

UNINTENDED VICTIMS:
THE IMPACT OF THE IRAN SANCTIONS ON
IRANIAN AMERICANS

NOVEMBER 2012

A JOINT PROJECT BY THE ASIAN LAW CAUCUS, THE IRANIAN AMERICAN BAR ASSOCIATION, THE NATIONAL IRANIAN AMERICAN COUNCIL, AND THE PUBLIC AFFAIRS ALLIANCE OF IRANIAN AMERICANS

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Iranian American Bar Association
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I. EXECUTIVE SUMMARY

The United States has the “[m]ost sweeping sanctions on Iran of virtually any country in the world.”¹

“Part of what makes the Iran sanctions so remarkable is the personal level at which they’re aimed.”²

“Because of [the] deep linkages between the Iranian American community and Iran...sanctions against other nations [such as North Korea] may not carry the same consequences for those with roots in the targeted country.”³

The United States sanctions on Iran (“Iran Sanctions”) have been a prominent feature of U.S. policy vis-à-vis Iran for over three decades. This complex area of law is composed of a web of interacting statutes, Executive Orders, rules, and regulations that all U.S. persons must comply with, else risk severe civil and criminal penalties.

From the beginning of the sanctions in 1979, the U.S. has consistently and repeatedly declared that the purpose of the Iran Sanctions is to address actions by the Government of Iran that undermine or threaten U.S. national security, foreign policy, or economic interests. Indeed, every Executive Order adding to these sanctions has been issued to target the Iranian regime for its alleged support for international terrorism, for engaging in human rights abuses against its citizens, or for seeking to acquire nuclear or other nonconventional weapons.⁴

What is clear is that the U.S. government did *not* intend for the Iran Sanctions to burden Iranian Americans, nor would it make logical sense to do so. Since the target of the sanctions is the government of Iran, it is wholly illogical to target a group of individuals in the U.S. based solely on the fact that they have roots in the targeted country. Doing so would be an affront to foundational U.S. civil rights principles and would create a second-class group of U.S. citizens with inferior rights under the law, which would not only be illogical, but also counterproductive to U.S. interests. Thus, targeting Iranian Americans is not and could not be the goal of the Iran Sanctions.

Whether or not the sanctions are an effective tool in the effort to persuade the current Iranian regime to change its behavior, both proponents and opponents of sanctions can agree that the Iran Sanctions are having both intended and collateral effects. As illustrated in this report, one of the most troubling collateral effects of the sanctions is the unintended targeting of a subgroup of people in the United States – Iranian Americans. And yet, it is this community that is bearing an unjust and unintended burden under the sanctions. Factors contributing to this reality include:

Features of the Iranian American Community

The Iranian American community:

- *Is relatively new to the United States*, whose migration to this country did not begin in earnest until around the mid-1950s

- *Retains strong ties to the people of Iran*, due to their more recent arrival in the U.S., the fact that a vast majority of Iranian Americans have immediate family still in Iran, and the fact that many Iranian Americans retain assets in Iran that they have not yet been able to bring over to the U.S.
- *Has very little knowledge of the wide range of activity prohibited by the sanctions*, not unlike most U.S. persons.

These community features, combined with the complexity of the sanctions legal regime and the lack of useful guidance for community members from agencies charged with administering and enforcing the sanctions, have led to a troubling but avoidable burden on this community.

Features of the U.S. Sanctions against Iran

The U.S. sanctions against Iran prohibit virtually all activity involving Iran, including but not limited to:

- Most direct or indirect imports of Iranian goods, services, or technology
- Most direct or indirect exports to Iran of goods, services, or technology
- Facilitating, guaranteeing, financing, or approving such shipments
- Sending or receiving funds to or from Iran, except in very limited circumstances
- Making new investments in Iran, including buying property in Iran
- Selling existing real estate in Iran.

This partial list of prohibited activity, which may only be engaged in after obtaining official permission from the U.S. government to do so (called a “license”), implicates a broad range of routine activity that more recent immigrant communities, such as the Iranian American community, often must engage in to assist or support family or friends in Iran or manage their or their family’s assets in Iran.

In addition to the intricacy of the legal regime itself, which many Iranian Americans report being completely unaware of, other factors collude to undercut the ability of Iranian Americans and other U.S. persons to engage in activity that is clearly authorized by the Sanctions. In doing so, these factors not only severely and unfairly burden the Iranian American community, but also thwart Legislative and Executive intent by impeding or altogether eliminating the ability of U.S. persons to engage in transactions that lawmakers have signaled are of vital importance.

Factors Impeding Authorized Transactions

Factors impeding or altogether precluding activity that is clearly permissible under the sanctions, which were likely unanticipated when these laws were being crafted, include:

- Widespread confusion on the part of U.S. banks, mail carriers, retailers, and other service providers about activity that is permitted by the Iran sanctions, which has led to
 - Refusals to process legal transactions involving Iran, due to a mistaken belief that the activity is prohibited by the sanctions

- Refusals to process legal transactions involving Iran, even in cases where the provider knows the activity or transaction to be legal under the sanctions, due to a desire to avoid any dealings with Iran altogether
- Features of the Iranian banking system that render it exceedingly difficult for Iranian Americans and other U.S. persons to use Iranian financial institutions to effect funds transfers that would be legal under U.S. law
- Features of third country banking systems that make effecting funds transfers involving Iran exceedingly difficult
- The community's lack of the detailed knowledge that would be required to navigate not only the U.S.'s legal restrictions, but also all the above factors.

Summary of Key Recommendations

There are several undemanding steps that the federal government can take to ensure that Iranian Americans are not unjustly and unintentionally burdened by the sanctions:

- ***Talk with community members, sanctions practitioners, and community organizations:*** Understanding the concerns of the Iranian American community regarding the sanctions and working collaboratively with them to address the issues flagged in this report is a long overdue measure.
- ***The Office of Foreign Assets Control (“OFAC”), as the primary agency responsible for administering and enforcing the sanctions, should take the following steps to address issues raised in this report:***
 - ***Issue guidance for community members on exactly how permissible funds transfers to and from Iran may be effected:*** The OFAC should issue detailed guidance for community members explaining exactly how permissible funds transfers to and from Iran may take place, including details on which financial institutions may be legally transacted with.
 - ***Outreach and issue guidance to U.S. financial institutions:*** The OFAC should take proactive steps to outreach to U.S. financial institutions to advise them of which types of transactions are permissible under the Iran Sanctions, and assure them that they will not be targeted for effecting these permissible transactions.
 - ***Provide training to Customs and Border Protection (“CBP”) agents regarding the Iran Sanctions:*** OFAC should work with CBP and its agents to ensure that the rights of Iranian Americans are not violated at the border.
- ***Ensure overzealous enforcement does not lead to civil rights violations:*** Given the widespread confusion about the sanctions evinced by numerous service providers demonstrated throughout this report, the federal government, including OFAC, should take active measures to engage with providers such as mail carriers, technology retailers, and others to clear confusion over which transactions are permissible under the sanctions. In particular, OFAC, in conjunction with the Department of Justice, should issue guidance to retailers and financial institutions concerning the interactions between the sanctions and domestic civil rights law

II. METHODOLOGY

In an effort to ascertain the impact of the Iran Sanctions on Iranian Americans, the Asian Law Caucus (“ALC”), in partnership with the Iranian American Bar Association (“IABA”), and the National Iranian American Council (“NIAC”) solicited personal stories from community members whose business, personal, family, or charitable affairs were impacted by the Iran Sanctions, or who knew someone who was impacted by the sanctions. Solicitations were made over a one year span in several ways:

- The distribution of a general call for stories describing the effort
- The distribution of a questionnaire (included as Appendix B) about the effects of the Iran Sanctions on the community
- By sanctions law practitioners soliciting confidential stories from their clients
- At “Know Your Rights” presentations by the Asian Law Caucus on the legal requirements imposed by the Iran Sanctions, conducted for Iranian Americans at cultural and community centers in the Bay Area of Northern California.

Though many community members came forward with anonymous stories about family, friends, and acquaintances who were impacted by the sanctions, the vast majority of people were afraid to speak about how they themselves were impacted, for fear that the federal government would somehow find out about their inadvertent violations of the sanctions, if any.

Several community members who wished to share stories of impact were afraid to discuss them via phone, mail, email, or in person, for fear that their identifying information could be discerned by those methods. Every person who shared a story for this report requested that all personally identifying information, both theirs and that of the people about whom the stories relate if applicable, be redacted from this report. Thus, all names used are aliases.

The widespread fear in the Iranian American community about the Iran sanctions is an incredibly troubling phenomenon that has yet to be adequately researched and addressed. This fear is not only detrimental for the community, but also makes obtaining data on the impact of the sanctions exceedingly difficult.

