

request.¹⁰⁷ First, the district court ruled that “the Government’s narrowly defined list finds no support in the careful language of the Supreme Court or even in the immigration statutes on which the Government relies.”¹⁰⁸ The district court modified the injunction to prohibit the government from enforcing the exclusionary provisions of the executive order against: refugees with “a formal assurance from an agency within the United States that the agency will provide, or ensure the provision of, reception and placement services to that refugee”;¹⁰⁹ refugees “in the U.S. Refugee Admissions Program through the Lautenberg Program”;¹¹⁰ and persons with “grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, [or] cousins . . . in the United States.”¹¹¹ The district court denied the plaintiff’s request to expand the preliminary injunction to cover refugees affiliated with certain refugee admissions organizations.¹¹² The government then appealed the district court’s modification of the injunction to the Supreme Court.¹¹³

USE OF FORCE, ARMS CONTROL, AND NONPROLIFERATION

Trump Administration Maintains Nuclear Deal with Iran, Despite Persistent Skepticism

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Iran, the five permanent members of the UN Security Council, Germany, and the European Union agreed to the Joint Comprehensive Plan of Action (JCPOA) in July 2015. Under the JCPOA, Iran agreed to limit the scope and content of its nuclear program in exchange for relief from various nuclear-related sanctions imposed by the other signatories.¹ Throughout his campaign, President Donald Trump denounced the JCPOA. He said that, if elected, he would “renegotiate with Iran—right after . . . enabl[ing] the immediate release of our American prisoners and ask[ing] Congress to impose new sanctions that stop Iran from having the ability to sponsor terrorism around the world.”² So far, however, the

¹⁰⁷ *Hawai’i v. Trump*, No. 17-16366, Order Granting in Part and Denying in Part Plaintiffs’ Motion to Enforce, or, in the Alternative to Modify Preliminary Injunction (D. Haw. July 13, 2017), available at <https://www.clearinghouse.net/chDocs/public/IM-HI-0004-0138.pdf>.

¹⁰⁸ *Id.* at 12.

¹⁰⁹ *Id.* at 26.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 20–22.

¹¹³ *Trump v. Hawai’i*, No. 16-1540 (16A1191), Motion for Clarification of June 26, 2017, Stay Ruling and Application for Temporary Administrative Stay of Modified Injunction, (S. Ct. July 14, 2017).

¹ Joint Comprehensive Plan of Action, July 14, 2015, 55 ILM 98, 108 (2016) [hereinafter JCPOA]. See also Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, 109 AJIL 649 (2015); Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, 110 AJIL 789 (2016) [hereinafter Daugirdas & Mortenson, 110 AJIL].

² Donald Trump, *Donald Trump: Amateur Hour with the Iran Nuclear Deal*, USA TODAY (Sept. 8, 2015), at <https://www.usatoday.com/story/opinion/2015/09/08/donald-trump-amateur-hour-iran-nuclear-deal-column/71884090>; see also, e.g., Donald Trump, Full text of Donald Trump’s speech to AIPAC (Mar. 21, 2016), available at <http://www.timesofisrael.com/donald-trumps-full-speech-to-aipac> (indicating that his “number-one priority is to dismantle the disastrous deal with Iran”).

Trump administration has kept the agreement in place. The United States has continued to acknowledge Iran's compliance with the terms of the JCPOA and has waived various sanctions against Iran in compliance with its own obligations thereunder.³ Iran, by contrast, has charged the United States with failing to live up to its own JCPOA commitments.

The Trump administration first engaged with the issue after Iran launched a medium-range ballistic missile test on January 29, 2017, shortly after Trump's inauguration.⁴ Iran's Defense Minister Hosesin Dehghan stated that the test "did not violate the [JCPOA] or [UN Security Council] Resolution 2231" and warned that Iran would "not allow foreigners to interfere in [its] defense affairs."⁵ In response, the United States National Security Advisor stated that the United States was "officially putting Iran on notice" for the launch in what the administration characterized as actions undermining "security, prosperity, and stability."⁶

On February 3, 2017, in a formal response to the missile test, the administration issued new sanctions against Iran. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned twenty-five entities and individuals involved in procuring technology and/or materials to support Iran's ballistic missile program, as well as for providing support to Iran's Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF).⁷ The OFAC specifically designated:

