

# U.S. LAWFARE OPTIONS FOR HELPING BRING HAMAS TO ITS KNEES

*Pressuring Qatar and Turkey to Quickly Detain Hamas Leaders*

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President Joe Biden has repeatedly called for holding Hamas accountable for its October 7 massacre and ending the terrorist group's rule over Gaza.<sup>1</sup> Israel's efforts to achieve those objectives militarily are increasingly being criticized, in Washington and elsewhere, for resulting in too much bloodshed. Yet the Biden administration and Congress have yet to deploy their own powerful yet bloodless tools for holding Hamas accountable and ending its rule over Gaza: heavy pressure on Qatar, Turkey, and any other country hosting top Hamas leaders.

Whereas the United States has little to no direct leverage over Hamas, Washington has very strong and direct leverage over Qatar and Turkey, which have long housed most of Hamas's top leaders. This leverage could help bring the terrorist organization to its knees with minimal bloodshed.

The United States could, for example, press Doha and Ankara to detain Hamas leaders and threaten to turn them over to the United States unless Hamas releases all of its hostages and surrenders in Gaza. Even if Hamas forces in Gaza continue to fight, the detention of so many of their top leaders could severely disrupt and demoralize the organization, making it possible for Israel to defeat it militarily with far less bloodshed.

Some top Hamas leaders are reportedly relocating, or preparing to relocate, from Qatar to Algeria. Others might soon depart for Iran or Russia.<sup>2</sup> To hinder Hamas leaders from fleeing Qatar and Turkey, American officials could declare that any country that harbors Hamas leaders will suffer serious consequences. But swift U.S. action is essential, as Washington has more leverage over Qatar and Turkey than it does over any of the reported potential subsequent destinations.

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1. President Joseph R. Biden Jr., "Joe Biden: The U.S. won't back down from the challenge of Putin and Hamas," *The Washington Post*, November 18, 2023. (<https://www.washingtonpost.com/opinions/2023/11/18/joe-biden-gaza-hamas-putin/>); President Joseph R. Biden Jr., "Remarks by President Biden at a Campaign Reception," *Remarks by President Biden at a Campaign Reception*, December 12, 2023. (<https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/12/12/remarks-by-president-biden-at-a-campaign-reception-5>)

2. "Hamas leaders evacuate Doha offices due to security concerns - report," *i24NEWS* (Israel), December 13, 2023. (<https://www.i24news.tv/en/news/israel-at-war/1702470014-hamas-leaders-evacuate-doha-offices-due-to-security-concerns-report>)

## BACKGROUND

Qatar has for years been the residence of numerous Hamas officials, including the organization's top leader, Ismail Haniyeh.<sup>3</sup> Video circulating on social media reportedly shows Haniyeh, his deputy Saleh al-Arouri, and other Hamas officials monitoring and celebrating the October 7 massacre in Israel from the group's offices in Doha.<sup>4</sup>

The United States has named both Haniyeh and al-Arouri as Specially Designated Global Terrorists subject to robust financial sanctions.<sup>5</sup> In addition, the United States has long offered a reward of up to \$5 million for “information leading to the identification or location” of al-Arouri.<sup>6</sup> But there is no indication that the United States has directly and significantly pressured Qatar to turn over either Haniyeh or al-Arouri.

Several other senior Hamas officials reside in Turkey and use it as a base of operations.<sup>7</sup> At least a dozen officials reportedly use Turkey for recruitment, plotting terrorist attacks against Israel, and conducting military training.<sup>8</sup>

Numerous senators and representatives have raised the idea of pressuring Qatar and Turkey to crack down on Hamas. For example, H.R. 5961, which passed the House on November 30 in a bipartisan 307-119 vote, includes a provision stating the “sense of Congress” that Qatar should “turn Hamas leadership over [to] the United States or Israeli control.” However, the bill does not specify any consequences should Qatar fail to do so.<sup>9</sup>

In addition, an October 16 letter from 113 representatives — 63 Democrats and 50 Republicans — urged the president to “put significant pressure on Qatar and Turkiye to cease their support for Hamas and expel Hamas leadership that they host.”<sup>10</sup> The letter did not include particular ideas for imposing such pressure.

