

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

RICHARD ROE et al.,

Plaintiffs,

v.

JAMES N. MATTIS et al.,

Defendants.

Civil Action No. 1:18-cv-01565 (LMB/IDD)

*FILED UNDER SEAL*

DECLARATION OF STAFF SERGEANT [REDACTED] IN SUPPORT OF  
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, [REDACTED] declare as follows:

1. Attached as Exhibit A1 is a true and correct copy of the declaration I signed and submitted earlier this year in the case of *Harrison v. Mattis*, currently pending in this Court. All information stated in my original declaration remains accurate.
2. On November 9, 2018, I received a memorandum dated November 7, 2018 from John K. Vallario, Deputy Director of the Secretary of the Air Force Personnel Council, part of the Air Force Personnel Board ("AFPB"). The memorandum is attached to this declaration as Exhibit A5.
3. The memorandum denied my appeal and directed on behalf of the Secretary of the Air Force that I be discharged. The Secretary of the Air Force ("SAF") reached this decision even though, as noted in the memorandum, I have been "compliant with all treatment, [am] currently asymptomatic, and [have] an undetectable human immunodeficiency virus (HIV) viral load," and am "able to perform all in garrison duties, [have] passed [my] most recent fitness assessment without any component exemptions, and [my] commander strongly supports [my] retention." The basis of the decision, as noted in the memorandum, is that my condition

precludes me from being designated world-wide deployable without a waiver, and therefore renders me “unfit for continued military service.” According to the memorandum, I am to be discharged with a disability rating of 10 percent.

4. Because of the SAF’s decision, I must separate from the Air Force even though I want to continue to serve as I do now—in my regular capacity with no physical limitations. My doctors say that my medical condition does not restrict my ability to do my job. I understand that regulations classify me as non-deployable without a waiver, but I want to be worldwide deployable and I am willing to go anywhere in the world to fulfill my duties.

5. The SAF’s decision in my case is different from other recent decisions involving people living with HIV. Exhibit A6 is another memorandum from the SAF involving an appeal by another Airman with HIV. This memorandum was signed by the Director of the SAF Personnel Council (mine was signed by the Deputy Director) and was issued in January 2018 (while mine was in November). Even though this Airman and I both have HIV, the SAF decision in that case resulted in a retention, while mine resulted in a separation. I received Exhibit A6 by email directly from a person who works as a nurse at the San Antonio Military Medical Center, where all Airmen with HIV receive their HIV-related medical care.

6. Before my HIV diagnosis, I intended to apply for retraining in conjunction with re-enlisting for another term of service in the Air Force so that I could continue my military career. The year-long evaluation that I describe above has prevented me from applying for retraining and re-enlisting, however. My term of service has already expired, and my date of separation (“DOS”)—which included extensions and terminal leave—kept being extended while this medical evaluation was ongoing. My last extension, approved by AFPC prior to receiving the SAF decision moved my DOS to June 25, 2019.

7. Absent any changes or interventions, I expect to be separated from the Air Force earlier than that, in accordance with the Secretary's decision. On January 3, 2019, I received notice of my formal separation date from my base personnel office. My DOS is now March 28, 2019.

8. After being diagnosed with HIV in October 2017, I began treatment almost immediately and soon after my viral load was undetectable. My current treatment regimen involves taking one pill once a day. The pills are stored in ordinary pill bottles, do not require any special storage conditions, and are refilled every 90 days so that I have a three-month supply. Since being on the medication, my viral load has remained suppressed, and my doctors tell me that it will continue to be suppressed as long as I consistently take my medication as directed.

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

Executed on January 11, 2018.



# EXHIBIT A1

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

NICHOLAS HARRISON and  
OUTSERVE-SLDN, INC.

Plaintiffs,

v.

Case No. 1:18-cv-00641 (LMB/IDD)

JAMES N. MATTIS, in his official capacity  
as Secretary of Defense; MARK ESPER, in  
his official capacity as the Secretary of the  
Army; and the UNITED STATES  
DEPARTMENT OF DEFENSE,

Defendants.

**DECLARATION OF STAFF SERGEANT [REDACTED] IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, [REDACTED] declare as follows:

1. I am a Staff Sergeant in the U.S. Air Force, currently in my [REDACTED] year of active duty service. I specialize in [REDACTED] and I am attached to an [REDACTED] stationed at [REDACTED]
2. In [REDACTED] at the age of [REDACTED] I joined the Air Force out of a desire to serve in the military [REDACTED] From a young age, I knew I wanted to make the Air Force my lifelong career.
3. Originally, I intended to obtain an undergraduate degree prior to joining the military, so that I would enter as a commissioned officer. Though I was unable to do that, after [REDACTED] [REDACTED] in the military, I continue to aspire to commission.

[REDACTED]

4. Throughout my career, I have strived to be the best Airman that I can be, and my superiors have recognized my efforts. Along with receiving numerous awards for my conduct, including [REDACTED] I have been entrusted with enhanced levels of responsibility. For example, while stationed at [REDACTED] I was placed in charge of a [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Since being promoted to Staff Sergeant— [REDACTED] [REDACTED]—I remained a supervisor of this program.
5. While in the military, I have sought out positions of leadership and responsibility beyond that which is required of me. While stationed at [REDACTED] I underwent approximately forty hours of training to become [REDACTED] [REDACTED] [REDACTED]
6. I truly enjoy the supervisory role in which I find myself as a Staff Sergeant. I am able to encourage my Airmen I supervise to be better airmen and better people, and in turn, my recommendations can help them advance their careers. This mentoring role has become one of the highlights of my military career.
7. Unfortunately, my career is now in jeopardy. In October of 2017, I was diagnosed with HIV while on active duty.
8. Even in the acute stage of infection, I was still healthy. In my initial test results, my T-cell (or “CD4”) count was over 500. In keeping with Air Force regulations, I immediately started a course of antiretroviral treatment. The first time I was tested after beginning antiretroviral treatment, my viral load was undetectable. My doctors have
- [REDACTED]

never recommended that my daily work be restricted in any way as a result of my diagnosis.

9. In keeping with Air Force regulations, I have been deemed “non-deployable” because of my HIV status.
10. Because of my diagnosis, my records were reviewed by the local Physical Evaluation Board (“PEB”) to determine whether I should be retained for service.
11. On December 7, 2017, my commanding officer, [REDACTED] wrote an evaluation of my status in light of my condition and recommended that I be retained, because I was fit to serve and was “a valued team member.” My primary care doctor, [REDACTED] also recommended that I be returned to duty.
12. In spite of the recommendations of both my doctor and my commanding officer, the Informal PEB decided on February 22, 2018, that I should nevertheless be discharged. In reaching this conclusion, the Informal PEB determined that my “condition is not compatible with the fundamental expectations of military service,” because my condition is “subject to sudden and unpredictable progression and will result in deployment restrictions.” See Exh. 1A.
13. This decision was made despite the fact my condition has been well under control since shortly after I was diagnosed and will remain so for as long as I am in treatment, which is required by the Air Force as a condition of my continued service. According to current medical science, the progression of my condition is easily predicted: with my once-daily medication, it will not progress.
14. Given this unsatisfactory result, I decided to appeal to the Formal PEB of the Air Force, which is located at Randolph Air Force Base in Texas. At the same time, I requested

[REDACTED]

representation from the Judge Advocate General's (JAG) Corps for my appeal to the Formal PEB. [REDACTED] was assigned as my JAG officer.

15. While waiting for my appeal, I gathered numerous letters of support from my commanding officers and colleagues, in which they all requested I be retained. Among these letters was one from Lt. Col. Jason Okulicz, the Director of the HIV Medical Evaluation Unit at San Antonio Military Medical Center ("SAMMC"), in which he stated that there was "[no] medical reason to explain why [REDACTED] would not be returned to duty." See Exh. 1B.
16. My hearing before the Formal PEB was scheduled for [REDACTED] I decided to attend the hearing in person to better answer any specific questions the Board raised about my condition or my record of service.
17. When I arrived for my hearing, however, it had a distinctly *pro forma* feel. The only question they asked was why there had been a delay in the receipt of a particular test result, which had resulted from a medical staffer's logistical error. After traveling from [REDACTED] to Texas specifically for the hearing, I was dismissed after only a few minutes.
18. Before attending the hearing, I was told that it would take weeks, if not months, for the Formal PEB to reach a decision. Instead, I received a determination approximately three hours after I left the hearing. The Board had determined, despite the recommendations of my doctors, that my condition "place[d an] increased burden on others within [my] career field." This increased burden, in their opinion, was due solely to the fact that I was no longer worldwide deployable. As a result, the Formal PEB upheld the decision of the Informal PEB and recommended that I be discharged. See Exh. 1C.

