

BACKGROUND

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10 Objectives for the FY 2016 National Defense Authorization Act

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Abstract

The National Defense Authorization Act (NDAA) is a central piece of legislation for Congress each year. The NDAA is one of the last remaining bills that enjoys true bipartisan consensus, in part because Congress understands the critical need to set defense policies and guidelines for national security. The FY 2016 NDAA will continue in this tradition. The NDAA does, however, face a range of problems. A team of Heritage Foundation national security experts have compiled a set of 10 objectives—addressing issues from military morale to missile defense to Taiwan and China—that Congress should support.

The National Defense Authorization Act (NDAA) is a central piece of legislation for Congress each year. Not only has the NDAA been passed 53 years in a row, it is one of the last remaining bills that enjoys true bipartisan consensus. The annual legislation has been able to rise above the political fray in part because Congress understands the critical need to set defense policies and guidelines for national security. The fiscal year (FY) 2016 National Defense Authorization Act will continue in this tradition. The NDAA does, however, face a range of problems. A team of Heritage Foundation national security experts have compiled a set of 10 objectives that Congress should support in the new NDAA.

1. NDAA Must Focus on National Security

Congress considers the NDAA a must-pass bill. While this is generally good for national security policy, it also makes the bill a target for congressional pork or pet projects. This was the case with last year's NDAA, which included the "Title 30—National

KEY POINTS

- The National Defense Authorization Act (NDAA) is a central piece of legislation for Congress each year. It is one of the last remaining bills that enjoys true bipartisan consensus, in part because Congress understands the critical need to set defense policies and guidelines for national security.
- The FY 2016 NDAA will continue in this tradition; the NDAA does, however, face a range of problems, such as being diluted by non-defense policies and bogged down by an energy mandate.
- U.S. missile-defense readiness lags behind the growing missile threat, and the United States has pulled out too many troops from Europe.
- The world is perilous, especially with the rise of ISIS and other radical Islamist groups. The U.S. has the legal right to hold detainees who have lost their habeas corpus law suits, and the NDAA should continue to restrict the Obama Administration and provide guardrails on the release of Guantanamo detainees.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3002>

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Resources Related General Provisions,” a 451-page section, roughly 28 percent of the entire NDAA, that has nothing to do with defense or national security. Among many other non-defense-related policies, Title 30 created a “commission to study the potential creation of a National Women’s History Museum,” four new national parks, and seven national-park studies. Continuing to include non-defense-related provisions in the NDAA undermines the intent of the bill—to pass bipartisan meaningful policies that will shape the nation’s security. If the NDAA continues to be diluted with non-defense policies it will eventually jeopardize authorization.

2. Sales of Defense Material to Taiwan

A long-standing U.S. policy goal has been to preserve peace and stability in the Taiwan Strait. Under the Taiwan Relations Act, it is the policy of the United States “to make available to Taiwan such defense articles and services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.” In the face of China’s ongoing comprehensive military modernization program, as well as Beijing’s growing assertiveness throughout the western Pacific littoral, the cross-strait balance has been steadily deteriorating in favor of the People’s Republic of China.

It is therefore imperative for the United States to accelerate the provision of arms to the Taiwanese military before the trend in favor of China becomes irreversible. To this end, Congress should make clear that it is prepared to push for the sale of additional defense items to Taiwan. In particular, Congress should:

- **Indicate its support for the sale to Taiwan of more modern F-16C/D** fighters as replacements for the obsolete F-5s, which have been retired from Taiwan’s inventory.
- **Call on the State Department** to complete the authorization for American companies to assist manufacturers in Taiwan in studying the requirements associated with manufacturing diesel-electric submarines.

3. Inviting Taiwan to RIMPAC

In 2014, the Administration invited the People’s Liberation Army (PLA) to participate in the biennial multinational Rim of the Pacific (RIMPAC) exercises. Normally, the United States only invites allies and close friends to join in these exercises, which include such sensitive activities as anti-submarine warfare and anti-air warfare training. By inviting the PLA, the United States potentially exposed not only its own military secrets, but those of key allies, such as Australia and Japan. That the Chinese dispatched an uninvited intelligence-gathering vessel (that is, a spy ship) to monitor the exercises, in addition to the Chinese warships that were actively participating, underscores Beijing’s basic adversarial view of the proceedings.

