

August 15, 2023

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

**Re: NDAA Conference Recommendations from Demand Progress Action**

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

As the House and Senate negotiate the National Defense Authorization Act for Fiscal Year 2024, Demand Progress Action offers the following recommendations concerning provisions in the NDAA versions passed by the House of Representatives and by the Senate.

Furthermore, please refer to [this letter](#) (also attached) led by the Brennan Center, and signed by Demand Progress Action along with 9 other organizations, advocating for specific war powers related language to be retained, rejected, or modified, with expanded explanations.

Demand Progress Action advocates for strengthening Congressional war powers, protecting civil liberties, and increasing transparency over the use of U.S. security assistance and armed forces within the NDAA.

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

- **Sec. 1293 of S. 2226**, which would codify Sec. 1202 authorities and dangerously expand them through redefining “irregular warfare” in a way that allows the Department of Defense to use surrogate forces in foreign conventional wars, including those for which Congress has not passed an AUMF (see Brennan Center [letter here](#) for further details)
- **Section 1303 of S. 2226**, which would significantly broaden 10 U.S.C. § 333 train-and-equip programs, 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 (see Brennan Center [letter here](#) for further details)

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

- **Section 1689 of H.R. 2670**, which would prohibit the Department of Defense from purchasing data that is protected under the Fourth Amendment, including internet records and sensitive location information.
  - **\*NOTE\*** – This provision was passed by the House without opposition and with overwhelming bipartisan support.
- **Sec. 1074 of H.R. 2670**, which requires a public disclosure about the cost of the U.S.’ overseas military footprint and gives the American people greater transparency on military spending.
- **Sec. 1241 of H.R. 2670**, which strengthens Executive Branch reporting to Congress in the event of any incidents in which the United States Armed Forces are involved in an attack or hostilities, whether offensive or defensive (see Brennan Center [letter here](#) for further details)
  - **\*NOTE\*** - We strongly urge conferees to further strengthen this provision by modifying subsection (a)(2), which allows the executive branch to exclude attacks that are covered by the 2001 Authorization for Use of Military Force under existing interpretations of that authority. Because Congress is not regularly informed of the specific groups or countries covered by the executive branch’s interpretation of the 2001 AUMF, this exclusion could lead to Congress not being informed on new targets or areas of engagement.
- **Sec. 320 of H.R. 2670**, which requires a report to relevant committees containing the results of a study conducted by the Comptroller General on the status of the Federal cleanup and decontamination process in former military sites in Puerto Rico, including an impact assessment.
- **Section 1299A of S. 2226**, would extend the prohibition on in-flight refueling to non-United States aircraft that engage in hostilities in the ongoing civil war in Yemen.
- **Section 1207 of H.R. 2670**, would require a GAO report on current U.S. end-use monitoring programs and their ability to effectively track, report, and investigate end-use violations.
- **Section 1208 of H.R. 2670**, would require a GAO report on enhanced end-use monitoring, required for specially controlled items.
- **Section 1209 of H.R. 2670**, would require the Secretary of Defense to report on recipients of U.S. security assistance who engaged in a coup, insurrection, or action to overthrow a government.
- **Section 1862 of H.R. 2670**, would require the Department of Defense to report on misuse of U.S. weapons in El Salvador, Guatemala and Honduras.
- **Section 1212 of H.R. 2670 and Section 1396 S. 2226**, which would improve Department of Defense (DoD) quarterly reporting to Congress on *ex gratia* payments to civilian victims and survivors of U.S. operations.
- **Section 1080A of H.R. 2670**, which would close a loophole in 10 U.S.C. 122a, a transparency provision that requires DoD to make certain unclassified reports publicly available.
- **Section 529 of H.R. 2670**, which requires a report on military recruitment practices in public secondary schools.

We would welcome the opportunity to discuss these recommendations with you further. Thank you for your consideration.

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