Several stories collected for this report were left out if they were duplicative of stories already chosen for inclusion.

In addition to the above, several OFAC practitioners and members of community advocacy groups were interviewed. Other data sources were also used as noted.

ALC serves as a resource hub for community members with questions or concerns about the Iran Sanctions. In May 2011, ALC released a publication entitled “Know Your Rights: The Impact of the U.S. Sanctions against Iran on You,” which serves as a general guide to the scope of prohibited and permissible transactions under the Iran Sanctions. The purpose of the guide was to educate U.S. persons, and particularly Iranian Americans, about what the Iran Sanctions required of them and what their rights in this context are. The guide is available in both English and Farsi on the ALC website at <http://www.asianlawcaucus.org/publications/iranian-sanctions>.

ALC also provides general consultations for community members with questions about how to comply with the sanctions, and provides referrals to sanctions practitioners as needed. ALC has received scores of calls from community members seeking these services, and where appropriate, solicitations for stories for this report were made of callers.

III. INTRODUCTION

A. KEY FEATURES OF THE IRANIAN AMERICAN COMMUNITY

As used in this report, the term “Iranian Americans” refers to those individuals in the United States who trace their ancestry to Iran. Iranian Americans, many of whom are U.S. citizens, are integral parts of their local communities. They are students, parents, teachers, doctors, service workers, and more. They are liberals and conservatives, and everything in between. In short, Iranian Americans are a core part of the fabric that makes up our country.

A comprehensive discussion of the Iranian American community is not the objective of this report. However, a brief discussion of the major features of this community’s attributes is necessary to aid the Reader in understanding how and why the U.S. sanctions against Iran are having such a pronounced impact on this group.

The Iranian American Community is Very Diverse

The Iranian American community is far from homogenous. Ethnically, it includes Persians, Azaris, Kurds, Lors, Gilakis, Arabs, Baluchis, Armenians, Assyrians, and Turkmens, among others, and includes those who practice numerous faiths, including Islam, Christianity, Judaism, Zoroastrianism, and Baha’i, among others, as well as those who do not identify as religious.⁵

Size of the Community is Heavily Disputed

The size of the Iranian American population is heavily disputed. According to the U.S. Census Bureau’s 2010 American Community Survey, 463,552 people (+/- 18,925) reported their “first or second generation ancestry” as Iranian.⁶ However, there is widespread belief that this figure grossly under-represents this community’s true population size, which is widely believed to number over one million.⁷ The wildly variant estimates of the size of the community reported by other sources lend credence to this higher estimate.⁸

Facts at a Glance: Iranian Americans

- Ethnically and religiously diverse
- Census Bureau data states population size is about 460,000, but actual figures widely believed to be significantly higher, with many credible sources estimating this group to number over 1 million
- Are a newer immigrant community
- Over 80% have family living in Iran
- Maintain strong ties with people in Iran
- Are mostly U.S. citizens, with the 2000 Census reporting that over 3 in 5 Iranian immigrants were naturalized U.S. citizens

These disparate figures are attributed to numerous causes, the most oft-cited of which is community unwillingness to participate in census surveys due to fear of discrimination for identifying oneself as Iranian.⁹ This has been detailed in reports from community organizations

and anecdotal evidence,¹⁰ and is unsurprising as other communities that are likewise facing spikes in discrimination, such as Arab Americans, have expressed similar fears. Discrimination against Iranian Americans is discussed later in this Section.

Other factors contributing to the probable underreporting of the Iranian American population include issues with methods used by the Census Bureau to collect data,¹¹ the fact that the U.S. federal government officially categorizes the race of those of Middle Eastern descent (including Iranian Americans) as “white,”¹² as well as the fact that many Iranian Americans consider themselves to be white.¹³ These factors make it impossible to account for those individuals as Iranian Americans in official statistics.

The Community is Relatively New to the United States

Unlike many other ethnic groups in the U.S., Iranian Americans are a relatively new community. The migration of people of Iranian descent to the U.S. did not begin in earnest until around the mid-1950s, though a smaller community was present prior to this time. This migration is generally described as occurring in two phases, the first beginning in the mid-1950s and continuing until the 1979 Islamic Revolution in Iran, and the second beginning in 1979, peaking between the years 1980 to 1990, and continuing on to the present. These migrants consisted of a diverse group of students, workers, exiles, asylees, refugees, and many more.¹⁴

The Community Retains Strong Ties to the People of Iran

Given this recent immigration history, it is not surprising that the community retains very strong ties to people in Iran.¹⁵ According to a 2012 survey, 84% of Iranian Americans have family currently living in Iran,¹⁶ many of whom are “immediate family.”¹⁷ A 2011 survey reported that over 60% of Iranian Americans communicate with friends and family in Iran several times a month or more,¹⁸ and that 32% of Iranian Americans travel to Iran at least once every three years.¹⁹

This community’s comparatively recent arrival to the U.S., coupled with the strong ties the vast majority of Iranian Americans retain with the people of Iran, result in the U.S. sanctions against Iran playing out in particularly troubling and burdensome ways on Americans of Iranian descent, arguably much more so than for other minority groups in the U.S. who are navigating sanctions against their countries of origin.

“Because of these deep linkages between the Iranian American community and Iran...sanctions against other nations [such as North Korea] may not carry the same consequences for those with roots in the targeted country.”

From “Who Iran Sanctions are Really Affecting,” Kia Makarechi, Huffington Post, October 11, 2011.

Discrimination against Iranian Americans

“Imagine if your ethnicity determined which products you were able to buy. Or if sales clerks required you to divulge your ancestry before swiping your credit card. Some of us don’t have to imagine.”²⁰

Discrimination is a prevalent experience in the Iranian American community. According to a recent survey, 40% of Iranian Americans say either they themselves or someone they know has been discriminated against because of their ethnicity or country of origin.²¹ An online survey reported that 42.2% of participants “always,” “sometimes,” or “often” feel discriminated against because of their Iranian ancestry.²² It is unclear how much of this discrimination is a result of overzealous enforcement of the sanctions and how much is attributable to other factors.²³

Whether or not the sanctions against Iran are effective in achieving their stated goal of changing the behavior of the current Iranian regime has long been a topic of fierce debate and is not the subject of this report. What is clear is that the sanctions have had collateral effects on the Iranian American community, which is not the intended target of the sanctions.

One recent and well-publicized example of this occurred during the summer of 2012, when an Apple, Inc. (“Apple”) retail branch was accused of refusing to sell its products to an Iranian American woman, at least partially because she was speaking Farsi (the official language of Iran, which is widely spoken by Iranian Americans).²⁴

Several other similar incidents have been alleged at various Apple retail locations across the U.S. In at least one of those incidents, the retail clerk, in refusing to sell Apple products to an Iranian American, cited to Apple’s official company policy regarding current U.S. embargoes, which is taken almost verbatim from the Iran Transactions Regulations, a major component of the Iran Sanctions.²⁵ Congress did not intend for the U.S. sanctions against Iran to restrict the sale of phones and computers to Americans based on their ethnicity or ancestry, as is discussed further in Section III of this report; thus, it appears that confusion over the requirements the sanctions impose on U.S. persons may be leading to private sector racial discrimination against Iranian Americans. Given the complexity and sheer amount of activity implicated by the sanctions, which is discussed next, this is perhaps not surprising. It is, however, incredibly troubling.

B. OVERVIEW OF THE IRAN SANCTIONS

“Part of what makes the Iran sanctions remarkable is the personal level at which they’re aimed.”²⁶

The Iran Sanctions refer generally to the economic penalties imposed by the U.S. government on the country of Iran, many people subject to Iran’s jurisdiction, and other individuals and entities that engage in specified activity with these sanctioned entities. This complex web of legal restrictions is comprised of numerous statutes, executive orders, rules, and regulations²⁷ which all U.S. persons²⁸ must navigate successfully or else risk severe civil and criminal penalties.²⁹

Structure of the Iran Sanctions

Though the structure of the Iran Sanctions is complex and confusing, in general, these rules prohibit a broad range of transactions, and then carve out certain, very limited activities as permissible. These permissible activities may be authorized by “exemptions” or “licenses.”

Exemptions are certain types of activities that Congress has explicitly said are permissible, and which are written into the law itself. Licenses, by contrast, are specific permission to do

something that the law would otherwise not allow a U.S. person to do; they are issued by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), the agency charged with implementing and enforcing the sanctions. Licenses can be either “general” or “specific.” General licenses pre-authorize a particular type of transaction for all U.S. persons, while specific licenses are issued to a particular person or company and allows that specific entity to do a proposed transaction. U.S. persons seeking specific licenses must make written applications to OFAC for permission to do the proposed transaction.³⁰

Brief History and Legal Framework of the Iran Sanctions

A full explanation of all U.S. sanctions against Iran is beyond the scope of this report, but an overview of the history and legal framework comprising the sanctions is necessary to understand their effects on the Iranian American community.

