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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VOLKER KEITH MEINHOLD,	)	No. CV-92-6044-TJH (Jrx)
	)	
Plaintiff,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
v.	)	PLAINTIFF'S MOTION FOR
	)	SUMMARY JUDGMENT, OR, IN THE
U.S. DEPARTMENT OF DEFENSE, U.S.	)	ALTERNATIVE, FOR SUMMARY
DEPARTMENT OF THE NAVY,	)	ADJUDICATION OF CLAIMS ON THE
	)	FIRST AMENDED COMPLAINT
	)	[F.R.C.P. 56]
Defendants.	)	
	)	Date: January 25, 1993
	)	Time: 10:00 a.m.
	)	Place: Dept. 17

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## I. INTRODUCTION

Plaintiff, Volker K. Meinhold ("Meinhold") moves for summary judgment on his First Amended Complaint, or alternatively for summary adjudication of each of his claims therein, on the grounds there is no genuine issue as to any material fact, and as a matter of law he is entitled to a permanent injunction prohibiting defendants the U.S. Department of Defense and the U.S. Department of the Navy (collectively "Defendants") from discharging him on the basis of his homosexuality.

Meinhold has asserted four claims against the Government: (i) that the Navy discharged him in violation of the procedural requirements of the Administrative Procedure Act, (ii) that the Navy is estopped from discharging him, (iii) that the Navy's regulation relating to homosexuality violates the U.S. Constitution as a bill of attainder, and (iv) that the regulation violates the equal protection guarantee of the Fifth Amendment.

Pursuant to F.R.C.P. 56, where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is proper. See F.R.C.P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S. Ct. 2505, 2514 (1986) (summary judgment proper where no dispute as to material issues of fact). Here, as set forth below, there are no disputed issues of material fact and as a matter of law, Meinhold is entitled to summary judgment or summary adjudication of each of his claims for relief. Because he will prevail on the merits of his claims, Meinhold is entitled to a permanent injunction prohibiting the Navy from discharging him on the basis of his homosexuality.

## II. FACTS

In 1980, at age seventeen, Meinhold enlisted in the Navy and, during twelve years of dedicated Naval service, rose through the ranks to become one of the Navy's very best airborne sonar analysts and instructors.<sup>1/</sup> See Exhibits previously filed in support Of Meinhold's Motion For Preliminary Injunction ("Inj. Ex.") [Exhibit 1 at pp. 413-425, 431, 433, 419, 455] (Meinhold was rated in the top ten percent of all Navy instructors and described by Navy evaluators as "certainly one of the finest young men to have served the Naval establishment."); First Amended Complaint ("1st Am. Comp.") at ¶¶ 10, 12, 17-18 and 23-26 [Exhibit 2 at pp. 752-757]. He was respected and praised by superiors and subordinates alike. See 1st Am. Comp. at ¶¶ 10, 18, 24-26 [Exhibit 2 at pp. 752-757]; Inj. Ex. [Exhibit 1 at pp. 50, 421, 442-443, 431, 433, 427, 423, 416] (Meinhold is described by the Navy as "an ideal role model for subordinates and contemporaries.").

At no time during Meinhold's naval career did the Navy ever ask him to identify his sexual orientation. See 1st Am. Comp. at ¶¶ 7, 22 (Exhibit 2 at pp. 752-755).<sup>2/</sup> Nor did the Navy ever formally notify Meinhold that, under Navy regulations, he

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1/ All factual evidence referenced herein is contained in the Separate Index of Exhibits, filed concurrently herewith. Accordingly, each factual citation will identify the authority cited and the exhibit number and page of the separate index where it may be found.

2/ Although Meinhold twice truthfully denied having ever engaged in "homosexual activity" on enlistment and reenlistment forms, the Navy never asked Meinhold to identify his sexual orientation. Declaration of Volker K. Meinhold, dated December 30, 1992 ("Meinhold Decl.") ¶ 2 [Exhibit 3 at p. 770].

would be discharged solely on the basis of his homosexual orientation. See 1st Am. Comp. at ¶ 22 [Exhibit 2 at p. 755]. On the contrary, the armed services have maintained and continue to maintain that homosexual members are discharged only if they engage in, or exhibit a propensity to engage in, sodomy. See *infra* pp. 5-6. In addition, throughout Meinhold's career, See the Navy has enforced its homosexuality regulation Only against servicemembers who have engaged in improper conduct. See *infra* pp. 12-16.

