



Addressing the Allegations of Impropriety in the Proposed Transfer of Nuclear Energy Technology to Saudi Arabia

**Minority Staff Report
Committee on Oversight and Reform
U.S. House of Representatives**



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Executive Summary

Since 2017, Chairman Elijah Cummings and Committee Democrats have been examining alleged “efforts inside the White House to rush the transfer of highly sensitive U.S. nuclear technology to Saudi Arabia.”¹ As their inquiry expanded, the Democrats also sought to examine alleged conflicts of interest involving former National Security Advisor Michael Flynn; Tom Barrack, the Chairman of the Trump Inaugural Committee and Founder and Executive Chairman of Colony Capital; and IP3, a group of national security experts advocating for American-led nuclear energy around the world.²

Contrary to Chairman Cummings’s claims about a “cover-up” from the “top” on all congressional investigations,³ the Committee has an extensive record from which to draw conclusions. The Committee has received nearly 60,000 pages of documents from private entities and over 1,600 pages of documents from the Trump Administration. In addition, the Committee has received staff-level briefings from IP3, the Energy Department’s National Nuclear Security Administration, and the State Department’s Bureau of Nonproliferation.

The Committee’s oversight shows that at the beginning of the Trump Administration, IP3 sought to use its relationships with the Administration’s senior national security officials to advocate that the United States lead civilian nuclear energy development in Saudi Arabia. IP3 billed its proposal as a modern-day Middle East “Marshall Plan”—after the famous plan that saved Europe from communism after World War II.

Democrats allege that these early discussions between IP3 and the Administration are evidence of impropriety because the discussions concerned civilian nuclear technology in Saudi Arabia, where Jared Kushner is serving as an envoy for the Administration. Chairman Cummings, of course, is investigating virtually every aspect of Kushner’s role in the White House, including his email use and security clearance. Ultimately, however, the Administration did not opt to implement IP3’s proposal.

¹ Letter from Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Reform and Eliot L. Engel, Ranking member, Committee on Foreign Affairs to Flynn Intel Group, Rear Admiral Michael W. Hewitt, and Alex G. Copson (June 19, 2017); Letter from Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Reform and Eliot L. Engel, Ranking member, Committee on Foreign Affairs to Flynn Intel Group, Rear Admiral Michael W. Hewitt, and Alex G. Copson (Sept. 12, 2017); and Letter from Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Reform and Eliot L. Engel, Ranking member, Committee on Foreign Affairs to Flynn Intel Group, Rear Admiral Michael W. Hewitt, and Alex G. Copson (Sept. 15, 2017); Letter from Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Reform and Eliot L. Engel, Ranking member, Committee on Foreign Affairs to Flynn Intel Group, Rear Admiral Michael W. Hewitt, and Alex G. Copson 2 (Sept. 12, 2017); DEMOCRAT STAFF OF H. COMM. ON OVERSIGHT & REFORM, 116TH CONG. WHISTLEBLOWERS RAISE GRAVE CONCERNS WITH TRUMP ADMINISTRATION’S EFFORTS TO TRANSFER SENSITIVE NUCLEAR TECHNOLOGY TO SAUDI ARABIA (2019).

² DEMOCRAT STAFF OF H. COMM. ON OVERSIGHT & REFORM, 116TH CONG. WHISTLEBLOWERS RAISE GRAVE CONCERNS WITH TRUMP ADMINISTRATION’S EFFORTS TO TRANSFER SENSITIVE NUCLEAR TECHNOLOGY TO SAUDI ARABIA (2019) [hereinafter DEMOCRAT STAFF REPORT].

³ Griffin Connolly, *White House hasn’t provided ‘a single piece of paper’ to Oversight, despite 12 requests*, ROLL CALL, (Mar. 20, 2019) <https://www.rollcall.com/news/white-house-hasnt-provided-single-piece-paper-oversight-despite-12-requests>.

The evidence currently before the Committee does not show impropriety in the proposed transfer of nuclear energy technology to Saudi Arabia. Specifically, the Committee's oversight shows the following:

1. The Trump Administration is not rushing nuclear energy technology to Saudi Arabia;
2. The Trump Administration is not conflicted from deliberations to transfer nuclear energy technology to Saudi Arabia; and
3. The Trump Administration has not skirted requirements for congressional notification about nuclear energy technology transfers to Saudi Arabia.

Chairman Cummings and Oversight Democrats are obsessed with investigating every decision made by the Trump White House—especially when it involves a member of the First Family. In this case, however, the evidence before the Committee simply does not substantiate the allegations levied against the Trump Administration.

