

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

NICHOLAS HARRISON, *et al.*,

Plaintiffs,

v.

JAMES N. MATTIS, *et al.*,

Defendants.

No. 1:18-CV-00641-LMB-IDD

---

**DEFENDANTS' ANSWER TO COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Defendants, U.S. Secretary of Defense James N. Mattis, in his official capacity; Secretary of the Army Mark Esper, in his official capacity; and the U.S. Department of Defense (“DoD”), hereby answer Plaintiffs’ Complaint for Declaratory and Injunctive Relief as follows:

**AFFIRMATIVE DEFENSES**

1. The Court lacks jurisdiction to hear Plaintiffs’ claims because Plaintiffs’ challenge to Defendants’ policies are non-justiciable.
2. The Court lacks jurisdiction to hear Plaintiffs’ challenge to any policy other than that precluding Plaintiff Harrison from becoming a commissioned officer because they lack standing to challenge any such policies.
3. Plaintiffs have failed to state a claim for relief because Defendants’ policies are rationally related to their legitimate government interest in ensuring that every Service member is fit and capable of performing his or her job.

**STATEMENT OF THE CASE**

1. The allegations in the first and second sentences of this paragraph are denied except to admit that Defendants have promulgated policies in the past thirty years concerning both medical conditions generally and the Human Immunodeficiency Virus (“HIV”) specifically and that these policies affect Service members who are HIV positive. The third sentence consists of Plaintiffs’ characterization of this lawsuit, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that Plaintiffs’ claims challenge the constitutionality of certain HIV-related policies.

2. The allegations in the first sentence consist of Plaintiffs’ characterization of medical advances in HIV treatment and prevention as well as the vague conclusion that “[s]cientific innovation and medical advances have radically change the landscape and prevention,” to which no response is required. To the extent a response is deemed required, Defendants deny the allegation except to admit that there has been meaningful scientific innovation and medical advancements in the past thirty years. The second sentence consists of Plaintiffs’ characterization of medical advances in HIV treatment and prevention, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that antiretroviral medications first developed in the mid-1990s and that they prevent HIV from replicating. The third and fourth sentences consist of Plaintiffs’ characterization of unidentified medical research, to which no response is required. Defendants deny any characterization of such research, and respectfully refer the Court to the results of that research for a complete and accurate statement of its contents.

3. The first sentence consists of Plaintiffs’ argument and characterization of their claim in this case, to which no response is required. In addition, the allegation in the first

sentence that “medical advances . . . should have resulted in an overhaul of military policies” is a vague argument and conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied insofar as they allege that Defendants have failed to account for medical advances and current scientific understanding of HIV in their HIV-related policies. The allegations in the second sentence are denied except to admit that Defendants’ current policies do not allow the enlistment, appointment, or induction of individuals who are HIV-positive into the military services absent a waiver and place certain limitations on the locations to where individuals who are HIV-positive can be deployed absent a waiver.

4. The first sentence consists of Plaintiffs’ characterization of their claim in this case, to which no response is required. In addition, the allegation in the first sentence that “Plaintiff Nick Harrison ran headlong into these policies” is a vague argument and conclusion, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that Plaintiff Nick Harrison is affected by Defendants’ current HIV policies. The allegations in the second sentence are admitted to the extent they allege that Plaintiff Harrison deployed twice to the Middle East, after which he was diagnosed with HIV. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the second sentence. The allegations in the third sentence that Plaintiff Harrison’s “HIV was completely under control” and that “his physical capabilities were never affected in any way” are vague conclusions, to which no response is required. To the extent a response is deemed required, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this sentence. The fourth sentence consists of Plaintiffs’ characterization of their claim in this case, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that Plaintiff

Harrison applied to be an attorney in the Judge Advocate General Corps for the Washington, D.C. National Guard and that he was precluded from doing so by Defendants' current policies.

5. The first sentence consists of Plaintiffs' characterization of their claim in this case, to which no response is required. To the extent a response is deemed required, the allegations are denied. The second sentence consists of Plaintiffs' characterization of a memorandum that was issued on February 14, 2018. Defendants deny any characterization of that Memorandum, which speaks for itself, and respectfully refer the Court to the Memorandum for a complete and accurate statement of its contents. The allegations in the third sentence are denied except to admit that several Service members have served honorably after being diagnosed as HIV positive. The fourth sentence consists of Plaintiffs' characterization of their claim in this case, to which no response is required. To the extent a response is deemed required, the allegations are denied except to admit that Defendants' current policies do not allow the enlistment, appointment, or induction of individuals who are HIV-positive into the military services absent a waiver.