- [S]everal networks and supporters of Iran's ballistic missile procurement, including a critical Iranian procurement agent and eight individuals and entities in his Iran- and China-based network, an Iranian procurement company and its Gulf-based network, and five individuals and entities that are part of an Iran-based procurement network connected to Mabrooka Trading, which was designated on January 17, 2016, pursuant to Executive Order 13382
- [A] key IRGC-QF-run support network working with Hizballah, including IRGC-QF official Hasan Dehghan Ebrahimi, his associates Muhammad Abd-al-Amir Farhat and Yahya al-Hajj, and several affiliated companies in Lebanon pursuant to Executive Order 13224
- Ali Sharifi, an individual providing procurement and other services on behalf of the IRGC-QF, again, pursuant to Executive Order 13224.⁸

³ See *infra* note 30 and accompanying text.

⁴ *Iran Tested Medium-Range Ballistic Missile: U.S. Official*, REUTERS (Jan. 30, 2017), at <http://www.reuters.com/article/us-usa-iran-missiles-idUSKBN15E2EZ>.

⁵ *Iran Confirms Missile Test, Drawing Tough Response from Trump Aide*, REUTERS (Feb. 1, 2017), at <http://www.reuters.com/article/us-usa-iran-missiles-idUSKBN15G3ZO>.

⁶ White House Press Release, Statement by the National Security Advisor (Feb. 1, 2017), at <https://www.whitehouse.gov/the-press-office/2017/02/01/statement-national-security-advisor>.

⁷ U.S. Dep't of the Treasury Press Release, Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Iran's Islamic Revolutionary Guard Corps—Qods Force (Feb. 3, 2017), at <https://www.treasury.gov/press-center/press-releases/Pages/as0004.aspx>. Though this was the first time the United States imposed sanctions on Iran post-JCPOA, the United States has previously made clear its position that the JCPOA does not cover obligations relating to sanctions that are unrelated to Iran's nuclear development program. See Daugirdas & Mortenson, 110 AJIL, *supra* note 1, at 793.

⁸ *Id.* Executive Order 13,382 targets proliferators of weapons of mass destruction and their means of delivery and supporters of such activity. Exec. Order No. 13,382, 70 Fed. Reg. 38,567 (2005). Executive Order 13,224 targets terrorists and those providing support to terrorists or acts of terrorism. Executive Order 13,224, 66 Fed. Reg. 49,079 (2001).

A senior administration official emphasized the administration's view that the sanctions were fully consistent with the JCPOA:

Let me make clear: These steps we have taken today are outside the JCPOA. The JCPOA is limited to Iran's nuclear program, and the U.S. continues to implement its commitment under the JCPOA. Iran's provocative ballistic missile launches and other destabilizing activities in the region are a clear threat to region security. This is why we have acted today in designating these 25 individuals and entities.⁹

The administration further warranted that the February 3, 2017, sanctions did not redesignate any entities that had been previously dropped from the list as a result of the JCPOA.¹⁰ Nor did the sanctions threaten or affect previously negotiated private agreements, such as an agreement between Boeing and Iran for the sale of eighty aircraft that had been concluded in late 2016.¹¹

Adopting the Obama administration's formulation for criticisms of previous ballistic missile launches,¹² the Trump administration described the launches as "inconsistent with" Security Council Resolution 2231, which the Security Council had adopted to help implement the JCPOA. That resolution provides, in relevant part:

Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology, until the date eight years after the JCPOA Adoption Day or until the date on which the IAEA submits a report confirming the Broader Conclusion, whichever is earlier.¹³

A senior administration official stated: "The January 29th ballistic missile test launch is inconsistent with UN Security Council Resolution 2231 and underscores the importance of the continued international action to curtail such activity."¹⁴ The official further went on to state that "these missile launches now and in the past are in defiance of 2231" but that he did not "recollect an administration official using the term 'violation' per se [of resolution 2231]" to characterize the missile launches.¹⁵

Iran denounced the new sanctions as "not compatible with America's commitments and resolution 2231 of the U.N. Security Council that endorsed the nuclear deal reached between Iran and six powers."¹⁶ Iran warned that it would retaliate by imposing legal restrictions on American individuals—but issued no immediate retaliatory sanctions.

