

The Plaintiffs' Complaint contains an introductory preamble describing the nature of this lawsuit and the legal claims raised, to which no response should be required, but insofar as a response is required, the allegations contained in the preamble are denied.

STATEMENT OF THE CASE

1. Defendants admit the allegations contained in the first two sentences. Defendants deny the allegations contained in the third sentence: military service members may be evaluated for potential separation when they have a condition that might render them unable to reasonably perform the duties of their office, rank, grade, or rating.

2. Defendants deny the allegations contained in the first sentence. Defendants admit the allegations contained in the second sentence, except as to the vague label "significant." The allegations in the third through sixth sentences consist of Plaintiffs' characterization regarding public perceptions of HIV, medical advances related to HIV, and the effect of those advances on HIV-positive patients' health to which no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that there has been meaningful scientific innovation and medical advancements since the 1990s. Defendants admit the allegations contained in the seventh sentence, except to the extent that HIV interferes with the Service member's ability to reasonably perform duties of his or her office, grade, rank, or rating.

3. Defendants deny the allegations in the first sentence, except to admit that the Department of Defense has had and continues to have policies that allow for the retention of Service members who are diagnosed with HIV while on Active Duty. Defendants admit the portion of the second sentence which alleges that there are policies which restrict the ability of Service members with HIV to deploy or change assignments, but deny Plaintiffs' characterization of these policies; Defendants admit that the Air Force has allowed some number of personnel with

HIV to serve in assignments overseas, but denies the remainder of the allegations in this sentence. Defendants lack sufficient knowledge to form a belief as to the truth of the allegations in the remainder of the paragraph.

4. The first sentence of this paragraph consists of Plaintiffs' characterization of their claims in this case, to which no response is required, but insofar as a response is deemed required, Defendants deny the allegations except to admit that an HIV diagnosis may affect a service member's deployability. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence. The third sentence consists of Plaintiffs' characterization of their claims in this case, to which no response is required. To the extent a response is deemed required, the allegations in the first and third sentences are denied.

5. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence, except as to the allegation that Plaintiff Roe enlisted in the Air Force in 2012, which is admitted. Defendants admit the allegations contained in the second sentence. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation in the third and fourth sentences. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation in the fifth sentence concerning Plaintiff Roe's "dream" and insofar as the fifth sentence consists of Plaintiffs' characterization of their claim in this case, no response is required. To the extent a response is deemed required, Defendants deny the allegations except to admit that Plaintiff Roe is affected by Defendants' current policies.

6. The allegations in the first sentence that "Roe began treatment immediately" and that "his viral load was soon undetectable" 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. The second 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 Roe's deployability is limited by Defendants' current policies.

7. Defendants admit the allegations in the first sentence. Defendants admit the allegations in the second sentence to the extent that they allege that Roe was found unfit for continued military service by the Secretary of the Air Force Personnel Council under authority delegated to it by the Secretary of the Air Force. Defendants deny the allegations in the third sentence.

8. Defendants admit the allegations in this paragraph, except to the extent it characterizes Plaintiff Voe's reasons for cutting short his "dwell time," for which Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations.

9. Defendants admit the allegations in the first sentence. The allegations in the second sentence that "[Voe] quickly began treatment" and that "his viral load was undetectable within months" 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. The third 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 Voe's deployability is limited by Defendants' current policies.

10. Defendants admit the allegations in the first sentence. Defendants admit the allegations in the second sentence to the extent that the Air Force determined, due to disability, that

Plaintiff Voe was unable to reasonably perform the duties of his office, grade, rank, or rating.

Defendants deny the allegations in the third sentence.

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

12. The first and second sentences 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 third and fourth sentences consist of Plaintiffs' characterization of a Department of Defense Instruction ("DoDI"). Defendants deny any characterization of that DoDI, which speaks for itself, and respectfully refer the Court to the DoDI for a complete and accurate statement of its contents.

