

# ISSUE BRIEF

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## Truth as the Victim of Kerry's Promise to Iran

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U.S. Secretary of State John Kerry made an unusual promise to the Islamic Republic of Iran: All senior Obama Administration officials will make every effort to support the Iran deal in their public statements. For any Obama Administration officials who have doubts about all or any part of the Iran deal, or about the likelihood that Iran will actually honor the deal, Kerry's formal promise to Iran amounts to a gag order. When Congress summons Administration foreign policy and defense experts and other senior officials to testify on the Iran deal, Congress is entitled to the unvarnished, ungagged truth.

### **Section 28 of Iran Deal: A Promise That Senior U.S. Officials Will Hide the Truth from Congress and the American People?**

Section 28 of the Joint Comprehensive Plan of Action (JCPOA)—better known as “the Iran deal”—says “Senior Government officials of the E3/EU+3 and Iran will make every effort to support the successful implementation of this JCPOA including in their public statements.”<sup>1</sup> The reference to “E3/EU+3” is diplomat-speak for China, France, Germany, Russia, the United Kingdom, the European

Union High Representative for Foreign Affairs and Security Policy, and the United States.<sup>2</sup> Thus, the deal contains an odd U.S. promise to Iran that senior government officials of the U.S. will make every effort to support successful implementation of the Iran deal in their public statements. A footnote to that promise further states that “Government officials’ for the U.S. means senior officials of the U.S. Administration.”<sup>3</sup>

In plain language, Secretary Kerry has promised Iran that senior Obama Administration officials will make every effort to support the Iran deal, and specifically in their public statements. Given the likely appearance of many senior officials of the Obama Administration before congressional committees for public hearings on the Iran deal,<sup>4</sup> this Kerry promise to Iran is of concern.

### **The U.S. Constitution Entitles Congress to the Truth**

The Constitution vests in the Congress the legislative powers it grants, which includes the power to secure information needed to legislate.<sup>5</sup> The U.S. Supreme Court has made clear that “the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.”<sup>6</sup> Federal law implements the congressional power of inquiry in aid of legislation by providing specifically for process to compel testimony and production of documents and for administration of oaths.<sup>7</sup>

Failure to tell the truth, by any witness summoned before Congress to testify and placed under oath, may constitute the crime of perjury.<sup>8</sup> Failure to tell the truth, by any witness appearing before Congress, whether summoned or appearing voluntarily,

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This paper, in its entirety, can be found at <http://report.heritage.org/ib4439>

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and whether placed under oath or not, may constitute the crime of false statement.<sup>9</sup> While the courts have indicated that in certain circumstances an executive branch witness duly summoned by a congressional committee may have a legal privilege to decline to answer a question,<sup>10</sup> there are no circumstances under which the witness may lawfully lie in response to the question.

When the foreign relations, armed services, or other committees of jurisdiction in Congress summon “senior officials of the U.S. Administration” and ask for information or opinions regarding the Iran deal, the officials must tell the truth, without regard to the promise Secretary Kerry made to the Iranians that the officials would make every effort to support the deal. Indeed, federal law explicitly empowers a federal employee in an agency primarily concerned with matters relating to foreign countries to “express his views and opinions, and make recommendations he considers appropriate” when requested by a congressional committee of jurisdiction.<sup>11</sup> Also, a number of senior officials of the U.S. Administration have statutory duties with respect to advising Congress, such as the Chairman or another member of the Joint Chiefs of Staff, who “[a]fter first informing the Secretary of Defense, . . . may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.”<sup>12</sup>

## **Congressional Actions to Increase Chances Congress Gets the Truth**

To encourage senior officials of the Obama Administration to testify to Congress truthfully on their views and concerns about the Iran deal, without feeling pressure to suppress or hedge the truth due to Secretary Kerry’s promise to Iran, Congress can take the following steps:

1. The Chairmen of the Senate Foreign Relations Committee and the House Foreign Affairs Committee can write to the President to seek written confirmation that: (a) Secretary Kerry’s promise to Iran that senior officials of the U.S. Administration “will make every effort to support the successful implementation of this JCPOA including in their public statements” is subordinate to, and shall not interfere with, the duty of those senior officials to tell the truth when testifying on the Iran deal to congressional committees, and (b) the Secretary of State or the heads of the agencies or entities concerned will so instruct, in advance and in writing, U.S. government witnesses appearing before congressional committees on the Iran deal.

2. The chairman of any congressional committee of jurisdiction conducting a public hearing on the Iran deal with U.S. government witnesses can, in accordance with committee procedures:

- a. issue compulsory process to summon government witnesses, thereby making clear the duty of the witnesses to appear and testify;

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1. Sec. 28, Joint Comprehensive Plan of Action, Vienna, July 14, 2015 (China, France, Germany, Russia, United Kingdom, United States and Iran), p. 14, available at [http://www.ukpandi.com/fileadmin/uploads/uk-pi/Latest\\_Publications/Circulars/2015/iran\\_joint-comprehensive-plan-of-action.pdf](http://www.ukpandi.com/fileadmin/uploads/uk-pi/Latest_Publications/Circulars/2015/iran_joint-comprehensive-plan-of-action.pdf) (visited July 20, 2015).
  2. Preface, Joint Comprehensive Plan of Action, Vienna, July 14, 2015, p. 2.
  3. Footnote 2, Joint Comprehensive Plan of Action, Vienna, July 14, 2015, p. 14.
  4. For example, committees of the Senate and the House of Representatives may hold hearings on the JCPOA in implementing the Iran Nuclear Agreement Review Act of 2015 (Public Law 114-17, May 22, 2015) or otherwise in aid of the legislative process.
  5. U.S. Const., art. 1, sec. 1 (“All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”).
  6. *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).
  7. 2 U.S.C. 191 (oaths to witnesses), 192 (refusal of summoned witness to testify or produce papers), and 194 (referral to grand jury for failure to testify or produce). See also Senate Standing Rule XXVI (committee procedure) and House of Representatives Rule XI (114th Cong.) (procedures of committees).
  8. 18 U.S.C. 1621 (perjury).
  9. 18 U.S.C. 1001 (a)(2)(knowing and willful material false statement on matter within the jurisdiction of the legislative branch).
  10. See *United States v. Nixon*, 418 U.S. 683 (1974), *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), and *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725 (D.C. Cir. 1974)(en banc), and *United States v. AT&T*, 551 F.2d 384 (D.C. Cir. 1976), appeal after remand, 567 F.2d 121 (D.C. Cir. 1977).
  11. 2 U.S.C. 194a.
  12. 10 U.S.C. 151(f).

- b.** administer to the witnesses an oath to tell the truth;
- c.** remind the witnesses that they have a legal duty to tell the truth, and that Secretary Kerry's promise to Iran that senior Administration officials will make every effort to support in their public statements the Iran deal's successful implementation does not provide a legal excuse to tell anything other than the truth to the committee; and
- d.** in the case of witnesses from the Department of State or another agency primarily concerned with matters relating to foreign countries or multilateral organizations, request that the witness, in the course of testifying truthfully, express his or her views and opinions and make such recommendations as he or she considers appropriate, noting that the law specifically authorizes doing so.

In future international negotiations, American officials should refrain from promising to any foreign country what the President's subordinates will say to the American public and in the U.S. domestic legislative processes by which the U.S. may determine whether it will enter into an international agreement or implement a joint comprehensive plan of action. The President and his subordinates are accountable to the American people and their elected representatives for implementation of the U.S. Constitution—not to the people and leaders of the Islamic Republic of Iran or any other foreign country.

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