



October 19, 2015

VIA FACSIMILE ( [REDACTED] ) &  
OVERNIGHT DELIVERY SERVICE

The Honorable Ashton B. Carter  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Mr. Secretary:

By way of introduction, the American Center for Law and Justice (ACLJ) is a non-profit organization dedicated to defending constitutional liberties here at home and freedom and human rights abroad. ACLJ attorneys have successfully argued numerous free speech and religious freedom cases before the Supreme Court of the United States.<sup>1</sup> We have offices and affiliates in France, Russia, Kenya, Zimbabwe, Pakistan, and Israel; and, our affiliate, the European Centre for Law and Justice is accredited to the United Nations ECOSOC as a Non-Governmental Organization.

\* \* \* \* \*

It has recently been reported that a decorated Green Beret Non-Commissioned Officer, Sergeant First Class (SFC) Charles Martland, is facing involuntary separation from the Army because he had been reprimanded in 2011 for acting to protect a young Afghan boy who had been kidnapped and repeatedly raped by an Afghan leader allied with the United States.<sup>2</sup> From the reports that have become public, interfering with child rape apparently violated DOD policy.<sup>3</sup> That is absolutely outrageous. Whoever promulgated such a policy

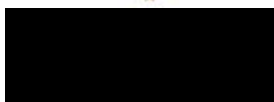
---

<sup>1</sup>See, e.g., *Pleasant Grove City v. Summum*, 129 S. Ct. 1125 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept other monuments merely because it has a Ten Commandments monument on its property); *McCormell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport's ban on First Amendment activities).

<sup>2</sup>Kyle Jahner, *Green Beret: Striking Corrupt Afghan got me Kicked Out*, ARMY TIMES (Aug. 21, 2015), <http://www.armytimes.com/story/military/careers/army/enlisted/2015/08/21/green-beret-striking-corrupt-afghan-got-me-kicked-out/32080843/>.

<sup>3</sup>Kyle Jahner, *'One of the Best': Defenders Show Support for Ousted Green Beret*, ARMY TIMES (Sept. 30, 2015), <http://www.armytimes.com/story/military/2015/09/30/defenders-mount-support-ousted-green-beret-charles-martland/72996486/>.

\*



should be the one against whom action is taken, not SFC Martland, who acted honorably and with considerable restraint in light of widespread child abuse being perpetrated by Afghans allied with the United States.

Mr. Secretary, now that what is happening to SFC Martland has become public, you have both the authority and the responsibility to right the wrong inflicted on SFC Martland. He acted with honor and integrity. Mr. Secretary, we now call on you to act honorably and with integrity *to correct this grave injustice*.

Mr. Secretary, we write to you today on behalf of ourselves and more than 132,000 Americans who have joined with the ACLJ to demand that you, as Secretary of Defense, do the right thing for SFC Martland, our military forces, and the defenseless children victimized by corrupt Afghan Local Police (ALP) commanders. **First**, we urge you to order the immediate reinstatement of SFC Martland to duty; to issue a formal, written apology to him for the inappropriate action initiated against him both at the time he acted to halt the repeated rape of the young Afghan boy as well as during the Army's QMP process; and to order that his military record is purged of all negative documents related to his actions surrounding the incident in Afghanistan. **Second**, we urge you to personally review and correct deficiencies in DOD policy that allowed the punishment of service members, like SFC Martland, for acting to stop felonious sexual conduct occurring before their very eyes. **Finally**, we urge you to revise DOD policy governing what constitutes acceptable behavior of allied forces on United States military installations.

## I. UNDERLYING FACTS

In September 2011, SFC Martland and his superior officer, Captain (CPT) Daniel Quinn, took decisive action to stop unconscionable sexual assaults perpetrated against a young boy. The perpetrator of these crimes was a local Afghan police commander working alongside U.S. troops every day.

SFC Martland and CPT Quinn had received reports that a local Afghan police commander had kidnapped a 12-year-old boy, tied the boy to his bed, and repeatedly raped him over the course of approximately ten days.<sup>4</sup> The soldiers learned of these despicable acts when the boy and his mother had sought help at the U.S. base.<sup>5</sup> The boy showed U.S. soldiers scars on his arms from being tied to his bed.<sup>6</sup> A U.S. medic examined the boy with an interpreter, and CPT Quinn verified the truth of the story with other local Afghan leaders.<sup>7</sup> For seeking U.S. help, the Afghan commander who had repeatedly raped the boy had the boy's mother beaten.<sup>8</sup>

According to SFC Martland, this was not the first time soldiers had learned that Afghan leaders allied with the U.S. had been involved in criminal conduct. As a result, SFC

---

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>Lucas Tomlison, *Army Kicking Out Decorated Green Beret who Stood up for Afghan Rape Victim*, FOX NEWS (Aug. 21, 2015), <http://www.foxnews.com/politics/2015/08/21/army-kicking-out-decorated-green-beret-who-stood-up-for-afghan-rape-victim/?intcmp=hpbt3>.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

Martland has aptly noted, “we were quickly losing the support of the local populace.”<sup>9</sup> SFC Martland wrote that “the severity of the rapes and the lack of action by the Afghan Government caused many of the locals to view our [local Afghan police allies] as worse than the Taliban.”<sup>10</sup> This is the context within which SFC Martland and CPT Quinn took action.

