



Congress's New Confirmation Power Should Apply to Current Special Envoys

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In a major change, the Senate is about to get significant new powers over an entire class of important diplomatic positions. Beginning in January 2023, U.S. Special Envoys—previously appointed at presidential discretion—will require Senate confirmation thanks to a provision included in the FY2022 National Defense Authorization Act. While there is ambiguity in the law, it strongly suggests that currently sitting Special Envoys reporting to the Secretary of State also require Senate confirmation, including Special Envoy for Iran Rob Malley. There are 54 Special Envoy or similar positions of which 41 are currently filled.

Congress should clarify whether the law applies to sitting Special Envoys. However, given the particular importance and urgency of the Iran portfolio, the White House should move quickly to officially nominate Malley for confirmation and senators should vet him or any nominee on the administration's policy to respond to the widespread protests in Iran calling for the regime's ouster, Iran's provision of weapons to aid Russia's illegal invasion of Ukraine and malign influence in the Middle East, and Tehran's repeated rejection of U.S. diplomatic offers.

What Happened?

- In Section 5105 “Special Appointment Authority” of the [FY2022 National Defense Authorization Act \(NDAA\)](#) passed into law last year, Congress added a requirement for Senate confirmation of any State Department Special Envoy or other positions performing a similar function “exercising significant authority pursuant to the laws of the United States.” This requirement will begin on January 3, 2023.
 - » The law allows individuals in those positions to operate in their roles for 180 days prior to confirmation if the President submits a waiver to the Senate Foreign Relations Committee and House Foreign Affairs Committee and allows one additional renewal of the waiver for another 180 days.

Why Is It Important?

- Congress will have additional oversight authority, starting on January 3, 2023, to confirm State Department Special Envoys and those fulfilling similar positions. While there is ambiguity in the legislation, a direct reading of the text indicates that it should apply both to current office holders and future appointees. The Special Envoy for Iran Robert Malley, or any other nominee for this position, should be among the most important officials Congress considers.

- » This new provision impacts not just the Special Envoy for Iran. The State Department currently has 54 Special Envoy or related positions, of which 41 are filled and 13 remain vacant (see table below).
 - Not all 54 of these positions may require Senate confirmation depending on how the State Department determines the requirements for “exercising significant authority pursuant to the laws of the United States.”
 - Confirmation requirements will likely, and should, apply to current officials holding high-profile portfolios including Afghanistan, North Korea, Yemen, and Sanctions Coordination.
 - The law specifically refers to Special Envoys reporting to the Secretary of State, suggesting that Envoys reporting to the president, including U.S. Special Presidential Envoy for Climate John Kerry, do not require confirmation.
- Sec. 5105 of the FY2022 NDAA clearly applies to anyone that is nominated in the future to serve as an U.S. State Department Special Envoy, Special Representative, Special Coordinator, Special Negotiator, Envoy, Representative, Coordinator, Special Advisor, or in related positions. However, the law also strongly appears to apply to those officials currently *in office*.
 - » Sec. 5105 limits the president’s authority to “*maintain* or establish a position” with the title or function similar to that of Special Envoy. This indicates that individuals currently holding the Special Envoy or other applicable title must be confirmed in order to remain in their current positions.
 - » In addition, the new law specifically differentiated congressional notification dates that indicate its applicability to current office holders. The law mandates the State Department provide Congress a notification within 15 days of a relevant appointment or within 30 days once the law becomes effective, whichever is earlier. In effect, the 30-day period would appear to apply to current officials, and the 15-day period for all those the president appoints after January 3, 2023.
 - » Despite these elements and the clear intent of Congress to require greater oversight of confirmations, the law leaves some slight room for ambiguity as to its application to individuals already functioning in relevant positions. State Department’s lawyers may take the opportunity to interpret the law in such a way that would negate confirmation for individuals currently serving as Special Envoys.
 - » While congressional notification is required, the legislation also gives the president latitude to use waivers to delay the necessity of Senate confirmations, creating significant loopholes where personnel could be shuffled around to avoid confirmation requirements.
- Congress passed Sec. 5105 because it believes that oversight of Special Envoys and similar positions is important so that Senators can provide advice and consent on the direction of U.S. foreign policy as well as on positions’ functional role within the State Department.
- Despite these justified concerns, Special Envoys can and do have an important role to play in certain circumstances, such as:
 - » Urgent national security issues, particularly those where the United States does not have an ambassador or other representative to implement policy and conduct diplomacy directly with the relevant

countries. The Special Envoy for Iran, given the lack of formal relations between the countries and escalating tensions fueled by Iran's continued pursuit of nuclear weapons, aggressive activity against U.S. partners in the Middle East, and material support for Russia's illegal invasion of Ukraine, is a prime example of this important use for this role.