#### **PARTIES**

6. The allegations in the first sentence are admitted to the extent they allege that Plaintiff Sergeant Nick Harrison is a 41-year old man. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation about Plaintiff Harrison's current residence. The allegations in the second and third sentences are admitted.

7. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

8. The allegations in this paragraph are admitted.

9. The allegations in the first sentence are admitted. The allegations in the second and third sentences are characterizations of the Secretary of the Army's statutory and executive authority over the Department of the Army, including the Army National Guard of the United States, under Title 10 and Title 32, as well as their implementing authorities and regulations, including 10 U.S.C. § 3013, Executive Order 11485, AR 600-110, and AR 40-501. Defendants deny any characterization of these legal authorities, which speak for themselves, and respectfully refer the Court to those authorities for a complete and accurate statement of their contents.

10. The allegations in this paragraph are admitted.

### **JURISDICTION AND VENUE**

11. To the extent they allege that Plaintiffs have standing or that their claims are justiciable, the allegations in this paragraph are denied.

12. The allegations in this paragraph are admitted.

13. The allegations in this paragraph are admitted to the extent they allege that Plaintiff Harrison was not appointed as a Judge Advocate with the D.C. National Guard, which has certain assignments located in Arlington, VA. Defendants deny any allegation that Plaintiff Harrison's denial of any position was unlawful, or that, but for his failure to meet accession standards, he would have been appointed to a position in Arlington, VA.

### **FACTUAL ALLEGATIONS**

#### **Background Information Regarding HIV<sup>1</sup>**

14. The allegation in this paragraph that HIV treatment and prevention, ramifications of an HIV diagnosis, and the prognosis for HIV-positive individuals "have all changed

---

<sup>1</sup> Defendants have included the headings listed in the Complaint simply to assist in reading the pleadings and do not admit the accuracy of those headings.

dramatically since . . . the 1980s,” is a vague conclusion, to which no response is required. To the extent a response is deemed required, Defendants deny this allegation except to admit that there has been progress with the treatment and prevention of HIV since the 1980’s and that the ramifications of an HIV diagnosis have been minimized while the prognosis for HIV-positive individuals has improved.

15. The allegations in this paragraph are admitted.

16. The allegations in this paragraph are admitted.

17. The allegations in this paragraph are admitted.

18. The allegations in this paragraph are denied insofar as they assert that, as of 1996, HIV can no longer be considered a terminal condition and that HIV-positive individuals have a comparable health status as individuals without HIV.

19. The allegation in the first sentence that “[i]n 1996, everything changed” is a vague conclusion to which no response is required. To the extent a response is deemed required, Defendants deny the allegation insofar as it asserts that, as of 1996, HIV can no longer be considered a terminal condition and that HIV-positive individuals have a comparable health status as individuals without HIV..

20. The allegations in this paragraph are admitted.

21. The allegation in the first sentence that “people living with HIV are able to live in good health” is a vague conclusion to which no response is required. To the extent a response is deemed required, Defendants deny the allegation insofar as it asserts that, as of 1996, HIV can no longer be considered a terminal condition and that HIV-positive individuals have a comparable health status as individuals without HIV. The allegation in the second sentence that HIV-positive individuals “were literally brought back from the brink of death” is a vague

conclusion to which no response is required. To the extent a response is deemed required, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations. The allegations in the third sentence are denied to the extent they allege that the immune systems of HIV-positive individuals can become fully restored. The allegation in the fourth sentence that “an AIDS diagnosis could be reversed” is a vague conclusion, to which no response is required. To the extent a response is deemed required, the allegation is denied to the extent it alleges that AIDS can be cured or that a person who is HIV-positive or infected with AIDS has a comparable health status as individuals who are not so infected.

22. The allegations in the first two sentences are admitted. The allegations in the third sentence are denied to the extent they allege that the side effects from antiretroviral medications are of no clinical significance. The allegations in the fourth sentence are admitted.

