

Testimony before the Senate Foreign Relations Committee

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Chairman Risch, Ranking Member Menendez, distinguished Members of the Committee, thank you for inviting me to testify today.

I am here today to address the Administration's view of the scope of the 2001 and 2002 AUMFs as they relate to Iran, as well as more general questions about the President's current authorities to use force and the Administration's position on a new AUMF.

The Administration is not seeking a new AUMF against Iran or any other nation or non-State actor at this time. In addition, the Administration has not, to date, interpreted either the 2001 or 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces as they pursue missions authorized under either AUMF. The latter nuance is simply a re-assertion of a long-standing right of self-defense for our military forces and those allies and partners deployed alongside them. Simply put, where U.S. forces are engaged in operations with partner forces anywhere in the world pursuant to either the 2001 or 2002 AUMF, if those forces either come under attack or are faced with an imminent armed attack, U.S. forces are authorized to use appropriate force to respond where it is necessary and appropriate to defend themselves or our partners. This principle is not new, and it is not specific to Iran or to any other particular country or non-State group.

The 2001 and 2002 AUMFs remain the cornerstone for ongoing military operations in multiple theaters and are a demonstration of U.S. strength and resolve. The 2001 AUMF provides the President authority to use

military force against al-Q'aida, the Taliban, and their associated forces, including against ISIS. That authority includes the authority to detain enemy personnel captured during the course of the ongoing armed conflict.

But it is important to note that the 2001 AUMF is not a blank check. It does not authorize the President to use force against every group that commits terrorist acts or could have links to terrorist groups or facilitators. As of today, the Executive Branch has determined that only certain terrorist groups fall within the scope of the 2001 AUMF, none of which are currently state actors. These groups are: 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.

The 2002 AUMF remains an important source of additional authority for military operations against ISIS in Iraq and to defend the national security of the United States against threats emanating from Iraq. The United States also relied on the 2002 AUMF as an additional source of authority to detain in recent litigation.

As you know, Section 1264(b) of the FY2018 National Defense Authorization Act states that, not later than 30 days after the date on which a change is made to the legal and policy frameworks for the United States' use of military force and related national security operations, the President is to notify the appropriate congressional committees of the change, including its legal, factual, and policy justifications. As such, there is a mechanism to report to Congress if any changes to our legal assessments may occur in the future, which has been used by this Administration on more than one occasion to keep the relevant Committees informed. More generally, the Administration has kept Congress informed about operations overseas on a regular basis, consistent with the War Powers Resolution.

Beyond the AUMFs, Article II of the Constitution empowers the President, as Commander in Chief and Chief Executive, to order certain military action in order to protect the Nation from an attack or imminent threat of attack and to protect important national interests. The legal and historical foundation of this Constitutional authority to protect the national security interests of the United States is extensive. The Department of Justice's Office of Legal Counsel (OLC) has issued a series of opinions under both Democratic and Republican presidents about the President's use of the Article II authority over more than two centuries.

Prior Administrations have consistently relied on the President's Constitutional authority to direct military force without specific prior congressional authorization, including in military operations in Libya in 2011; a bombing campaign in Yugoslavia in 1999; troop deployments in Haiti twice, in 2004 and 1994, Bosnia in 1995, and Somalia in 1992; air patrols and airstrikes in Bosnia from 1993-1995; an intervention in Panama in 1989; and bombings in Libya in 1986. Most recently, OLC explained this view in its 2018 opinion concerning the April 2018 use of force against chemical weapons targets in Syria.

Finally, besides not seeking any new AUMF at this time, the Administration is also not seeking any revisions to the existing AUMFs. We have sufficient statutory and Constitutional authorities to protect the national security interests of the United States.

If Congress were to consider a new or revised AUMF, the Administration affirms the same three criteria stated previously to this committee: any new AUMF must have no sunset provision, no geographic limitation, and no repeal before replacement. Any repeal of the 2001 or 2002 AUMF before a new AUMF is in place would cast doubt on the U.S. Government's continued authority to use force against the terrorist groups subject to those authorizations, including the scope of the U.S. Government's detention authority over such groups. Amending the 2001 AUMF could also create substantial, avoidable, and

unnecessary litigation risk by potentially unsettling the existing legal framework as to current detainees.

It is also essential that any new legislation not undermine the President's Constitutional authority to defend the nation against threats or attacks. Anything casting doubt on our ability to respond in self-defense to Iranian threats or attacks on U.S. or partner forces or interests increases risk and emboldens Iran to make further provocations.

Chairman Risch, Ranking Member Menendez, and other Members of this Committee, I thank you again for the opportunity to testify before you. I welcome the opportunity to answer your questions.