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February 17, 2017

VIA ELECTRONIC & REGULAR MAIL

Brigadier General William M. Journey
Commanding General, Western Recruiting Region
Marine Corps Recruit Depot San Diego
1600 Henderson Ave.
San Diego, CA 92140

Re: Displays on Chapel Grounds

Dear Brigadier General Journey:

I write on behalf of the ACLU of San Diego & Imperial Counties to address an issue of free expression that has arisen at Marine Corps Recruit Depot San Diego (“MCRD”). I understand MCRD allows individuals or private groups to place religious displays such as a depiction of the birth of Jesus Christ, or crèche, on the chapel grounds during the winter holiday season. I presume MCRD allows such a display as an accommodation of private religious expression and does not officially endorse the display.

I further understand that the Military Religious Freedom Foundation (MRFF), on behalf of 27 active duty, retired, and veteran Marines assigned to or otherwise affiliated with MCRD who sought MRFF’s assistance, recently requested that individuals of the Jewish faith be allowed to place a Menorah or other symbol representing the Jewish celebration of Chanukah, similar in size and scope to the crèche, on chapel grounds during the next winter holiday season. The Staff Judge Advocate at MCRD declined to grant the request, contending it was “premature.”

I respectfully disagree that the request was premature. If MCRD has allowed the display of a crèche on chapel grounds, there is no reason why it cannot agree to the display of a Menorah or other symbol on the same grounds, now or later. Indeed, the failure to do so may violate the Constitution. “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). “At a minimum, the protections of the Free Exercise Clause pertain if the [government] discriminates against some or all religious beliefs.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). The equal protection component of the Fifth Amendment “likewise prohibits the Government from impermissibly discriminating among persons based on religion.” *Washington v. Trump*, ___ F.3d ___, No. 17-35105, 2017 WL 526497, at *10 (9th Cir. Feb. 9, 2017). To the extent MCRD has created a limited forum for private speech on the chapel

grounds, it may not exclude speech from that forum based on viewpoint, religious or otherwise. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001).

For any or all of these reasons, if MCRD has allowed a crèche on the chapel grounds, it must allow the requested Jewish display. To claim the request is “premature” is at best evasive and at worst thinly veiled discrimination. There is no logical or principled reason why MCRD cannot grant permission now to place the Jewish display on the chapel grounds during the next appropriate holiday season. As a practical matter, advance permission is necessary to allow sufficient time for planning the display, raising sufficient funds, and constructing and placing it on the chapel grounds in time for the holiday season. If issues arise concerning size, placement, and available space, they can be resolved through an appropriate process, but those hypothetical concerns cannot justify declining to grant permission at all.

For these reasons, the ACLU respectfully requests that MCRD immediately grant MRFF’s request on behalf of its 27 current and former USMC clients to place a Jewish display on the chapel grounds during the next holiday season. Please feel free to contact me if you or your staff have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'DLoy', with a stylized flourish extending to the right.

David Loy
Legal Director

cc: Lt. Col. Jeffrey V. Munoz, Staff Judge Advocate MCRD
Michael L. “Mikey” Weinstein, Founder and President, MRFF
Tobanna Barker, Legal Affairs Coordinator, MRFF