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Chief Counsel

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VIA OVERNIGHT DELIVERY SERVICE

The Honorable Barak Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

By way of introduction, the American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued cases before the Supreme Court of the United States, other federal appellate and trial courts, as well as various state courts throughout the United States.¹ Our international affiliate, the European Centre for Law and Justice (ECLJ), is an international, Non-Governmental Organization (NGO), based in Strasbourg, France, and is dedicated, *inter alia*, to the promotion and protection of human rights and to the furtherance of the rule of law in international affairs. ECLJ attorneys have argued cases before the European Court of Human Rights and have also appeared twice before the Prosecutor of the International Criminal Court in The Hague to argue Israel's position to the Prosecutor. The ECLJ has held Special Consultative Status before the United Nations/ECOSOC since 2007.²

It has been reported that the Obama administration has tightened its control "on arms transfers to Israel."³ Recently, for example, the Pentagon and U.S. military officials were instructed by White House officials "to halt the transfer of Hellfire missiles requested by Israel after learning that some weapons shipments entered Israel during the Gaza conflict without prior approval by the White House or the State Department."⁴ In fact, it has been reported that "even

¹See, e.g., *Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (holding that the First Amendment does not require the government to display counter-monuments when it displays a Ten Commandments monument); *McConnell v. FEC*, 540 U.S. 93 (2003) (holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (holding that denying a church access to public school premises to show a film series violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding that allowing a student Bible club to meet on a public school campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (striking down an airport's ban on First Amendment activities).

²*Consultative Status for the European Centre for Law and Justice*, U.N. DEP'T ECON. & SOC. AFF., <http://esango.un.org/civilsociety/consultativeStatusSummary.do?profileCode=3010> (last visited 2 Nov. 2012).

³Adam Entous, *Gaza Crisis: Israel Outflanks the White House on Strategy*, WALL ST. J. (Aug. 14, 2014, 1:14 PM), <http://online.wsj.com/articles/u-s-sway-over-israel-on-gaza-at-a-low-1407979365>.

⁴Lucy Westcott, *U.S./Israel Relations at Low Ebb: Hellfire Missile Supplies Halted*, NEWSWEEK (Aug. 14, 2014, 4:44 PM), <http://www.newsweek.com/usisrael-relations-low-ebb-hellfire-missile-supplies-halted-264724>.

routine munitions requests by Israel” now require White House and State Department approval.⁵ Apparently, such a move is intended to send Israel a message: “Instead of being handled as a military-to-military matter, each case is now subject to review—slowing the approval process and signaling to Israel that military assistance once taken for granted *is now under close scrutiny*.”⁶

Such actions by administration personnel suggest that you believe there is some sort of moral equivalence between actions in the recent Gaza conflict taken by Israel, a state which attempts to fully comply with International Humanitarian Law (IHL), and actions taken by Hamas, an unrepentant terrorist organization, which repeatedly calls for the total destruction of Israel and openly and notoriously flouts IHL.⁷ There is no moral equivalence here and yet, Israel is singled out by you and others in your administration for taking actions Israel would have preferred to have avoided altogether, but for the incessant attacks on Israeli communities from Hamas-controlled Gaza. In a recent *Jerusalem Post* article, Eric Mandel explained the matter quite well: “If Hamas didn’t fire rockets, there would be no cycle of violence.”⁸

With due respect, moral equivalence suggests that the two parties were each equally responsible for the conflict and that their respective actions were equally defensible.⁹ Such a view is not only wrong, it is both naïve and dangerous. The June 12 kidnapping by Hamas operatives of three Israeli teenagers in the West Bank was a despicable act that sparked the current Israeli-Hamas conflict.¹⁰ In response to the kidnappings, Israel launched a search-and-rescue mission to find the missing teens.¹¹ That would be a natural response by any responsible Government. Hamas responded by firing rockets into southern Israel. As a result of Hamas’ firing rockets indiscriminately at Israeli civilians, on July 7, Israel launched Operation Protective Edge, exercising its inherent right to defend itself.

It is also worth noting that, since the conflict began, Hamas repeatedly refused to accept a number of ceasefire proposals,¹² while Israel consistently honored ceasefire requests to allow

⁵Adam Entous, *Gaza Crisis: Israel Outflanks the White House on Strategy*, WALL ST. J. (Aug. 14, 2014, 1:14 PM), <http://online.wsj.com/articles/u-s-sway-over-israel-on-gaza-at-a-low-1407979365>.

⁶*Id.*

⁷See Anne Barnard & Jodi Rudoren, *Israel Says that Hamas Uses Human Shields, Reviving Debate*, NY TIMES (July 23, 2014), <http://www.nytimes.com/2014/07/24/world/middleeast/israel-says-hamas-is-using-civilians-as-shields-in-gaza.html>; Elad Benari, *Watch: Hamas Spokesman Encourages Using Civilians As Shields*, ARTUZ SHEVA (July 7, 2014), <http://www.israelnationalnews.com/News/News.aspx/182729#.U9kmg7Gf-ik> (reporting a video of Hamas spokesman Sami Abu Zuhri explicitly encouraging Palestinians to adopt the strategy of becoming human shields and lauding its effectiveness and its display of the brave character of Palestinians).

