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“AUTHORIZING THE USE OF MILITARY FORCE: S.J. RES. 59”

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Thank you, Chairman Corker and Ranking Member Menendez, for the invitation to be here today to discuss Senate Joint Resolution 59. After nearly 17 years of war, it is appropriate for Congress to reassert its control over when, where, and against whom the nation uses military force. In particular, I commend the many members of this Committee, and particularly Chairman Corker and Senator Kaine, for bringing attention to this important issue. Unfortunately, this proposal would cede congressional power, not reassert it.

Deciding when to authorize the use of military force is Congress’ most solemn responsibility under the United States Constitution. The Framers of our Constitution intentionally and wisely entrusted Congress, not the president, with deciding when the nation should go to war. In exercising this solemn responsibility in the current threat environment, Congress must begin by carefully assessing the extent to which military force is necessary and appropriate for today’s terrorist threats, particularly in light of the proclaimed defeat of ISIS in Iraq and near-defeat of ISIS in Syria.

The United States has many tools at its disposal for countering the range of diverse terrorist threats around the world today. Offensive military force is the most extreme, and not always the most effective, of those tools. Authorizing war allows the government to use a range of extreme and exceptional powers, including lethal targeting and detention without criminal charge, that if not appropriately cabined can infringe on core American freedoms and values. These exceptional powers were designed for the exceptional circumstance of battlefield combat, and they should be carefully confined to circumstances necessitating their use. Military force should only be authorized if Congress has determined that such force is necessary, lawful, proportionate, and effective.

If and when Congress determines that a new AUMF is warranted, it must strike a balance between providing the president with sufficient operational flexibility and maintaining congressional control over the decision to use force. As the past 17 years have shown, AUMFs that do not include adequate safeguards risk embroiling the nation in new

conflicts without public debate or authorization from Congress and make it difficult for Congress to reassert the role assigned to it by the Constitution as the body responsible for declaring war.

The Problematic Status Quo

As this Committee well knows, Congress passed the 2001 Authorization for Use of Military Force, known as an “AUMF,” within days of the September 11th terrorist attacks. In the nearly 17 years since then, successive presidents have cited the 2001 AUMF, as well as the 2002 Iraq war AUMF, as authority for military operations far beyond what Congress intended, or could possibly have envisioned, at the time.

Congress expressly limited the purpose for which force could be used under the 2001 AUMF to preventing future acts of terrorism against the United States by those responsible for 9/11 and those who harbored them. The 2002 Iraq war AUMF was clearly intended to authorize force against the threat posed by Saddam Hussein.

Congress did not authorize force against so-called associated forces, successor groups, or terrorist groups that might emerge in the future in either AUMF. Indeed, even in the tense days after 9/11, Congress had the foresight to reject the executive branch’s requests for expansive authority to use force against unknown future terrorist threats.¹

However, Congress failed to include in the AUMF crucial safeguards against executive overreach. Most significantly, the 2001 AUMF did not name the specific enemy that force was authorized against and it did not set an expiration date. These safeguards would have protected the constitutional balance of war powers between the executive and legislative branches. Naming the enemy would have required the president to return to Congress before using force against a new enemy and an expiration date would have required the two branches to come together to debate and assess the conflict, ensuring Congress’ continued decision-making role in matters of war.

As a result of this lack of key safeguards, Congress cut itself out of the decision-making process. This enabled the executive branch to claim the authority to use military force in more than a dozen countries around the world and against an array of terrorist organizations that Congress never voted to authorize force against.² Many of these

¹ See, e.g., Gregory Johnsen, *60 Words and a War Without End: The Untold Story of the Most Dangerous Sentence in U.S. History*, BuzzFeed, Jan. 16, 2014, available at https://www.buzzfeed.com/gregoryjohnsen/60-words-and-a-war-without-end-the-untold-story-of-the-most?utm_term=.dmGmgRyAP#.kn97pNXrR.

² Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related Operations, December 2016, available at https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report_Final.pdf.

groups, like ISIS and al Shabaab, played no role in the 9/11 attacks, and did not even exist at the time the 2001 and 2002 authorizations were enacted.³

The continued failure of Congress to rein in the 2001 and 2002 AUMFs has allowed the president to sidestep Congress' role in the decision to go to war with new associated forces, blurred the line between war and peace in counterterrorism efforts, and endangered civil liberties and human rights at home and abroad.

