

Congress of the United States
Washington, DC 20515

March 14, 2022

The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Austin:

We write first to express our appreciation for your recent commitments to address civilian harm caused by U.S. counterterrorism operations delineated in your 27 January Department of Defense memorandum. The care you have taken to speak to the defense community about this issue as a priority is laudable. We also believe that there are many ways in which the Pentagon can improve. As such, we request that you brief Congress on your progress on repairing systemic flaws related to civilian harm.

Civilian deaths, injuries, and other harm caused by US military operations risks our legitimacy overseas, has been shown to fuel the very extremism we're fighting, gives other governments an excuse to overlook harm, and does not align with our American values. We are optimistic that your recent commitments will lead to change. At the same time, while improvements have been made, the Pentagon must look at new ways to address the issue, including increased interagency input. This letter reflects our expectations in writing for the level of ambition we believe is needed at the Department of Defense to prevent and address US-caused civilian harm.

After the *New York Times* brought to light substantial flaws in the US military's procedures to prevent, investigate, and respond to civilian deaths in Iraq, Afghanistan, and Syria, you directed the Department to provide a plan to address civilian harm within 90 days and created a Center of Excellence for civilian protection. Your proposed efforts could be critically important to minimizing further harm if prioritized and properly implemented.

We request that the following issues be addressed in the forthcoming Department of Defense Instruction, Center of Excellence, or the Civilian Harm Mitigation and Response Action Plan (CHMRAP) being prepared by your team:

- ***Resources and staffing.*** Despite OSD's designation of the Deputy Undersecretary of Defense for Policy as the official responsible for civilian harm mitigation – which was only made at Congress' directive – there is still no leader within DoD working solely on this issue. Furthermore, there are fewer than a handful of individuals working at all on civilian harm issues. We request that the Department bring on, at sufficiently senior levels, staff and data experts solely devoted to civilian harm mitigation policies, including analyzing trends, compiling and dispersing lessons learned, and reviewing investigations.
- ***Targeting procedures.*** DoD-commissioned studies have found civilians misidentified as legitimate targets. US strikes have all too often missed the presence of civilian bystanders. We believe it is crucial to examine targeting processes to ensure tactical and operational improvements comply with the Law of Armed Conflict principles of distinction and proportionality.

- ***Tracking and analysis.*** Over twenty years of military operations, US officials have not analyzed casualty assessments in aggregate to discern patterns of the failed intelligence, decision-making, and execution. When the *New York Times* recently undertook this analysis, they found that many allegations of civilian casualties had been summarily dismissed. In doing so, they cast significant doubt on DoD's official numbers of civilian casualties. Without understanding how many civilians were killed or injured, and assessing the rate over time, the United States cannot understand the impact of its operations nor can the US military improve its targeting procedures. We request that the Department implement a standardized civilian harm reporting process that enables the Department to track and analyze civilian harm in the future.
- ***Investigations.*** The US must ensure full, independent, and transparent assessment and investigations of all credible reports of civilian harm, including past reports that may have been erroneously dismissed. Investigations should meet international standards for independence, thoroughness, and impartiality, and should evaluate conduct according to the applicable international human rights and international humanitarian law standards. Assessments and investigations should also proactively consult information from civil society and credible media sources, interview survivors and witnesses wherever possible, and visit the sites of attack where possible. We request information on new guidance that pertains to improved investigations into civilian casualty incidents.
- ***Amends.*** Congress has authorized ex gratia and condolence payments over many years. Despite these authorizations, it appears that the DOD has failed to offer amends, including ex gratia payments, in cases where DOD has confirmed civilian casualties. Current DOD policies do not offer clear guidance on providing such amends. We request a new comprehensive policy that addresses all civilian harm response options and incorporates dialogue with affected family members and public or private acknowledgement of harm.
- ***Lessons learned.*** The Department of Defense has made strides on understanding how civilian harm happened in the past. Yet, the Department has not institutionalized lessons learned. We request an update on how the Department plans to capture good practices and feed them back into operational planning and learning.
- ***Accountability.*** The US should provide meaningful accountability to civilian victims and survivors of U.S. operations by publicly and transparently acknowledging deaths and injuries, providing amends or redress, and appropriately holding civilian leaders and military commanders responsible for their actions, including by addressing findings of wrongdoing through disciplinary measures or prosecutions. These mechanisms need to be clearly established, properly resourced, and sustained over time.
- ***Center for Excellence.*** We request that the Center be empowered and operationalized as the central hub for many of the issues we've outlined here, especially since there is currently no full-time focal point for civilian harm issues at the Pentagon. The Center of Excellence, reporting directly to you or to the Deputy Secretary, should be resourced and staffed to convene an Interagency Task Force quarterly to assess progress on civilian harm mitigation, track civilian harm data, conduct civilian-harm assessments and investigations, issue amends, and engage actively with civil society.

We welcome your commitment to addressing US-caused civilian harm. It is imperative that the United States armed forces uphold the highest standards of conduct, including consistent standards for protecting the lives of civilians. We expect to be briefed following the

completion of your 90-day review.

Now comes the hard work of implementation. We stand ready to work with you to ensure the Department of Defense has the tools it needs to make civilian protection a priority.

Sincerely,



Ruben Gallego
Chair
Intelligence and Special
Operations Subcommittee



Jason Crow
Member of Congress



Sara Jacobs
Member of Congress



Tom Malinowski
Member of Congress



Rick Larsen
Member of Congress



Adam Smith
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House Armed Services Committee



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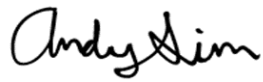
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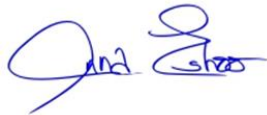
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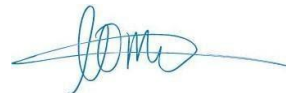
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André Carson
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Eleanor Holmes Norton
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