

DECLARATION OF MAJOR GENERAL STEVEN A. HUMMER

I, Major General Steven A. Hummer, declare as follows:

1. I have served in the United States Marine Corps for 37 years and am an active duty Major General.

2. I am currently Chief of Staff of the Repeal Implementation Team, a component of the Office of the Under Secretary of Defense for Personnel and Readiness. The Repeal Implementation Team is responsible for planning, coordination, and implementation of the repeal of 10 U.S.C. § 654, and related policies, consistent with the terms of “The Don’t Ask, Don’t Tell Repeal Act of 2010” (Repeal Act). This means that I am responsible for coordinating the preparation of the Armed Forces for this very important change in personnel policy.

3. On October 12, 2010, the U.S. District Court for the Central District of California issued a permanent injunction against “enforcing or applying the ‘Don’t Ask, Don’t Tell’ Act and implementing regulations” and ordered the government “immediately to suspend and discontinue any investigation, or discharge, separation, or other proceeding, that may have been commenced under the ‘Don’t Ask, Don’t Tell’ Act, or pursuant to 10 U.S.C. § 654 or its implementing regulations.”

4. On November 1, 2010, the U.S. Court of Appeals for the Ninth Circuit stayed enforcement of the injunction.

5. On December 22, 2010, President Obama signed into law the Repeal Act, which provided a congressionally established process to ensure that § 654 is repealed in an orderly manner consistent with military necessity.

6. On July 6, 2011, a panel of the U.S. Court of Appeals for the Ninth Circuit lifted the November 1, 2010 stay, noting that “the process of repealing Section 654 is well underway, and the preponderance of the Armed Forces are expected to have been trained by mid-summer[.]” and that “[t]he circumstances and balance of hardships have changed[.]”

The Path to Certification

7. The Legislative and Executive branches of government concluded, as reflected in passage of the Repeal Act, that implementation of repeal should be done in a careful and deliberate

manner, only after certification by the President, Secretary of Defense, and Chairman of the Joint Chiefs of Staff that the post-repeal architecture is consistent with military necessity.

8. The Department of Defense Comprehensive Review Working Group (Working Group) was established by the Secretary of Defense to “understand all issues and potential impacts associated with repeal of the law and how to manage implementation [of repeal] in a way that minimizes disruption to a force engaged in combat operations and other demanding military activities around the globe.” Over a nine-month period, the Working Group “solicited the views of nearly 400,000 active duty and reserve component Service members with an extensive and professionally-developed survey, which prompted 115,052 responses—one of the largest surveys in the history of the U.S. military.”

9. Based in part on this research, the Working Group provided recommendations for the steps needed before repeal could become effective. My group, the Repeal Implementation Team, has been charged with implementing these recommended steps.

10. In the Repeal Act, Congress also recognized the need for careful planning. The Repeal Act specifies that repeal will take effect 60 days *after* the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff certify that “the Department of Defense has prepared the necessary policies and regulations [to effectuate repeal,]” and that “implementation of necessary policies and regulations . . . is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces.”

11. At this time, the President, Secretary of Defense, and Chairman of the Joint Chiefs of Staff have not yet certified that repeal is consistent with these standards, though it is anticipated that certification will be presented for their decision in a matter of weeks, by the end of July or early in August. Just last week, the Secretaries of the Military Departments, Chiefs of the Military Services, and Commanders of the Combatant Commands submitted their written advice regarding the status of their preparations for repeal and ability to satisfy the certification standards set by Congress.

12. An immediate injunction would require the Armed Forces to suspend all enforcement of § 654 before the President, Secretary of Defense, and Chairman of the Joint Chiefs of Staff have made the certification, and prior to the conclusion of the 60-day period specified by Congress.

Efforts to Ensure Appropriate Enforcement

13. In recent years, and especially since passage of the Repeal Act, the number of discharges under 10 U.S.C. § 654 has fallen significantly. In 2008, 619 discharges occurred; in 2009, that number fell to 428; in 2010, 250 discharges occurred; and so far in 2011, only 1 Service member has been discharged pursuant to § 654. (Data are from the Department of Defense Manpower Data Center.)