The underlying authority for the imposition of most economic sanctions, including those against Iran, is the International Emergency Economic Powers Act³¹ (“IEEPA”), passed by Congress in 1977 to clarify the President’s powers to implement embargoes and impose sanctions on foreign governments during war or times of declared national emergencies.³²

Specifically, the IEEPA grants a great deal of authority³³ to the President, which may be exercised to “deal with any unusual and extraordinary threat” to the economy, foreign policy, or national security of the U.S. whose source is wholly or substantially outside the United States.³⁴ It is this statute that provides the underlying legal authority for the federal government’s power to impose economic sanctions and to block or freeze assets that come within the U.S.’s jurisdiction.

Sanctions have been a prominent feature of U.S. policy vis-à-vis Iran for over three decades, and have become increasingly restrictive over time. They began in 1979 following the seizure of the U.S. Embassy in Tehran, Iran, which led to the severing of diplomatic ties between the two nations in 1980 and was the impetus for the installation of sweeping sanctions against Iran.³⁵

The sanctions against Iran have been expanded several times since then.

The Reagan Administration declared Iran to be a state sponsor of terrorism, leveled comprehensive restrictions on Iranian imports with the issuance of Executive Order 12613 (discussed below), and imposed a number of restrictions on exports to Iran.³⁶

A particularly notable period of expansion of the sanctions occurred during the Clinton Administration, which severely restricted involvement with Iran’s oil and gas sectors, as well as general trade with Iran.³⁷ Many of the sanctions added during this time were also aimed at persuading U.S. allies to similarly restrict trade with Iran.³⁸ The most notable of these measures

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| <p><i>The Iran Sanctions:</i></p> <ul style="list-style-type: none">○ Are comprised of numerous statutes, executive orders, rules and regulations○ Affect routine transactions done by individuals, <i>not</i> merely transactions between governments or transactions between businesses○ Are not well known or well understood by communities most affected by them |
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was the Iran and Libya Sanctions Act (renamed the “Iran Sanctions Act” in 2006),³⁹ a set of extra-territorial sanctions targeting foreign firms that invest in Iran’s energy sector.⁴⁰

The Bush Administration saw the expansion of the list of designated persons and entities that were sanctioned for terrorism or nuclear proliferation activities. Among those designated were the Iranian Revolutionary Guard Corps and key Iranian state-owned banks.⁴¹

Finally, the Obama Administration has overseen another sweeping expansion of the Iran Sanctions,⁴² such that the U.S. is now widely acknowledged to have the “[m]ost sweeping sanctions on Iran of virtually any country in the world.”⁴³ In 2010, the Iran Sanctions Act (“ISA”) was expanded by the passage of the Comprehensive Iran Sanctions, Accountability, and Divestment Act (“CISADA”). *Inter alia*, CISADA strengthened then-existing sanctions against Iran’s energy sector, codified various legal restrictions which were previously imposed under a number of executive orders, and penalized foreign financial institutions who engage in specified transactions with Iran by limiting their access to the U.S. financial system in an effort to step up efforts to use legal authorities to drive down foreign investment in Iran.⁴⁴ The ISA and CISADA were further expanded with the passage of the Iran Threat Reduction and Syria Human Rights Act,⁴⁵ which was signed into law on August 10, 2012.⁴⁶ A further discussion of recent changes to the Iran Sanctions regime may be found at Appendix A.

Administering the Sanctions: The Iranian Transactions Regulations

As discussed above, the economic and trade sanctions against Iran (and other targeted foreign countries and individuals) are administered and enforced by OFAC, which issues regulations that help implement and administer the restrictions on dealings with Iran contained in the statutes and executive orders discussed herein. The most relevant sanctions program regulations⁴⁷ affecting Iranian American community members’ dealings with Iran are the Iranian Transactions Regulations,⁴⁸ which began in 1987 with Executive Order 12613 (“E.O. 12613”), which imposed a new import embargo on Iranian goods and services.⁴⁹ In addition to E.O. 12613, three other executive orders, all issued by President Clinton, underpin the expansive prohibitions contained in the ITR:

The ITR Executive Orders At-a-Glance:

- 12613: Prohibited Iranian imports
- 12957: Prohibited involvement with Iran’s petroleum sector
- 12959: Transformed the sanctions:
 - Prohibited exports to Iran
 - Prohibited new investments in Iran
 - Tightened the ban on Iranian imports
- 13059: Clarified and expanded the sanctions

- **Executive Order 12957**⁵⁰: Issued in 1995, this order targeted Iran’s petroleum industry by prohibiting U.S. involvement with that sector.
- **Executive Order 12959**⁵¹: Issued in 1995, this order is the linchpin of the ITR and is widely credited with truly establishing those Regulations.⁵² It “completely transformed the U.S. sanctions program dealing with Iran”⁵³ by implementing broad prohibitions on exports to Iran, banning “new investments”⁵⁴ in Iran, and expanding upon prohibitions on U.S. involvement with the Iranian petroleum sector implemented by E.O. 12957.⁵⁵

- **Executive Order 13059**⁵⁶: Issued in 1997, this order clarified and expanded the broad prohibitions of the sanctions, as well as “confirm[ed] that virtually all trade and investment activities with Iran by U.S. persons, wherever located, are prohibited.”⁵⁷

Purpose of the Iran Sanctions

From the beginning of the sanctions in 1979, the U.S. has consistently stated that the sanctions against Iran have been imposed in response to actions or stances by the Iranian regime that undermines or threatens U.S. interests, such as the Iranian government’s alleged: support for terrorist groups; efforts to acquire nuclear and other nonconventional weapons; and human rights abuses against its citizens. This is clear from the major executive orders and statutes relating to Iran discussed above.

The first U.S. sanctions against Iran, which came in the form of Executive Order 12170,⁵⁸ were imposed ten days after the commencement of the 1979 Iran Hostage Crisis;⁵⁹ it and other orders issued during the crisis were lifted at the conclusion of the crisis. The next major Order issued relating to Iran, Executive Order 12613,⁶⁰ was issued due to findings by President Reagan that the Government of Iran was “actively supporting terrorism as an instrument of state policy” and had conducted “aggressive and unlawful military action against U.S.-flag vessels;” it was intended to “ensure that the United States[’] imports of Iranian goods and services will not contribute financial support to terrorism or to further aggressive actions” by the Government of Iran.⁶¹

Executive Order 12957 (“E.O. 12957”) was issued due to findings that the “actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy” of the U.S. and declared a national emergency to address that threat.⁶² Every executive order relating to Iran issued subsequent to E.O. 12957 has been issued with respect to the national emergency declared in E.O. 12957.⁶³ Finally, Executive Orders 13553 and 13606 were issued due to concerns about human rights abuses by the Iranian government.

The major statutes discussed in this section, the Iran Sanctions Act of 1996 and CISADA, are similarly focused on the actions of the Government of Iran. The Iran Sanctions Act found that the “efforts of the Government of Iran to acquire weapons of mass destruction and the means to deliver them and its support of international terrorism” are a danger to the national security and foreign policy interests of the U.S. and that preventing Iran from obtaining such weapons requires efforts to deny Iran the financial ability to sustain its nuclear, chemical, biological, and missile weapons programs.”⁶⁴ CISADA was likewise focused on weapons acquisition and terrorism, finding that the “illicit nuclear activities of the Government of Iran, combined with its development of unconventional weapons and ballistic missiles and its support for international terrorism” is a threat to the security of the U.S. and its allies⁶⁵ and that it was the sense of Congress that “diplomatic efforts to address Iran’s illicit nuclear efforts and support for international terrorism are more likely to be effective if strong additional sanctions are imposed on the Government of Iran.”⁶⁶

Thus, every executive order and major piece of legislation relating to Iran has targeted the actions of the Government of Iran for supporting terrorism, engaging in human rights abuses against its citizens, or seeking to acquire nuclear and other nonconventional weapons. What is clear is that the U.S. government is *not* targeting Iranian Americans, nor would it make logical sense to do so. As the target of the sanctions is the government of Iran, it is wholly illogical to target a group of individuals in the U.S. based solely on the fact that they have roots in the targeted country. Singling out this group of Americans based on their national origin would be an affront to foundational U.S. civil rights protections⁶⁷ and would lead to the indefensible outcome of the creation of a group of U.S. citizens with inferior rights under the law. Thus, targeting Iranian Americans would not only be illogical, but also counterproductive to U.S. aims.

