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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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October 12, 2017

VIA ELECTRONIC TRANSMISSION

Ms. Elaine Duke
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary Duke:

In June 2015, I wrote to several member agencies on the Committee on Foreign Investment in the United States (CFIUS) regarding the acquisition of Uranium One, an owner of U.S. based uranium assets, by Atomredmetzoloto (ARMZ), which is a subsidiary of Russia's state energy corporation, Rosatom.¹ The transaction raised a number of national security concerns because it effectively ceded twenty percent of U.S. uranium production capacity to the Russian government.²

In that letter, I raised additional concerns related to potential conflicts of interest between the State Department and the transacting parties. These concerns stemmed from the fact that during critical stages of the acquisition approval, interested parties, such as the Chairman of Uranium One, Ian Telfer, made large donations—some in the millions of dollars—to the Clinton Foundation while Hillary Clinton was Secretary of State.³

In response to my inquiry, the Obama administration wrote that in October 2010, CFIUS certified to Congress that “there [were] no unresolved national security concerns with the

¹ Letter from Senator Chuck Grassley, Chairman, Senate Comm. on the Judiciary to the Dep't of Justice, State, and Treasury (June 30, 2015).

² Wilson Andrews, “Donations to the Clinton Foundation, and a Russian Uranium Takeover,” THE NEW YORK TIMES (April 22, 2015); Jo Becker and Mike McIntire, “Cash Flowed to Clinton Foundation Amid Russian Uranium Deal,” THE NEW YORK TIMES (April 23, 2015). See also, Uranium One to Nuclear Regulatory Commission, January 29, 2013. Accessible at <http://pbadupws.nrc.gov/docs/ML1304/ML13043A505.pdf>

³ In my June 30, 2015 letter, I noted the following: “Reports further indicate that between 2008 and 2010, Uranium One and Former UrAsia investors donated \$8.65 million to the Clinton Foundation. During this period of time, Uranium One's legal hold on the Kazakhstan-based uranium deposits was in doubt. Allegedly, Uranium One executives contacted U.S. Embassy officials in Kazakhstan to help ensure the validity of their mining licenses. According to *The New York Times*, the State Department cable explaining the circumstances was copied to Secretary Clinton, among other individuals. In 2009, when the validity of the mining licenses was at issue, the Chairman of Uranium One, Mr. Ian Telfer, donated \$1 million to the Clinton Foundation via his family charity called the Fernwood Foundation. In the same year, ARMZ acquired a 17% state in Uranium One and the parties sought an initial CFIUS review. In June 2010, Rosatom, via ARMZ, sought majority ownership in Uranium One. According to news reports, Mr. Telfer donated \$250,000 to the Clinton Foundation during this crucial time. In total, Mr. Telfer donated over \$2 million through 2013.” Wilson Andrews, *Donations to the Clinton Foundation, and a Russian Uranium Takeover*, The New York Times (April 22, 2015); Jo Becker and Mike McIntire, *Cash Flowed to Clinton Foundation Amid Russian Uranium Deal*, The New York Times (April 23, 2015).

transaction” and that the transaction had been approved.⁴ Further, the U.S. Treasury’s response noted that “[n]o CFIUS agency proposed mitigation or prohibition of the transaction.”⁵

I am not convinced by these assurances. The sale of Uranium One resulted in a Russian government takeover of a significant portion of U.S. uranium mining capacity. In light of that fact, very serious questions remain about the basis for the finding that this transaction did not threaten to impair U.S. national security.

In addition, it has recently come to the Committee’s attention that employees of Rosatom were involved in a criminal enterprise involving a conspiracy to commit extortion and money laundering during the time of the CFIUS transaction. According to court filings in the United States District Court for the District of Maryland, in 2009, the FBI began an investigation into corruption and extortion by senior managers of JSC Techsnabexport (Tenex), a subsidiary of Rosatom.⁶ Tenex operated as the sole supplier and exporter of Russian Federation uranium and uranium enrichment services to nuclear power companies worldwide.⁷ Tenex established a wholly-owned subsidiary company located in the United States called Tenam, which became Tenex’s official representative in the United States. Tenex was run by Vadim Mikerin, a Russian national and Director of the Pan American Department of Tenex from 2004 to 2010. In 2010, Mikerin became the executive director of Tenam until 2014.⁸ As director of Tenam, he oversaw the shipment of uranium from Russia for use in American power plants under the “Megatons to Megawatts” program.⁹ It has been reported that at one point the program fueled ten percent of U.S. electricity.¹⁰

