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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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June 30, 2015

VIA ELECTRONIC TRANSMISSION

Mr. Jose W. Fernandez
Gibson Dunn
200 Park Avenue
New York, NY 10166-0193

Dear Mr. Fernandez:

On April 23, *The New York Times* reported on details regarding the Clinton Foundation's ties to a number of investors involved in a business transaction that resulted in the acquisition of Uranium One, owner of U.S. based uranium assets, by Atomredmetzoloto (ARMZ), a subsidiary of Rosatom, a Russian government owned company. The transaction raised a number of national security concerns because it effectively ceded 20% of U.S. uranium production capacity to the Russian government.¹ Due to that foreign involvement, a review of the transaction was conducted by the Committee on Foreign Investment in the United States (CFIUS), whose membership includes the Secretary of State and of which Treasury is the chair. In addition, during critical stages of the acquisition approval, interested parties made large donations – some in the millions of dollars – to the Clinton Foundation while Ms. Hillary Clinton held the position of Secretary of State. When millions of dollars flow to decision makers who have substantial discretion to provide support for or against approval of controversial transactions, public confidence in the integrity of the process requires a commitment to transparency and responsiveness to oversight inquiries.

Clinton Foundation Accepts Multiple Donations from Interested Parties in Deal

In light of the gravity of the decision to allow a Russian takeover of almost a quarter of U.S. uranium assets, it is in the public interest to determine the facts and circumstances of the transaction, including any potential donations that could have influenced the CFIUS review process. The purpose of CFIUS is to ensure that national security is not undermined by transactions that result in control of a U.S. business by a foreign person.

¹ 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>

The timing of donations to the Clinton Foundation raises the appearance of potential influence in CFIUS's review process. According to *The New York Times*, in September 2005, Mr. Frank Giustra won a uranium deal in Kazakhstan for UrAsia, his company at the time.² The deal was cut days after he visited the country with President Bill Clinton and after that deal in 2006, Mr. Giustra donated \$31.3 million to the Clinton Foundation.³ UrAsia eventually merged with a South African company and became Uranium One.

Reports further indicate that between 2008 and 2010, Uranium One and former UrAsia investors donated \$8.65 million to the Clinton Foundation.⁴ 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.⁵ According to *The New York Times*, the State Department cable explaining the circumstances was copied to Secretary Clinton, among other individuals.⁶ 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.⁷ In the same year, ARMZ acquired a 17% stake in Uranium One and the parties sought an initial CFIUS review.⁸

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.⁹ In total, Mr. Telfer donated over \$2 million through 2013.¹⁰ In addition, in June 2010, President Clinton was paid \$500,000 for a speech in Russia, funded by a Russian investment bank that assigned a buy rating to Uranium One stock and also reportedly had ties to the Kremlin.¹¹ In October 2010, CFIUS approved Rosatom's plan to acquire a controlling 51% stake and, in January 2013, Rosatom purchased all remaining Uranium One shares.¹²

If the news reports are true, Secretary Clinton's involvement in the decision-making process needs to be more closely examined given that the Clinton Foundation was accepting donations from parties who had a stake in the outcome of the uranium deal.

Similar Deals Denied by CFIUS

In contrast to the Rosatom deal, similar transactions have been scuttled by CFIUS. For example, in December 2009, Northwest Nonferrous International Investment Corp, a subsidiary of China's largest aluminum producer, attempted to acquire a U.S. based mining company.¹³

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).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Uranium One to Nuclear Regulatory Commission, January 29, 2013. Accessible at <http://pbadupws.nrc.gov/docs/ML1304/ML13043A505.pdf>

¹³ James K. Jackson, "The Committee on Foreign Investment in the United States (CFIUS)," Congressional Research Service (March 6, 2014). p. 9.

Reportedly, Treasury objected to the acquisition because the U.S. company, Firstgold, owned property near U.S. military bases.¹⁴ In June 2010, a Chinese company withdrew its proposed acquisition of a fiber optic and solar panel company, Emcore, due to regulatory concerns.¹⁵ In another acquisition, a Chinese firm invested in Ralls Corp., operator of a wind farm project.¹⁶ CFIUS initiated contact with Ralls, reviewed the acquisition and recommended that Ralls cease operations until the investigation was completed due to concerns the US Navy had regarding the placement of wind turbines near or within restricted drone testing airspace.¹⁷ Eventually, President Obama issued an executive order requiring Ralls to divest itself of the wind farm project due to a determined threat to national security.¹⁸

It is clear that some potential acquisitions have caused substantial concern within the upper echelons of government to such a degree that the acquisition was denied. Indeed, Secretary Clinton shares a concern about foreign governments, such as China, acquiring U.S. tech firms and was recently quoted by C-SPAN:

A lot of foreign companies particularly Chinese companies, but not exclusively, are looking to buy American companies, particularly with advanced technology. And, it's very unfortunate.¹⁹

Here, a Russian government controlled company was able to acquire 20% of U.S. uranium production capacity, yet the transaction was approved – and apparently approved in record speed. According to a letter sent by Uranium One to the Nuclear Regulatory Commission, Uranium One and ARMZ jointly filed notice with CFIUS in the first week of August 2010 regarding the transaction.²⁰ In return, on October 22, 2010, CFIUS informed Uranium One and ARMZ that “there were no unresolved national security concerns regarding these transactions under Section 721 of the Defense Production Act of 1950, as amended.”²¹ The amount of time between filing and final resolution is less than the 75-90 day review that, according to statute, is generally the timeline.²²

It is unclear why this uranium deal was approved when other deals with similar national security implications were not.