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3. “FOREIGN TERRORIST ORGANIZATIONS HAMAS,” *National Counterterrorism Center*, September 2022. ([https://www.dni.gov/nctc/ftos/hamas\\_fto.html](https://www.dni.gov/nctc/ftos/hamas_fto.html))

4. Edward Malnick and Susie Coen, “Rishi Sunak urged to sanction Qatar, where Hamas leaders live in five-star luxury,” *The Telegraph* (UK), October 15, 2023. (<https://www.telegraph.co.uk/politics/2023/10/14/rishi-sunak-sanction-hamas-leaders-luxury/>); @GLucaPacchiani, X, October 7, 2023. (<https://twitter.com/GLucaPacchiani/status/1710542585360457977>); James Rothwell, “The Hamas leader behind group’s deadliest attack on Israel,” *The Telegraph* (UK), October 8, 2023. (<https://www.telegraph.co.uk/world-news/2023/10/08/hamas-leader-ismail-haniyeh-behind-attack-on-israel/>)

5. U.S. Executive Order 13224, “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,” September 23, 2001. (<https://www.state.gov/executive-order-13224>); “Rewards for Justice - Salih al-Aruri,” *Rewards for Justice*, accessed December 15, 2023. (<https://rewardsforjustice.net/rewards/salih-al-aruri>)

6. “Rewards for Justice – Reward Offer for Information on Hamas and Hizballah Key Leaders,” *Office of the Spokesperson*, November 13, 2018. (<https://2017-2021.state.gov/rewards-for-justice-reward-offer-for-information-on-hamas-and-hizballah-key-leaders>)

7. Press Release, “Gottheimer, Bacon, Moskowitz, Tenney Lead 110+ Bipartisan Members Asking President Biden to Bolster Israel’s Security,” *Office of Rep. Josh Gottheimer*, October 17, 2023. (<https://gottheimer.house.gov/posts/release-gottheimer-bacon-moskowitz-tenney-lead-110-bipartisan-members-asking-president-biden-to-bolster-israels-security>)

8. James Rothwell, “Turkey grants citizenship to Hamas operatives plotting terror attacks from Istanbul,” *The Telegraph* (UK), August 13, 2020. (<https://www.telegraph.co.uk/news/2020/08/13/turkey-grants-citizenship-hamas-operatives-plotting-terror-attacks/>); Raf Sanchez, “Exclusive: Hamas plots attacks on Israel from Turkey as Erdogan turns blind eye,” *The Telegraph* (UK), December 17, 2019. (<https://www.telegraph.co.uk/news/2019/12/17/hamas-plots-attacks-israel-turkey-erdogan-turns-blind-eye/>); Emanuel Fabian, “Shin Bet says it busted Turkey-based Hamas ring planning attacks,” *The Times of Israel* (Israel), March 6, 2023. ([https://www.timesofisrael.com/liveblog\\_entry/shin-bet-says-it-busted-turkey-based-hamas-ring-planning-attacks](https://www.timesofisrael.com/liveblog_entry/shin-bet-says-it-busted-turkey-based-hamas-ring-planning-attacks))

9. No Funds for Iranian Terrorism Act, H.R.5961, 118th Congress (2023-2024). (<https://www.congress.gov/bill/118th-congress/house-bill/5961/text>)

10. Congress of the United States, “Letter to President Biden,” October 16, 2023. (<https://d12t4t5x3vyizu.cloudfront.net/gottheimer.house.gov/uploads/2023/10/Israel-Hamas-Letter-to-Biden-.pdf>)

By contrast, a few bills have been more specific. The one with the most support is H.R. 340, which passed the House on November 1 by a 363-46 vote.<sup>11</sup> It would impose an arms sale ban and other sanctions on a foreign state that the president determines “materially contributes, directly or indirectly, to the terrorist activities of Hamas.” While the bill mentions neither Qatar nor Turkey by name, they are its obvious targets.

Qatar has been credited with helping secure the November deal that resulted in release of some of the hostages and a temporary pause in fighting. But the Qatari neutral broker process appears to have exhausted its utility.

Whatever U.S. and Israeli pressure led Hamas to release hostages between November 24 and December 1 was clearly insufficient to achieve further results. As Secretary of State Antony Blinken explained, the negotiations “came to an end because of Hamas. Hamas reneged on commitments it made.”<sup>12</sup> Blinken said Hamas, before the pause in fighting expired, “committed an atrocious terrorist attack in Jerusalem,” which killed two women and an elderly man, “began firing rockets” at Israel, and “reneged on commitments it had made in terms of releasing certain hostages.”<sup>13</sup> As of December 13, Hamas was reportedly continuing to reject further hostage negotiations.<sup>14</sup>

The United States has a long menu of options, listed and analyzed below, for immediately increasing pressure on Qatar, Turkey, or any other country that hosts Hamas leaders. The United States could ramp up pressure incrementally, commencing with actions directly, and relatively narrowly, related to the Hamas leaders currently residing in those countries. Or it could start with more drastic steps, by threatening fundamental change in U.S. relations with the hosting country.

