

**Statement for the Record**  
**House Foreign Affairs Committee Hearing**  
**“Reclaiming Congress’s Article I Powers: Counterterrorism AUMF Reform”**  
**September 28, 2023**  
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Thank you, Chairman McCaul, Ranking Member Meeks, and Members of the Committee for providing this opportunity to address the question of repealing and replacing Authorizations for Use of Military Force (AUMFs) that have been used for counterterrorism operations over the past two decades. The Biden-Harris Administration is committed to working with Congress to repeal outdated AUMFs and to replace the 2001 AUMF with a more specific framework that will ensure that we can continue to address threats to the United States with appropriately decisive and effective military action. President Biden and the entire Administration recognize that the power and strength of the United States are greatest when the President and Congress work together to address external threats.

Since Congress passed the 2001 AUMF shortly after the September 11, 2001, terrorist attacks, the 2001 AUMF has served as the cornerstone of our domestic legal authority for the use of force against al-Qa’ida and associated forces. The Executive Branch has provided Congress with a complete list of all groups that have been determined to be covered by the 2001 AUMF. These groups include al-Qa’ida, the Taliban, certain other terrorist or insurgent groups affiliated with al-Qa’ida and the Taliban in Afghanistan, al-Qa’ida in the Arabian Peninsula, al Shabaab, al-Qa’ida in the Lands of the Islamic Maghreb, al-Qa’ida in Syria, and ISIS.

Replacing the 2001 AUMF is not an easy task, and we welcome the opportunity to work with you as you consider new legislation. The terrorist threat has evolved since the 2001 AUMF was enacted, and it will continue to change going forward. Any new or updated AUMF should reflect those changes. It should maintain the critical authority needed to protect our country and people from terrorist threats, and it should ensure continued transparency and collaboration between the Executive Branch and Congress on the use of military force in the following ways.

First, any new counterterrorism AUMF should include explicit authority to use force against al-Qa’ida and ISIS, given that we are in an ongoing armed conflict with both groups. It should also include a mechanism to add associated forces of these groups. We know from experience that terrorist groups splinter and re-organize over time, and that new, associated groups may in the future pose a threat to the United States and Americans abroad.

In this connection, the Administration does not believe it is necessary to name groups in a new authorization against whom the United States is not currently in an armed conflict. There are other tools to appropriately and effectively address threats from such groups. In particular, Article II of the Constitution empowers the President to direct certain military action without prior Congressional approval in order to protect the national security interests of the United States. This authority has been recognized over more than two centuries, across Presidential Administrations, and has been effectively utilized to authorize discrete actions to address threats,

including threats to our forces when deployed overseas. If the nature of a threat changes and the President determines additional authorities are appropriate and necessary, the Administration would consult with Congress.

Second, a new or updated AUMF should include periodic review of the locations where force is used. We have over 20 years of experience in the fight against al-Qa'ida and associated forces, and we know that these terrorist groups' operations are not constrained by international boundaries. At the same time, the countries where the United States has used force under the 2001 AUMF have been limited. We are committed to transparency with Congress and the American people about the locations where military force is used.

Third, and most importantly, a new AUMF should *not* include a set end date. Sunsetting the authority based on a specific date—rather than conditions bearing on the need to use force—risks a lapse of this vital legal authority for ongoing operations, including detention operations, at a point in time in which it is still critically needed. The Administration fully recognizes the interest in having a more specific authorization, and we are committed to working with you to find a solution that ensures regular, transparent reviews of the authority. But it is essential that we avoid a possible gap or lapse in this vital authority. The expiration of the authority should be based on the threat posed by terrorist groups to the United States and the American people.

In addition to the 2001 AUMF, there are other AUMFs currently in effect, namely the 1957 “Joint Resolution to promote peace and stability in the Middle East” (Public Law 85-7), the 1991 “Authorization for Use of Military Force Against Iraq Resolution” (Public Law 102-1), and the “Authorization for Use of Military Force Against Iraq Resolution of 2002” (Public Law 107-243). The Administration supports repeal of these AUMFs.

No current U.S. military operations rely on the 1991 AUMF as a domestic legal basis. The United States also does not engage in any ongoing military activities that are dependent on the 2002 AUMF as a domestic legal basis. At least since 2015, the U.S. Government has at most referred to the 2002 AUMF as an “additional authority,” alongside the 2001 AUMF and, at times, the President’s Article II authority, underpinning ongoing counterterrorism operations against ISIS in Iraq and Syria. Repeal of the 2002 AUMF would have no impact on current U.S. military operations.

I look forward to answering your questions today, and to working with you on this important effort. Thank you.