Legal Framework for Nuclear Energy Technology Transfers

The Atomic Energy Act (AEA) governs the transfer of nuclear technology and material.⁴ Section 123 of the AEA requires the United States to execute a peaceful nuclear cooperation agreement—known as a “123 Agreement”—for the transfer of U.S.-origin “special nuclear material,” defined by the AEA as plutonium and uranium, to a foreign nation.⁵ Section 123 requires that any agreement for nuclear cooperation meet nine nonproliferation criteria, including safeguards on the transfer and storage of nuclear material.⁶ The President must submit a proposed agreement to Congress, which has a 90-day period within in which to review the agreement.⁷

The State Department is responsible for negotiating 123 Agreements, in coordination with the Energy Department and the Nuclear Regulatory Commission (NRC).⁸ The United States currently has 123 Agreements in place with 48 countries, the International Atomic Energy Agency (IAEA), and the American Institute in Taiwan.⁹

Separately, Part 810 of title 10 of the Code of Federal Regulations requires the Secretary of Energy to authorize the “development or production of any special nuclear material outside of the United States” if the Secretary determines that the development or production “will not be inimical to the interest of the United States.”¹⁰ The Secretary of Energy may only make such an authorization—known as an “810 Authorization”—with the concurrence of the State Department and after consulting with the NRC, the Commerce Department, and the Defense Department.¹¹ An 810 Authorization allows a private company to market its unclassified hardware, blueprints, and “know-how” to interested foreign countries. Importantly, 810 Authorizations do not allow for the transfer of any uranium or plutonium.¹²

Allegations of Wrongdoing Are Not Supported by Committee’s Evidence

Chairman Cummings has been investigating the role of IP3 in advocating for civilian nuclear energy technology in Saudi Arabia. IP3 is a leader in the development of peaceful nuclear power around the world. The company is led by Retired Real Admiral Michael Hewitt, and its Board includes several former generals, a former Member of Congress, and other national security experts.

The evidence before the Committee to date does not support allegations that the Trump Administration committed wrongdoing in considering the transfer of civilian nuclear energy technology to Saudi Arabia.

⁴ 42 U.S.C. § 2153 *et seq.*

⁵ 42 U.S.C. § 2153.

⁶ *Id.*

⁷ *Id.*

⁸ *123 Agreements for Peaceful Cooperation*, National Nuclear Security Administration, <https://www.energy.gov/nnsa/123-agreements-peaceful-cooperation>.

⁹ *Id.*

¹⁰ 10 C.F.R. Part 810.

¹¹ *Id.*

¹² *Id.*

1. The Trump Administration is not “rushing” to transfer nuclear technology to Saudi Arabia

In February 2019, the Democrat majority released an interim staff report alleging that the Trump Administration sought to “rush the transfer of highly sensitive U.S. nuclear technology to Saudi Arabia in violation of the Atomic Energy Act and without review by Congress as required by law”¹³ The evidence available to the Committee does not support this allegation.

- In the course of the Committee’s oversight, the Committee has received no documents proving that the White House rushed any transfer of nuclear technology to Saudi Arabia.
- Instead, the documents show that IP3, since its formation, attempted to educate federal officials—including Democrat Members of Congress—about the importance for American companies to lead the development of civil nuclear energy in the Middle East, instead of allowing Russia and China to do so.¹⁴
- The documents show that IP3 appeared to operate as a spokesman for the civilian nuclear energy industry to the Trump Administration and Congress.¹⁵
 - IP3 documents show that it briefed Democrat and Republican Members of Congress about the civilian nuclear energy possibilities in the Middle East in 2017 and 2018.¹⁶
 - Documents suggest that IP3 arranged a White House meeting with nuclear energy company executives in February 2019.¹⁷
- Contrary to the allegation of a “rushed” transfer, the documents actually suggest that IP3 had difficulty in obtaining meetings in 2018 with senior White House officials to discuss IP3’s proposal.¹⁸
- Finally, the evidence shows that companies involved in civilian nuclear energy technology development in Saudi Arabia have received the required 810 Authorizations—a lengthy and time-intensive process (see Section 3 below).

¹³ DEMOCRAT STAFF REPORT at 2.

¹⁴ See Email from Michael Hewitt, Co-Founder & CEO, IP3 (Feb. 27, 2018 at 4:05 PM) (On file with Committee); see Email from Michael Hewitt, Co-Founder & CEO, IP3 (Apr. 5, 2017 at 8:08 AM) (On file with Committee).

¹⁵ See Email from Michael Hewitt, Co-Founder & CEO, IP3 (Feb. 11, 2019 at 7:02 PM) (On file with Committee).