## **U.S. OPTIONS DIRECTLY RELATED TO HOSTING HAMAS LEADERS**

### **PROSECUTION**

The United States could start by immediately announcing prosecutions of, and demanding that Qatar and Turkey (or another hosting country) turn over, Haniyeh and the other principal Hamas leaders currently in those countries. U.S. law authorizes prosecution of any person who “seizes or detains” or conspires with others to seize, detain, or continue to detain a U.S. citizen as a hostage outside the United States.<sup>15</sup>

Even if a particular Hamas leader was initially unaware that U.S. citizens were kidnapped, he certainly became complicit in the continuation of this offense. All principal Hamas leaders could therefore be successfully prosecuted

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11. Hamas International Financing Prevention Act, H.R.340, 118th Congress (2023-2024). (<https://www.congress.gov/bill/118th-congress/house-bill/340/text>)

12. Suhaib Salem and Nidal Al-Mughrabi, “Scores reported killed in Gaza as fighting shatters Israel-Hamas truce,” *Reuters*, December 1, 2023. (<https://www.reuters.com/world/middle-east/gaza-negotiators-try-get-israel-hamas-agree-extend-truce-again-2023-12-01>)

13. Matthew Lee, “Blinken sees goals largely unfulfilled in Mideast trip, even as Israel pledges to protect civilians,” *Associated Press*, December 1, 2023. (<https://apnews.com/article/blinken-hamas-israel-gaza-5d85b5732fe5457ab3ab5e8ba64a4c16>); David Gritten, “Three Israelis killed by Palestinian gunmen at Jerusalem bus stop,” *BBC News* (UK), November 30, 2023. (<https://www.bbc.com/news/world-middle-east-67575684>)

14. MJ Lee, Alex Marquardt, and Jeremy Diamond, “Hamas not responding to attempts to get hostage negotiations back on track,” *CNN*, December 13, 2023. (<https://www.cnn.com/2023/12/13/politics/hostage-negotiations-hamas-israel/index.html>)

15. Hostage Taking, 18 U.S.C. § 1203. ([https://uscode.house.gov/view.xhtml?req=\(title:18%20section:1203%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title18-section1203\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:18%20section:1203%20edition:prelim)%20OR%20(granuleid:USC-prelim-title18-section1203)&f=treesort&edition=prelim&num=0&jumpTo=true))

for Hamas holding hostage in Gaza all the U.S. nationals (including the eight who remain hostages) whom Hamas seized in Israel on October 7.<sup>16</sup>

Under these circumstances, longstanding Department of Justice practice calls for the United States to request immediately that Qatar and Turkey (or any other hosting country) provisionally arrest and detain those culpable Hamas leaders to facilitate U.S. custody for criminal prosecution.<sup>17</sup> Such a move would be consistent with the bill, passed by the House on November 30, which calls for Qatar to turn Hamas leaders over to U.S. or Israeli control.

On December 6, Attorney General Merrick Garland very briefly announced, without providing any details, that the Department of Justice is investigating the October 7 murders and seizures of Americans by Hamas.<sup>18</sup> There has been no indication that the investigation extends to Hamas leaders outside Gaza and no reported request that Qatar and Turkey detain them.

## SECONDARY SANCTIONS

The United States should immediately supplement its already existing direct sanctions on Hamas leaders with secondary sanctions that would apply to those who do business with them in Qatar, Turkey, and elsewhere. U.S. Treasury officials have repeatedly said that top Hamas officials outside Gaza “live in luxury.”<sup>19</sup> A British newspaper recently underscored that “[f]or years, Hamas’s architects of terror have been running the bloodthirsty unit while living in five-star luxury in Qatar.”<sup>20</sup>

Both luxury living and terrorist plotting inevitably involve numerous providers of banking, communications, lodging, transportation, and other services. Federal law authorizes the U.S. government to block the assets of individuals and entities that provide support, services, or assistance to, or are “otherwise associated with,” designated terrorists and terrorist organizations.<sup>21</sup>

The U.S. government has sometimes aggressively implemented its secondary sanctions authorities. For example, the Obama administration imposed billions of dollars in fines on banks that engaged in illicit transactions with Iranian and other clients.<sup>22</sup> Aggressive implementation of secondary sanctions on those who provide services to Hamas leaders could both directly constrain their ability to operate and indirectly pressure Qatar and Turkey (or a subsequent host country) to expel them.

