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

Dear President Biden,

We write to express our serious concern with the pattern of unauthorized U.S. military strikes and actions in Syria and Iraq. We are deeply troubled by your administration’s dangerous claim that Article II of the Constitution permits you to bypass Congressional authorization to perform strikes inside Syria, as well as your administration’s claim that the wide range of activities that you have undertaken as part of the ongoing U.S. occupation of a large swath of Syrian territory is justified by the Authorization for Use of Military Force (AUMF) of 2001.¹

These claims raise serious constitutional questions about unchecked military activities conducted by the Executive Branch in Syria and Iraq without approval from Congress, and they could lead to actions that prolong the U.S.’s involvement in “endless wars” overseas. In light of the recent House vote by a strong majority of Democrats and over 20 Republicans on Rep. Bowman’s FY2022 NDAA amendment to require Congressional authorization for U.S. military participation in Syria or withdraw troops within a year,² we respectfully urge you to provide transparency about U.S. military actions in this region and your administration’s position on legal and constitutional questions regarding the authority to wage war and authorize U.S. military action.

The Constitution is clear: Article I, Section 8 of the Constitution grants Congress – and only Congress – the power to declare war. Once authorized by Congress, Article II, Section 2 of the Constitution allows the president to direct the military as Commander-in-Chief. Under the War Powers Resolution of 1973, the president may only “introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances” under three scenarios: “(1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.” In addition, two explicit war powers-related provisions passed into law in the FY2021 Consolidated Appropriations Act³ which prohibit the use of funds to “be used with respect to Syria in contravention of the War Powers Resolution⁴, as well as prohibit the use of funds “[t]o exercise United States control over any oil resource of Iraq or Syria.”⁵

However, the recent pattern of developments in Syria suggest that your administration is acting in contravention of the Constitution, the War Powers Resolution of 1973, and the Syria-related provisions in the FY2021 Consolidated Appropriations Act.

On February 25, 2021, the U.S. conducted airstrikes on sites in Syria reportedly used by Iran-backed militia groups. In its War Powers Report to Congress, your Administration stated that these groups “were

¹ https://www.csis.org/analysis/syria-gray-zone, Dana Stroul: “the one-third of Syrian territory that was owned via the U.S. military with its local partner, the Syrian Democratic Forces [...] And that one-third of Syria is the resource-rich – it’s the economic powerhouse of Syria. So where the hydrocarbons are, which obviously is very much in the public debate here in Washington these days, as well as the agricultural powerhouse.”
² https://www.politico.com/newsletters/national-security-daily/2021/09/24/progressive-foreign-policy-big-week-494467 (“It failed 141-286, but the tally showed there’s strong support for ending America’s seven years of military operations there.”)
³ P.L. 116-260
⁴ 50 U.S.C. 1541 et seq. (“including for the introduction of United States armed or military forces into hostilities in Syria, into situations in Syria where imminent involvement in hostilities is clearly indicated by the circumstances, or into Syrian territory, airspace, or waters while equipped for combat, in contravention of the Congressional consultation and reporting requirements of sections 3 and 4 of that law (50 U.S.C. 1542 and 1543”)”)
involved in recent attacks against United States and Coalition personnel in Iraq, including the February 15, 2021, attack in Erbil, Iraq, which wounded one United States service member and four United States contractors, as well as resulting in the death of a Filipino contractor.”  The report further asserted that “these groups are also engaged in ongoing planning for future such attacks.” Your administration asserted that the strikes constituted “self-defense” that is permissible under your “authority to conduct United States foreign relations and as Commander in Chief and Chief Executive.” However, you did not claim that the strikes were necessary to repel an imminent threat that did not allow time for Congressional authorization — the only justification for military action without Congressional authorization that is permitted under the War Powers Resolution of 1973.\(^7\)

On June 27, 2021, the U.S. conducted another round of airstrikes against these same two Iran-backed militia groups in Syria. In a statement by Pentagon Press Secretary John Kirby, your administration justified these new strikes by citing militia involvement in “unmanned aerial vehicle (UAV) attacks against U.S. personnel and facilities in Iraq.” Kirby’s statement also claimed that your administration acted once again in “self-defense” and that you, as the President, “took this action pursuant to [your] Article II authority to protect U.S. personnel in Iraq.” Again, your administration declined to claim that these strikes were necessary to repel an imminent threat that did not allow time for Congressional authorization. Subsequent reporting indicates that your administration has instituted a policy that lowers the bar for use of U.S. military force in Syria and Iraq.\(^8\) We believe such a policy change increases the likelihood of further tit-for-tat military escalation.

