

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, COL. RONALD BUCKLEY, 366th Fighter Wing Commander,

Defendants.

Case No. 1:10-cv-00402-EJL

**ORDER WITHDRAWING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION
AND STAYING CASE**

Based on the parties' stipulation (Docket No. 22), Plaintiff's Motion for Preliminary Injunction (Docket No. 2) is hereby removed from the Court's docket, and this case is hereby stayed, subject to the following conditions:

1. Plaintiff agrees to withdraw his pending motion for a preliminary injunction and the parties agree to stay the case. Plaintiff, however, shall be permitted to move to lift the stay and to re-file his motion for a preliminary injunction in the event Defendants inform Plaintiff or his lead counsel that the Secretary or his designee intends to proceed with Plaintiff's discharge prior to his approved retirement date.

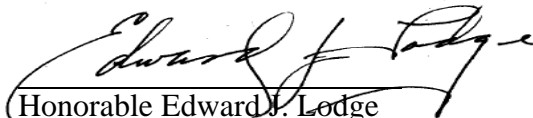
2. Defendants agree to notify Plaintiff's lead counsel (by electronic mail and telephone) and the Court within one day in the event the Secretary of the Air Force or his designee makes a decision to discharge Plaintiff. In order to permit Plaintiff to move the Court to lift the stay and to maintain the *status quo*, Defendants agree that they will not take any steps to execute or process Plaintiff's discharge or separation, to give any effect to a decision to discharge or separate Plaintiff, or to establish any date for the discharge or separation of Plaintiff, for 21 days following such notification.

3. In the event that Defendants notify Plaintiff that the pending discharge proceeding under “Don’t Ask, Don’t Tell” has been terminated, or upon Plaintiff’s retirement, whichever is earlier, Plaintiff will dismiss his Verified Complaint for Injunctive Relief.

IT IS SO ORDERED.



DATED: **February 3, 2011**


Honorable Edward J. Lodge
U. S. District Judge