S.J. Res. 59 Would Expand, Not Rein In, Presidential Power

I very much appreciate the intent behind S.J. Res. 59, and greatly value the contributions of Senators Corker and Kaine to this debate. Unfortunately, the AUMF proposal before the Committee today would worsen, rather than improve, the very problematic status quo. Rather than reasserting Congress' role in authorizing and overseeing the use of military force, this legislation would cede future war-making authority to the president by establishing a process for the president to add new groups and countries to the AUMF with no meaningful constraints, no meaningful gains in transparency or congressional oversight, and no expiration date.

Many members of Congress have objected to the executive branch's unilateral expansion of the 2001 and 2002 AUMFs far beyond congressional intent. S.J. 59 would ratify and cement these 17 years of expansions into law by authorizing military force against eight groups: Al Qaeda, the Taliban, ISIS, Al Qaeda in the Arabian Peninsula, Al Shabaab, Al Qaeda in Syria to include Al Nusrah, the Haqqani Network, and Al Qaeda in the Islamic Mahgreb. It would also authorize force in at least six countries: Afghanistan, Iraq, Syria, Somalia, Yemen, and Libya.

³ It is worth recalling that in 2014 when the claim that the 2001 AUMF applied to ISIS was first made, national security law experts from both sides of the aisle were astounded. *See e.g.* Robert Chesney, *The 2001 AUMF: From Associated Forces to (Disassociated) Successor Forces*, Lawfare Blog, September 10, 2014, *available at* <https://www.lawfareblog.com/2001-aumf-associated-forces-disassociated-successor-forces>. Before the announcement, law professor Ryan Goodman had noted the "remarkable consensus of opinion" among experts "that ISIS is not covered by the 2001 AUMF." *See* Ryan Goodman, *The President Has No Congressional Authorization to Use Force against ISIS in Iraq*, Just Security, June 19, 2014, *available at* <https://www.justsecurity.org/11873/president-congressional-authorization-force-isis-iraq/>. National security expert Ben Wittes commented that extending the 2001 AUMF to ISIS "is not a stable or sustainable reading of the law." *See* Ben Wittes, *Not Asking the Girl to Dance*, Lawfare Blog, September 10, 2014, *available at* <https://lawfareblog.com/not-asking-girl-dance>. And former State Department legal advisor Harold Hongju Koh considered a new AUMF to be the only "lawful way to fight the Islamic State" and prevent a "constitutional battle over the president's prerogative to conduct unilateral war." *See* Harold Hongju Koh, *The Lawful Way to Fight the Islamic State*, Politico, August 29, 2014, *available at* http://www.politico.com/magazine/story/2014/08/the-lawful-way-to-fight-the-islamic-state-110444_full.html#.WUXKrhPyut9.

Congress would be authorizing force against these eight groups in these six countries without first conducting a thorough, independent, and public assessment of whether and to what extent military force is necessary and appropriate against each of those groups or in each of those countries at the present time.

And the authority Congress would be providing would not be limited to drone strikes, special forces raids, or assistance to partner forces. Unlike many other new use of force proposals that have been introduced, S.J. 59 contains no limitations on the use of ground troops.⁴ This proposal would authorize the president to conduct a ground war in any of the countries included in the AUMF.

But the current proposal would also go much further. In addition to blessing the past 17 years of expansions, this new authorization would also provide a statutory green light, for the first time, for *future* expansions by the president without authorization from Congress. S.J. 59 sets up a process for the president to add new groups and countries to the AUMF. Once the group or country is added, the authorization permits Congress to remove it; however, the president could veto a decision by Congress to remove a group or country. Therefore, Congress would need a veto-proof majority in both houses to ensure that the group or country is removed from the authorization. This scheme would flip our constitutional system on its head, providing this president—and all future presidents—with unilateral authority to go to war with an untold number of unnamed groups and in any country in the world indefinitely into the future, possibly for decades.

Instead of the president being required to come to Congress for authorization before using military force, as the Constitution provides, Congress would be on the hook for any new wars the president begins under this authorization unless it could muster an unrealistic veto-proof supermajority to stop it.

