

Opening Statement
SFRC Hearing on 2002 AUMF Repeal
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Thank you very much, Mr. Chairman and Members of the Committee, for inviting me to address the Administration's support for a proposal to repeal the 2002 AUMF. I'm pleased to have the opportunity to be here.

The preamble to the 2002 AUMF speaks to the threats that the United States was facing from Iraq in 2002 and that the authorization was drafted to address. At that time, Saddam Hussein's regime had demonstrated a continuing threat to the national security of the United States and international peace and security. It was threatening the lives of Americans; flouting its obligations under UN Security Council resolutions; brutally oppressing its own people; threatening its regional neighbors; and posing a danger to international peace and stability. Just months after the 2002 AUMF was enacted, the UN Security Council recognized a military occupation of Iraq by the United States and the United Kingdom to promote the welfare of the Iraqi people, restore security, and support the formation of a new representative government for the Iraqi people. The 2002 AUMF authorized the United States to use necessary force to defend the United States national security from the continuing threat posed by Iraq, and to enforce all relevant United Nations Security Council resolutions regarding Iraq.

Today, the circumstances in Iraq have changed dramatically.. The Iraqi government seeks friendship, partnership, and cooperation with the United States and the international community. The threats posed by ISIS and destabilizing Iranian activities, including Iran-backed militia groups in Iraq, are serious and real, but they are not the threats that the 2002 AUMF was designed to address nearly 20 years ago.

As a result, the Biden-Harris Administration supports the repeal of the 2002 AUMF. Repeal of the 2002 AUMF is aligned with the President's commitments to continuing a strong relationship with our Iraqi partners, and to working with Congress to ensure that outdated authorizations for the use of military force are replaced with a narrow and specific framework that will ensure that we can continue to protect Americans from terrorist threats. As part of efforts to work with Congress on repealing and replacing outdated authorizations of military force, we want to ensure that Congress has a clear and thorough understanding of the effect of any such action. I am here today as part of that effort.

The President has also stated that, in any effort to reform existing AUMFs, it will be critical to maintain authority to address threats to the United States with appropriately decisive and effective military action. To be clear, we do not believe that repeal of the 2002 AUMF will impede our ability to do so. The United States has no ongoing military activities that rely solely on the 2002 AUMF as a domestic legal basis, and repeal of the 2002 AUMF would likely have minimal impact on current counterterrorism operations. At least for the last six years, 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. It is not the sole – or even primary - authority for any of those ongoing operations.

U.S. forces remain in Iraq at the invitation of the Iraqi government in a training, advising, assisting, and intelligence sharing role in support of our Iraqi Security Forces partners in their fight against the continuing threat that ISIS poses in Iraq and Syria. We continue to seek a stable, prosperous, and democratic Iraq. Although this mission remains essential, we do not believe that the 2002 AUMF is necessary in order to execute that mission or to protect and defend our forces while doing so.

A separate statute, the 2001 AUMF, authorizes the counterterrorism mission being carried out by U.S. forces in Iraq and Syria against ISIS and al-Qa'ida to address the threat those groups continue to pose to the United States. As we have previously briefed this committee, the 2001 AUMF also authorizes U.S. forces to use necessary and appropriate force to defend U.S. or partner forces against threats and attacks as they pursue missions authorized under the AUMF.

In addition, Article II of the Constitution empowers the President to direct certain military action when it serves important national interests, including protecting and defending U.S. personnel and facilities, and when such action would not result in a “war” in the Constitutional sense. The legal and historical foundation of this Constitutional authority to protect the national security interests of the United States is extensive and has been recognized over more than two centuries, across Presidential administrations.

Some members of this Committee have pointed out that Iran’s destabilizing activities in Iraq undermine U.S. objectives in Iraq and continue to pose a threat to the national security interests of the United States. We agree. Iran-backed militia groups have engaged in UAV and rocket attacks against U.S. forces and facilities in Iraq that have escalated in recent months. Although we seek to de-escalate and avoid conflict with Iran or Iranian-backed militia groups, the President has made clear that we will take necessary and proportionate action in self-defense to protect U.S. personnel and facilities in Iraq from attacks.

This is evidenced by the military action that U.S. forces have taken to protect and defend our personnel and our partners against attacks from these actors, and to deter future attacks. The President did not rely on the 2002 AUMF in directing any of these recent actions. In particular, on June 27, the President directed targeted strikes against facilities at two locations in Syria and one location in Iraq near the Iraq-Syria border. These facilities were used by Iran-backed militia groups that have been involved in a series of UAV and rocket attacks against U.S. personnel and facilities in Iraq. The strikes were a necessary and proportionate action to defend our personnel against these attacks and the threat of further attacks, and the operation was consistent with both domestic and international law.

In sum, at the present time, we believe we have sufficient authority to continue the vital counter-ISIS mission in Iraq and Syria and to address any threats to U.S. personnel or the United States that might arise in Iraq, without relying on the 2002 AUMF. We recognize that there is always a risk that tensions with Iran and Iranian-supported militia groups could further escalate and require a more sustained military response than the discrete, episodic individual strikes to

date. If we are faced with that scenario, and if it becomes clear that other legal authorities are insufficient to address such an escalation, the Biden Administration believes that it would be important for the Congress and the Administration to work together to develop an appropriate new domestic authority that is tailored to addressing such a scenario.

Thank you.