

1 M. ANDREW WOODMANSEE (CA SBN 201780)
 MAWoodmansee@mofocom
 2 STEPHANIE L. FONG (CA SBN 240836)
 SFong@mofocom
 3 KIMBERLY R. GOSLING (CA SBN 247803)
 KGosling@mofocom
 4 JESSICA A. ROBERTS (CA SBN 265570)
 JRoberts@mofocom
 5 MORRISON & FOERSTER LLP
 12531 High Bluff Drive
 6 San Diego, California 92130-2040
 Telephone: 858.720.5100
 7 Facsimile: 858.720.5125

8 JOHN M. GOODMAN (DC SBN 383147)
 jgoodman@sldn.org
 9 SERVICEMEMBERS LEGAL DEFENSE NETWORK
 P.O. Box 65301
 10 Washington, DC 20035-5301
 Telephone: 202.328.3244
 11 Facsimile: 202.797.1635

12 Attorneys for Plaintiffs
 MICHAEL D. ALMY, JASON D. KNIGHT,
 13 AND ANTHONY J. LOVERDE

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

16 MICHAEL D. ALMY, JASON D. KNIGHT,
 and ANTHONY J. LOVERDE,

17 Plaintiffs,

18 v.

19 UNITED STATES DEPARTMENT OF
 20 DEFENSE; ROBERT M. GATES, Secretary
 of Defense; DEPARTMENT OF THE AIR
 21 FORCE; MICHAEL B. DONLEY, Secretary,
 Department of the Air Force; DEPARTMENT
 22 OF THE NAVY; and RAY MABUS,
 Secretary, Department of the Navy,

23 Defendants.
 24

Case No. 10-cv-05627-RS

**DECLARATION OF MICHAEL D.
 ALMY IN SUPPORT OF PLAINTIFF
 ALMY'S MOTION FOR PARTIAL
 SUMMARY JUDGMENT**

Date: August 9, 2012
 Time: 1:30 p.m.
 Courtroom: 3, 17th Floor
 Judge: Hon. Richard Seeborg

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Michael D. Almy, hereby declare as follows:

1. The Air Force has been a part of my life since it began. I was born at Bergstrom Air Force Base (“AFB”), Texas in 1970. My father is a West Point graduate who taught chemistry at the Air Force Academy, flew helicopters in Vietnam, and ultimately retired from the Air Force as a senior officer. One of my uncles retired as a Master Gunnery Sergeant from the Marine Corps, with service in World War II, Korea, and Vietnam. Another uncle served in the Army in Korea.

2. In 1988, I went to college at Wright State University and received a scholarship through Air Force ROTC. During my time in ROTC, I took an active role in developing programs there. In the summer of 1991, I was one of only a handful of AFROTC cadets who reported to Army Airborne Training at Fort Benning, Georgia. Although I have not had occasion to jump since, I am very proud of having earned my jump wings that summer. In 1992, I graduated from AFROTC as a distinguished graduate, in the top ten percent of all graduates nationwide.

3. I entered active duty in the Air Force in 1993. When I first entered active duty, I attended Basic Communications-Electronics Officer Training at Keesler AFB in Mississippi. Following completion of this course, I was stationed at the Air Intelligence Agency at Kelly AFB in Texas. After nine months of service at Kelly AFB, I was accepted for and attended navigator training at Randolph AFB in 1994.

4. In July 1995, I was assigned to Scott AFB in Illinois. I initially worked in systems support for the Intelligence Directorate (J2) of United States Transportation Command. Following this, I worked at the help desk for all Air Mobility Command and Control Systems.

5. In 1998, I was stationed at the Third Combat Communications Group at Tinker AFB in Oklahoma. While stationed in Oklahoma, I was named officer of the year for my unit of nearly 1,000 people.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. In September 1998, I deployed to Eskan Village, Saudi Arabia, as the senior communicator from my unit, with approximately 60 personnel in my squadron. There the squadron supported all the base-level communications requirements during Operation Desert Fox.

7. In September 1999, I again deployed to Saudi Arabia. I served as the executive officer for the 363rd Expeditionary Operations Group at Prince Sultan Air Base, where the group was deployed in support of Operation Southern Watch.

8. In July 2001, I was one of six officers selected from the entire Air Force to attend Professional Military Education at the Quantico Marine Corps Base in Virginia.

9. In June 2002, I was stationed at Ramstein Air Base, Germany, in the Communications Directorate of Headquarters for the U.S. Air Force Europe. There I worked on tactical communications and airborne communications projects. In November 2002, I again deployed to Prince Sultan Air Base in support of the invasion of Iraq at the beginning of Operation Iraqi Freedom. I was directly responsible for facilitating communications activation at newly established bases throughout the theater in Jordan, Saudi Arabia, and Iraq, as well as overseeing the viability of the network architecture supporting the unmanned aerial vehicle fleet.

