Judicial Watch®
Because no one is above the law!

July 23, 2025

The Honorable Pete Hegseth
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Re: Ashli Babbitt

Dear Secretary Hegseth:

I am writing to urge you to make a new determination granting military funeral honors for SrA Ashli Elizabeth Pamatian, *aka* Ashli Elizabeth McEntee, and Ashli Elizabeth Babbitt, a War on Terror veteran of the U.S. Air Force and Air National Guard. Ashli Babbitt was fatally shot in the U.S. Capitol on January 6, 2021 by U.S. Capitol Police Lt. Michael Byrd. Military funeral honors were denied for Ashli's funeral service by Lt. Gen. Brian T. Kelly, USAF (Ret.) on February 9, 2021. Gen. Kelly's letter to Ashli's family stated that his denial was due to "the circumstances preceding her death."[1] Gen. Kelly expressly left open the possibility for a new and different determination to be made in the following paragraph of his letter:

> As reported to us at the time of death, SrA Ashli McEntee (Babbitt) was fatally shot after having illegally entered the United States Capitol Building on 6 January 2021. As a result, I have determined that military funeral honors would bring discredit upon the Air Force. Should any new information come forward for consideration, I will make a new determination at that time.[2]

A lot of new information has come forward that warrants your making a new determination granting military funeral honors for Ashli Babbitt and her family. I respectfully encourage the Department of Defense to favorably consider two major recent developments and also Ashli's lengthy and meritorious military service.

First, on January 20, 2025, President Trump granted clemency for certain offenses relating to the events at or near the United States Capitol on January 6, 2021. The Presidential proclamation states, "This proclamation ends a grave national injustice that has been perpetrated upon the American people over the last four years and begins a process of national reconciliation."[3] President Trump (a) commuted the sentences of certain individuals convicted

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[1] Letter from USAF Lt. Gen. Brian T. Kelly to Aaron Babbitt (Feb. 9, 2021) (copy enclosed).
[2] *Id.*
[3] Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events At or Near the United States Capitol on January 5, 2021, *available at* https://www.whitehouse.gov/presidential-

of offenses related to events that occurred at or near the U.S. Capitol on January 6, 2021, to time served as of January 20, 2025; (b) granted a full, complete and unconditional pardon to all other individuals convicted of offenses related to events that occurred at or near the U.S. Capitol on January 6, 2021; and (c) directed the Attorney General to pursue dismissal with prejudice to the government of all pending indictments against individuals for their conduct related to the events at or near the U.S. Capitol on January 6, 2021.[4] It is impossible to reconcile Gen. Kelly's denial of military funeral honors for Ashli Babbitt's funeral with President Trump's grant of clemency to all individuals accused or convicted of offenses relating to the events at or near the U.S. Capitol on January 6, 2021. Gen. Kelly's refusal to provide military funeral honors was part of the "grave national injustice" that President Trump ended by granting clemency. The "process of national reconciliation" that began with presidential clemency demands a new determination granting military funeral honors for Ashli and her family.

Second, earlier this month on July 2, 2025, the United States of America paid a damage award of nearly five million dollars to settle a wrongful death lawsuit that Judicial Watch and I brought forward on behalf of the Estate of Ashli Babbitt and her husband Aaron Babbitt to ensure justice and accountability for the fatal shooting of Ashli Babbitt on January 6, 2021.[5] Once again, Gen. Kelly's denial of military funeral honors for Ashli's funeral cannot be reconciled with this landmark legal settlement. Many well-documented facts now clearly show that the fatal shooting was not justified.

For example, Ashli was the only official homicide on January 6, 2021.[6] Ashli, age 35, was unarmed when she was fatally shot.[7] She stood 5'3" tall and weighed 115 pounds.[8] Her hands were up in the air, empty, and in plain view of Lt. Byrd and four armed officers behind him.[9] Seven additional armed officers were behind Ashli, including four Containment and Emergency Response Team officers.[10] Ashli posed no threat to the safety of any officer nor any Member of Congress who stayed after Member evacuation.[11] Ashli was begging officers to call for backup before she was shot.[12] Officers ignored Ashli.[13] The only shot fired that day was

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actions/2025/01/granting-pardons-and-commutation-of-sentences-for-certain-offenses-relating-to-the-events-at-or-near-the-united-states-capitol-on-january-6-2021/

[4] *Id.*

[5] Judicial Watch Announces $4.975 Million Settlement of Ashli Babbitt Wrongful Death Lawsuit With U.S. Government, Judicial Watch (June 6, 2025), *available at* https://www.judicialwatch.org/4-975-million-settlement-of-ashli-babbitt/

[6] Autopsy Report, Gov't of the District of Columbia, Office of the Chief Medical Examiner (Feb. 4, 2021) (Confidential-Subject to Protective Order) (on file with Judicial Watch).