13. Defendants admit that the DoD issued DoDI 1332.45 in July 2018. The paragraph otherwise consists of Plaintiffs' characterization of DoDI 1332.45. Defendants deny any characterization of DoDI 1332.45, which speaks for itself, and respectfully refer the Court to DoDI 1332.45 for a complete and accurate statement of its contents.

14. Defendants deny the allegations in the paragraph, except to admit that Roe and Voe's limited ability to deploy was considered as a factor in determining whether they would be retained. Defendants admit that other Airmen living with HIV have been retained.

15. This paragraph consists of Plaintiffs' characterization of their claims 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 hundreds of individuals living with HIV, including Roe and Voe, have

served honorably in the Armed Forces after being diagnosed with HIV, and except to admit that Defendants' current policies limit the deployability of individuals who are HIV-positive.

16. This paragraph consists of Plaintiffs' characterization of the claims in their case, to which no response is required. To the extent a response is deemed required, the allegations are denied, except that Defendants admit that the deployability of Plaintiffs Roe and Voe are affected by Defendants' current policies.

17. This paragraph consists of Plaintiffs' characterization of the claims in their case, to which no response is required. To the extent a response is deemed required, the allegations are denied.

JURISDICTION AND VENUE

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

19. The allegations in this paragraph are admitted.

20. Defendants admit the allegations contained in this paragraph.

PARTIES

A. Plaintiffs¹

21. The allegations in the first sentence are admitted. Defendants admit that Plaintiff Roe is proceeding under pseudonym, but lack sufficient information or knowledge to form a belief as to the truth of Roe's reasons for proceeding under pseudonym.

22. The allegations in the first sentence are admitted. Defendants admit that Plaintiff Voe is proceeding under pseudonym, but lack sufficient information or knowledge to form a belief as to the truth of Voe's reasons for proceeding under pseudonym.

¹ 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.

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

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

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

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

27. Defendants deny the allegations in this paragraph.

B. Defendants

28. Defendants deny the allegations in this paragraph to the extent they allege that James Mattis is currently the Secretary of Defense because the acting Secretary of Defense is Patrick M. Shanahan.

29. The allegations in this paragraph are admitted, except to the extent that the paragraph alleges that James Mattis is currently the Secretary of Defense and is currently responsible for DoD policy related to HIV. Those allegations are denied. The current acting Secretary of Defense is Patrick M. Shanahan.

30. The allegations in this paragraph are admitted.

31. The allegations in this paragraph are admitted.

BACKGROUND

A. Regulatory Background

32. In this paragraph, Plaintiffs characterize numerous regulations as being “relevant to active duty service members diagnosed with HIV.” Defendants deny any characterizations of these

policies, which speak for themselves, and respectfully refer the Court to these policies for a complete and accurate statement of their contents.

33. Defendants admit that the quoted statement appears in DoDI 6490.07.

34. This paragraph consists of Plaintiffs' characterization of Enclosure 3 to DoDI 6490.07. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

35. Defendants admit that the quoted statement appears in Enclosure 3 of DoDI 6490.07.

36. The first sentence consists of Plaintiffs' characterization of Enclosure 3 to DoDI 6490.07. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence.

37. This paragraph consists of Plaintiffs' characterization of DoDI 6490.07. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

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

39. Defendants admit that the quoted statement contained in the first sentence of this paragraph appears in DoDI 6485.01. The second sentence consists of Plaintiffs' characterization of DoDI 6485.01. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

40. This paragraph consists of Plaintiffs' characterization of DoDI 1332.18. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

41. This paragraph consists of Plaintiffs' characterization of DoDI 1332.45. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

42. This paragraph consists of Plaintiffs' characterizations of DoDI 1332.45 and DoDI 6490.07. Defendants deny any characterizations of these policies, which speak for themselves, and respectfully refer the Court to the policies for a complete and accurate statement of their contents.

