran Deal Could Start Nuclear Fuel Race—Saudi Arabia,” *BBC*, Mar. 16, 2015; *see also* Richard Haas, “How to Live With the Iran Nuclear Deal,” *Huffington Post*, July 17, 2015 (“[A] major effort must be launched to assuage the concerns of Iran’s neighbors, several of which will be tempted to hedge their bets against Iran’s potential breakout in 15 years by pursuing nuclear programs of their own”).

### ***B. The Medium Term (Years 5 to 8)***

Under the deal, the ban on advanced conventional weapons is lifted in year five and the ban on ballistic missiles is lifted in year eight. These are UN provisions and had there been no Iran deal, the US would have been able to veto any attempts to lift these two crucial arms control provisions.

The elimination of these arms control provisions makes the JCPOA weaker than the framework announced in Lausanne, and came as a surprise to many. Representative Eliot Engel (D-NY), the Ranking Member of the House Foreign Affairs Committee, stated: “I was told that these issues weren’t on the table during the talks. So it’s unacceptable to me that after a maximum of five and eight years, respectively, the deal lifts these restrictions. Worse, if Iran were to repeat past behavior and violate the arms embargo or restrictions on its ballistic missile program, such an action wouldn’t violate the JCPOA and wouldn’t be subject to snapback sanctions.”<sup>55</sup>

When the arms embargo is removed, countries will be able to sell Iran “battle tanks, armed combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined by UN Register of Conventional Arms, or related materials or spare parts” or assistance and financial measures used to acquire these items.<sup>56</sup> Iran—which already would have received a massive upfront cash infusion plus five years of additional sanctions relief—can significantly rearm, rebuild, and upgrade its military. Iran can also seek to provide the advanced conventional arms to its terrorist networks and brutal proxy regimes.

When the ballistic missile ban is removed, Iran will be permitted to develop ballistic missile systems and countries will be able to sell Iran “all items, materials, equipment, goods and technology set out in S/2015/546 [latest missile technology control list] and of any items, materials, equipment, goods and technology that the State determines could contribute to the development of nuclear weapon delivery systems.”<sup>57</sup> Iran can again significantly upgrade its military with advanced attack and defense missiles, as well as acquire technology, equipment, and materials to build intercontinental ballistic missiles.

I believe it was a strategic error for the United States not to insist that restrictions for delivery devices for nuclear weapons be made a part of the deal. We should have insisted that Iran further limit its missile development, not go the other way and actually lift the ballistic missile

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<sup>55</sup> Representative Eliot Engel, Statement on Iran Deal, Aug. 16 2015.

<sup>56</sup> United Nations Security Council Resolution 2231, Annex B, Section 5.

<sup>57</sup> United Nations Security Council Resolution 2231, Annex B, Section 4.

ban. Right now Iran does not have the capability to deliver nuclear warheads onto American soil with ballistic missiles. As a result of this deal, Iran is more likely to get that capability.<sup>58</sup>

The lifting of the ballistic missile ban is so dangerous that two Administration officials publicly testified that the ban should not be lifted. On July 7, 2015, before the Senate Armed Services Committee, then Chairman of the Joint Chiefs of Staff General Martin Dempsey stated, “Under no circumstances should we relieve pressure on Iran relative to ballistic missile capabilities and arms trafficking.”<sup>59</sup> Secretary of Defense Ash Carter testified that “The reason that we want to stop Iran from having an ICBM program is that ‘I’ in ICBM stands for intercontinental, which means having the capability of flying from Iran to the United States.”<sup>60</sup>

### *C. The Long Term (Years 8.5 to 15+)*

Starting in year 8.5, the JCPOA’s nuclear rollback provisions start expiring.<sup>61</sup> More provisions expire in year 10, as well as snapback sanctions.<sup>62</sup> After year 15, Iran will essentially be able to have a massive nuclear infrastructure because it can spin an unlimited amount of advanced centrifuges and enrich an unlimited amount of uranium.