It is clear from the text of the text of the statutes, Executive Orders, and regulations discussed in this Section that the Iran Sanctions prohibit a broad range of activity, but the full range of those prohibitions are not necessarily intuitive. For example, though it is clear that one may not export goods, services, or technology to Iran, it is not evident that this prohibition precludes taking along one's personal laptop while traveling in Iran. The Asian Law Caucus has received scores of calls from Iranian Americans who were trying to conduct routine transactions that recent immigrant communities must often do, only to be blocked from doing so by these laws. This is discussed more fully in the next Section.

IV. IMPACTED: BUSINESS, FAMILY, PERSONAL, AND CHARITABLE AFFAIRS

As discussed above, the legal framework of the Iran Sanctions is composed of a complex web of interacting statutes, orders, rules, and regulations that even those with legal training have found exceedingly difficult to navigate. Add in the fact that most Americans, including Iranian Americans, have very limited knowledge about the sanctions⁶⁸ or their rigorous requirements, and we can easily see how community members can innocently run afoul of these laws. Several other factors compound these problems, the most troubling of which is that activity that is legal under the sanctions laws is often deliberately blocked by service providers and others. Finally, other factors and realities on the ground often render exemptions and licenses meaningless. These themes are examined below in the context of a discussion of routine activity that is prohibited or restricted by the Iran sanctions.⁶⁹

Major Issues:

- *The law is very complex:* This area of law was created over a 30+ year period and is comprised of tens of executive orders and numerous statutes and regulations. The average layperson does not have the specialized knowledge base about the sanctions' requirements and the U.S. and Iranian banking systems to navigate this complex area of law.
- *Many people do not know what the law requires:* Many community members have no idea what the sanctions require, and where to go to understand what the law requires of them.
- *Legal activity is often deliberately blocked:* Even activity that is clearly allowed by U.S. law is often blocked by banks, other service providers, and private actors.
- *Other factors often render legal exemptions and licenses meaningless:* Issues arising from the structure of the Iranian banking system, banking practices of third country banks, and other entities often make it exceedingly difficult to effect certain transactions, even when they are allowed by U.S. and other laws.

A. MONEY AND INVESTMENT AFFAIRS

The Iran Sanctions impede a large range of routine activity related to money and investment matters. For example, the sanctions prohibit U.S. persons from:

- Making new investments in Iran⁷⁰
- Buying or investing in property in Iran⁷¹
- Selling existing property in Iran, including real estate acquired through inheritances
- Continuing to accrue interest or charging fees on pre-existing loans in Iran⁷²
- Buying, selling, financing, or facilitating Iranian goods or services⁷³
- Transferring funds to Iran for most matters, unless they meet the strict requirements of certain narrow exceptions, such as non-commercial personal remittances,⁷⁴ payments associated with an import or export exception, or transactions that have been licensed by OFAC
- Conducting any business with any Iranian financial institution, even private ones.⁷⁵

This partial list illustrates the wide range of routine activity that is prohibited by the sanctions, and which can only be legally engaged in if a U.S. person applies for and obtains a license -- a complex and time consuming process -- and overcomes the host of practical obstacles that often render licenses and exemptions in the law useless.

These restrictions on money and investment have enormous implications for Iranian Americans who, as discussed in Section III, are very likely to have close ties to Iran, whether because they have close family members living there, because they retain significant assets there, or because they travel there frequently. These general prohibitions are examined in two specific contexts that are often an issue for Iranian Americans: selling existing property in Iran and transferring funds from or to Iran.

The Law in Practice: Selling a House in Iran

Community members often run into issues when trying to sell existing property in Iran and bring the proceeds over to the U.S. Divesting from Iran by liquidating assets in that country and bringing them to the U.S., where they can be of use to the individual and benefit the general U.S. economy, is consistent with U.S. interests and is permissible under the sanctions. Actually affecting these transactions, however, is fraught with difficulty.

First, it is important to recognize that this scenario is a frequent problem for Iranian Americans for several reasons:

- As Iranian Americans are likely to be newer immigrants, and many are naturalized U.S. citizens who were born in Iran, they are more likely than other immigrant communities to have assets in their country of origin that they may need to bring to the U.S.
- Since the vast majority of Iranian Americans have immediate family in Iran, they are more likely to acquire real property, such as land and houses, via inheritances.
- Anecdotal evidence from OFAC practitioners who are frequently in contact with persons in Iran have reported that probate in Iran often takes a lengthy period of time,⁷⁶ meaning

even Iranian Americans who have been in the U.S. for many years are likely to possess assets that are tied up in Iran that they must eventually move to the U.S.

Second, even when licenses are granted by OFAC to sell property in Iran and bring the funds to the U.S., a host of practical considerations can make doing so all but impossible. For example:

- Due to the dismal state of the Iranian economy, many community members are reporting that it is taking years to find a buyer for their property in Iran. However, licenses authorizing U.S. persons to sell such property usually expire after only one year.
- Since many Iranian Americans attempt to effect the sale of property from outside Iran, they must often rely on intermediaries to take care of the day-to-day issues that come up in such matters. Anecdotal evidence indicates those intermediaries are taking advantage of Iranian Americans with unknown frequency, as seen in Samir's story.

Stories of Impact: Ehsan

Ehsan is an Iranian American who has been a U.S. citizen since the mid-1990s. He inherited a shopping center in Iran, but due to the bad economy, he has been unable to find a buyer, though he has been actively looking for over three years. Since he cannot simply let the property sit there, he must pay someone to manage the property and take care of other routine needs that arise from being a property owner. Ehsan states that the situation causes him a lot of stress, especially because he is confused by the sanctions and is not aware of how to abide by the legal requirements imposed by the sanctions in his situation.

Stories of Impact: Samir*

Samir came to the U.S. in 1975, and has been a U.S. citizen since 1982. His immediate family is likewise in the U.S. Samir had a house in Iran, and asked his friend to effect a sale of the property. Since Samir was unsure about how he would be able to transfer the money to the U.S., he asked a relative to hold onto the money, amounting to about \$500,000 USD, until Samir could figure out how to bring it to the U.S. The relative refused to give the money back to Samir, who must now take legal action in Iran. Due to the sanctions, he has no idea how to go about doing this without violating U.S. law. The loss of so much of his assets has had a hugely detrimental effect on Samir's health, who was almost hospitalized for high blood pressure caused by the stress of the situation.

*This story was relayed by an Iranian American man living in California who is a friend of Samir.

Iranian Americans attempting to sell property in Iran must navigate through all the above potential blockades to simply sell their property. The problem continues even after the sale's conclusion because then the question of how to get the money to the U.S. arises. A U.S. person would not be allowed to deposit the proceeds into a bank in Iran, even temporarily, both because s/he is forbidden from doing business with Iranian banks, and because such a deposit would constitute a new investment in Iran, which is likewise forbidden. Difficulties in funds transfers are discussed next.

The Law in Practice: Transferring Funds to or from Iran

The difficulty in transferring funds is the most frequent issue that has come up for community members who have contacted the Asian Law Caucus, and several OFAC practitioners across the U.S. have reported similar patterns.

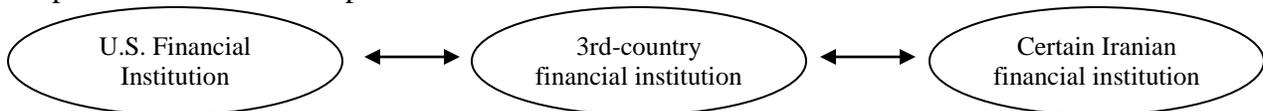
As discussed earlier, sending funds to or receiving funds from Iran is prohibited except in limited circumstances, such as for “non-commercial personal remittances.” General License B, issued by OFAC on February 5, 2012, authorized U.S. depository institutions, registered brokers, and dealers in securities to process such remittances from (or to) Iran, provided several stringent conditions are met:

- The funds are not transferred to, from, or on behalf of someone who falls under the broad standard of the “Government of Iran”⁷⁷
- The transfer is not made by, to, or through a person, financial institution, or other entity blocked pursuant to
 - 31 C.F.R. Part 544 or
 - 31 C.F.R. Part 594
- The transfer is not made by, to, or through a person, financial institution, or other entity blocked pursuant to
 - Any other part of 31 C.F.R. Chapter V or
 - Any Executive Order, except for Iranian financial institutions that are blocked solely pursuant to Executive Order 13599.

“Both my parents are in their 80’s and extremely ill. They have very high medical and home-care expenses. It is extremely frustrating and bears very heavily on my conscience that I cannot provide for them despite having the means to do so. I desperately need a legal mechanism to make such regular family remittances.”

~ **Reza**, discussing the difficulty of sending money to family in Iran.