After both rounds of U.S. strikes in Syria, your administration argued that these strikes “aim[ed] to de-escalate the overall situation” and were “designed to limit the risk of escalation.” However, reports indicate that these groups launched retaliatory strikes against U.S. troops in Iraq and Syria, raising serious doubts about the effectiveness and legality of the policy.\(^9\) In at least one instance, U.S. troops responded again with artillery fire.\(^10\)

On Wednesday, October 20, U.S. troops in Syria were once again targeted in a “deliberate and coordinated attack” that appears to have used both unmanned aircraft and indirect fire.\(^11\) It is clear there is a pattern of activity directed at U.S. military forces in Syria and Iraq, which constitutes “hostilities” as laid out under the War Powers Resolution of 1973. Despite this, following the October 20 attack, U.S. CENTCOM spokesman Capt. Bill Urban stated “we maintain the inherent right of self-defense and will respond at a time and place of our choosing.” This implies that the administration believes, as with the previous strikes, that it does not need Congressional authorization for a pending military action.

In contrast to justifications for military action in Syria cited by the previous administration, your administration has not even asserted any imminent threat as a legal basis for these retaliatory strikes, merely citing “ongoing planning” for future attacks. Leading war powers scholar and former Obama-Biden administration Defense Department counsel Oona Hathaway has explained that “past attacks combined with vague future planning is not sufficient to meet the necessity standard. Instead, there would need to be evidence that the groups were preparing for imminent attacks, not some possible attacks at some point in the future that they may or may not carry out.”\(^12\) Under this analysis, your administration’s own assertions appear to be insufficient on their face to meet this imminent attack standard. Your administration’s position represents a far more expansive claim of Executive power than even your predecessor.

The apparent cycle of strike and counter-strikes in Iraq and Syria also raises related constitutional and legal questions about the ongoing, years-long U.S. troop presence in Syria.\(^13\) The attacks by Syria-based

\(^6\) [https://www.nytimes.com/2021/02/15/world/middleeast/iraq-us-contractor-killed.html](https://www.nytimes.com/2021/02/15/world/middleeast/iraq-us-contractor-killed.html)

\(^7\) War Powers Resolution of 1973, [https://www.worldjusticeproject.org/analysis/syria-gray-zone](https://www.worldjusticeproject.org/analysis/syria-gray-zone)


\(^11\) [https://www.csis.org/analysis/syria-gray-zone](https://www.csis.org/analysis/syria-gray-zone)
militias targeted U.S. forces inside of Syria who are based in the “vicinity of al Omar oil field,” Syria’s largest oil field, as well as U.S. forces at the al-Tanf base. The continued presence of these U.S. troops in Syria apparently results from President Trump’s decision to stop his previously announced withdrawal from Syria in order to achieve his stated goal to “secure the oil,” and he acknowledged that his policy meant that “we may have to fight for the oil.” Asked to clarify if this plan could entail directly countering Russian or Syrian government forces in the region, then-Secretary of Defense Mark T. Esper said: “The short answer is yes, it presently does.”

The U.S. special representative for Syria at the time, who oversaw President Trump’s plan, was even more direct: “My job is to make [Syria] a quagmire for the Russians.” After that, in August 2020, U.S. and Russian troops had a standoff in northern Syria, with each country’s military vehicles colliding and resulting in injuries to four Americans. Former Trump administration official Brett McGurk — now serving as the National Security Council Coordinator for the Middle East and North Africa — subsequently revealed that “these incidents have been ongoing for months.” McGurk later wrote that “[w]e have American soldiers with an ill-defined mission in Syria” who “are forced to navigate roads controlled by Russian and Syrian regime forces.”