At the same time, the Taiwanese navy is not invited to participate in RIMPAC—despite the American commitment to helping defend the island. Taiwan’s isolation from other militaries, especially that of the United States, jeopardizes the smooth interoperability essential to any successful defense of the island. Moreover, it also limits the ability of Taiwan’s military to improve its operations by training with foreign militaries. Congress should make clear, at a minimum, that any invitation to the PLA to participate in future RIMPAC exercises will be matched by an invitation to Taiwan to send forces to participate as well. Given the prohibitions and limitations imposed on Department of Defense (DOD) cooperation with the PLA in the FY 2000 NDAA, however, Congress should also investigate whether DOD’s invitation of the PLA to participate in RIMPAC is in violation, and, if so, prohibit China’s participation in the 2016 RIMPAC entirely.

4. Removing the Energy Mandate

The FY 2010 NDAA mandated that 25 percent of DOD energy use be generated by renewable sources by 2025. To enact this mandate, DOD has committed to developing three gigawatts of renewable energy on Army, Navy, and Air Force installations.¹ The services have worked toward this goal by focusing on domestic installations. They have implemented renewable energy installations, such as solar photovoltaic energy

1. The White House, “Fact Sheet: Obama Administration Announces Additional Steps to Increase Energy Security,” April 11, 2012, <http://www.whitehouse.gov/the-press-office/2012/04/11/fact-sheet-obama-administration-announces-additional-steps-increase-ener> (accessed February 4, 2015).

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systems, across more than 31 states.² This mandate does not consider warfighting capabilities or the costs it will impose on the services to implement these systems.³ Furthermore, the 25 percent mandate provides little flexibility for DOD to manage energy costs, especially given the decreasing price in oil.

The DOD energy strategy's stated mission is to "promote the energy security of military operations through guidance for and oversight of Departmental activities and investments."⁴ Yet it is often unclear how DOD is achieving this mission. Often, the goal appears to be inducing investment in politically desired actions, such as reducing carbon dioxide emissions. The primary role of the military is to provide for the common defense, not to effect social or economic change.

For example, one of the DOD energy strategy's principles is to "reduce the demand for energy in military operations."⁵ Yet initiatives like the Navy's investment in biofuels do nothing to accomplish this reduction of demand.⁶ While this alternative fuel source is much costlier than conventional oil, it is neither more readily available across the globe nor is it more fuel efficient. This policy therefore imposes excessive costs on the service while failing to enhance any naval capability.

The Army's experimentation with flexible solar panels on fatigues and rucksacks meets such goals better.⁷ As soldiers rely increasingly on energy-intensive communications systems, they must carry more batteries. Solar technologies may therefore lighten the warfighter's load and reduce reliance on diesel generators to recharge batteries.

2. Solar Energies Industries Association, "Enlisting the Sun: Powering the U.S. Military with Solar Energy 2013," May 17, 2013, <http://www.seia.org/research-resources/enlisting-sun-powering-us-military-solar-energy-2013> (accessed March 5, 2015).
3. U.S. Department of Defense, Office of the Assistant Secretary of Defense for Operational Energy Plans and Programs, "Energy for the Warfighter: Operational Energy Strategy," May 2011, http://energy.defense.gov/Portals/25/Documents/Reports/20110614_Operational_Energy_Strategy.pdf (accessed January 23, 2015).
4. Ibid.
5. Ibid. For more on this, see Brian Slattery and Michaela Dodge, "Biofuel Blunder: Navy Should Prioritize Fleet Modernization over Political Initiatives," Heritage Foundation *Issue Brief* No. 4054, September 24, 2013, <http://www.heritage.org/research/reports/2013/09/navy-s-green-fleet-a-biofuel-blunder>.
6. Slattery and Dodge, "Biofuel Blunder."
7. David Vergun, "New Technology to Reduce Soldier's Load," U.S. Army, November 12, 2014, http://www.army.mil/article/138122/New_technology_to_reduce_soldier_s_load/ (accessed January 23, 2015).