On numerous occasions throughout his naval career, Meinhold voluntarily acknowledged his gay orientation to fellow servicemembers and various Navy representatives, including senior officers and, on one occasion, his base commander. See, 1st Am. Comp. at ¶ 27 [Exhibit 2 at p. 757]; Declaration of Hans D. Warren, dated December 28, 1992 ("Warren Decl.") at ¶ 3 [Exhibit 4 at p. 776]; Declaration of Richard T. Morgan, dated December 28, 1992 ("Morgan Decl.") at ¶ 3 [Exhibit 5 at p. 778]. In fact, Meinhold was sufficiently open about his sexual orientation that his sexual status was common knowledge within his unit. See, 1st Am. Comp. at ¶ 27 [Exhibit 2 at p. 757]; Inj. Ex. [Exhibit 1 at p. 52]; Warren Decl. at ¶¶ 4-5 [Exhibit 4 at p. 776]; Morgan Decl. at ¶¶ 4-5 [Exhibit 5 at p. 778]. On May 19, 1992, during an interview on a national news program, Meinhold again acknowledged his gay status. See 1st Am. Comp. at ¶ 28 [Exhibit 2 at p. 758].

Contrary to its stated enforcement policy and its previous pattern of conduct, the Navy immediately initiated discharge proceedings against Meinhold solely on the basis of his sexual status. See 1st Am. Comp. at ¶ 29 [Exhibit 2 at p. 758];

Inj. Ex. [Exhibit 1 at pp. 5-6]; see also discussion *infra* pp. 6, 20-22. Within three months, the Navy terminated Meinhold, depriving him of his sole career and livelihood. See 1st Am. Comp. at ¶ 40 [Exhibit 2 at p. 761]. However, in its haste to discharge Meinhold, the Navy failed to offer any rationale for its discharge decision, and repeatedly violated its own procedural requirements. See discussion *infra* pp. 4-12.

On November 12, 1992, in accordance with the order of this Court, Meinhold returned to active duty in the Navy. Meinhold Decl. at ¶ 3 [Exhibit 3 at p. 771]. Upon his return to active duty, Meinhold received the congratulation and support of many fellow servicemembers. Meinhold Decl. at ¶ 4 [Exhibit 3 at p. 771]. His presence has had no adverse impact upon unit morale, good order, or discipline. See Meinhold Decl. at ¶ 7 [Exhibit 3 at pp. 771-772]. He quickly has regained his status as one of his unit's best instructors, and has received praise from the students in his classes. Meinhold Decl. at ¶ 8 [Exhibit 3 at p. 772]. In fact, despite the Navy's practice of warning each of Meinhold's prospective students of his sexual orientation and, thereafter, inviting them to request a different instructor, no student has requested a different instructor. Meinhold Decl. at ¶ 9 [Exhibit 3 at pp. 772-773].

### III. MEINHOLD IS ENTITLED TO JUDGMENT ON HIS CLAIM THAT THE NAVY

#### UNLAWFULLY DISCHARGED HIM IN VIOLATION OF THE APA

Under the Administrative Procedure Act ("APA"), a court may set aside agency actions, findings, or conclusions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or that are taken without observance of

procedural requirements. See APA, 5 U.S.C. § 706(2)(A)(D). The Navy's decision to discharge Meinhold should be set aside because it lacks any reasoned explanation, and because the Navy repeatedly violated its own applicable procedural requirements.<sup>3/</sup>

A. The Navy's Decision Lacks Any Reasoned Explanation.

In order for its decision to withstand review under the APA, the Navy must provide the reasons for its decisions, and articulate the standard governing its action. See Moon v. United States Dep't of Labor, 727 F.2d 1315, 1318 (D.C. Cir. 1984) ("[A] court must be able to ascertain the reasons for an agency's decision."). Reasons and standards are required in order to (i) enable the court to properly review the agency decision, (ii) ensure that the agency acts within proper authority and discretion, and (iii) inform the aggrieved person of the grounds for the administrative action so that he can plan his course of action, including seeking judicial review. Matlovich v. Secretary of the Air Force, 591 F.2d 852, 857 (D.C. Cir. 1978) (airman discharged from the Air Force on the basis of homosexuality).

