

## **Joint Statement for the Record**

### **United States Department of Defense**

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before the

Committee on Foreign Affairs

U.S. House of Representatives

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Chairman McCaul, Ranking Member Meeks, and Members of the Committee on Foreign Affairs: thank you for the opportunity speak with you today about the Authorizations for Use of Military Force (AUMFs) that the United States has relied on for its counterterrorism operations, particularly the 2001 AUMF, which was passed shortly after the September 11th attacks on our Homeland. The Department of Defense (DoD) welcomes this dialogue with Congress and is committed to providing transparency regarding the circumstances in which the United States uses military force.

### **1957, 1991, and 2002 AUMFs**

At the outset, we would like to emphasize that DoD supports repeal of the 1957, 1991 and 2002 AUMFs, including the Senate's passage of S.316, which would repeal the 2002 and 1991 AUMFs. We have no ongoing military activities that rely solely or primarily on the 2002 AUMF as a domestic legal basis and no activities that rely on the 1957 or 1991 AUMFs.

### **DoD's Current Activities Under the 2001 AUMF**

The last twenty years of sustained counterterrorism pressure by the United States and our allies and partners has unquestionably degraded terrorist threats to the United States.

Nevertheless, we continue to face threats from a number of terrorist groups committed to harming U.S. persons and vital U.S. interests. These groups seek to capitalize on instability and

ungoverned spaces overseas, leveraging new technologies and the information environment, circumventing traditional financial systems, and exercising influence over new generations of recruits to further their cause of harming the United States and our interests. Although degraded by our actions, the threats posed by those groups endure. DoD is addressing those continuing threats in a number of ways, including through activities authorized by the 2001 AUMF.

The 2001 AUMF provides the foundational legal basis for our continuing military operations against al-Qa'ida and associated forces, including against ISIS. DoD regularly relies on the 2001 AUMF to conduct military activities to address the threats these groups pose to the United States and to U.S. personnel and citizens around the world.

DoD conducts a variety of ongoing counterterrorism activities that rely on the 2001 AUMF. Direct action operations—including those in which U.S. military personnel employ lethal force, including airstrikes and raids, against al-Qa'ida and associated forces, including against ISIS—are the clearest example of operations that rely on the AUMF. In addition, military detention operations are a form of use of military force, and the 2001 AUMF is the basis for continued law of war detention of detainees at Guantanamo Bay, Cuba.

We remain in an ongoing armed conflict against several groups that continue to present threats to the United States in the following countries:

- **In Syria and Iraq**, ISIS remains a capable and dangerous threat. U.S. forces remain in Iraq to advise and assist at the invitation of the Government of Iraq and the U.S.-led Global Coalition to Defeat ISIS continues to work “by, with, and through” vetted local partner forces in Iraq and Syria, including the Iraqi security forces (ISF) and the Syrian Democratic Forces (SDF), to achieve the enduring defeat of ISIS. Without sustained military pressure, ISIS would almost certainly be able to reconstitute itself to pose a significantly greater threat to the United States and U.S. persons than it does right now. DoD remains committed to

supporting the Government of Iraq through security and counterterrorism cooperation in our shared fight against ISIS. The 2001 AUMF continues to provide critical authority for our counterterrorism operations in Iraq and Syria.

- **In Somalia**, we primarily work “by, with, and through” local partners to achieve stability and security, including in Somalia’s fight against al-Shabaab, an associated force of al-Qa’ida. DoD support to the African Union Transition Mission in Somalia (ATMIS) and the Somali National Army (SNA) focuses on building partner institutions and military capabilities that are keeping pressure on al-Shabaab as a means to counter terrorist threats to U.S. persons and interests in the region. DoD relies on the authority of the 2001 AUMF not only to use force in support of our partners but also for U.S. counterterrorism direct action operations in Somalia when necessary, such as the January 2023 raid that led to the death of ISIS leader Bilal al-Sudani.
- **In Afghanistan**, following the withdrawal of U.S. forces, we maintain our ability to counter terrorist threats to U.S. persons and interests by employing capabilities from outside the country to counter the ongoing threat from ISIS and al-Qa’ida when necessary.

### **Modernizing the 2001 AUMF**

We are committed to working with Congress to ensure that outdated authorizations for the use of military force are replaced with a more specific framework that provides clear authority to address threats to the United States. We welcome the opportunity to continue to engage with Congress as it considers ways to modernize the existing AUMF framework. As this Committee considers replacement legislation, we would like to highlight some aspects of any proposed AUMF that we believe are critical to maintaining the United States’ uninterrupted ability to prevent terrorist attacks on U.S. personnel and vital U.S. interests.

