

M. ANDREW WOODMANSEE (CA SBN 201780)  
 MAWoodmansee@mofocom  
 ARAMIDE O. FIELDS (CA SBN 239692)  
 AFields@mofocom  
 JAMES J. CEKOLA (CA SBN 259443)  
 JCekola@mofocom  
 JESSICA A. ROBERTS (CA SBN 265570)  
 JRoberts@mofocom  
 MORRISON & FOERSTER LLP  
 12531 High Bluff Drive, Suite 100  
 San Diego, CA 92130-2040  
 Telephone: 858.720.5100  
 Facsimile: 858.720.5125

AARON D. TAX (DC SBN 501597)  
 adt@sldn.org  
 JOHN GOODMAN (DC SBN 383147)  
 JGoodman@sldn.org  
 SERVICEMEMBERS LEGAL DEFENSE NETWORK  
 P.O. Box 65301  
 Washington, DC 20035-5301  
 Telephone: 202.328.3244 ext. 10  
 Facsimile: 202.797.1635

Attorneys for Plaintiff  
 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, COL. RONALD BUCKLEY,  
 366th Fighter Wing Commander,

Defendants.

Case No. CIV 10-402-S-EJL

**PLAINTIFF'S REQUEST FOR AN  
 EXPEDITED HEARING DATE**

Pursuant to Local Civil Rule 6.1, Plaintiff Lieutenant Colonel Victor J. Fehrenbach respectfully requests an expedited hearing date of Friday August 13, 2010 or earlier for his concurrently filed motion for a temporary restraining order in which he seeks a court order to *preserve the status quo* until such time that the Court can hold a hearing on his motion for a preliminary injunction.

**I. PLAINTIFF FACES THE IMMEDIATE AND GREAT DANGER OF IRREPARABLE CONSTITUTIONAL INJURY THAT NECESSITATES AN EXPEDITED HEARING.**

Lt. Col. Fehrenbach is an active duty, highly-decorated Air Force Weapons Systems Officer, described by his commanders throughout his nearly 19-year military career as a “Superstar,” the “best I’ve seen,” “My #1 officer/aviator,” and “[ a] War Hero.” Despite his impeccable record, superior skills and excellence at building morale and cohesion, the Defendants now seeks to separate Lt. Col. Fehrenbach from the Air Force under 10 U.S.C. § 654, the law commonly known as “Don’t Ask, Don’t Tell,” in violation of his constitutionally protected rights.

As explained in the Paragraph 13 of the Declaration of M. Andrew Woodmansee in Support of Application for Temporary Restraining Order and Preliminary Injunction (filed August 11, 2010), on August 4, 2010, counsel for Plaintiff received an email from the Honorable Charles A. Blanchard, General Counsel to named Defendant Secretary of the Air Force. In that email, Mr. Blanchard confirmed that the Air Force Personnel Board had met and made a recommendation to the Secretary’s designated separation authority in Lt. Col. Fehrenbach’s administrative separation case. The applicable Air Force regulation, AFI 36-3206 Chapter 6.10, states that had the AFPB concluded that Lt. Col. Fehrenbach should be retained, no action by the Secretary’s designated separation authority would be required. AFI 36-3206 Chapter 6.10 (“When the AFPB recommends retaining the respondent, HQ AFPC/DPRS advises the

respondent, through the SCA, that the AFPB's determination ends the action."'). But under Air Force regulation AFI 36-3206 Chapter 6.10.1, further action by the Secretary's designated separation authority is required if the AFPB recommended discharge and Chapter 6.10.1 ("When the AFPB recommends removal from active duty, discharge, or other action, the AFPB sends the case to the SAF.") With the Air Force moving to unconstitutionally separate Lt. Col. Fehrenbach under "Don't Ask, Don't Tell," if the hearing date for his motion for a temporary restraining order is not expedited there may be insufficient time to prevent great irreparable injury to him.

There is good cause to grant Plaintiff's request for an expedited hearing date also because Defendants' counsel has present notice of both this request and Plaintiff's Application for a Temporary Restraining Order and Preliminary Injunction since Plaintiff served, via hand delivery, a copy of both this request and the motion for a temporary restraining with its supporting memorandum of points of authorities, declaration and exhibits on the United States Attorney for the District of Idaho on August 11, 2010. Further, Plaintiff's counsel has been in communication with the military authorities involved in this case about possible federal litigation since at least May 3, 2010, so Defendants cannot claim prejudice from the requested expedited hearing date due to lack of time to prepare.

## **II. CONCLUSION**

For the reasons above, Plaintiff respectfully requests that the Court grant his request for expedited hearing date so that his motion for a temporary restraining order can be heard on Friday August 13, 2010 or earlier.

Dated: August 11, 2010

MORRISON & FOERSTER LLP

By: /s/ M. Andrew Woodmansee  
M. ANDREW WOODMANSEE

M. ANDREW WOODMANSEE (CA SBN 201780)  
MAWoodmansee@mofocom  
ARAMIDE O. FIELDS (CA SBN 239692)  
AFields@mofocom  
JAMES J. CEKOLA (CA SBN 259443)  
JCekola@mofocom  
JESSICA A. ROBERTS (CA SBN 265570)  
JRoberts@mofocom  
MORRISON & FOERSTER LLP  
12531 High Bluff Drive, Suite 100  
San Diego, CA 92130-2040  
Telephone: 858.720.5100  
Facsimile: 858.720.5125

AARON D. TAX (DC SBN 501597)  
adt@sldn.org  
JOHN GOODMAN (DC SBN 383147)  
JGoodman@sldn.org  
SERVICEMEMBERS LEGAL DEFENSE  
NETWORK  
P.O. Box 65301  
Washington, DC 20035-5301  
Telephone: 202.328.3244 ext. 10  
Facsimile: 202.797.1635

Attorneys for Plaintiff  
LIEUTENANT COLONEL  
VICTOR J. FEHRENBACH

**CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2010, a copy of the following document:

**PLAINTIFF'S REQUEST FOR AN EXPEDITED HEARING DATE;**

which was filed in this matter, was mailed, with first class postage prepaid, certified, return receipt requested, to all parties listed below or on the attached mailing matrix:

Dr. Robert M. Gates  
Secretary of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301-1000

Honorable Michael B. Donley  
Secretary of the Air Force  
1660 Air Force Pentagon  
Washington, D.C. 20330-1660

Lieutenant General Glenn F. Spears  
Commander of the Twelfth Air Force  
Davis—Monthan AFB, AZ 85707

Colonel Ronald D. Buckley  
Commander of the 366th Fighter Wing  
Mountain Home AFB, ID 83648

Department of Air Force  
c/o Major General Nolan Skulte — Chief, General Litigation Division  
Office of the Judge Advocate General  
1660 Air Force Pentagon  
Washington, D.C. 20330-1660

U.S. Attorney  
U.S. Department of Justice  
District of Idaho  
550 West Fort Street, Room 400  
Boise, ID 83724  
**ALSO SERVED VIA HAND-DELIVERY ON 8/11/10**

/s/ M. Andrew Woodmansee  
M. Andrew Woodmansee

Attorney for Plaintiff  
LIEUTENANT COLONEL  
VICTOR J. FEHRENBACH