⁸See Eric R. Mandel, *Progressives and Moral Equivalence During Operation Protective Edge*, THE JERUSALEM POST (July 20, 2014), <http://www.jpost.com/Opinion/Op-Ed-Contributors/Progressives-and-moral-equivalence-during-Operation-Protective-Edge-363491>.

⁹*Id.*

¹⁰*Murdered Israeli Teens Mourned in Joint Funeral, as Israel Launches Strike Against Hamas*, FOX NEWS (July 1, 2014), <http://www.foxnews.com/world/2014/07/01/israeli-teens-found-dead/>.

¹¹Lea Speyer, *360 Arrested as Operation Brothers Keeper Enters 12th Day*, BREAKING ISRAEL NEWS (June 24, 2014), <http://www.breakingisraelnews.com/17063/269-terrorists-arrested-operation-brothers-keeper-enters-12th-day/#kswx537rQzX62L97.97>.

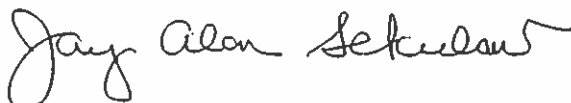
¹²Harriet Sherwood, *Gaza Crisis: How the Game Has Changed Since Egypt’s Tabling of Ceasefire Plan*, THE GUARDIAN (July 21, 2014), <http://www.theguardian.com/world/2014/jul/21/gaza-crisis-how-game-changed-since-egypt-tabling-ceasefire-plan>.

humanitarian assistance into Gaza.¹³ As of August 1, at least four ceasefire agreements had been announced during the conflict.¹⁴ The fourth negotiation resulted in an agreement to have a seventy-two hour ceasefire. Hamas militants broke the ceasefire a mere ninety minutes after it had begun by attacking Israeli soldiers.¹⁵

Your administration is causing further damage to the United States' already strained relationship with Israel, a steadfast ally to the United States and the only state in the entire Middle East that shares our values and carries out the principles set forth in IHL. The stalling of the release of weapons to Israel is misguided, sends the signal that the United States is an untrustworthy ally, and indirectly encourages Hamas to continue its lawless actions. Significantly, it also means that, once it runs out of the "smart" weapons we routinely supply, Israel will have to resort to using "dumb" munitions which are less accurate and are sure to increase collateral damage to property and increase injury to civilians.

In sum, we respectfully urge you to direct all officials in your administration to expedite delivery to Israel of the military weaponry it requests. One simply cannot be neutral when one faces a choice between right and wrong. Israel was the victim in this conflict. Israel was attacked by Hamas and its terrorist allies in Gaza. Israel responded in self-defense. Israel sought in every reasonable way to minimize damage to property and injury to innocent civilians. Israel accepted and observed every ceasefire. In contrast, Hamas initiated hostilities by kidnapping and murdering students coming home from school. Hamas increased hostilities by firing rockets and mortars at Israeli communities. Hamas intentionally located its headquarters, arms caches, tunnel entrances, and firing sites in the midst of the civilian population. Hamas refused to accept and/or violated agreed-to ceasefires. The time for neutrality has long passed, and the time to do what is right is now. We urge your administration to support Israel and to send a clear message to Hamas that its terrorist tactics against innocent Israeli civilians will not be supported in any way, shape, or form by the United States of America.

Respectfully yours,



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Robert W. Ash
Senior Counsel

¹³See, e.g., Tzvi Ben-Gedalyahu, *Israel to Honor 6-Hour "Humanitarian Ceasefire" While Planning Ground Op*, THE JEWISH PRESS (July 16, 2014), <http://www.jewishpress.com/news/breaking-news/israel-to-honor-6-hour-humanitarian-ceasefire-while-planning-ground-op/2014/07/16/>; Jodi Rudoren & Anne Barnard, *Israeli Military Invades Gaza, With Sights Set On Hamas Operations*, N.Y. TIMES (July 17, 2014), <http://www.nytimes.com/2014/07/18/world/middleeast/israel-gaza-strip.html>.

¹⁴Heather Saul, *Israel-Hamas 72-Hour Ceasefire Crumbles as Dozens Killed in Gaza Shelling*, INDEP. (Aug. 1, 2014), <http://www.independent.co.uk/news/world/middle-east/israelgaza-conflict-kerry-warns-72hourunconditional-ceasefire-is-a-respite-not-an-end-9641781.html>.

¹⁵U.S. Calls Hamas Attack 'Barbaric' Violation of Gaza Ceasefire: CNN, REUTERS (Aug. 1, 2014), <http://www.reuters.com/article/2014/08/01/us-mideast-gaza-whitehouse-idUSKBN0G143S20140801>.