[REDACTED]

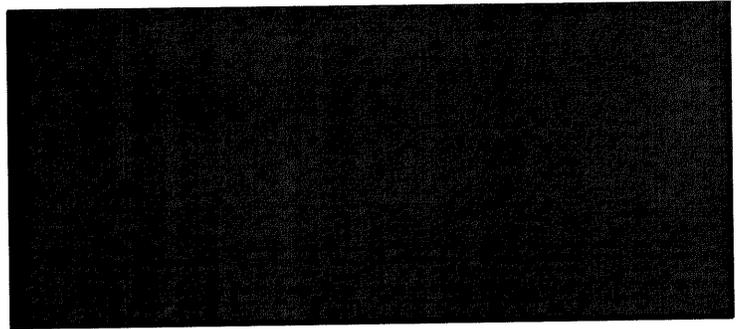
19. Frustrated with this result as well, I wrote a letter of appeal to the Secretary of the Air Force. I was informed that it would take the Secretary a minimum of six months to reach a decision, if not longer. Thus, I will have to wait until at least October to receive a decision.
20. In the meantime, I continue to serve in my regular capacity with no physical restrictions. In spite of the fact that the Formal PEB described me as a “burden,” the Air Force has allowed me to continue my work supporting their overall mission while I await the Secretary’s decision on my future.
21. I am not a burden in my role as an Airman. This fact has been recognized by my commanding officers and supervisors on multiple Air Force bases. My doctors do not foresee any daily restrictions on my work as a result of my condition. I am serving with pride at [REDACTED], and my non-deployable status will not keep me from supporting the Air Force’s mission in my current capacity as [REDACTED]
22. Moreover, my non-deployable designation is not an accurate reflection of my fitness to serve overseas. My condition is well under control; I am virally suppressed; and I likely will remain so for as long as I am in treatment. The non-deployable designation was not a determination by my doctors, but rather a requirement of Air Force regulations.
23. My HIV status has not prevented me from serving for approximately the past year. I will continue to serve as I await a final decision in my own case, and I will intently watch this court’s adjudication of Sergeant Harrison’s case. My career thus far in the Air Force has been a success, and I want to continue that career. The only obstacle in my way is a regulation restricting my deployability that does not accurately reflect my health status or

[REDACTED]

ability to serve and is preventing thousands of other current and future Air Force service members from serving their country to the full extent of their capabilities.

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

Executed on: July 18, 2018



# EXHIBIT A2

INFORMAL	FINDINGS AND RECOMMENDED DISPOSITION OF USAF PHYSICAL EVALUATION BOARD	DATE: <b>22-Feb-18</b>
<i>PRIVACY ACT STATEMENT</i>		
<p><i>AUTHORITY: 10 U.S.C. 8013, Secretary of the Air Force (AF); as implemented by AF Instruction 36-2608 and Executive Orders 9397 (SSN) and 13478.</i></p> <p><i>PRINCIPAL PURPOSE: Military personnel records are used at all levels of AF personnel management for actions/processes related to disability evaluation for separation/retirement or retention.</i></p> <p><i>ROUTINE USES: Records may be disclosed to the Department of Veterans Affairs for research, processing, and adjudication of claims, and providing medical care.</i></p> <p><i>DISCLOSURE: Voluntary. SSN is necessary to ensure positive identification. Refusal to divulge information may delay or halt further processing and may jeopardize entitlement to disability benefits.</i></p>		
1. BOARD CONVENED AT JBSA Randolph AFB TX 78150-4708	2. EXHIBITS ATTACHED: A	
3. MEMBER'S NAME (Last, First, MI) [REDACTED]	4. GRADE <b>SSgt</b>	5. SSN [REDACTED]
6. COMPONENT: <b>Regular AF</b>	7. 10 USC 1208 SERVICE [REDACTED]	8. APPROVED RETIREMENT/HYT:
<b>9. FINDINGS CONCERNING INDIVIDUAL CONDITIONS DESCRIBED IN THE RECORDS</b>		
<p>A. DIAGNOSIS</p> <p>B. INCURRED WHILE ENTITLED TO RECEIVE BASIC PAY (Enter "Yes", "No", or "NA" for Not Applicable.)</p> <p>C. LINE OF DUTY OR PROXIMATE RESULT OF PERFORMING DUTY (Enter "Yes" for in line of duty or proximate result, "No" for not proximate result of performing duty (ARC only), "M" for Not LOD - intentional misconduct, "N" for Not LOD - willful neglect, "A" for Not LOD - incurred during a period of unauthorized absence, or "NA" for not applicable)</p> <p>D. DISABILITY COMPENSATION RATING</p> <p>E. VETERANS ADMINISTRATION SCHEDULE FOR RATING DISABILITIES (VASRD) CODE</p> <p>F. COMBAT RELATED DETERMINATION AS DEFINED IN 26 USC 104 (Enter "A" for direct result of armed conflict, "I" for direct result of instrumentality of war, "S" for duty under conditions simulating war, or "H" for while engaged in hazardous service, or "No" if not combat related.)</p>		
A. DIAGNOSIS	B.	C.
D.	E.	F.
<p><b>CATEGORY I - UNFITTING CONDITIONS:</b> Human Immunodeficiency Virus (HIV) w/ Pharyngitis</p> <p><b>CATEGORY II - CONDITIONS THAT CAN BE UNFITTING BUT ARE NOT CURRENTLY UNFITTING:</b> See NOTE in Block 15</p> <p><b>CATEGORY III - CONDITIONS THAT ARE NOT UNFITTING AND NOT COMPENSABLE OR RATABLE:</b> NONE</p>	Yes	Yes
	10	6351
		No
<b>10. ADDITIONAL FINDINGS</b>		
A. MEMBER IS UNFIT BECAUSE OF PHYSICAL DISABILITY		YES
B. OVERCOMES THE PRESUMPTION OF FITNESS		N/A
C. CONDITION IS PERMANENT/STABLE		YES
D. DISABILITY WAS INCURRED IN LINE OF DUTY IN TIME OF WAR OR NATIONAL EMERGENCY OR AFTER 14 SEP 1978		YES
E. DISABILITY WAS INCURRED IN A COMBAT ZONE OR INCURRED DURING THE PERFORMANCE OF DUTY IN COMBAT-RELATED OPERATIONS AS DESIGNATED BY THE SECRETARY OF DEFENSE (NDA 2008, Sec 1646)		NO
11. COMBINED COMPENSABLE PERCENTAGE <b>10</b>	12. RECOMMENDED DISPOSITION <b>Discharge With Severance Pay (DWSP)</b>	
13. NAME OF PEB PRESIDENT OR REPRESENTATIVE <b>RICHARD S. BINGER, DAFC</b>	14. SIGNATURE 	
<b>CLINICS FOR TDRL EVALUATIONS</b>		
N/A	N/A	N/A
		N/A

FINDINGS AND RECOMMENDED DISPOSITION OF USAF PHYSICAL EVALUATION BOARD					
GRADE/NAME: ██	SSN: ██████████	DATE: <b>22-Feb-18</b>			
Continuation of Item 9, FINDINGS CONCERNING INDIVIDUAL CONDITIONS DESCRIBED IN THE RECORDS					
A. DIAGNOSIS	B.	C.	D.	E.	F.
<p><b>15. REMARKS:</b> The Informal Physical Evaluation Board (IPEB) finds the service member's (SM) medical condition prevents him from reasonably performing the duties of his office, grade, rank or rating. Accordingly, the IPEB recommends the SM be discharged with severance pay with a disability rating of 10% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD) guidelines. The SM is a ██████████ submitted for HIV, stage 3, diagnosed in October 2017 with last negative test in October 2015. He reports an illness suggestive of acute retroviral syndrome in June 2017. He was started on antiretroviral therapy in November 2017. The AF FORM 469, Duty Limiting Condition Report, indicated the SM has the following mobility/duty/fitness restrictions: no PCS/TDY/mobility. The IPEB reviewed and considered the SM's comments and multiple letters of support. The SM's commander has indicated the SM is able to function in his primary AFSC and recommends retention. The IPEB acknowledges the commander's recommendation for retention and statement that the SM is able to perform his daily in-garrison duties; however, the IPEB finds the SM's medical condition is subject to sudden and unpredictable progression and will result in deployment restrictions that prevent him from being fully worldwide qualified. Personnel with confirmed HIV infection are disqualified from deploying without a waiver. Additionally, some nations have legal prohibitions against entering their country with this diagnosis. Due to these restrictions, the SM's condition is not compatible with the fundamental expectations of military service. Thus, the IPEB finds the SM's HIV is incompatible with the rigors of military service and unfitting. NOTE: The IPEB has considered all other medical conditions rated by the Department of Veterans Affairs related to the SM's military service as required under the Integrated Disability Evaluation System. The Board finds these conditions are currently not unfitting for duty separately or collectively.</p>					

# EXHIBIT A3



DEPARTMENT OF THE AIR FORCE  
59TH MEDICAL WING (AETC)  
JOINT BASE SAN ANTONIO - LACKLAND TEXAS

29 May 2018

To whom it may concern,

SSgt [REDACTED] has been under our care at the USAF HIV Medical Evaluation Unit (MEU) since November 2017. His initial CD4 cell count was over 500 cells/uL and he started a once-daily antiretroviral treatment regimen. He currently has preserved immune function and is at his treatment goal on antiretroviral therapy with a suppressed viral load. He has no physical limitation that would prevent him from conducting his duties. In the future, he will require continuation of his 1 pill daily treatment with laboratory testing approximately every 6 months and a once yearly evaluation for HIV infection at the MEU.

