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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

May 14, 2024

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Biden,

We have written previously about your administration's tendency to undermine the regular order associated with the non-statutory informal notification process for arms sales. These violations of regular order range from the misuse of classification to help obscure arms transfers to Taiwan in the summer of 2022, to your failure to respect the informal review process in notifying the sale of F-16s to Turkey in January of 2024.

Unfortunately, the failure to respect congressional prerogatives has risen to new levels with your recent decision to unilaterally pause a shipment of weapons to Israel without any prior notification or consultation with Congress. Despite numerous requests from our respective chambers, we still don't have basic answers to questions about the weapons you have stopped from shipping.

To date, we do not know how these weapons were financed, where they are, or by what authority you chose to do this. This decision not only transgresses well-established processes and contradicts congressional intent, but it also undermines a close ally during a time of war for reasons principally associated with U.S. domestic political considerations. At a minimum, this calls into question our credibility as a security assistance provider.

In late 2023, we wrote to Secretary Blinken about the failure of your administration to adhere to regular order in processing Israel-related direct commercial sales (DCS) cases. We specifically called out your administration's refusal to submit a case for formal notification despite its having cleared the informal review of both the chair and ranking members of both the Senate Foreign Relations and House Foreign Affairs Committees. In addition to this, we believe there are countless other DCS cases under review by the State Department that remain in limbo – neither granted a license nor formally rejected.

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We now worry that the U.S.-Israel Memorandum of Understanding (MOU), which lays out a ten-year plan for military assistance from 2018-2028 demonstrating our shared interests and “unshakeable” commitment to Israel’s security, is being used to conceal executive branch actions from Congress, resulting in the de facto conditioning of our assistance.

It is clear your policy shift contradicts congressional intent based on recent enacted legislation. Congress has consistently funded security assistance to Israel, consistent with the 2018 U.S.-Israel MOU. Thus far in fiscal year 2024, Congress has enacted regular and supplemental legislation appropriating \$12.5 billion in security assistance and missile defense for Israel without any extra conditions.

Additionally, the decision to classify certain arms transfers since the heinous October 7th terrorist attack has enabled you to both selectively declassify information for political purposes while simultaneously obscuring congressional oversight of weapons transfers. Even the vast amounts of security assistance provided to Ukraine, while handled in official channels, have not been subject to these measures.

The White House background brief to the press on May 7th claimed the weapons being “paused” were 2,000 and 500 lb. bombs. Congress has not received any congressional notifications, either for Foreign Military Sales (FMS) or DCS cases, that fit the description of the weapons described, other than an FMS case dating back to 2015. Therefore, it is imperative that Congress understand what is being paused.

Accordingly, we ask that you answer the following questions in writing by May 24:

- Who initiated this policy review of Israel arms transfers, and on what date?
- What agencies, bureaus, offices, and officials are responsible for this review?
- What is the process, timeline, and criteria of the review?
- Exactly what weapons are being delayed?
- Were these weapons purchased before or after October 7, 2023?
- Were these weapons financed via Foreign Military Financing, FMS, DCS, or a blended case?
- Were supplemental funds or previously appropriated funds used to purchase the paused weapons deliveries?
- If previously appropriated funds were used to finance this sale, then what fiscal year were they drawn from?
- Was cash flow financing used to procure these weapons?
- What are the statutory means by which you are pausing weapons made with already appropriated funding?
- Are these weapons already in Israel?
- If so are these weapons in the WRSA-I stockpile?
- If the weapons are not already in Israel, where are they?
- What is the impact of this decision on related U.S. defense industry?

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- Are the U.S. government or U.S. contractors accruing additional costs due to delayed shipments?
- What other arms transfers are the administration reviewing with respect to Israel, and under what conditions would those arms transfers be held?
- Has your administration delayed or revoked the license of any Israel-related DCS cases? If so, which ones?
- How many Israel-related DCS cases that fall beneath Congressional Notification thresholds are currently under review at the State Department?
- How, when, and at what level did you communicate to Israel the pause in weapons shipments?
- What are the conditions under which the shipment of these weapons will be resumed? Have these been communicated with Israel?
- What agencies are involved in the delayed shipment and under what legal authority are these agencies operating?
- With which members of Congress did your administration consult with regarding this pause and when?
- Why wasn't your decision conveyed to Congress the day it was made, given Congress' longstanding role in security assistance and arms transfers to Israel, including through the supplemental assistance package the administration strenuously advocated for seven months?
- Have you determined Israel has been involved in an AECA Section 3(c)(2) violation?

Threatening to abandon Israel as it prepares to undertake the last stage of its campaign to eradicate the threat posed by Hamas is deeply troubling. The foreign policy implications of your recent decision will have a lasting impact on perceptions of the United States as a dependable security partner. Make no mistake, America's allies and adversaries are watching. Partners straddling the fence between the United States on the one hand and China and Russia on the other are watching. They're drawing the conclusion that the United States is a fickle friend and cannot be relied upon to follow through on its commitments in their hour of need.

Sincerely,



JAMES E. RISCH
Ranking Member
Senate Foreign Relations Committee



MICHAEL T. McCAUL
Chairman
House Foreign Affairs Committee

CC:

The Honorable Antony Blinken, Secretary, U.S. Department of State

The Honorable Jacob J. Sullivan, National Security Advisor, The White House