¹⁶ See Email from Michael Hewitt, Co-Founder & CEO, IP3 (Feb. 27, 2018 at 4:05 PM) (On file with Committee); see Email from Michael Hewitt, Co-Founder & CEO, IP3 (Apr. 5, 2017 at 8:08 AM) (On file with Committee).

¹⁷ See Email from Michael Hewitt, Co-Founder & CEO, IP3 (Feb. 11, 2019 at 7:02 PM) (On file with Committee).

¹⁸ See Email from Robert McFarlane, Chairman, IP3 (Oct. 9, 2018 at 4:27 PM) (On file with Committee).

2. The Trump Administration is not conflicted from decisions on the transfer of nuclear energy technology to Saudi Arabia

The Democrats suggest that IP3 sought to lean on its relationships with former senior White House officials to urge President Trump to name Tom Barrack as the envoy for nuclear energy in the Middle East.¹⁹ Specifically, they allege that IP3 sought to lobby former National Security Advisor Michael Flynn and former Deputy National Security Advisor K.T. McFarland to implement this plan.²⁰ Based on the documents produced to the Committee, however, there is no evidence of a conflict of interest between IP3, Barrack, Flynn, McFarland, or the Trump Administration in advocating for civilian nuclear energy in the Middle East. Moreover, Barrack was not chosen to be an envoy to implement any civil nuclear energy plan in the Middle East.

- Documents produced to the Committee show that IP3 proposed Barrack to the White House in hopes that it would choose him to serve as an envoy to the Middle East to push an idea deemed the “Middle East Marshall Plan.”²¹
- Documents produced to the Committee show that IP3 communicated with the Trump transition team after the 2016 election to offer its national security expertise, including its goal that Saudi Arabia select the United States—over Russia or China—to build its civil nuclear energy program.²²
 - The documents suggest that IP3’s goal was to have Barrack chosen so that he could advocate to Saudi Arabian officials to select the United States energy companies for its civil nuclear energy program.²³
 - Emails show that after White House attorneys proactively cancelled a meeting with IP3 in 2018, IP3 reiterated that it sought to engage the White House “to talk about policy, not business.”²⁴
- Ultimately, the White House did not select Barrack to lead any effort toward civilian nuclear energy in the Middle East.

On March 7, 2019, IP3 founder Rear Admiral Michael Hewitt briefed Committee staff about the formation of IP3 and the composition of its Board of Directors.²⁵ This briefing helped to clarify the allegations about conflicts of interest involving IP3.

¹⁹ DEMOCRAT STAFF REPORT at 3-4.

²⁰ *Id.* at 6-18.

²¹ See Email from Robert McFarlane, IP3 (Jan. 26, 2017 at 9:11 PM) (On file with Committee).

²² See Email from Molly Denham, Executive Assistant, IP3 (Jan. 10, 2017 at 8:09 PM) (On file with Committee); see Email from Robert McFarlane, Co-Founder, U.S. Energy Security Council (Feb. 5, 2017 at 11:27 PM) (On file with Committee).

²³ See Email from Robert McFarlane, IP3 (Jan. 26, 2017 at 9:11 PM) (On file with Committee).

²⁴ See Email from Robert McFarlane, Chairman, IP3 (Oct. 9, 2018 at 4:27 PM) (On file with Committee).

²⁵ Briefing by Admiral Michael Hewitt, Cofounder and CEO, IP3, to Committee Staff, H. Comm. on Oversight & Reform (Mar. 7, 2019).

- In his briefing, Hewitt stated that he attempted to persuade Flynn to join the Board of Directors of IP3, but that ultimately Flynn passed on the opportunity.²⁶
- IP3 produced documents showing that because Flynn accepted a position within the Trump Administration, he resigned from the boards of companies affiliated with the group forming IP3 and declined an offer to join the newly formed board of IP3.²⁷
- Flynn never served on IP3's Board of Directors and therefore Flynn is not conflicted from meeting with IP3.

The Democrats also allege a conflict of interest involving Westinghouse, an international energy company that may pursue civil nuclear energy opportunities in Saudi Arabia.

- Westinghouse filed for bankruptcy in March 2017. Barrack's company, Colony Capital, considered acquiring Westinghouse but ultimately decided against it.
- Barrack never became the envoy for the "Middle East Marshall Plan" and Barrack's company, Colony Capital, never acquired Westinghouse.
- Therefore, Westinghouse is not conflicted from pursuing business opportunities with Saudi Arabia's civil nuclear energy program.

3. The Committee has no evidence that the Administration skirted Congressional notification requirements

Evidence produced to the Committee by the Energy Department shows that the Department granted 810 Authorizations to energy companies allowing the companies to conduct business in Saudi Arabia. The Democrats may allege there was malfeasance within the Trump Administration in granting or fast-tracking these authorizations.²⁸ However, the evidence before the Committee does not support this allegation.

