

Obama Poised to Sign Iran Deal: Time for the States to Bring Suit in Federal Court?



President Obama and Iranian President Rouhani

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Source: *New York Post*

Thursday, October 15, 2015, President Obama will sign an executive order in the Oval Office initiating the Iran Deal on the so-called “adoption date” . The clock then starts on the track towards “implementation day” of the JCPOA, December 15, 2015. That assumes the UN nuclear watchdog agency, the IAEA, files a report on Iran’s prior military developments, which Tehran vehemently denies. That would officially begin the lifting of international and US sanctions sequestering Iranian assets in both US and foreign financial institutions estimated at over \$100 billion. What could possibly stop the clock is the filing of a federal suit by states, 30 of whom passed sanctions laws authorized under a 2010 federal law. Further, that possible suit would be [bolstered](#) by the closing of the so-called foreign subsidiary loophole under the 2012 Iran Threats and Syrian Human Rights Act (ITRA) signed by the President.

In the run up to the Congressional standoff with the President on the Iran nuclear pact, 15 Republican governors, led by Florida Governor Rick Scott, sent a letter on September 8, 2015 to the President opposing the Iran nuclear deal. As noted in the *Miami Herald* [“Naked Politics” blog](#), “the letter

focuses concern about how it would affect pension divestment policies and contracting restrictions.” The governors’ letter supported the position articulated by Washington, DC constitutional litigator David Rivkin, Esq. of the Baker and Hostetler law firm:

Paragraph 25 of the Iran nuclear agreement provides that the federal government will “actively encourage” states to lift state-level sanctions such as the divestment and contracting restriction laws,” the letter states. “While Secretary Kerry confirmed in testimony before the House Foreign Affairs Committee that the agreement will not preempt state law because it is not a treaty, we are concerned about what steps your Administration may take to attempt to implement paragraph 25. Therefore, we wish to make it clear to you in advance of any efforts to implement paragraph 25 that we intend to ensure that the various state-level sanctions that are now in effect remain in effect. These state-level sanctions are critically important and must be maintained.’

The [letter](#) was signed by Govs. **Scott**, **Doug Ducey** of Arizona, **Asa Hutchinson** of Arkansas, **Mike Pence** of Indiana, **Bobby Jindal** of Louisiana, **Phil Bryant** of Mississippi, **Chris Christie** of New Jersey, **Jack Dalrymple** of North Dakota, **John Kasich** of Ohio, **Mary Fallin** of Oklahoma, **Nikki Haley** of South Carolina, **Dennis Daugaard** of South Dakota, **Greg Abbott** of Texas, **Gary Herbert** of Utah, and **Scott Walker** of Wisconsin.

In our *NER* [article](#) on the question of states having the authority to bring possible federal litigation over sanctions relief, we noted this comment from an August 2015 *Steptoe International Compliance* blog post on the JCPOA and State Sanctions:

The Iran nuclear deal (JCPOA) does not say much about Iran sanctions imposed by US state governments. ... These state

restrictions can be more extensive in scope than US federal sanctions. For example, some state restrictions (e.g. in Florida) attach automatically to the parent entity of the company who engages in certain Iran activities. Laws in many states provide for the lifting of Iran sanctions when the President removes Iran from the list of countries that support terrorism; but the JCPOA does not do that, and, as a result, Iran sanction laws in most states will remain intact.

As we have noted in an *NER* October 2015 [article](#) Iran has already received \$72 billion in sanctions relief under the interim Joint Plan of Action and the Swiss banking authorities who lifted restrictions on \$60 billion of Iranian hard currency reserves just a few days after the July 22, 2015 UN Security Council unanimous endorsement.

Amir Taheri in a *New York Post* opinion article, "[Obama will be the only One Sticking to the Iran Deal](#)," noted the 'gold rush' fever of other countries eager to cast aside restrictions seeking billions in trade deals:

Britain, China, Germany, France and Russia, who were involved in the so-called P5+1 talks that produced the JCPOA, deemed it necessary to provide the Obama "deal" with any legal basis of their own. Obama's partners have simply decided that the deal he is promoting is really about lifting sanctions against Iran and nothing else.

So they have started doing just that without bothering about JCPOA's other provisions. Britain has lifted the ban on 22 Iranian banks and companies blacklisted because of alleged involvement in deals linked to the nuclear issue.

German trade with Iran has risen by 33 percent, making it the Islamic Republic's third-largest partner after China.

China has signed preliminary accords to help Iran build five more nuclear reactors. Russia has started delivering

S300 anti-aircraft missile systems and is engaged in talks to sell Sukhoi planes to the Islamic Republic.

France has sent its foreign minister and a 100-man delegation to negotiate big business deals, including projects to double Iran's crude oil exports.