My assessment of did not reveal a medical reason to explain why he would not be returned to duty like hundreds of other USAF members diagnosed with this infection before him. If there are any questions, please contact me at (210) 916-0532.

Very respectfully,

A handwritten signature in black ink, appearing to read "J. Okulicz", is positioned above the typed name.

Jason F. Okulicz, MD, Lt Col, MC  
Director, HIV Medical Evaluation Unit  
Chief, Infectious Disease Service  
San Antonio Military Medical Center

# EXHIBIT A4

FORMAL	FINDINGS AND RECOMMENDED DISPOSITION OF USAF PHYSICAL EVALUATION BOARD				DATE: <b>11-Apr-18</b>	
<i>PRIVACY ACT STATEMENT</i>						
<p><i>AUTHORITY: 10 U.S.C. 8013, Secretary of the Air Force (AF); as implemented by AF Instruction 36-2608 and Executive Orders 9397 (SSN) and 13478.</i></p> <p><i>PRINCIPAL PURPOSE: Military personnel records are used at all levels of AF personnel management for actions/processes related to disability evaluation for separation/retirement or retention.</i></p> <p><i>ROUTINE USES: Records may be disclosed to the Department of Veterans Affairs for research, processing, and adjudication of claims, and providing medical care.</i></p> <p><i>DISCLOSURE: Voluntary. SSN is necessary to ensure positive identification. Refusal to divulge information may delay or halt further processing and may jeopardize entitlement to disability benefits.</i></p>						
1. BOARD CONVENED AT JBSA Randolph AFB TX 78150-4708			2. EXHIBITS ATTACHED: A-C, G-Y			
3. MEMBER'S NAME (Last, First, MI)			4. GRADE	5. SSN		
			<b>SSgt</b>			
6. COMPONENT:		7. 10 USC 1208 SERVICE		8. APPROVED RETIREMENT/HYT:		
<b>Regular AF</b>						
<b>9. FINDINGS CONCERNING INDIVIDUAL CONDITIONS DESCRIBED IN THE RECORDS</b>						
<p>A. DIAGNOSIS</p> <p>B. INCURRED WHILE ENTITLED TO RECEIVE BASIC PAY (Enter "Yes", "No", or "NA" for Not Applicable.)</p> <p>C. LINE OF DUTY OR PROXIMATE RESULT OF PERFORMING DUTY (Enter "Yes" for in line of duty or proximate result, "No" for not proximate result of performing duty (ARC only), "M" for Not LOD - intentional misconduct, "N" for Not LOD - willful neglect, "A" for Not LOD - incurred during a period of unauthorized absence, or "NA" for not applicable)</p> <p>D. DISABILITY COMPENSATION RATING</p> <p>E. VETERANS ADMINISTRATION SCHEDULE FOR RATING DISABILITIES (VASRD) CODE</p> <p>F. COMBAT RELATED DETERMINATION AS DEFINED IN 26 USC 104 (Enter "A" for direct result of armed conflict, "I" for direct result of instrumentality of war, "S" for duty under conditions simulating war, or "H" for while engaged in hazardous service, or "No" if not combat related.)</p>						
A. DIAGNOSIS		B.	C.	D.	E.	F.
<p><b>CATEGORY I - UNFITTING CONDITIONS:</b> Human Immunodeficiency Virus (HIV) w/ Pharyngitis</p> <p><b>CATEGORY II - CONDITIONS THAT CAN BE UNFITTING BUT ARE NOT CURRENTLY UNFITTING:</b> See NOTE in Block 15</p> <p><b>CATEGORY III - CONDITIONS THAT ARE NOT UNFITTING AND NOT COMPENSABLE OR RATABLE:</b> NONE</p>		Yes	Yes	10	6351	No
<b>10. ADDITIONAL FINDINGS</b>						
A. MEMBER IS UNFIT BECAUSE OF PHYSICAL DISABILITY					YES	
B. OVERCOMES THE PRESUMPTION OF FITNESS					N/A	
C. CONDITION IS PERMANENT/STABLE					YES	
D. DISABILITY WAS INCURRED IN LINE OF DUTY IN TIME OF WAR OR NATIONAL EMERGENCY OR AFTER 14 SEP 1978					YES	
E. DISABILITY WAS INCURRED IN A COMBAT ZONE OR INCURRED DURING THE PERFORMANCE OF DUTY IN COMBAT-RELATED OPERATIONS AS DESIGNATED BY THE SECRETARY OF DEFENSE (NDAA 2008, Sec 1646)					NO	
11. COMBINED COMPENSABLE PERCENTAGE			12. RECOMMENDED DISPOSITION			
<b>10</b>			<b>Discharge With Severance Pay (DWSP)</b>			
13. NAME OF PEB PRESIDENT OR REPRESENTATIVE			14. SIGNATURE			
<b>ADAM N. CARTER, Lt Col, USAF</b>						
<b>CLINICS FOR TDRL EVALUATIONS</b>						
N/A		N/A		N/A		

FINDINGS AND RECOMMENDED DISPOSITION OF USAF PHYSICAL EVALUATION BOARD

GRADE/NAME: ██	SSN: ██	DATE: <b>11-Apr-18</b>
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Continuation of Item 9, FINDINGS CONCERNING INDIVIDUAL CONDITIONS DESCRIBED IN THE RECORDS

A.	DIAGNOSIS	B.	C.	D.	E.	F.

15. REMARKS:

**Contention:** SSgt ██████ contends he is fit and should be returned to duty.

SSgt ██████ is a ██████ who was diagnosed with HIV, Stage 3, in October 2017. He reported a previous illness in June 2017 suggestive of acute retroviral syndrome. He is treated with antiretroviral therapy and is asymptomatic. His commander reports he is able to perform all in-garrison duties of his AFSC and recommends his retention. The most recent AF Form 469, Duty Limiting Condition Report, indicates he is not worldwide qualified. Confirmed HIV infection is disqualifying for deployment IAW CENTCOM MOD 13, Tab A paragraph 7C. The FPEB acknowledges SSgt ██████ record of performance during his ██████ years of military service and the numerous letters of support for his retention. Unfortunately, his condition significantly affects his ability to be assigned worldwide and deploy, which would have significant effect on his career progression and place increased burden on others within his career field. Therefore, the FPEB finds this condition is *unfitting* for continued military service.

The Formal Physical Evaluation Board (FPEB) finds SSgt ██████ medical condition prevents him from reasonably performing the duties of his office, grade, rank or rating and recommends discharge with severance pay with a disability rating of 10% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD) guidelines.

**NOTE:** The FPEB has considered all other medical conditions rated by the Department of Veterans Affairs related to SSgt ██████ military service as required under the Integrated Disability Evaluation System. The Board finds these conditions are currently not unfitting for duty separately or collectively.

# EXHIBIT A5



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

Office of the Assistant Secretary

MEMORANDUM FOR AFPC/DPFDD

FROM: SAF/MRBP

SUBJECT: Physical Evaluation—Staff Sergeant [REDACTED]

On behalf of the Secretary of the Air Force, it is directed that Staff Sergeant [REDACTED] be discharged and receive severance pay with a disability rating of 10 percent under the provisions of Title 10, United States Code, Section 1203. This disability rating was determined based on the Veterans Affairs Schedule for Rating Disabilities (VASRD) in accordance with the National Defense Authorization Act of 2008.