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16. Orde F. Kittrie and Steven W. Pelak, “The US should immediately prosecute culpable Hamas leaders,” *The Hill*, November 21, 2023. (<https://thehill.com/opinion/national-security/4319878-the-us-should-immediately-prosecute-culpable-hamas-leaders>)

17. *Ibid.*

18. Lindsay Whitehurst, “The Justice Department is investigating the deaths and kidnappings of Americans in the Hamas attack,” *Associated Press*, December 6, 2023. (<https://apnews.com/article/hamas-americans-killed-kidnapped-justice-department-investigation-64d851f794a6de4cbda40968dca50320>)

19. Jeff Stein, “Far from war in Gaza, Hamas chief oversees vast financial network,” *The Washington Post*, November 2, 2023. (<https://www.washingtonpost.com/business/2023/11/02/hamas-funding-ismail-haniyeh-us-sanctions/>)

20. Edward Malnick and Susie Coen, “Rishi Sunak urged to sanction Qatar, where Hamas leaders live in five-star luxury,” *The Telegraph* (UK), October 15, 2023. (<https://www.telegraph.co.uk/politics/2023/10/14/rishi-sunak-sanction-hamas-leaders-luxury/>)

21. U.S. Executive Order 13224, “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,” September 23, 2001. (<https://www.state.gov/executive-order-13224/>)

22. Orde F. Kittrie, *Lawfare: Law as a Weapon of War* (Oxford: Oxford University Press, 2016). (<https://global.oup.com/academic/product/lawfare-9780190263577?cc=us&lang=en&>)

## “TERRORIST SANCTUARY” DESIGNATION

Both Qatar and Turkey clearly meet the definition, under U.S. law, of a “foreign country whose territory is being used as a sanctuary for terrorists or terrorist organizations.”<sup>23</sup> Each of their governments “allows, tolerates, or disregards” Hamas’s use of its territory for “training, fundraising, financing, and recruitment” or “as a transit point.” U.S. law thus requires the Department of State to start listing Qatar and Turkey as terrorist sanctuaries and report to Congress on U.S. “strategies for disrupting or eliminating the security provided to terrorists by such sanctuaries.” Doing so could powerfully place at risk whatever current and future goodwill the Qataris have acquired with the billions of dollars they have invested in enhancing their image in the United States.<sup>24</sup>

## ENFORCING EXISTING QATAR-RELATED VIOLATIONS OF U.S. LAW

### AL-JAZEERA

According to members of Congress from both parties, Al-Jazeera has since September 2020 been in violation of a U.S. Department of Justice order that its social media wing, AJ+, register as a foreign agent within 30 days because of its “political activities” on behalf of Qatar.<sup>25</sup> According to the Justice Department, “Al Jazeera Media Network and its affiliates are controlled and funded by the Government of Qatar.”<sup>26</sup>

Secretary Blinken reportedly asked the Qatari government to “turn down the volume on Al Jazeera’s coverage because it is full of anti-Israel incitement.”<sup>27</sup> The U.S. government can and should also act directly against Al-Jazeera. Willful violation of the Foreign Agents Registration Act is punishable by up to five years in prison. It is past time to enforce the law.<sup>28</sup>

### DONATIONS TO HIGHER EDUCATION

Qatar is the single largest foreign funder of American universities, according to a 2022 study by the National Association of Scholars which estimated \$4.7 billion in such Qatari funding over the prior two decades.<sup>29</sup> Notwithstanding a federal law requiring federal reporting of foreign gifts and contracts, U.S. executive branch officials, Members of Congress, and numerous outside commentators have raised questions as to the true scope

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23. Annual country reports on terrorism, 22 U.S.C. § 2656f. (<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title22-section2656f&num=0&edition=prelim>)

24. Eli Lake, “Qatar’s War for Young American Minds,” *The Free Press*, October 24, 2023. (<https://www.thefp.com/p/qatars-war-for-young-american-minds>)

