



February 3, 2016

VIA OVERNIGHT DELIVERY SERVICE

Representative Adam Smith
Ranking Member
House Armed Services Committee

SUBJECT: Call to Investigate and Correct Injustice to Green Beret SFC Charles Martland, United States Army

Dear Congressman Smith:

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.¹ 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.

* * * * *

We are writing to you to request your immediate intervention on behalf of Green Beret Sergeant First Class (SFC) Charles Martland who is facing involuntary separation from the United States Army based on a reprimand he had received in 2011 for actions he took at the time to halt the repeated rape of a young Afghan boy who had been kidnapped by an Afghan police commander allied with the United States.²

¹See, 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).

²Kyle 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/>.

★

It has recently been reported that SFC Martland's Qualitative Management Program (QMP) appeal has been denied and that he is about to be involuntarily separated from the Army.³ Given the circumstances of what occurred (discussed further below), we believe that SFC Martland acted honorably and with absolute integrity in using force to put a stop to the ongoing sexual abuse of a young boy and that separating SFC Martland from the Army for doing what was right would be an absolute travesty of justice.

Congressman Smith, we write to you today on behalf of ourselves and more than 210,000 Americans who have joined with the ACLJ to urge in the strongest terms possible that SFC Martland not be separated from the Army for defending a defenseless young boy from repeated sexual assaults by a corrupt Afghan official.

First, we respectfully urge you to inform your House Committee colleagues of this matter and about the injustice that is about to transpire.

Second, we respectfully urge you to request that the Chairman convene a hearing to ask senior Army officials to justify before your Committee their punishing an outstanding soldier for intervening to defend a defenseless young boy from the sexual abuse of a corrupt Afghan official.

Third, we respectfully urge you and your House Committee colleagues to ask senior Army officials why, if his conduct had been so egregious, they had not barred SFC Martland from reenlisting and had, instead, allowed him to reenlist.

Fourth, we respectfully urge you to request that the Chairman convene a hearing to investigate reports cited in the press that Department of Defense officials had instructed Service Members not to interfere with the Afghan "cultural" practice of sexually abusing young boys.

UNDERLYING FACTS

In September 2011, SFC Martland and his superior officer, Captain (CPT) Daniel Quinn, took decisive and forceful action to stop repeated sexual assaults perpetrated against a young Afghan boy. The perpetrator of those crimes was a local Afghan police commander who worked 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.⁴ The soldiers had learned of these despicable acts when the boy and his mother had sought help at the U.S. base.⁵ The boy showed U.S. soldiers scars on his arms from being tied to his bed.⁶ A U.S. medic,

³Michelle Tan, *Congressman, Citing Green Beret's Plight, Adds to Army Secretary Controversy*, ARMY TIMES (Jan. 27, 2016), <http://www.armytimes.com/story/military/capitol-hill/2016/01/27/congressman-citing-green-berets-plight-adds-secarm-controversy/79428122/>.

⁴*Id.*

⁵*Id.*

with the aid of an interpreter, examined the boy and verified that abuse had occurred. CPT Quinn also verified the truth of the story with other local Afghan leaders.⁷ For seeking U.S. help, the Afghan police commander who had repeatedly raped the boy had the boy's mother beaten.⁸

As a result of such ongoing criminal conduct by Afghan forces allied with the U.S., SFC Martland had noted, "we were quickly losing the support of the local populace."⁹ SFC Martland reported 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."¹⁰ *Congressman Smith, that was 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.¹¹ 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."¹² In response, SFC Martland and CPT Quinn took immediate and forceful action to send an unmistakable message: sexual abuse of children would not be tolerated around U.S. forces.

Subsequent actions by SFC Martland's chain of command have proven to be absolutely inexplicable—and shameful. Rather than supporting and praising CPT Quinn and SFC Martland for doing what was necessary to halt the ongoing rape of an innocent young Afghan boy, the two soldiers were themselves relieved and reprimanded.

