



The Return of the Military Death Penalty? The Modern History of Executions in the United States Armed Forces and the Planned Execution of Major Nidal Hasan

For more than six decades, the United States military has possessed the legal authority to impose and carry out the death penalty, yet it has not executed a service member since 1961. That long period of dormancy may soon come to an end. On October 2, 2026, President Donald Trump approved the death sentence imposed upon former Army Major Nidal Hasan for the 2009 Fort Hood massacre, and the Army has announced plans to execute Hasan by firing squad at Fort Hood, Texas, on December 3, 2026.

If carried out, the execution would represent the first military execution in approximately sixty-five years and the first military execution by firing squad since World War II.

The development has renewed attention to a little-understood aspect of military justice: the military death penalty and the lengthy statutory and constitutional process required before a military execution may lawfully occur.

The Military Death Penalty in Historical Context

Capital punishment has existed in American military law since the nation's founding. During wartime, military courts imposed death sentences for offenses ranging from espionage and mutiny to desertion and murder. Thousands of military death sentences were imposed during the Civil War and World War II, although comparatively few were ultimately carried out.

One of the most notable military executions occurred in January 1945, when Private Eddie Slovik became the only American soldier executed for desertion since the Civil War. He was executed by firing squad in France during World War II.

The last military execution occurred on April 13, 1961, when Army Private John A. Bennett was hanged at Fort Leavenworth after being convicted of rape and attempted murder. Since Bennett's execution, no service member has been executed under military authority.

Although executions ceased, courts-martial continued to impose death sentences in a limited number of cases.

Modern Military Death Row

Today, only four individuals remain on military death row:

- Ronald A. Gray, convicted of multiple murders and rapes committed while stationed at Fort Bragg.
- Hasan K. Akbar, convicted for the 2003 grenade and rifle attack on fellow soldiers in Kuwait.
- Timothy B. Hennis, convicted of the 1985 murders of an Air Force captain's wife and two children.
- Nidal M. Hasan, convicted for the 2009 Fort Hood attack that resulted in the deaths of 13 fellow soldiers and civilians.

The rarity of military death sentences reflects both the infrequency with which capital charges are referred and the extraordinary procedural safeguards embedded within the military justice system.

The Fort Hood Attack and Hasan's Death Sentence

On November 5, 2009, Major Nidal Hasan, an Army psychiatrist, opened fire at the Soldier Readiness Processing Center at Fort Hood, Texas. Thirteen people were killed and thirty-two others were wounded. During his court-martial, Hasan effectively admitted responsibility and sought to characterize his actions as support for Taliban forces fighting against the United States military.

In August 2013, a military panel convicted Hasan of thirteen counts of premeditated murder and thirty-two counts of attempted premeditated murder and sentenced him to death.

Over the next decade, Hasan pursued extensive military appellate review. According to the Army, the Supreme Court denied further review on March 31, 2025, leaving intact the findings and sentence approved through the military appellate process.

The Legal Framework Governing Military Executions

Unlike a state criminal prosecution, a military death sentence cannot be carried out solely because appellate review is complete.

The principal statutory authority is Article 71 of the Uniform Code of Military Justice ("UCMJ"), which provides that a death sentence imposed by court-martial may not be executed until: (i) Appellate review has been completed and a final judgment has been reached regarding the legality of the proceedings; and (ii) The President personally approves the sentence.

Article 71 further grants the President authority to commute, remit, or otherwise modify the sentence. As a practical matter, presidential approval serves as the military equivalent of a death warrant.

The Multi-Layered Military Review Process

Military capital cases undergo review that is often broader and more extensive than review in civilian criminal cases. The process generally includes:

1. Trial by General Court-Martial

- The accused is tried before a properly constituted capital court-martial, with heightened procedural protections concerning counsel, jury selection, aggravating factors, and sentencing.

2. Automatic Military Appellate Review

- Every military death sentence receives automatic review by the service Court of Criminal Appeals and the Court of Appeals for the Armed Forces.

3. Supreme Court Review

- The Supreme Court may review the case through the certiorari process.

4. Executive Review

- After judicial review is completed, the record is transmitted through military channels to The Judge Advocate General, the Secretary of the Army, the Secretary of Defense, and ultimately the President for final action. Army regulations specifically contemplate review of the record of trial, clemency submissions, and recommendations from military authorities.

Only after completion of those steps can an execution date be set.

Army Regulation 190-55 and Execution Procedures

Military executions are governed primarily by Army Regulation 190-55, entitled U.S. Army Corrections System: Procedures for Military Executions.

The regulation establishes procedures concerning: (i) Selection of the execution facility; (ii) Appointment of an execution official; (iii) Witness procedures; (iv) Medical participation and death certification; (v) Security planning; (vi) Media access; (vii) Disposition of remains; and (viii) Documentation of the execution.

The regulation also provides that, after presidential approval, the Secretary of the Army establishes an execution window and issues the execution order. According to the Army's October 2026 announcement, an execution date must fall between 60 and 150 days following presidential approval.

Why Hasan's Case Is Different

Historically, modern military execution planning contemplated transporting military prisoners from Fort Leavenworth to Terre Haute, Indiana, where federal executions have been conducted. Reports concerning "Operation Resolute Justice" indicated that the Army had been planning for potential executions at the federal execution complex in Terre Haute.