25. “Rubio Joins Colleagues in Pressing DOJ on Why Al Jazeera Is Not Registered as a Foreign Agent,” *Sen. Marco Rubio’s Office*, July 6, 2021. (<https://www.rubio.senate.gov/rubio-joins-colleagues-in-pressing-doj-on-why-al-jazeera-is-not-registered-as-a-foreign-agent>); Congress of the United States, “Letter to Attorney General Merrick Garland,” November 8, 2023; (<https://d12t4t5x3vyizu.cloudfront.net/gottheimer.house.gov/uploads/2023/11/Letter-to-DOJ-.pdf>)

26. Jerry Dunleavy, “DOJ orders Al Jazeera Plus to register as a foreign agent of Qatar,” *Washington Examiner*, September 16, 2020. (<https://www.washingtonexaminer.com/news/doj-orders-al-jazeera-plus-to-register-as-a-foreign-agent-of-qatar>)

27. Barak Ravid, “Scoop: Blinken says he asked Qatari PM to rein in Al Jazeera war coverage, per sources,” *Axios*, October 25, 2023. (<https://www.axios.com/2023/10/25/tony-blinken-qatar-israel-hamas>)

28. Foreign Agents Registration Act (FARA), 22 U.S.C. §611 et seq, Page 10G. (<https://www.justice.gov/nsd-fara/fara-index-and-act#10G>)

29. “Outsourced to Qatar,” *National Association of Scholars*, September 12, 2022. (<https://www.nas.org/reports/outsourced-to-qatar/full-report>)

of such funding and what its impact has been on U.S. higher education.<sup>30</sup> A study by the Institute for the Study of Global Antisemitism and Policy “found a direct correlation between the funding of universities by Qatar and the Gulf States and the active presence at those universities of groups such as Students for Justice in Palestine (SJP), which foster an antisemitic and aggressive atmosphere on campus.”<sup>31</sup>

Section 117 of the Higher Education Act requires nearly all U.S. colleges and universities to publicly report foreign gifts and contracts the value of which is \$250,000 or greater. But an October 2020 study by the U.S. Department of Education discovered over \$6 billion in previously unreported funds and concluded that such funding had been “massively underreported.”<sup>32</sup> The study singled out “the concerning nature of contracts with China, Qatar and Russia,” and suggested that Qatari entities had, in specific cases, inappropriately used their leverage over American educational institutions.<sup>33</sup>

Members of Congress have urged the Biden administration to more aggressively investigate potential violations of Section 117 reporting requirements.<sup>34</sup> Meanwhile, the House recently approved (by a 246-170 vote) H.R. 5933, a bipartisan bill that would close loopholes and otherwise enhance reporting requirements to prevent any foreign country — including China and Qatar — from continuing to capitalize on undisclosed financial contributions to U.S. universities.<sup>35</sup> Immediately enhanced enforcement of the existing law, and Senate passage of H.R. 5933, would appropriately spotlight and weaken Chinese, Qatari, and other foreign influence operations in the United States.

## **THREATEN FUNDAMENTAL CHANGE IN U.S. RELATIONS**

### **IMPOSE ARMS SALE BAN AND OTHER SANCTIONS ON STATES SUPPORTING HAMAS**

As mentioned above, H.R. 340, which passed the House on November 1, would impose an arms sale ban and other sanctions on a foreign state if the president determines it “provides significant material support to Hamas” or “materially contributes, directly or indirectly, to the terrorist activities of Hamas.”<sup>36</sup> While the bill mentions neither

30. Erica L. Green and Ellen Barry, “Harvard and Yale Ensnared in Education Dept. Crackdown on Foreign Funding,” *The New York Times*, February 12, 2020. (<https://www.nytimes.com/2020/02/12/us/politics/harvard-yale-foreign-funding.html>); Elizabeth Redden, “Foreign Gifts Under Scrutiny,” *Inside Higher Ed*, July 8, 2019. (<https://www.insidehighered.com/news/2019/07/09/colleges-call-more-clarity-rules-requiring-disclosure-foreign-gifts-and-contracts>); Kate O’Keeffe, “Education Department Investigating Harvard, Yale Over Foreign Funding,” *The Wall Street Journal*, February 13, 2020. (<https://www.wsj.com/articles/education-department-investigating-harvard-yale-over-foreign-funding-11581539042>); Eli Lake, “Qatar’s War for Young American Minds,” *The Free Press*, October 24, 2023. (<https://www.thefp.com/p/qatars-war-for-young-american-minds>); Charles Asher Small and Michael Bass, “Higher Education and Contemporary Antisemitism: Soft Power and Foreign Influence – Examining Undocumented Foreign Funding of American Universities: Implications for Education and Rising Antisemitism,” *The Institute for the Study of Global Antisemitism and Policy*, June 13, 2020. (<https://isgap.org/post/2020/06/isgap-research-report-finds-billions-in-unreported-middle-east-funding-to-american-universities>)