14. On October 21, 2010, Secretary Gates issued a memorandum requiring that all separations under § 654 be personally approved by “the Secretary of the Military Department concerned in coordination with the Under Secretary of Defense for Personnel and Readiness and the General Counsel of the Department of Defense.”

15. Although the Military Departments have continued to enforce the law as required, they have done so in a way that ensures that discharges only occur after a careful and detailed process.

16. Since passage of the Repeal Act, only one discharge has occurred, and that Service member requested an expedited discharge notwithstanding the Repeal Act.

The Ongoing Efforts of the Department of Defense to Implement Repeal

17. Meanwhile, the orderly process laid out by Congress in the Repeal Act is nearly complete, and proceeding without any significant difficulties.

18. The Department of Defense has worked steadfastly over the last six months to prepare the hundreds of pages of necessary revisions to policies and regulations in connection with repeal, and to train 2.2 million Service members, including separate training for senior leadership, the Chaplain Corps, and the judge advocate community on the implications of repeal. As part of this process, the Department of Defense has undertaken a comprehensive and thorough review of regulations and policies to identify those that require revision, and to ensure that, going forward, policies and regulations will be neutral with respect to sexual orientation. The Repeal Implementation Team, the Services, and the General Counsel of the Department of Defense are completing their review of 89 separate regulations and policies that would be adopted on the effective date of repeal. Implementation of these policies will only occur after certification and repeal of the statute.

19. In addition to regulatory changes, the Department crafted training materials to educate the Force on the impact of repeal. Training of 2.2 million Service members both within the U.S.

and deployed abroad has been ongoing for the last several months, and is nearly, though not yet, complete. As part of the training, the Department was not only providing information to the Force, but also collecting information and feedback from soldiers, sailors, airmen and Marines.

20. It is the general consensus of the Military Departments that this thoughtful and steady approach to educating and preparing the force and revising policies and regulations – in short, the method by which implementation of repeal is proceeding – laid the groundwork for a smooth and orderly transition. As this court's July 6, 2011 opinion notes, the majority of the Force has now received training, though the process of training is ongoing. The necessary policies and regulations have been prepared. The certification process is not complete, but it is in its last weeks.

21. The various measures instituted by the Department of Defense to implement the Repeal Act – including extensive training (and creation of training materials) and revisions of numerous written policies and regulations – have been designed to facilitate a smooth and orderly transition. Imposing an immediate halt to enforcing § 654 would supplant and contradict the judgment of the Department of Defense about the proper sequencing and timing of these measures in preparation for the change in policy.

22. In the Department's judgment, it is important for the messages communicated during training to remain consistent in the last weeks leading up to repeal, and that DoD counsel those leaders, especially those who will have the most direct and regular engagement with soldiers, sailors, airmen and Marines as we implement repeal and transition to a post-repeal environment. As the Working Group Report noted, leadership is the single most critical element of the repeal process. The sequencing and timing of the process was designed to ensure that leaders, including some of the most junior non-commissioned officers, platoon leaders, first sergeants, and squadron commanders, would have time to prepare themselves and those under their command for any challenges they may face after repeal. They were told that they would have 60 days' advance notice before repeal would go into effect to facilitate that process.

23. Another important premise of the Repeal Act and DoD's implementation of it is that Service members see that the military and civilian leadership of the Department of Defense take the lead in implementing the repeal, as Congress intended. The Repeal Act places implementation squarely in the hands of the Department of Defense by conditioning repeal on the certification of senior members of the chain of command. As a result of my 37 years of

experience in the Marines, and the knowledge and experience I have gained through my role as Chief of Staff of the Repeal Implementation Team, I have concluded that transition will best be implemented if the military "owns" the process of repeal. In other words, the premise of the Act, as implemented, is that change from within the organization will be more effective than change imposed from outside the organization.

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

Executed this 14 day of July, 2011.

A handwritten signature in black ink, appearing to read "S.A. Hummer", written over a horizontal line.

Steven A. Hummer

Major General, United States Marine Corps