

May 15, 2018

Senator Bob Corker
United States Senate
425 Dirksen Senate Office Building
Washington, DC 20510

Senator Bob Menendez
United States Senate
528 Hart Senate Office Building
Washington, DC 20510

Re: Authorizing the Use of Military Force

Dear Chairman Corker and Ranking Member Menendez:

We, the undersigned, are a diverse group of organizations with a range of missions and perspectives who are all strongly opposed to the approach taken in the Authorization for Use of Military Force (AUMF) introduced on April 16. It would be difficult to overstate our concerns with this proposal. This new authorization would cede to the Executive Branch Congress' power under Article I of the Constitution to declare war and would authorize this president and future presidents to send American troops to countries where we are not currently at war—with no meaningful limitations on the type of force that may be used or whom it may be used against. Such an authorization is not an improvement over the status quo; it is a dangerous and unnecessary expansion of the president's war powers that would completely undermine the purported purposes behind the bill.

The two most recent AUMFs are the 2001 AUMF, which authorizes the use of military force against those responsible for the 9/11 attacks, and the 2002 AUMF, which authorizes the use of military force against the Saddam Hussein regime in Iraq. The Executive Branch, over the course of three administrations, has cited these AUMFs as authority for the use of force in countries and against persons far beyond the text and purpose of the 2001 and 2002 AUMFs.

We certainly understand Congress' frustration with these expansive Executive Branch interpretations. But the solution is for Congress to amend or repeal the current AUMFs and/or strengthen existing transparency and oversight through separate legislation—not pass new and expansive authorities that are broader than current law, and that would invite even greater executive overreach in the future.

This dangerous legislation would:

- **Authorize the use of military force far beyond what Congress has currently authorized.** This legislation would authorize the use of military force, with no limitations on the use of ground troops, in at least six countries and against at least eight organizations and give the president the authority to expand that list of countries and organizations even further without congressional approval.

- **Upend the constitutional process for deciding to use military force by ceding congressional power to the president.** This legislation would damage the Constitution's separation of powers by allowing the president, not Congress, to decide to use military force in the future against new terrorist groups that the president deems "associated forces" (including groups that do not exist on the date of the AUMF's enactment) or in new countries (including the United States itself). Article I of the Constitution vests in Congress the power to authorize the use of military force. This proposed AUMF would invert this process, as it would allow the president to unilaterally make such decisions and simply tell Congress after the fact, rather than the decision residing with the nation's elected representatives as the Founders intended. Stopping unwanted presidential expansions could only occur after-the-fact and would, in effect, require a veto-proof majority vote.
- **Impede congressional oversight by failing to sunset the authorization.** This legislation would authorize the use of military force against unknown enemies in unknown countries with no expiration date, opening the door to decades of armed conflict with no meaningful way for Congress to rein it in. Instead of a reasonable sunset provision, this proposal provides for a quadrennial review process by which Congress could choose to amend, repeal, or extend the AUMF under purportedly expedited procedures. However, if Congress fails to act or reach agreement—again by a veto-proof majority—then the existing expansive authorization automatically remains in place. This failure to include an expiration date will perpetuate and compound, not correct, the problems caused by the lack of a sunset in the 2001 and 2002 AUMFs, leading to less Congressional engagement and control in the future, not more.
- **Fail to enhance transparency and accountability regarding the use of military force.** While this AUMF masquerades as an effort to increase transparency and oversight, it would in fact expand the president's power without requiring *any* increase in transparency to the American people, adding only duplicative congressional reporting requirements, and making weak and reversible procedural changes that will have little to no effect on congressional oversight and engagement going forward. If Congress is interested in strengthening existing reporting requirements and engaging in more rigorous oversight, it can do so through separate legislation, without expanding existing authorities or ceding congressional power to the executive.

Vague and overbroad authorizations, like this proposal, that cede Congress' constitutional powers to the president undermine transparency and accountability, frustrate effective oversight, and invite mission creep. Moreover, they risk embroiling the nation in unauthorized or perpetual wars that threaten human rights, the rule of law, the separation-of-powers systems enshrined in the U.S. Constitution, and adherence to U.S. obligations, including under the law of armed conflict and the United Nations Charter.

As this proposal, if enacted, is likely to cause lasting and colossal harm to the U.S. Constitution, lead to irreversible damage to civil liberties and human rights at home and abroad, gravely harm U.S. national security and prosperity, and cede breathtaking and unnecessary powers to the president without any meaningful gains in transparency or oversight, we believe the current bill should not become law, and that the committee should instead focus on passing legislation that will meaningfully rein in the Executive Branch's misuse of the 2001 and 2002 AUMFs.

Sincerely,

American Civil Liberties Union
Brennan Center for Justice
Campaign for Liberty
Center for Constitutional Rights
Coalition for Peace Action
Common Defense
Defending Rights & Dissent
Defense Priorities
Demand Progress
Free the People
FreedomWorks
Friends Committee on National Legislation
Government Information Watch
Human Rights Clinic (Columbia Law School)
Human Rights First
Indivisible
Interfaith Network on Drone Warfare
Just Foreign Policy
National Religious Campaign Against Torture
OpenTheGovernment
Peace Action
Project on Government Oversight
Public Citizen
Win Without War

cc: Chairman Ed Royce and Ranking Member Eliot Engel, House Foreign Affairs Committee
Senator Mitch McConnell, Majority Leader
Senator Charles Schumer, Minority Leader
Congressman Paul Ryan, Speaker of the House
Congresswoman Nancy Pelosi, Minority Leader