31. Charles Asher Small and Michael Bass, “Higher Education and Contemporary Antisemitism: Soft Power and Foreign Influence – Examining Undocumented Foreign Funding of American Universities: Implications for Education and Rising Antisemitism,” *The Institute for the Study of Global Antisemitism and Policy*, June 13, 2020. (<https://isgap.org/post/2020/06/isgap-research-report-finds-billions-in-unreported-middle-east-funding-to-american-universities>)

32. U.S. Department of Education, Office of the General Counsel, “Institutional Compliance with Section 117 of the Higher Education Act of 1965,” October 2020. (<https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>)

33. *Ibid.*

34. Committee on Education and the Workforce, U.S. House of Representatives, “Letter to Secretary Cardona on Sec. 117,” April 5, 2023. ([https://edworkforce.house.gov/uploadedfiles/letter\\_to\\_secretary\\_cardona\\_on\\_sec\\_117\\_vf.pdf](https://edworkforce.house.gov/uploadedfiles/letter_to_secretary_cardona_on_sec_117_vf.pdf))

35. DETERRENT Act, H.R.5933, 118th Congress (2023-2024). (<https://www.congress.gov/bill/118th-congress/house-bill/5933/text>); “House Passes Bipartisan Bill to Deter Foreign Adversaries’ Influence in American Education,” *U.S. House Committee on Education and Labor*, December 6, 2023. (<https://georgetown.app.box.com/s/m1zonx8jdztxnk8iubmivbecitlmpb6e>)

36. Hamas International Financing Prevention Act, H.R.340, 118th Congress (2023-2024). (<https://www.congress.gov/bill/118th-congress/house-bill/340/text>)

Qatar nor Turkey by name, publicly available information indicates that both meet the threshold for sanctions under the bill. However, the bill both requires a presidential determination before the application of penalties and authorizes a waiver of any such penalties. Presidents have long refused to make inconvenient determinations or issue waivers to avoid the consequences.

If the Biden administration wants to impose such sanctions on a Hamas-supporting country, it need not await this bill's passage. Existing laws, including the Arms Export Control Act and the International Emergency Economic Powers Act, already provide the president all the necessary discretionary authority to impose both an arms sale ban and financial sanctions on Hamas-supporting countries. If Congress wants such sanctions imposed, it would be much faster to impose them directly rather than authorize and await discretionary presidential action.

## STATE SPONSOR OF TERRORISM DESIGNATION

Numerous commentators have called for Qatar to be designated as a state sponsor of terrorism.<sup>37</sup> Countries that the Secretary of State determines to have repeatedly provided support for acts of international terrorism are designated pursuant to three laws: section 1754(c) of the National Defense Authorization Act for Fiscal Year 2019, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act of 1961.<sup>38</sup>

Designation of a particular country under these authorities triggers sanctions, including restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual-use items; and miscellaneous financial and other restrictions.<sup>39</sup> In addition, a special exception to the Foreign Sovereign Immunities Act authorizes U.S. courts to order designated state sponsors of terrorism to pay monetary damages to U.S. victims of terrorist acts that the state committed or for which it provided material support or resources.<sup>40</sup> Under this exception, U.S. courts have awarded tens of billions of dollars in damages against Iran and other designated states.<sup>41</sup>

As currently phrased, the three designation laws do not define the term “international terrorism” and thus provide the Secretary of State with very broad discretion as to when and if to designate.<sup>42</sup>

There are four countries currently designated: Cuba, Iran, North Korea, and Syria. There is considerable publicly available evidence of Qatari support for Hamas.<sup>43</sup>

37. Jonathan Schanzer, “Stop With the Nice Words on Qatar,” *Commentary*, December 3, 2023. (<https://www.commentary.org/jonathan-schanzer/stop-with-the-nice-words-on-qatar>); Richard Goldberg, “A U.S. Ultimatum for Qatar: Stop Sheltering Hamas,” *The Wall Street Journal*, October 31, 2023. (<https://www.wsj.com/articles/a-u-s-ultimatum-for-qatar-stop-sheltering-hamas-4a62c002>)

38. “State Sponsors of Terrorism,” *U.S. Department of State*, 2019. (<https://www.state.gov/state-sponsors-of-terrorism>)