43. This paragraph consists of Plaintiffs' characterization of DoDI 1332.45. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

44. Defendants admit the allegations contained in the first sentence. The second sentence consists of Plaintiffs' characterizations of unidentified policies. Defendants deny Plaintiffs' characterizations of those policies, and respectfully refer the Court to Defendants' policies for a complete and accurate statement of their contents. The second sentence also consists of Plaintiffs' characterization of their claims in this case, to which no response is required. To the extent a response is deemed required, they are denied.

45. This paragraph consists of Plaintiffs' characterization of Attachment 9 of AFI 44-178. Defendants deny any characterization of this policy, which speaks for itself, and respectfully refers the Court to the policy for a complete and accurate statement of its contents.

46. This paragraph consists of Plaintiffs' characterization of AFI 44-178. Defendants deny any characterization of this policy, which speaks for itself, and respectfully refers the Court to the policy for a complete and accurate statement of its contents.

47. This paragraph consists of Plaintiffs' characterization of AFI 44-178. Defendants deny any characterization of this policy, which speaks for itself, and respectfully refers the Court to the policy for a complete and accurate statement of its contents.

48. This paragraph consists of Plaintiffs' characterization of AFI 44-178. Defendants deny any characterization of this policy, which speaks for itself, and respectfully refers the Court to the policy for a complete and accurate statement of its contents.

B. Treatment of HIV

49. The allegation in this paragraph that HIV treatment and prevention, ramifications of the diagnosis, and the prognosis for HIV-positive individuals "have all changed dramatically since the virus was first identified in the late 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 1980s and that the ramifications of an HIV diagnosis have been minimized while the prognosis for HIV-positive individuals has improved.

50. The allegation that "[i]n 1996, the advent of new antiretroviral medications . . . transformed the landscape of HIV treatment and prevention and radically shifted health outcomes for people living with HIV" 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.

51. The allegations in this paragraph are admitted.

52. The allegation in the first sentence that “people living with HIV are restored to 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. Defendants further deny this allegation to the extent it alleges that the immune system of HIV-positive individuals can be fully restored. The allegations in the second sentence 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.

53. 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.

54. This paragraph appears to consist of Plaintiffs’ characterizations of reports from the Center 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.

55. This paragraph appears to consist of Plaintiffs’ characterizations of reports from the Center 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.

56. The allegation in the first sentence that “HIV is not the same disease it once was perceived to be” 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. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph.

C. Roe's Impending Discharge from the Air Force

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

58. Defendants admit the allegations contained in this paragraph except for the allegation that Plaintiff Roe "enjoys serving as a mentor to the Airmen he supervises," to which Defendants lack sufficient knowledge or information to form a belief as to the truth of that allegation.

59. The allegations in the first sentence are admitted to the extent they allege that Plaintiff Roe was diagnosed with HIV while on active duty and was placed on combination antiretroviral therapy. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in the remainder of the paragraph.

60. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation that "Roe's doctors have never recommended that his work be restricted in any way." The paragraph otherwise consists of Plaintiffs' characterizations of DoDI 6490.07 and AFI 44-178. 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. However, Defendants admit that Defendants' current policies limit the deployability of individuals who are HIV-positive, including Plaintiff Roe.

61. This paragraph consists of Plaintiffs' characterizations of AFI 44-178. Defendants deny any characterization of this policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents. However, Defendants admit that, because of his HIV status, Plaintiff Roe underwent medical evaluation for the purpose of determining the status of his continued military service.

62. Defendants admit the allegations contained in this paragraph.

63. This paragraph consists of Plaintiffs' characterizations of the findings and recommended disposition of the informal physical evaluation board. Defendants deny any characterizations of the findings and recommendations, which speak for themselves, and respectfully refer the Court to the findings and recommendations for a complete and accurate statement of its contents.

64. This paragraph consists of Plaintiffs' characterization of the claims in their case, to which no response is required. To the extent a response is deemed required, the allegations are denied.

65. Defendants admit the allegations contained in this paragraph.

66. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants lack sufficient information to form a belief as to the allegations in the second sentence.

