

Statement on Signing the National Defense Authorization Act for Fiscal Year 2024
December 22, 2023

Today, I have signed into law H.R. 2670, the "National Defense Authorization Act (NDAA) for Fiscal Year 2024" (the "Act"). The Act authorizes fiscal year appropriations principally for the Department of Defense, Department of Energy national security programs, Department of State, and the Intelligence Community. The Act provides the critical authorities we need to build the military required to deter future conflicts, while supporting service members and their spouses and families who carry out that mission every day. I also thank the Congress for its extension of title VII of the Foreign Intelligence Surveillance Act. My Administration looks forward to working with the Congress on the reauthorization of this vital national security authority as soon as possible in the new year. While I am pleased to support the critical objectives of the NDAA, I note that certain provisions of the Act raise concerns.

Section 1033 of the Act continues to bar the use of funds appropriated to the Department of Defense to transfer Guantánamo Bay detainees to the custody or effective control of certain foreign countries. Section 1031 likewise would continue to prohibit the use of such funds to transfer Guantánamo Bay detainees into the United States. It is the longstanding position of the executive branch that these provisions unduly impair the ability of the executive branch to determine when and where to prosecute Guantánamo Bay detainees and where to send them upon release. In some circumstances, these provisions could make it difficult to comply with the final judgment of a court that has directed the release of a detainee on writ of habeas corpus, including by constraining the flexibility of the executive branch with respect to its engagement in delicate negotiations with foreign countries over the potential transfer of detainees.

I urge the Congress to eliminate these restrictions as soon as possible. Moreover, certain provisions of the Act raise constitutional concerns or questions of construction.

Certain provisions of the Act, including sections 856(c), 1221(a)(7), 1269, 1687, 7315, and 7351 would require the President and other officials to submit reports and plans to committees of the Congress that will, in the ordinary course, include highly sensitive classified information, including information that could reveal critical intelligence sources or military operational plans or could implicate executive branch confidentiality interests. The Constitution vests the President with the authority to prevent the disclosure of such highly sensitive information in order to discharge his responsibility to protect the national security. At the same time, congressional committees have legitimate needs to perform vital oversight and other legislative functions with respect to national security and military matters. Accordingly, it has been the common practice of the executive branch to comply with statutory reporting requirements in a way that satisfies congressional needs pursuant to the traditional accommodation practice and consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, as well as to preserve the confidentiality of internal executive branch deliberations, particularly those with respect to decisions bearing on the Nation's national security. I believe the Congress shares this understanding, and my Administration will presume that it is incorporated into statutory reporting requirements of the kind at issue in the Act.

A number of provisions of the Act may, in certain circumstances, interfere with the exercise of the President's constitutional authority to articulate the positions of the United States in international negotiations or fora including sections 825(c)(1), 1013(b), 1255(b)(2), 1256(c)(2), 1305, 1309(a), 1518(a), 5411(a), 5602(c), and 6406. I recognize that "[i]t is not for the President

alone to determine the whole content of the Nation's foreign policy" (*Zivotofsky v. Kerry*) and will make every effort to take action consistent with these provisions. Indeed, I do not necessarily oppose many of the objectives in these provisions. Nevertheless, I will not treat them as limiting the President's constitutional discretion to articulate the views of the United States before international organizations and with foreign governments.

Section 1555(a) of the Act requires recipients of certain Department of Defense (the "Department") advertising contracts to certify that they "[do] not place advertisements in news sources based on personal or institutional political preferences or biases, or determinations of misinformation." The Department will comply with this provision by requiring recipients of such contracts to certify that they will not place the Department's advertisements based on the enumerated grounds. But the Department must also comply with the First Amendment, which limits the Government in "leverag[ing] funding to regulate speech outside the contours of the [governmental] program itself" (*Agency for International Development v. Alliance for Open Society International, Inc.*). The Department of Defense will implement the certification required by section 1555(a) consistent with the First Amendment.

JOSEPH R. BIDEN JR.

The White House,
December 22, 2023.

NOTE: An original was not available for verification of the content of this statement.

Categories: Statements by the President : National Defense Authorization Act for Fiscal Year 2024, signing statement.

Subjects: Classified national security information; Constitutional roles and separation of powers; Defense contracting and procurement, improvement efforts; Guantanamo Bay, U.S. Naval Base in Cuba, detention of alleged terrorists; Intelligence gathering; Military families; National Defense Authorization Act for Fiscal Year 2024; U.S. diplomatic efforts, expansion; U.S. servicemembers, service and dedication.

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