

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK KELLY, United States Senator
representing the State of Arizona,

Plaintiff,

v.

PETE HEGSETH, in his official capacity as
Secretary of Defense, *et al.*,

Defendants.

Case No. 26-cv-81

Oral Argument Requested
Expedited Hearing Requested

**PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, AND STAY UNDER 5 U.S.C. § 705**

Pursuant to Federal Rule of Civil Procedure 65(a) and Local Civil Rule 65.1, Plaintiff Senator Mark Kelly respectfully moves for a temporary restraining order, as well as a preliminary injunction, vacatur, and stay of agency action under 5 U.S.C. § 705. Senator Kelly, a retired Navy Captain, challenges a Secretarial Letter of Censure issued by the Department of Defense, and a decision made at the direction of the Secretary of Defense to reopen Senator Kelly's grade determination. Defendants took both actions on January 5, 2026, and the actions are expressly predicated on public statements regarding military affairs that Defendants ascribe to Senator Kelly.

Plaintiff seeks to preserve the status quo and prevent imminent, irreparable harm that will occur if the Defendants continue to enforce or implement either action.

Specifically, Plaintiff seeks a temporary restraining order, preliminary injunction, and stay under 5 U.S.C. § 705 halting the effect of the Secretarial Letter of Censure, the reopening of his retirement grade, and all current or future proceedings predicated on these actions. Plaintiff further requests that the Court order Defendants—including their officers, agents, servants, employees,

attorneys, and all persons acting in concert with them—to (1) refrain from taking any other action in reliance on the findings, determinations, or threats of additional criminal or administrative action contained in the censure letter; (2) take no steps, and undo any steps already taken, to place the censure letter in Plaintiff’s file; (3) refrain from relying on the censure letter in any military or other agency proceeding; (4) not revisit Senator Kelly’s grade determination; and (5) not adjust Plaintiff’s grade pursuant to the censure letter or notification of reopening.

Without immediate injunctive relief, Plaintiff will suffer immediate and irreparable harm. Defendants’ actions impose official punishment for protected speech, chill the exercise of legislative oversight, and threaten concrete reductions in grade and pay. They also signal to retired service members and Members of Congress that criticism of the Executive’s use of military power may be met with retaliation through military channels. Plaintiff’s constitutional harms must be vindicated now, before he is forced to submit to any further unconstitutional proceedings.

Plaintiff has taken steps to resolve this issue before turning to this Court for emergency relief. Plaintiff’s counsel sent Defendants a letter on January 7, 2026, in response to the censure letter and the grade-determination notification. Counsel explained that the censure and the related actions violate the Constitution, Defendants’ statutory authority, and the Administrative Procedure Act. Counsel asked Defendants to halt any further proceedings—and to stay the effects of any further determinations—pending judicial review. The General Counsel of the Department of Defense acknowledged receipt but did not respond to the letter’s substance.

This morning, at 8:27 AM ET, Plaintiff’s counsel sent an email to Alex Haas and Diane Kelleher, Directors of the Federal Programs Branch of the U.S. Department of Justice, Civil Division, offering to refrain from filing this motion if Defendants would agree to halt the effect to their actions. That email also provided actual notice that Plaintiff intended to file a complaint and

motion for temporary restraining order, in accordance with Local Civil Rule 65.1(a), if counsel did not receive a response by 10:00 AM ET. As of the time of this filing, Defendants have not responded to Plaintiff's request.

In further accordance with Local Civil Rule 65.1(a), Plaintiff provided a copy of the complaint after it was filed and is providing the motion and accompanying brief, declarations, exhibits, and proposed order to Mr. Haas and Ms. Kelleher.

Plaintiff respectfully requests that the Court rule on this motion by no later than January 16, 2026. Plaintiff has been unconstitutionally ordered to participate in the Department of the Navy's unlawful retirement grade proceedings by January 20, 2026, and the Department of the Navy has declared that Plaintiff's failure to do so may forfeit his opportunity to defend himself in that forum.

The grounds for this motion are set forth more fully in the accompanying memorandum.

Dated: January 12, 2026

Respectfully submitted,

By: /s/ Paul J. Fishman
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* Admitted only in Texas; practicing in D.C. pursuant to D.C. Ct. of Appeals R. 49(c)(8), under supervision of D.C. Bar Members.

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CERTIFICATE OF SERVICE

I certify that, on January 12, 2026, I filed this motion with the Clerk of the Court for the U.S. District Court for the District of Columbia using the Court's CM/ECF system. I further certify that a copy of this motion and the accompanying memorandum of law and attachments will be transmitted by email to counsel for Defendants.

/s/ Paul J. Fishman
Paul J. Fishman (DC Bar No. 449014)