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NIMJ Statement Against Secretary Hegseth's Threats to Punish a Senator

The National Institute of Military Justice condemns any attempt by military leaders to punish Senator Mark Kelly, a military retiree, for his speech.

Any adverse action against Senator Kelly would threaten core constitutional principles. It blurs the separation of powers by allowing the Executive Branch to punish a member of the Legislative Branch for speech made in the performance of his duties as a Senator.

Any adverse action chills First Amendment expression. When military leaders punish speech they do not like, they send a message that honest debate invites retaliation. Service members quickly learn that loyalty to the Constitution may carry risk if their words displease those in power. If the military can punish a Senator for speech that a senior military official does not like, no viewpoint of any military member or retiree is safe.

Senator Kelly's speech is not punishable under the UCMJ. Although the military code criminalizes certain types of speech that may affect the military mission, the Senator's remarks are far from criminal. He simply restated a fundamental principle of military law: service members must obey lawful orders and disobey unlawful orders.

Finally, the process here was flawed from the start. Secretary Hegseth first publicly announced that he wanted to punish Senator Kelly for his speech, then sent the case to a subordinate leader for his independent decision. That puts the subordinate in an impossible position: either deliver some form of punishment that Secretary Hegseth demands, or potentially be fired. That is not how justice in the military works or should work. Nothing erodes confidence in military leadership faster than the appearance that political pressure—not law—drives outcomes.

Since 1991, NIMJ has been an independent, non-partisan body of military justice experts advocating for the fair administration of justice in the armed forces. For more than three decades and across administrations, we have warned that the continued assertion of military jurisdiction over retirees creates the potential for targeted, abusive, and politically motivated actions. Secretary Hegseth's zeal to have the military punish Senator Kelly is a worst-case scenario of this problem.

The Board of Directors, National Institute of Military Justice