DOD energy strategy should reflect warfighters' needs and remove inappropriate initiatives, which impose unnecessary costs on its strained budget. Congress can facilitate this by repealing the 25 percent mandate and allowing the military to determine how to manage its energy enterprise in the most efficient and effective manner.

5. Treaties that Affect National Defense

The Arms Trade Treaty and the Mine Ban Treaty can have significant effects on national security. Congress has not ratified either of these treaties and should be wary of any implementation of them until they are ratified.

- **Arms Trade Treaty (ATT).** The U.S. has not ratified the ATT, and a bipartisan majority of the Senate opposes its ratification on the grounds that it is vague, is easily politicized, and could hinder the U.S. in fulfilling its commitments to provide arms to key allies. Many other leading arms exporters and importers oppose the ATT as well, but despite its own assertion that any ATT that did not include all U.N. members would be “less than useless,” the Obama Administration signed the ATT in 2013. Congress should be sure to reiterate its previous rejections of the ATT—including any U.S. financial support for the establishment of a secretariat, which is called for by the treaty.
- **Mine Ban Treaty (Ottawa Convention).** The U.S. has not ratified the Mine Ban Treaty—the treaty has never even been submitted to the Senate. U.S. anti-personnel landmines meet or exceed all relevant international standards, and the U.S. employs such landmines responsibly. Studies by NATO and other organizations confirm their military utility, and in 2014, the Chairman of the Joint Chiefs of Staff stated that anti-personnel landmines remain “an important tool in the arsenal of the armed forces of the United States.” But in late 2014, the Obama Administration banned their use outside the Korean peninsula. Congress should prohibit the destruction of U.S. anti-personnel landmine stockpiles before the Department of Defense completes and publishes a comprehensive study on the tactical and operational effects of a ban as well as on the current state of research into operational

alternatives to anti-personnel landmines, and before Congress certifies that the replacement of anti-personnel landmines by such alternatives will not endanger U.S. or allied forces or pose any operational challenges.

6. Nuclear Weapons and Missile Defense Policy

U.S. nuclear weapons and missile defense capabilities remain essential in the face of growing ballistic missile threats and other nations' nuclear weapon capabilities. A modern, flexible, and capable nuclear weapons posture is essential to keeping the U.S. safe, allies assured, and enemies deterred.

In order to improve the U.S. strategic posture, Congress and the Pentagon should:

- **Oppose misguided arms reductions.** Congress should not provide funding for implementation of agreements that put the U.S. at a disadvantage and that do not benefit U.S. national security—such as the New Strategic Arms Reduction Treaty, which does not provide predictability in U.S.–Russian relations, and the Intermediate Range Nuclear Forces Treaty, which Russia is violating. Congress should not provide funding for unilateral nuclear weapons reduction efforts while all other nuclear players are modernizing and expanding their arsenals.
- **Modernize U.S. nuclear weapons.** U.S. nuclear weapons and delivery systems are aging and investments in them are overdue. If not modernized, the U.S. will soon have inadequate nuclear weapons infrastructure and inadequate nuclear delivery platforms. Further delays increase the overall costs of the programs and leave the U.S. less capable of responding to unexpected developments in the nuclear programs of other nations. Congress must provide the 10 percent increase in additional funding requested by then-Secretary of Defense Chuck Hagel to address issues plaguing the nuclear enterprise.
- **Consider the benefits of yield-producing experiments for the U.S. nuclear weapons program.** Conducting very-small-scale, yield-producing experiments would benefit the science that underpins the program, and the U.S. could gain important benefits; indeed,