Due to the lack of a direct relationship between U.S. and Iranian financial institutions, these funds must be routed through a third country (meaning a non-U.S., non-Iranian) financial institution before going on to their final destination in either the U.S. or Iran. A greatly simplified illustration of a permissible funds transfer chain is as follows:



As one California OFAC practitioner stated, figuring out the meaning of this complex exemption, finding financial institutions and brokers that are not implicated by the enumerated provisions, and actually carrying out the transfer is feasible if one has the proper legal knowledge and contacts within the Iranian and U.S. financial systems, but for those who do not, these transactions are all but impossible. Thus, though a license is not required for these types of transfers, the average Iranian American must hire a lawyer with specialized knowledge in this area to effect these transfers, which for many individuals is cost prohibitive.

The lack of a “white list” or any useful guidance⁷⁸ for community members on these transfers severely compounds the problem. Community members attempting to send non-commercial

personal remittances to or from Iran without the assistance of an attorney cannot access a list of Iranian financial institutions that would meet the specifications of General License B, because no such list is made available by OFAC or any other U.S. government entity.

Complications arising from the severing of many SWIFT messaging services⁷⁹ for Iranian financial institutions make effecting these transfers even more complicated. SWIFT, short for the Society for Worldwide Interbank Financial Telecommunication, is a global communication network which is vital for the banking industry and broader financial world to conduct its business operations.⁸⁰ One of its most important services is enabling financial institutions in 210 different countries to send and receive messages containing information about financial transactions in a secure manner, which greatly facilitates routing funds to different countries.

SWIFT has already severed its services for numerous major Iranian banks;⁸¹ should a wholesale severing of these transactions from the SWIFT system occur, funds transfers that are legal under U.S. law, such as noncommercial personal remittances, would be blocked.⁸²

The trouble does not end there. Even if an individual was able to ascertain which Iranian financial institutions could be used under U.S. law, the reality is that issues arising from the Iranian banking system heavily impede these transfers. One California sanctions practitioner who focuses on money transfers reported that, because of restrictions imposed by the government of Iran on the amount of U.S. dollars that can be transferred abroad, it is difficult to send money from Iran to other countries, including the U.S., as was discussed by Omid.

'For those [of us] trying to transfer savings from Iran to the U.S., you have to run through ten different hoops and risk losing your money at every turn. And it is risky from both ends, because [in addition to worrying about the U.S.'s requirements] we also have to worry about the Iranian government finding out about [us] trying to transfer money to the U.S.'
~ **Omid**, discussing the additional hurdles to money transfers.

Therefore, most transfers cannot be effected through Iranian financial institutions (even though it would be allowable under U.S. law, provided all requirements are met). As a result, money often ends up moving through licensed currency exchange brokers, as other widely available and frequently used methods of transferring money, such as hawala, are not permissible under the Iran Sanctions.

Hawala is an informal value transfer system used extensively in the Middle East and Northern Africa. In this system, money is transferred from sender to recipient via a network of hawala brokers. In the most basic version of this system, a customer approaches a Hawala broker in City A and gives a sum of money to be transferred to a recipient in City B. The Hawala broker calls another Hawala broker in City B, gives him instructions on how and to whom to deliver the funds, and promises to settle the debt at a later date. However, under the Iran Sanctions and its relevant case law, the hawala system may not be used by U.S. persons. Troublingly, advocates report that a large proportion of the Iranian American community is unaware of this.⁸³

Finding out which brokers are available, trustworthy, and will scrupulously abide by U.S. law is yet another area of knowledge that most U.S. persons simply do not have.

Deliberately Blocking or Hindering Legal Funds Transfers

There is an additional major impediment to sending funds transfers – the deliberate blocking or hindering of these legal transactions. Numerous OFAC practitioners, community and legal advocacy groups, and anecdotal evidence from Iranian Americans demonstrate that many U.S. banks are refusing to process even clearly authorized transactions involving Iran.⁸⁴ The Asian Law Caucus and other advocacy groups have heard numerous complaints from Iranian Americans whose bank accounts were closed for legally receiving funds from Iran, or whose funds were frozen for extended periods of time after receiving funds from or sending funds to Iran.

Stories of Impact: Amir*

Amir, a middle aged man living in Los Angeles County, received an inheritance from Iran. He had the funds transferred to the U.S. legally via a currency exchange broker, but his bank froze those funds for months, even though the transfer was clearly authorized under the Iranian Transactions Regulations.

*This story was relayed by Amir's attorney.

The most confusing source of such efforts to impede these legal transfers is none other than OFAC itself. The long-standing authorizations in the sanctions that allow U.S. persons to send money to their family in Iran for non-business related reasons, such as supporting ailing family members, clearly indicates that the federal government recognizes how important it is to allow these types of transactions to occur. However, though OFAC is charged with administering the sanctions, including permissible activity, it is all the while undercutting the mechanisms by which these transactions can logistically happen. The clearest example of this is OFAC's efforts to persuade foreign financial institutions to cease most or all of their interactions with Iran.

Indeed, OFAC has admitted to reaching out to over 100 foreign financial institutions in over 50 countries to persuade them to significantly reduce or altogether eliminate their interactions and relationships with Iran.⁸⁵ Many of these efforts have been successful, at least partly due to these financial institutions' fear of losing their access to the U.S. financial system. However, as discussed earlier, funds transfers between Iran and the U.S. must go through a third country financial institution. Thus, OFAC's efforts to dissuade foreign financial institutions from processing transactions relating to Iran are breaking the chain of transactions needed to effect funds transfers. As one OFAC practitioner summarized:

[D]ue to the lack of a direct bank to bank relationship between Iran and the United States, and OFAC's efforts to [dissuade] foreign banks from conducting business with Iran, there is no way to facilitate the transfer of funds related to those licenses [that OFAC is] issuing. In short, they are authorizing [transactions] and then stripping away the manner in which [those transactions may] be carried out....⁸⁶

There is another way this chain is being disrupted or severed. Many U.S. financial institutions are refusing to process any transactions that involve dealings with Iran, whether because of a false belief that all such transactions are forbidden, or because of a decision that transactions involving Iran are too administratively burdensome due to the sanctions. As the same practitioner elaborated:

Those of us practicing in this field can relate that it is becoming nearly impossible for funds transfers for licensed transactions between Iran and the U.S. to take place. Even when U.S. persons...[find an appropriate foreign financial institution] many U.S. banks are now taking [a] zero-risk tolerance policy towards dealings with Iran and rejecting funds transfers, even if they are authorized pursuant to valid OFAC licenses, and/or in some cases closing down the accounts of those who have sought to engage in transactions with Iran....⁸⁷

Thus, legal transfers of funds to or from Iran have become all but infeasible, especially for Iranian Americans who are unable to hire a lawyer specializing in this field of law.

Stories of Impact: Funds Transfers

Tara*: Tara had long dreamed of coming to the U.S. to study, and was overjoyed when she received a student visa to do so. But when she arrived in the U.S., she realized there was no safe and legal way for her parents to send her money for her tuition and other expenses on a regular basis. She is frustrated beyond imagination, because after having done so much to get here, she is now facing the possibility of abandoning her life-long dream and going back to Iran, solely for this reason.

*This story was relayed by an Iranian American man who is friends with Tara's parents.

Farah*: Farah, a 20 year old Iranian American living in Long Beach, CA, tragically lost both of her parents. Her family in Iran sent her money to help pay for her school and personal expenses. Farah contacted OFAC, who told her the funds did not require a license (this type of transfer qualifies as a non-commercial personal remittance), and also contacted her bank to let them know the funds would be coming in. Nevertheless, once the funds actually arrived in her account, her bank harassed the recently-orphaned woman with numerous calls regarding the transfer. She was very scared and nervous throughout the ordeal, which was not resolved until three weeks later.

*This story was relayed by Farah's attorney.

B. SENDING AND RECEIVING GOODS

As discussed in Section II, and just as with money and investment activity, most transactions involving receiving goods, services, or technology from Iran, or sending goods, services, or technology to Iran, are severely restricted. For example, U.S. persons are prohibited from:

- Sending goods, services, or technology to Iran (this would include bringing one's personal laptop to Iran while travelling, for example)
- Sending goods, services, or technology to a third country (a country besides the U.S. or Iran) if s/he has reason to know the items are intended for direct or indirect shipment to Iran, even if the U.S. person has no intention of having the items or services go to Iran
- Importing goods or services of Iranian origin into the U.S.
- Facilitating, guaranteeing, financing, or approving such imports

Thus, unless certain narrow exceptions⁸⁸ apply, almost nothing can be sent or received from Iran. Compounding the problem is confusion over what exactly is legal to send, receive, take, or bring to or from Iran, not only on the part of Iranian Americans and other U.S. persons, but also service providers such as mail and package carriers, as well as border agents. This has been reported by numerous community members and advocacy groups. For example, a community advocacy group has reported that banks, drug companies, and perhaps even the U.S. Postal

Service have refused to process shipments of humanitarian items to Iran that are clearly legal under the law.⁸⁹ Anecdotal evidence, such as Karim’s story, provides further evidence of this issue.