Upending the Constitutional System Designed by the Founders Is Not Only a Bad Idea, It Is Unnecessary for Protecting National Security

Proponents of an AUMF that delegates to the president Congress' power to decide who the nation uses military force against argue that such a reversal is necessary because of the need for operational flexibility against an amorphous and rapidly evolving enemy and the risk of gridlock or delay in Congress.

⁴ See, e.g., AUMF proposal from Representative Eliot Engel (D-NY) H.R.J. Res. ___, 115th Cong. (2017), available at https://www.justsecurity.org/wp-content/uploads/2017/06/ENGEL_Discussion-Draft-AUMF-2017.pdf; AUMF proposal from Representative Adam Schiff (D-CA) H.R.J. Res. 100, 115th Cong. (2017), available at <https://www.congress.gov/115/bills/hjres100/BILLS-115hjres100ih.pdf>; and AUMF proposal passed by the Senate Foreign Relations Committee in 2014, S.J. Res. 47, 113th Cong. (2014), available at <https://www.govtrack.us/congress/bills/113/sjres47>.

The evolving nature of terrorism is not so rapid that it warrants such a radical departure from our constitutional system.⁵ If there is a sudden attack against the United States by a new organization, the president has narrow but sufficient authority under Article II of the Constitution to defend the nation from that attack. And for new terrorist groups that arise in the future that require a military response, Congress can authorize force against those groups.

Over the course of nearly 17 years, the executive branch has claimed the need to use military force against half a dozen or so “associated forces.” There is no national security harm in requiring the president, as set out in the Constitution, to come to Congress for authorization to fight a newly formed terrorist group once every three or four years, whether as an addition to an existing AUMF, under a new authorization, or as part of a renewal and modification of an expiring authorization.

Moreover, there is no reason to think Congress could not act swiftly to provide a new authorization if persuaded that one was necessary. Congress passed the 2001 AUMF within three short days of the 9/11 attacks and Congress has acted with similar haste in a multitude of other contexts.⁶

The difficulty in reaching consensus on repeal or replacement of the 2001 AUMF is not illustrative of the speed with which Congress would authorize force against a new terrorist group threatening the security of the United States. It is the lack of a sunset and other safeguards in the 2001 AUMF, and the executive branch’s claim that it already has all the authorities it needs, that have fostered inaction by Congress.

Lastly, the AUMF proposal before us today would not address concerns in Congress about this president or future presidents striking Syria, as the current president has already done twice, or deciding to strike North Korea or Iran under the guise of Article II authority. To be sure, the president could not designate nation-states as associated forces under this authorization,⁷ but neither is there a credible argument for the president to use force against such nations under existing AUMFs. An AUMF is not the solution to preventing such actions by the president.

⁵ Jennifer C. Daskal and Stephen I. Vladeck, *After the AUMF*, HARV. NAT’L SEC. J. 115 (2014).

⁶ Jennifer K. Elsea and Matthew C. Weed, *Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications*, Congressional Research Service (2014), available at <https://fas.org/sgp/crs/natsec/RL31133.pdf>.

⁷ It is notable, however, that some experts have warned that this proposal could inadvertently open the door to war with Iran. See, e.g., Elizabeth Goitein, *Would the Corker-Kaine AUMF Authorize Military Strikes in Iran? A Response to Bobby Chesney*, Lawfare Blog, May 7, 2018, available at <https://www.lawfareblog.com/would-corker-kaine-aumf-authorize-military-strikes-iran-response-bobby-chesney>.

This Proposal Is Not Merely a Codification of the Status Quo

Some have argued that S.J. Res. 59 is merely codifying the status quo. Their argument is that because the executive branch is claiming the authority under the 2001 AUMF to use force against associated forces with no geographic limitations and no expiration date, this proposal merely makes explicit the authority to conduct current operations. To the contrary, this AUMF would radically alter the legal status quo by providing congressional authorization for executive branch expansions, and it would also affirmatively authorize uses of force far beyond those currently taking place.

First and foremost, as a legal matter, executive branch *claims* of power are not equivalent to actual congressional authorization.⁸ This proposal would take what are now dubious executive branch claims and interpretations and cement them into law, providing explicit statutory authority for what is now only an executive branch assertion of power. In addition to the significant impact such an authorization would have on litigation in this context, such a change in the legal status would eliminate the internal executive branch constraints that currently inhibit further expansions.