23. The allegations in the first sentence are denied insofar as it asserts that HIV can no longer be considered a terminal condition and that HIV-positive individuals have a comparable health status as individuals without HIV. The allegations in the second sentence are denied.

24. This paragraph consists of Plaintiffs’ characterizations of reports from the Centers for Disease Control and Prevention (“CDC”). Defendants deny any characterization of these reports, which speak for themselves, and respectfully refer the Court to those reports for a complete and accurate statement of their contents.

25. This paragraph consists of Plaintiffs’ characterizations of a report from the Centers for Disease Control and Prevention (“CDC”). Defendants deny any characterization of the reports which speaks for itself, and respectfully refer the Court to the report for a complete and accurate statement of its contents.

26. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

#### **Current Military Regulations Regarding HIV**

27. The allegations in this paragraph are denied except to admit that in 1991 DoD issued a predecessor version of Department of Defense Instruction (“DoDI”) 6485.01, which established DoD policies at that time.

28. This paragraph consists of Plaintiffs’ characterizations of DoDI 6485.01. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to that policy for a complete and accurate statement of its contents.

29. The first sentence of this paragraph consists of Plaintiffs’ characterizations of DoDI 6485.01. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to that policy for a complete and accurate statement of its contents. The second sentence consists of Plaintiffs’ characterizations of interpretations of DoDI 6485.01 by other branches of the military. Defendants deny any characterization of those policies, which speak for themselves, and respectfully refer the Court to those policies for a complete and accurate statement of their contents.

30. This paragraph consists of Plaintiffs’ characterizations of DoDI 6485.01. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to that policy for a complete and accurate statement of its contents.

31. This paragraph consists of Plaintiffs’ characterizations of Army Regulation (“AR”) 600-110. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to that policy for a complete and accurate statement of its contents.

32. This paragraph consists of Plaintiffs' characterizations of AR 600-110. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to that policy for a complete and accurate statement of its contents.

33. The first and second sentences of this paragraph consist of Plaintiffs' characterizations of AR 600-110. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to that policy for a complete and accurate statement of its contents. The allegation in the third sentence that the Army "rarely, if ever" grants waivers pursuant to AR 600-110 is a vague conclusion, to which no response is required. To the extent a response is deemed required, Defendants deny the allegation.

34. This paragraph consists of Plaintiffs' characterizations of AR 600-110. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to that policy for a complete and accurate statement of its contents.

35. The allegations in this paragraph are admitted.

36. The allegations in this paragraph are admitted, except that under title 10 U.S.C. § 1074a, health care services provided to members of the Reserve Components (including the National Guard) who are not serving on active duty for periods of more than 30 days are not comparable to health care services provided to active duty service members.

37. The first, second, third, and fourth sentences of this paragraph consist of Plaintiffs' characterization of a memorandum that was issued on February 14, 2018. Defendants deny any characterization of that Memorandum, which speaks for itself, and respectfully refer the Court to the Memorandum for a complete and accurate statement of its contents. The fifth sentence consists of Plaintiffs' characterizations of unspecified DoD and Army policies. Defendants deny any characterizations of those policies, which speak for themselves, and

respectfully refer the Court to DoD and Army policies for a complete and accurate statement of their contents. The sixth sentence consists of Plaintiffs' characterizations of unspecified policies of the Services. Defendants deny any characterizations of those policies, which speak for themselves, and respectfully refer the Court to the Services' policies for a complete and accurate statement of their contents.

38. This paragraph consists of Plaintiffs' characterizations of a memorandum that was issued on February 14, 2018 and unspecified DoD and Army policies. Defendants deny any characterizations of those policies, which speak for themselves, and respectfully refer the Court to DoD and Army policies for a complete and accurate statement of their contents.

39. The fifth sentence consists of Plaintiffs' characterizations of a February 14, 2018 Memorandum as well as unspecified DoD and Army policies. Defendants deny any characterizations of that Memorandum and policies, which speak for themselves, and respectfully refer the Court to the Memorandum and to DoD and Army policies for a complete and accurate statement of their contents.

**Plaintiff Nick Harrison's Quest to Become an Officer in the JAG Corps**

40. The first sentence of this paragraph consists of Plaintiffs' characterization of Plaintiff Nick Harrison's military record, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations are denied except to admit that Harrison enlisted in the Army in 2000 and has not had a dishonorable or other than honorable discharge. The allegations in the second sentence are admitted.