Staff Sergeant [REDACTED] case was considered by the Air Force Personnel Board (AFPB), which made a recommendation regarding its disposition. The following rationale is provided for the final decision in this case. The Board considered the member's contention that he is fit and should be returned to duty. The Board noted the member has been compliant with all treatment, is currently asymptomatic, and has an undetectable human immunodeficiency virus (HIV) viral load. Additionally, he is able to perform all in garrison duties, has passed his most recent fitness assessment without any component exemptions, and his commander strongly supports his retention. However, the Board noted the member's condition precludes him from being able to deploy world-wide without a waiver and renders him ineligible for deployment to the Central Command (CENTCOM) Area of Responsibility (AOR), where the majority of Air Force members are expected to deploy. Deployability is a key factor in determining fitness for duty and the Board recognized the member belongs to a career field with a comparatively high deployment rate/tempo. Therefore, based on his inability to deploy and considering his current career point, the Board determined he is unfit for continued military service and shall be discharged with severance pay.

When addressing the applicant's disability rating award, the Board is required by law to rate a disability using criteria outlined in the VASRD. The AFBP typically applies the disability ratings proposed by the Department of Veterans Affairs (DVA) under the Integrated Disability Evaluation System (IDES), as these ratings should be in compliance with the VASRD. The Board therefore assigned a rating of 10 percent to the member's HIV infection. This rating warranted discharge with severance pay.

This action is taken under the authority delegated by the Secretary of the Air Force.

11/7/2018

X John K. Vallario

JOHN K. VALLARIO  
Deputy Director, SAF Personnel Council  
Signed by: VALLARIO.JOHN.K.1069511070

Attachment:  
Additional Information Sheet

### Additional Information Sheet

Your case was reviewed by the Air Force Personnel Board (AFPB) of the Secretary of the Air Force Personnel Council (SAFPC) under authority delegated by the Secretary of the Air Force. The board reviewed all facts and evidence in the case, to include the testimony presented before the Formal Physical Evaluation Board (FPEB) and the remarks of the FPEB (if applicable), the remarks of the Informal Physical Evaluation Board (IPEB), the service medical record (including electronic entries contained in the Armed Forces Health Longitudinal Technology Application, or AHLTA), the Narrative Summary of the Medical Evaluation Board (MEB), the Department of Veterans Affairs (DVA) medical examination, information provided by you and your counsel, and any additional information that was provided.

If you are on extended active duty and have between 15 and 19+ years of active duty service (but less than 20 years), have an essentially stable condition, and wish to return to duty, you may be eligible to apply for the Limited Assignment Status (LAS) program. Please see Chapter 6 of AFI 36-3212 for more information or discuss your options with your Office of Airmen's Counsel (OAC) representative. Note: you are normally not eligible to apply for LAS if you are being placed on the Temporary Disability Retired List (TDRL).

The board is sensitive to your potential need for continuing medical care. Therefore, the board encourages you to utilize the resources of the DVA to the extent that you may be entitled. The DVA is the agency chartered by Congress to provide assistance to all eligible veterans. A full complement of medical services is available at any tertiary-level DVA health care facility. The DVA's Vocational Rehabilitation and Employment Program's mission is to assist veterans with a service-connected disability to prepare for and find suitable employment. Additional information regarding this program can be obtained at the following website: <http://www.benefits.va.gov/vocrehab/index.asp>. The Military Disability Evaluation System (MDES) is responsible for maintaining a fit and vital fighting force. While the MDES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member's career, and then only to the degree of severity present at the time of final disposition. However, the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate veterans for the purpose of adjusting their disability ratings should their degree of impairment vary over time.

You are also advised of your right to pursue further appeal through application to the Air Force Board for Correction of Military Records (AFBCMR) should you find reason that brings into question the decision of the board. The AFBCMR is an independent body chartered by Congress to redress any Air Force personnel action without influence of previous boards or their respective decisions. You may obtain information on appeal procedures from the AFBCMR website at: <http://www.afpc.af.mil/Board-for-Correction-of-Military-Records>.

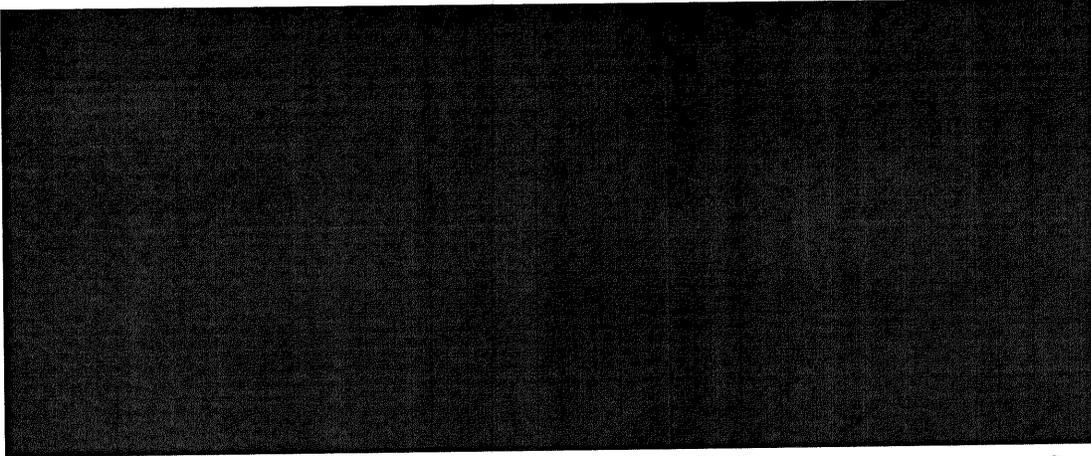
# EXHIBIT A6



DEPARTMENT OF THE AIR FORCE  
WASHINGTON DC



OFFICE OF THE ASSISTANT SECRETARY



The case was reviewed by the Personnel Board of the Secretary of the Air Force Personnel Council, under authority delegated by the SAF. The Board considered the member's contention to be returned to duty. Following a review of all facts and evidence in the case, to include the testimony presented before the Formal Physical Evaluation Board (FPEB), the remarks by the FPEB, the remarks by the Informal Physical Evaluation Board (IPEB), the service medical record (including electronic entries contained in the Armed Forces Health Longitudinal Technology Application, or AHLTA), the Narrative Summary of the Medical Evaluation Board (MEB), the Department of Veterans Affairs (DVA) medical examination, and additional information provided by the member; the Board directs that the member be returned to duty.

In keeping with the 11 October 2017 AF/AIP Policy, *Retention of Airmen with Asymptomatic HIV*, and in accordance with AFI 48-178, *Human Immunodeficiency Virus Program*, the Board offers the following rationale for its decision. Airman First Class was diagnosed with her condition in March 2016. On a standard regimen of Tivicam and Truvada as prescribed by her specialist at San Antonio Military Medical Center, she has remained symptom free and with an undetectable viral load. She has strong command support for retention. Given her current health status and no requirement for medications requiring special handling, the Board found returning her to duty constitutes a reasonable medical risk.

It is understood that the member may require an Assignment Limitation Code "C" and, if so, would require waivers to deploy. If it is found that the member's condition changes or that he requires additional duty restrictions, then a new MEB should be initiated. The member will be required to undergo an annual review in lieu of MEB at which time his case may be subjected to any updated policy changes.

**BREAKING BARRIERS...SINCE 1947**

*This document contains information that must be protected IAW AFI 33-332 and DoD Regulation 5400.11 Privacy Act of 1974, as amended, applies. For Official Use Only (FOUO).*

This action is taken under the authority delegated by the Secretary of the Air Force.

1/22/2018

X 

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USA M. CRAIG, Colonel, USAF  
Director, SAF Personnel Council  
Signed by: CRAIG.USA.M.1159521326

**BREAKING BARRIERS...SINCE 1947**

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Privacy Act of 1974, as amended, applies. For Official Use Only (FOUO).*

# EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

RICHARD ROE et al.,

Plaintiffs,

v.

JAMES N. MATTIS et al.,

Defendants.

Civil Action No. 1:18-cv-01565 (LMB/IDD)

*FILED UNDER SEAL*

DECLARATION OF SENIOR AIRMAN [REDACTED] IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION

I, [REDACTED] declare as follows:

1. After graduating from high school in [REDACTED] I found myself facing a difficult job market in my home state of [REDACTED]. I had heard that the military offered young people like me the ability to further their education through both internal vocational training and financial assistance toward a college education afterward. I was also intrigued by a career in the military because it would afford me the chance to travel to and even live and work in different countries around the world.