Even with its lack of adequate safeguards and the executive branch's expansive interpretation, the 2001 AUMF still provides some key constraints that will only grow stronger the further we are from 9/11. While the executive has managed to stretch the 2001 AUMF far beyond Congress' intent, that authorization is not, as former Department of Defense General Counsel Stephen Preston has noted, "infinitely elastic." The executive branch still requires that any associated forces must be associated with al Qaeda or the Taliban given the 2001 AUMF's required link to the 9/11 attacks. With each passing day, the nexus to 9/11 and those responsible grows increasingly difficult for the executive branch to assert.

Moreover, the 2001 AUMF is limited to using force that is necessary to prevent continued attacks by those responsible for 9/11. The ability of those groups to attack the United States continues to dissipate and, at some point, the 2001 AUMF will have run its course, even without a formal expiration date.

⁸ Supreme Court Justice Jackson outlined three categories of presidential power in his *Youngstown* concurrence (*Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 653-38 (952) (Jackson, J., concurring)) ("When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate... When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain... When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.").

Not so with this new proposal. Unlike the 2001 AUMF, this authorization would be untethered not just from the 9/11 attacks but from any purpose or mission objectives for using military force. It would not only authorize current operations, but would also codify executive war-making at the expense of Congress' power under the Constitution. And, unlike the stretched and outdated 2001 authorization, this fresh new authorization would not be at the end of its life. It would mark the beginning of what could be *decades* worth of conflict with little ability or political incentive on the part of Congress to rein it back in.

Moreover, this proposal also goes far beyond the operational status quo by providing the president broad authority to expand the conflict to new groups and countries in the future, as discussed above. If Congress actually wants to authorize the *operational* status quo, there are ample ways for it to do so without ceding congressional power to the executive branch and irrevocably entrenching an amorphous and indefinite war.

An Expiration Date Is Critical for Maintaining Congressional Control

There is widespread support among national security experts from across the political spectrum that AUMFs should be of limited duration.⁹ As many experts have noted, sunsets act as forcing mechanisms, requiring Congress and the administration to reexamine any AUMF at a future date in light of more current conditions, and if necessary, reauthorize and/or refine the legislation to suit those new conditions. Such a forcing function is critical for ensuring continued congressional oversight and public debate and approval as the conflict evolves. An expiration date is also an important safeguard against perpetual armed conflict, mission creep, and executive branch overreach.

An expiration date would not, as some fear, telegraph to our nation's enemies that the fight will end at a certain date. This argument, as two commentators recently noted, "borders on the facetious. The appropriations and authorizations for nearly all our national defense activities occur on an annual basis, and countless other key national security laws operate on similarly fixed time-frames between renewals. There is no

⁹ See, e.g., Scott R. Anderson and Molly E. Reynolds, *A Fast Track to Nowhere: 'Expedited Procedures' and the New AUMF Proposal*, Lawfare Blog, April 19, 2018, available at <https://www.lawfareblog.com/fast-track-nowhere-expedited-procedures-and-new-aumf-proposal>; Jack Goldsmith, Ryan Goodman, and Steve Vladeck, *Five Principles That Should Govern any U.S. Authorization of Force*, Washington Post, November 14, 2014, available at http://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-offorce/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1eacc_story.html; Ryan Goodman and Steve Vladeck, *Avoiding Unnecessary Wars and Preserving Accountability: Principles for an ISIL-Specific AUMF*, Just Security, November 10, 2014, available at <https://www.justsecurity.org/17257/aumf-principles/>.

compelling reason to believe that periodic reconsideration of an AUMF...would pose any greater danger.”¹⁰

Indeed, as former Department of Defense General Counsel Stephen Preston has also noted, an expiration date does not mark the end of a particular conflict, but demonstrates that we are committed to our democratic institutions even as we continue to fight for as long as it takes.¹¹ Similarly, former National Counterterrorism Center Director Matt Olsen has explained that “such good government practices reflect our nation’s strength and should not be viewed as a sign to our enemies that we plan to give up the fight.”¹²

Instead of including an expiration date, this proposal requires the president, every four years, to submit a report to Congress proposing to repeal, modify, or extend the AUMF and provides expedited procedures for Congress to consider a qualifying resolution to repeal or modify the AUMF. However, the AUMF would remain in place unless Congress acted to repeal or modify it. And even if Congress passed a resolution repealing or modifying the AUMF, it would need a veto-proof majority to ensure that its resolution became law. Such a framework would entrench, facilitate, and encourage—not prevent—the type of executive branch overreach and marginalization of Congress that has occurred under the 2001 and 2002 AUMFs.