One reason I have a different perspective of the JCPOA than the Administration is based on my view of the central problem at issue. The Administration and supporters of the JCPOA view the primary goal as rolling back Iran’s nuclear breakout time to one-year in order to prevent Iran from getting “a nuclear bomb.”<sup>63</sup> Secretary of the Treasury Jacob Lew wrote, “Without this deal, Iran, the world’s leading state sponsor of terrorism, would be less than 90 days away from having enough fissile material to make a nuclear bomb.”<sup>64</sup>

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<sup>58</sup> See James Conway and Charles Wald, “The Problem With the Iran Deal,” *CNN*, Sept. 4, 2015 (“[O]nce sanctions against its ballistic missile program sunset, Iran could more easily develop weapons capable of reaching targets within the Middle East and beyond -- including Europe and the United States”).

<sup>59</sup> Senate Armed Services Committee Hearing, “Counter-ISIL (Islamic State of Iraq and the Levant) Strategy,” Transcript Pg. 54

<sup>60</sup> Senate Armed Services Committee Hearing, “Counter-ISIL (Islamic State of Iraq and the Levant) Strategy,” Transcript Pg. 54

<sup>61</sup> JCPOA, Annex I, paragraphs 37 and 38.

<sup>62</sup> JCPOA, Annex I, paragraphs 27, 32, 35, 36, 39 53, 63, and 81.

<sup>63</sup> See Testimony of Secretary Kerry before House Foreign Affairs Committee, July 28, 2015 (“stop them from having a nuclear weapon”); Graham Allison, “9 Reasons to Support the Iran Deal,” *The Atlantic*, Aug 4, 2015 (“In this case, the overriding objective of the United States has been to prevent Iran from acquiring a nuclear bomb”); Sandy Berger, “The Fantasy of a Better Iran Deal,” *Politico*, April 5, 2015 (“The present agreement ... can substantially reduce the ability of Iran to develop a nuclear weapon over the next ten years or more ....”).

<sup>64</sup> Jacob Lew, “The High Price of Rejecting the Iran Deal,” *New York Times*, Aug. 13, 2015.

I agree with the Administration that we need to stop Iran from acquiring “a nuclear bomb.” If Iran got one nuclear bomb, or even a small handful, it would certainly pose significant problems for US interests in the region and likely increase Iran’s aggression in the Middle East. Having nuclear weapons, even one or two, gives Iran leverage to pursue destabilizing activity in the region with less fear of consequences or retaliation. But that view of the problem alone is too narrow, which has resulted in a solution that is too narrow.

My view is that the Iranian problem is much larger. What poses a grave, unacceptable, and existential threat to the United States is an Iran that (1) acquires *many* nuclear bombs and (2) acquires the ability to *deliver* those bombs on intercontinental ballistic missiles. The express terms of the JCPOA make that grave scenario possible.

The Administration does not dispute that Iran’s nuclear breakout time comes back down to near zero when the JCPOA’s nuclear rollback provisions expire. President Obama stated in an interview on NPR on April 7, 2015 that, “What is a more relevant fear would be that in year 13, 14, 15, they have advanced centrifuges that enrich uranium fairly rapidly, and at that point the breakout times would have shrunk almost down to zero.”<sup>65</sup>

But there are three key differences between Iran’s nuclear breakout time today compared to after year 15 under the JCPOA. First, as noted above, Iran’s nuclear breakout time would be shorter than it is today. Instead of less than three months, Iran would be looking at a nuclear breakout time that could approach a few weeks or near zero. This does not give the US or our allies very much time to react should Iran make a decision to weaponize its uranium.

Second, Iran currently only has enough fissile material for one nuclear bomb, or perhaps a handful. After year 8.5, Iran can start conducting testing on multiple advanced IR-6 and IR-8 centrifuges; after year 10 Iran can start spinning a lot of advanced centrifuges; and after year 15, Iran has no caps on the amount of uranium it can enrich. At that point, Iran’s short nuclear breakout time would be for not just one nuclear bomb, but potentially a large *arsenal* of nuclear bombs.