Other nations have also interpreted JCP0A as a green light for dropping sanctions. Indian trade with Iran has risen by 17 percent, and New Delhi is negotiating massive investment in a rail-and-sea hub in the Iranian port of Chah-Bahar on the Gulf of Oman. With help from Austrian, Turkish and United Arab Emirates banks, the many banking restrictions imposed on Iran because of its nuclear program have been pushed aside.

"The structures of sanctions built over decades is crumbling," boasts Iranian President Hassan Rouhani.

Meanwhile, the nuclear project is and shall remain "fully intact," says the head of Iran's Atomic Energy Agency, Ali Akbar Salehi.

"We have started working on a process of nuclear fusion that will be cutting-edge technology for the next 50 years," he adds.

Today, *Reuters*, [reported](#) that what passes for Iran's Parliament, the Majlis, has approved the JCP0A, subject to ratification by the Council of Guardians, but ultimately, Ayatollah Khamenei, the Islamic Republic's Supreme Leader. The bill was adopted with 161 votes in favor, 59 against and 13 abstentions, the state news agency IRNA said. Moreover, the bill comes with strict limitations on inspections by the UN nuclear watchdog, the IAEA.

Even before President Obama signs the executive order on Thursday, October 15th, to initiate the Iran deal, it has begun to unravel. *The New York Times* [reported](#) that Iran launched a

long range guided missile, the 1,700 kilometer range, Emad or pillar, in violation of UN Security Council resolution 1929 on ballistic missile technology. Iran called it a satellite launch test. That conjures up the ability of Iran to put into polar orbit a nuclear device in a satellite that could produce an EMP effect.

As to Iran's behavior improving towards the US after approving the deal, yesterday brought news of the conviction after 444 days in detention of *Washington Post* journalist, Jason Rezaian on what only could be deemed trumped up charges of "espionage". The conviction carries a possible 20 year sentence. *The Washington Post* [condemned](#) Iran for its "outrageous" injustice. Besides Rezaian, there are other [three other Americans](#) in detention in Iran: Pastor Saeed Abedini, ex-Marine Amir Hekmati and 'missing' ex-FBI agent and alleged CIA-contractor Robert Levinson. President Obama and Secretary of State Kerry have said they have frequently asked after their status. Iran says it might entertain a so-called prisoner swap of these Americans for 19 Iranians, it alleges are imprisoned by the US. However, after the Iran deal was approved, all leverage was jeopardized, as the President didn't think such behavior warranted making the Iran deal contingent on release of these falsely imprisoned Americans.

Amir Taheri noted in his *NYP* [article](#) Iran's behavior has worsened in the Middle East region since the nuclear deal was approved:

Iran has teamed up with Russia to keep Bashar al-Assad in power in Syria, mocking Obama's "Assad must go" rhetoric. More importantly, Iran has built its direct military presence in Syria to 7,000 men. (One of Iran's most senior generals was killed in Aleppo last Wednesday.)

Tehran has also pressured Iraqi Premier Haider al-Abadi's weak government to distance itself from Washington and join a dubious coalition with Iran, Russia and Syria.

Certain that Obama is paralyzed by his fear of undermining the non-existent "deal" the mullahs have intensified their backing for Houthi rebels in Yemen. Last week a delegation was in Tehran with a long shopping list for arms.

In Lebanon, the mullahs have toughened their stance on choosing the country's next president. And in Bahrain, Tehran is working on a plan to "ensure an early victory" of the Shiite revolution in the archipelago.

The mullahs are also heightening contacts with Palestinian groups in the hope of unleashing a new "Intifada."

"Palestine is thirsty for a third Intifada," Supreme Guide Khamenei's mouthpiece Kayhan said in an editorial last Thursday. "It is the duty of every Muslim to help start it as soon as possible."

Obama's hopes of engaging Iran on other issues were dashed last week when Khamenei declared "any dialogue with the American Great Satan to be forbidden."

"We have no need of America" his adviser Ali-Akbar Velayati added later. "Iran is the region's big power in its own right."

The JCP0A compliance conflicts with the federal 2012 ITRA law coupled with no coverage of state sanctions laws by the Iran nuclear deal . That questions the legality of the President's actions inclusive of his signing an executive order on October 15, 2015. These latest developments should bolster possible litigation by 15 States who's Governors signed a letter in September 2015 opposing the Iran nuclear pact. Members of the Lisa Benson Show National Security Task Force for America in Texas are making ready to contact their state legislators, Governor and Attorney General to join with 14 other Republican gubernatorial colleagues to initiate federal litigation. Following the Texas example, similar efforts should be undertaken by citizens in these other states to

retain their sanctions.