C. CHARITABLE GIVING TO IRANIAN CAUSES

Charitable giving by Iranian Americans to Iranian causes, whether Muslim or not, has been rendered extremely difficult by the prohibitions on charitable giving to causes and organizations in Iran.⁹⁰

“Freedom of religion is central to the ability of peoples to live together.... [I]n the United States, rules on charitable giving have made it harder for Muslims to fulfill their religious obligations.”

“A New Beginning,” Speech by President Obama in Cairo, Egypt.

The general prohibitions on exportation⁹¹ and trade⁹² with Iran bar most charitable giving to Iranian causes. Thus, the only charitable giving involving Iran that is legal under the Iran sanctions are donations of *articles* (not funds) such as food, clothing, and medicine to Iran that are intended to relieve human suffering⁹³ or donations that are authorized by general licenses issued by OFAC. An example of such a license is General License C,⁹⁴ which temporarily allows donations for victims of the August 2012 earthquakes in Iran, but which was not issued until after numerous Iranian American organizations and 14 bipartisan Congressional members pushed heavily for its issuance.⁹⁵

Leaving aside the efficacy and feasibility of donating articles rather than funds, which preclude community members from conducting such common charitable measures as sponsoring orphans in Iran, many community members have reported that they are nervous about donating to causes in Iran for fear of running afoul of U.S. sanctions laws on the issue, which are not well understood in the community. Still others are completely unaware of the prohibitions on charitable giving, and thus unintentionally run afoul of U.S. law, for which they often suffer harsh consequences. Nima’s story is but one example of many charitable humanitarian efforts that have been stymied by the sanctions.

*Stories of Impact: Nima**

For his birthday, Nima, a Californian in his 20s, decided to ask his friends to take the money they would have spent on gifts for him and put it into a PayPal account, to be donated to a small, reputable charity in Iran that assists low-income Iranians pay for medical treatment. Neither he nor his friends had any idea that this type of donation ran afoul of the U.S. sanctions. The funds were never sent to Iran and were given back to all the donors, but the situation caused Nima a great deal of stress, all because this young person sought to think of others instead of himself on his birthday.

*This story was relayed Nima to the Asian Law Caucus.

D. ISSUES AT THE U.S. BORDER

Iranian Americans returning home from travels in Iran face a host of civil rights complications at the U.S. border. Over the past several years, the Asian Law Caucus, along with many other civil rights groups, has received numerous complaints from U.S. persons from Arab, Middle Eastern, Muslim, and South Asian communities, including Iranian Americans,⁹⁶ who were singled out for overbroad and intrusive questioning about religious practices, political leanings, family details, and more based on their actual or perceived nationality, ethnicity, or religion.⁹⁷ Iranian

Americans, however, are facing added complications due to the manner in which the Iran Sanctions are being enforced at the border.

The Department of Homeland Security’s Customs and Border Protection (“CBP”) is *inter alia* charged with “facilitating lawful international travel and trade while enforcing hundreds of U.S. laws and regulations,”⁹⁸ including the Iran Sanctions. CBP agents have the authority to seize the personal items of travelers returning home to the U.S. if they have “reasonable cause” to believe that any law or regulation CBP is charged with enforcing has been violated.⁹⁹

Despite the demonstrated complexity of the sanctions, CBP agents are *not* required to consult with OFAC or any other agency before seizing the property of U.S.

persons.¹⁰⁰ It is therefore not surprising that advocates have received numerous complaints from Iranian Americans whose items were seized even though they do not seem to be a violation of the sanctions. Karim’s story is a stark illustration of the harms that can result from an incorrect application of these laws at the border.

The issues raised by the Iran Sanctions are as complex as the law itself. Though the intended target of the U.S. sanctions against Iran is the Iranian regime itself, there can be little doubt that the unintended victims of the U.S. targeting of Iran are Iranian Americans and other U.S. persons with close ties or interactions with Iran.

Efforts should be undertaken by the U.S. government to ensure that: the mechanisms in place to allow certain interactions with Iran that are in line with U.S. interests and which are vital for the Iranian American community can actually be effected; that the legal rights of Iranian Americans are not impeded by private actors and other government agents; and that the concerns of the Iranian American community are understood. There is much that U.S. lawmakers can do to ensure that their constituents are no longer unjustly implicated by the sanctions against Iran. These recommendations are taken up next.

V. RECOMMENDATIONS AND CONCLUSION

A. RECOMMENDATIONS

As illustrated throughout this report, due to the complexity of the law, confusion over which activities are permissible and impermissible under the sanctions, and the activities and actions of those outside the U.S. government,

*Stories of Impact: Karim**

Karim, an Iranian American man in his mid-40s, travelled from his home in Los Angeles County to Iran to visit with family. While there, he suffered a bad fall and had to undergo emergency knee surgery. Once he was well enough to travel, he returned home to the U.S. However, Customs and Border Protection arrested him at the border for bringing in prescription medication from Iran, which were for his injury. All charges were eventually dropped, as Karim had not violated any laws, but not before he was forced to spend the night in jail and incur massive legal fees.

*This story was relayed by Karim’s attorney.

“[Policymakers] are not necessarily well-informed about realities on the ground when it comes to Iranian-Americans and their contacts in Iran.”

From “Who Iran Sanctions are Really Affecting,” Kia Makarechi, Huffington Post, October 11, 2011.

the Iranian American community has been unfairly burdened by the sanctions against Iran, though they are neither the intended nor logical targets of such measures. There are many steps the U.S. federal government can take to alleviate this burden, paramount among which is understanding the realities on the ground that are affecting, and in many cases prohibiting, the ability of U.S. persons to make use of legal exemptions and licenses:

- ***Talk with community members, sanctions practitioners, and community organizations:*** Understanding the concerns of the Iranian American community regarding the sanctions and working collaboratively with them to address the issues flagged is a long overdue measure that should be undertaken to ensure the intent behind the law, such as the inclusion of exemptions and the issuance of licenses, are not rendered moot by unforeseen factors.
- ***The Office of Foreign Assets Control, as the primary agency responsible for administering and enforcing the sanctions, should take the following steps to address the issues raised in this report:***
 - ***Issue guidance for community members on exactly how permissible funds transfers to and from Iran may be effected:*** The OFAC should issue detailed guidance for community members detailing exactly how permissible funds transfers to and from Iran may take place, including details on which financial institutions may be legally transacted with, such as by issuance of a “white list” of Iranian financial institutions. It is critical that OFAC outreach to sanctions practitioners who regularly effect funds transfers for Iranian Americans, as they will have a detailed understanding of the practical issues raised by the Iran banking system, third country financial institutions, and the broker system.
 - ***Outreach and issue guidance to U.S. financial institutions:*** The OFAC should take proactive steps to outreach to U.S. financial institutions to inform them of which types of transactions are permissible under the Iran Sanctions, and assure them that they will not be targeted for effecting these permissible transactions.
 - ***Ensure that its efforts to limit foreign financial institutions’ interactions with Iran do not undercut permissible transactions:*** The OFAC should ensure that foreign financial institutions are aware of the types of transactions that are permissible under the Iran Sanctions, and confirm with such institutions that they will continue to facilitate these legally permissible transactions.
 - ***Provide training to Customs and Border Protection (“CBP”) agents regarding the Iran Sanctions:*** OFAC should work with CBP and its agents to ensure that the rights of Iranian Americans are not violated at the border when going to or returning home from Iran due to an incorrect application of the law.
- ***Ensure overzealous enforcement does not lead to civil rights violations:*** Given the demonstrated, widespread confusion about the sanctions evinced by numerous service providers, the federal government, including OFAC, should take active measures to

engage with providers such as mail carriers, technology retailers, and others to clear confusion over which transactions are permissible under the sanctions and to help these providers process such transactions.

B. CONCLUSION

Both proponents and opponents of the sanctions must agree that U.S. persons should not be unfairly targeted by a set of laws and regulations simply because of their nationality or country of origin. And yet, that is precisely the situation the Iranian American community finds itself in. As illustrated in this report, it is clear that the Iran Sanctions have had intended and collateral consequences for the Iranian American community. Lawmakers and those in the Executive Branch, including the President and the Office of Foreign Assets Control, should work closely with the Iranian American community and community and legal organizations to understand the community's concerns, and should take the proactive steps outlines above to ensure that this disproportionate burden is lifted.