- Documents and briefings provided to the Committee show that the Energy Department granted all 810 Authorizations for Saudi Arabia in accordance with the law and governing regulations.²⁹
- The 810 Authorization process is necessarily a lengthy process because the AEA requires the consent of or consultation with multiple agencies and the Secretary of State must seek assurances from the receiving country that it will handle the nuclear technology safely and appropriately.

²⁶ *Id.*

²⁷ Letter from Kristen Verderame, Counsel for Lt. Gen. Michael T. Flynn, to Michael Hewitt, President, X-Co. Dynamics, Chairman, Iron Bridge Group (Dec. 1, 2016) (On file with Committee).

²⁸ DEMOCRAT STAFF REPORT at 2.

²⁹ Saudi Arabia-related 810 Authorizations (On file with Committee).

- The most recent 810 Authorization for Saudi Arabia was granted as recently as February of 2019—over two years after the beginning of the Trump Administration.
- Although the relevant energy companies asked for their 810 Authorizations to remain non-public for business proprietary purposes, the Trump Administration agreed to produce to the Committee all 810 Authorizations granted to the energy companies to conduct business in Saudi Arabia .
- These 810 Authorizations received all necessary agency consultation and concurrence.

The Democrats also allege that the Trump Administration is skirting the rules by attempting to transfer nuclear technology without a 123 Agreement in place.³⁰ Again, the facts do not support this allegation.

- 123 Agreements are only required for transferring special nuclear material, such as plutonium or uranium. A transfer of plutonium or uranium would occur only after a bid is awarded to an American company and reactors are built. To this point, no reactor has been built and therefore no special nuclear material can be transferred.
- State Department officials informed Committee staff that the 123 Agreement negotiation process relating to Saudi Arabia began in 2012 during the Obama Administration and remains ongoing.³¹ Therefore, even if Saudi Arabia builds nuclear reactors, U.S. companies could not transfer plutonium or uranium until the negotiations are complete and Congress has reviewed the agreement.
- Although some nuclear related technology may have been transferred, hardware, blueprints, and “know-how” may be legally transferred without a 123 Agreement—under the allowances of an 810 Authorization.³²

Conclusion

Contrary to the Democrats’ allegations of wrongdoing in the transfer of nuclear energy technology, the evidence available to the Committee tells a different story. The evidence shows that in the early days of the Trump Administration, IP3 attempted to excite new senior officials—including Michael Flynn and K.T. McFarland—about its proposal to place the United States as the leader in developing civilian nuclear technology in the Middle East. Importantly, IP3 did not successfully convince the Trump Administration to take any action.³³ Since then, the nuclear energy technology progress relating to Saudi Arabia has been the legal process initiated during the Obama Administration and undertaken by the energy companies with the appropriate approvals by several federal agencies.

³⁰ *Id.*

³¹ Briefing by Jim Warden, Acting Director, Office of Nuclear Energy, Safety, and Security, Bureau of Nonproliferation, Dep’t of State, to Committee Staff, H. Comm. on Oversight & Reform (May 23, 2019).

³² See 10 C.F.R. Part 810.

³³ DEMOCRAT STAFF REPORT at 5, 17.

Appendix

During this investigation, Chairman Cummings has sent letters to the following individuals and entities:

1. IP3 Corporation
2. Thomas Barrack
3. ACU Strategic Partners
4. Flynn Intel Group
5. Colony Capital
6. U.S. Joint Chief of Staff
7. The White House
8. The Department of Energy
9. The Department of Treasury
10. The Department of Commerce
11. The Department of Defense
12. The Department of State
13. The CIA
14. Michael Hewitt (Co-Founder & CEO, IP3)
15. Keith Alexander (Co-Founder & Director, IP3)
16. Jack Keane (Co-Founder & Director, IP3)
17. Robert McFarlane (Co-Founder & Director, IP3)
18. Fran Townsend (Director, IP3)
19. Stuart Soloman (President, IP3)
20. K.T. McFarland (Former Deputy National Security Advisor)
21. Kory Langhofer (Counsel, Trump for America)
22. Bechtel
23. AECOM
24. Exelon
25. General Electric
26. Jacobs Engineering Group
27. BWX Technologies
28. Lightbridge Corp.
29. Westinghouse Electric Company
30. NuScale Power
31. Siemens
32. TerraPower
33. Centrus Energy Corporation
34. Fluor Corporation
35. X-energy
36. Toshiba
37. GE-Hitachi