Hasan's execution, however, has been scheduled for Fort Hood itself, the location of the murders. The Army also announced that the method will be execution by firing squad rather than lethal injection.

That decision is highly significant because it will be the first military execution since 1961. Furthermore, it will be the first Army firing squad execution since the execution of Eddie Slovik in 1945; and it will likely become one of the most publicly scrutinized military justice events in modern American history.

Execution By Firing Squad

Although military executions are governed by Army Regulation 190-55, the Army has not publicly released a detailed firing squad protocol specific to the planned execution of Nidal Hasan. As noted above, the publicly available regulations address administrative responsibilities, witness procedures, medical oversight, and execution orders, but do not provide the same level of publicly available operational detail that many states publish for civilian executions.

The most detailed publicly available description of a United States military execution by firing squad appears in War Department Pamphlet No. 27-4, Procedure for Military Executions, issued on June 12, 1944, during World War II. The pamphlet was promulgated under the authority of the War Department and provided detailed instructions concerning executions by both hanging and "musketry," the historical military term for execution by firing squad.

Importantly, there is no indication that the Army plans to use these exact procedures in the Hasan execution. Nevertheless, the pamphlet offers a valuable glimpse into how military firing squad executions were conducted during the period in which the last Army firing squad executions occurred.

1. Composition of the Firing Squad

- Under the 1944 pamphlet, the firing squad consisted of:
- A firing party of twelve armed soldiers.
- An officer in charge of the firing detail.
- Medical personnel.
- A chaplain, if requested.
- Witnesses authorized to attend the execution.

The soldiers selected for the firing squad were equipped with rifles and positioned at a specified distance from the condemned prisoner. The manual treated the firing squad as a military formation rather than an ad hoc collection of execution personnel.

2. Preparation of the Condemned Prisoner

The pamphlet directed that the prisoner be securely restrained and seated. The condemned individual was blindfolded unless he declined the blindfold. A target was affixed over the region of the heart to provide a visible aiming point for the firing squad.

The procedures were designed to ensure a rapid and certain death while preserving military discipline and formality.

3. The Firing Command

After all participants were in position, the officer in charge ordered the firing detail to assume firing positions and, upon command, discharge their weapons simultaneously. The objective was to direct fire at the prisoner's heart rather than the head.

The pamphlet reflects the longstanding military view that death by musketry was particularly appropriate for offenses committed by soldiers, as distinguished from execution by hanging.

4. Medical Verification and Coup de Grâce Procedure

One aspect of the pamphlet that modern readers may find striking is its requirement that a medical officer immediately examine the prisoner following the volley. If the prisoner remained alive, the officer in charge was directed to administer a final shot intended to ensure death. This procedure, often referred to historically as the coup de grâce, was specifically contemplated by the pamphlet.

Whether any comparable procedure would be authorized under current Army regulations has not been publicly disclosed.

5. Secrecy and Formality

The 1944 pamphlet emphasized dignity, discipline, and control. It regulated:

- The number and identity of witnesses;
- Security arrangements;
- Transportation of the prisoner;
- Conduct of chaplains and medical personnel;
- Post-execution documentation; and
- Disposition of the remains.

In many respects, the document reads less like a penal regulation and more like a military operations order, reflecting the Army's effort to standardize executions during wartime.

As noted, the Army has not publicly disclosed whether the Hasan execution will follow historical Army firing squad procedures, a newly developed protocol, or procedures modeled after modern state firing squad executions. The currently available public announcements establish only that Hasan is scheduled to be executed by firing squad at Fort Hood, Texas.

Can Hasan Still Challenge the Execution?

Probably yes.

Although the Army has announced an execution date, federal civilian litigation may still occur. Commentators have noted that military prisoners facing execution may pursue collateral review in federal district court through habeas corpus proceedings and related constitutional challenges.

Indeed, Ronald Gray's execution was approved by President George W. Bush in 2008 and an execution date was scheduled, yet federal litigation stayed the execution and it never occurred.

Accordingly, Hassan's appellate path may not be entirely closed despite presidential approval and final military review.

Practical Implications

Hasan's case highlights several unique features of military justice:

First, the President plays a direct and indispensable role in every military execution. Second, military death sentences can remain pending for decades after conviction. Third, the military appellate process is among the most extensive review systems in American criminal law. Fourth, although rarely used, the military death penalty remains a viable component of the UCMJ. Finally, the planned execution may establish precedent for future cases involving the remaining inmates on military death row.

Conclusion

For sixty-five years, military capital punishment has existed largely as a theoretical power. The planned execution of former Army Major Nidal Hasan represents the closest the United States military has come to carrying out a death sentence since the execution of Private John Bennett in 1961. Whether Hasan is ultimately executed on the presently scheduled date or succeeds in obtaining additional judicial review, the case marks a historic moment in military law and serves as a reminder that the death penalty remains an available punishment under the Uniform Code of Military Justice.

For military justice practitioners, government attorneys, and civilian counsel representing service members, Hasan's case offers a rare opportunity to examine a legal process that has largely remained dormant for more than half a century but may once again become operational.

This alert is for general informational purposes only, is based on publicly available information as of October 8, 2026, and does not constitute legal advice. Developments in this matter are ongoing.

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