ENDNOTES

- ¹ U.S. Congressional Research Service, *Iran Sanctions* (Feb. 10, 2012) at 37, Table 3 [hereinafter CRS 2/10/2012].
- ² Kia Makarechi, *Who Iran Sanctions are Really Affecting*, Huffington Post, Oct. 11, 2011.
- ³ *Id.*
- ⁴ See the “Purpose of the Iran Sanctions” discussion in Section III of this Report.
- ⁵ “Demographics & Statistics: Iranian Americans,” PAAIA (2010), available at <http://www.paaia.org/CMS/demographics--statistics.aspx> [hereinafter PAAIA 2010].
- ⁶ *Id.*
- ⁷ U.S. Congressional Research Service, *Iran: U.S. Concerns and Policy Responses* (June 26, 2012) at 20 [hereinafter CRS 6/26/2012]; PAAIA 2010, *supra* note 5; NIAC Census Center website, http://www.niacouncil.org/site/PageServer?pagename=Resources_census_center (last visited Sept. 17, 2012); *Iranians Count!*, <http://www.iranianscount.org/FAQ.html> (last visited Sept. 17, 2012).
- ⁸ John Tehranian, *Compulsory Whiteness: Towards a Middle Eastern Scholarship*, *IND. L. J.* Vol. 82, Iss. 1, Article 1 at 21-22; Nilou Mostofi, *Who We Are: The Perplexity of Iranian-American Identity*, *Sociological Quarterly*, Vol. 44, No. 4 (Autumn 2003) at 685; Azadeh Ansari, *Iranian-Americans Cast Ballots on Iran’s Future*, *CNN U.S.*, June 12, 2009.
- ⁹ See e.g. PAAIA 2010, *supra* note 5; Mostofi, *supra* note 8, at 685; Ali Mostashari and Ali Khodamhoseini, *An Overview of Socioeconomic Characteristics of the Iranian-American Community based on the 2000 U.S. Census*, Iranian Studies Group at MIT (Feb. 2004) at 2. For example, the Iranian Studies group at MIT states that the Iranian American community believes there to be a serious underestimation of the actual community population due to “adverse perceptions of Iranian-Americans on claiming Iranian ancestry.” “Factsheet on the Iranian-American Community” (Feb. 2004), Iranian Studies Group at MIT [hereinafter Iranian Studies Group] available at http://web.mit.edu/isg/PUBLICATIONS/factsheet_feb_04.pdf. Similarly, Williams reports that “[d]espite their high achievements in both the public and the private sector... Iranian-Americans have been hesitant to... participate further in civil society” due to anti-Iranian and anti-Middle Eastern discrimination. Williams, Danielle D., *The Question of Identity for Iranian and Iranian-American Women in the American Diaspora* (2011), Research Papers, at 23-24, available at http://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1148&context=gs_rp.
- ¹⁰ For example, the Iranian Studies group at MIT states that the Iranian American community believes there to be a serious underestimation of the actual community population due to “adverse perceptions of Iranian-Americans on claiming Iranian ancestry.” Iranian Studies Group, *supra* note 9. Similarly, Williams reports that “[d]espite their high achievements in both the public and the private sector... Iranian-Americans have been hesitant to... participate further in civil society” due to anti-Iranian and anti-Middle Eastern discrimination. Williams, *supra* note 9, at 23-24.
- ¹¹ *The Iranians Count Census Coalition Releases the Special Tabulation Results from the 2010 Census*, Payvand Iran News, May 2012, available at <http://www.payvand.com/news/12/may/1005.html>.
- ¹² Tehranian, *supra* note 8, at 3,6. See also Mostofi, *supra* note 8, at 694.
- ¹³ Tehranian, *supra* note 8, at 22.
- ¹⁴ Shirin Hakimzadeh and David Dixon, *Spotlight on the Iranian Foreign Born*, Migration Policy Institute, June 2006, available at <http://www.migrationinformation.org/usfocus/display.cfm?ID=404#1>.
- ¹⁵ Makarechi, *supra* note 2.
- ¹⁶ “National Public Opinion Survey of Iranian Americans regarding Potential Military Strike Against Iran,” PAAIA (2012) at 3 [hereinafter PAAIA 2012], available at <http://www.paaia.org/CMS/2012-national-survey.aspx>.
- ¹⁷ For example, MIT’s Iranian Studies Group conducted an online survey in 2005 and reported that 45.2% of Iranian Americans had parents in Iran, 36.7% had siblings in Iran, and 78.9% had aunts, uncles, or grandparents living in Iran. Iranian Studies Group at MIT, *MIT ISG Iranian-American Community Survey 2005* [hereinafter MIT ISG 2005 Survey] available at <http://isgmit.org/research/?id=43&cat=iranian-american&stat=full#Results of the Community Survey>.
- ¹⁸ “2011 National Survey,” PAAIA at 16 [hereinafter PAAIA 2011], available at <http://www.paaia.org/CMS/2011-national-survey.aspx>. See also Akbar Ganji, *In Vain We Have Sanctioned*, *Boston Review*, Mar. 8, 2012.
- ¹⁹ PAAIA 2011, *supra* note 18, at 15.
- ²⁰ Jamal Abdi, *Sanctions at the Genius Bar*, *N.Y. Times*, July 11, 2012.
- ²¹ PAAIA 2012, *supra* note 16, at 10.
- ²² MIT ISG 2005 Survey, *supra* note 17.
- ²³ See generally Tehranian, *supra* note 8.

²⁴ “Letter to Apple from Coalition of Iranian American and Civil Liberties Organizations,” June 27, 2012, *available at* http://www.niacouncil.org/site/News2?page=NewsArticle&id=8351&security=1&news_iv_ctrl=-1. For more resources on alleged discrimination by Apple against the Iranian American community, see NIAC’s website at http://www.niacouncil.org/site/PageServer?pagename=Action_apple_discrimination&JServSessionIdr004=iicdjja042.app331b.

²⁵ *Id.*

²⁶ Makarechi, *supra* note 2.

²⁷ For a list of most of the laws, rules, regulations, and orders comprising the legal framework for the Iran Sanctions, see OFAC’s website at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx>.

²⁸ 31 C.F.R. § 560.314.

²⁹ 31 C.F.R. § 560.701; 50 U.S.C. § 1705.

³⁰ For more information, *see generally* Asian Law Caucus, KNOW YOUR RIGHTS: THE IMPACT OF THE IRAN SANCTIONS ON YOU, May 2011, *available at* <http://www.asianlawcaucus.org/publications/iranian-sanctions> [hereinafter ALC KYR].

³¹ Pub. L. No. 95-223, tit. II, 91 Stat. 1625 (1977), 50 U.S.C.A. §§ 1701-1707 (2007), amended by Pub. L. No. 107-56, § 106 (2001).

³² American Civil Liberties Union, BLOCKING FAITH, FREEZING CHARITY: CHILLING MUSLIM CHARITABLE GIVING IN THE “WAR ON TERRORISM FINANCING, June 2009 at 33-35 [hereinafter Blocking Faith]; Erich C. Ferrari, *Iranian Transactions Regulations: Practice Guide*, Jan. 2011 [hereinafter ITR Practice Guide] at 17-20, 172-173.

³³ The list of Presidential authorities is contained at 50 U.S.C. § 1702.

³⁴ 50 U.S.C. § 1701.

³⁵ CRS 6/26/2012, *supra* note 7, at 59; Patrick Clawson, “Iran Primer: U.S. Sanctions,” Oct. 21, 2010, *available at* <http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2010/10/iran-primer-us-sanctions.html>. For a fuller discussion of U.S.-Iran relations since 1979, see CRS 6/26/2012, *supra* note 7, at 59-62.

³⁶ Clawson, *supra* note 35.

³⁷ *Id.* British Broadcasting Corp., “Timeline: U.S.-Iran Ties,” [hereinafter BBC] *available at* http://news.bbc.co.uk/2/hi/middle_east/3362443.stm.

³⁸ CRS 6/26/2012, *supra* note 7, at 60.

³⁹ The ISA was amended by subsequent legislation.

⁴⁰ CRS 2/10/2012, *supra* note 1; CRS 6/26/2012, *supra* note 7, at 60.

⁴¹ BBC, *supra* note 37.

⁴² See Appendix A for a timeline of changes to the Iran sanctions since 2010.

⁴³ CRS 2/10/2012, *supra* note 1, at 37, Table 3.

⁴⁴ Office of Foreign Assets Control, “CISADA: The New U.S. Sanctions on Iran,” *available at* http://www.treasury.gov/resource-center/sanctions/programs/documents/cisada_english.pdf. CRS 6/26/2012, *supra* note 7, at 76; Clawson, *supra* note 35; CRS 2/10/2012, *supra* note 1, at 1-13.

⁴⁵ Pub. L. No 112-158, 126 Stat. 1214 (2012).

⁴⁶ For a summary of key provisions of this legislation, see e.g. DechertOnPoint, August 2012 / Issue 11, *available at* <http://www.jdsupra.com/legalnews/iran-threat-reduction-and-syria-human-r-21484/>.