Third, Iran cannot today deliver nuclear warheads onto US soil with ballistic missiles. Since the JCPOA lifts the ballistic missile ban in year eight, however, Iran could potentially acquire or develop intercontinental ballistic missiles far more easily than if there was no Iran deal.

Because of this potential existential threat to our homeland, I believe there will be tremendous pressure for the US to engage in a war with Iran that will be protracted, difficult, and deadly when the JCPOA’s nuclear rollback provisions start expiring.

The chances of war also increase because the American President’s economic options would be more limited. Since snapback sanctions expire in year 10, there would not be an ability to impose significant sanctions should Iran start racing to build a nuclear arsenal. There also

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<sup>65</sup> President Barack Obama, interview on *NPR*, April 7, 2015.

would not be enough time for sanctions to work. It took years for the current sanctions regime to have a significant effect on Iran. After year 15, Iran's breakout time could shrink to a few weeks or less.

The American President's military options could also be more limited. Having served on active duty in the US Air Force, and as a graduate of Air War College, I am well aware that America's airpower is unmatched today. But it is difficult to predict what will happen in 10 to 15 years. Since Iran could be spinning advanced centrifuges anywhere, it would potentially be more difficult to find and target all the possible uranium enrichment places in a country that is 1.65 million square kilometers.

In addition, because the JCPOA lifts the ban on advanced conventional weapons and ballistic missiles, and because Iran will be receiving hundreds of billions of dollars over the course of the JCPOA, Iran would likely have a far more robust, advanced and lethal military than it does today. Iran is already taking steps to build up its military. The Iranian Minister of Defense, Hossein Dehqan, stated Russia has agreed to deliver advanced S-300 missiles "before the end of 2015."<sup>66</sup> If Russia delivers this advanced missile system—over US objections—it would increase Iran's military capability.<sup>67</sup> Former Commandant of the Marine Corps General James Conway stated these anti-aircraft missiles "are probably the best in the world. So that alone will be a game changer in the region."<sup>68</sup>

While Iran looks at building up its military due to the lifting of sanctions and arms control provisions, the US military has had to make cuts due to sequestration. General Conway stated: "If Iran decides to race for a nuclear weapon after the main provisions of the deal expires, the US will be weaker militarily if sequestration remains the law of the land."<sup>69</sup> It is certainly possible or perhaps even likely that in the future, airstrikes may not be enough to take out Iran's potentially vast nuclear infrastructure, which means a ground invasion may be necessary.

#### **IV. ALTERNATIVES TO THE JCPOA**

Because I conclude the JCPOA likely provides a legal path for an economically and militarily stronger Iran to have a very short breakout time to nuclear weapons on ballistic missiles that could strike our homeland, I do not believe there are any alternatives that would be worse than that existential scenario. I will, however, go through the predictions of supporters and opponents of the deal regarding what would happen if Congress were to reject the JCPOA. But first it is important to understand my view of the role of Congress in matters of foreign policy.

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<sup>66</sup> "No Limit on Cooperation with Russia: Iranian Defense Minister," *Tehran Times*, Sept. 1, 2015.

<sup>67</sup> Tom Porter, "Russia and Iran Agree to Deal on Delivery of S-300 Missiles," *International Business Times*, Aug. 19 2015.

<sup>68</sup> Kristina Wong, "Former Military Officials Fear Surge of Cash, Weaponry to Iran," *The Hill*, Sept. 6, 2015.

<sup>69</sup> *Id.*

### A. *The Role of Congress in Foreign Policy*

In speaking to Administration officials and analyzing statements from many supporters, one persistent argument being used is that the alternatives to the JCPOA are worse. That argument does not give one much confidence about the actual merits of the JCPOA. That line of argument would also apply to virtually any Iran deal the Administration negotiated. Indeed, it appears some supporters would support the Iran deal even if it lasted only five years.<sup>70</sup>

The main problem with the “alternatives are worse” line of argument is that it tends to diminish the role of Congress. Any time the Executive Branch places an international agreement before Congress, the Administration can always say that is the best deal it could get, that rejecting the agreement would weaken the credibility of the Executive Branch, and that the alternatives are worse.