- » Transnational or regional issues where the need to coordinate across the country-specific portfolios of the State Department's regional bureaus can advance U.S. diplomacy and interests. For example, JINSA has [recommended](#) the creation of a Special Envoy for the Eastern Mediterranean to coordinate security cooperation, enable energy development, and resolve disputes among countries in this vital area that sits astride two different regional bureaus.
- Assuming that Sec. 5105 applies to current officials and that the administration will likely issue the for waiver and one-time renewal (the maximum of 360 days allowed) to postpone nomination hearings, its Special Envoys will require Senate confirmation no later than December 29, 2023.
 - » Alternatively, the administration may seek to claim that the provision does not apply to sitting Special Envoys at all, given the law's lack of clarity on this point.
- Among the most important Special Envoy positions for the Senate to review and consider for confirmation as soon as possible under Sec. 5105 is the Special Envoy for Iran, Robert Malley.
 - » The Special Envoy for Iran coordinates all State Department Iran-related efforts on behalf of the Secretary of State, but under Malley, the United States has failed to develop a comprehensive Iran policy beyond the JCPOA.
 - » Even as the Iranian regime has repeatedly refused U.S. offers for a new nuclear deal, brutalized and begun executing Iranian bravely demanding their rights and freedoms, and supplied Russia with drones to be used against Ukraine, the administration refuses to abandon hopes for a deal or articulate any sort of alternative strategy.
 - As documented on JINSA's [Iran Talks Status](#) page, U.S. and European officials have repeatedly claimed since June 2021 that time is running out for the conclusion of the nuclear talks, only for them to persist.

What Should the United States Do Next?

- It is critical that the Biden administration rapidly comply with the law by submitting all relevant office holders for Senate confirmation and that the Senate thoroughly vet all the nominees.
- Congressional leadership should publicly state, and new legislation should clarify, that Sec. 5105 of the FY2022 NDAA applies to individuals already serving as Special Envoys and other relevant positions.
- The Senate should quickly and thoroughly exercise the authority granted by Sec. 5105 to consider sitting Special Envoys and those holding similar positions, beginning with those impacting the most urgent national security issues, particularly Special Envoy for Iran, Rob Malley.

SPECIAL ENVOYS, REPRESENTATIVES, AND SIMILAR POSITIONS

POSITION	OFFICE HOLDER	STATUS	APPOINTMENT DATE
Advancing the Human Rights of LGBTQI+ Persons	Jessica Stern	Other	9/27/2021
Afghanistan	Thomas West	Other	10/20/2021
APEC Senior Official	Matt Murray	Other	2/1/2022
Arctic Region	James P. DeHart	Career FS	7/27/2020
Belarus	VACANT		
Biodiversity and Water Resources	Monica Medina	Other	9/28/2022
Biological Weapons Convention	Kenneth D Ward	Other	3/30/2022
Climate Change	John Kerry*	Other	1/20/2021
Commercial & Business Affairs	Dilawar Syed	Other	2/14/2022
Conference on Disarmament	Bruce I. Turner	Career FS	9/16/2022
Cyberspace and Digital Policy	Nathaniel C. Fick	Other	9/21/2022
Global Coalition to Counter ISIS	VACANT		
Global COVID-19 Response and Health Security	Mary Beth Goodman (Acting)		9/30/2021
Global Criminal Justice	Beth Van Schaack	Other	3/17/2022
Global Engagement Center	James Rubin	Other	7/2/2021
Global Food Security	Cary Fowler	Other	5/5/2022
Global Partnerships	Dorothy McAuliffe	Other	7/6/2022
Global Women's Issues	VACANT		
Global Youth Issues	Abby Finkenauer	Other	12/1/2022
Guantanamo Affairs	Tina Kaidanow	Recalled FS	9/19/2022
Haiti	VACANT		
Holocaust Issues	Ellen Germain	Career FS	8/23/2021
Horn of Africa	Michael Hammer	Career FS	6/1/2022
Hostage Affairs	Roger D. Carstens	Other	3/2/2020
International Disability Rights	Sara Minkara	Other	11/8/2021
International Labor Affairs	Kelly M. Fay Rodriguez	Other	12/5/2022
International Religious Freedom	Rashad Hussain	Other	1/24/2022
Iran	Robert Malley	Other	1/28/2021
Israeli-Palestinian Negotiations	VACANT		
Libya	Richard Norland	Career FS	9/8/2021
Monitor and Combat Anti-Semitism	Deborah Lipstadt	Other	5/3/2022
Monitor and Combat Human Trafficking	VACANT		
Muslim Communities	VACANT		
Northern Ireland	Joe Kennedy III	Other	12/19/2022
Northern Triangle	Ricardo Zuniga	Career FS	3/22/2021
North Korea	Sung Y. Kim	Career FS	5/21/2021
North Korea Human Rights Issues	VACANT		
Nuclear Nonproliferation	Adam M. Scheinman	Other	12/20/2021
Organization for the Prohibition of Chemical Weapons	Joseph Manso	Career FS	9/16/2020
Organization of Islamic Cooperation	Faris Y. Asad	Career FS	8/15/2021
Palestinian Affairs	Hady Amr	Other	9/22/2022
Racial Equity and Justice	Desiree Cormier Smith	Former FS	6/17/2022
Religion and Global Affairs	VACANT		
Sahel Region of Africa	VACANT		
Sanctions Coordination	James C. O'Brien	Other	4/7/2022
Science & Technology	Allison Schwier (Acting)	Other	2/20/2021
Security Negotiations and Agreements	VACANT		2022
Subnational Diplomacy	Nina Hachigian	Other	10/3/2022
Sudan and South Sudan	VACANT		
Syria	VACANT		
Tibetan Issues	Uzra Zeya	Recalled FS	12/20/2021
U.S. Foreign Assistance Resources	Dafna H. Rand	Other	6/21/2021
USG Activities to Combat HIV/AIDS Globally	John Nkengasong	Other	6/13/2022
Yemen	Tim Lenderking	Career FS	2/4/2021

*Reports to the President and Not Likely to Require Confirmation

Office Holders as of December 27, 2022