2. I enlisted in the United States Air Force in the [REDACTED] at the age of [REDACTED]. On [REDACTED] I began eight weeks of Basic Military Training ("BMT"). After completing BMT in [REDACTED] I reported to [REDACTED] in [REDACTED] where I studied to be [REDACTED]. After receiving a broad education that covered [REDACTED]

[REDACTED] I left [REDACTED] in [REDACTED]

3. In early [REDACTED] I was stationed with the [REDACTED] in [REDACTED] I spent my year-long tour working in the base's [REDACTED] [REDACTED]

4. In [REDACTED] I began my next tour of duty, this time in [REDACTED] where [REDACTED] I worked in the [REDACTED] [REDACTED] where my role consisted mainly of [REDACTED] [REDACTED] I spent nearly [REDACTED] at [REDACTED] concluding in [REDACTED]

5. While stationed at [REDACTED] I was deployed on two separate occasions to [REDACTED] [REDACTED] The first deployment began in [REDACTED] and ended in [REDACTED] At [REDACTED] I performed largely the same [REDACTED] role as I had at [REDACTED]

6. Typically, members of the Air Force who have been deployed begin a period of "dwell time" upon their return, during which they may not be deployed from their home station again. Dwell time is intended to give returning service members the opportunity to rest, recharge, enjoy the comforts of home, and reconnect with family and friends. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

7. I returned to [REDACTED] for my second deployment. This time, I was assigned to a different job in the [REDACTED] There, my

duties consisted of [REDACTED] After about [REDACTED] I returned to [REDACTED] in late [REDACTED]. I left [REDACTED] on [REDACTED] [REDACTED]

8. At the end of [REDACTED] I was assigned to [REDACTED] at [REDACTED] I was again placed in [REDACTED] but this time I worked on [REDACTED] I was later reassigned to [REDACTED] similar to the one I had held at [REDACTED]

9. In early [REDACTED], I was transferred to the [REDACTED] [REDACTED] This role involves [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10. In [REDACTED] I began training to be [REDACTED] [REDACTED] These duties concluded in [REDACTED] [REDACTED] and I returned to [REDACTED], where I currently serve.

11. On March 1, 2017, I was diagnosed with HIV at [REDACTED] Within two weeks, I began Antiretroviral Therapy ("ART"). By August 2017, I had an undetectable viral load. It has remained undetectable ever since. My doctors have not recommended restricting my work in any way as a result of my diagnosis.

12. My treatment regimen requires me to take two pills, Tivicay and Descovy. I take them at the same time, once a day. The pills are stored in ordinary pill bottles and do not require any special storage conditions. I refill my prescription every 90 days, just as I would any other long-term medication.

13. In accordance with regulation, after my diagnosis I began a standard medical evaluation process, which was to determine whether I would be retained in or separated from the Air Force. My commanding officer supported my retention, and my doctors offered the opinion that my medical condition, including my HIV status, did not affect my ability to do my job.

14. As part of this process, after what I understand was some review of medical records and other information, in October 2017 I received notification of a recommendation from the Informal Physical Evaluation Board ("IPEB") that I should be separated based on my HIV status. A copy of the IPEB findings and recommendation is attached to this declaration as Exhibit B1.

15. Yet my condition has in fact been well under control since shortly after I was diagnosed and will remain so for as long as I am in treatment, which is required by the Air Force as a condition of my continued service. As I understand it, according to current medical science, the progression of my condition is easily predicted: with my once-daily medication, I understand that it will not progress.

16. I immediately appealed the IPEB's recommendation to the Formal PEB ("FPEB") of the Air Force at Randolph Air Force Base in San Antonio, Texas. My hearing was scheduled for [REDACTED]

[REDACTED] During the hearing, which lasted only 20 minutes, I got the impression that the Board was not receptive to my position. After just half an hour of post-hearing deliberation, the FPEB issued its recommendation that I be separated based on my HIV status. A copy of the FPEB's findings and recommendations is attached as Exhibit B2.

17. I appealed the FPEB's recommendation to the Secretary of the Air Force, submitting a memorandum and supporting documents on December 27, 2017. On November 15,

2018, I received a memorandum dated November 7, 2018 from John K. Vallario, Deputy Director of the Secretary of the Air Force Personnel Council.

18. The memorandum denied my appeal and directed on behalf of the Secretary of the Air Force that I be discharged. A copy is attached as Exhibit B3. The Secretary of the Air Force reached this decision even though, as noted in the memorandum, I have been “compliant with all treatment, [am] currently asymptomatic, and [have] an undetectable human immunodeficiency virus (HIV) viral load,” and am “able to perform all in garrison duties, [have] passed [my] most recent fitness assessment without any component exemptions, and [my] commander strongly supports [my] retention.” The basis of the decision, as noted in the memorandum, is that my condition precludes me from being designated world-wide deployable without a waiver, and therefore renders me “unfit for continued military service.” According to the memorandum, I am to be discharged with a disability rating of 10 percent.

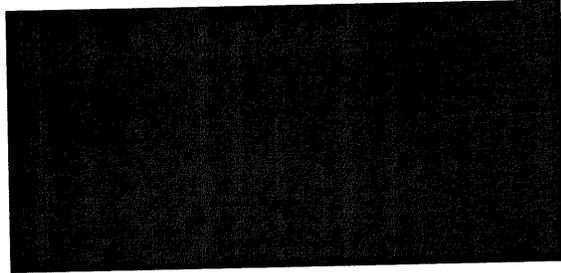
19. Consequently, I must separate from the Air Force even though I want to continue to serve as I do at present—in my regular capacity with no physical restrictions. Again, my doctors state that my medical condition does not restrict my ability to do my job. I understand that regulations classify me as non-deployable without a waiver, but I want to be worldwide deployable and I am willing to go anywhere in the world to fulfill my duties.

20. Before my HIV diagnosis, I intended to re-enlist for another term of service in the Air Force so that I could continue the military career that I know and love. But the year-long evaluation process that I describe above has prevented me from re-enlisting. My term of service has already expired, and my date of separation (“DOS”)—which includes extensions and terminal leave—keeps being extended while this medical evaluation is ongoing. After three extensions, I would be able to remain in the Air Force until June 2019.

21. I will be separated sooner than that, though. On December 20, 2018, I received notice from the Air Force Personnel Center ("AFPC") of my formal separation date. The notice is attached as Exhibit B4. My DOS is set for February 25, 2019.

