

Administration of Donald J. Trump, 2018

Statement on Signing the John S. McCain National Defense Authorization Act for Fiscal Year 2019

August 13, 2018

Today, I have signed into law H.R. 5515, "an Act to authorize appropriations for fiscal year 2019 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes." This Act authorizes fiscal year 2019 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 applaud the Congress for passing 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 112, 147, 936, 1017, 1665, and 1689, purport to restrict the President's authority to control the personnel and materiel the President believes to be necessary or advisable for the successful conduct of military missions. While I share the objectives of the Congress with respect to maintaining the strength and security of the United States, my Administration will implement these provisions consistent with the President's authority as Commander in Chief.

Several other provisions of the bill, including sections 141, 147, 323, 1231, 1242, 1247, 1259, 1264, and 1290, purport to require that the Congress receive a certification or notification before the President directs certain military or diplomatic actions. I reiterate the longstanding understanding of the executive branch that these types of provisions encompass only actions for which such advance certification or notification is feasible and consistent with the President's exclusive constitutional authorities as Commander in Chief and as the sole representative of the Nation in foreign affairs.

Sections 1033 and 1035 purport to restrict transfers of detainees held at the United States Naval Station, Guantánamo Bay. I fully intend to keep open that detention facility and to use it, as necessary or appropriate, for detention operations. Consistent with the statement I issued in signing the National Defense Authorization Act last year, I reiterate the longstanding position of the executive branch that, under certain circumstances, restrictions on the President's authority to transfer detainees violates constitutional separation-of-powers principles, including the President's constitutional authority as Commander in Chief.

Several provisions of the bill, including sections 1207, 1241, 1257, and 1289, purport to dictate the position of the United States in external military and foreign affairs. 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, including the authorities to determine the terms upon which recognition is given to foreign sovereigns, to receive foreign representatives, and to conduct the Nation's diplomacy.

Other provisions of the bill present concerns under the Constitution's Appointments Clause and the separation of powers. First, section 739 would deepen existing violations of the Appointments Clause, the Incompatibility Clause, and the separation of powers contained

within the statute that established the Henry M. Jackson Foundation for the Advancement of Military Medicine. President Reagan signed that legislation on the understanding that these constitutional defects would be remedied (see Statement on Signing the Foundation for the Advancement of Military Medicine Act of 1983, 1 Pub. Papers 782, 782 (May 27, 1983)), but that has not happened. The Attorney General and the Secretary of Defense should confer about measures that would allow this Foundation to continue its important work in compliance with the Constitution.

Second, section 1051 purports to establish an advisory commission "in the executive branch" for the purpose of producing reports and recommendations on the national security uses of artificial intelligence and machine learning. Section 1051, however, empowers Members of Congress to appoint 12 of the commission's 15 commissioners. While I welcome the creation of this commission, these legislative branch appointees preclude it, under the separation of powers, from being located in the executive branch. My Administration accordingly will treat the commission as an independent entity, separate from the executive branch.

A number of provisions of the bill, including sections 595, 842, 1031, 1043, 1062, 1212, 1231, 1233, 1236, 1245, 1262, 1265, 1274, 1280, 1281, 1287, 1294, and 1761, purport to mandate or regulate the submission to the Congress or the publication of 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 national security, foreign relations, law enforcement, or the performance of the President's constitutional duties. Additionally, while I share the objective of section 1062 of providing the Congress accurate information, my Administration will interpret the reporting requirement in this provision as requiring only the submission of information that is reasonably available to DOD, not as requiring changes in underlying DOD processes for battle damage assessment and investigation.

A number of other provisions of the bill, including sections 218, 327, 335, 627, 1018, 1065, 1205, 1208, 1261, 1677, and 1793, 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,
August 13, 2018.

NOTE: H.R. 5515, approved August 13, was assigned Public Law No. 115–232.

Categories: Bill Signings and Vetoes: John S. McCain National Defense Authorization Act for Fiscal Year 2019, signing statement.

Subjects: Armed Forces, U.S. : Funding; Cuba : Guantanamo Bay, U.S. Naval Base :: Detention of alleged terrorists; Legislation, enacted: John S. McCain National Defense Authorization Act for Fiscal Year 2019; Presidency, U.S. : Constitutional role and powers.

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