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Testimony of

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Regarding Bill S-219

Thank you for the opportunity to appear before you here today. I also appreciate the opportunity to testify via videoconference, an innovation that I wish my own Congress might consider.

I appear today as a friend of Canada, but not as a Canadian citizen. I was asked to offer my comments on Bill S-219 and I do so conscious of the fact that my testimony may shape the decisions of another sovereign country. Given this reality, I feel it is best if I describe my views of the bill in comparison to what I would consider to be standard sanctions practice, offering my opinion as a former practitioner and current professor of the art of sanctions.

I say this in part because, though I find the intention behind this bill laudable, I believe there are potential problems in, and deficiencies with, this legislation. I have no stake in the politics that may surround this bill, but share a common interest with Canada to ensure your country's future prosperity and efficacy of your sanctions regime. After all, I hope one day to work again with the Canadian government and sanctions have been a tool that we have utilized together to great effect.

I will group my comments and reactions in three parts, each related to a particular concern.

First, I believe this bill usefully underscores the prevalence of hate speech and incitement in Iran, as well as Iran's longstanding support for acts of terrorism and its deplorable human rights record. However, I believe that the bill's requirement to correct all of these bad acts before sanctions relief can be enjoined is a dangerous practice, and runs the risk of undermining prospects for progress in any of these areas.

Simply put, this bill requires Iran to make progress on such a great variety of bad acts that it removes the Canadian government's ability to respond to, and reward, improvement of any one particular element. 'All for one and one for all' is a good rallying cry, but in sanctions practice, it often leads to the absence of any material progress along multiple fronts. There is simply no incentive for a foreign government to take the potentially difficult steps necessary to address bad behavior because they will simply expect the sanctioning state's demands to never cease.



Put another way, this legislation could be a roadblock to the Canadian government's ability to incentivize positive changes by Iran in areas of terrorism or human rights. The mere utterance of the words "Death to America" by an Iranian government official would, per the terms of this legislation, preclude any offer of sanctions relief. As a U.S. citizen, I would strongly prefer that Iranian officials keep this horrid, semi-religious practice if the trade-off were actual improvements in human rights and terrorism policy. Regardless, the risk of this strategy—clearly intended to coerce massive changes across the board by Iran—is that Canada loses the inherent coercive value of its sanctions for specific policy improvements.

This concern takes me to my second point, one of definitions. The terms of this legislation go well beyond what I would consider standard for international sanctions. That, of course, could be a good thing if Canada's actions were to push the envelope forward. But, my concern is that, in practice, Canada would simply find itself on the margins of international relations with Iran. Take, for example, the decision to consider any service in the Basij or the IRGC as a disqualifier for immigration to Canada or a potential cause for sanctions. Many Basij and IRGC are draftees who did not ask to serve, but were instead drafted. As this legislation currently stands, draftees and true believers are considered one and the same. The United States does not use this standard and I would suggest that it also goes too far for Canada.

Relatedly, the terms of the bill would change the definition of ownership and control with respect to the IRGC or EIKO to merely 10%. In Iran's current economy, that is the equivalent of requiring an embargo. The burdens of finding out whether there is an eleven percent ownership stake—perhaps made through intermediaries and cut-outs—would preclude most companies from doing business with Iran. The Canadian government might not ever find enough evidence to impose an asset freeze, but companies will likely interpret this as a signal that no transactions are possible and will act accordingly. This very scenario may be your intention, but—as a practitioner—I would urge Canada to adopt a comprehensive embargo and establish exemptions for those transactions you do support. This is a cleaner approach, more accommodating for companies and their compliance officers, and, frankly, it is more honest and direct.

Lastly, this legislation takes away a considerable amount of flexibility and autonomy for the government, insofar as IRGC terrorism designations and sanctions against EIKO are concerned. It essentially cooks the books, defining IRGC bad acts in such a way that it would be almost impossible for the associated Ministers to not make a sanctions determination. Likewise, it presupposes that EIKO is a bad entity on its face, without a basis for justification.

I served at the National Security Council for President Obama, and in that capacity I spearheaded the drive for U.S. designation of EIKO. As the State Department's Deputy Sanctions Coordinator, I signed off on the decision to designate it in 2013 and I understand its complexities. Importantly, EIKO's primary crime—in terms of U.S. sanctions definitions—was that it was helping to evade all of the nuclear sanctions that the U.S. had in place; however, it was only engaged in bad acts insofar as other U.S.



sanctions were implicated. It is for this reason that, when the JCPOA was adopted, the United States dropped sanctions against EIKO. The underlying bad acts were no longer happening; therefore, from that perspective, there was no reason for U.S. sanctions to remain.

In my professional opinion, reliance on independent assessment of bad acts – and clarity as to the nature of those bad acts – is an absolutely vital element of sanctions imposition. It ensures sanctions are focused on the ills they seek to correct, creating a sense of fairness and justice, along with a means for the targeted entity to get itself out of trouble. Establishing rigid designation frameworks – which this legislation would cement into force by eliminating executive and foreign policy flexibility – damages the tool of sanctions and compromises its legal and ethical principles, in my view.

There are fixes for each of the issues that I have identified that would help improve this legislation and confirm its coherence with standard sanctions practice. I encourage the drafters to consider making those changes, and I encourage the entire Committee to accept my outsider perspective in the spirit in which it is given: as a friend of Canada, a former U.S. official who has worked closely with your Foreign Ministry, and perhaps, an overly pedantic academician.

Thank you again for the opportunity to speak before you. I would welcome your questions.