To address concerns about possible gridlock in Congress or the need for the Department of Defense to prepare for any changes in authorities, a better approach is to include an expiration date, but also adopt procedural changes that would facilitate congressional consideration of a revised or renewed authorization, with ample time between the vote and the actual expiration date. This approach would provide adequate notice to the Department of Defense to make any necessary adjustments.¹³

¹⁰ Scott R. Anderson and Molly E. Reynolds, *A Fast Track to Nowhere: ‘Expedited Procedures’ and the New AUMF Proposal*, Lawfare Blog, April 19, 2018, available at <https://www.lawfareblog.com/fast-track-nowhere-expedited-procedures-and-new-aumf-proposal>.

¹¹ *Is it Time for Congress to Pass an ISIS-Specific AUMF?*, Remarks of Stephen Preston, The Heritage Foundation, May 1, 2017, available at <http://www.heritage.org/defense/event/it-timecongress-pass-isis-specific-aumf>.

¹² Statement by Matthew G. Olsen, Authorization for the Use of Military Force and Current Terrorist Threats, House Foreign Affairs Committee, July 25, 2017, available at <https://docs.house.gov/meetings/FA/FA00/20170725/106315/HHRG-115-FA00-Wstate-OlsenM-20170725.pdf>. Matthew G. Olsen currently serves as a board member of Human Rights First.

¹³ Scott R. Anderson and Molly E. Reynolds, *A Fast Track to Nowhere: ‘Expedited Procedures’ and the New AUMF Proposal*, Lawfare Blog, April 19, 2018, available at <https://www.lawfareblog.com/fast-track-nowhere-expedited-procedures-and-new-aumf-proposal>.

The Proposal Does Not Increase Public Transparency or Reporting to Congress

Unlike numerous other AUMF proposals, this proposal would neither increase public transparency nor congressional reporting requirements related to the use of force.¹⁴ Regular and thorough reporting sufficient to keep both Congress and the public informed is important for democratic accountability, ensuring compliance with domestic and international law, and enabling Congress to fulfill its critical oversight functions.

While this proposal requires the president to notify Congress of any new groups or countries he or she has added, the unclassified report may contain a classified annex and only goes to certain congressional committees and leadership. Such reporting does not go beyond what is already mandated by current law. In addition to regular reporting under the War Powers Act, under Section 1264 of the Fiscal Year 2018 National Defense Authorization Act, the president must already report to these same congressional committees within 30 days of any change to the legal and policy framework for the use of U.S. military force, including the legal, factual, and policy justification for using force against new groups or in new locations under existing AUMFs. These reports must be unclassified but may contain a classified annex.

The only change brought by S.J. 59 is that the president would need to report within 48 hours of using force against new groups or in new countries instead of within the 30 days required by Section 1264. There is no explicit requirement in the proposal that this information be made public. As noted below, if Congress wants to ensure greater public transparency regarding which groups force is being used against and in what countries, it could make clear that under Section 1264 the names of groups and countries must be provided in the unclassified portion of the report (as there is no justification for classifying who the country is at war with). Congress could also pass additional public or congressional reporting requirements without an accompanying expansion of the president's authorities.

The Expedited Procedures and Quadrennial Review

S.J. 59 sets up expedited procedures for Congress to remove a new group or new country after the president has added it to the AUMF. The proposal also includes a “Quadrennial Review” mechanism, requiring the president to submit a report every four years, which includes a proposal to repeal the AUMF, modify it, or leave it in place. Congress could

¹⁴ See e.g. AUMF proposal from Senator Todd Young (R-IN) S.J. Res. 31, 115th Cong. § 5 (2017) available at <https://www.congress.gov/115/bills/sjres31/BILLS-115sjres31is.pdf>; AUMF proposal from Representative Eliot Engel (D-NY) H.R.J. Res. ___, 115th Cong. (2017), available at https://www.justsecurity.org/wp-content/uploads/2017/06/ENGEL_Discussion-Draft-AUMF-2017.pdf; and AUMF proposal passed by the Senate Foreign Relations Committee in 2014, S.J. Res. 47, 113th Cong. (2014), available at <https://www.govtrack.us/congress/bills/113/sjres47>.

then utilize the expedited procedures to modify or repeal the AUMF. Unless the president agreed to this modification or repeal, Congress would need to secure a veto-proof majority in both houses in order to overcome a presidential veto. Such a veto-proof majority would also be required to remove a group or country that the president has added.