The Afghan leader who had been identified as having kidnapped and raped the young boy was invited to the base and questioned.<sup>11</sup> It is undisputed that the man admitted the abuse. When confronted about the rapes, he laughed it off and said, “It is only a boy.”<sup>12</sup> SFC Martland and CPT Quinn took immediate action to send an unmistakable message: sexual abuse of children would not be tolerated around U.S. forces. Unfortunately, actions by senior U.S. military leaders in response to what CPT Quinn and SFC Martland did have sent the opposite message—to our allies, our troops, our enemies, and the world. Rather than punish known, notorious, sexual predators, it appears that, by its policy, the United States is knowingly condoning the most heinous of criminal acts against defenseless children.

Consider what SFC Martland’s reprimand conveys to local villagers like the abused boy and his mother when the U.S. soldiers who stood up to defend them against an admitted serial child rapist were reprimanded and relieved of duty for doing so. And, perhaps worst of all, consider the message conveyed to the local Afghan commanders who were openly engaging in such abuse. The Army’s action against SFC Martland in reality empowered the rapist to continue committing despicable acts with defenseless children. The Army’s response constituted a devastating blow in the battle to win the hearts and minds of everyday Afghans. The widespread abuse of women and children at the hands of local Afghan police forces allied with the United States will sadly continue, but now with apparent U.S.-sanctioned impunity.

The ACLJ and our members do not dispute that U.S. forces must be sensitive to and respectful of the cultures and traditions of the people in the host nation. Of course, our military should respect, where possible, traditions and cultural norms pertaining to religion, dress, language, and the like. Yet, the open and notorious sexual abuse of children is not an acceptable custom in any culture and is unworthy of any semblance of respect by the United States and its Armed Forces. A policy of deference to local customs and traditions is one thing. A policy of tolerating and facilitating the sexual slavery and abuse of defenseless children is quite another!

Historically, protecting children from harm has endeared others to Americans. Permitting the open abuse of children is shameful, and our lack of action implies our condoning of such conduct. That is absolutely unacceptable. SFC Martland acted honorably and did not

---

<sup>9</sup>Kyle Jahner, ‘One of the Best’: Defenders Show Support for Ousted Green Beret, ARMY TIMES (Sept. 30, 2015), <http://www.armytimes.com/story/military/2015/09/30/defenders-mount-support-ousted-green-beret-charles-martland/72996486/>.

<sup>10</sup>*Id.*

<sup>11</sup>Jake Tapper & Kim Berryman, *Green Beret Discharged for Beating Alleged Child Rapist Speaks Out*, CNN (Sept. 28, 2015), <http://www.cnn.com/2015/09/28/politics/green-beret-discharged-for-beating-alleged-child-rapist-speaks-out/>.

<sup>12</sup>*Id.*

deserve to be reprimanded and relieved for his actions. Mr. Secretary, you have the authority to correct the injustice visited upon SFC Martland, and you should do so today!

## **II. UNITED STATES MILITARY POLICY CONCERNING SEXUAL ABUSE OF CHILDREN**

The reprimand and the relief of SFC Martland for acting to protect a helpless child rape-victim are clear manifestations of a deeper problem within the military chain of command: an ignoble and wholly unconscionable policy requiring our military forces to ignore known sexual abuse of children at the hands of our local Afghan police “allies.” A recent report in the New York Times raised allegations that U.S. ground troops were being ordered to overlook child rape. In fact, the report indicated that U.S. commanders were even allowing local Afghan militia leaders residing on U.S. bases to bring their harem of children onto U.S. installations to abuse.<sup>13</sup>

The Times report told the story of Lance Corporal (LCpl) Gregory Buckley Jr., USMC, since killed in action. The young Marine had told his father that, from his bunk, he could hear Afghan police officers sexually abusing boys they had brought to the base: “At night we can hear them screaming, but we’re not allowed to do anything about it.”<sup>14</sup> This is morally and legally outrageous and must stop! The United States simply cannot justify in any way, shape or form such perversion aimed at defenseless children with the pious claim that we must do so to accommodate “local customs and traditions.”