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

Executed on January 11, 2018



# EXHIBIT B1

ACTION ON PHYSICAL EVALUATION BOARD FINDINGS AND RECOMMENDED DISPOSITION		
<b>PRIVACY ACT STATEMENT</b> Authority: 10 U.S.C. 801, Executive Orders 9397 and 13478 (SSN). Purpose: To process disability cases. SSN is necessary to ensure positive identification. Routine Uses: May specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a (b) (3). Disclosure is Voluntary: Refusal to divulge information may jeopardize entitlement to disability benefits.		
<b>PERSONNEL DATA</b>		
I. MEMBER (Last, First, Middle Initial)	SSN	GRADE
[REDACTED]	[REDACTED]	[REDACTED]
<b>NEXT OF KIN OR GUARDIAN DATA</b>		
II. NEXT OF KIN (or guardian)	ADDRESS	RELATIONSHIP
[REDACTED]	[REDACTED]	[REDACTED]
<b>COUNSELING ACTION</b>		
III. I have fully explained to the member (or next of kin or guardian indicated in Section II, above), in person or by letter, the findings and recommended disposition of the PEB and applicable case processing procedures and appeal rights. I have counseled the member that regardless of their election as indicated below, upon review by a Special Assistant to the Secretary of the Air Force Personnel Council (SAFPC), the member's case <u>MAY</u> be referred to the SAFPC for further review and final decision.		
DATE	SIGNATURE OF COUNSEL, PEB REPRESENTATIVE, OR PEBLO	
Nov 15, 2017	TWOMEY.SARA.CHRISTINE.1162752541 <small>Digitally signed by TWOMEY.SARA.CHRISTINE.1162752541                      DN: cn=US, o=U.S. Government, ou=DoD, ou=PEL, ou=USAF, cn=TWOMEY.SARA.CHRISTINE.1162752541                      Date: 2017.11.27 13:25:52 -0600</small>	
<b>IV. IPEB ACTION BY THE MEMBER, NEXT OF KIN, OR GUARDIAN</b>		
HAVING BEEN ADVISED OF THE FINDINGS AND RECOMMENDED DISPOSITION OF THE PEB (as indicated on AF Form 356) AND APPLICABLE CASE PROCESSING PROCEDURES AND APPEAL RIGHTS: (Check applicable blocks)		
<input checked="" type="checkbox"/> I agree with the findings and recommended disposition of the Informal PEB and am waiving the right to a Formal PEB hearing.		
<input type="checkbox"/> (IDES only) I do <u>not</u> request a one-time reconsideration of the disability ratings for the conditions found unfitting by the PEB.		
<input type="checkbox"/> (IDES only) I request a one-time reconsideration of the disability ratings for the conditions found unfitting by the IPEB. I understand I <u>MUST</u> submit documentation in support of my request to my PEBLO or attorney NLT COB CST <u>within ten calendar days from my briefing or my reconsideration request will not be granted.</u> The request is due NLT COB _____ CST.		
<input type="checkbox"/> I do <u>not</u> agree with the findings and recommended disposition of the Informal PEB and request a formal hearing of my case. (If the IPEB recommended return to duty, I understand I must provide justification for my request and that my request for a formal hearing may be denied.)		
<b>V. FPEB ACTION BY THE MEMBER, NEXT OF KIN, OR GUARDIAN</b>		
HAVING BEEN ADVISED OF THE FINDINGS AND RECOMMENDED DISPOSITION OF THE PEB (as indicated on AF Form 356) AND APPLICABLE CASE PROCESSING PROCEDURES AND APPEAL RIGHTS:		
<input checked="" type="checkbox"/> I agree with the findings and recommended disposition of the Formal PEB. I also elect the following - [Check one below]		
<input type="checkbox"/> (IDES only) I do <u>not</u> request a one-time reconsideration of the disability ratings for the conditions found unfitting by the PEB. I understand that I <u>MUST</u> submit documentation in support of my request to either my attorney, or my PEBLO, or directly to AFPC/DPFDF, 555 E Street West, (Bldg 663), JBSA-Randolph AFB, TX 78150 and that it is due NLT COB _____ CST.		
<input type="checkbox"/> (IDES only) I request a one-time reconsideration of the disability ratings for the conditions found unfitting by the PEB. I understand that my rating reconsideration request will be held until after receipt of the SAFPC decision. I understand I <u>MUST</u> submit documentation in support of my reconsideration to my attorney, or my PEBLO, or directly to AFPC/DPFDF, 555 E Street W, (Bldg 663), JBSA Randolph AFB, TX 78150, <u>within ten calendar days after receipt of the SAFPC decision,</u> or my reconsideration request will not be granted.		
<input type="checkbox"/> I do <u>not</u> agree with the findings and recommended disposition of the Formal PEB and request my case be referred to SAFPC for review and final decision. I understand I may submit a rebuttal/additional evidence to my attorney, or to my PEBLO, or directly to HQ AFPC/DPFDF, 555 E Street W, (Bldg 663), JBSA-Randolph AFB, TX 78150. I understand my rebuttal is due NLT COB _____ CST. I also elect the following - [Check one below]		
<b>REMARKS</b>		
VI. LEAVE BALANCE	REQUESTED SEPARATION DATE IF REQUESTING SHORTER DOS (MPS Must concur if <30 days)	
[REDACTED]	[REDACTED]	
<b>VII. SIGNATURE OF MEMBER</b>		
DATE	SIGNATURE OF MEMBER, NEXT OF KIN, OR GUARDIAN	
Nov 27, 2017	[REDACTED]	

INFORMAL	FINDINGS AND RECOMMENDED DISPOSITION OF USAF PHYSICAL EVALUATION BOARD				DATE: 7-Nov-17	
PRIVACY ACT STATEMENT AUTHORITY: 10 U.S.C. 8013, Secretary of the Air Force (AF); as implemented by AF Instruction 36-2608 and Executive Orders 9397 (SSN) and 13478. PRINCIPAL PURPOSE: Military personnel records are used at all levels of AF personnel management for actions/processes related to disability evaluation for separation/retirement or retention. ROUTINE USES: Records may be disclosed to the Department of Veterans Affairs for research, processing, and adjudication of claims, and providing medical care. DISCLOSURE: Voluntary. SSN is necessary to ensure positive identification. Refusal to divulge information may delay or halt further processing and may jeopardize entitlement to disability benefits.						
1. BOARD CONVENED AT JBSA Randolph AFB TX 78150-4708			2. EXHIBITS ATTACHED: A			
3. MEMBER'S NAME (Last, First, MI)		4. GRADE		5. SSN		
██		SrA		████████████████████		
6. COMPONENT		7. 10 USC 1208 SERVICE		8. APPROVED RETIREMENT/HYT.		
Regular AF		████████████████████				
9. FINDINGS CONCERNING INDIVIDUAL CONDITIONS DESCRIBED IN THE RECORDS						
A. DIAGNOSIS B. INCURRED WHILE ENTITLED TO RECEIVE BASIC PAY (Enter "Yes", "No", or "NA" for Not Applicable.) C. LINE OF DUTY OR PROXIMATE RESULT OF PERFORMING DUTY (Enter "Yes" for in line of duty or proximate result, "No" for not proximate result of performing duty (ARC only), "M" for Not LOD - intentional misconduct, "N" for Not LOD - willful neglect, "A" for Not LOD - incurred during a period of unauthorized absence, or "NA" for not applicable) D. DISABILITY COMPENSATION RATING E. VETERANS ADMINISTRATION SCHEDULE FOR RATING DISABILITIES (VASRD) CODE F. COMBAT RELATED DETERMINATION AS DEFINED IN 26 USC 104 (Enter "A" for direct result of armed conflict, "I" for direct result of instrumentality of war, "S" for duty under conditions simulating war, or "H" for while engaged in hazardous service, or "No" if not combat related.)						
A	DIAGNOSIS	B.	C.	D.	E.	F.
	CATEGORY I - UNFITTING CONDITIONS: HIV	Yes	Yes	10	6351	No
	CATEGORY II - CONDITIONS THAT CAN BE UNFITTING BUT ARE NOT CURRENTLY UNFITTING: See NOTE in Block 15					
	CATEGORY III - CONDITIONS THAT ARE NOT UNFITTING AND NOT COMPENSABLE OR RATABLE: NONE					
10. ADDITIONAL FINDINGS						
A. MEMBER IS UNFIT BECAUSE OF PHYSICAL DISABILITY				YES		
B. OVERCOMES THE PRESUMPTION OF FITNESS				N/A		
C. CONDITION IS PERMANENT/STABLE				YES		
D. DISABILITY WAS INCURRED IN LINE OF DUTY IN TIME OF WAR OR NATIONAL EMERGENCY OR AFTER 14 SEP 1978				YES		
E. DISABILITY WAS INCURRED IN A COMBAT ZONE OR INCURRED DURING THE PERFORMANCE OF DUTY IN COMBAT-RELATED OPERATIONS AS DESIGNATED BY THE SECRETARY OF DEFENSE (NDAA 2008, Sec 1646)				NO		
11. COMBINED COMPENSABLE PERCENTAGE		12. RECOMMENDED DISPOSITION				
10		Discharge With Severance Pay (DWSP)				
13. NAME OF PEB PRESIDENT OR REPRESENTATIVE		14. SIGNATURE				
RICHARD S. BINGER, DAFC						
CLINICS FOR TDRL EVALUATIONS						
N/A		N/A		N/A		

FINDINGS AND RECOMMENDED DISPOSITION OF USAF PHYSICAL EVALUATION BOARD					
GRADE/NAME: [REDACTED]	SSN: [REDACTED]	DATE: 7-Nov-17			
Continuation of Item 9, FINDINGS CONCERNING INDIVIDUAL CONDITIONS DESCRIBED IN THE RECORDS					
A DIAGNOSIS	B	C	D	E	F
<p><b>15. REMARKS:</b> The Informal Physical Evaluation Board (IPEB) has reviewed the available evidence and finds the service member's (SM) medical condition incompatible with continued military service; accordingly, the IPEB recommends the SM be discharged with severance pay with a disability rating of 10% IAW the Veterans Administration Schedule for Rating Disabilities (VASRD) guidelines. The SM is a [REDACTED] [REDACTED] submitted for HIV. He has undergone HIV treatment protocols since Feb 2017 without any additional sequelae but due to this lifelong condition, he will require quarterly evaluations and restrictions for deploying. The AF FORM 469, Duty Limiting Condition Report, indicated the SM has the following mobility/duty/fitness restrictions: no PCS/TDY/mobility. The SM's commander has indicated the SM is able to function in his primary AFSC garrison duties but is limited to deploy; however, she recommends retention. The IPEB acknowledges the commander's recommendation for retention; however, the IPEB finds the SM's medical condition prevents him from reasonably performing the duties of his office, grade, rank or rating; represents a medical risk to the health of the SM or the health/safety of others with continued service; is subject to progression; requires frequent follow-up with a medical specialist; and limits the SM's ability to meet mobility requirements. Thus, the IPEB finds the SM's condition is incompatible with the rigors of military service and unfitting. NOTE: The IPEB has considered all other medical conditions rated by the Department of Veterans Affairs related to the SM's military service as required under the Integrated Disability Evaluation System. The Board finds these conditions are currently not unfitting for duty separately or collectively.</p>					