China and Russia are already conducting such experiments.⁸

- **Advance a “protect and defend” strategic posture.** At the core of today’s more dangerous world is a fundamental asymmetry between the values of the U.S. and the values of its adversaries. While the U.S. values the lives of its citizens, economic prosperity, and institutions, U.S. adversaries value leadership survival above all. The U.S. should develop precise means to credibly threaten that which its adversaries value, and deploy both passive and active defenses to remove the benefits that adversaries might gain by attacking the U.S. or its allies.
- **Re-evaluate U.S. strategic nuclear posture.** The Pentagon currently bases its nuclear posture on the notion that “Russia and the United States are no longer adversaries, and prospects for military confrontation have declined dramatically.”⁹ In light of Russia’s demonstrated recklessness in Ukraine, this posture is no longer valid.
- **Continue to develop a layered, comprehensive missile defense system.** The system should be able to address various ranges of ballistic missiles in various threat scenarios. Currently, the U.S. continues to lag behind the ballistic missile threat. Space-based interceptors provide the best opportunity to accomplish these tasks at the best cost-per-interceptor ratio.
- **Deploy an X-band tracking radar to a European host nation that is a NATO member.** The U.S. has previously determined the Czech Republic to be the ideal country for tracking incoming ballistic missiles from Iran. The radar would improve the capability of U.S. homeland missile defense systems, and it would serve as a visible reminder of U.S. commitment to European security.

- **Encourage NATO allies to enhance their ballistic missile and air defense capabilities.** Allies can participate in the U.S. ballistic missile defense program in various ways, including making their ships (where applicable) compatible with the U.S. Aegis weapons system.

Nuclear weapons have played, and will continue to play, a significant role in deterring adversaries and assuring allies. Other countries are not only modernizing their arsenals, but also increasing the role that nuclear weapons play in their security strategies. The NDAA is a key tool for advancing a prudent U.S. nuclear posture. Similarly, Congress must ensure that the U.S. is ahead of the ballistic missile threat. A viable missile defense enterprise is the way to do so, as more than 30 nations around the world possess ballistic missiles that can strike the U.S., its allies, and forward-deployed troops within minutes. This leaves a very short time to react and protect what the U.S. values most: its population and economic centers.

7. The Value of U.S. Forces in Europe in Light of Russian Aggression

The U.S. military presence in Europe deters adversaries, strengthens allies, and protects U.S. interests. Whether deterring Russian aggression, preparing U.S. and allied troops for deployments to the Middle East, or responding to a humanitarian crisis in the region, forward-based military capabilities in Europe allow the U.S. to project power and react to unexpected events and developments more quickly and effectively. Reducing this capability would only make America and NATO weaker.

The commonly held belief that U.S. forces are stationed in Europe to protect European allies from a threat that no longer exists is wrong. Russia’s recent aggression against Ukraine and Moscow’s reckless behavior with its air and maritime incursions against NATO members is proof that the U.S. needs robust military capability in Europe if it is to properly live up to its NATO commitments. As a result

8. Michaela Dodge, “U.S. Nuclear Weapons Policy: After Ukraine, Time to Reassess Strategic Posture,” Heritage Foundation *Issue Brief* No. 4183, March 27, 2014, http://www.heritage.org/research/reports/2014/03/us-nuclear-weapons-policy-after-ukraine-time-to-reassess-strategic-posture#_ftn3.

9. *Ibid.*

of the Obama Administration's removal of 10,000 troops from Europe, the U.S. is largely dependent on rotational forces from outside Europe. Rotating one battalion of infantry is no substitute for the two armored brigade combat teams that were permanently based in Europe until 2013.

The common belief that U.S. forces are stationed in Europe to protect European allies from a threat that no longer exists is wrong.

Furthermore, forward-basing U.S. troops in Europe also allows the U.S. to respond quickly to security crises outside the European region. One of the most obvious benefits of having U.S. troops in Europe is its geographical proximity to some of the most dangerous and contested regions in the world. Europe has borders with Russia, the Arctic, Iran, Asia Minor, the Caspian Sea, and North Africa. Most of these areas have long histories of instability and a potential for future instability that could directly impact the security interests and economic well-being of the United States. Some of the most important energy security and trade corridors—such as the transit routes in the Caucasus, the Suez Canal, and the Strait of Gibraltar—are on the periphery of Europe and are located in some of the world's most dangerous and unstable regions.