⁹ U.S. Dep't of State Press Release, Senior Administration Officials on an Announcement from the Treasury Department on Iran (Feb. 3, 2017) at <https://www.state.gov/r/pa/prs/ps/2017/02/267435.htm> [hereinafter February U.S. Dep't of State Press Release].

¹⁰ *Id.*

¹¹ *Id.* See also Boeing Press Release, *Boeing, Iran Air Announce Agreement for 80 Airplanes* (Dec. 11, 2016), at <http://boeing.mediaroom.com/2016-12-11-Boeing-Iran-Air-Announce-Agreement-for-80-Airplanes>.

¹² Daugirdas & Mortenson, 110 AJIL, *supra* note 1, at 794.

¹³ S.C. Res. 2231, Annex B, para. 3 (July 20, 2015).

¹⁴ February U.S. Dep't of State Press Release, *supra* note 9.

¹⁵ *Id.*

¹⁶ *Iran to Impose Legal Restrictions on Some U.S. Entities*, REUTERS – TV (Feb. 3, 2017), at <http://www.reuters.com/article/usa-trump-iran-idUSL5N1FO5ZO>.

The International Atomic Energy Agency (IAEA) found that Iran has continued to comply with the JCPOA in its monitoring report released on February 24, 2017.¹⁷ Notably—and following criticism that its previous reports had been insufficiently specific¹⁸—the IAEA for the first time published specific details on Iran’s enriched uranium stockpile, finding that Iran has not exceeded 300kg of UF₆ enriched up to 3.67 percent U-235 during the relevant time period.¹⁹ In response to the report, Acting U.S. Representative to the IAEA Andrew Schofer reiterated the United States’ position that “Iran must strictly and fully adhere to all commitments and technical measures for their duration to enable the IAEA to provide such assurance. . . . [T]he United States will approach questions of JCPOA interpretation, implementation, and enforcement with great strictness indeed.”²⁰

In a letter from Secretary of State Rex Tillerson to U.S. House Speaker Paul Ryan on April 18, 2017, the State Department certified that Iran was in compliance with its obligations under the plan.²¹ The letter indicated that the administration remained concerned about Iran’s sponsorship of terrorism and that President Trump “ha[d] directed a National Security Council-led interagency review of the [JCPOA] that will evaluate whether suspension of sanctions related to Iran pursuant to the JCPOA is vital to the national security interests of the United States.”²² Secretary of State Tillerson criticized the JCPOA in a press briefing the next day, saying that it “fails to achieve the objective of a non-nuclear Iran; it only delays their goal of becoming a nuclear state.”²³ Secretary Tillerson further noted that “[t]he Trump Administration has no intention of passing the buck to a future administration on Iran” and thus, the administration was “conducting a comprehensive review of [its] Iran policy.”²⁴

In response, Iran’s envoy to the IAEA stated that the “US can only talk about strictness if and only if it fully complies with all its obligations under the JCPOA.”²⁵ During the Obama administration, Iran had also complained that the United States was defying the spirit and the letter of the agreement.²⁶ This time, Iranian Foreign Minister Javad Zarif took to Twitter accusing the United States of failing to fulfill its commitments under the JCPOA.²⁷ In response to Secretary Tillerson’s letter to Congress, Minister Zarif highlighted the U.S. commitments to “make every effort to support the successful implementation of this JCPOA including in their

¹⁷ IAEA Director General, Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (Feb. 24, 2017), at <https://www.iaea.org/sites/default/files/gov2017-10.pdf> [hereinafter IAEA February Report].

¹⁸ *Trump Administration Pledges ‘Great Strictness’ on Iran Nuclear Deal*, REUTERS (Mar. 7, 2017), at <http://www.reuters.com/article/us-iran-nuclear-idUSKBN16E2GZ>.

¹⁹ IAEA February Report, *supra* note 17, at 4.

²⁰ U.S. Statement as Delivered by Chargé d’Affaires a.i. Andrew J. Schofer, IAEA Board of Governors Meeting (Mar. 7, 2017), available at <https://vienna.usmission.gov/u-s-statement-iran>.

