

February 17, 2021

Dear President Biden:

Following the September 11, 2001 terrorist attack, the United States responded with military force intended to target those responsible for that attack, and invoked extraordinary powers reserved for war. Nearly two decades later, the legal and policy framework created to facilitate that war-based response has resulted in a series of endless and amorphous conflicts with no grand strategy or endgame in sight.

The American people have rightly grown [skeptical](#) of this [costly](#) war-based approach of the last two decades, and as candidate for President you wisely committed to ending America's "endless wars." Now, as President, you have the authority, and responsibility, to rethink and reshape the United States' approach to national and human security based on a realistic assessment of challenges, threats, and priorities; sound strategy; and clear objectives. And you have an obligation to ensure that U.S. policy and practice are consistent with the nation's legal, human, and civil rights obligations, and the moral authority that the United States has long claimed on these issues.

Continuing down the path of endless war is not only unpopular and harmful, it is also unwise and unnecessary. The United States has a robust array of diplomatic, law enforcement, peacebuilding, development, and other resources to mitigate actual security concerns abroad and at home. The United States need not, therefore, remain in this harmful, counterproductive, and costly state.

Moreover, with the growing recognition of other pressing global challenges it is critical that your administration usher in a new era of a sustainable and rights-respecting approaches to national security policy and shift national resources and attention away from unnecessary endless war and toward the pressing challenges of the future.

To achieve this, your administration must do more than merely end large scale troop deployments. To end the cycle of endless war of the last two decades, your administration must:

End Operations Under the 2001 and 2002 Authorizations for Use of Military Force

Ultimately ending endless war will require ending all operations under the 2001 Authorization for Use of Military Force (AUMF), which authorized military force against those who "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 or harbored such organizations or persons" and the 2002 AUMF, which authorized force against the Saddam Hussein regime in Iraq.

Continued reliance on the 2001 and 2002 AUMFs for military and other operations nearly two decades after their enactment has resulted in mission creep far beyond Congress's original intent, relieved Congress of its responsibility to take hard votes regarding military engagements overseas, eroded public support, and siphoned limited resources from other national priorities.

As President, you can and should retire these authorities without waiting for congressional action. You should begin by immediately ceasing reliance on the 2002 AUMF – which does not serve as the primary domestic legal basis for any current military operations – and set an end date for all ongoing operations conducted under the 2001 AUMF to allow for a brief winddown period. Your administration should also publicly abandon prior executive branch legal interpretations that widened the scope of these authorities far beyond their original purpose.

To prevent future administrations from reviving these already decades-old authorities, your administration should also urge Congress to rescind them, along with other outstanding war authorizations.

End War-Based Approaches to Detention, Trial, and Lethal Force

Ending endless war will also require shifting away from reliance on the tools of war and, in particular, away from reliance on a war-based legal framework for the use of force and military prosecution and detention of terrorism suspects. When legitimately and lawfully used in extraordinary circumstances meeting the legal threshold of armed conflict, wartime use of force and military detention and tribunals are aimed at balancing military necessity, humanity, and fundamental rights. Even so, wartime authorities can confer extraordinary powers that in peacetime are egregious human rights violations.

To move away from endless war towards a sustainable approach to security, these practices based on claimed war authorities must end. Ending large footprint operations and shifting to “small footprint” counterterrorism missions that continue to rely on war-based authorities is not sufficient.

Adopt an Appropriately Tailored and Rights-Respecting Approach to Security

The United States has at its disposal a host of tools and resources available for addressing legitimate security concerns, including those posed by transnational armed groups. Your administration should prioritize the non-militarized tools in its toolbox: law enforcement; lawful intelligence-gathering; accountable and appropriately tailored foreign assistance; peacebuilding; and diplomatic capabilities for addressing long-term drivers of conflict and violence.

Moreover, your administration must not outsource the United States’ own endless war approach to foreign partners. Rather than continuing to prioritize foreign military engagement and capacity building as the key tool to addressing security challenges, your administration should expand and increase its engagement with civil society and other nongovernmental actors, as well as its engagement with the non-security agencies of partner governments, to effectively support alleviation of conditions that contribute to organized violence—including political repression and lack of economic development. It must do so without perpetuating policies and programs that view local communities solely or primarily through a security lens, undermining their human rights and security.

Use Military Force Only as a Last Resort and with Authorization from Congress

Should extraordinary new security challenges arise, your administration should consider the full array of tools available for addressing them before considering the use of military force. Only if your administration exhausts all non-military means and determines that military force is necessary, lawful, and strategically effective should it seek authorization from Congress in the form of a new, narrowly tailored AUMF with appropriate limits and safeguards.

Your administration should also consider support for the use of force by partner security forces only as a last resort, when non-military means are insufficient, and when that military force is lawful, necessary, proportionate, and strategically effective. If it deems such operations necessary, it must secure appropriate congressional authorization. The administration must also be transparent about such operations, proactively and thoroughly vet partner forces for human rights compliance, and insist on formal and enforceable assurances from partners.

