

June 18, 2025

The Honorable Donald Trump  
President of the United States  
White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500



National Office  
125 Broad Street, 18th Floor  
New York, NY 10004

Executive Director  
Anthony D. Romero

RE: Congress Alone Has the Constitutional Authority to Decide Whether the United States May Use Force Against Iran

Dear President Trump:

The American Civil Liberties Union strongly urges you to uphold the Constitution, and the fundamental principle of separation of powers, by recognizing the sole authority of Congress to declare war—and to refrain from the use of force against Iran in the absence of explicit congressional authorization for the use of force. Despite reports of requests from the government of Israel for the United States to use military force against Iran and reports of your consideration of these requests, you as President have no constitutional authority to use force against Iran. The one exception to the Constitution’s delegation to Congress of the power to declare war is the President may unilaterally order the use of force to, in the words of James Madison, “repel sudden attacks,” which is a factual scenario that does not apply to Iran.

The ACLU is particularly concerned by recent statements you and Administration officials have made publicly, including:

- In a social media post yesterday, you stated, “*We* now have complete and total control of the skies over Iran.” (emphasis added).
- In a separate, earlier post, you stated, “Simply stated, IRAN CAN NOT HAVE A NUCLEAR WEAPON. I said it over and over again! Everyone should immediately evacuate Tehran!”
- Reporting by the *New York Times* yesterday that, “Privately, [President Trump] told some confidants that he was now leaning toward a more serious escalation: going along with Israel’s earlier request that the United States deliver powerful bunker-busting bombs to destroy Iran’s nuclear facility at Fordo.”
- Vice President Vance tweeted, “The president has made clear that Iran cannot have uranium enrichment. And he said repeatedly that this would happen one of two ways--the easy way or the ‘other’ way. . . . He may decide he needs to take further action to end Iranian enrichment. That decision ultimately belongs to the president.”

These threats over the past few days have raised concerns across the country about whether you will abide by the check on the President's power that is fundamental to the Constitution's separation of powers on war authority.

Article I of the Constitution explicitly and exclusively reserves for Congress the power to declare war. Article 1, Section 8 provides that only the Congress has the power "To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water," among other war powers. Any use of force against Iran without a declaration of war or explicit authorization by Congress would strike at the very heart of the fundamental principle of separation of powers that is at the core of the Constitution and is the undergirding of our democratic form of government.

The ACLU does not take a position on whether military force should be used against Iran. However, we have been steadfast in insisting, from Vietnam through the war in Afghanistan, both wars in Iraq, the military action against Libya, and the use of force in Iraq, Syria, Yemen, and Somalia that decisions on whether to use military force require Congress's specific, advance authorization. We have written letters to the president or the Congress about the paramount importance of separation of powers for the use of force when military action was considered or used during the administrations of: Presidents Nixon, Reagan, George H.W. Bush, Clinton, George W. Bush, Obama, Biden, and to you during your first term as President.

Absent a sudden attack on the United States that requires the President to take immediate action to repel the attack, no President has the power under the Constitution to decide to take the United States into war. Such power belongs to the Congress alone.

As Thomas Jefferson once wrote, this allocation of war power to Congress provides an "effectual check to the Dog of war" by "transferring the power of letting him loose from the Executive to the Legislative body . . . ." Letter from Jefferson to Madison (Sept. 6, 1789). Congress alone has the authority to say yes or no on whether the United States can use military force in Iran or anywhere else.

The structure of the Constitution reflects the framers' mistrust of concentrations of power and their consequent separation of those powers into the three branches of our government. The framers well understood the danger of combining powers into the hands of a single person, even one who is elected, particularly a person given command of the armed forces. In order to prevent such an accumulation in times of war or emergency, the framers split the war powers between the Executive and Legislative branches, giving the Congress the power to declare war, i.e., make the decision whether to initiate hostilities, while putting the armed forces under the command of the President.