Defendants have articulated two contradictory standards relating to the Navy's homosexuality discharge regulation,<sup>4/</sup> but have failed to identify which of the two standards, if any, was

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<sup>3/</sup> Meinhold is not required to exhaust administrative remedies before seeking relief on these claims from this Court, because such exhaustion would be futile. Beller v. Middendorf, 632 F.2d 788, 801 (9th Cir. 1980) ("[I]t would serve no purpose for the plaintiffs to pursue such administrative remedies."); Watkins v. United States Army, 875 F.2d 699, 705 (9th Cir. 1989) (en banc), cert. denied, 111 S. Ct. 384 (1990) ("Any further pursuit of intraservice remedies would . . . be fruitless.").

<sup>4/</sup> See Naval Military Personnel Manual ("NAVMILPERSMAN") 3630400, located at Inj. Ex. [Exhibit 1 at pp. 659-660].

applied in their decision to discharge Meinhold. First, in briefs before the U.S. Supreme Court, Defendants have asserted that the regulation "is quite specific in making clear that it proscribes certain types of conduct, not sexual orientation." Government's reply in support of Cert. petition in Cheney v. Pruitt, No. 90-389, filed in the United States Supreme Court on 11/18/92 ("Pruitt Brief") at p. 1 [Exhibit 6 at p. 782] (emphasis in original). Defendants further explain that, under the regulation a servicemember is discharged based upon a finding that they have engaged in, or are likely to engage in, criminal sodomy. See Pruitt Brief at p. 4 [Exhibit 6 at p. 784] ("[A] propensity to commit homosexual acts . . . necessarily translate[s] into a propensity to commit sodomy."). Under this standard, therefore, servicemembers are discharged based upon their conduct.

Second, during Meinhold's administrative discharge hearing, the Navy's legal advisor instructed the Administrative Discharge Board that an individual's propensity to engage in conduct was not relevant to the Board's findings. Consequently, he instructed the Board to ignore references in the regulation to conduct (Inj. Ex. [Exhibit 1 at pp. 64, 67]), and explained that the Board need only find that Meinhold fell into a "particular class [of people]." Inj. Ex. [Exhibit 1 at p. 64, 67]. Therefore, the Navy's legal advisor articulated a standard that completely contradicts the standard espoused Defendants before the Supreme Court, and which requires discharge solely upon the basis of a servicemember's sexual status, regardless of conduct.

In rendering its finding and recommendation, the Navy Board failed to identify which of these contradictory standards,

if either, it applied in recommending that Meinhold be discharged. The Board stated only that it found Meinhold to be a "homosexual," but did not identify the criteria it applied. 1st Am. Comp. at ¶ 38 [Exhibit 2 at p. 760]. Inj. Ex. [Exhibit 1 at pp. 95, 97]. Since the Navy failed to identify what standard it applied in discharging Meinhold, Meinhold is entitled to judgment on this claim and his discharge should be set aside.<sup>5/</sup>

B. The Navy Repeatedly Violated Its Own Procedural Requirements.

Meinhold's discharge should also be set aside because the Navy repeatedly violated its own procedural requirements. Under the APA, a court may set aside agency actions taken without observance of all internal procedural regulations. 5 U.S.C. § 705(2)(D); see Doe v. Casey, 796 F.2d 1508 (D.C. Cir. 1986) (In discharging employee for homosexuality, CIA must follow its own regulations.).

Throughout Meinhold's discharge process, the Navy violated its own procedural regulations. First, the Navy improperly introduced evidence purporting to show improper sexual conduct by Meinhold (see Inj. Ex. [Exhibit 1 at pp. 86, 116-119]), even though Meinhold was notified that he was being processed for

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<sup>5/</sup> Moreover, Meinhold's discharge should be set aside under either standard. If the Navy applied a "conduct" standard, the discharge should be set aside because, as Defendants admit, the Board was not presented with any evidence relating to homosexual conduct. See Defendants' Responses to Plaintiff's First Set of Requests For Admissions, Request No. 21 [Exhibit 7 at p. 795] (Defendants admit that no "'evidence relating to homosexual conduct' was considered by the [discharge] board."). Alternatively, if the Navy applied a status-based standard, the regulation violates the U.S. constitution. See infra pp. 20-34.

discharge solely upon the basis of his statement that he is gay.<sup>6/</sup> See Inj. Ex. [Exhibit 1 at p. 5].