According to the facts set forth by the federal government, between 2004 and 2014, Mr. Mikerin was involved in a multimillion dollar conspiracy involving an extortion and money laundering scheme that awarded contracts to American companies to transport uranium in exchange for kick-backs.¹¹ In 2014, Mr. Mikerin pleaded guilty “to helping orchestrate more

⁴ CFIUS Certification to Congress, Case 10-40: Rosatom (Russian Federation)/Uranium One, Inc. (October 22, 2010). In November of 2015, the Department of Justice (DOJ), replied to my letter and said “The Department of Justice’s National Security Division (NSD) reviewed this transaction in consultation with the Federal Bureau of Investigation (FBI) and CFIUS agencies. In accordance with standard procedure, NSD evaluated the factors listed in section 721 of the Defense Production Act of 1950, as amended, and ultimately communicated to CFIUS the Department’s clearance of this transaction.”

⁵ Letter from Anne Wall, Assistant Secretary for Legislative Affairs, to Senator Chuck Grassley, Chairman, Senate Committee on the Judiciary (Sept. 3, 2015). The CFIUS review process begins with an informal review that consists of an unofficial CFIUS determination prior to a formal filing. From there, CFIUS engages in a 30-day review period where the Director of National Intelligence is required to carry out an analysis of any threat to the national security. If security risks or concerns are identified and cannot be resolved during the 30-day review, CFIUS proceeds to a 45-day national security investigation stage. At that point, CFIUS negotiates mitigation with the parties. At the end of the 45-day investigation, CFIUS will either determine that the transaction does not pose national security risks or refer the matter to the President for a determination. In addition, under 50 U.S.C. § 2170 (b)(1)(B), CFIUS is required to proceed to the 45-day investigation period if the transaction is considered a foreign government controlled transaction. According to Treasury’s September 3, 2015, response the transaction at issue was considered as such. *See also* James Jackson, *The Committee on Foreign Investment in the United States (CFIUS)*, CRS (June 13, 2017).

⁶ Government’s Response to Defendant’s Motion to Dismiss for Pre-Indictment Delay, *United States v. Vadim Mikerin*, Criminal No. TDC-14-0529 (D. MD) at 1.

⁷, Superseding Indictment, *United States v. Vadim Mikerin*, Criminal No. TDC-14-0529 (D. MD) at 1.

⁸ *Id.*

⁹ Joel Schectman, *U.S. sentences Russian nuclear official to four years for bribe scheme*, Reuters (Dec. 15, 2015). The “Megatons to Megawatts” program converted uranium from thousands of Russian nuclear warheads for civilian use in U.S. nuclear power plants.

¹⁰ *Id.*

¹¹ Plea Agreement, *U.S. v. Vadim Mikerin*, Criminal No. TDC-14-0529 (D. MD) at 10-11.

than \$2 million in bribe payments through a web of secret accounts in Cyprus, Latvia, and Switzerland.”¹² His actions, according to the government, occurred “with the consent of higher level officials at Tenex and Rosatom...”¹³ Indeed, based on news reports, the investigation began as an intelligence probe into Russian nuclear officials.¹⁴ During the investigation, federal agents attempted to convince Mr. Mikerin to turn on his Russian colleagues by showing him evidence of relationships between “shell companies and other Russian energy officials, including President Vladimir Putin.”¹⁵ He refused to expose them and was subsequently arrested and charged. It is unclear whether these criminal actors and actions factored into CFIUS’ review of the Rosatom transaction and, if so, whether it brought additional scrutiny.

The Committee has also learned additional details regarding a June 2010 speech in Moscow where former President Bill Clinton, and thereby Secretary Clinton,¹⁶ received \$500,000 from Renaissance Capital, a Russian investment bank whose senior officers include former FSB (Russian intelligence) personnel. Most of the banks in Russia are controlled in some manner by the Kremlin, and sources have described Renaissance Capital as an extension of the Russian government.¹⁷ At the Committee’s recent oversight hearing on the Foreign Agents Registration Act, a witness described Renaissance Bank in the following way:

The Chairman was – or I should say another senior official was a British citizen of Russian origin named Igor Sagiryan. On their staff at Renaissance Capital, they trumpeted the fact that they had a number of former FSB officers on their staff. I should point out that there is no such thing as a former FSB officer. It is a lifetime commitment. And in the Department of Justice investigation into Prevezon Holdings, they determined that \$13 million from the crime that Sergei Magnitsky uncovered, exposed, and was killed over went to the bank accounts of Renaissance Capital in the United Kingdom.¹⁸

¹² Joel Schectman, *U.S. sentences Russian nuclear official to four years for bribe scheme*, Reuters (Dec. 15, 2015).

