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10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 12 **EASTERN DIVISION**

13 LOG CABIN REPUBLICANS,
 14 Plaintiff,
 15 v.
 16 UNITED STATES OF AMERICA AND
 ROBERT M. GATES, Secretary of
 17 Defense,
 18 Defendants.
 19
 20

**DEFENDANTS' OPPOSITION
 TO MOTION FOR RELIEF
 FILED BY NON-PARTY,
 JAMES E. PIETRANGELO**

No. CV04-8425 VAP (Ex)
 DATE: April 11, 2011
 TIME: 2:00 P.M.
 PLACE: Courtroom 2, 2nd Floor,
 United States District Court,
 3470 Twelfth St., Riverside CA.

1 Non-party James E. Pietrangelo, II, requests the Court to extend the
2 declaratory judgment set forth in the Court's October 12, 2010 order (Doc. 284)
3 to him, and that he be additionally entitled to reinstatement into the military and an
4 award of damages based upon defendants' purported failure to comply with the
5 Court's order. The Court should summarily reject Mr. Pietrangelo's motion.

6 The Ninth Circuit has stayed any enforcement of the Court's October 12,
7 2010 judgment and permanent injunction pending appeal. *See* Doc. 284
8 (recognizing, *inter alia*, that balance of hardships tilts in favor of requested stay
9 where Executive Branch is enjoined from implementing duly enacted statute,
10 particularly in the military context where judicial deference is at its apogee);
11 attached November 12, 2010 Supreme Court order denying request to vacate stay.

12 And even if the Court's October 12, 2010 order were in effect, nothing in
13 the Court's injunction required the reinstatement of service members who were
14 previously discharged—or the award of money damages. The requested relief and
15 the resulting order include only prospective equitable relief. *See* Doc. 252.
16 Mr. Pietrangelo's repeated assertion that he is entitled to additional relief because
17 defendants have violated the Court's order (*see* Doc. 295 at 4:12-27) ignores the
18 current stay entered by the Court of Appeals and left undisturbed by the Supreme
19 Court.

20 Since the entry of the Court's October 12, 2010 Order, Congress enacted the
21 Don't Ask, Don't Tell (DADT) Repeal Act of 2010, Pub. L. No. 111-321 (Repeal
22 Act). Section 2(f) of the Repeal Act provides that, upon the effective date
23 established by Section 2(b), the DADT statute (10 U.S.C. § 654) shall be stricken
24 from the Code. And Section 2(b) states that the repeal shall take effect 60 days
25 after the date on which the President transmits to Congress a certification by the
26 President, Secretary of Defense, and the Chairman of the Joint Chiefs of Staff that
27 the requirements for a successful and orderly repeal have been met. Mr.

1 Pietrangelo will be afforded the opportunity to reapply to the military after repeal
2 occurs.

3 Lastly, at bottom, Mr. Pietrangelo’s motion is merely an attempt to litigate
4 anew claims that he presented and were rejected in *Cook v. Gates*, 528 F.3d 42
5 (1st Cir. 2008). There, Mr. Pietrangelo and the other named plaintiffs challenged
6 10 U.S.C. § 654, claiming that the statute violates due process and equal
7 protection, as well as the First Amendment. 528 F.3d at 45, 47. The First Circuit
8 rejected each of these claims and upheld the Act. *See id.* at 65. Mr. Pietrangelo’s
9 attempt to relitigate these claims here is barred by the doctrine of *res judicata*.

10 *Res judicata* consists of two related concepts, claim preclusion and issue
11 preclusion. *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 n. 1,
12 104 S. Ct. 892, 894 n. 1, 79 L. Ed. 2d 56 (1984). “The doctrine of claim
13 preclusion treats a judgment, once rendered, as the full measure of relief to be
14 accorded the same parties on the same claim or cause of action . . . [T]he effect of
15 a judgment extends to the litigation of all issues relevant to the same claim
16 between the parties, whether or not raised at trial.” *Haphey v. Linn Cty.*, 924 F.2d
17 1512, 1515 (9th Cir. 1991) (quoting 18 C. Wright, A. Miller, & E. Cooper, *Federal*
18 *Practice and Procedure* § 4402 (1981)(internal quotations omitted). Issue
19 preclusion, meanwhile, “recognizes that suits addressed to particular claims may
20 present issues relevant to suits on other claims [This doctrine] bars the
21 relitigation of issues actually adjudicated, and essential to the judgment, in a prior
22 litigation between the same parties.” *Id.* Regardless of how the doctrine is
23 viewed here however, the First Circuit’s *Cook* ruling completely disposed of
24 whatever constitutional challenges Mr. Pietrangelo had to Section 654.

1 For any one of these reasons, Mr. Pietrangelo's motion should be denied.

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3 Date: March 21, 2011

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify under penalty of perjury that on this 21st day of March,
3 2011, I caused to be placed in the United States mail (first-class mail, postage
4 paid) a copy of the foregoing addressed as follows:

5
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