This improperly introduced evidence, which purports to show that Meinhold made a sexual advance toward a fellow servicemember<sup>7/</sup> (see Inj. Ex. [Exhibit 1 at pp. 86, 116-119]), is 60 inflammatory and prejudicial that it taints the entire discharge proceeding. See *Krulewitch v. United States*, 336 U.S. 440, 445, 69 S. Ct. 716, 719 (1949) (reversing federal criminal conviction because the Court "[could not] say that the erroneous admission of [the evidence] may not have been the weight that tipped the scales against petitioner"); see also *United States v. Boyce*, 340 F.2d 418, 420 (4th Cir. 1965) ("If there is only a reasonable probability that the [evidence] was prejudicial to [petitioner], his conviction cannot stand.").

Even to this day, Defendants continue to rely upon the improperly introduced evidence to justify Meinhold's discharge. See Defendants' Response to Plaintiff's First Set Of Requests For Admission, Request No. 9 [Exhibit 7 at p. 791] (Defendants assert that the evidence is proof that Meinhold's sexual orientation had an adverse impact upon good order, morale, and discipline within the Navy.); Reporter's Transcript of Proceedings, November 16, 1992 at p. 8 ("11/16/92 Transcript") [Exhibit 8 at p. 805]

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6/ This improperly introduced evidence also was never authenticated, and the alleged author was never made available for questioning or cross-examination. See Inj. Ex. [Exhibit 1 at pp. 86-90].

7/ In fact, the evidence shows on its face that Meinhold did not engage in any improper conduct, and that "[t]he whole situation was a misunderstanding, and [was] worked out between [the servicemember] and P.O. Meinhold." Inj. Ex. [Exhibit 1 at p. 118].

(Defendants' counsel, Mr. Glass, referring to the improperly introduced evidence, characterized it as an incident "in which [Meinhold] allegedly made advances to one of the seamen . . ."). Defendants cannot assert that such improperly introduced evidence is harmless, while, at the same time, relying upon it to justify Meinhold's discharge. The discharge, therefore, should be set aside.

Second, Navy counsel violated procedural requirements by exhorting the Board to draw an adverse inference from Meinhold's decision not to testify. During closing argument, Navy counsel stated:

Now members, there is only one person in this room who knows whether or not [Meinhold] is a homosexual. And what [Meinhold] has done today. . . is simply not to talk about that at all. He has not addressed it before you today, although he addressed it on national television.

Inj. Ex. [Exhibit 1 at pp. 90-91].<sup>8/</sup>

This egregious violation of Navy regulations was highly prejudicial and taints the entire discharge proceeding. Comment by the Government on an accused's decision not to testify is prohibited by both Navy regulations<sup>9/</sup> and the Fifth Amendment. See Griffin v. California, 380 U.S. 609, 615, 85 S. Ct. 1229, 1233

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8/ Defense counsel objected to this statement at the hearing. Inj. Ex. [Exhibit 1 at p. 92].

9/ Navy regulations require that the Board not consider the respondent's failure to testify. NAVMILPERSMAN 3640350(3)(H) and 3640350(4)(A)(3) [Exhibit 1 at pp. 670-671].

(1965) (Fifth Amendment "forbids . . . comment by the prosecution on the accused's silence"); *Stewart v. United States*, 366 U.S. 1, 2, 81 S. Ct. 941, 942 (1961) (Under the Fifth Amendment, "no comment or argument about [the accused's] failure to testify is permitted.").

Moreover, such comment constitutes prejudicial error unless the Navy can prove beyond a reasonable doubt that the error did not contribute to the verdict. See *Chapman v. California*, 386 U.S. 18, 26, 87 S. Ct. 824, 829 (1967) ("[I]t is completely impossible for us to say that the State has demonstrated, beyond a reasonable doubt, that the prosecutor's comments [on defendants' failure to testify] . . . did not contribute to petitioners' convictions."). Given the obvious implication of the Navy counsel's remarks, and their prominence in the Navy's closing argument (see Inj. Ex. [Exhibit 1 at pp. 90-91]), Defendant6 cannot demonstrate that the remark6 did not contribute to Meinhold's discharge. Meinhold's discharge, therefore, should be set aside.