67. The first sentence of this paragraph consists of Plaintiffs' characterizations, to which no response is required. The second sentence of this paragraph consists of Plaintiffs' characterizations of the findings and recommended disposition of the formal physical evaluation board. Defendants deny any characterizations of the findings and recommendations, which speak for themselves, and respectfully refer the Court to the findings and recommendations for a complete and accurate statement of its contents.

68. Defendants admit the allegation contained in the first sentence. The remaining allegations in this paragraph consist of Plaintiffs' characterizations of a memorandum dated November 7, 2018. Defendants deny any characterizations of this memorandum, which speaks for itself, and respectfully direct the Court to the memorandum for a complete and accurate statement of its contents.

69. This paragraph consists of Plaintiffs' characterizations of a memorandum dated November 7, 2018. Defendants deny any characterizations of this memorandum, which speaks for itself, and respectfully direct the Court to the memorandum for a complete and accurate statement of its contents.

70. This paragraph consists of Plaintiffs' characterizations of a memorandum dated November 7, 2018. Defendants deny any characterizations of this memorandum, which speaks for itself, and respectfully direct the Court to the memorandum for a complete and accurate statement of its contents.

71. Defendants deny the allegations contained in this paragraph.

72. Defendants admit the allegations in the paragraph.

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

74. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first, second, third, and fourth sentences. Defendants admit the allegations in the fifth sentence of this paragraph.

75. This paragraph consists of Plaintiffs' characterizations of their claims in this case, to which no response is required. To the extent a response is deemed required, the allegations are denied.

76. Defendants deny the allegations contained in this paragraph.

D. Voe's Impending Discharge from the Air Force

77. Defendants admit the allegations in this paragraph.

78. Defendants admit the allegations in this paragraph.

79. The allegations in the first sentence are admitted to the extent they allege that Plaintiff Voe was diagnosed with HIV in March 2017 while on active duty. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations otherwise contained in this paragraph, except that Defendants admit that Plaintiff Voe was placed on combination antiretroviral therapy.

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

81. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation that "Voe's doctors have never recommended that his work be restricted in any way." The paragraph otherwise consists of Plaintiffs' characterizations of DoDI 6490.07 and AFI 44-178. 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. However, Defendants admit that Defendants' current policies limit the deployability of individuals who are HIV-positive, including Plaintiff Voe.

82. The first sentence consists of Plaintiffs' characterizations of AFI 44-178. Defendants deny any characterization of this policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents. However, Defendants admit that, because of his HIV status, Plaintiff Roe underwent medical evaluation for the purpose

of determining the status of his continued military service. Defendants admit the allegations contained in the second and third sentences.

83. Defendants admit the allegations of the first sentence of this paragraph to the extent that the informal physical evaluation board recommended Plaintiff Voe's separation and deny the remaining allegations in the first sentence. Defendants deny the allegations in the second sentence of this paragraph.

84. Defendants admit the allegations contained in the first sentence of this paragraph. Defendants lack sufficient information or knowledge to form a belief as to the truth of the remaining allegations in this paragraph.

85. Defendants admit the allegations contained in the first sentence. The second sentence consists of Plaintiffs' characterization of a memorandum dated November 7, 2018. Defendants deny any characterization of this memorandum, which speaks for itself, and respectfully directs the Court to the memorandum for a complete and accurate statement of its contents.

86. This paragraph consists of Plaintiffs' characterization of a memorandum dated November 7, 2018. Defendants deny any characterization of this memorandum, which speaks for itself, and respectfully directs the Court to the memorandum for a complete and accurate statement of its contents.

87. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, except that Defendants admit that Plaintiff Voe had been scheduled to be separated from the Air Force before this Court preliminarily enjoined the Air Force from separating him.

88. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first and second sentences. Defendants admit the allegations in the third sentence.

89. Defendants deny the allegations contained in this paragraph.

* * *

90. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence. The second and third sentences consist of Plaintiffs' characterization of their claims in this case, to which no response is required. To the extent a response is deemed required, the allegations are denied.

