

Administration of Donald J. Trump, 2017

Statement on Signing the National Defense Authorization Act for Fiscal Year 2018

December 12, 2017

Today, I have signed into law H.R. 2810, the "National Defense Authorization Act for Fiscal Year 2018." This Act authorizes fiscal year 2018 appropriations for critical Department of Defense (DOD) national security programs, provides vital benefits for military personnel and their families, and includes authorities to facilitate ongoing military operations around the globe. I am very appreciative that the Congress has passed this bill to provide the DOD with the resources it needs to support our Armed Forces and keep America safe. I note, however, that the bill includes several provisions that raise constitutional concerns.

Several provisions of the bill, including sections 1046, 1664, 1680, and 1682, purport to restrict the President's authority to control the personnel and materiel the President believes is necessary or advisable for the successful conduct of military missions. Additionally, section 1601 provides that the Commander of Air Force Space Command, a military officer subordinate to the civilian leadership of the President as the Commander in Chief, the Secretary of Defense, and the Secretary of the Air Force, has "sole authority" over certain matters. While I share the objectives of the Congress with respect to maintaining the strength and security of the United States, my Administration will treat these provisions consistent with the President's authority as Commander in Chief.

Certain other provisions of the bill, including sections 350, 1011, 1041, 1202, and 1227, purport to require that the Congress receive advance notice before the President directs certain military actions. I reiterate the longstanding understanding of the executive branch that these types of provisions encompass only military actions for which such advance notice is feasible and consistent with the President's constitutional authority and duty as Commander in Chief to protect the national security of the United States.

Sections 1033 and 1035 restrict transfers of detainees held at the United States Naval Station, Guantanamo Bay. I fully intend to keep open that detention facility and to use it for detention operations. Consistent with the statement I issued in signing H.R. 244, I reiterate the longstanding position of the executive branch that, under certain circumstances, restrictions on the President's authority to transfer detainees would violate constitutional separation-of-powers principles, including the President's constitutional authority as Commander in Chief. Additionally, section 1035 could, in some circumstances, interfere with the ability of the United States to transfer a detainee who has been granted a writ of habeas corpus.

I also strongly object to section 1633, which threatens to undermine the effective operation of the Executive Office of the President by making full funding for the White House Communications Agency (WHCA) contingent upon the submission of a report on a national policy for cyberspace, cybersecurity, and cyberwarfare. I take cyber-related issues very seriously, as demonstrated by Executive Order 13800, which has initiated strategic actions across executive departments and agencies that will improve the Nation's cyber-related capabilities. Among other things, WHCA plays a critical role in providing secure communications to the President and his staff. The Congress should not hold hostage the President's ability to communicate in furtherance of the Nation's security and foreign policy. I

look forward to working with the Congress to address, as quickly as possible, this unprecedented and dangerous funding restriction.

Several provisions of the bill, including sections 1069, 1231, 1232, 1239, 1239A, 1258, 1259, 1263, 1271, 1279A, and 1607, could potentially dictate the position of the United States in external military and foreign affairs and, in certain instances, direct the conduct of international diplomacy. My Administration will treat these provisions consistent with the President's exclusive constitutional authorities as Commander in Chief and as the sole representative of the Nation in foreign affairs to determine the terms on which recognition is given to foreign sovereigns and conduct the Nation's diplomacy.

Section 1244(b) purports to limit certain expenditures unless, under section 1244(c), the President submits to the Congress a plan to impose sanctions—including asset blocking, exclusion from the United States, and procurement bans—on certain persons for failing to comply with the Intermediate-Range Nuclear Forces (INF) Treaty. My Administration will apply these provisions consistent with the President's constitutional authority to conduct foreign relations, including the President's authority under Article II, section 3 of the Constitution to "receive Ambassadors and other public Ministers." Section 1245 purports to direct the United States Government to consider the RS-26 ballistic missile to be a breach of the INF Treaty "for purposes of all policies and decisions," if the President, with the concurrence of certain other executive branch officials, were to make certain legal and factual determinations. My Administration will apply this provision consistent with the President's constitutional authority to identify breaches of international agreements by counterparties.

Section 910 purports to elevate the current Deputy Chief Management Officer of the DOD to the position of Chief Management Officer, which would result in an expansion of duties, along with an increase in both responsibility and pay. While my Administration supports the policy of section 910, the provision raises constitutional concerns related to the President's appointment authority. My Administration will devise a plan to treat this provision in a manner that mitigates the constitutional concerns, while adhering closely to the intent of the Congress.

Section 1097 purports to reauthorize the Office of Special Counsel, including by continuing the existing tenure protections for the Special Counsel. The Special Counsel is a principal officer of the United States who performs executive functions, and has both broad authority and long tenure insulated from the President's removal authority. I reiterate the longstanding position of the executive branch that such insulation of a principal officer like the Special Counsel raises serious constitutional concerns.

Section 1653 purports to require the Nuclear Weapons Council to make an assessment and provide a report to the congressional defense committees in response to legislative activity by a single house of Congress. To direct the Council's operations in this manner, the Congress must act in accord with the requirements of bicameralism and presentment prescribed in Article I, section 7 of the Constitution. Accordingly, my Administration will treat section 1653 as non-binding, and I will instruct the Council to take action in response to this provision only as an exercise of inter-branch comity—i.e., only insofar as such action would be practicable and consistent with the Council's existing legal responsibilities.

Several provisions of the bill, including sections 737, 1097, 1244, 1631, 1632, and 1669, as well as language in the classified annex to the joint explanatory statement of the committee of conference, purport to mandate or regulate the submission to the Congress of information—such as deliberative process and national security information—protected by executive privilege. My Administration will treat these provisions consistent with the President's

constitutional authority to withhold information, the disclosure of which could impair foreign relations, national security, the deliberative processes of the executive branch, or the performance of the President's constitutional duties. Additionally, I note that conditions in the classified annex to the joint explanatory statement of the committee of conference are not part of the text of the bill and do not carry the force of law.

Several provisions of the bill, including sections 513, 572, 807, 1648, 1676, 1696, 2878, and 3117, purport to require executive branch officials under the President's supervision to recommend certain legislative measures to the Congress. My Administration will treat those provisions consistent with Article II, section 3 of the Constitution, which provides the President the discretion to recommend to the Congress only "such Measures as he shall judge necessary and expedient."

DONALD J. TRUMP

The White House,
December 12, 2017.

NOTE: H.R. 2810, approved December 12, was assigned Public Law No. 115–91.

Categories: Bill Signings and Vetoes : National Defense Authorization Act for Fiscal Year 2018, signing statement.

Subjects: Armed Forces, U.S. : Funding; Cuba : Guantanamo Bay, U.S. Naval Base :: Detention of alleged terrorists; Defense and national security : Cybersecurity :: Strengthening efforts; Defense and national security : Military readiness; Foreign policy, U.S. : Presidential authority and oversight; Legislation, enacted : National Defense Authorization Act for Fiscal Year 2018; Nuclear Weapons Council; Presidency, U.S. : Military, civilian control and oversight; Special Counsel, Office of; Terrorism : Transfer of detainees at Guantanamo Bay; White House Communications Agency.

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