Congress should:

- **Reward key U.S. allies with closer defense cooperation.** Instead of reducing the numbers of U.S. military bases in Europe, the U.S. should be looking at the potential for establishing new bases—especially on the periphery of Europe and with allies who have been committed to Euro-Atlantic security, especially the Baltic states.
- U.S. military bases in Europe provide American leaders with increased flexibility, resilience, and options in a dangerous world. As part of a policy that is shrinking America's military presence in the world, the Obama Administration's defense cuts heavily impact the U.S. military footprint in Europe. With Russia on the march in Ukraine, and the Baltic states feeling nervous, now is not the time for the U.S. to not live up to its NATO commitments.
- ### 8. Improving DOD's Cyber Capabilities
- The U.S. military has been one of the largest, if not the single largest, adopters of technologically advanced devices. From communications systems to weapons guidance systems, DOD has readily adopted new, powerful technologies that make the military more effective, efficient, and responsive. With the power and speed of these technologies have also come cyber vulnerabilities. Whether through Internet-based attacks or malicious cyber hardware, many modern military systems can be the target of cyber attacks, jeopardizing or seriously impairing military operations.
- Since the U.S. benefits greatly from modern systems, it must do more to secure those systems and prevent enemies from using cyber vulnerabilities against the U.S. Furthermore, the U.S. must leverage its strengths in cyber operations for offensive purposes where needed. To this end, Congress should use the NDAA to:
- **Put America's national security interests ahead of defense cuts.** Important decisions, such as those concerning the numbers of bases and troops in Europe, need to be made as part of a strategic review of U.S. interests in Europe, not from a desire to slash the defense budget to find savings.
 - **Show U.S. commitment to NATO and Euro-Atlantic security.** The U.S. troop presence in Europe is the most visible sign of U.S. support for NATO. At a time when Russia has shown the most aggression against NATO members in a generation, the Alliance needs American leadership and commitment.
 - **Encourage the private development of cyber-security supply chain ratings and accreditation.** While DOD is arguably the most reliable government protector of the cyber supply chain, more work remains to be done. Ratings should be based on a private-sector set of best practices such as that developed by the Open Group, to which DOD is a contributor. A specific way to encourage the adoption of this system would be to require government agencies that have security-related duties, such as DOD, to purchase technology only

from organizations that are accredited by this cyber supply chain ratings system.¹⁰

- **Continue to develop defensive and offensive cyber capabilities at U.S. Cyber Command and within the combatant commands and services.** Cybersecurity and operations are not merely Internet technology activities that the military can assign to a department to handle. Each part of the military has a need for defensive cyber capabilities, and many also have the need for offensive capabilities. At the same time, U.S. Cyber Command is critical for ensuring leadership and a centralized command for cyber operations. While Cyber Command set a goal of 133 operational cyber teams by the end of 2016, as of February 2014, only 17 were fully operational.¹¹ Congress should adequately fund and support the development, training, and deployment of those teams.
- **Reject cybersecurity cooperation with malicious nation-states.** Last year, the U.S. indicted five Chinese military officers for hacking U.S. companies. In response, China ceased its involvement with the U.S. in the bilateral cybersecurity working group that had been established just one year earlier.¹² The U.S. should not pursue this working group, as the Chinese have little interest in substantively changing their behavior in the absence of a serious deterrent. Given increasing Russian malicious behavior in cyberspace, the U.S. should also not continue its existing cyber working group with Russia.¹³ It is naive for the U.S. to cooperate on cybersecurity with nations

that are actively stealing military and economic secrets through cyber espionage and maliciously hacking U.S. systems.

Implementing these policies, together with expanding existing policies, such as cyber information sharing between the public and private sectors, will better prepare the Department of Defense to face serious cybersecurity challenges. From defending U.S. military networks to disrupting an enemy's, the U.S. military should continue to improve its cyber capabilities and policies.

9. Terrorist Detention Policies

Since 9/11, the United States has been engaged in an armed conflict against al-Qaeda, the Afghan Taliban, and associated forces. That war continues to this day. One of the flashpoints of controversy and debate over U.S. conduct in this war is the detainment of enemy combatants.¹⁴ Over the past decade, the United States and coalition partners have held over 75,000 detainees (security internees) in Iraq, over 25,000 detainees in Afghanistan, and 779 detainees in Guantanamo Bay, Cuba. Today, the United States holds only 122 detainees at Guantanamo. Despite the comparatively low number, public interest in the Guantanamo detainees is high because the principles involved are vital. Under the international law of armed conflict, and as recognized by the U.S. Supreme Court and authorized by Congress, the United States has the legal authority to detain enemies who have engaged in combatant actions, including acts of belligerence, until the end of hostilities.¹⁵ The U.S. detains captured enemy