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

CLAIMS FOR RELIEF

COUNT I

Violation of Equal Protection Under the Fifth Amendment's Due Process Clause (Based on HIV Status) Against All Defendants

92. All prior responses are incorporated as if fully set forth herein.

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

94. 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.

95. The allegation in this paragraph that Defendants “routinely permit similarly situated individuals who do not have HIV, including but not limited to people with comparable chronic, manageable conditions, to deploy worldwide and to continue to serve” is a vague argument and conclusion, to which no response is required. To the extent a response is deemed required, the allegations are denied.

96. Defendants deny the allegations in this paragraph.

97. 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.

98. 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.

99. 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.

100. 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.

COUNT II

**Violation of the APA
Against Wilson as to Deployability and Separation Determinations as Contrary to Law**

101. All prior responses are incorporated as if fully set forth herein.

102. 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.

103. 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.

104. This paragraph consists of Plaintiffs' characterization of DoDI 6490.07. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

105. This paragraph consists of Plaintiffs' characterization of Enclosure 3 of DoDI 6490.07. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

106. Defendants admit the allegations in this paragraph.

107. This paragraph consists of Plaintiffs' characterization of Enclosure 3 to DoDI 6490.07. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

108. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph concerning Plaintiff Roe or Plaintiff Voe's medical conditions. To the extent this paragraph consists of Plaintiffs' characterization of Enclosure 3 to DoDI 6490.07, Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

109. 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.

110. 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.

111. 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.

112. Defendants deny the allegations in this paragraph.

113. This paragraph consists of Plaintiffs' characterization of DoDI 1332.45. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

114. This paragraph consists of Plaintiffs' characterization of DoDI 6490.07. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

115. This paragraph consists of Plaintiffs' characterization of DoDI 1332.45. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

116. Defendants deny the allegations in this paragraph.

117. 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.

118. 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.

119. 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. Furthermore, this paragraph consists of Plaintiffs' characterization of AFI 44-178. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

120. Defendants deny the allegations in this paragraph.

121. This paragraph consists of Plaintiffs' characterization of AFI 44-178. Defendants deny any characterization of that policy, which speaks for itself, and respectfully refer the Court to the policy for a complete and accurate statement of its contents.

122. Defendants deny the allegations contained in the first sentence. Defendants admit the allegations contained in the second sentence. The third sentence 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.

123. 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.

124. 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.

125. 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.

COUNT III

Violation of the APA Against Wilson as to Deployability and Separation Determinations as Arbitrary and Capricious or an Abuse of Discretion

126. All prior responses are incorporated as if fully set forth herein.

127. 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.

128. 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.

129. This paragraph consists of Plaintiffs' characterization of memoranda dated November 7, 2018. Defendants deny any characterization of these memoranda, which speak for themselves, and Defendants respectfully refer the Court to the memoranda for complete and accurate statements of their contents.

130. 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.

131. This paragraph consists of Plaintiffs' characterization of a memorandum dated January 22, 2018. Defendants reject any characterization of this memorandum, which speaks for itself, and Defendants respectfully refer the Court to the memorandum for a complete and accurate statement of its contents.

132. 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.

133. 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.

134. 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.

135. 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.

COUNT IV

**Violation of the APA
Against Defendants United States Department of Defense and
Mattis as to DoDI 6490.07²**

² Defendants deny any allegation that James Mattis is currently the Secretary of Defense or a

136. All prior responses are incorporated as if fully set forth herein.

137. 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.

138. Defendants deny the allegations in this paragraph.

139. 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.

140. 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.

141. 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.

COUNT V

**Violation of the APA
Against Defendant Wilson as to AFI 10-403, AFI 48-122, and AFI 44-178**

142. All prior responses are incorporated as if fully set forth herein.

143. 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.

proper defendant in this case. The current Secretary of Defense is Patrick M. Shanahan.

144. 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.

145. 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.

146. 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.

REQUEST FOR RELIEF

The remainder of Plaintiffs' Complaint sets forth Plaintiffs' request for relief, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations contained in the request 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: March 8, 2019

Respectfully submitted,

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/s/

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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:

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