## **III. SEXUAL ABUSE OF CHILDREN IS UNIVERSALLY RECOGNIZED AS A CRIME**

No law requires that American service members look the other way from sexual crimes committed on U.S. installations or in their presence. It appears from the reports on SFC Martland’s case that it was a policy promulgated somewhere within the DOD that required American service members to refrain from taking action that any honorable person possessing knowledge of open child enslavement and sexual abuse would take. *Since an express prohibition on defending minor children from child predators would constitute an unlawful order, no soldier was required to obey it. In fact, soldiers are obligated to disobey unlawful orders.*

The UCMJ specifically criminalizes sexual assault and rape of a child.<sup>15</sup> No member of the U.S. Armed Forces can be ordered to sit idly by and allow a defenseless child to be sexually assaulted. Such attacks are not only morally wrong; they are also a clear violation of the UCMJ. Any order forbidding such aid to defenseless children would be unlawful—it would also be shameful!

---

<sup>13</sup>Joseph Goldstein, *U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies*, N.Y. TIMES (Sept. 20, 2015), [http://www.nytimes.com/2015/09/21/world/asia/us-soldiers-told-to-ignore-afghan-allies-abuse-of-boys.html?\\_r=3](http://www.nytimes.com/2015/09/21/world/asia/us-soldiers-told-to-ignore-afghan-allies-abuse-of-boys.html?_r=3).

<sup>14</sup>*Id.*

<sup>15</sup>*See, e.g.*, 10 U.S.C. § 920 (criminalizing rape); 10 U.S.C. § 920b (criminalizing sexual assault and rape of a child); 10 U.S.C. § 925 (criminalizing forcible sodomy); 10 U.S.C. § 928 (criminalizing assault).

The argument that sexual abuse of young boys is simply cultural is also specious. The Afghan Penal Code outlaws all sexual intercourse outside of marriage.<sup>16</sup> Surely, forced sexual intercourse with a minor male child easily falls within that prohibition. Any U.S. commander or policy-maker who failed to understand that basic truth should be disqualified from holding any position of responsibility in DOD or elsewhere.

International law also speaks to this situation. The International Covenant on Civil and Political Rights (ICCPR) requires that “[e]very child shall have . . . the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”<sup>17</sup> Further, both Afghanistan and the United States share a commitment under international law to end slavery in all its forms<sup>18</sup> as well as cruel, inhuman or degrading treatment.<sup>19</sup> According to the United Nations Committee on the Rights of the Child, “[n]o violence against children is justifiable. . . .”<sup>20</sup> Rape is surely a form of prohibited violence.

\* \* \* \* \*

Mr. Secretary, what happened to SFC Martland in 2011 was a travesty. That travesty was compounded by the QMP Board’s decision to separate a decorated and devoted United States warrior from the Army’s ranks because he took decisive action to stop the repeated rape of a young Afghan boy at the hands of a corrupt Afghan leader. SFC Martland’s brave actions halted ongoing felonies recognized in the UCMJ. His actions halted ongoing criminal actions recognized under Afghan law. His actions halted ongoing felonies condemned by international law. *SFC Martland acted with honor and dispatch to stop what has turned out to be, in effect, DOD-sanctioned child abuse.* Yet, he turned out to be the one who was punished; he was both relieved and reprimanded. That is unconscionable.

Mr. Secretary, it is not SFC Martland who acted amiss in what he did. It is the person or persons who promulgated and enforced a policy that violated U.S. law, Afghan law, and international law who acted amiss. Rather than separate SFC Martland for his honorable service, you should instead seek out those who promulgated and enforced such a despicable policy and remove them. SFC Martland acted honorably throughout. That is more than can be said of those morally obtuse persons who promulgated a policy that subjected untold numbers of innocent Afghan children to sexual slavery and abuse in violation of U.S., Afghan, and international law.

\* \* \* \* \*

---

<sup>16</sup>Article 427 of the Afghan Penal Code criminalizes sexual intercourse outside marriage. According to a United Nations report, “[t]hose who sexually abuse children are currently jailed and sentenced according to this article, which can bring a jail sentence of six to ten years. . . .” United Nations Convention on the Rights of the Child, Aug. 28, 2009, CRC/C/AFG/1 at 72.

<sup>17</sup>International Covenant on Civil and Political Rights art. 24(1), Mar. 23, 1976, 999 U.N.T.S. 171. The United States has ratified and Afghanistan has acceded to this Convention.

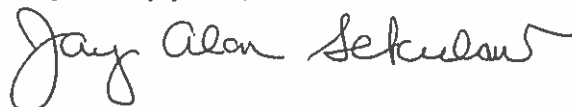
<sup>18</sup>G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. iv (Dec. 10, 1948).

<sup>19</sup>*Id.* at art. v.

<sup>20</sup>United Nations Convention on the Rights of the Child, Apr. 18, 2011, CRC/C/GC/13.

Mr. Secretary, we respectfully call on you to do the right thing, and we urge you to take swift action to correct this miscarriage of justice. You have the authority to stop this travesty today. We respectfully urge you to do so. Brave men and women in uniform, like SFC Martland, CPT Quinn, and many unnamed others, deserve no less.

Respectfully yours,



Jay Alan Sekulow  
Chief Counsel



Robert W. Ash  
Senior Counsel