²¹ Letter from Rex Tillerson, Secretary of State, U.S. Dep’t of State, to Paul Ryan, Speaker of the U.S. House of Representatives (Apr. 18, 2017), at <https://www.state.gov/secretary/remarks/2017/04/270315.htm>.

²² *Id.*

²³ U.S. Dep’t of State Press Release, Secretary of State Rex Tillerson Press Availability (Apr. 19, 2017), at <https://www.state.gov/secretary/remarks/2017/04/270341.htm>.

²⁴ *Id.*

²⁵ *All Parties to JCPOA Must Fulfill Commitments, Says Iran’s IAEA Envoy*, PRESS TV (Mar. 8, 2017), at <http://www.presstv.ir/Detail/2017/03/08/513531/Iran-IAEA-Najafi-JCPOA-nuclear-deal-US-Amano>.

²⁶ Daugirdas & Mortenson, 110 AJIL, *supra* note 1, at 791.

²⁷ *U.S. Defies Both Letter, Spirit of Nuclear Deal: Iran FM*, PRESS TV (Apr. 21, 2017), at <http://www.presstv.ir/Detail/2017/04/21/518916/Iran-US-Mohammad-Javad-Zarif-JCPOA-Twitter>.

public statements”²⁸ and to “refrain from any policy specifically intended to directly and adversely affect the normalisation of trade and economic relations with Iran”²⁹

On May 17, 2017, despite its criticisms of the agreement, the Trump administration waived sanctions against Iran as required under the JCPOA.³⁰ At the same time, the administration imposed new sanctions against several Iranian individuals and four organizations, including a China-based network, for human rights violations.³¹ OFAC designated the “Ruan Runling Network,” including one Chinese national and several Chinese firms, for providing, or attempting to provide, financial, material, technological, or other support to Iran’s Shiraz Electronic Industries.³² Acting Assistant Secretary of State for the Near Eastern Affairs Ambassador Stuart Jones explained:

As we continue to closely scrutinize Iran’s commitment to the JCPOA and develop a comprehensive Iran policy, we will continue to hold Iran accountable for its human rights abuses with new actions. We urge our partners around the world to join us in calling out individuals and entities who violate international sanctions targeting Iran’s human rights abuses.

Whether it’s imprisoning people arbitrarily, inflicting physical abuse and torture, or executing juvenile offenders, the Iranian regime has for decades committed egregious human rights violations against its own people and foreign nationals, and this pattern of behavior must come to an end. The U.S. and its partners will continue to apply pressure on Iran to protect the human rights and fundamental freedoms for everyone in Iran. This includes the U.S. citizens wrongfully detained or missing in Iran, and we call on Iran to immediately return them to their families.

In addition to the actions taken today, we are communicating to the U.S. Congress that the United States continues to waive sanctions as required to continue implementing U.S. sanctions-lifting commitments in the Joint Comprehensive Plan of Action. This ongoing review does not diminish the United States’ resolve to continue countering Iran’s destabilizing activity in the region, whether it be supporting the Assad regime, backing terrorist organizations like Hezbollah, or supporting violent militias that undermine governments in Iraq and Yemen. And above all, the United States will never allow the regime in Iran to acquire a nuclear weapon.³³

Iran and China criticized these new sanctions. On May 18, 2017, Iranian Foreign Ministry spokesman Bahram Qassemi stated that Iran “condemns the US government’s malintent in its attempts to reduce the positive effects of the implementation of that country’s commitments under the JCPOA by adding natural and legal individuals to the list of its transnational, unilateral and illegal sanctions.”³⁴ In further response, Iran added nine U.S. individuals and

²⁸ JCPOA, *supra* note 1, para. 28. According to the JCPOA, government officials for the United States means senior officials of the U.S. Administration. *Id.*, para. 28, n.1.

²⁹ *Id.*, para. 29.

³⁰ U.S. State Dep’t Press Release, U.S. State Department Issues Report on Human Rights Sanctions on Iran (May 17, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/05/270925.htm>. Acting Assistant Secretary of State for Near Eastern Affairs Ambassador Stuart Jones stated the following with regards to the report: “[W]e are communicating to the U.S. Congress that the United States continues to waive sanctions as required to continue implementing U.S. sanctions-lifting commitments in the Joint Comprehensive Plan of Action.”

