



One Hundred Sixteenth Congress
U.S. House of Representatives
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515
www.foreignaffairs.house.gov

June 25, 2019

Mr. Marik String
Acting Legal Adviser
U.S. Department of State
2201 C Street NW
Washington, D.C., 20520

Dear Mr. String:

At his appearance on Wednesday, June 20 before the House Foreign Affairs Committee's Subcommittee on the Middle East, North Africa, and International Terrorism, U.S. Special Representative for Iran Brian Hook was asked repeatedly about whether the Administration believes that it has the legal authorization, under either the 2001¹ or 2002² Authorization for Use of Military Force (AUMFs), to attack the Islamic Republic of Iran. Mr. Hook declined to answer. Speaking on behalf of the Secretary, however, he committed that the Department's Office of the Legal Adviser would provide Congress with that legal rationale, stating:

"This is something which the Office of the Legal Adviser can give you an opinion on, if you'd like to submit [a request for] it."

We hereby submit that request. We will be abundantly clear: as several members stated during the June 20 hearing, Congress has not authorized the President to attack Iran under any legal theory, including under the 2001 or 2002 AUMF. Two former State Department attorneys, including one who preceded you as Legal Adviser, recently confirmed that "[t]here is no existing

¹ Pub. L. No. 107-40, 115 Stat. 224 (2001).

² Pub. L. No. 107-243, 116 Stat. 1498 (2002).

congressional authorization for the use of force against Iran.”³ These experts, who have advised Presidents and Secretaries of State on the scope of Executive powers, went on to note that the Trump Administration’s recent efforts to link Iran and al-Qaeda, as a way of shoehorning itself under the 2001 AUMF, are “thoroughly unconvincing.”⁴ We agree.

Given the life-and-death stakes of the current situation between the United States and Iran, we can think of no issue where it is more imperative for the Department to explain its rationale for, interpretation of, and limits upon the legal authorities that have been provided by the Congress, a co-equal branch of government that the Constitution vests with the sole power to declare war. We therefore request that you produce, **no later than Friday, June 28 at 9 AM:**

Any and all legal analysis, whether contained in electronic documents, emails, or hard copy, concerning, relating, or referring in any way to whether the 2001 or 2002 AUMFs are applicable to any actions that could be undertaken by the Executive Branch in or against the Islamic Republic of Iran.

Please note that this request seeks documents in existence as of the date of this letter. While it is critical for the Department to also provide any legal rationale created on or after this date, that will not satisfy this request. As you know, common law privileges do not apply to Congress, which derives its oversight power directly from the Constitution. Moreover, history is rich with examples of the Executive Branch providing Congress with such materials, including Justice Department memos, OLC opinions,⁵ attorney notes,⁶ records of interagency lawyers’ communications,⁷ and the testimony of Executive Branch lawyers,⁸ including from the State Department.⁹

³ Brian Egan and Tess Bridgeman, *Top Experts’ Backgrounder: Military Action Against Iran and US Domestic Law*, Just Security, June 21, 2019 (online at: <https://www.justsecurity.org/64645/top-experts-backgrounder-military-action-against-iran-and-us-domestic-law/>).

⁴ *Id.*

⁵ *Justice Yields to House, Averting Showdown*, 49 Cong. Q. Wkly. Rep. 2179, 2179 (1991); see also Louis Fisher, *Congressional Access to Information: Using Legislative Will and Leverage*, 52 Duke L.J. 323, 343-344 (2002).

⁶ See Minority Staff, Special Investigations Division, House Committee on Oversight and Government Reform, *Congressional Oversight of the Clinton Administration*, at 5 (Jan. 17, 2006).


⁷ See Final Report of the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi (“Benghazi Report”) at 154 (available at: <https://www.congress.gov/114/crpt/hrpt848/CRPT-114hrpt848.pdf>) (quoting a September 11, 2012 email from Legal Adviser Harold Koh summarizing a conference call involving the deputy counsel to the President for National Security Affairs regarding the Benghazi incident).

⁸ For example, more than 20 White House lawyers from six presidential administrations have testified in hearings and depositions since the Watergate investigation, including nine White House Counsels. See *White House Counsels, Co-Equal* (available at: <https://www.co-equal.org/guide-to-congressional-oversight/white-house-counsels>) (last visited June 24, 2019).

⁹ See, e.g. Benghazi Report at 283-84, quoting advice from the Office of the Legal Adviser that “[T]his facility would not fit within the definition of a ‘diplomatic facility’ under [the Secure Embassy Construction and Counterterrorism Act (SECCA)], which defines the term as an office that (1) is officially notified to the host government as diplomatic/consular premises or (2) houses USG personnel with an official status recognized by the host government. If the facility will not be notified to the host government then it will not be considered inviolable, and

We trust you will give this request your urgent attention. If we do not receive these documents by 9 AM on Friday, June 28, we will be forced to consider other measures to obtain them.

Sincerely,



ELIOT L. ENGEL
Chairman
House Foreign Affairs Committee



TED DEUTCH
Chairman
Subcommittee on the Middle East, North
Africa, and International Terrorism

our personnel will not have any official status, then the facility would not meet the definition of a diplomatic facility under the statute").