[7] Complaint for Assault and Battery; Negligence; Negligent Supervision, Discipline and Retention; Negligent Training; Survival; Wrongful Death, U.S. Dist. Ct. for the District of Columbia, Case No. 1:24-cv-01701-ACR (Jan. 5, 2024) (ECF 1) at 7.

[8] *See, supra,* note 6.

[9] *See, supra,* note 7.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 24.

[13] *Id.*

the one Lt. Byrd fired to kill Ashli.[14] Lt. Byrd was not in uniform.[15] Lt. Byrd did not identify himself as a police officer or otherwise make his presence known to Ashli.[16] Lt. Byrd also did not give Ashli any warnings or commands before firing the shot that killed her.[17] Ashli never saw Lt. Byrd because he was hidden from her view.[18] She was ambushed and defenseless.[19] Multiple witnesses at the scene yelled, "you just murdered her."[20] Lt. Byrd later told the world on NBC Nightly News that he "had no clue" about the individual he shot.[21] "I didn't even know it was a female until hours, way later . . . that night," he said.[22]

The official cover-up for the unlawful shooting began immediately. Within a minute *after* shooting Ashli, Lt. Byrd used his radio to communicate far and wide that he was being shot at and preparing to shoot back, which was a blatant lie he told to cover up his unjustified use of deadly force against Ashli.[23]

Lt. Byrd's identity was also withheld from the public for over seven months after the shooting,[24] and from July 8, 2021 through January 28, 2022 he was secreted away at Jt. Base Andrews in a "Distinguished Visitor Suite" typically reserved for officers at the rank of O-7 (Brigadier General or higher), paid for by Capitol Police with taxpayer money.[25]

Also buried in the cover-up was Lt. Byrd's history of dangerous and incompetent behavior involving use of deadly force, mishandling his service weapon, and other misconduct.[26] Shocking details of Lt. Byrd's lengthy disciplinary history and the glaring political influence on internal Capitol Police decisions related to Lt. Byrd following January 6, 2021 emerged only

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[14] Examining the U.S. Capitol Attack – Part II: Joint Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs and the S. Comm. on Rules & Admin., 117th Cong. (Mar. 3, 2021) (3:21:35) (testimony of Jill Sanborn, Ass't Dir., FBI Counterterrorism Div.), *available at* https://www.youtube.com/watch?v=lRC9Y4D7fNM&t=12069s

[15] *See, supra,* note 7 at 7.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* at 8.

[20] *Id.*

[21] *Id.* at 12.

[22] *Id.*

[23] *See, supra,* note 7 at 7. ("405B. We got shots fired in the lobby. We got shots shots fired in the lobby of the House chamber. Shots are being fired at us and we're sh, uhh, prepared to fire back at them. We have guns drawn. Please don't leave that end. Don't leave that end.") (Capitol Police radio communication and transcript on file with Judicial Watch); *see also* Radio Transmissions by Capitol Police Lt. Michael Byrd, *available at* https://hanneblaze.podbean.com/e/radio-transmissions-by-capitol-police-lt-michael-byrd/

[24] US Capitol cop who shot Ashli Babbitt ID'd as Michael Byrd, NY Post (Aug. 26, 2021), *available at* https://nypost.com/2021/08/26/us-capitol-cop-who-shot-ashli-babbitt-idd-as-michael-byrd/

[25] Air Force Records Reveal Tens of Thousands of Taxpayer Dollars Spent to House Ashli Babbitt Shooter and His Pet for Several Months in 'Distinguished Visitor Suite' at Joint Base Andrews, Judicial Watch (Jan. 6, 2023), *available at* https://www.judicialwatch.org/taxpayer-dollars-spent-to-house-ashli-babbitt-shooter/;

[26] *See, supra,* note 7 at 26-27.

recently from the office of Rep. Barry Loudermilk, former Chairman of the Committee on House Administration Subcommittee on Oversight and its investigation into the events at the U.S. Capitol on January 6, 2021.[27]