Third, in clear violation of Navy regulations, the Navy's legal advisor, who is expressly prohibited from being present during closed session of the Board, in fact joined the Board during closed session. See 1st Am. Comp. at ¶ 37 [Exhibit 2 at p. 760]. Defendants admit this. See Defendants' Response to Plaintiff's Request for Admissions, Request No. 1 [Exhibit 7 at pp. 786-787] (admitting that the legal advisor "was present . . . during the closed session of the administrative discharge board").

This clear violation of Navy regulations prejudiced Meinhold and tainted the entire discharge proceeding. See Remmer

v. United States, 347 U.S. 227, 229, 74 S. Ct. 450, 451 (1954) ("[A]ny private communication, contact, or tampering directly or indirectly, with a juror during a trial . . . is, for obvious reasons, deemed presumptively prejudicial . . .");<sup>10/</sup> United States v. Littlefield, 752 F.2d 1429, 1431 (9th Cir. 1985) (government must bear burden of proof in showing that extrajudicial contact was harmless). Defendants admit that they do not know what occurred between the Board and the legal advisor while he was present. See Defendants' Response to Plaintiff's First Set of Interrogatories, Nos. 9 and 10 [Exhibit 9 at pp. 852-853]. Defendants, therefore, cannot establish that the contact was harmless, and Meinhold's discharge should be set aside.

Finally, in recommending to the Chief of Naval Personnel that Meinhold be discharged, the Navy's convening authority relied upon improper factual findings. Under Navy regulations, the convening authority is required to "[m]ake and forward to [Chief of Naval Personnel], a recommendation with supporting rationale as to the Board's findings and recommendation."<sup>11/</sup> However, in recommending Meinhold's discharge, the convening authority stated "that AW1 Meinhold's sexual orientation has adversely affected his performance of duty and adversely affected good order and discipline," despite the fact that the Board made no such finding.

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10/ Navy regulations require that only voting members of the Board may be present when the Board meets in closed session. NAVMILPERSMAN 3640350(4)(b) [Exhibit 1 at p. 671]. The legal advisor is designated under Navy regulations as a non-voting member of the Board. NAVMILPERSMAN 3640350(1)(b)(7) [Exhibit 1 at p. 668].

11/ NAVMILPERSMAN 3640350(1)(b)(10) [Exhibit 1 at p. 668] (emphasis added).

See Inj. Ex. [Exhibit 1 at pp. 4, 97]; 1st Am. Comp. at ¶ 39 [Exhibit 2 at pp. 760-761].

The convening authority's independent factual finding is improper and violates Navy regulations. See Watkins v. United States Army, 541 F. Supp. 249, 259 (W.D. Wash. 1982) (convening authority lacked the regulatory authority to make supplemental finding that soldier had engaged in homosexual acts, when Board found only that soldier "stated . . . that he is homosexual"). Because this unsupported finding by the convening authority supported the recommendation upon which the Navy discharged Meinhold, the discharge should be set aside.

IV. MEINHOLD IS ENTITLED TO JUDGMENT ON HIS CLAIM THAT THE NAVY  
IS ESTOPPED FROM DISCHARGING HIM

The Navy is estopped from discharging Meinhold. Where justice and fair play require it, estoppel will be applied against the government. See Seldovia Native Ass'n, Inc. v. Lujan, 904 F.2d 1335, 1347 (9th Cir. 1990) (applying rules of estoppel against the Department of the Interior). A party seeking to estop the government must establish two additional elements beyond those required for traditional estoppel:<sup>12/</sup> (i) affirmative misconduct going beyond mere negligence and (ii) a serious injustice, the imposition of liability for which will not unduly damage the public interest. *Id.* at 1347.

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12/ Traditional estoppel requires: "(1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury." United States v. Wharton, 514 F.2d 406, 412 (9th Cir. 1975).

The Navy engaged in affirmative misconduct, as it repeatedly and falsely promised Meinhold that he would not be discharged solely on the basis of his sexual orientation. See Watkins, 875 F.2d at 708 (Affirmative misconduct is established by "ongoing active misrepresentations" or a "pervasive pattern of false promises."). Throughout Meinhold's naval career, the Navy has maintained a policy of enforcing its homosexuality regulation almost exclusively in instances where servicemembers have engaged in improper sexual conduct. As former Secretary of the Navy in the Reagan Administration, John Lehman, has explained, the regulation has been enforced with "a common sense approach directed to behavior, to not tolerating the kind of behavior of sexual harassment or sexual importuning or sexual acts by homosexuals . . . [but] a person's orientation or what his private thoughts are or what he does on his own private time shouldn't be the purview of Big Brother and of the government." Statement of John Lehman on "This Week With David Brinkley," 11/15/92 ("Lehman Statement") at pp. 8-9 [Exhibit 10 at p. 863] (emphasis added).