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10. David Inserra and Steven P. Bucci, "Cyber Supply Chain Security: A Crucial Step Toward U.S. Security, Prosperity, and Freedom in Cyberspace," Heritage Foundation *Backgrounders* No. 2880, March 6, 2014, <http://www.heritage.org/research/reports/2014/03/cyber-supply-chain-security-a-crucial-step-toward-us-security-prosperity-and-freedom-in-cyberspace>.
 11. Gayle Putrich, "Defense Budget Zeroes in on Cyber Spending," FCW, March 4, 2014, <http://fcw.com/articles/2014/03/04/budget-defense.aspx> (accessed January 14, 2015).
 12. Ting Shi and Michael Riley, "China Halts Cybersecurity Cooperation After U.S. Spying Charges," Bloomberg, May 20, 2014, <http://www.bloomberg.com/news/2014-05-20/china-suspends-cybersecurity-cooperation-with-u-s-after-charges.html> (accessed January 14, 2015).
 13. News release, "FACT SHEET: U.S.-Russian Cooperation on Information and Communications Technology Security," The White House, June 17, 2013, <http://www.whitehouse.gov/the-press-office/2013/06/17/fact-sheet-us-russian-cooperation-information-and-communications-technol> (accessed January 14, 2015).
 14. The Heritage Foundation, "Detention of the Enemy During Wartime," <http://www.heritage.org/research/projects/enemy-detention/detention-of-the-enemy>.
 15. Charles Stimson, "Law of Armed Conflict and the Use of Military Force," testimony before Armed Services Committee, U.S. Senate, May 16, 2013, <http://www.heritage.org/research/testimony/2013/05/the-law-of-armed-conflict>.
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fighters, not as punishment, but to keep them from returning to the battlefield. Detaining select enemy combatants during wartime, under safe, secure, and humane conditions, is vital for this war and any future armed conflict.¹⁶

The world continues to be a dangerous place, especially with the rise of ISIS and other radical Islamist non-state actors. The Administration has the legal authority to hold those detainees who have lost their habeas corpus lawsuits before the court, and should continue to do so. The NDAA should continue to place commonsense restrictions on the Obama Administration and provide guardrails on the transfer of Guantanamo detainees. Congress should:

- **Continue to require 30 days' notice to Congress** before a detainee is transferred from Guantanamo.
- **Continue to prohibit the use of appropriated funds to construct or modify any facility** in the United States, its territories, or possessions to house any Guantanamo detainee in the custody or control of the Department of Defense.
- **Continue to prohibit the use of appropriated funds to transfer Guantanamo detainees** to the United States for any purpose.

10. Military Sexual Assault

Sexual assault occurs in civilian life as well as in the military. These assaults often have lifelong consequences for the victims. In the military, sexual assault has the additional insidious element of being detrimental to morale, destroying unit cohesion, disrespecting the chain of command, and damaging the military as a whole. The best policies to thwart sexual assault in the military combine education to prevent assaults in the first place, hold defendants accountable in a fair system of justice, are sensitive

to and fair to all victims, and are crafted to the unique nature of the military.

The military exists to defend the nation. That is its mission. As detailed in Heritage's *Special Report*, "Sexual Assault in the Military: Understanding the Problem and How to Fix It,"¹⁷ the military justice system is a well-developed, unique, and integrated criminal justice system. It is structured so that those in charge, commanding officers, can carry out the orders of their civilian leaders. Ultimately, the military is structured to fight and win wars.

To accomplish the mission, military leaders must ensure that those who serve are combat ready, and, once ordered into armed conflict, combat effective. Maintaining good order and discipline in the armed forces is essential to accomplishing the mission.

The military justice system is integral to the military's mission of defending the nation.

Signed into law by President Barack Obama in December 2013, the 2014 NDAA contained reforms aimed at preventing and reducing sexual assault in the military. While prudent and comprehensive, these reforms to the military justice system will take months or years to bear fruit.¹⁸ Still, considered in their totality, these 38 key reforms represent the most comprehensive rewriting of the military justice system in decades.

