



August 23, 2013

**VIA FACSIMILE (703.571.8951) &
OVERNIGHT DELIVERY SERVICE**

The Honorable Chuck Hagel
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 secured by law. ACLJ attorneys have successfully argued numerous free speech and religious freedom cases before the Supreme Court of the United States.¹

On the afternoon of November 5, 2009, at Fort Hood, Texas, Army Major Nidal Hasan shouted “Allahu Akbar” as he opened fire on unarmed fellow soldiers, killing thirteen and wounding thirty-two others. This was a premeditated act of treachery by a radicalized American Muslim officer who had been in contact with—and *had been encouraged to kill his fellow soldiers by*—radical al-Qaeda cleric, Anwar al-Awlaki.² By aiding the enemies of the United States, Major Hasan abrogated his oath to support and defend the Constitution of the United States against all enemies, foreign and domestic, as well as his oath to obey the lawful orders of those appointed to

¹*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); *McConnell 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).

²Carol Cratty, *FBI Official: Hasan Should Have Been Asked about E-mails with Radical Cleric*, CNN (Aug. 2, 2012), <http://www.cnn.com/2012/08/01/politics/hasan-fbi>. Anwar Al-Awlaki was considered such a threat that he was killed in a U.S. drone attack in Yemen—what was termed a major victory in the U.S. efforts against al-Qaeda. President Barack Obama, Remarks at the “Change of Office” Chairman of the Joint Chiefs of Staff Ceremony (Sept. 30, 2011), <http://www.whitehouse.gov/the-press-office/2011/09/30/remarks-president-change-office-chairman-joint-chiefs-staff-ceremony>.



positions of authority over him. That this was an act of war was self-evident to most Americans on the very day the shootings at Fort Hood took place. Yet, for any with lingering doubts among us, that fact has been confirmed beyond all doubt at Major Hasan's recently concluded General Court Martial.

Major Hasan betrayed the United States and his comrades-in-arms and took up arms to attack his fellow soldiers preparing to deploy overseas. Major Hasan brought the war back onto U.S. soil. He single-handedly turned a part of Fort Hood into a battlefield in the ongoing war on terrorism. Until the very day of the Fort Hood massacre, he went about as a wolf in sheep's clothing, all the while plotting the deaths of his fellow soldiers. All of that is now beyond dispute. Accordingly, there is absolutely no way that the attack which occurred at Fort Hood on November 5, 2009, can be legitimately characterized as a case of "workplace violence."³ Such a characterization boggles the imagination and profanes the lives, memories, and sacrifices of the men and women who were the targets of Major Hasan's perverse fanaticism.

When President Obama went to Fort Hood to speak at the memorial service for the fallen and wounded, he acknowledged the obvious: "This is a time of war. Yet these Americans did not die on a foreign field of battle. They were killed here, on American soil, in the heart of this great state"⁴ He acknowledged further that the thirteen who were killed "were not able to escape the horror of war"⁵ even at home in the United States. The President concluded by assuring the Nation and all present at the memorial ceremony that the United States was "determin[ed] to honor them."⁶

The President's noble goal of honoring Fort Hood's dead and wounded is not yet realized. Moreover, it will not—and cannot—be realized until Major Hasan's attack on his fellow soldiers at Fort Hood is recognized for what it truly was—not "workplace violence" but an actual battle in the ongoing war against al-Qaeda and its supporters. When that is acknowledged, the men and women killed and wounded on that tragic day at Fort Hood will be able to receive the Purple Heart medals they rightfully deserve. Such recognition will establish forever in the annals of our proud history that the men and women killed and wounded at Fort Hood were genuine casualties in the ongoing global war against al-Qaeda and its supporters. Every day that goes by without correcting the mischaracterization of what transpired at Fort Hood is a day that prolongs the pain of the loved ones of those who were killed on that fateful day as well as of those who survived

³See *Lawmakers Blast Administration for Calling Fort Hood Massacre 'Workplace Violence'*, FOX NEWS (Dec. 7, 2011), <http://www.foxnews.com/politics/2011/12/06/military-growing-terrorist-target-lawmakers-warn/>; REPORT OF THE DOD INDEPENDENT REVIEW, PROTECTING THE FORCE: LESSONS FROM FORT HOOD (2010), *available at* http://www.defense.gov/pubs/pdfs/dod-protectingtheforce-web_security_hr_13jan10.pdf (recommending policies in response to the shooting at Fort Hood in the broader context of workplace violence); *Final Recommendations of the Ft. Hood Follow-on Review*, DEP'T OF DEF. (Aug. 18, 2010), *available at* <http://www.defense.gov/news/d20100820FortHoodFollowon.pdf> (recommending a strengthening of Department policies concerning workplace violence).

⁴President Barack Obama, Remarks at the Memorial Service at Fort Hood (Nov. 10, 2009), *available at* <http://www.whitehouse.gov/the-press-office/remarks-president-memorial-service-fort-hood>.

⁵*Id.*

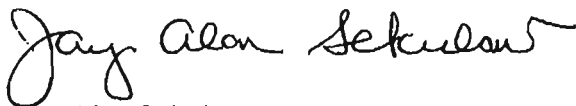
⁶*Id.*

but were grievously wounded. Justice demands that the United States Government right this serious wrong and that it do so quickly. There are no legal or logical grounds to delay such a decision.

Mr. Secretary, we are writing to you on behalf of ourselves and more than 51,000 Americans who have joined with the ACLJ to demand that you, as Secretary of Defense, do the right thing for the dead and wounded at Fort Hood and their families. **First**, we urge you to recognize the attack at Fort Hood for what it truly was—an actual battlefield in the ongoing war against al-Qaeda. **Second**, we urge you to acknowledge that the dead and wounded were engaged in an actual battle in that war and to direct that the military records of the dead and wounded be corrected to reflect that fact. **Finally**, we urge you to order the Secretary of the Army to ensure that the dead and wounded at Fort Hood be awarded Purple Heart medals immediately.

Major Hasan's Court Martial is over. The facts are established. All doubt is gone. He has been found guilty on all counts. Accordingly, we urge you to do the right thing and to do it now. Our brave men and women in uniform deserve no less.

Respectfully yours,

A handwritten signature in black ink that reads "Jay Alan Sekulow". The signature is fluid and cursive, with the first name "Jay" being particularly prominent.

Jay Alan Sekulow
Chief Counsel

A handwritten signature in blue ink that reads "Robert W. Ash". The signature is fluid and cursive, with the first name "Robert" being particularly prominent.

Robert W. Ash
Senior Counsel