

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

RICHARD ROE, et al.,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF  
DEFENSE, et al.,

Defendants-Appellants.

No. 19-1410

**APPELLANTS' MOTION TO SET ORAL ARGUMENT ON THE  
SEPTEMBER CALENDAR**

For the reasons set forth below, the government respectfully requests that the Court schedule oral argument during its September calendar. Plaintiffs take no position on this request. In support of this motion, counsel for the government declares as follows:

1. The military has determined that deploying HIV-positive soldiers to the Middle East, North Africa, and Central Asia presents risks that it is unwilling to bear. The United States Central Command, which governs military operations in those areas, therefore prohibits personnel with HIV from deploying without a waiver.

The two individual plaintiffs in this case are airmen who contracted HIV. The Air Force determined that they could no longer perform their military duties because their career fields required them to deploy frequently and because their condition

prevented them from deploying to Central Command's area of responsibility, where most airmen are expected to go. The Air Force planned to discharge them in early 2019.

On February 15, 2019, the district court entered a nationwide preliminary injunction prohibiting the Air Force from making or enforcing discharge decisions based on its deployment policy, concluding that the policy is irrational. The court's decision is deeply flawed and significantly burdens the military's interests. The injunction forces the Air Force to retain airmen who cannot deploy, even though their units are often asked to do so. The injunction therefore requires those who *can* deploy to compensate for their unavailable team members by deploying more often, burdening those service members, their families (who must endure extended periods of separation) and their units (which must deploy soldiers more frequently than they wish, undermining mission readiness). The nationwide scope of the injunction magnifies the injury to the military.

2. The government filed its opening brief on May 28. Plaintiffs' response brief was originally due on June 28. Plaintiffs sought a 30-day extension. The government agreed to take no position on plaintiffs' request on the condition that they take no position on the government's request to set oral argument on the September calendar. This Court granted plaintiffs a 21-day extension. The Court has not yet scheduled this case for oral argument.

3. Because of the importance of the issues to the military and the nature of the relief ordered by the district court, the government respectfully requests that the Court schedule oral argument for the first sitting calendar after this Court's summer recess, which is in September.

4. Plaintiffs' counsel, Geoffrey Eaton, has authorized us to state that plaintiffs take no position on this request.

### CONCLUSION

For the forgoing reasons, the Court should schedule oral argument for the September calendar.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2019, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished automatically by the appellate CM/ECF system on all other counsel, who are CM/ECF participants.

/s/ James Y. Xi  
JAMES Y. XI