41. The allegations in this paragraph are admitted to the extent they allege that Plaintiffs Harrison was discharged from active duty in 2003, joined the Army Reserves, and became a member of the Oklahoma National Guard. Defendants lack sufficient knowledge or

information to form a belief as to the truth of the allegation that these actions were undertaken so that Plaintiff Harrison could focus on his education.

42. The allegations in this paragraph are admitted to the extent they allege that Plaintiff Harrison received a bachelor's degree from the University of Central Oklahoma in 2005. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations that Plaintiff Harrison enrolled in law school at Oklahoma City University in 2005 and that he was the top student in his class at the end of the first semester.

43. The allegations in the first sentence are admitted to the extent they allege that Plaintiff Harrison was deployed to Afghanistan for sixteen months starting in March 2006. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first sentence. The allegations in the second and third sentences are admitted.

44. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

45. Defendants admit the allegations in the first sentence to the extent they allege that Plaintiff Harrison received a J.D. and an M.B.C. from the University of Oklahoma in 2001. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first sentence. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence.

46. The allegations in the first sentence are admitted to the extent they allege that Plaintiff Harrison mobilized with his unit in May 2011, and deployed to Kuwait from July 2011 to March 2012. Defendants lack sufficient knowledge or information to form a belief as to the

truth of the remaining allegations in the first sentence. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence.

47. The allegations in this paragraph are admitted to the extent they allege that Plaintiff Harrison was previously diagnosed as HIV seropositive by a medical treatment facility. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

48. The allegations in the first sentence are admitted to the extent they allege that Plaintiff Harrison was placed on combination antiretroviral therapy. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first sentence. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the second sentence.

49. The allegations in the first sentence are admitted to the extent they allege that Plaintiff Harrison was notified that he was conditionally recommended for appointment in the D.C. National Guard and for selection as a Judge Advocate. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first sentence. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence.

50. The allegations in this paragraph are admitted to the extent they allege that Plaintiff Harrison transferred from the Oklahoma National Guard to the National Guard for Washington, D.C. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

51. The allegations in the first and second sentences are admitted to the extent they allege that in 2013 Plaintiff Harrison interviewed for and was conditionally recommended for

appointment in the D.C. National Guard and for selection as a Judge Advocate, but was never appointed. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first and second sentences. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the third sentence.

52. The first sentence consists of Plaintiffs' characterization of the accessions process for National Guard applicants to the JAG Corps outlined in AR 27-1 and AR 135-100. Defendants deny any characterization of these regulations, which speak for themselves, and respectfully refer the Court to these regulations for a complete and accurate statement of their contents. The allegations in the second sentence are admitted to the extent they allege that Plaintiff Harrison began the process of assessment and qualification with the assistance of First Lieutenant Nicole Ono, the Regional Specialty Branch Recruiter in the recruitment office of the D.C. National Guard.

53. The allegations in this paragraph are admitted, except to the extent they imply that his medical exam ratings or scores applied to anything other than his PULHES score.

54. The allegations in this paragraph are admitted.

55. This paragraph consists of Plaintiffs' characterizations of a December 30, 2014 memorandum from the Chief Surgeon of the Army National Guard, which is attached to the Declaration of Nicholas Harrison in Support of His Motion for Preliminary Injunction. *See* ECF No. 26-3. Defendants deny any characterization of that memorandum, which speaks for itself, respectfully refer the Court to the memorandum for a complete and accurate statement of its contents.

56. The first sentence consists of Plaintiffs' characterizations of AR 25-30, ¶ 1-8(c), AR 40-501, and AR 600-110. Defendants deny any characterizations of these regulations, which

speaks for themselves, and respectfully refer the Court to the regulations for a complete and accurate statement of their contents. The second sentence consists of Plaintiffs' characterizations of a February 23, 2015 memorandum letter submitted by Plaintiff Harrison to the Under Secretary of Defense (Personnel and Readiness), which is attached to the Declaration of Nicholas Harrison in Support of His Motion for Preliminary Injunction. *See* ECF No. 26-3. Defendants deny any characterization of the memorandum letter, which speaks for itself, and respectfully refer the Court to the memorandum letter for a complete and accurate statement of its contents.