Insist on Essential Safeguards in any Future AUMFs

If your administration determines that the use of military force is necessary in the future, it must obtain prior authorization from Congress. In doing so, it should insist on the inclusion of essential and widely accepted safeguards that permit the United States to address legitimate and exceptional security concerns while applying the hard lessons learned from overbroad and harmful interpretations of the 2001 and 2002 AUMFs. Any new authorities sought should:

- *Clearly define the opponent and mission objectives:* Specifying the nation or group(s) against which force is authorized and the objectives or purpose – i.e., the mission – for which force is authorized ensures that congressional intent and the will of the American people cannot be overridden by subsequent, unintended interpretations and expansions of the use of force authority. The administration should not seek nor sign into law open-ended or vague authorities that blur the line between armed conflicts or between conflicts and peace.
- *Specify the geographic scope of the authorization:* Explicitly limiting war authorities to declared theaters of actual armed conflict helps ensure compliance with U.S. obligations under the U.N. Charter and provides public clarity regarding with whom the nation is at war and where.
- *Require robust transparency and reporting:* Regular and specific reporting requirements promote democratic accountability, ensure compliance with domestic and international law, and allow Congress to fulfill its oversight responsibilities by staying informed about conflict. Reporting requirements in an AUMF also provide a critical safeguard against endless war, and transparency that is crucial to public oversight and accountability.
- *Require compliance with international law:* Any new AUMF should contain an explicit statement that its authorities may only be exercised in compliance with U.S. international legal obligations. The United States is already bound by international law regardless of whether an explicit statement is included in an AUMF, but its inclusion will help restore domestic and global confidence in the United States as a nation that complies with the rule of law.
- *Include a supersession or sole source of authority provision:* Given prior administrations' assertions that the 2001 AUMF and 2002 Iraq AUMF authorized the use of force against

ISIS – even though those authorizations were passed by Congress before ISIS even existed – if Congress does not repeal both of these AUMFs, any new AUMF should make clear it is the sole, superseding source of authority to use force against the nation or entity to which it applies. [Without this clarifying language](#), a next administration could read the new authorization as expanding its administration’s war-making powers, rather than limiting them.

- *Set an expiration date:* Sunset clauses, which [have been included](#) in nearly one-third of prior AUMFs as well as [several](#) post-9/11 national security [statutes](#), set a date for Congress and the executive branch to reexamine the AUMF in light of current conditions and, if necessary, refine or narrow the legislation in response.

Support War Powers Reform Efforts in Congress

To secure lasting change for future generations, your administration should support structural reforms by Congress that protect against unilateral executive branch uses of force and restore the constitutional balance of war powers enshrined in the Constitution, including through reforming and modernizing the War Powers Act. At a minimum, such reforms should:

- Recognize that the Constitution vests the decision to go to war solely in Congress, with only a narrow exception for the President to use force temporarily to repel a sudden attack if that force is necessary and there is no time to obtain advance authorization from Congress;
- Require the President to report any such defensive use of force without advance congressional authorization to Congress within 48 hours of the actions taken with an explanation of the necessity to use force and a statement as to whether the hostilities are concluded or ongoing. Within seven days following the initial reporting deadline, the President should be required to submit a request for congressional authorization if hostilities remain ongoing. If congressional authorization is not provided within 20 days, there should be a mechanism for requiring the automatic termination of hostilities;
- Define “hostilities,” “imminent hostilities,” and other ambiguities in the existing law to ensure that the requirement for advance congressional approval applies to all actions by U.S. forces that involve the use of deadly force;
- Require the President to provide ongoing public unclassified reports on current and possible engagement in hostilities whenever there is a material change, or no less frequently than every 30 days, to keep Congress and the public fully and currently informed;
- Recognize that the President may not introduce U.S. forces into hostilities in any additional countries or against any additional nations, organized armed groups, or forces without advance congressional authorization;
- Provide expedited congressional procedures for consideration of resolutions to cease the use of U.S. forces in hostilities or situations where there is a serious risk of hostilities;
- Provide judicial review for non-compliance with resolutions to cease hostilities or automatic termination requirements, as well as for credibly alleged violations of international humanitarian law or human rights law; and
- Prohibit funding for activities related to hostilities that are not authorized by Congress in advance.

Taking the steps outlined above would demonstrate that you and your administration are committed to meaningfully charting a new course that moves the nation off of a perpetual war-based approach to security.

Sincerely,

Bridges Faith Initiative
Council on American-Islamic Relations
Center for Victims of Torture
Columbia Law School Human Rights Clinic
Concerned Veterans for America
Defending Rights & Dissent
Defense Priorities Initiative
Friends Committee on National Legislation
Government Accountability Project
Government Information Watch
Human Rights First
ICNA Council of Social Justice
Jetpac Resource Center
National Religious Campaign Against Torture
Peace Action
Project On Government Oversight
Protect Democracy
Reprieve
Secure Families Initiative
September 11th Families for Peaceful Tomorrows
Quincy Institute for Responsible Statecraft
Win Without War
Women's Action for New Directions