⁴⁷ Besides the Iranian Transactions Regulations, there are three other sanctions program regulations: the Iranian Human Rights Abuses Sanctions Regulations (31 C.F.R. Part 562), the Iranian Financial Sanctions Regulations (31 C.F.R. Part 561), and the Iranian Assets Control Regulations (31 C.F.R. Part 535).

⁴⁸ 31 C.F.R. Part 560.

⁴⁹ Office of Foreign Assets Control, “What you need to know about U.S. Economic sanctions: An overview of O.F.A.C. Regulations involving sanctions against Iran,” Jan. 23, 2012, *available at* <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran.pdf>; ITR Practice Guide, *supra* note 32, at 26-39. This was revoked in part and supplemented in part by E.O.s 12959 and 13059. ITR Practice Guide, *supra* note 32, at 30.

⁵⁰ “Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources,” issued Mar. 15, 1995, 60 FR 14615. This was revoked in part and supplemented in part by E.O.s 12959 and 13059. ITR Practice Guide, *supra* note 32, at 32.

⁵¹ “Prohibiting Certain Transactions with Respect to Iran,” issued May 06, 1995, 60 FR 24757.

⁵² ITR Practice Guide, *supra* note 32, at 27 (fn 39), 28.

⁵³ ITR Practice Guide, *supra* note 32, at 28.

⁵⁴ Defined as committing or contributing funds (or other assets) or providing loans or other forms of credit. Executive Order 12957, *supra* note 50 at § 2(e).

⁵⁵ Executive Order 12957, *supra* note 50; “What you need to know about U.S. Economic sanctions: An overview of O.F.A.C. Regulations involving sanctions against Iran,” OFAC, Jan. 23, 2012, *available at* <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran.pdf>; ITR Practice Guide, *supra* note 32.

⁵⁶ “Prohibiting Certain Transactions with Respect to Iran,” issued Aug. 19, 1997, 62 FR 44531.

⁵⁷ Office of Foreign Assets Control, *supra* note 49. *See also* ITR Practice Guide, *supra* note 32, at 37-40.

⁵⁸ “Blocking Iranian Government Property,” issued Nov. 14, 1979, 44 F.R. 65729.

⁵⁹ The 1979 Iran Hostage Crisis began on November 4, 1979 when a group of Iranian students seized 63 hostages at the U.S. Embassy in Tehran, Iran. BBC, *supra* note 37. It concluded on January 19, 1981 with the signing of the Algiers Accords, which included a provision that the U.S. would revoke E.O. 12170 and other Executive Orders issued during the crisis targeting Iran.

⁶⁰ Executive Order 12613, issued Oct. 30, 1987, 52 FR 41940.

⁶¹ *Id.*

⁶² Executive Order 12957, Preamble.

⁶³ See Preambles of Executive Orders: 12959, 13059, 13553, 13574, 13590, 13599, 13602, and 13608.

⁶⁴ ISA Sec. 2 (1)-(2).

⁶⁵ CISADA, Pub. L. 111-195, 124 Stat. 1312 § 2 (1).

⁶⁶ *Id.* at § 3 (1).

⁶⁷ See Letter to Apply from Coalition of Iranian American and Civil Liberties Organizations, June 27, 2012.

⁶⁸ See e.g. Makarechi, *supra* note 2. Several OFAC practitioners have confirmed this with anecdotal evidence. As an illustration, every single community member who has contacted the Asian Law Caucus with questions about the sanctions or attended one of ALC’s Know Your Rights presentations regarding the Iran Sanctions either knew very little about the sanctions or was unaware of major areas of routine activity that were severely impeded by the sanctions.

⁶⁹ For a fuller discussion of the sanctions’ impact on routine activity engaged in by Iranian Americans, see ALC KYR, *supra* note 30.

⁷⁰ 31 C.F.R. § 560.207.

⁷¹ 31 C.F.R. § 560.207.

⁷² 31 C.F.R. § 560.206.

⁷³ 31 C.F.R. § 560.206.

⁷⁴ U.S. banks, depository institutions, registered brokers, and dealers in securities are allowed to process “noncommercial, personal remittances,” provided the following conditions are all met: i) the funds transfer does not involve any entity deemed to be the “Government of Iran,” as defined by E.O. 13599 §7(d), ii) the funds are not transferred to, by, or through an entity blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regime (31 C.F.R. part 544) or the Global Terrorism Sanctions Regulations (31 C.F.R. part 594), and iii) if an Iranian financial institution is used, the institution is only blocked by E.O. 13599, meaning the only reason the entity is blocked is because of E.O. 13599. General License B (issued 02/05/2012).

⁷⁵ NDAA § 1245(c); E.O. 13599. An “Iranian financial institution” is defined as “a financial institution organized under the laws of Iran or any jurisdiction within Iran (including foreign branches), any financial institution in Iran, any financial institution, wherever located, owned or controlled by the Government of Iran, and any financial institution, wherever located, owned or controlled by any of the foregoing.” E.O. 13599 § 7(f).

⁷⁶ One practitioner reported that a family member who is a U.S. person had to wait about 10 years for title to clear on inherited property, meaning he had to wait ten years before he could really begin determining how to divest those assets from Iran and bring them to the U.S.

⁷⁷ As defined in E.O. 13599 §7.

⁷⁸ Though General License B contains an example of a permissible non-commercial personal remittance, it simply restates the complex requirements of the license in a more succinct fashion. It does not give details on how a permissible transaction could actually be effected. The text reads: “A United States depository institution may transmit a noncommercial, personal remittance from a customer in the United States to her mother in Iran, provided the remittance is routed through a third-country financial institution to an Iranian financial institution that has not been designated under the WMDPSR or the GTSR or any other part of 31 C.F.R. chapter V, or any Executive order, but whose property and interests in property are blocked solely under the new Executive Order.”

⁷⁹ *See generally* SWIFT website, <http://www.swift.com/>.

⁸⁰ Rick Gladstone and Stephen Castle, *Global Network Expels as Many as 30 of Iran's Banks in Move to Isolate Its Economy*, N.Y. Times, Mar. 15, 2012. *See also* SWIFT website, http://www.swift.com/about_swift/index.page?.

⁸¹ *Id.*

⁸² "NIAC Letter to CEO of SWIFT," Aug. 9, 2012, *available at* <http://www.niacouncil.org/site/News2?page=NewsArticle&id=8432>.

⁸³ *See generally* ALC KYR, *supra* note 30.

⁸⁴ *Sanctions Stymie Iranian Americans Who Want to Help Earthquake Victims*, N.Y. Times, Aug. 13, 2012.

⁸⁵ "What's the Point? OFAC Licensing vs. OFAC Outreach," Ferrari Legal, [hereinafter Ferrari Legal] *available at* <http://www.sanctionlaw.com/2012/05/24/whats-the-point-ofac-licensing-vs-ofac-outreach/>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ The most relevant import and export exceptions for Iranian Americans are for: certain gifts under \$100, accompanied baggage and personal use, household goods and personal effects, information, personal communications and necessary software, and certain humanitarian donations of articles. *See* ALC KYR, *supra* note 30 at 7-8, 11-12.

⁸⁹ Humanitarian Relief Requires Sanctions Waiver Following Earthquakes in Iran, NIAC, Aug. 12, 2012, *available at* http://www.niacouncil.org/site/News2?page=NewsArticle&id=8433&security=1&news_iv_ctrl=1261.

⁹⁰ For a thorough discussion of the chilling of Muslim charitable giving post 2001, *see generally* "Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the 'War on Terrorism Financing,'" June 2009, ACLU.

⁹¹ 31 C.F.R. § 560.204.

⁹² 31 C.F.R. § 560.206.

⁹³ 31 C.F.R. § 560.210(b).

⁹⁴ Issued by OFAC on August 21, 2012. This license expires at 11:59 P.M. (EST) on October 5, 2012.

⁹⁵ "Treasury Issues Temporary Exemption for Iran Earthquake Donations," Charity & Security Network, Aug. 22, 2012, *available at* http://www.charityandsecurity.org/news/OFAC_issues_General_License_NGOs_Iran.

⁹⁶ "Asian Law Caucus Requests Government Records on Border Questioning and Searches of Iranian Americans and Discriminatory Application of Immigration Laws," Press Release, Asian Law Caucus, May 31, 2011. *See generally* Asian Law Caucus, RETURNING HOME: HOW U.S. GOVERNMENT PRACTICES UNDERMINE CIVIL RIGHTS AT OUR NATION'S DOORSTEP (2009) [hereinafter *Returning Home*].

⁹⁷ This has been extensively documented in numerous reports. *See e.g.* *Returning Home*, *supra* note 96.

⁹⁸ CBP website, <http://www.cbp.gov/xp/cgov/about/>.

⁹⁹ 19 C.F.R. § 162.21(a).

¹⁰⁰ ALC KYR, *supra* note 30 at 16.