³¹ U.S. Dep’t of Treasury Press Release, Treasury Sanctions Iranian Defense Officials and a China-Based Network for Supporting Iran’s Ballistic Missile Program (May 17, 2017), at <https://www.treasury.gov/press-center/press-releases/Pages/sm0088.aspx>.

³² *Id.* In September 2008, pursuant to Executive Order 13,382, OFAC had designated Shiraz Electronics Industries for being owned or controlled by Iran’s Ministry of Defense and Armed Forces Logistics. *Id.*

³³ U.S. Dep’t of State Press Release, U.S. State Department Issues Report on Human Rights Sanctions on Iran (May 17, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/05/270925.htm>.

³⁴ *Iran Condemns Fresh US Sanctions over Missile Program*, PRESS TV (May 18, 2017), at <http://www.presstv.com/DetailFr/2017/05/18/522318/Iran-US-sanction-missile-nuclear>.

corporations to its sanctions list, citing their “confirmed role in blatant human rights violations.”³⁵ The Foreign Ministry alleged that the banned U.S. firms and individuals directly and indirectly cooperated with Israel in its “crimes against humanity in the occupied Palestinian territories” or in the regime’s “terrorist acts.”³⁶ On May 18, 2017, China lodged a complaint with the United States due to the sanctions against Chinese figures.³⁷ Chinese Foreign Ministry spokesperson Hua Chunying stated “China is opposed to the blind use of unilateral sanctions particularly when it damages the interests of third parties. I think the sanctions are unhelpful in enhancing mutual trust and unhelpful for international efforts on this issue.”³⁸

United States Strikes Syrian Government Airbase in Response to Chemical Weapons Attacks by Syrian Forces; Two Additional Strikes on Syrian Government Forces Justified by Defense of Troops Rationale

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On April 6, 2017, the United States launched air strikes against a Syrian government airfield,¹ marking a new development in Syria’s long-running civil war.² U.S. involvement in the conflict had previously been limited to the provision of indirect support for some rebels and the use of direct force against certain nonstate actors, particularly Islamic State of Iraq and the Levant (ISIL).³ This changed in the wake of April 4, however, when a rebel-held town was hit by a nerve gas attack that killed more than eighty people—including at least thirty children—and injured hundreds more.⁴ The attack used Sarin or a Sarin-like substance, which causes death by asphyxiation, often accompanied by blue facial skin and foaming at the mouth.⁵ The United States concluded, along with many other states and the NGO Human Rights Watch, that the attack was perpetrated by Syria’s Assad regime.⁶

³⁵ *Id.*

³⁶ *Id.*

³⁷ *China Complains to U.S. About New Iran Sanctions*, REUTERS (May 18, 2017), at <http://www.reuters.com/article/us-iran-nuclear-usa-china-idUSKCN18E0UC>.

³⁸ *Id.*

¹ *Transcript, Trump Speaks about Strikes in Syria*, N.Y. TIMES (Apr. 6, 2017), at <https://www.nytimes.com/2017/04/06/world/middleeast/transcript-video-trump-airstrikes-syria.html>.

² Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 110 AJIL 567 (2016).

³ Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 109 AJIL 429 (2015).

⁴ Anne Barnard & Michael Gordon, *Worst Chemical Attack in Years in Syria; U.S. Blames Assad*, N.Y. TIMES (Apr. 4, 2017), at <https://www.nytimes.com/2017/04/04/world/middleeast/syria-gas-attack.html>; *Syria Chemical ‘Attack’: What We Know*, BBC (Apr. 26, 2017), at <http://www.bbc.com/news/world-middle-east-39500947>. For discussion of the U.S. response to earlier uses of chemical weapons in the Syrian conflict, see Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 108 AJIL 95 (2014).

⁵ *Syria Chemical ‘Attack,’ supra* note 4.

⁶ Human Rights Watch, *Death by Chemicals: The Syrian Government’s Widespread and Systematic Use of Chemical Weapons* (May 1, 2017), at <https://www.hrw.org/report/2017/05/01/death-chemicals/syrian-governments-widespread-and-systematic-use-chemical-weapons>. See also *infra* footnote 24 (listing statements supporting U.S. strike).