

February 10, 2015

President Barack H. Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President,

We understand that you will shortly send Congress legislation to authorize force against the Islamic State of Iraq and the Levant (ISIL). We agree that congressional authorization for—and oversight of—military force is essential to our democracy. We further understand that your administration will wisely propose that any ISIL-specific statute include a sunset provision—to provide that the government’s new authority will expire (and thus require re-enactment if still necessary) at some point after the 2016 elections.

We think it is also vitally important that that any statute authorizing force against ISIL include not just its own sunset but also one for the 2001 AUMF—in order to ensure that Congress revisits and reevaluates *both* authorities on the far side of the next elections.

The 2001 AUMF is already the longest-running use-of-force authorization in history. That statute was directed toward the groups responsible for the 9/11 attacks (al Qaeda and the Taliban), but it has since provided the authority for the use of force against groups with remote connection to 9/11, in places far removed from Afghanistan—such as Iraq, Somalia, Syria, and Yemen. Your administration has interpreted the AUMF to authorize military action against “associated forces” of al Qaeda, such as al Qaeda in the Arabian Peninsula, and at least one successor organization of al Qaeda, namely ISIL. While we have differing views on the merits of such an interpretation, we are all concerned that there was no serious public or legislative debate before the United States initiated these broader, more extensive military campaigns.

As you explained in your May 2013 speech at the National Defense University, “unless we discipline our thinking, our definitions, our actions, we may be drawn into more wars we don’t need to fight, or continue to grant Presidents unbound powers more suited for traditional armed conflicts between nation states.” To that end, you expressed your support for “efforts to refine, and ultimately repeal” the 2001 AUMF.

If, as you warned at the NDU, the American people are to avoid the distorting effects of perpetual war, Congress and the American people should be prompted to periodically revisit, and reapprove if necessary, ongoing use-of-force authorizations. The purpose of a sunset provision is not to terminate a military campaign before it has achieved its objectives, but to ensure democratic accountability and proper tailoring as the conflict inevitably evolves. An ISIL-specific statute that does not sunset the 2001 AUMF would simply expand the President's already broad statutory authorities, while doing nothing to ensure public deliberation and congressional accountability respecting significant new military operations.

For all of these reasons, we urge you to include a sunset for the 2001 AUMF in any ISIL-specific use-of-force legislation that you send to Congress. You could use as a model various bills in the last Congress containing provisions that would have done just that. Representative Adam Schiff, the ranking member of the House Permanent Select Committee on Intelligence, proposed a bill that would sunset both the ISIL-specific statute and the 2001 AUMF three years after the former is enacted. The Senate Foreign Relations Committee took a similar approach in the bill it adopted last December, as did Senator Rand Paul in his legislative proposal. As you and Congress work toward an AUMF for ISIL, a decision to include in any such legislation a sunset for both the ISIL AUMF and the outdated 2001 AUMF would avoid open-ended laws that could be used by future Presidents to wage costly, unauthorized wars with inadequate congressional oversight or public deliberation.

Separately, we also urge you to clarify, ideally in the provisions of the new legislation itself, that the new ISIL-specific authorization will, as of the date of enactment, supersede the 2001 AUMF with respect to the use of force against ISIL. If the open-ended 2001 AUMF is left unmodified as a separate source of force authorization against ISIL, then the new authorization might simply confuse the source of the President's ability to act against ISIL under existing law; and the sole effect of the new law could be to expand or muddy, not appropriately tailor, Congress's authorization of the use of force against ISIL. Critically, though, this important step should be in addition to, and not in lieu of, the sunset discussed above.

Sincerely yours,

Signatories

(Affiliations provided for identification purposes only.)

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