In giving the power of deciding whether to go to war to Congress alone, the framers made clear that the President's powers as Commander in Chief, while "nominally the same [as] that of the king of Great Britain . . . in substance [is] much inferior to it." The Federalist No. 69 (Alexander Hamilton). As Alexander Hamilton explained, the power

of Commander in Chief "would amount to nothing more than the supreme command and direction of the military and naval forces; while that of the British king extends to the DECLARING of war and to the RAISING and REGULATING of fleets and armies, all of which, by the Constitution under consideration, would appertain to the legislature." *Id.*

Chief Justice Marshall made clear, as early as 1801, that the Executive Branch did not have the power to decide whether the country will use military force. In a series of cases involving the seizure of vessels during an undeclared naval war with France, the Supreme Court made clear that Congress, not the President, was the ultimate repository of the power to authorize military force. See *Little v. Barreme*, 6 U.S. 170 (1804), *Talbot v. Seeman*, 5 U.S. 1, 28 (1801); *Bas v. Tingy*, 4 U.S. 37 (1800). As Marshall made clear, "The whole powers of war being, by the constitution of the United States, vested in congress, the acts of that body can alone be resorted to as our guides in this inquiry." *Talbot*, 5 U.S. at 28 (1801).

In *The Prize Cases*, 67 U.S. 635 (1863), the Supreme Court found that a "state of war" may exist without a declaration of war. But the peculiar context of the Civil War explains those cases. Indeed, the Court reaffirmed that, in contrast to the President's power to suppress insurrections, "By the Constitution, Congress alone has the power to declare a national or foreign war." *Id.* at 668.

Although some supporters of unlimited presidential war making power argue that the President, as Commander in Chief, has the ability to use military force whenever the president deems it necessary in the "national interest" and need not obtain either a declaration of war or Congressional approval, this view is based on a misreading of history. Proponents of this view make much of the fact that the drafters of the Constitution had considered giving Congress the sole power to "make War," but in the end decided its power would be to "declare War." Some supporters of Executive power claim this means the President has the power to make war regardless of whether Congress has acted. However, James Madison explained that this change was made simply to leave "to the Executive the power to repel sudden attacks." Debates in the Federal Convention, Aug. 17, 1787. According to Hamilton, "anything beyond" such use of military force "must fall under the idea of reprisals and requires the sanction of that Department [i.e., the Congress] which is to declare or make war." Letter from Hamilton to Sec. of War James McHenry. May 17, 1798.

As this history makes clear, the correct view of the Constitution, has been that the President's power to engage in the use of force without Congressional approval is limited to the power "to repel sudden attacks." Any other use of military force requires a declaration of war or other explicit congressional authorization.

The War Powers Act does not provide a route around the Constitution. Some analysts wrongly claim that the War Powers Act, which was enacted in 1973 as a response to presidential overreaching in expanding and extending the Vietnam War, somehow gives a president a 90-day free pass to go to war without congressional authorization. The War Powers Act provides that, if Congress does not consent to the use of military force within

60 days of the President first reporting to Congress on a military action, then the President must withdraw American forces within 30 days. 50 U.S.C § 1544(b). But the timetable in the War Powers Act is a statutory safeguard and not a free pass to get around the Constitution. It is a backstop for remedying presidential wrongs, and does not override the Constitution's allocation of war powers between the Executive Branch and the Congress.

You cannot—and should not—unleash Jefferson's "Dog of war" in Iran or elsewhere, without congressional authorization and compliance with the law. The Congress, as representatives of the American citizenry, has exclusive authority under the Constitution to decide whether the President may use military force. Particularly in the wake of recent threats of U.S. military action against Iran, we urge you to make clear that you will refrain from use of force outside the scope of the Constitution and the law.

Please do not hesitate to contact us if you have any questions regarding this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Romero", with a stylized underline.

Anthony D. Romero

Executive Director

cc: All members of U.S. Senate and U.S. House of Representatives