



Lawmakers say Obama's calls to curb executive overreach by Trump is 'hypocrisy'

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In his final speech on his administration's national security strategy, President Barack Obama outlined a set of legal and policy guidelines to prevent the incoming President, Donald Trump, from abusing his executive authority in the ongoing war against terrorism.

The Tuesday speech to troops at MacDill Air Force Base in Tampa, Fla. was punctuated by a set of measures Obama says "should guide" the long-term fight against terrorism and provide "a potential check on unfettered executive power" in the next administration. The recommendations come one day after the White House released a [66-page report](#) on the legal frameworks used by the Obama administration to justify ongoing overseas military operations.

The White House report outlines the reasons the administration has imposed limits on the detention, interrogation, and prosecution of terror suspects. It sketches the framework the president uses to target individuals in conflict zones, as with drone strikes or covert operations. And it also justifies the ongoing U.S. support for proxy wars, like Saudi Arabia's involvement in Yemen, and counter-terrorism operations across the globe, from Iraq and Afghanistan, to Libya and Syria, by citing a 15 year-old document, the 2001 Authorization for Use of Military Force (AUMF).

"It is rank hypocrisy," Sen. John McCain said of Obama's guidelines for the incoming Trump administration. "He abused executive power more than any president in my lifetime."

Sen. Lindsey Graham (R-S.C.) argued that that Obama's guidelines for the Trump administration are "beyond ironic and beyond hypocritical." He continued that the Obama administration's policies on detaining terror suspects are "absurd" and the restrictions he has imposed on the military "have come back to bite them" in conflict zones like Syria.

During his time in office, President Obama ordered more extrajudicial killings than any other president, with drone strikes carried out by the CIA. The administration has taken steps to improve transparency in drone program, which it did not acknowledge until 2010, releasing the number of civilian drone casualties in July amounting to far fewer than independent analysts had recorded. Still, very little is known of the program.

Despite drawing down U.S. troop presence in Iraq and Afghanistan from a peak of over 180,000, the president expanded the number of countries where U.S. forces are deployed. In its most up-to-date memo to Congress, the White House acknowledged the United States is engaged in military operations in [at least 15 countries](#).

As Donald Trump prepares to take over as Commander in Chief, the Obama administration should be concerned about the legacy of executive overreach it has left behind, according to the vice president of the Cato Institute, Gene Healy.

"In the run-up to the 2012 election, Obama, according to some of his advisers, had privately worried about 'leaving a loaded weapon behind' for future presidents in the form of expanded executive powers," Healy said. "If he was worried then, he has to be even more worried now that Donald Trump, a man Obama has said is 'unfit to serve as president,' is going to inherit those powers."

Despite Obama's self-declared efforts to improve "transparency" in his final national security speech, it will do little to counteract the actual impact of expanding executive powers, according to Healy. These expansions, he argues, "create de facto 'precedents,'" that can be built on by the next president. "And thanks to Obama's innovations in presidential war-making...Donald Trump will be able to get away with a lot."

Even though Obama has taken liberties in interpreting his authorities to conduct war under the 2001 AUMF, the responsibility still lies with Congress to check potential presidential overreach. The 2001 AUMF was passed overwhelming by Congress to give President George W. Bush the authority to wage war against al-Qaeda and anyone who aided in the 9/11 terror attacks. In the fifteen years since its passage, the Bush and Obama administrations used the authority in that act 37 times in 14 nations, in wars against a host of terrorist entities, many of whom didn't exist in 2001, including ISIS, al-Shabaab, Boko Haram, and al-Nusra.

Rep. Jim Himes (D-Conn.) introduced legislation on Monday to curb the expanding executive authority he saw under the Obama administration, and return the power to authorize war to the Congress.

"This president has stretched the 2001 AUMF in ways that are pretty uncomfortable," Himes told Sinclair Broadcast Group. "But Congress has been more than happy to let that authority [to declare war] go away."

Himes's bill would strengthen the 1973 War Powers Act, a piece of legislation passed in the aftermath of the Vietnam War reaffirming Congress's sole authority to declare war, except in the case of a national emergency. It would also repeal all existing AUMF's, which he argues have become a pretense for "perpetual pseudo-war."

The timing of the legislation is intended to coincide with President-elect Trump taking office. Himes worries that Trump is entering the White House with "zero foreign policy experience." Given the president-elect's penchant for "spontaneous behavior," the congressman said, "I worry I could wake up and discover that the country is in hostilities somewhere."

Hillary Clinton's running mate and Virginia Senator Tim Kaine has also been pressing Congress to "do its job" and pass a new war resolution since 2014. Last week, after learning of the first U.S. military casualty in Syria, Kaine took to the floor of the Senate to demand Congress debate the use of force against non-state entities.

In Feb. 2015, President Obama sent a draft AUMF to Capitol Hill requesting the authority to wage war against the Islamic State in Iraq and Syria. The White House proposal was debated in

committee, but was never brought to the floor for a vote. Some Republicans saw the proposal as too weak, because it forbid U.S. armed forces from engaging in "enduring offensive ground combat operations" and put a three-year time limit on the authorization. A number of Democrats argued the president's proposal didn't go far enough, because it didn't repeal the 2001 AUMF, which they see as an authorization for perpetual war.

When Obama sent the proposal to Congress, Sen. Graham rejected it out of concern that it would tie the hands of the next president. He introduced his own war authorization that did not impose geographic or time limits on the president's deployment of the armed forces.

"I can't believe the Commander in Chief wanted to limit himself in terms of how to fight and defeat radical Islam," Graham said Wednesday, reflecting on Obama's proposal. "If I were President Trump, I would reach out to the Congress and urge us to do a new authorization," he said, adding it would be one in line with his proposal that would not put unnecessary restrictions on the military.

In his Tuesday speech, Obama did emphasize the fact that he sent Congress a war authorization to combat ISIS, but said they refused to act. "Democracies should not operate in a state of permanently authorized war," the president stressed.

According to Louis Fisher, Obama's words mean little when they are measured against his actions in office. Fisher is currently a resident scholar with the Constitution Project and formerly worked as a specialist in the separation of powers at the Library of Congress.

In the past, Obama has pledged to uphold the rule of law, but has failed on numerous occasions, leading to spiraling foreign policy consequences, Fisher argued. Obama violated the law requiring him to give Congress 30-days notice before releasing detainees from Guantanamo when he released five Taliban fighters in exchange for a U.S. Army soldier, Bowe Bergdahl, who was being held captive by the Taliban, he said.

When Obama emphasized in his speech that "military action is most successful when it authorized and supported by the Legislative branch," the president again did not meet his own proclamations.

"He ignored that principle when he used military force against Libya in 2011, preferring to ignore Congress and go to the UN Security Council for support," Fisher said, adding that as a result of executive actions, U.S. military action helped Libya and Yemen become magnets for terrorists and insurgencies.

In the aftermath of Richard Nixon's impeachment, historian and political scientist Arthur Schlesinger wrote the now-famous treatise, The Imperial Presidency. In it he warned that "the imperial Presidency received its decisive impetus... from the capture of the Presidency of the most vital of national decisions, the decision to go to war." The growth of the imperial presidency, he said, was as much a matter of "congressional abdication" as it was "presidential usurpation."

The temptation to expand presidential authority, especially in foreign affairs, was too much even for a constitutional law professor. Those authorities abdicated by Congress and the precedents

for presidential power set by the Obama administration will now be turned over to the incoming Commander in Chief, Donald Trump.