

# Defense Department needs to start following the law



This week, Demand Progress, the Brennan Center for Justice, the Project On Government Oversight and 39 other civil society organizations sent [President Biden](#) a [letter](#) protesting his signing statement for the [National Defense Authorization Act for Fiscal Year 2022](#). Biden's statement indicated that the Department of Defense (DOD) would not comply with certain parts of the law requiring it to submit reports to Congress. Repeating an excuse often used to frustrate oversight of the military, [Biden said](#) that compliance with the law "could reveal critical intelligence sources or military operational plans," threatening national security.

Biden is wrong about his ability to withhold national security information from Congress, as the letter of protest notes. But Biden's statement raises another issue that receives too little attention: DOD's disturbing pattern of

violating reporting obligations. Noncompliance with reporting requirements is a problem under any circumstance, but it's particularly alarming when the noncompliant agency is in such dire need of oversight.

Take the 2001 Authorization for Use of Military Force — the president's standing authority for prosecuting the war on terror. Congress regularly demands information on how the authority is interpreted and implemented by the military. But compliance is spotty or nonexistent, leaving lawmakers to find out about the scope of American hostilities only when [misfortune strikes](#). Indeed, the [president and DOD](#) have yet to produce a single update under a [2019 law](#) that requires biannual reporting on the use of the 2001 Authorization.

Congress also requires DOD to submit information on civilian casualties. Suspicious of potential undercounts, Congress passed a [law](#) four years ago mandating that DOD overhaul its procedures for receiving and reviewing allegations of civilian harm. No overhaul has taken place. Adding insult to injury, DOD will not tell Congress what assistance it needs to complete the overhaul — never mind that Congress enacted a [separate law](#) in 2021 requesting that information.

Then there's the [national emergency](#) declared by President Bush after 9/11 and still in place today. The declaration unlocked emergency powers that DOD relies on to bolster its military capacity and spending. The National Emergencies Act [requires](#) the president, who has [delegated the task](#) to DOD, to submit biannual reports on the costs of using these emergency powers. Twenty years into the national emergency, there should have been 40 such reports. There are [zero](#).

These repeated failures to produce reports to Congress can't be chalked up to the president's need to protect sensitive information. The president has

no authority to withhold information that Congress must have to perform its own constitutional role. When it comes to military oversight, that role is substantial: It is Congress — not the president — that has the constitutional power to raise and maintain the military and to declare war.

Moreover, the Constitution imposes on Congress unique oversight responsibilities — and associated prerogatives — with respect to the military. Because of the risk the military can pose to democracy and good governance, the Founders had the [keen sense](#) to limit army appropriations to two years, ensuring regular review and reconsideration of military activity. No other appropriations power was so limited.

The need for robust Congressional oversight is as acute now as it has ever been. The 2001 AUMF and 9/11 national emergency were enacted to confront the threat posed by al-Qaeda. Two decades later, they have been stretched to support operations far afield from that original purpose. Many of these operations take place in secret, without public debate or express congressional authorization. This opens the door to abuse.

And there has been abuse — not just in the scope of military operations, which [span Africa and Asia](#), but also in the conduct of those operations. As recent reporting has revealed, the military has [bombed](#) critical civilian infrastructure, [prevented](#) the collection of evidence on civilian harm, and [ignored concerns](#) about reckless airstrikes from officers in the field. Last month, 50 Democratic lawmakers [urged](#) DOD to “end this pattern” and “emphasize[] the rule of law.” That necessarily entails abiding by reporting requirements, instead of forcing lawmakers to learn about military misconduct from investigative journalists.

- [Pentagon unveils strategy to promote competition in defense industry](#)

- [The Hill's Morning Report - Russia-Ukraine waiting game](#)

Shortly after taking office, Biden [acknowledged](#) that revitalizing our national security institutions would “require[] a recommitment to the highest standards of transparency.” He also promised to “work closely and cooperatively with the Congress” to improve the accountability of those institutions. Biden’s signing statement, which greenlights the DOD’s noncompliance with congressional reporting requirements, does not reflect these commitments.

Biden must honor Congress’s constitutional role, and Congress must insist upon its constitutional right to information to oversee the military. Should this administration continue to enable DOD’s lack of accountability, Congress should rethink whether this agency deserves, and can be trusted with, broad operational authorities and a budget of [\\$778 billion](#).

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