To this day, Lt. Byrd has not been charged or punished for Ashli Babbitt's homicide.[28]

Turning now to Ashli Babbitt's distinguished military service, Ashli was a highly trained military police officer. Ashli enlisted in the U.S. Air Force after graduating high school at age seventeen.[29] She left home for basic training after her eighteenth birthday.[30] Ashli graduated from basic training at Lackland Air Force Base, San Antonio, Texas in August 2004.[31] Ashli served in the U.S. Air Force from April 2004 to June 2009 and then in the Air National Guard for several years.[32] Ashli was a Senior Airman and received an honorable discharge.[33]

Ashli served as a military police officer and guarded high-value military assets and troops and high-level national security officials and dignitaries in the Middle East as well as captured terrorists and even nuclear weapons.[34]

Ashli's first assignment was at Eielson Air Force Base near Fairbanks, Alaska.[35] Ashli deployed down range on at least four separate occasions in support of Operation Iraqi Freedom and Operation Enduring Freedom maintaining security for her area of responsibility.[36] Ashli conducted Convoy Security Operations, Base Entry Control Procedures, Force Protection, Physical Security, Personal Security, and Embassy Security Operations.[37] Ashli also conducted Detainee Movement Operations as well as provided security for detainees at Camp Bucca, Iraq where she was also tasked with gathering intelligence and maintaining order and balance within compounds.[38] Ashli also conducted Presidential Security for two years.[39] Ashli also deployed to the United Arab Emirates and Korea for approximately six months at a time.[40]

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[27] Letter from Rep. Barry Loudermilk (R-GA) to Chief J. Thomas Manger, Chief of Police, U.S. Capitol Police (Nov. 20, 2024), *available at* https://www.documentcloud.org/documents/25378139-rep-loudermilk-letter-to-chief-manger-nov-20-2024/; *see also* Cop who killed Ashli Babbitt has 'significant' discipline history, including gun incidents: Report, Blaze media (Nov. 22, 2024), *available at* https://www.theblaze.com/news/cop-who-killed-ashli-babbitt-has-significant-discipline-history-including-gun-incidents-report

[28] *See, supra,* note 7 at 8.

[29] Declaration of Michelle A. Witthoeft in support of Plaintiffs' Opposition to Defendant's Motion to Transfer Venue, U.S. Dist. Ct. for the Dist. of Columbia case no. 1:24-cv-01701-ACR (Mar. 25, 2024) (ECF 9-1) at 2-3.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

Ashli's weapons training included the M-4 assault rifle, M-9 semiautomatic 9mm pistol, M-249 squad automatic weapon, M-240B machine gun, and M-203 grenade launcher, as well as the less than lethal alternatives, Oleoresin Capsicum (OC) spray (aka pepper spray) and the Armament Systems and Procedures (ASP) baton.[41] Ashli also received training on Military Operations in Urban Terrain (MOUT), Improvised Explosive Device (IED) detection, Entry Control Procedures, and Vehicle/Personnel Search Procedures.[42]

Ashli's awards include the Air Force Achievement Medal, Army Achievement Medal, Iraqi Freedom Campaign Medal, Afghanistan Campaign Medal, Marksmanship Ribbon with Cluster Meritorious Unit Award, Outstanding Performer for Unit Inspection, Outstanding Performer for Wing Level Exercise, Leadership Award, and Command Chief Master Sergeant A.C.E. Award.[43]

This request is authorized by Title 10, United States Code, Section 1491, which provides, "The Secretary of Defense shall ensure that, upon request, a funeral honors detail is provided for the funeral of any veteran."[44] The term "veteran" includes a decedent who served full-time duty in the United States Air Force, including its reserve component and who was discharged under conditions other than dishonorable.[45] Ashli Babbitt is eligible to receive military funeral honors because she served on active duty in the U.S. Air Force from April 2004 to June 2009 and was honorably discharged.[46]

Gen. Kelly denied military funeral honors pursuant to Title 10, United States Code, Section 985.[47] Section 985 states that military honors may not be provided at the funeral or burial of a veteran "when the circumstances surrounding the person's death or other circumstances as specified by the Secretary of Defense are such that to provide military honors at the funeral or burial of the person would bring discredit upon the person's service (or former service)."[48] Gen. Kelly's letter states that it was reported to him that "SrA Ashli McEntee (Babbitt) was fatally shot after having illegally entered the United States Capitol Building on 6 January 2021."[49] These circumstances should not have made Ashli Babbitt ineligible for military funeral honors. Under American law, deadly force is never justified by a trespass upon

