

The Honorable Jack Reed
Chairman
The Senate Committee on Armed Services
Washington, DC 20510

The Honorable Mike Rogers
Chairman
The House Committee on Armed Services
Washington, DC 20515

The Honorable Roger Wicker
Ranking Member
The Senate Committee on Armed Services
Washington, DC 20510

The Honorable Adam Smith
Ranking Member
The House Committee on Armed Services
Washington, DC 20515

September 4, 2024

Dear Chairmen Reed and Rogers and Ranking Members Wicker and Smith,

We, the undersigned human rights, peacebuilding, civil rights, government accountability, protection of civilians, and faith-based organizations, write to urge you and National Defense Authorization Act (NDAA) conferees to support measures introduced in the House and Senate versions of the Fiscal Year 2025 NDAA that would prevent and address civilian harm caused by U.S. operations and reassert Congress's constitutional war powers.¹ We also urge you to reject provisions that undermine these goals.

Specifically, we urge you to **support and retain** the following amendments and provisions:

- **Extend the annual report on civilian casualties in connection with U.S. military operations.** Since 2018, the NDAA (Section 1057 of the FY18 NDAA, as amended) has required the Secretary of Defense to submit to the congressional defense committees an annual report on civilian casualties caused as a result of U.S. military operations during the preceding year. This reporting is critical to ensuring congressional and public oversight, transparency, and accountability regarding the U.S. use of force. **Section 1054 of S.4638 and Section 1053 of H.8070** would extend the reporting requirement, which is set to sunset this year. We urge the conferees to retain this provision in the conferenced bill.
- **Review of execute orders and the legal basis for operations involving the use of force.**² All uses of military force must be supported by congressional authorization or the president's inherent authority to defend U.S. territory and persons. The Department of Defense, however, memorializes its kinetic or potentially kinetic operations in broadly drafted execute orders (EXORDs) that sometimes omit the legal basis and specific conditions under which force is authorized. This issue has created confusion among military lawyers, exacerbated the longstanding problem of mission creep, and rendered

¹ Some of the undersigned groups do not, as an institutional matter, take a position on U.S. domestic law or decisions to engage in armed conflict.

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congressional oversight more challenging. **Section 1056 of H.R. 8070** would address this issue by requiring the Secretary of Defense to review all EXORDs permitting the use of force and identify the legal basis and specific conditions that support using force. Section 1056 also requires the Secretary to submit a report to Congress comparing the scope of EXORDs permitting the use of force to the scope of earlier-reported administration interpretations of the president's war authorities.

- **Reporting on Department of Defense civilian harm mitigation and response policy implementation.** In 2022, the Department of Defense committed to overhauling its approach to mitigating and responding to civilian harm, releasing the Civilian Harm Mitigation and Response Action Plan. In 2023, a Department of Defense Instruction followed. We request that you retain language in the **S.4638 and H.8070 committee reports** requiring reporting on implementation of the Department of Defense Instruction on civilian harm mitigation and response, the Civilian Protection Center of Excellence, civilian harm assessments, and *ex gratia* payments.
- **Reinstating reporting on civilian casualties outside of areas of active hostilities.** Since the attacks of 9/11, successive presidents have claimed the unilateral power to authorize secret killing outside any recognized battlefield. This lethal strikes program has undermined the rule of law and transparent governance and devastated civilian communities in multiple parts of the world. **S.Amdt.2132** would extend a sunsetted reporting requirement to require transparency regarding civilian casualties from such strikes. We recommend adoption of the amendment.
- **Repeal the 2002 and 1991 Iraq AUMFs.** Congress passed the 2002 and 1991 Authorizations for Use of Military Force (AUMFs) to authorize the Iraq War and Gulf War respectively. Both of these wars are long over and neither AUMF is necessary for any current operations. Bipartisan majorities in both chambers of Congress, as well as the [White House](#), support repealing these outdated laws. In May 2023 the Senate voted 66 to 30 to repeal both AUMFs. The House has also voted to repeal them, including a 2021 vote to repeal the 2002 AUMF, which passed by a vote of 268-161. **S.Amdt.2491** would take these outdated laws off the books, strongly reassert Congress's constitutional war powers, and help ensure that Congress, not the president, determines when the nation goes to war.³

Additionally, we urge conferees to **reject** the following provisions:

- **Overbroad expansion of train-and-equip authority absent necessary safeguards.** The Department of Defense's train-and-equip programs have previously led to U.S. forces' involvement in hostilities not expressly authorized by Congress — when, for instance, U.S. forces have exercised collective self-defense on behalf of their foreign partners. It is therefore important that Congress set

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appropriate limitations on why and how the Department of Defense runs these programs. In 10 U.S.C. Section 333, the global train-and-equip authority, Congress has enumerated specific purposes for which the Department of Defense may run a program. Congress should **oppose language in Section 1202 of S.4638** that would render this list of purposes irrelevant by allowing the Department of Defense to run Section 333 programs in support of “foreign internal defense operations.” The Department of Defense defines “foreign internal defense” as any activity “to free and protect [a foreign] society from subversion, lawlessness, insurgency, violent extremism, terrorism, and other threats to its security.” Given the breadth of this definition, Section 1202 would give the Department of Defense the power to run train-and-equip programs for essentially any purpose, including purposes that may exceed what Congress has contemplated and would approve.

Thank you for your consideration. Our organizations look forward to continuing to engage with each of you as well as committee staff as the NDAA moves forward.

Signed,

American Civil Liberties Union
Amnesty International USA
Brennan Center for Justice
Bridges Faith Initiative
Center for Civilians in Conflict (CIVIC)
Center for Victims of Torture
Defending Rights & Dissent
Friends Committee on National Legislation
Government Information Watch
Human Rights First
Human Rights Watch
National Religious Campaign Against Torture
Reprieve US
September 11th Families for Peaceful Tomorrows

cc: Speaker of the House Mike Johnson, Senate Majority Leader Chuck Schumer, Senate Minority Leader Mitch McConnell, House Minority Leader Hakeem Jeffries, Senate Foreign Relations Committee Chair Ben Cardin and Ranking Member Jim Risch, House Foreign Affairs Committee Chair Michael McCaul and Ranking Member Gregory Meeks.