The Navy's policy of enforcement only in instances of improper conduct is confirmed by the testimony of a career Navy veteran. Dr. Robert M. Rankin, a retired Navy Captain and 21-year veteran, who has counseled approximately 300 gay servicemembers, testified that in his experience no action was taken against gay servicemembers provided they "conform[ed] their conduct . . . to the requirements of military life." See Inj. Ex. [Exhibit 1 at pp. 468, 470]. Moreover, as recently as January and February, 1991, Defendants continued to assure gay servicemembers that they would be subject to discharge only if they engaged in homosexual

conduct. See Declaration of Mary Newcombe, dated December 29, 1992, ("Newcombe Decl.") and exhibits attached thereto [Exhibit 11 at pp. 868-871]. Therefore, throughout Meinhold's career, the Navy enforced its regulation against gay and lesbian servicemembers only if they engaged in improper conduct.<sup>13/</sup>

Accordingly, the Navy repeatedly acted so as to promise Meinhold that, consistent with this policy of enforcement, he would not be discharged solely on the basis of his sexual status, provided he did not engage in improper conduct. For example, during Meinhold's enlistment, reenlistment, and various security investigations, the Navy never inquired as to Meinhold's sexual status or orientation. See 1st Am. Comp. at ¶¶ 7, 22-23 (Exhibit 2 at pp. 752, 755-756]. In addition, on numerous occasions throughout his career, Meinhold voluntarily acknowledged his sexual orientation to fellow servicemembers and Navy representatives, including senior officers and, in one instance, his base commander. 1st Am. Comp. at ¶ 27 [Exhibit 2 at p. 757]; Morgan Decl. at ¶ 3 [Exhibit 5 at p. 778]; Warren Decl. at ¶ 3 [Exhibit 4 at p. 776]. Consequently, Meinhold's gay orientation was well known throughout his unit, and he often joked about it with fellow servicemembers. See Morgan Decl. at ¶¶ 5-6 [Exhibit 5 at p. 778]; Warren Decl. at ¶¶ 5-6 [Exhibit 4 at p. 776]; Inj. Ex. [Exhibit 1 at p. 52].

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<sup>13/</sup> Ironically, even now, while discharging Meinhold solely upon his admission of his gay sexual orientation, Defendant6 continue to insist that the regulation only "proscribes certain types of conduct, not sexual orientation," and that servicemembers are discharged based upon their propensity to commit criminal sodomy. See Pruitt Brief at pp. 1, 2-4 [Exhibit 6 at pp. 782, 784].

Despite these repeated voluntary acknowledgements by Meinhold, and the widespread knowledge within his unit that Meinhold was gay, the Navy took no action to discharge him. Therefore, through its repeated conduct and stated policy of enforcement, the Navy assured Meinhold that its regulation would not be enforced against him solely on the basis of his status. This pattern of misleading representations and false promises by the Navy amounts to affirmative misconduct. See *Watkins*, 875 F.2d at 707-08, 738 (Army's conduct in knowingly reenlisting gay soldier, despite its ban on homosexuals, amounted to affirmative misconduct, even though the Army never explicitly promised the gay soldier that he would be exempt from the regulation.).

Second, any possibility of damage to the public interest is nonexistent compared with the hardship Meinhold would suffer from a failure to estop the Navy. See *Watkins*, 875 F.2d at 708-09 (finding harm to public interest to be nonexistent because "[p]laintiff has demonstrated that he is an excellent soldier"). The Navy has terminated Meinhold's twelve-year naval career as an expert airborne sonar analyst and instructor -- the career to which he has devoted his entire adult life. The hardship to Meinhold, therefore, is certain and extreme.

On the other hand, by the Navy's own admission, the Navy and the country have benefitted greatly by Meinhold's military service. See 1st Am. Comp. at ¶¶ 10-13, 17-18, 23-26 [Exhibit 2 at pp. 752-757]; Inj. Ex. [Exhibit 1 at p. 52] (Meinhold's supervisor testified at the discharge hearing that Meinhold was "the best AW instructor I have."); Defendants' Responses to Plaintiff's First Set of Requests for Admission, Request No. 16