57. This paragraph consists of Plaintiffs' characterizations of a March 19, 2015 letter from the Office of the Under Secretary of Defense (Personnel and Readiness), a reproduced version of which is attached to the Declaration of Nicholas Harrison in Support of His Motion for Preliminary Injunction. *See* ECF No. 26-3. Defendants deny any characterization of the letter, which speaks for itself, and respectfully refer the Court to the letter for a complete and accurate statement of its contents.

58. This paragraph consists of Plaintiffs' characterizations of a March 24, 2015 email from Lt. Col. Conreau Williams to Plaintiff Nick Harrison, which is attached to the Declaration of Nicholas Harrison in Support of His Motion for Preliminary Injunction. *See* ECF No. 26-3. Defendants deny any characterizations of that email, which speak for itself, and respectfully refer the Court to the email for a complete and accurate statement of its contents.

59. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation that "Sgt. Harrison pulled together all of the necessary materials to support his request for an ETP." The remainder of this paragraph consists of Plaintiffs' characterization of an ETP request submitted to the Office of the Army Surgeon General on behalf of Plaintiff

Harrison. Defendants deny any characterizations of that request, which speak for itself, and respectfully refer the Court to the request for a complete and accurate statement of its contents.

60. The allegation that “[a]fter securing the necessary approval from the Office of the Army Surgeon General, the process included legal review . . .” is a vague conclusion, to which no response is required. To the extent a response is deemed necessary, Defendants deny the allegation except to admit that the Army processed his ETP in accordance with AR 600-110, AR 40-501, and AR 25-30.

61. The allegations in the first sentence are denied except to admit that the Army processed his ETP in accordance with AR 600-110, AR 40-501, and AR 25-30. The second sentence consists of Plaintiffs’ characterizations of an ETP packet submit to the Deputy Chief of Staff for the Army (G-1) in December 2015. Defendants deny any characterization of that packet, which speaks for itself, and respectfully refer the Court to that packet for a true and accurate statement of its contents.

62. This paragraph consists of Plaintiffs’ characterizations of a June 29, 2016 letter from Director of Military Personnel Management, Office of the Deputy Chief of Staff, G-1, to Plaintiff Nick Harrison. Defendants deny any characterizations of that letter, which speak for itself, and respectfully refer the Court to the letter for a complete and accurate statement of its contents.

63. The first sentence consists of Plaintiffs’ characterizations of a July 21, 2016 ETP request submitted by Harrison to the Under Secretary of Defense (Personnel and Readiness). Defendants deny any characterizations of that request, which speaks for itself, and respectfully refer the Court to that request for a complete and accurate statement of its contents. The second sentence consists of Plaintiffs’ characterizations of a July 26, 2016 email from the office of the

Under Secretary of Defense for Personnel and Readiness. Defendants deny any characterizations of that email, which speak for itself, and respectfully refer the Court to the email for a complete and accurate statement of its contents.

64. The allegations in the first sentence are admitted. The second sentence consists of Plaintiffs' characterization of correspondence dated March 2017, 2017 from the ABCMR to Plaintiff Harrison. Defendants deny any characterizations of that correspondence, which speak for itself, and respectfully refer the Court to the email for a complete and accurate statement of its contents. The allegations in the third sentence are admitted to the extent they allege that there had been no final resolution of Plaintiff Harrison's application as of the date the Complaint was filed in this case.

65. The allegations in the first sentence are admitted to the extent they allege that Plaintiff Harrison was 41 years old at the time the Complaint in this case was filed. The remainder of the allegations in the first sentence consist of Plaintiffs' characterizations of 10 U.S.C. § 532(a)(2) and U.S.C. § 12201(b), as implemented by AR 135-100 and AR 27-1. Defendants deny any characterization of those statutes or their implementing regulations, which speak for themselves, and respectfully refer the Court to the statutes and regulations for a complete and accurate statement of their contents.

66. The allegations in the first sentence consists of a hypothetical scenario posited by Plaintiffs, to which no response is required. To the extent a response is deemed required, Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations. The allegations in the second sentence are admitted to the extent they allege that Plaintiff Harrison was approximately 37.5 years old in September 2014.