For example, the Trans-Pacific Partnership (TPP) agreement is another major international agreement negotiated with multiple countries. The same argument that “the alternatives are worse” has been used as a reason to support Fast Track Authority for the TPP. The Administration’s argument was that if the US does not move forward with this agreement, then China will write the rules and the credibility of the Executive Branch will be weakened if Congress were to reject the TPP.

I acknowledge that rejecting the JCPOA, or the TPP, will result in a weakening of the credibility of the Executive Branch and that from the point of view of the Administration, the alternatives are worse. But that result is a function of the US Constitution. The Framers created Congress—the branch closest to the people—as a *coequal* branch of government. I believe Congress must do an independent review on the merits rather than accept as a *fait accompli* any international agreement that is placed before it by the Executive Branch.<sup>71</sup>

As a Member of Congress, I will analyze any international agreement based on the merits of the agreement. If the agreement is a bad deal for the US, I will vote no, whether it is the JCPOA, or the TPP, or another international agreement. I believe our system of government functions better—and we will get better agreements—if the Administration believes Congress will vote based on the merits of any proposed agreement, rather than to default to an “alternatives are worse” argument which will be made every single time by any Administration.

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<sup>70</sup> See Michael Gordon, “Head of Group Opposing Iran Accord Quits Post, Saying He Backs Deal,” *New York Times*, Aug. 11, 2015 (quoting Gary Samore who stated “If I knew for certain that in five years they would cheat or renege, I’d still take the deal”).

<sup>71</sup> Keep in mind that for most of the time the JCPOA was being negotiated, the Administration did not believe Congress even had the right to vote on this agreement. See Jonathan Weisman and Peter Baker, “Obama Yields, Allowing Congress Say on Iran Deal,” *New York Times*, Apr. 14, 2015.

## ***B. The Main Predictions Offered by Supporters and Opponents of What Would Occur if Congress Rejected the JCPOA***

Supporters and opponents have very different predictions about what would happen if Congress rejected the JCPOA with a two-thirds vote in both houses. Supporters now argue that no deal means war. Opponents argue that no deal means this Administration will get a better deal. I don't believe either result is likely to happen.

The Administration's argument that no deal means war is a surprising argument because previously, the Administration had repeatedly stated that "no deal is better than a bad deal." The Administration's recently discovered war argument presupposes a series of actions that are unlikely to occur.<sup>72</sup> First, Iran would have to decide to race to a nuclear bomb. Given Iran's current weakened economy and weakened military, it is unlikely Iran would make a dash to the bomb if the JCPOA was rejected. Rather, as set forth below, Iran has other options that it would find more attractive.

Second, the Administration would need to request that Congress approve a war with Iran. I don't believe the Administration would seek a war with Iran if the JCPOA was rejected. Instead, I believe the Administration would seek more diplomacy or try to implement as much of the deal as they could.

Third, Congress would need to approve war with Iran. Even if the Administration sought a war authorization with Iran, I believe it is unlikely Congress would approve it. If the JCPOA was rejected and the Administration actually sought a war authorization, I would vote no on the war authorization. As discussed earlier, Iran does not currently have the capability to strike the American homeland. It is instructive to remember that when the Administration sought to go to war with Syria because of Syria's use of another weapon of mass destruction, in that case chemical weapons, the Administration could not get that request through Congress.

I agree with the Administration, however, that opponents' prediction that a better deal could be reached is unlikely to happen, at least in the short term. I believe this Administration would not try to seek a better deal but instead, it would try to implement as much of the deal as possible even if Congress did not authorize the JCPOA. This is in fact what the Administration did when it went ahead with the UN vote on the deal, even though Congress had not yet made a decision on the JCPOA.<sup>73</sup>

I also believe this Administration, because it has stated numerous times that the sanctions regime will dissolve if the JCPOA were to be rejected, will not try hard to keep the sanctions regime in place. Treasury Secretary Lew suggests numerous countries, including Taiwan and

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<sup>72</sup> See, e.g., former Sen. Mary Landrieu and USMC Gen. Charles C. Krulak, "The Better Alternative to the Iran Deal," *The Hill*, Aug. 27, 2015 ("[N]one of the catastrophic predictions is accurate—and there is a better way").