Hence, rather than reinforce the message to Afghan sexual predators that sexual abuse of children would not be tolerated around U.S. forces, actions by senior U.S. military leaders in response to what CPT Quinn and SFC Martland did sent the exact opposite message—to our allies, our troops, our enemies, and the world. Rather than punish known, notorious, sexual predators, by its actions, the United States military command instead demonstrated its willingness to condone the most heinous, criminal acts against defenseless children.

Consider what SFC Martland's relief and reprimand conveyed 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 themselves reprimanded and relieved of duty for doing so. And, perhaps worst of all, consider the

⁶Lucas 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>.

⁷*Id.*

⁸*Id.*

⁹Kyle 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/>.

¹⁰*Id.*

¹¹Jake 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/>.

¹²*Id.*

message conveyed to the local Afghan commanders who had been openly engaging in such abuse. They were, henceforth, untouchable.

The Army's action against SFC Martland has, in reality, empowered such rapists 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.

Congressman Smith, 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 countries where U.S. forces are stationed. 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 foreigners to American service members. Permitting the open abuse of children is unacceptable. SFC Martland acted honorably and did not deserve to be reprimanded and relieved for his actions. *Congressman Smith, you have the means to put a spotlight on the situation SFC Martland faced and to hold military leaders to account, and we urge you to do so quickly!*

UNITED STATES MILITARY POLICY CONCERNING SEXUAL ABUSE OF CHILDREN

The reprimand and the relief of SFC Martland for acting with force 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.¹³

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."¹⁴ 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."

¹³Joseph 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>.

¹⁴*Id.*

SEXUAL ABUSE OF CHILDREN IS UNIVERSALLY RECOGNIZED AS A CRIME

Congressman Smith, 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 there was a policy promulgated somewhere within 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 would be required to obey it. In fact, soldiers are obligated to disobey unlawful orders.*

The UCMJ specifically criminalizes sexual assault and rape of a child.¹⁵ 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!

The argument that sexual abuse of young boys is simply an Afghan cultural phenomenon that we must tolerate is also specious. The Afghan Penal Code outlaws all sexual intercourse outside of marriage.¹⁶ 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.”¹⁷ Further, both Afghanistan and the United States share a commitment under international law to end slavery in all its forms¹⁸ as well as cruel, inhuman or degrading treatment.¹⁹ According to the United Nations Committee on the Rights of the Child, “[n]o violence against children is justifiable. . . .”²⁰ Rape is surely a form of prohibited violence.

* * * * *

¹⁵See, 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).

¹⁶Article 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.

¹⁷International 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.

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

¹⁹*Id.* at art. v.

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

Congressman Smith, what happened to SFC Martland in 2011 was a travesty. That travesty is being compounded by the Army QMP Board's decision to separate a decorated and devoted United States warrior from the Army's ranks because he was wrongly reprimanded for taking 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. Yet, it was he who turned out to be the one who was punished; he was both relieved and reprimanded. That is unconscionable.

Congressman Smith, 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, we urge you and your House Committee colleagues instead to seek out those who promulgated and enforced such a despicable policy and remove them. SFC Martland acted honorably in protecting the Afghan boy from further sexual assault. That is more than can be said of those morally obtuse persons in his chain of command who promulgated and enforced a policy that subjects untold numbers of innocent Afghan children to sexual slavery and abuse in violation of U.S., Afghan, and international law.

* * * * *

Congressman Smith, we respectfully urge you and your House Committee colleagues to investigate SFC Martland's situation, to expose the policy that required American Service Members to tolerate sexual abuse of children, and to require the Army and DOD to take swift action to correct this miscarriage of justice. SFC Martland acted with honor and integrity. It is not in the best interests of the United States or the United States Army to separate the most fearless and courageous amongst us. Please stand with SFC Martland.

Respectfully yours,



Jay Alan Sekulow
Chief Counsel



Robert W. Ash
Senior Counsel