# EXHIBIT B2



FORMAL	FINDINGS AND RECOMMENDED DISPOSITION OF USAF PHYSICAL EVALUATION BOARD				DATE: 12-Dec-17	
<i>PRIVACY ACT STATEMENT</i>						
<i>AUTHORITY: 10 U.S.C. §013, Secretary of the Air Force (AF); as implemented by AF Instruction 36-2608 and Executive Orders 9397 (SSN) and 13478.</i> <i>PRINCIPAL PURPOSE: Military personnel records are used at all levels of AF personnel management for actions/processes related to disability evaluation for separation/retirement or retention.</i> <i>ROUTINE USES: Records may be disclosed to the Department of Veterans Affairs for research, processing, and adjudication of claims, and providing medical care.</i> <i>DISCLOSURE: Voluntary. SSN is necessary to ensure positive identification. Refusal to divulge information may delay or halt further processing and may jeopardize entitlement to disability benefits.</i>						
1. BOARD CONVENED AT JBSA Randolph AFB TX 78150-4708			2. EXHIBITS ATTACHED: A-C, G-I			
3. MEMBER'S NAME (Last, First, MI) [REDACTED]			4. GRADE SrA	5. SSN [REDACTED]		
6. COMPONENT: Regular AF		7. 10 USC 1208 SERVICE [REDACTED]		8. APPROVED RETIREMENT/HYT:		
9. FINDINGS CONCERNING INDIVIDUAL CONDITIONS DESCRIBED IN THE RECORDS						
A. DIAGNOSIS B. INCURRED WHILE ENTITLED TO RECEIVE BASIC PAY (Enter "Yes", "No", or "NA" for Not Applicable.) C. LINE OF DUTY OR PROXIMATE RESULT OF PERFORMING DUTY (Enter "Yes" for in line of duty or proximate result. "No" for not proximate result of performing duty (ARC only), "M" for Not LOD - intentional misconduct, "N" for Not LOD - willful neglect, "A" for Not LOD - incurred during a period of unauthorized absence, or "NA" for not applicable) D. DISABILITY COMPENSATION RATING E. VETERANS ADMINISTRATION SCHEDULE FOR RATING DISABILITIES (VASRD) CODE F. COMBAT RELATED DETERMINATION AS DEFINED IN 26 USC 104 (Enter "A" for direct result of armed conflict, "I" for direct result of instrumentality of war, "S" for duty under conditions simulating war, or "H" for while engaged in hazardous service, or "No" if not combat related.)						
A. DIAGNOSIS		B.	C.	D.	E.	F.
CATEGORY I - UNFITTING CONDITIONS: HIV  CATEGORY II - CONDITIONS THAT CAN BE UNFITTING BUT ARE NOT CURRENTLY UNFITTING: See NOTE in Block 15  CATEGORY III - CONDITIONS THAT ARE NOT UNFITTING AND NOT COMPENSABLE OR RATABLE: NONE		Yes	Yes	10	6351	No
10. ADDITIONAL FINDINGS						
A. MEMBER IS UNFIT BECAUSE OF PHYSICAL DISABILITY				YES		
B. OVERCOMES THE PRESUMPTION OF FITNESS				N/A		
C. CONDITION IS PERMANENT/STABLE				YES		
D. DISABILITY WAS INCURRED IN LINE OF DUTY IN TIME OF WAR OR NATIONAL EMERGENCY OR AFTER 14 SEP 1978				YES		
E. DISABILITY WAS INCURRED IN A COMBAT ZONE OR INCURRED DURING THE PERFORMANCE OF DUTY IN COMBAT-RELATED OPERATIONS AS DESIGNATED BY THE SECRETARY OF DEFENSE (NDAA 2008, Sec 1646)				NO		
11. COMBINED COMPENSABLE PERCENTAGE 10		12. RECOMMENDED DISPOSITION Discharge With Severance Pay (DWSP)				
13. NAME OF PEB PRESIDENT OR REPRESENTATIVE JEFFERY A. TOWNS, Lt Col, USAF		14. SIGNATURE <i>Jeffery A. Towns</i>				
CLINICS FOR TDRL EVALUATIONS						
N/A		N/A		N/A		

FINDINGS AND RECOMMENDED DISPOSITION OF USAF PHYSICAL EVALUATION BOARD					
GRADE/NAME: [REDACTED]	SSN: [REDACTED]	DATE: 7-Nov-17			
Continuation of Item 9, FINDINGS CONCERNING INDIVIDUAL CONDITIONS DESCRIBED IN THE RECORDS					
A DIAGNOSIS	B.	C.	D.	E.	F.
<p><b>15. REMARKS:</b>                      Contention: [REDACTED] contends he is fit for duty.</p> <p>[REDACTED] is a [REDACTED] with close to [REDACTED] years of active duty service. [REDACTED] was diagnosed with HIV as the result of routine screening in Feb 2017. His initial viral load was 14,000. After initiation of treatment which included daily Tivicay and Descovy, subsequent testing revealed a reduction in viral load and [REDACTED] testified his viral load is currently "0". [REDACTED] has undergone routine follow-up since his diagnosis and has exhibited no evidence of infection related to his HIV diagnosis. As of 18 Oct 2017, [REDACTED] is considered to be stage 2 by CDC case definition and nadir values and he does not have evidence of immune compromise. He did develop an allergy to certain sunscreens after starting treatment for HIV but he testified he is still able to utilize mineral-based sunscreens without a problem. [REDACTED] testified he is aware his condition is associated with deployment limitations, but he noted he is able to perform his in-garrison duties and he has no fitness restrictions. The AF FORM 469, <i>Duty Limiting Condition Report</i>, indicates [REDACTED] has the following mobility/duty/fitness restrictions: no PCS/TDY/mobility. [REDACTED] commander commented [REDACTED] is able to function in his primary AFSC garrison duties but is limited to deploy; however, she recommends retention. The Board acknowledges the commander's recommendation for retention. The Board also notes [REDACTED] HIV condition is well controlled and he is currently asymptomatic. However, as a result of his chronic medical condition, [REDACTED] requires frequent follow-up with a specialist and he is a non-deployable asset in a high ops-tempo career field. For these reasons, the Board finds [REDACTED] HIV condition <i>unfitting</i> for continued military service.</p> <p>[REDACTED] HIV medical condition prevents him from reasonably performing the duties of his office, grade, rank, or rating. The Formal Physical Evaluation Board finds [REDACTED] <i>unfit</i> and recommends discharge with severance pay with a disability rating of 10% IAW Veterans Administration Schedule for Rating Disabilities guidelines.</p> <p><b>NOTE:</b> The FPEB has considered all other medical conditions rated by the Department of Veterans Affairs related to [REDACTED] military service as required under the Integrated Disability Evaluation System. The Board finds these conditions are currently not unfitting for duty separately or collectively.</p>					

# EXHIBIT B3



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

Office of the Assistant Secretary

MEMORANDUM FOR AFPC/DPFDD

FROM: SAF/MRBP

SUBJECT: Physical Evaluation—Senior Airman [REDACTED]

On behalf of the Secretary of the Air Force, it is directed that [REDACTED] be discharged and receive severance pay with a disability rating of 10 percent under the provisions of Title 10, United States Code, Section 1203. This disability rating was determined based on the Veterans Affairs Schedule for Rating Disabilities (VASRD) in accordance with the National Defense Authorization Act of 2008.

[REDACTED] case was considered by the Air Force Personnel Board (AFPB), which made a recommendation regarding its disposition. The following rationale is provided for the final decision in this case. The Board considered the member's contention that he is fit and should be returned to duty. The Board noted the member has been compliant with all treatment, is currently asymptomatic, and has an undetectable human immunodeficiency virus (HIV) viral load. Additionally, he is able to perform all in garrison duties, has passed his most recent fitness assessment without any component exemptions, and his commander strongly supports his retention. However, the Board noted the member's condition precludes him from being able to deploy world-wide without a waiver and renders him ineligible for deployment to the Central Command (CENTCOM) Area of Responsibility (AOR), where the majority of Air Force members are expected to deploy. Deployability is a key factor in determining fitness for duty and the Board recognized the member belongs to a career field with a comparatively high deployment rate/tempo. Therefore, based on his inability to deploy and considering his current career point, the Board determined he is unfit for continued military service and shall be discharged with severance pay.