10. After returning from Saudi Arabia, I was promoted to the rank of Major and accepted a position as the Chief of Maintenance at the 606th Air Control Squadron ("ACS") at Spangdahlem Air Base in Germany. I reported to Spangdahlem Air Base in September 2003, where I was in charge of a directorate of 180 troops.

11. In September 2004, my unit deployed to three locations in Iraq in support of Operation Iraqi Freedom. This marked my fourth deployment to the Middle East during my Air Force career. During this deployment, my unit controlled the airspace over two-thirds of Iraq, and my troops maintained the communications systems necessary for that mission. This included air support for the liberation of Fallujah, Iraq. My base came under daily mortar

1 attacks. During one of these attacks, one of my Airmen was struck. The mortar attack also
2 caused significant damage to our equipment.

3 12. Towards the end of this deployment to Iraq, I received the Leo Marquez Field
4 Grade Officer of the Year Award, which recognized me as one of the top officers in my career
5 field for the entire Air Force. A true and correct copy of a letter from USAF General
6 Foglesong congratulating me on this award is attached hereto as Exhibit 1.

7 13. During my service in the Air Force, I received numerous other military awards
8 and decorations. These accolades include, but are not limited to, the Joint Service
9 Commendation Medal, three Air Force Commendation Medals, the Air Force Achievement
10 Medal, the Air Force Outstanding Unit Award, the Air Force Organizational Excellence
11 Award, the Combat Readiness Medal, the National Defense Service Medal, the Armed Forces
12 Expeditionary Medal, the Iraq Campaign Medal, the Global War on Terrorism Expeditionary
13 Medal, the Global War on Terrorism Service Medal, the Humanitarian Service Medal, the Air
14 Force Overseas Long Tour Ribbon, the Air Force Longevity Service Award, the Small Arms
15 Expert Marksmanship Ribbon, the Air Force Training Ribbon, the Company Grade Officer of
16 the Year award, the Senior Communications and Information Badge, and a recognition as
17 Distinguished Air Force ROTC Graduate.

18 14. Throughout my service in the Air Force, my military superiors and evaluators
19 provided uniformly high assessments of me in my annual performance evaluations and
20 promotion recommendations. For example, when I served as the Chief of Maintenance in the
21 606th ACS at Spangdahlem Air Base, a supervisor commented that I was: “Outstanding leader
22 of [his] largest directorate; immediate impact on morale/mission—maintenance never
23 stronger. . . Complete leader . . . Superb leader ready for command; simply incredible results in
24 every endeavor.” Similarly, another supervisor commented: “Deployed superstar; engineered
25 unprecedented mission results during local deployments in Germany/Holland[.] Top-shelf
26 comm[unications] officer and outstanding leader; impact player ready for command.” True
27 and correct copies of these evaluations are attached hereto as Exhibit 2.
28

1 15. During my deployment in Iraq that began in 2004, the Air Force prohibited
2 Airmen from using private email accounts. Airmen in Iraq were forced to use government-
3 provided computers and email accounts for official duty as well as personal correspondence.
4 Specifically, AFI 33-119 authorized service members to use their government email accounts
5 for personal correspondence for “morale, health, and welfare purposes.” Because of that, I
6 used my Air Force email account for personal emails. However, I made every effort to keep
7 my work and personal emails separate. I was using an email account and computer that only I
8 had access to.

9 16. Shortly after I left Iraq in January 2005, during a purportedly “routine” search of
10 my computer files, another member of the Air Force found personal emails in a separate folder
11 labeled “Friends,” including at least one email from me to another man discussing same-sex
12 conduct. Although this search was conducted outside my chain of command, these emails
13 were brought to the attention of my commander.

14 17. Around midday on March 14, 2005, my commander, Lt Col Fischer ordered me
15 to attend a meeting and confronted me with the emails. Lt Col Askew was also there. Lt Col
16 Fischer began by reading me the DADT law, and pressured me to acknowledge I am gay. I
17 understand that before the meeting, Lt Col Fischer had already taken the unnecessary steps of
18 putting me on a “Do Not Arm” list, and took action to limit my access to the squadron armory.

19 18. In mid-June, 2005, a “Discharge For Cause” memorandum was circulated that
20 stated I was being considered for administrative discharge for violation of Department of
21 Defense policy against homosexual conduct. Major Mueller and Lt Col Askew both signed
22 this document. A true and correct copy of which is attached hereto as Exhibit 3.

23 19. On June 24, 2005, Lt Col Askew completed a “Commander’s Assessment” that
24 characterized me as a “moderate” threat to national security. Being described as any sort of
25 threat to this country after all of my service continues to hurt me to this day.

26 20. Subsequently, I was relieved of my duties, my security clearance—Sensitive
27 Compartmented Information, one of the highest level security clearances available in the
28

1 military—was suspended, and part of my pay was terminated. My clearance was suspended in
2 such a way that I in essence “lost” my clearance, which had significant impact on my
3 employability after the Air Force.

