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November 6, 2019

The Honorable Mark T. Esper
Secretary of Defense
1000 Defense Pentagon
Washington, D.C., 20301-1000
Sent via U.S. Postal Service Express Mail

Re: *United States of America v. First Lieutenant Clint A. Lorange*
Department of Defense Position on Potential Executive Action

Dear Mr. Secretary:

We are members of the team representing First Lieutenant Clint A. Lorange ("1LT Lorange"), who was convicted by court-martial in August 2013, and presently serving a nineteen-year sentence at the U.S. Disciplinary Barracks in Fort Leavenworth, Kansas. We understand from recent media coverage that the President is considering taking action in 1LT Lorange's case pursuant to the authority granted to the President by Article 2, Section 2 of the Constitution for the United States, and by Article 22 and Article 60 of the Uniform Code of Military Justice ("UCMJ"), 10 U.S.C. §§ 822 and 860, respectively. We further understand from media reports that you are considering urging the President not to use the authority granted to him at Commander-in-Chief.

We write to encourage you to include in any communications you have with the President a complete and accurate depiction of the facts surrounding the prosecution of 1LT Lorange. The Army's theory at every stage of this case has been that 1LT Lorange was a "bad apple" who ordered the killing of "civilian casualties." This was the theory the prosecution told the jury; it was the theory endorsed by the Army Court of Criminal Appeals, and was the narrative parroted by senior Army officials in public and to at least one member of Congress.

It has been de-bunked by the following facts, discovered since 1LT Lorange's conviction, and in spite of the Army's efforts to support its theory of the case, which was developed without regard for the truth or a legitimate search for justice. The facts uncovered since 1LT Lorange's trial indicate that those he was convicted of killing or wounding were, in fact, enemy combatants – and lawful targets. Stated more simply, the evidence that now exists establishes that during the engagement in July 2012, 1LT Lorange killed the enemy, and protect his troops, which is precisely what this nation sent him to do.

The facts we ask you to include in any communication you have with the President with respect to any action he may take in 1LT Lorange's case include:

- Army prosecutors did not provide to 1LT Lorange's trial defense team evidence that DNA and/or fingerprint evidence linked the Afghan men killed and wounded in the July 2012 engagement to improvised explosive device ("IED") events targeted at killing Americans.
- Army prosecutors did not provide to 1LT Lorange's trial defense team Significant Activity Reports issued shortly before and contemporaneously with 1LT Lorange's patrol indicated that the platoon was being scouted by hostile forces.
- Army prosecutors did not provide to 1LT Lorange's trial defense team surveillance reports from an over-flying aerostat with high-visibility cameras that indicated that the platoon was being scouted by hostile forces.
- While the prosecution depicted the local men killed or wounded as "unarmed," the local population had ample opportunity to remove any weapons or explosives from the scene before U.S. forces were able to observe them.
- Nine members of the platoon 1LT Lorange assumed command over just days before the July 2012 patrol were threatened with murder charges, and granted immunity in exchange for their testimony against 1LT Lorange.
- While the Army prosecutors, and Army leaders in subsequent public discussions, accused 1LT Lorange of unilaterally and unlawfully changing the rules of engagement, 1LT Lorange was acquitted of that offense.

The concerns we raise in this letter are driven in part by comments made about this case by senior leaders in the Army legal community to the public and to Congress regarding this case that are inaccurate. For example, in a March 2018 public panel discussion regarding the infamous My Lai massacre, Brigadier General (BG) Joseph Berger, who for a time served as the Chief Judge of the Army Court of Criminal Appeals, addressed 1LT Lorange by name. He called 1LT Lorange a "bad apple," a "very aggressive Lieutenant who had his own ideas about how the war in

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Afghanistan should be being fought.” BG Berger told the audience that 1LT Lorange had changed rules of engagement, despite the fact that 1LT Lorange was acquitted of altering the rules of engagement. And further, our research has indicated that these same remarks were echoed several months later, in remarks made to a member of Congress by the Army’s Judge Advocate General. We bring these comments to your attention with the hope that in your conversation with the President regarding 1LT Lorange’s case, similar misstatements will not be included.

Finally, in preparing for your discussions with the President, we respectfully request that you look at the facts objectively, and that you encourage the President to act in accordance with his own independent judgment as Commander-in-Chief, under the authority granted to him by the Constitution and the UCMJ. And further in this regard, to the extent you are inclined to advise the President that his taking action in this particular court-martial would somehow undermine the faith the public and military have in the military justice system, we urge you to reconsider this position. Presidential action here will demonstrate that the President, as Commander-in-Chief and general court-martial convening authority, is an integral part of the military justice system, and takes seriously his role here. That the President of the United States would act in such a case would send a strong message to our young combat leaders that their country will support them when they are called upon to make split-second, life-or-death decisions to protect the men and women they lead. Moreover, there is deep precedent for the President of the United States taking action in courts-martial, dating to many similar actions President Lincoln took during the Civil War. President Trump exercising his discretion and independent review here would affirm the faith the American people have in their military’s leadership.

We hope you consider these points during any conversation you have with the President regarding 1LT Lorange, and we stand by to answer any questions you have or to engage in further discussion regarding this young warrior.

Sincerely,

____// Original Signed //_____

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