Conflicts of Interest

The facts and circumstances of this matter raise a number of important questions regarding possible conflicts of interest and potential quid pro quos.

According to the Office of Government Ethics, federal law requires executive branch employees be disqualified from matters that have a direct and predictable effect on the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at p. 10.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Hillary Clinton Roundtable in New Hampshire, C-SPAN (May 22, 2015). Accessible at <http://www.c-span.org/video/?326207-1/hillary-clinton-roundtable-smuttynose-brewery-new-hampshire>.

²⁰ Uranium One to Nuclear Regulatory Commission, January 29, 2013. Accessible at <http://pbadupws.nrc.gov/docs/ML1304/ML13043A505.pdf>.

²¹ *Id.* Of note, Section 721 is codified in 50 U.S.C. App. 2170.

²² 50 U.S.C. App. 2170. See also, James K. Jackson, “The Committee on Foreign Investment in the United States (CFIUS),” Congressional Research Service (March 6, 2014).

employee's own financial interests or if persons or organizations with which the employee is affiliated, such as a spouse, have a financial interest, unless the employee first obtains an individual waiver or a regulatory exemption applies.²³ Notably, the Clinton Foundation includes the Clinton Giustra Sustainable Growth Initiative which, according to the memorandum of understanding between the Clinton Foundation and Obama Administration, "...works with the mining industry, local and national governments, and other non-governmental organizations to enable sustainable growth in countries where the mining sector plays a significant role."²⁴

The risk of conflicts with Secretary Clinton at State was so great that the Clinton Foundation and the Obama Administration entered into a memorandum of understanding which, in part, required donations to be disclosed. However, millions of dollars in donations to the Clinton Foundation from executives with an interest in the Uranium One/ARMZ transaction were not disclosed, breaching the agreement.²⁵

Accordingly, please answer the following:

1. When were you put in charge of the Uranium One/ARMZ matter before CFIUS?
2. Who put you in charge of the CFIUS matter?
3. Please describe your role in the CFIUS investigation of the Uranium One/ARMZ transaction.
4. You were quoted in *TIME* as follows, "Mrs. Clinton never intervened with me on any CFIUS matter."²⁶ What do you mean by intervene?
5. Do you equate the meaning of "communication" with "intervene"?
6. Did Secretary Clinton communicate with you in any way, directly or indirectly, regarding the Uranium One/ARMZ transaction? If so, what did she communicate?
7. Did anyone contact you on behalf of Secretary Clinton regarding the Uranium One/ARMZ transaction? If so, who, and what did they communicate to you on behalf of Secretary Clinton?
8. Please characterize Secretary Clinton's involvement in the CFIUS investigation.
9. How many CFIUS matters have you been involved in? How many Secretaries of State did you serve during that time?

²³ 18 U.S.C. § 208.

²⁴ Memorandum of Understanding, December 18, 2008. Accessible at <http://msnbcmedia.msn.com/i/msnbc/sections/news/understanding.pdf>

²⁵ Jo Becker and Mike McIntire, "Cash Flowed to Clinton Foundation Amid Russian Uranium Deal," *THE NEW YORK TIMES* (April 23, 2015).

²⁶ Sam Frizell, Zeke J. Miller, Massimo Calabresi, "Clinton Allies Knock Down Donor Allegations, New Questions Pop Up," *TIME* (April 22, 2015).

10. Did you ever brief Secretary Clinton on the Uranium One/ARMZ transaction? If so, how many times? If not, why not?
11. Other than Secretary Clinton, did you brief State Department personnel on the transaction? If so, who?
12. Did anyone make you aware of the donations to the Clinton Foundation by interested parties in the Uranium One/ARMZ transaction? If so, who?
13. How and when did you first learn of the donations to the Clinton Foundation related to parties involved in the Uranium One/ARMZ transaction?
14. Was your office aware of any possible conflicts of interest between interested parties in the Uranium One/ARMZ transaction and State department personnel? If so, what steps did you take to investigate? If your office did not take steps to investigate, please explain that decision.

Please number your responses according to their corresponding questions. Thank you in advance for your cooperation with this request. Please respond no later than July 16, 2015. If you have questions, contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary