

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

RICHARD ROE, VICTOR VOE and  
OUTSERVE-SLDN, INC.,

*Plaintiffs,*

v.

PATRICK M. SHANAHAN, in his official  
capacity as acting Secretary of Defense;  
HEATHER WILSON, in her official capacity as  
the Secretary of the Air Force; and the UNITED  
STATES DEPARTMENT OF DEFENSE,

*Defendants.*

NO. 1:18-CV-01565-LMB-IDD

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL  
DOCUMENTS AND INFORMATION WITHHELD  
ON THE BASIS OF DELIBERATIVE PROCESS PRIVILEGE**

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## INTRODUCTION

This motion asks the Court to order the production of 161 documents that Defendants admit are relevant and responsive to Plaintiffs' requests for production, but nevertheless will not produce because they allegedly involve Defendants' decision-making regarding policies affecting service members living with HIV. In a meet and confer with Defendants on March 20, 2019, Defendants did not dispute that approximately half of the documents within their privilege log should be produced based on the reasoning found in the Court's ruling in the related case *Harrison, et al. v. Shanahan, et al.* [Case No. 1:18-cv-00641], see Dkt. 128, Order Granting Pls.' Mot. to Compel. But Defendants nevertheless intend to have the *Harrison* dispute anew in this case. Further, during the meet and confer, Defendants identified two categories of documents they believe do not fall within the Court's reasoning found in the March 20, 2019 Order: (1) documents concerning an inquiry from the House Armed Services Committee and the Air Force's response to that inquiry; and (2) a spreadsheet containing personal notes of Air Force Personnel Board Members regarding more than 300 cases.<sup>1</sup> All these documents are central to the issues in this case. Yet, Defendants attempt to prevent the Plaintiffs from seeing these documents and from fully understanding the reasons for Defendants' discriminatory policies, and the arbitrary and capricious decisions made under these policies.

The Court has already noted in *Harrison* that Plaintiffs are entitled to discovery "to prove that the reasons that [Defendants] are saying they use are not justified and [do] not have a legitimate basis, [and] are only pretextual." *Harrison*, Dkt. 85-8, Nov. 30, 2018 Hr'g at 18:23-25.

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<sup>1</sup> Defendants identified a third category (vote sheets related to service members with HIV, but who are not plaintiffs in this case) that contained 61 documents that Plaintiffs agreed to not challenge as an indication of their willingness to have a meaningful meet and confer. Defendants did not agree to withdraw any of their claims of privilege.

The Court further explained that Plaintiffs are entitled to discovery regarding the evolution of the regulations at issue, including what was considered during the creation or amendment of those regulations. *See id.* at 31:24-32:22. In the subsequent order, the Court held that, under balancing test of *Cipollone v. Liggett Group, Inc.*, 812 F.2d 1400 (4th Cir. 1987) (unpublished table decision), Plaintiffs' need for documents similar to those now being withheld by Defendants under the deliberative process privilege in this case outweighed the Defendants' interests in withholding those documents. *Harrison*, Dkt. 128, Order Granting Pl.'s Mot. to Compel Docs at 2-3. Nevertheless, Defendants are standing on their assertion of the deliberative process privilege and withholding all 161 documents still at issue.

The deliberative process privilege does not apply at all in this case. The government's intent is at issue in this case challenging the Department of Defense's ("DoD") and Air Force's discriminatory practices as they concern people living with HIV under both the Constitution and the Administrative Procedure Act ("APA"). But even if the deliberative process privilege were applicable, the privilege is not absolute, and Plaintiffs' need for the withheld documents outweighs any potential interests served by the privilege. Plaintiffs therefore move the Court for an order compelling Defendants to produce the 161 documents Defendants continue to withhold as deliberative process privilege even after the Court's recent ruling ordering production of similar documents in *Harrison*.

### **BACKGROUND**

This case presents a challenge to certain DoD and Air Force policies that discriminate against people living with HIV under the Equal Protection Clause and the APA. *See generally* Compl., Dkt. 1. The relevant policies relate to the deployability of individuals living with HIV, and the separations of individuals living with HIV because of their limited deployability. Plaintiffs contend that the DoD's and Air Force's policies discriminate against people living with HIV and

lack a rational basis in light of modern advances in science and medicine that make HIV very manageable with a simple one or two pills per day treatment. Dkt. 1 at ¶¶ 92-100; Dkt. 34 at 12-18. Plaintiffs further contend that Defendants violate the Administrative Procedure Act by enacting arbitrary and capricious policies that restrict the deployability of individuals living with HIV, and by applying those policies to Plaintiffs Roe and Voe in a manner that is arbitrary, capricious, and contrary to law, resulting in their separation from the Air Force. Dkt. 1 at ¶¶ 101-146; Dkt. 34 at 18-24. After a hearing on the matter, the Court has preliminarily enjoined the Air Force from continuing with the unlawful discharge of service members living with HIV solely because those members have HIV. *See* Dkt. 73, Order Granting in Part Pls.’ Mot. for Prelim. Inj. and Denying Defs.’ Mot. to Dismiss; Dkt. 72, Memorandum Opinion (finding that “[P]laintiffs have made a strong preliminary showing that the Air Force’s approach to servicemembers living with HIV is irrational, inconsistent, and at variance with modern science”).

