

COMMITTEE ON
ARMED SERVICES

United States Senate

WASHINGTON, DC 20510-4607

COMMITTEE ON
FOREIGN RELATIONS

COMMITTEE ON
THE BUDGET

COMMITTEE ON
HEALTH, EDUCATION, LABOR,
AND PENSIONS

May 23, 2018

The Honorable James Mattis
Secretary of Defense
U.S. Department of Defense
100 Defense Pentagon
Washington DC, 20301

Dear Secretary Mattis:

Following a recent classified briefing to members of the Senate Armed Services Committee and the Department of Defense's release of its investigative report into the October 4, 2017 attack in Niger that resulted in the death of four U.S. servicemembers, I am writing to request clarification on issues regarding train, advise, assist, and accompany missions that are intended to build the capacity of partner forces. For this reason I request a response to the following questions:

1. Please detail the limitations imposed on U.S. forces charged with a mission of "train, advise, assist, and accompany" to prevent them from engaging in direct combat with enemy forces, including while they are accompanying partner forces on missions that are not U.S.-led and directed. Given the risk of possible U.S. engagement against a partner's enemy forces and the need for self-defense, how are accompanying missions approved?
2. May U.S. forces accompany a partner force taking direct action against enemies not covered under a current congressional authorization for use of military force? Where does DOD derive the authority to accompany partner forces in Niger? In which other countries does DOD conduct accompany missions?
3. Please detail the mitigation measures in place at the time to prevent U.S. forces from engaging in direct combat for the U.S. military missions planned and executed in Niger on October 3-4, 2017.
4. During DOD's briefing on the investigation on May 10, 2018, General Waldhauser stated that the mission of the U.S. forces deployed to Niger was to work "by, with, and through" their Nigerien counterparts. Given that the Chief of Mission (COM) at the U.S. Embassy in Niamey is responsible for the diplomatic mission to Niger, what responsibility, oversight, control, or awareness did the COM have regarding the missions planned and executed on October 3-4, 2017? Please describe the level of coordination between AFRICOM and the COM in Niger regarding the approval of military operations both before, and after, the October 4, 2017 attack. In retrospect,

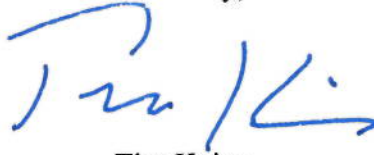
was the COM provided accurate information with respect to the purpose and intent of the missions that were planned and executed on October 3-4, 2017?

5. At what level in AFRICOM's chain of command are the rules of engagement (ROE) or other special instructions involving the tactical employment of U.S. forces involved in train, advise, assist and accompany missions verified to be in compliance with statutory legal authorities and/or limitations?
6. Please describe the legal and policy differences between self-defense and collective self-defense. Specifically, can collective self-defense be invoked to support foreign partner forces engaged in hostilities against enemies that are not covered by a congressional authorization for use of military force? What were the rules of engagement regarding self-defense and collective self-defense in Niger on October 3-4, 2017? What are they today?
7. What legal authority underpins any kill or capture missions planned or executed in Niger on October 3-4, 2017? Who approves the use of U.S. lethal force, or U.S. support to partner forces using lethal force, when accompanying partner forces?
8. In a November 8, 2017, letter in response to questions I had following the incident in Niger (attached), DOD states that, "Although we now believe the attackers were part of the Islamic State of Iraq and Syria (ISIS), a group subject to the 2001 AUMF, the team was not conducting an operation under that authority." Following the October 4, 2017 attack, did the Administration make a new determination that U.S. military force can be used in Niger pursuant to the 2001 AUMF? Additionally, did the Administration make a new determination that this ISIS group is an "associated force" under the 2001 AUMF? If so, please describe the Administration's internal process for making this determination regarding Niger and detail when such determinations were notified and briefed to Congress.
9. How many individuals have been killed or captured in Niger by U.S. forces or partner forces supported by U.S. forces since January 2017?
10. DOD's November 2017 letter states that "direct action or lethal action against targets not previously authorized" would be notified to Congress, "generally at the professional staffer level within 48 hours." For any direct action operation in Niger conducted by U.S. military forces or partner forces supported by U.S. military personnel, please provide the date and content of each notification provided to the congressional defense committees if it was so notified. If it was not notified to the congressional defense committees, please provide an explanation as to why such notification did not occur.
11. Outside of Somalia and Libya, please list all direct action operations conducted by U.S. military forces or partner forces supported by U.S. military personnel since January 2017 that have resulted in enemy casualties and/or detainees in the AFRICOM area of responsibility. For each operation, please indicate whether it was

U.S. only or in support of partner forces, whether it was notified to the congressional defense committees and, if so, when.

I appreciate the Department's cooperation and responsiveness on this issue and believe that strong Congressional oversight and ongoing discussion will help ensure that our U.S. servicemembers deployed abroad to support partner forces are provided with appropriate authorities, training, and resources to ensure their protection and avoid similar tragedies in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Kaine". The signature is stylized with a large initial "T" and a long horizontal stroke at the end.

Tim Kaine