



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

NOV 09 2017

The Honorable Ed Royce
Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice (“the Department”) on the amendment in the nature of a substitute to H.R. 1698, the “Iran Ballistic Missiles and International Sanctions Enforcement Act.” As we explain below, the bill raises two constitutional concerns.

First, section 2(b) would assert that it “is the policy of the United States to prevent Iran from undertaking any activity related to ballistic missiles designed to be capable of delivering nuclear weapons.” Because this assertion of policy is apparently intended to require the Executive Branch to initiate contact with foreign partners relating to specific topics and to advance specified objectives, it would intrude on the President’s exclusive authority under the Constitution “to determine the time, scope, and objectives of international negotiations.” *Unconstitutional Restrictions on Activities of the Office of Science and Technology Policy in Section 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011*, 35 Op. O.L.C. ___, at *4 (Sept. 19, 2011) (citation and internal quotation marks omitted), <https://www.justice.gov/file/18346/download>. We thus recommend making the section hortatory, perhaps by changing “is” to “should be” or revising the section to reflect the sense of the Congress.

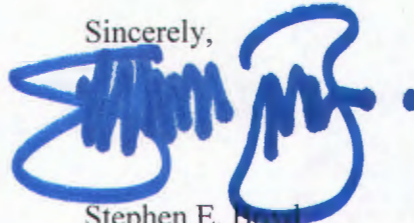
Second, section 2(e) would amend the Iran Sanctions Act of 1996 to require, in certain circumstances, the exclusion from the United States of certain individuals. Section 2(h) would expand the category of individuals to whom the exclusion might apply. Although section 2(h) would provide an exception for admission necessary for compliance with the agreement concerning United Nations headquarters, it does not provide a general exception for aliens whom the President wishes to receive for diplomatic purposes. This could, therefore, in certain circumstances, interfere with the President’s plenary authority to “receive Ambassadors and

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other public Ministers.” U.S. Const. art. II, § 3. This “right of reception extends to ‘all possible diplomatic agents which any foreign power may accredit to the United States.’” *Presidential Power Concerning Diplomatic Agents and Staff of the Iranian Mission*, 4A Op. O.L.C. 174, 180 (1980) (quoting *Ambassadors and Other Public Ministers of the United States*, 7 Op. Atty. Gen. 186, 209 (1855)). Accordingly, we recommend adding the following text to section 2(e) after “as the case may be”: “, and to the extent compatible with the President’s discretion to receive ambassadors and other diplomatic officials of his choosing,”.

Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen E. Boyd", with a large, stylized flourish extending from the end of the signature.

Stephen E. Boyd
Assistant Attorney General

cc: The Honorable Eliot L. Engel
Ranking Member