

United States Senate

WASHINGTON, DC 20510

September 5, 2023

The Honorable Lloyd J. Austin III
Secretary of Defense
Washington, DC 20301

Dear Secretary Austin:

U.S. servicemembers have been stationed in Niger for about a decade, ostensibly to train, advise, and assist Nigerien forces. One of those individuals trained by the United States, Moussa Salaou Barmou, is one of the coup leaders who toppled the duly elected government of Niger on July 26th. As a result of the military coup d'état in Niger, over 1,000 U.S. service members deployed there now face additional dangers to their safety.

Additionally, despite the official explanation that the American presence in Niger is to provide training, U.S. forces sustained combat casualties during a 2017 ambush that resulted in the loss of four U.S. soldiers.¹ Given this record, the American people deserve answers about the presence of the U.S. military abroad and the associated costs borne by our servicemembers.

Congress never voted to authorize U.S. combat operations in Niger. The tragic deaths of four U.S. soldiers—Staff Sergeant Bryan Black, Staff Sergeant Jeremiah Johnson, Sergeant La David Johnson, and Staff Sergeant Dustin Wright—should have served as the catalyst to end our operations there. Yet, the Biden Administration continues to cite the 9/11 Authorization for Use of Military Force (AUMF), which was narrowly tailored to bring justice to those who played a role in the 2001 terrorist attacks, to justify the presence of approximately 1,016 U.S. troops in Niger.²

Media reports also indicate the Pentagon previously used authorities to work with foreign partners, such as sections 127e and 333 of Title 10 of the U.S. Code in ways that directly involved or foreseeably led to combat in numerous countries around the world, including Niger.³ Through 127e authority, the Department of Defense (DOD) is permitted to spend up to \$100,000,000 in taxpayer funds each year to provide support to foreign forces, irregular forces, groups, or individuals to assist U.S. special operations forces combat terrorism. Section 333 permits the DOD to train and equip foreign forces to conduct counterterrorism operations. These

¹ James Gordon Meek, *US Soldiers Killed in Niger Were Outgunned, 'Left Behind' in Hunt for ISIS leader*, ABC NEWS, May 3, 2018, <https://abcnews.go.com/International/us-soldiers-killed-niger-outgunned-left-hunt-isis/story?id=54909240>.

² President Joseph R. Biden, Jr., *Letter to the Speaker of the House and President Pro Tempore of the Senate on War Powers Report*, (June 08, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/08/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-on-war-powers-report/>.

³ See e.g., Nick Turse & Alice Speri, *How the Pentagon Uses a Secretive Program to Wage Proxy Wars*, THE INTERCEPT, July 1, 2022, <https://theintercept.com/2022/07/01/pentagon-127e-proxy-wars/>; KATHERINE YON EBRIGHT, *SECRET WAR*, BRENNAN CTR. FOR J. AT N.Y.U. SCH. OF L., Nov. 3, 2022, <https://www.brennancenter.org/our-work/research-reports/secret-war>.

two authorities can be used to create proxy forces that fight alongside of and on behalf of U.S. forces as well as put U.S. forces at risk.⁴

The Administration's limitless interpretation of the 9/11 AUMF and frequent use of Title 10 authorities results in military operations abroad conducted with little congressional oversight and even less public scrutiny. Taken together, these authorities are employed in such a manner as to circumvent our Constitution, which was designed to ensure that the decision to engage in hostilities would be made only after serious deliberation in the legislature.

As citizens of a constitutional republic, Americans must be informed of hostilities involving the Armed Forces so the people can participate in national debates over war and peace. To that end, please respond by September 25, 2023, with answers to the following questions:

1. Under what authorities, and for what purpose, did U.S. forces provide training to Moussa Salaou Barmou or any of the other Nigerien forces and coup leaders who overthrew President Mohamed Bazoum?
2. Under what authority was the mission that resulted in the deaths of four American soldiers in October 2017 permitted? Was Operation Juniper Shield modified in any way after this incident and, if so, how?
3. How many times have U.S. forces taken fire from or fired upon hostile forces in Niger? How many U.S. service members have been killed or wounded in Niger since 2013?
4. Please detail the sections within Title 10 of the U.S. Code that have been used to approve U.S. combat operations or activities in Niger and how many times each section of Title 10 authority has been used to conduct combat operations or activities in Niger since 2013. How many U.S. casualties in Niger can be attributed to missions authorized under Title 10 authority since 2013?
5. Please detail the sections within Title 10 of the U.S. Code that have been used to approve U.S. combat operations or activities globally and how many times each section of Title 10 authority has been used to conduct U.S. combat operations or activities globally. How many U.S. casualties globally can be attributed to missions authorized under Title 10 authority since 2004?
6. How much funding in 127e and 333 authority was obligated for operations and activities in Niger and for what specific purposes were the funds used? Please include the following information:
 - a. A detailed description of the recipient forces receiving aid and support;
 - b. A detailed description of the aid and support provided to each recipient, including the delivery and execution status of all defense articles, training, defense services, supplies, and construction;

⁴ Katherine Yon Ebright, *What Can a Secretive Funding Authority Tell Us About the Pentagon's Use of Force Interpretations?*, LAWFARE, Oct. 11, 2022, <https://www.lawfaremedia.org/article/what-can-secretive-funding-authority-tell-us-about-pentagons-use-force-interpretations>.

- c. A detailed description of the legal and operational authorities related to the operations; and
 - d. The status of funds allocated for programs, including amounts of unobligated funds, unliquidated obligations, and disbursements.
7. What steps has the Department of Defense taken to ensure that nations receiving U.S. funds, training, equipment, or other kinds of support pursuant to Title 10 are not engaged in human rights violations? Is the Department of Defense concerned that any current recipients of funds, training, equipment, or other kinds of support pursuant to Title 10 is currently engaged in human rights violations or engaged in human rights violations in the last ten years.
8. What groups does the Administration determine to be targetable under the 2001 AUMF?
9. In how many countries are U.S. forces conducting operations authorized by the 2001 AUMF? How many unique adversarial groups are U.S. forces conducting operations against authorized by the 2001 AUMF? How many operations authorized by the 2001 AUMF are taking place in countries that your administration assesses to be vulnerable to coups or other violent internal dissent or crises?

I look forward to your prompt response.

Sincerely,



Rand Paul, M.D.
United States Senator