Additionally, Congress required the formation of a panel of experts to review and assess the systems used to investigate, prosecute, and adjudicate adult sexual assault crimes in the military. The Response Systems to Adult Sexual Assault Crimes Panel, established by the Secretary of Defense, published its findings in June 2014.¹⁹ The panel's 125 recommendations are consistent with many of those

16. Charles D. Stimson, "The National Defense Authorization Act and Military Detention of U.S. Citizens," Heritage Foundation *WebMemo* No. 3497, February 10, 2012, <http://www.heritage.org/research/reports/2012/02/facts-about-the-national-defense-authorization-act-and-military-detention-of-us-citizens>.

17. Charles D. Stimson, "Sexual Assault in the Military: Understanding the Problem and How to Fix It," Heritage Foundation *Special Report* No. 149, November 6, 2013, <http://www.heritage.org/research/reports/2013/11/sexual-assault-in-the-military-understanding-the-problem-and-how-to-fix-it>.

18. Charles D. Stimson, "Military Sexual Assault Reform: Real Change Takes Time," Heritage Foundation *Backgrounder* No. 2888, March 6, 2014, <http://www.heritage.org/research/reports/2014/03/military-sexual-assault-reform-real-change-takes-time>.

19. "Report of the Response Systems to Adult Sexual Assault Crimes Panel," June 2014, <http://responsesystemspanel.whs.mil/> (accessed March 5, 2015).

included in Heritage's *Special Report*. Key among the panel's recommendations was keeping the power to convene courts martial with commanding officers, a key aspect of the Heritage report.

In June 2014, the Secretary of Defense established the Judicial Proceedings Panel (JPP) in accordance with section 576(a)(2) of the FY 2013 NDAA. An independent federal advisory committee comprised of five civilian members, the JPP is tasked with "conducting an independent review and assessment of military judicial proceedings for sexual assault offenses ... and developing recommendations to Congress."²⁰ The JPP submitted its initial report on February 4, 2015,²¹ and will continue to hold hearings and file reports annually for each fiscal year through September 2017.

Given the massive changes to the military justice system with respect to sexual assault, the findings of Heritage's *Special Report*, the panel's report, and the initial report of the JPP, Congress should not make any further changes to how the military justice system handles sexual assault cases at this time.

The NDAA should retain the ability of commanders to refer cases of sexual assault, and all other crimes, to a court martial.²²

Additionally, as The Heritage Foundation *Special Report* details, Congress should:

- **Require the judge advocates general** in the Army, Air Force, and Marine Corps to establish career litigation tracks for uniformed military prosecutors and defense counsel in order to better serve the needs of victims and defendants alike.²³ Establishing career prosecutors and defense counsel is in line with best practices in the civilian criminal justice system, and will allow the military's system of justice to perform better.
- **Refrain from any additional changes to the military justice system** until all expert review panels report their final recommendations, and the newest reforms have been in place at least two years.

Conclusion

Each year the NDAA aims to improve American national security while providing oversight to the largest bureaucracy in the U.S. government. Considering the 10 objectives detailed here would help Congress do just that.

20. Judicial Proceedings Panel on Sexual Assault in the Military, January 8, 2014, http://jpp.whs.mil/Public/docs/09-News_Media/Press_Release/JPP_PR_20150116_01.pdf (accessed March 6, 2015).

21. Judicial Proceedings Panel, "Initial Report," February 2015, http://jpp.whs.mil/Public/docs/08-Panel_Reports/JPP_InitialReport_Final_20150204.pdf (accessed March 5, 2015).

22. Steven P. Bucci and Charles Stimson, "Changing the Military Justice System: Proceed with Caution," Heritage Foundation *Background* No. 2795, May 9, 2013, <http://www.heritage.org/research/reports/2013/05/changing-the-military-justice-system-proceed-with-caution>.

23. Charles Stimson, "JAG Corps and Reforming the Military Justice System," Heritage Foundation *Issue Brief* No. 3955, June 3, 2013, <http://www.heritage.org/research/reports/2013/06/jag-corps-and-reforming-the-military-justice-system>.