4 21. On July 7, 2005, I was sent a Notification of Show-Cause Action Initiated
5 Under AFI 36-3206, Chapter 3, paragraph 3.6.8. Under the Air Force regulations cited in the
6 Show-Cause action memorandum, I was required to make a showing that I should be retained
7 in the Air Force. On February 1, 2006, I received notice by Special Order that administrative
8 board proceedings were being convened to determine whether to recommend a discharge under
9 DADT.

10 22. In response to the recommendation for discharge under AFI 36-3208, I decided
11 to make a Conditional Waiver Statement that would waive the rights associated with a Board of
12 Inquiry hearing because the decision of the Board would get reviewed by the same person who
13 would have the ultimate deciding authority even if I did not have the hearing. I made the
14 decision to waive the Board under guidance from my defense counsel. I also made the decision
15 for personal reasons because after nearly a year of dealing with the administrative and legal
16 process, I was emotionally exhausted and did not want to face a hostile Board.

17 23. Consequently, on February 15, 2006, I offered a conditional waiver contingent
18 on (a) my receipt of no less than an honorable service characterization, if the recommendation
19 for my discharge is approved; and (b) the opportunity to submit statements on my own behalf
20 to the Show-Cause Authority, and any subsequent reviewing authorities, for their consideration
21 in determining if my discharge should be approved. A true and correct copy of that statement
22 is attached hereto as Exhibit 4.

23 24. The same day, I submitted a “Personal Statement” in response to the Show-
24 Cause Action Initiated under AFI 36-3206. A true and correct copy of this Personal Statement
25 is attached hereto as Exhibit 5.

26 25. The first attachment to my Personal Statement was a “Memorandum for
27 Record” regarding the “Purported Evidence and Inquiry Leading to Show-Cause Action.” The
28

1 memorandum discussed my expectation of privacy regarding my government email account
2 during deployment. In the memorandum, I also raised the question of whether the search of
3 my files was to find proof of homosexuality without any credible evidence.

4 26. Also attached to my personal statement were multiple character references.
5 True and correct copies of some of these references are attached as Exhibits 6-8 respectively.
6 As you can see, many of my colleagues—superiors and subordinates alike—wrote letters in
7 resounding support of my retention. For instance, a retired Army Colonel wrote: “My view is
8 that Major Almy has been, and will continue to be an excellent officer.” The Lieutenant
9 Colonel who was my squadron commander during the discharge process also wrote: “I am
10 convinced the Air Force, its personnel, mission and tradition remains unchanged and unharmed
11 despite his alleged [violations of DADT].”

12 27. Other character reference letters included the following comments from a First
13 Lieutenant who had been under my supervision in the 606th ACS:

14 As a graduate of the Virginia Military Institute I have seen plenty of
15 examples of good and bad leadership. Based on my personal and
16 professional interaction with Maj Almy I can say that he is truly
17 one of the best. . . . One would be hard pressed to find someone in
18 the directorate that did not respect him. His troops loved working
19 for him and were willing to do anything for him at a moment’s
20 notice. He demands the best out of his people and always gets it. If
21 given the opportunity to work for Maj Almy again, my answer
22 would be a resounding YES! If removed, the Air Force would be
23 losing a great man and a great leader. When he was relieved of his
24 duties as Chief of Maintenance the 606 ACS fell apart. It became
25 painfully evident how important Maj Almy was not only to the
26 mission but to his troops.

27 28. While discharge proceedings were pending, I remained at Spangdahlem Air
28 Base performing ad hoc duties. Approximately a year after I was relieved of my command
duties, my Wing Commander formally recommended to the Air Force promotion board that I
be promoted to Lieutenant Colonel “below promotion zone”—in other words, ahead of my
peers—even though the Air Force was actively pursuing my discharge. This recommendation
was made by the base commander, the most senior officer on the installation. Ironically, this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

was the same man who recommended formal discharge proceedings be initiated against me. A true and correct copy of this promotion recommendation is attached hereto as Exhibit 9.

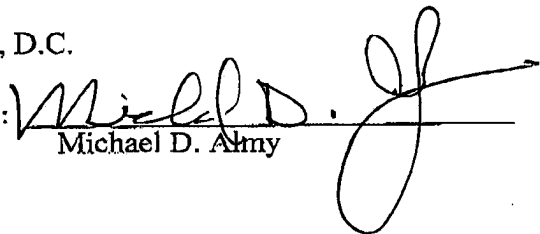
29. The Air Force ultimately discharged me under DADT for making a statement that could be construed to be about my sexual orientation in private email correspondence while I was deployed in Iraq, despite never once making a statement to the military that violated the DADT law throughout my thirteen-year career as an officer.

30. I received an Honorable Discharge on or about July 21, 2006. A true and correct copy of the first page of my discharge order is attached to hereto as Exhibit 10.

31. I was discharged from the Air Force against my will. Had I not been discharged under DADT, I would have remained on active duty in the Air Force to this day. I simply wish to be reinstated into active duty in the Air Force so I can once again serve my country and fulfill the commitment I made to the Air Force.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 3, 2012 at Washington, D.C.

By: 
Michael D. Almy