

## The 2002 Iraq AUMF: What It Is and Why Congress Should Repeal It

Over the last few years, congressional support for repealing the 2002 Iraq Authorization for Use of Military Force (AUMF) has grown. Organizations spanning varying ideologies and perspectives agree, including a *transpartisan coalition* of 25 groups and the *Heritage Foundation*, which said that “the 2002 AUMF has run its course ... [and] should be repealed.”

In 2019, the House voted to include a 2002 AUMF repeal provision in the annual defense policy bill – the National Defense Authorization Act or “NDAA” – for the first time. In 2020 the House twice voted to repeal this authorization, *first* as part of the January *No War Against Iran Act* and *second*, in the *annual defense spending bill* in July. In 2022 the House voted to *adopt* Rep. Barbara Lee’s (CA-13) amendment to the 2023 NDAA to repeal the 2002 AUMF.

In June 2021, the House passed Rep. Barbara Lee’s bill to repeal the 2002 Iraq AUMF, *H.R. 256*, by a bipartisan vote of 268-161, including 49 Republicans. In the Senate, *S.J. Res. 10* from Sens. Tim Kaine (VA) and Todd Young (IN), to repeal both the 2002 Iraq AUMF and the 1991 Gulf War AUMF, accumulated *51 bipartisan co-sponsors, including 11 Republicans*.

The Biden administration also supports repealing the 2002 Iraq AUMF. Prior to the passage of H.R. 256, the administration released a *Statement of Administration Policy* endorsing its repeal.

### What is an AUMF and how is it different from a declaration of war?

- While declarations of war authorize “*total war*” – providing the president with the entire and unqualified use of the U.S. military – AUMFs authorize a more limited use of force.
- The last declaration of war was passed in 1942 against *Romania* during World War II. Since that time, the wars in Vietnam, the Persian Gulf, Afghanistan, and Iraq have all been *authorized by AUMFs*.

### What is the 2002 Iraq AUMF?

- Congress passed the *2002 Iraq AUMF* to authorize the war against Saddam Hussein’s regime in Iraq. It permitted the president to use the armed forces as “necessary and appropriate” to “defend U.S. national security against the continuing threat posed by Iraq” and to “enforce all relevant Security Council resolutions regarding Iraq.”
- The legal justification for attacking Iraq was that the Saddam Hussein regime was in breach of U.N. Security Council resolutions through its possession of weapons of mass destruction. As the world later learned, this justification had no basis in fact.

### How is the 2002 Iraq AUMF different from the 2001 AUMF?

- The 2001 AUMF and 2002 Iraq AUMFs were passed to authorize two very different conflicts. While the 2002 Iraq AUMF authorized force against the Saddam Hussein regime, the *2001 AUMF*, passed three days

after the attacks of September 11, authorized force against those who “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”

- Members of Congress *intended* the 2001 AUMF to be tailored to target al Qaeda (who were responsible for the 9/11 attacks) and the Taliban (who harbored al Qaeda in Afghanistan). However, successive administrations have used it to *justify* counterterrorism operations in at least 19 countries by claiming that the 2001 AUMF applies to “associated forces” of al Qaeda and the Taliban—a term that appears nowhere in the law. Today the 2001 AUMF is the legal basis used to justify all current wars. For this reason, it is often called the “*blank check*” for endless wars.

### **If the 2001 AUMF covers current conflicts, how is the 2002 Iraq AUMF being used now?**

- Since the Iraq war was declared over in 2011, the 2002 Iraq AUMF has never been cited as the sole authority for any U.S. military operations. In 2014, the Obama administration *cited* the 2002 AUMF as an “alternative statutory basis” to the 2001 AUMF for its campaign against ISIS in Iraq, while maintaining that “our position on the 2002 AUMF hasn’t changed and we’d like to see it repealed.”
- The Trump administration reiterated this position, *claiming* in 2018 that the 2002 Iraq AUMF “reinforces” the authority to use force against ISIS in Iraq. But it also went further, asserting that the 2002 AUMF authorizes force to address both “threats to, or stemming from, Iraq” in “Syria or elsewhere.”
- In January 2020, the Trump administration relied on this expansive interpretation to *claim* that the 2002 Iraq AUMF authorized its assassination of Iranian general Qassem Soleimani. This claim was *rejected* by respected legal scholars. Congress responded by passing the bipartisan *S.J. Res. 68* under the War Powers Resolution that directed President Trump to terminate the use of force against Iran. President Trump subsequently vetoed the resolution.

### **Why should the 2002 Iraq AUMF be repealed?**

- **To fulfill Congress’s constitutional responsibility.** It is Congress’s role to not only authorize but to limit the president’s power to use force. Repealing the 2002 Iraq AUMF would reassert Congress’s Article I constitutional duty to determine if and when the United States goes to war.
- **To prevent further abuse.** The Trump administration already misused the 2002 Iraq AUMF to erroneously justify the assassination of an Iranian general, in a strike that killed 9 other people. The executive branch’s overbroad interpretation of the 2002 Iraq AUMF remains deeply problematic, ignores congressional intent, and renders the law susceptible to further abuse. Congress should remove the ability of this or any future president to misuse the 2002 Iraq AUMF to justify unauthorized new military actions.
- **It’s not needed.** Even without the 2002 AUMF, the president has authority as Commander in Chief to defend the United States against attack. Existing operations would not be affected by its repeal.
- **It is no longer relevant.** The Saddam Hussein regime was overthrown in 2003 and a formal end to the U.S. mission in Iraq was declared at the end of 2011. The law that authorized this long over war should be repealed.