As of this writing, the U.S. continues to have a presence in a region that comprises approximately a third of Syrian territory, despite the fact that virtually all observers, including your administration, acknowledge that ISIS no longer holds territory in Syria. This casts serious doubt on the applicability of the 2001 Authorization for Use of Military Force (AUMF), which some claim authorizes the entire U.S. military presence in Syria. This claim implies that the 107th Congress — which voted on September 14, 2001, to authorize force in response to the September 11 terrorist attacks — intended to authorize a military occupation of roughly one-third of Syrian territory more than two decades later.

We are well aware of the malign nature of various militias and state actors throughout the region. We also share the longstanding view that Article II of the U.S. Constitution allows the president to act unilaterally in response to imminent threats to the U.S. or its forces in instances where the imminent and extreme nature of the threat makes it impractical or impossible to convene Congress in time to authorize the necessary defensive actions. This imminent threat interpretation was also reaffirmed in the 116th Congress, which passed several War Powers Resolutions in the Democratic-led House and Republican-led Senate with provisions explicitly reaffirming this principle.

Given these facts, and in order to conduct our constitutionally-mandated war powers authorities, we respectfully request clarification about your legal and policy positions regarding these matters, including by releasing a detailed, unclassified legal memo explaining the administration’s legal justification for U.S. military strikes in Syria and Iraq: as scholars and others have requested. We also ask that you respond directly to the following questions:

- Under what legal authority is the U.S. conducting strikes against militias in Syria and Iraq and under what legal authorities, if any, is the U.S. military deployed in Syria?
- If the administration claims that these actions are authorized, what scale and scope of military action does the administration assert is permissible under that authority?

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15 https://www.reuters.com/world/middle-east/us-says-its-strikes-iran-backed-militia-iraq-syria-were-necessary-2021-06-28/
20 https://www.cnn.com/politics/live-baghdadi-monday-dle-intl/h_0a321e1559154a06c23b6ecab429
22 https://twitter.com/brett_mcgurk/status/1227640653217062917
23 https://www.state.gov/on-the-second-anniversary-of-isis-syrias-terrestrial-defeat/
- If the administration believes that U.S. law and the Constitution places any legal constraints on its actions, please include a detailed explanation of actions that the administration does not believe would be lawful or constitutional.
- Does the administration believe that these missions constitute, at a minimum, a situation “where imminent involvement in hostilities is clearly indicated by the circumstances,” which would require Congressional authorization under the War Powers Resolution of 1973? If not, please explain.
- Will the administration affirm that it is not legally permitted to introduce U.S. forces into hostilities unless authorized by Congress or in the face of an imminent threat that requires immediate response?
- If your administration asserts that the 2001 AUMF provides authorization for the ongoing troop presence inside of Syria despite the fact that ISIS no longer holds territory there, what conditions would need to be met in order for the 2001 AUMF to no longer be applicable?

We request a thorough response to these specific questions no later than one month from today. To the extent possible, we also ask that the administration provide public responses to maximize transparency for the American people.

As you have acknowledged, the American people are tired of endless U.S. military involvement in overseas wars. It is imperative that Congress and its Members, as representatives of the American people, exercise its constitutionally-granted war powers authorities to oversee and authorize any and all overseas military actions. Going forward, we strongly urge your administration to recognize the seriousness of this matter, respect the separation of powers and Congress’s constitutional war powers authority, and fully consider the constitutional precedent that your administration’s actions may set.

We look forward to your comprehensive responses, and as always, we reserve our constitutional and statutory right to take action on the floor of Congress if these responses do not meet the relevant legal and constitutional standards.

Thank you for your time and attention to this important matter.

Sincerely,

[Signatures]

Peter A. DeFazio
Member of Congress

Nancy Mace
Member of Congress

Jamaal Bowman, Ed.D
Member of Congress

Eleanor Holmes Norton
Member of Congress

Yvette D. Clarke
Member of Congress

Paul A. Gosar, D.D.S.
Member of Congress

Jared Huffman
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Sheila Jackson Lee
Member of Congress

James P. McGovern
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Alan Lowenthal
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Rashida Tlaib
Member of Congress

Jake Auchincloss
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