

United States Senate

WASHINGTON, DC 20510

September 16, 2016

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

We are gravely concerned with reports that North Korea has successfully conducted a fifth nuclear test. This is the regime's second test this year and this is the largest weapon they have tested, with an estimated explosive yield of 10 kilotons of TNT. The rapid advancement of North Korea's nuclear and ballistic missile program represents a grave threat to global peace and stability, and a direct threat to the U.S. homeland in the immediate future.

In the wake of this latest provocation from Pyongyang, we ask you to take immediate steps to expand U.S. sanctions against North Korea and those entities that assist the regime, most importantly China-based entities; expedite the deployment of the Terminal High Altitude Area Defense (THAAD) system in South Korea; and take all feasible steps to facilitate a stronger trilateral alliance between the United States, Japan, and South Korea to more effectively counter the North Korean threat.

We also ask you to urgently pursue an additional United Nations Security Council Resolution (UNSCR) to impose additional multilateral sanctions against Pyongyang. This resolution must close loopholes of previous resolutions, such as the "livelihood" exemption in UNSCR 2270, which have allowed China to skirt faithful compliance with the letter and the spirit of such resolutions.

On February 18, 2016, you signed into law the North Korea Sanctions and Policy Enhancement Act of 2016 (P.L. 114-122), but your Administration's implementation of this legislation has been disappointing. While we commend the designation of North Korea as a jurisdiction of "primary money laundering concern" and the designation of top North Korean officials, including Kim Jong Un, as human rights violators, these actions only scratch the surface of the sanctions authorities provided to you under the new law.

First and foremost, you must begin to designate entities that are assisting the North Korean regime, especially those based in China -- the country with which North Korea currently conducts an estimated 90% of its trade and that has historically served as Pyongyang's largest military and diplomatic protector.

As you know, Section 102 of P.L. 114-122 mandates, not simply authorizes, investigations against all entities, no matter where they are based, “upon receipt by the President of credible information indicating that such person has engaged” in illicit conduct outlined in the legislation.

As the *Wall Street Journal* wrote in an editorial on August 18, 2016: “The promise of secondary sanctions is that they can force foreign banks, trading companies and ports to choose between doing business with North Korea and doing business in dollars, which usually is an easy call... But this only works if the U.S. exercises its power and blacklists offending institutions, as Congress required in February’s North Korea Sanctions and Policy Enhancement Act. The Obama Administration hasn’t done so even once.”

As the *Wall Street Journal* further noted, for instance, the Administration has not acted on information from the United Nations Panel of Experts report in March 2016 that the Bank of China “allegedly helped a North Korea-linked client get \$40 million in deceptive wire transfers through U.S. banks.” Moreover, there is ample evidence of increased North Korean efforts to evade sanctions with help from China-based entities. According to the *New York Times* report on September 9, 2016, “To evade sanctions, the North’s state-run trading companies opened offices in China, hired more capable Chinese middlemen, and paid higher fees to employ more sophisticated brokers, according to Jim Walsh and John Park, scholars at MIT and Harvard.”

We respectfully ask you to immediately provide written answers to the following questions:

- 1) Has the Administration received credible evidence that entities based in China are engaging in illicit activities outlined in P.L. 114-122? If so, what is the status of these investigations? Why have no Chinese-based entities been designated to date?
- 2) Do you believe that China is in full compliance of UN Security Council Resolution 2270 and all preceding U.N. Security Council resolutions regarding North Korea? Please provide a detailed account of China’s compliance or non-compliance and what actions, if any, have been pursued at the U.N. for China’s non-compliance.
- 3) Why has the Administration not designated any entities for malicious cyber-enabled activities, as required by Section 209 of P.L. 114-122?
- 4) Does the Administration believe that the multilateral enforcement of UNSCR 2270 and its own enforcement of P.L. 114-122 has had a credible and measurable impact on North Korea’s regime ability to obtain luxury goods?
- 5) Is North Korea’s state-owned Air Koryo airline involved in any activities outlined in Section 104 of P.L. 114-122 and if so, has the Administration initiated an investigation for the designation of Air Koryo under the law? If not, why not?
- 6) What actions has the Administration taken to discourage the North Korean forced labor camps and trafficking of North Korean workers? Is the Administration pursuing any designations for entities that are assisting in “the operation and maintenance of political prison camps or forced labor camps, including outside of North Korea”, as required by Section 104(a)(8) of P.L. 114-122? If not, why not?

Mr. President, we must send a strong message to Beijing that our patience has run out and exert any and all effort with Beijing to use its critical leverage to stop Pyongyang. As Secretary Ash Carter stated on September 9, following the latest nuclear test: “China shares important

responsibility for this development and has an important responsibility to reverse it. It's important that it use its location, its history and its influence to further the denuclearization of the Korean Peninsula and not the direction things have been going."

Thank you for your prompt attention to this letter and we hope to work closely with you to contain, and ultimately eliminate, the North Korean threat.

Sincerely,



CORY GARDNER
United States Senator



RICHARD SHELBY
United States Senator



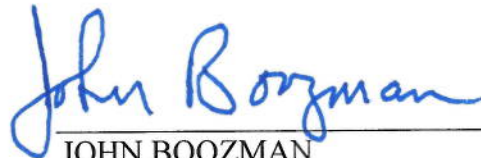
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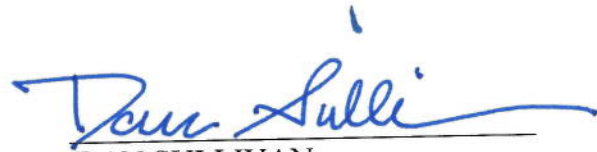

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United States Senator

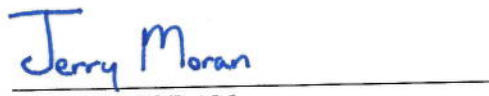

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