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 LIEUTENANT COLONEL VICTOR J. FEHRENBACH

**UNITED STATES DISTRICT COURT  
 DISTRICT OF IDAHO**

LIEUTENANT COLONEL VICTOR J.  
 FEHRENBACH,

Plaintiff,

v.

DEPARTMENT OF THE AIR FORCE;  
 ROBERT M. GATES, Secretary of Defense;  
 MICHAEL B. DONLEY, Secretary,  
 Department of the Air Force; LT. GENERAL  
 GLENN SPEARS, Twelfth Air Force  
 Commander, and COL. RONALD  
 BUCKLEY, 366th Fighter Wing Commander,

Defendants.

Case No.

**APPLICATION FOR TEMPORARY  
 RESTRAINING ORDER AND  
 PRELIMINARY INJUNCTION**

Plaintiff Lieutenant Colonel Victor J. Fehrenbach (“Lt. Col. Fehrenbach”) hereby applies to this Court for a temporary restraining order and preliminary injunction to enjoin the Department of the Air Force; Robert M. Gates, Secretary of Defense; Michael B. Donley, Secretary, Department of the Air Force; Lt. General Glenn Spears, Twelfth Air Force Commander, and Col. Ronald Buckley, 366th Fighter Wing Commander (collectively “defendants”) from discharging Lt. Col. Fehrenbach from the United States Air Force. It is specifically requested that defendants, their agents, assistants, successors, employees, attorneys, and all persons acting in concert or cooperation with them or at their direction or under their control, be enjoined from discharging Lt. Col. Fehrenbach under Air Force Instruction (“AFI”) 36-3206, chapter 3, paragraph 3.6.8, which implements the law commonly referred to as “Don’t Ask, Don’t Tell” (“DADT”). Lt. Col. Fehrenbach has given notice to defendants regarding this application and requests that a hearing be held on Friday, August 13, 2010, or as soon thereafter as this matter may be heard.

This application is made on the grounds that defendants have violated the Administrative Procedure Act and Lt. Col. Fehrenbach’s rights to substantive and procedural due process under the Fifth Amendment. Defendants will cause imminent, irreparable harm to Lt. Col. Fehrenbach if the temporary restraining order and preliminary injunction are not issued. This application is based upon the Verified Complaint filed in this action, the supporting memorandum of points

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and authorities, accompanying declarations and exhibits, and such further evidence and arguments as may be presented in this matter.

Dated: 8/11/2010

MORRISON & FOERSTER LLP

By: /s/ M. Andrew Woodmansee  
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