

## Myths and Facts

### The 2001 Authorization for the Use of Military Force and the Permanent War Footing

**MYTH:** A widely dispersed and decentralized al Qaeda is more threatening to the United States now than it was after 9/11.

**FACT:** The nature of the threat presented by al Qaeda and other groups has changed significantly since 9/11.

- ☑ Al Qaeda Core – the highly centralized node of a once expansive terrorist network – has been “decimated” since 9/11 by effective U.S. military action in Afghanistan.
- ☑ Ayman Al-Zawahiri, the successor to Osama bin Laden, has lost control of warring terrorist factions in Syria and Iraq. He has been forced to excommunicate certain allies due to differences in priorities and goals.
- ☑ While many groups from Morocco to Malaysia endorse the al Qaeda ideology, the majority have localized objectives and limited capacity.
- ☑ Assessing the threat presented by the different capabilities of terrorist groups and responding to each accordingly is smart and productive. Reacting based on lofty aspirations and empty rhetoric, by contrast, affords small-time groups a legitimacy they don’t deserve.

**MYTH:** Military action is the only way to effectively fight back against terrorists.

**FACT:** Smart counterterrorism demands a robust, whole-of-government approach.

- ☑ Admiral William McRaven of U.S. Special Operations Command testified that “how we build partner capacities is our best counterterrorism asset” because “no nation alone can stem the tide of extremism.”<sup>1</sup> Experts like Admiral McRaven understand that training allies to police their own territory is essential to U.S. security interests.
- ☑ Michael Leiter, former Director, National Counterterrorism Center (NCTC) has said, “But I readily admit this is not going to be a war won by body counts. Body counts and taking out leadership is a part of it but there are many, many other elements of this, ranging from effective aviation screening to ... trying to counter the ideology that is spawning this.”<sup>2</sup> Messaging is important; General Lloyd Austin III of U.S. Central Command has argued that “To defeat an idea, we need a better idea.”<sup>3</sup> Extremist messaging is less appealing to marginalized groups than political and economic opportunities.
- ☑ Attorney General Eric Holder notes that “In disrupting potential attacks and effectively interrogating, prosecuting, and incarcerating terrorists – there is, quite simply, no more powerful tool than our civilian court system.”<sup>4</sup> U.S. courts have convicted nearly 500 terrorism-related defendants since 9/11; military commissions, only eight.<sup>5</sup>

<sup>1</sup> Admiral William McRaven, 27 February 2014, Testimony in front of House Armed Services Committee

<sup>2</sup> <http://www.newsweek.com/us-counterterror-chief-we-need-debate-cia-terror-targets-217438>

<sup>3</sup> General Lloyd Austin III, 5 March 2014, Testimony in front of Senate Foreign Relations Committee

<sup>4</sup> Attorney General Eric Holder, 16 June 2011, <http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-1106161.html>

<sup>5</sup> <http://www.humanrightsfirst.org/wp-content/uploads/DOJ-Terrorism-Related-Convictions.pdf>

**MYTH:** The United States needs to be engaged in an armed conflict (i.e., under the laws of war) congressionally sanctioned by an Authorization for the Use of Military Force (AUMF) to attack terrorists abroad.

**FACT:** Authorities under international law and the U.S. Constitution and law are sufficient for counterterrorism.

- ☑ The President is authorized under Article II of the U.S. Constitution to respond to imminent threats anywhere in the world without an AUMF, as long as he or she complies with the War Powers Act and other congressional consultation and notification requirements.
- ☑ Outside of armed conflict (where the laws of war apply), the United States can still use force against threats so long as they are both specific and imminent, and there are no other non-lethal means to deal with the threat.
- ☑ Diplomatic agreements with partner states, including extradition treaties and other bilateral agreements, allow the U.S. to arrest and transfer terrorist suspects to its jurisdiction.

**MYTH:** The 2001 AUMF gives the U.S. government the authority to fight any and all terrorists.

**FACT:** The 2001 AUMF is limited in language and has been artificially expanded over time.

- ☑ The 2001 AUMF only covers “those nations, organizations, or persons” that “planned, authorized, committed, or aided” the 9/11 attacks. At that time, Congress rejected a broader proposal that would have authorized the President to use force against other terrorist threats beyond those responsible for the 9/11 attacks.
- ☑ The law itself does not address “associated forces”—whether actual al Qaeda affiliates like Al Qaeda in the Arabian Peninsula, or other groups like the Islamic State of Iraq and Al-Shams and al Shabaab.
- ☑ The 2001 AUMF was passed to authorize the war in Afghanistan. Accordingly, there are serious questions as to whether it will remain a valid domestic legal authority after that war comes to a close. There is widespread agreement that Congress did not intend the 2001 AUMF to authorize the use of force against groups beyond those responsible for 9/11 and in areas far from the current “hot battlefield” in Afghanistan.
- ☑ The AUMF is irrelevant to so-called “lone wolf” terrorists—those unaffiliated with any ideological group acting on their own volition.

**MYTH:** A ‘permanent war footing’ is no big deal—the U.S. fights lots of wars, and that’s just how it is.

**FACT:** Distinctions between wartime and peacetime matter, and Americans are increasingly war weary.

- ☑ The Founding Fathers knew better; James Madison wrote that “Of all the enemies to public liberty, war is perhaps the most to be dreaded, because it compromises and develops the germ of every other.”<sup>6</sup>
- ☑ The executive and legislative branches typically use AUMFs to limit the time that the U.S. spends in conflict abroad, but this law fails to establish temporal or geographic boundaries.
- ☑ The continuation of an open-ended AUMF into a third successive presidential administration risks establishing its war powers as a permanent birthright of the office of the president.
- ☑ The AUMF and its “war on terror” have been used to justify countless practices that threaten constitutional principles, including indefinite detention in Guantanamo Bay, standing kill lists for drone strikes, and expanded domestic surveillance.

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<sup>6</sup> James Madison, 20 April 1795 *Political Observations*