<sup>73</sup> Jordain Carney, "Protests Erupt in Congress as UN Races Toward Iran Vote," *The Hill*, July 18, 2015.

South Korea, would flout US sanctions so that they could trade with Iran.<sup>74</sup> That assertion is hard to believe, considering the US sells arms to Taiwan and has sent the US 7<sup>th</sup> fleet to protect Taiwan from China, and the US has a strong military presence in South Korea to protect it from North Korea.

The US is also Taiwan's second largest trading partner after China/Hong Kong, and we are South Korea's second largest trading partner after China. Secretary Lew's statements suggest this Administration would not try hard to enforce the sanctions regime even for countries that rely significantly on America for both their national security and their economy.

### *C. The Likely Consequences if Congress Rejects the JCPOA*

I believe the most likely consequence if Congress rejects the JCPOA is that the deal goes forward without the US. Various commentators have also arrived at this conclusion. Robert Satloff wrote in *The Atlantic*: “While it’s impossible to predict with certainty how Iranian leaders would react to congressional disapproval of the agreement, I’d argue chances are high that they would follow through on their commitments anyway, because the deal is simply that good for Iran. After Iran fulfills its early obligations, all United Nations and European Union nuclear-related sanctions come to an end. They aren’t just suspended like US sanctions—they are terminated, presenting Iran with the potential for huge financial and political gain.”<sup>75</sup>

George Bisharat and John Whitbeck, both of whom support the deal, wrote in the *Los Angeles Times* that if Congress rejects the deal, “It would simply constitute a decision to opt out and not participate in the agreement, reminiscent of earlier American opt-outs from the League of Nations and the International Criminal Court. The other signatories would be perfectly free to honor the Iran deal and would be far more likely to do so than to follow the US example.”<sup>76</sup>

Don Liebich, who also supports the deal, wrote that “[t]his train has left the station” because the UN has already endorsed the deal and Iran will continue to follow the JCPOA even if Congress rejects it.<sup>77</sup> This begs the question why I would rather have this alternative than support the JCPOA. There are at least three reasons.

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<sup>74</sup> See Jacob Lew, “The High Price of Rejecting the Iran Deal,” *New York Times*, Aug. 13, 2015 (“The major importers of Iranian oil — China, India, Japan, South Korea, Taiwan and Turkey — together account for nearly a fifth of our goods exports and own 47 percent of foreign-held American treasuries. They will not agree to indefinite economic sacrifices in the name of an illusory better deal”).

<sup>75</sup> Robert Satloff, “A Better Deal With Iran is Possible,” *The Atlantic*, Aug. 13 2015.

<sup>76</sup> George Bisharat and John Whitbeck, “No to the Iran Deal Means No to US Credibility,” *Los Angeles Times*, Sept. 1, 2015.

<sup>77</sup> Don Liebich, “Six Things You Should Know About Iran and the Nuclear Deal,” *Foreign Policy Journal*, Aug. 29, 2015.

First, sticking with Mr. Liebich's train analogy, I believe the train is going in the wrong direction and will take us to a destination wrought with existential threats. I want to stop this train, or at least slow it down. If Congress rejects the deal and the US does not lift sanctions, it would mean Iran would, over time, get less money to fund its nuclear and non-nuclear activities.

Second, rejecting the JCPOA gives the next Administration and the next Congress more diplomatic and economic options. The next Administration can seek, for example, to ratchet up US sanctions on Iran. The GDP of the US in 2014 was \$17.4 trillion, larger than the next two closest countries combined. Iran's GDP in 2014 was \$415.3 billion, which is less than 2.4% of America's GDP. It is certainly possible many companies and countries would choose to do business with the US, rather than to flout US sanctions so they can trade with the comparatively far smaller economy of Iran.<sup>78</sup>

It is also possible that the US will fail in keeping the sanctions regime together. But I would rather have the US—the leading economy in the world—exert every economic and diplomatic action it can to resist this Iranian regime from having a large nuclear infrastructure than to go along with what I believe will be a bad deal. The US should not agree that this regime can spin an unlimited number of advanced centrifuges today, tomorrow or ten years from now.