Addressing the applicant's disability rating award, the Board is required by law to rate a disability using criteria outlined in the VASRD. The AFPB typically applies the disability ratings proposed by the Department of Veterans Affairs (DVA) under the Integrated Disability Evaluation System (IDES), as these ratings should be in compliance with the VASRD. The Board therefore assigned a rating of 10 percent to the member's HIV infection. This rating warranted discharge with severance pay.

This action is taken under the authority delegated by the Secretary of the Air Force.

11/7/2018

 John K. Vallario

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JOHN K. VALLARIO

Deputy Director, SAF Personnel Council

Signed by: VALLARIO.JOHN.K.1069511070

Attachment:  
Additional Information Sheet

# EXHIBIT B4

REQUEST AND AUTHORIZATION FOR SEPARATION											
This contains information which must be protected IAW AFI 33-332 and DoD Regulation 5400.00; Privacy Act of 1974 as Amended Applies, and it is for Official Use Only (FOUO). It must be protected or Privacy Act information removed prior to further disclosure.											
1. TYPE OF SEPARATION:											
<input checked="" type="checkbox"/> DISCHARGE <input type="checkbox"/> ENTRY LEVEL SEPARATION <input type="checkbox"/> RELEASE FROM VOID ENLISTMENT <input type="checkbox"/> RELEASE FROM EAD/REVERTS TO ANG <input type="checkbox"/> RELEASE FROM ACTIVE DUTY/TRANSFERS TO RESAF <input type="checkbox"/> RELEASE FROM EAD/REVERTS TO RESAF <input type="checkbox"/> DISMISSAL											
2. AUTHORITY: <input type="checkbox"/> BY DIRECTION OF THE PRESIDENT <input type="checkbox"/> RESIGNATION ACCEPTED BY THE PRESIDENT											
3 a. NAME (Last, First, MI)			3 b. GRADE		3 c. SSAN		4. PLACE OF ENTRY ON ACTIVE DUTY OR ENLISTMENT				
5. HOME OF RECORD			6. FUTURE MAILING ADDRESS				7. UNDER 2 YEARS SERVICE <input type="checkbox"/> (E-4 Only)				
8. PAFSC		9. RESERVE AF GRADE		10. MIL SVC OBLIGATION DATE		11. AERONAUTICAL RATING		12. FLYING STATUS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
13. EFFECTIVE DATE		14. CHARACTER OF SERVICE								15. CERTIFICATE ISSUED	
25 FEB 2019		<input checked="" type="checkbox"/> HONORABLE <input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS <input type="checkbox"/> GENERAL (Under Honorable Conditions) <input type="checkbox"/> BAD CONDUCT DISCHARGE <input type="checkbox"/> UNCHARACTERIZED <input type="checkbox"/> DISHONORABLE DISCHARGE				<input type="checkbox"/> DD FORM 256 AF <input checked="" type="checkbox"/> DD FORM 214					
16. RELIEVED FROM ASSIGNMENT (Unit, Major Command, Address and Servicing MPF)						17. WILL PROCEED TO					
						<input type="checkbox"/> PLACE OF ENTRY ON ACTIVE DUTY OR ENLISTMENT <input checked="" type="checkbox"/> HOME OF RECORD <input type="checkbox"/> OTHER (See Remarks) <input type="checkbox"/> HOME OF SELECTION					
						18. TRAVEL BY PRIVATE CONVEYANCE (TPC) <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, WITH    0 DAYS TRAVEL TIME PERMITTED.					
						19. MEMBER QUALIFIES FOR FULL TRAVEL/TRANSPORTATION ENTITLEMENT UNDER THE JTR <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
20. ASSIGNED TO (Check if Applicable)											
a. ARPC DENVER, CO			b. PROJECTED UNIT OF ACCESSION			c. TYPE OF POSITION:					
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO						<input type="checkbox"/> MOBILIZATION AUGMENTEE <input type="checkbox"/> REINFORCEMENT DESIGNEE <input type="checkbox"/> UNIT <input type="checkbox"/> AGR <input type="checkbox"/> TR					
d. UNIT OF ASSIGNMENT AND MPF			e. TRAINING/PAY CATEGORY		f. RESERVE SECTION CODE		g. FUNCTIONAL ACCT CODE				
			h. AUTHORIZED GRADE		i. AUTHORIZED AFSC		j. POSITION CONTROL NO.				
21a. ELIGIBLE FOR (PER 10 U.S.C. 1174)			b. ENTITLED TO SEVERANCE/SEPARATION PAY								
<input type="checkbox"/> SEPARATION PAY <input type="checkbox"/> READJUSTMENT PAY CREDITABLE ACTIVE FEDERAL SERVICE			SERVICE FOR PAY IS:				c. CHAPTER 61, 10 U.S.C. DISABILITY				
			YEARS		MONTHS		DAYS		<input type="checkbox"/> NOT ENTITLED TO BENEFITS <input type="checkbox"/> NOT APPLICABLE		
YEARS			MONTHS			DAYS					
22. DEPENDENTS											
23. REMARKS											
01. SEPARATION PROGRAM DESIGNATOR (SPD) CODE IS JEB.											
02. FOR INFORMATION ON ORDER AMENDMENTS, PLEASE REFER TO MYPERS AMENDING SEPARATION ORDERS AT <a href="https://GUM-CRM.CSD.DISA.MIL/APP/ANSWERS/DETAIL/A_ID/8557/P/8,10/C/790">HTTPS://GUM-CRM.CSD.DISA.MIL/APP/ANSWERS/DETAIL/A_ID/8557/P/8,10/C/790</a> .											
24. DATE		25. ORDERS ISSUING/APPROVING OFFICIAL (Name, Grade, Title, DSN Phone)				26. SIGNATURE					
21 DEC 2018		SHOEMATE, SADESHA, SRA, USAF, SEPARATIONS AO				// SIGNED //					
27. EXPENSES CHARGEABLE TO: 5793500 329 5881.0* 05 525725 NONTEMPORARY STORAGE CHARGEABLE TO: 57\$3500 32\$ 5888.0N 05 525725    TAC: F8SN CIC: 4 5 948 0081 525725                      TAC: F8S1 SDN HHG: PB58819001MP0H                      SDN NTS: PB58889001MP0N                      SDN INT: --											
28. DESIGNATION AND LOCATION OF HEADQUARTERS					29. AUTHORITY		30. SPECIAL ORDER NO.		31. DATE		
DEPARTMENT OF THE AIR FORCE					AFI 36-3212		AM-032259		21 DEC 2018		
33. DISTRIBUTION					32. TDN FOR THE COMMANDER						
AA					34. SIGNATURE ELEMENT OF ORDERS AUTHENTICATING OFFICIAL //signed// GUY M. PALUMBO, GS-15, DAFC CHIEF, USAF PHYSICAL DISABILITY DIVISION						

**REQUEST AND AUTHORIZATION FOR SEPARATION (Continued)**

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NAME (Last, First, MI): [REDACTED]

35. CONTINUATION OF DEPENDENTS AND REMARKS

23. CONTINUED

03. GOVERNMENT TRAVEL CARD MANDATE IAW PUBLIC LAW 105-264, GOVERNMENT TRAVEL CARD (GTC) USE IS MANDATORY FOR ALL AUTHORIZED EXPENSES UNLESS OTHERWISE EXEMPTED UNDER SPECIFIC PROVISIONS DETAILED IN PARA E OF THE TRAVEL TRANSPORTATION REFORM ACT. IF AIRMAN IS A GTC HOLDER USE OF HIS/HER INDIVIDUALLY BILLED ACCOUNT IS MANDATORY FOR ALL COMMERCIAL TRANSPORTATION ARRANGEMENTS AND ADVANCE TRAVEL PAY IS NOT AUTHORIZED. IF AIRMAN IS A NON-CARD HOLDER THE CENTRALLY BILLED ACCOUNT WILL BE UTILIZED FOR ALL COMMERCIAL TRANSPORTATION ARRANGEMENTS.

04. MEMBER IS AUTHORIZED PERMISSIVE TDY LEAVE IN CONJUNCTION WITH SEPARATION. YOU MAY BE ELIGIBLE FOR VALUABLE TRANSITION BENEFITS (ID CARD FOR AN ADDITIONAL 2-YEARS, EXTENDED MEDICAL COVERAGE, ETC.). CONTACT THE LOCAL AIRMAN AND FAMILY READINESS CENTER FOR DETAILS CONCERNING THESE BENEFITS.