39. *Ibid.*

40. Terrorism exception to the jurisdictional immunity of a foreign state, 28 U.S.C. § 1605A. (<https://www.law.cornell.edu/uscode/text/28/1605A>); Jennifer K. Elsea, “Justice for United States Victims of State Sponsored Terrorism Act: Eligibility and Funding,” *Congressional Research Service*, April 11, 2023. (<https://crsreports.congress.gov>)

41. Orde Kittrie, “After Supreme Court Decision, Iran Still Owes \$53 Billion in Unpaid U.S. Court Judgments to American Victims of Iranian Terrorism,” *Foundation for Defense of Democracies*, May 2016. ([https://s3.us-east-2.amazonaws.com/defenddemocracy/uploads/documents/Kittrie\\_After\\_SCOTUS\\_Iran\\_Owes.pdf](https://s3.us-east-2.amazonaws.com/defenddemocracy/uploads/documents/Kittrie_After_SCOTUS_Iran_Owes.pdf))

42. Dianne E. Rennack, “State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief,” *Congressional Research Service*, May 4, 2021. (<https://crsreports.congress.gov/product/pdf/R/R43835>)

43. “State Sponsors of Terrorism,” *Bureau of Counterterrorism*, 2019. (<https://www.state.gov/state-sponsors-of-terrorism>); “Qatar: Extremism and Terrorism,” *Counter Extremism Project* (<https://www.counterextremism.com/countries/qatar-extremism-and-terrorism>)

If the Department of State does not designate Qatar as a state sponsor of terrorism, Congress could do so through legislation. In the absence of such definitive steps, the Biden administration could ramp up pressure on Qatar by publicly ordering an assessment of whether Qatar should be designated as a state sponsor of terrorism.

#### **REVOKE DESIGNATION OF QATAR AS A MAJOR NON-NATO ALLY**

Biden designated Qatar as a “major non-NATO ally” (MNNA) of the United States in March 2022.<sup>44</sup> The U.S. law creating this category provides the president with full discretion to both designate a country as an MNNA and terminate such a designation.<sup>45</sup>

MNNA status confers several privileges under U.S. law. As the Department of State notes, those privileges include eligibility for some types of cooperative research, development, testing, and evaluation; prepositioning of stocks; training; excess defense articles; and ammunition.<sup>46</sup> Designation can also render the respective country eligible for cooperative research and development projects related to defense equipment; allow firms of the MNNA to bid on certain maintenance-related contracts outside the United States; and allow potential funding for projects under the auspices of the Department of State’s Technical Support Working Group.

If the President does not revoke Qatar’s status as an MNNA, Congress could do so through legislation. In the absence of such definitive steps, the Biden administration could ramp up pressure on Qatar by publicly ordering an assessment of whether Qatar should continue to be designated as an MNNA.

In addition, the United States could consider publicly announcing that it will assess whether Turkey should be expelled from NATO. Several members of Congress and even Mark Esper, while serving as U.S. defense secretary, have threatened such expulsion in prior circumstances.<sup>47</sup> Although the North Atlantic Treaty does not explicitly include a suspension or expulsion mechanism, at least one leading expert has suggested that a member could be expelled if they were found to be in material breach of the treaty.<sup>48</sup>

#### **THREATEN TO MOVE U.S. AIRBASES**

Several commentators have suggested that the United States withdraw, or threaten to withdraw, its forces from the Incirlik Air Base in Turkey.<sup>49</sup> Turkish governments, including the Erdogan administration, have long attempted to use the U.S. presence at Incirlik as leverage over U.S. policy.<sup>50</sup>

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44. President Joseph R. Biden, Jr., The White House, “Memorandum on the Designation of the State of Qatar as a Major Non-NATO Ally,” March 10, 2022. (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/10/memorandum-on-the-designation-of-the-state-of-qatar-as-a-major-non-nato-ally>)

45. Designation of major non-NATO allies, 22 U.S.C. § 2321k. (<https://www.law.cornell.edu/uscode/text/22/2321k>)

46. “Major Non-NATO Ally Status,” *U.S. Department of State*, January 20, 2021. (<https://www.state.gov/major-non-nato-ally-status>)

47. Aurel Sari, “Can Turkey be Expelled from NATO? It’s Legally Possible, Whether or Not Politically Prudent,” *Just Security*, October 15, 2019. (<https://www.justsecurity.org/66574/can-turkey-be-expelled-from-nato>)