Approving the JCPOA, however, means the US is locked into an agreement where the US is forced to allow Iran to spin an unlimited number of advanced centrifuges after year 10 and enrich an unlimited amount of uranium after year 15. The US would be prevented from imposing nuclear-related sanctions under the JCPOA even if the Iranian regime does not moderate or gets worse.

Third, absent fundamental regime change in Iran, I cannot in good conscience vote for an agreement that gives Iran a *legal path to a vast nuclear infrastructure and lifts two critical arms control provisions*. I do not believe Iran should legally be at a very short nuclear breakout time to a large number of nuclear weapons that potentially can be delivered on ballistic missiles that can strike America.

I agree with supporters of the deal that Iran is already a threshold nuclear state.<sup>79</sup> But Iran is currently an *illegitimate* threshold nuclear state. Iran secretly built an underground facility at Fordow to enrich uranium. That is one reason the E3/EU+3 imposed sanctions. Right now, Iran cannot legally spin vast numbers of centrifuges or enrich vast amounts of uranium. Under the JCPOA, Iran will after years 10 and 15 be able to legally do what they cannot do now.

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<sup>78</sup> See, e.g., Landrieu and Krulak, "The Better Alternative to the Iran Deal," *The Hill*, Aug. 27, 2015 ("What wise banker would trade America's \$17.4 trillion economy for Iran's \$400 billion in gross national product?").

<sup>79</sup> See Walter Pincus, "Iran is Already a Threshold Nuclear State," *Washington Post*, Aug. 11, 2015.

## V. CONCLUSION

I wanted to support the JCPOA, wanted to find a path to yes, but couldn't get there based on the totality of the information I considered. I believe the JCPOA will result in more regional wars and conflict in the Middle East, along with more US entanglement, in the short term; and increase the chances of a lengthy, difficult, and more deadly war with Iran in the long term. Because many key provisions in the JCPOA expire, the Iran deal provides a legal path after 15 years for an Iran that would be (1) far stronger militarily and economically than it is today, (2) at a shorter nuclear breakout time to more nuclear weapons than it would be today, and (3) capable of delivering nuclear weapons long range, potentially onto US soil.

I kept an open mind throughout this process and tried to consider objectively every argument and fact put forth by both supporters and opponents of the deal, but I am not prescient. I freely admit my predictions could be wrong. I acknowledge this issue is a close call and I respect others who have looked at the same facts I have but come to a different conclusion. This is a very complex, difficult issue and thoughtful Americans of goodwill and conscience have come down on both sides of this issue.

People with more experience than I have in foreign policy—such as our transformational President and the tireless and amazing US negotiating team—support the JCPOA. Others with more experience than I have in foreign policy—such as the Chair and Ranking Member of the Senate Foreign Relations Committee and the Chair and Ranking Member of the House Foreign Affairs Committee—oppose the JCPOA.

Ultimately this is a vote of conscience and I cannot in good conscience vote for a deal—absent fundamental regime change—that gives Iran a legal path to a vast nuclear infrastructure and lifts two crucial arms control provisions, the arms embargo and the ballistic missile ban. My conscience is clear. I will oppose the JCPOA.

In our system of government, if Congress cannot get a two-thirds vote and the President disagrees with Congress, the Administration prevails. I respect the Constitution and I respect our President. If the JCPOA goes into effect, I will certainly work with this Administration to implement the JCPOA and minimize the negative consequences I believe will occur as a result of the agreement.

This vote is just the beginning. The hard work of ensuring American national security continues the second after the vote is concluded. I look forward to engaging with both opponents and supporters of the JCPOA to strengthen US national security; prevent Iran from getting nuclear weapons and missile delivery systems for nuclear weapons; and work for more peace and stability in the Middle East.