¹³ Affidavit in support of an application under rule 41 for a Warrant to Search, *U.S. v. Vadim Mikerin*, Criminal No. TDC-14-0529 (D. MD).

¹⁴ Joel Schectman, *U.S. sentences Russian nuclear official to four years for bribe scheme*, Reuters (Dec. 15, 2015).

¹⁵ *Id.*

¹⁶ As I have previously written with respect to the applicability of the foreign Emolument Clause to Secretary Clinton, she and former President Bill Clinton filed joint taxes, were a joint economic unit, and therefore any monies received by her husband are also hers. See U.S. Office of Government Ethics, *04x16 Disclosure of Assets of a Spouse and Dependents*, Nov. 16, 2004 where the Office of Government Ethics held that employees who prepare joint tax returns with their spouses would be considered to have derived financial or economic benefit from their spouses’ assets and would also be charged with knowledge of their spouses’ assets.

¹⁷ According to the DOJ’s Office of Legal Counsel, one of the factors used to determine whether an entity is an instrumentality of a foreign government is whether it is susceptible to becoming one. See *Applicability of the Emoluments Clause to Non-Government Members of ACUS*, 17 Op. O.L.C. 121 (1993). Having multiple former FSB officers involved in running the bank weighs in favor of finding the entity to be an instrumentality. Of course, it’s also common knowledge that there is no such thing as a “former” FSB officer.

¹⁸ Senate Comm. on the Judiciary, *Oversight of the Foreign Agents Registration Act and Attempts to Influence U.S. Elections: Lessons Learned from Current and Prior Administrations*, Testimony from Mr. Bill Browder at 20-21 (July 27, 2017).

Notably, in the same month as the Clinton speech, Uranium One and Rosatom notified CFIUS of the Russian government's intent to acquire twenty percent of the United States' uranium assets. The next month, in July 2010, Renaissance Bank reportedly assigned Uranium One a "buy" rating, a move that would principally benefit its Russian investors.¹⁹

The donations raise concerns about potential conflicts of interest for Secretary Clinton and the Obama administration. The fact that Rosatom subsidiaries in the United States were under criminal investigation as a result of a U.S. intelligence operation apparently around the time CFIUS approved the Uranium One/Rosatom transaction raises questions about whether that information factored into CFIUS' decision to approve the transaction.

In order to assess the decisions concerning the sale of Uranium One, please answer the following questions:

1. According to the Treasury Department, CFIUS gathers on a weekly basis to discuss pending transactions. Please list the date of each meeting that involved a discussion of the Uranium One/Rosatom transaction, the list of attendees by agency, and provide all records related to each meeting to include all transcripts, memoranda, and other communications regarding the transaction.
2. Were your agency's personnel assigned to the CFIUS transaction made aware of the ongoing criminal and intelligence investigation into senior managers of Tenex, Tenam, and Rosatom prior to CFIUS approval of the Uranium One transaction in October 2010? If so, please detail when they were made aware and what exactly they were made aware of. In addition, please provide all records relating to those communications. If not, why not?
3. Please provide a copy of all records related to the presentation provided by Uranium One/Rosatom to CFIUS staffers prior to filing a formal notice on August 4, 2010.
4. Please provide a copy of your agency's official confirmation to Treasury that the transaction did not raise any unresolved national security concerns.
5. Please provide all records relating to your agency's determination that the Uranium One/Rosatom transaction did not raise any unresolved national security concerns.
6. Please provide all records relating to communications with respect to Secretary Clinton and donations to the Clinton Foundation by parties interested in the Uranium One/Rosatom transaction.

I anticipate that your written response and most responsive documents will be unclassified. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified

¹⁹ Jo Becker and Mike McIntire, "Cash Flowed to Clinton Foundation Amid Russian Uranium Deal," THE NEW YORK TIMES (April 23, 2015).

information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. The Committee complies with all laws and regulations governing the handling of classified information. The Committee is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you in advance for your cooperation with this request. Please respond no later than October 26, 2017. If you have questions, contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Chairman
Committee on the Judiciary