67. The allegations in the first sentence are denied. The allegations in the second sentence are admitted to the extent they allege that Plaintiff Harrison had accrued approximately five years of active-duty service at the time the Complaint in this case was filed. The remainder of the allegations in the second sentence are denied.

68. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

69. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

70. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

**CAUSE OF ACTION**  
**VIOLATION OF EQUAL PROTECTION**

71. This paragraph consists of Plaintiffs' characterizations of the Fifth Amendment to the U.S. Constitution. Defendants deny any characterizations of the Fifth Amendment, which speak for itself, and respectfully refer the Court to the Fifth Amendment for a complete and accurate statement of its contents.

72. This paragraph consists of Plaintiffs' characterization of this lawsuit, to which no response is required. To the extent a response is deemed required, the allegations are denied to the extent they allege any unlawful conduct by Defendants.

73. The allegation in this paragraph that Defendants "routinely permit similarly situated individuals who are not HIV positive" and who have "comparable chronic, manageable conditions" to enlist and commission as officers is a vague argument and conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

74. The allegations in this paragraph are admitted to the extent they allege that Plaintiff Harrison was denied a commission because he failed to meet medical accession standards due to his HIV status. To the extent this paragraph alleges that Plaintiff Harrison would have received a commission but for his HIV status, Defendants lack sufficient information to form a belief as to the truth of that allegation.

75. This paragraph consists of Plaintiffs' legal argument, to which no response is required. To the extent a response is deemed required, the allegations are denied.

76. This paragraph consists of Plaintiffs' legal argument, to which no response is required. To the extent a response is deemed required, the allegations are denied.

- a. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this sub-paragraph.
- b. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this sub-paragraph.
- c. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this sub-paragraph.
- d. The factual allegations in this sub-paragraph are admitted. Defendants deny that these allegations should result in a higher standard of review being applied to Plaintiffs' claim.

77. This paragraph consists of Plaintiffs' argument and characterization of their claim in this case, to which no response is required. To the extent a response is deemed required, the allegations are denied.

78. This paragraph consists of Plaintiffs' argument and characterization of their claim in this case, to which no response is required. To the extent a response is deemed required, the allegations are denied.

**PRAYER FOR RELIEF**

The remainder of Plaintiffs' Complaint sets forth Plaintiffs' prayer for relief, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations contained in the prayer for relief and further aver that Plaintiffs are not entitled to the requested relief or any relief from the Defendants.

Defendants further deny any and all allegations in the complaint not expressly admitted herein to which a response is deemed required.

**CONCLUSION**

Wherefore, having fully answered Plaintiffs' Complaint, Defendants respectfully request that the Court enter judgment dismissing this action with prejudice and awarding Defendants costs and such other relief as the Court may deem appropriate.

DATE: September 28, 2018

Respectfully submitted,

G. ZACHARY TERWILLIGER  
United States Attorney

\_\_\_\_\_/s/\_\_\_\_\_  
R. TRENT MCCOTTER  
Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
Tel: (703) 299-3845  
Fax: (703) 299-3983  
trent.mccotter@usdoj.gov

JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division

ANTHONY J. COPPOLINO  
Deputy Director  
Federal Programs Branch

NATHAN M. SWINTON  
Senior Trial Counsel  
U.S. Department of Justice, Civil

Division  
Federal Programs Branch  
20 Massachusetts Ave., NW  
Washington, D.C. 20001  
Telephone: (202) 305-7667  
Facsimile: (202) 616-8460  
Nathan.M.Swinton@usdoj.gov

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date, I filed the foregoing using the Court's CM/ECF system, which will send a notification of electronic filing (NEF) to the following counsel of record:

ANDREW R. SOMMER  
Va. Bar Number 70304  
WINSTON & STRAWN LLP  
1700 K St., NW  
Washington, DC 20006  
T: (202) 282-5000  
ASommer@winston.com

*Counsel for Plaintiffs*

\_\_\_\_\_/s/\_\_\_\_\_  
R. TRENT MCCOTTER  
Assistant United States Attorney  
Office of the United States Attorney  
Justin W. Williams U.S. Attorney's Building  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
Tel: (703) 299-3845  
Fax: (703) 299-3983  
Email: trent.mccotter@usdoj.gov

*Counsel for Defendants*