First, it is critical that any new or updated AUMF provides uninterrupted authority to continue operations currently authorized by statute that the President and Congress deem necessary to address ongoing threats, including detention activities. Importantly, the 2001 AUMF is the domestic legal basis for continued law of war detention of detainees currently being held at Guantanamo Bay. Any AUMF should maintain a clear statement that this detention authority is uninterrupted.

Second, any new or updated AUMF also should include explicit authority to use necessary and appropriate force against ISIS and al-Qa'ida, which, as described above, continue to present terrorist threats to the United States. Furthermore, in any AUMF, Congress should consider establishing mechanisms and standards that (1) address how the authorization will apply to associated terrorist groups beyond those that may be identified by name in the text of the AUMF; and (2) include periodic review of the groups that are subject to the use of force, and the locations where force is used, under the AUMF.

As terrorist threats continue to evolve, our counterterrorism capabilities and authorities must evolve with them. We have seen terrorist groups splinter and re-align themselves under new names or new leadership, while still maintaining their intent to attack the United States. DoD works closely with our partners in the Intelligence Community and other departments and agencies to monitor new and emerging terrorist groups and to respond lawfully and appropriately when new threats emerge. The President's authority under the 2001 AUMF to use necessary and appropriate force against "associated forces," as affirmed in the National Defense Authorization Act for 2012, has been a critical component of the U.S. counterterrorism campaign, and any replacement AUMF should continue to provide similar flexibility to add new groups not listed by name.

Of course, this inclusion of a mechanism to add new groups in the scope of the 2001 AUMF does not mean that the United States may use military force against every international

terrorist group pursuant to the 2001 AUMF. The mere fact that an entity has been labeled as a terrorist group or has committed terrorist acts does not necessarily bring it within the scope of the 2001 AUMF. Indeed, the reality of the changing terrorism threat landscape reflects why authorizations for use of military force should be more specific to address current threats to the United States, while remaining appropriately adaptive to the dynamic nature of the evolving threat environment.

With respect to other notable groups, we do not believe it is necessary to add Iran-aligned militia groups (IAMGs) to a new or updated AUMF. We are not in an armed conflict with Iran, nor do we seek one. The 2022 National Security Strategy prioritizes China and Russia as the primary strategic threats to the United States. Engaging in a new, protracted conflict with Iranian partners and proxies in the Middle East would only serve to distract us from our far more critical task of modernizing the U.S. military to achieve our strategic priorities. And, as President Biden has demonstrated as recently as March 2023, he has sufficient legal authority under the Constitution to use military force to defend the United States and U.S. persons from attacks by Iran-aligned groups when necessary.

We also do not believe it is necessary to include the Taliban in a new or updated AUMF. The United States is not currently engaged in hostilities against the Taliban, and a new or updated AUMF should be forward-looking, focusing on terrorist groups that currently pose a threat to the United States. The Taliban leaders have pledged to take action against terrorists operating inside Afghanistan—in line with their Doha commitments—and we are indeed seeing increased capability in this regard. A new or updated AUMF should, however, be flexible enough to add groups as the situation changes. Should the nature of these threats change, we would consult with Congress on how to address the threats most effectively.

Finally, the current AUMF has enabled our persistent campaign against terrorist organizations for more than two decades. That persistence is a key component of our overall success countering al-Qa'ida and ISIS, and that is feasible only with an AUMF in place. It is critical that any replacement AUMF should similarly signal the United States' commitment to persistent engagement and should not include a sunset provision with an artificial end date, unmoored from the conditions on the ground. A sunset provision would add strategic and operational risk to our counterterrorism efforts and potentially undermine our international partnerships, delivering easy wins to adversaries as our foreign partners struggling with terrorist threats may begin to question our longer-term commitment and be tempted to turn to our competitors for assistance. This is critical, and we are happy to discuss with the Committee alternatives to a sunset that would ensure that we can both protect the nation and facilitate regularized congressional engagement on these important issues. But we must be clear: we regard a sunset as a major obstacle to providing the legal, strategy, and policy certainty needed to fulfill the nation's counterterrorism missions.

We have the utmost respect for the role of Congress in authorizing the use of force and will continue to engage actively with you on these important issues. We thank the Committee for convening today's hearing and look forward to your questions.