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[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] 10 U.S.C. § 1491(a).
[45] *See* 10 U.S.C. § 1491(h)(1) (The term "veteran" means a decedent who "served in the active military, naval, air, or space service . . . and who was discharged or released therefrom under conditions other than dishonorable."); 38 U.S.C. § 101(24)(A) (The term "active military, naval, air, or space service" includes "active duty."); *id.* § 101(21)(A) (The term "active duty" includes "full-time duty in the Armed Forces[.]"); *id.* § 101(10) (The term "Armed Forces" means "the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components thereof.").
[46] *See, supra*, note 29 at 2.
[47] *See, supra*, note 1.
[48] 10 U.S.C. § 985(a).
[49] *See, supra*, notes 1 and 2.

property.[50] There is no exception in the law for trespassing the U.S. Capitol Building on January 6, 2021. Knowingly entering or remaining in any restricted building is a misdemeanor.[51] Gen. Kelly's determination was fatally flawed at the time and still remains a grave national injustice.

Also, as explained above, it is impossible to reconcile Gen. Kelly's denial of military funeral honors for Ashli Babbitt's funeral with either President Trump's grant of clemency to all individuals accused or convicted of offenses relating to the events at or near the U.S. Capitol on January 6, 2021 or the United States of America's decision to pay a damage award of nearly five million dollars to settle a wrongful death lawsuit that litigated the facts and circumstances surrounding Ashli's unlawful, fatal shooting on January 6, 2021.

Ashli Babbitt's patriotic and courageous service in the U.S. Air Force and Air National Guard also merits favorable action on this request.

On behalf of Ashli Babbitt's estate and her family, I hereby respectfully request that the Department of Defense provide military funeral honors to honor Ashli's commitment and sacrifice to her country and provide comfort and gratitude to her family.

I very much look forward to your prompt reply.

Thank you for your attention to this important matter.

Sincerely,

Robert Patrick Sticht
Senior Counsel
Judicial Watch, Inc.
rsticht@judicialwatch.org

[50] *See Graham v. Connor*, 490 U.S. 386 (1989), and *Tennessee v. Garner*, 471 U.S. 1 (1985), a pair of cases in which the U.S. Supreme Court holds that, for a seizure to comport with the Fourth Amendment, it must be reasonable under the totality of the circumstances. Deadly force is only authorized where the subject of such force poses an imminent threat of death or serious bodily harm to the officer or to a third party; *see also* U.S. Capitol Police Directive 1020.004, Use of Force (Oct. 26, 2016) at 2-5.

[51] *See* 18 U.S.C. § 1752(a)(1), the statute invoked by the Department of Justice to charge individuals who entered the U.S. Capitol on January 6, 2021. Section 1752(a)(1) is a Class A misdemeanor which carries a maximum sentence of one (1) year of imprisonment; a fine of not more than $100,000, pursuant to 18 U.S.C. § 3571(b)(5); a term of supervised release of not more than 1 year, pursuant to 18 U.S.C. § 3583(b)(3); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

9 February 2021

HQ USAF/A1
1040 Air Force Pentagon
Washington, DC 20330-1040

Mr. Aaron Babbitt
4849 Cape May Avenue
San Diego, California 92107

Dear Mr. Babbitt,

On behalf of the Secretary of the Air Force, I extend my condolences to you and your family on the loss of your wife, SrA Ashli McEntee (Babbitt), USAF. I understand you requested military funeral honors to be rendered at your spouse's funeral service.

Military funeral honors have been denied for the funeral of your wife due to the circumstances preceding her death. My decision to deny the request for military honors is in accordance with Title 10, Section 985, United States Code.

As reported to us at the time of death, SrA Ashli McEntee (Babbitt) was fatally shot after having illegally entered the United States Capitol Building on 6 January 2021. As a result, I have determined that military funeral honors would bring discredit upon the Air Force. Should any new information come forward for consideration, I will make a new determination at that time.

Thank you for your understanding, and, again, my deepest condolences.

Sincerely,

KELLY.BRIAN.T.1030223779 Digitally signed by KELLY.BRIAN.T.1030223779 Date: 2021.02.09 16:34:44 -05'00'

BRIAN T. KELLY
Lieutenant General, USAF
DCS, Manpower, Personnel and Services

cc:
OSD P&R
AF/A1S
AFMAO/CC