While these mechanisms are beneficial, they are far outweighed by the radical shift in the division of war powers that S.J. 59 would codify with no expiration date, as discussed above. Further, these mechanisms are not an improvement over the way our constitutional system is designed to operate. Under our constitutional system, adding a new group or country would be automatically blocked unless the president could persuade Congress to authorize force against that group or in that country. In S.J. 59, Congress would be reversing this system, allowing the president to add new groups and countries and putting a high burden on Congress to remove them. Without a sunset, this process could carry on for decades or longer.

The Quadrennial Review by itself could certainly be a useful procedure to put in place. Given there is no sunset in the 2001 AUMF forcing the executive branch to come back to Congress to debate the authorization, the Quadrennial Review could be a constructive means for increasing congressional engagement. Given widespread agreement in Congress about its need to reassert its role, Congress could pass this review procedure or require such a report from the president without delegating its constitutional powers to the executive branch. Alternatively, Congress could include such an expedited review procedure to aid in revising or reauthorizing an AUMF with an actual expiration date, as several experts have proposed.¹⁵

Finally, as S.J. 59 acknowledges in section 9(b)(5), the expedited procedures would constitute rules of the House and the Senate and could be changed by either of those chambers. As Scott Anderson and Molly Reynolds note in their critique of the expedited procedures and quadrennial review, this is a “constitutional limitation [that] is unavoidable.”¹⁶

A Better Way Forward

Should Congress decide that continued use of military force is warranted, it should ensure that any new AUMF it considers is clear, specific, carefully tailored to the situation at hand, and aligned with U.S. legal obligations. Careful drafting and robust safeguards are critical to preventing any new AUMF from being stretched to justify wars Congress

¹⁵ Scott R. Anderson and Molly E. Reynolds, *A Fast Track to Nowhere: ‘Expedited Procedures’ and the New AUMF Proposal*, Lawfare Blog, April 19, 2018, available at <https://www.lawfareblog.com/fast-track-nowhere-expedited-procedures-and-new-aumf-proposal>.

¹⁶ *Id.*

never intended to authorize, to ensuring ongoing congressional engagement and an informed public as the conflict proceeds, and to preventing any new AUMF from being used in ways that undermine human rights, national security, or the separation of powers.

To that end, any new use of force authorization should name the specific enemy, list the countries where force is authorized, specify the permitted mission objectives, require robust reporting both to Congress and the American people, require compliance with U.S. obligations under international law, clearly specify that it is the sole source of statutory authority to use force against the enemy named, and set an expiration date.¹⁷

Unfortunately, S.J. Res. 59 fails on nearly all of these counts other than implicitly requiring compliance with international law by authorizing “necessary and appropriate force.”¹⁸

These elements are not merely suggested inclusions that it would be helpful to have in a use of force authorization. They are critical safeguards that reflect the hard lessons learned from experience under the 2001 and 2002 AUMFs, and without which, Congress would be worse off than under the status quo.

If this Congress is not yet able to agree on an authorization with appropriate safeguards, there are other avenues for reasserting congressional control and increasing transparency and oversight in the interim, without resorting to a dangerously overbroad new authorization with potential to cause lasting harm to our constitutional system.

¹⁷ These elements have been recommended and endorsed by numerous national security experts from across the political spectrum. *See e.g.*, Goldsmith et al., *Five principles that should govern any U.S. authorization of force*, Washington Post, available at https://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1eacc_story.html?utm_term=.334aca4237fa. These elements have also gained the support of a coalition of human rights, civil liberties, and faith groups. *See* "Re: Authorizing the Use of Military Force," Letter to Senator Bob Corker and Senator Ben Cardin, June 19, 2017, available at <http://www.humanrightsfirst.org/sites/default/files/AUMF-letter-final-text-June-19-2017.pdf>.

¹⁸ Principles to Guide Congressional Authorization of the Continued Use of Force Against ISIL, available at <https://www.justsecurity.org/wp-content/uploads/2014/11/ISIS-AUMF-Statement-FINAL.pdf>.