48. *Ibid.*

49. Michael Rubin, “Incirlik: Time for the U.S. Military to Leave,” *American Enterprise Institute*, September 17, 2020. (<https://www.aei.org/op-eds/incirlik-time-for-the-u-s-military-to-leave>); Philip Kosnett, “A Farewell to Incirlik?” *Center for European Policy Analysis*, March 28, 2023. (<https://cepa.org/article/a-farewell-to-incirlik>)

50. “Turkey’s Erdogan Threatens to Close 2 US Military Bases,” *Agence France-Presse*, December 15, 2019. ([https://www.voanews.com/a/europe\\_turkeys-erdogan-threatens-close-2-us-military-bases/6181115.html](https://www.voanews.com/a/europe_turkeys-erdogan-threatens-close-2-us-military-bases/6181115.html)); Philip Kosnett, “A Farewell to Incirlik?” *Center for European Policy Analysis*, March 28, 2023. (<https://cepa.org/article/a-farewell-to-incirlik>)



Incirlik is reportedly less valuable to the United States than it was in the past.<sup>51</sup> However, such a withdrawal would still impose significant costs on the United States as well as Turkey.

Separately, various commentators have suggested that the United States withdraw, or threaten to withdraw, its forces from Al-Udeid air base in Qatar.<sup>52</sup> The U.S. government reportedly considered alternatives to Al-Udeid in 2017, amid tensions between Qatar and its neighbors.<sup>53</sup>

Al-Udeid is reportedly less valuable to Washington now than it was prior to the American departure from Afghanistan.<sup>54</sup> However, such a withdrawal would still impose significant costs on the United States as well as Qatar.<sup>55</sup>

If the U.S. government believes it would be imprudent for Washington to immediately withdraw, or threaten to withdraw, its forces from Incirlik and/or Al-Udeid, it could publicly announce — or Congress could legislatively mandate — contingency planning for such a withdrawal.<sup>56</sup>

## CONCLUSION

There is a broad menu of options available to the U.S. government should it decide to use its leverage over Qatar and Turkey, which house most of Hamas's top leadership, in order to hold the terrorist group accountable and end its rule over Gaza. Whichever pressure options the Biden administration or Congress prefer, they must move quickly. The longer the United States waits to publicly prosecute, and demand the detention of, culpable Hamas leaders in Qatar and Turkey, the more time they will have to flee to destinations over which the United States has less leverage. It would be tragic to lose this powerful opportunity to help achieve the president's goals of holding Hamas accountable and ending its rule over Gaza while minimizing bloodshed.

51. Philip Kosnett, "A Farewell to Incirlik?" *Center for European Policy Analysis*, March 28, 2023. (<https://cepa.org/article/a-farewell-to-incirlik>)

52. Eliot Bakker, "Why It's Time To Remove The United States' Air Base From Qatar," *The Federalist*, July 18, 2017. (<https://thefederalist.com/2017/07/18/time-remove-united-states-air-base-qatar>); Michael Rubin, "The U.S. Military Has a Basing Problem," *American Enterprise Institute*, October 19, 2023. (<https://www.aei.org/op-eds/the-u-s-military-has-a-basing-problem>); Richard Goldberg, "A U.S. Ultimatum for Qatar: Stop Sheltering Hamas," *The Wall Street Journal*, October 31, 2023. (<https://www.wsj.com/articles/a-u-s-ultimatum-for-qatar-stop-sheltering-hamas-4a62c002>)

53. Tara Copp, "Pentagon: Al-Udeid Air Base still open, but US prepared in case Qatar rift escalates," *Associated Press*, July 17, 2017. (<https://www.militarytimes.com/news/pentagon-congress/2017/07/17/pentagon-al-udeid-air-base-still-open-but-us-prepared-in-case-qatar-rift-escalates>)

54. Michael Rubin, "The U.S. Military Has a Basing Problem," *American Enterprise Institute*, October 19, 2023. (<https://www.aei.org/op-eds/the-u-s-military-has-a-basing-problem>)

55. Simon Henderson, "Qatar's Relations with Washington and Israel Are Being Tested," *The Washington Institute for Near East Policy*, Oct 24, 2023. (<https://www.washingtoninstitute.org/policy-analysis/qatars-relations-washington-and-israel-are-being-tested>)

56. Jonathan Schanzer, "Stop With the Nice Words on Qatar," *Commentary*, December 3, 2023. (<https://www.commentary.org/jonathan-schanzer/stop-with-the-nice-words-on-qatar>)

## Foundation for Defense of Democracies (FDD)

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