Plaintiffs issued discovery requests on January 23, 2019. *See* (Pls.’ First Set of RFPs to Defs., Ex. A). Plaintiffs requested documents related to the determinations that Plaintiffs Roe and Voe are limited in their ability to deploy. *Id.* at RFPs 1-2. Plaintiffs also requested documents Defendants relied upon in writing or amending Air Force policies relating to individuals living with HIV. *Id.* at RFPs 3-5. Finally, Plaintiffs requested documents related to the deployability of other Airmen living with HIV, and the decisions to separate or retain those Airmen. *Id.* at RFPs 6-9. On February 7, 2019, Defendants served their objections to Plaintiffs’ discovery requests, which included a blanket objection to all documents requests “to the extent they seek information protected by . . . the deliberative process privilege.” *See* (Defs.’ Obj., Ex. B). Plaintiffs did not move to compel at that time because Defendants had not yet produced a privilege log, and the extent to which Defendants would rely on this privilege was therefore not yet clear.

On March 14, 2019, the Court issued its order granting Plaintiffs' motion to compel the production of documents being withheld on the basis of the deliberative process privilege in the *Harrison* case. *Harrison*, Dkt. 128, Order Granting Pls.' Mot. to Compel. The Court held, among other things, that "under the *Cipollone* balancing test . . . disclosure of the documents to Plaintiffs outweigh the deliberative privilege process [sic]." *Id.* at 3. In reaching this conclusion, the Court "consider[ed]: '(1) the relevance of the evidence to the lawsuit; (2) the availability of alternative evidence on the same matters; (3) the government's role (if any) in the litigation, and (4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions.'" *Id.* at 2 (citing *Cipollone*, 812 F.2d 1400, 1987 U.S. App. LEXIS 19775, at \*6-7). As to the first consideration, the Court held, after reviewing a sample of documents *in camera*, that the documents Plaintiffs challenged "all appear relevant to Plaintiffs' lawsuit." *Harrison*, Dkt. 128, Order Granting Pls.' Mot. to Compel at 2. The Court further held that, under the second consideration, "alternative evidence is not available because Defendants are the only source of the information." *Id.* The third consideration also weighed in favor of the production of the documents, due to the government's significant role in the litigation as "a party to the case and . . . the entities that proposed and enforced the policies that are the subject of this matter." *Id.* Finally, as to the fourth factor, the Court found that "disclosure of the documents would not hinder frank and independent discussions because there is a protective order in place that would prevent public disclosure of the documents." *Id.* at 2-3. There is therefore "little, if any, risk of a chilling effect." *Id.*

Prompted by this order, Plaintiffs and Defendants met and conferred on the claims of deliberative process privilege in this case on March 20, 2019.<sup>2</sup> Defendants recognized that the reasoning in the Court's Order in *Harrison* applies to the majority of documents withheld by Defendants on the basis of deliberative process privilege in their March 1, 2019 production, but they still did not intend to produce those documents. Further, Defendants identified two other categories of documents that they believe are beyond the Court's reasoning in the March 20, 2019 order: (1) documents concerning an inquiry from the House Armed Services Committee and the Air Force's response to that inquiry, and (2) a spreadsheet containing personal notes of Air Force Personnel Board Members regarding more than 300 cases. Defendants identified a third category (vote sheets related to service members with HIV, but who are not plaintiffs in this case) that contained 61 documents that Plaintiffs agreed to not challenge as an indication of their willingness to have a meaningful meet and confer. Nevertheless, Defendants were unwilling to withdraw or narrow their claim of privilege on any document at issue, necessitating this motion to compel.

### **LEGAL STANDARD**

By including the documents sought by Plaintiffs' motion on a privilege log, Defendants concede they are relevant and responsive to Plaintiffs' discovery requests.<sup>3</sup> To continue to

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<sup>2</sup> Plaintiffs attempted to meet and confer earlier, but Defendants were unavailable due to deposition schedules. Defendants have agreed not to object to this motion on timeliness grounds since discovery has closed. Moreover, Defendants have informed Plaintiffs they may be providing another privilege log for recently-produced documents.

<sup>3</sup> If a party "believed that the documents . . . were irrelevant, it should not have produced them on its privilege log. The first consideration in responding to written discovery requests is whether the information or documents are" relevant. *Williams v. Corelogic Rental Prop. Sols., LLC*, No. PX 16-58, 2016 WL 6277675, at \*3 (D. Md. Oct. 26, 2016). Next, a privilege inquiry is made. *Id.* "[A]s defense counsel knows[,] when a party produces a privilege log, information on that log is presumed to be 'otherwise discoverable,' i.e., relevant. Fed. R. Civ. P. 26(5) . . . ." *Id.*

withhold these documents, “the burden of proof is with the party objecting to the discovery to establish that the challenged production should not be permitted.” *Singletary v. Sterling Transp. Co.*, 289 F.R.D. 237, 241 (E.D. Va. 2012).

While the Fourth Circuit has not directly addressed the issue, district courts in this circuit have limited the scope of the deliberative process privilege to circumstances where the government decision-making process is collateral to a plaintiff’s claim and where the cause of action is not directed at the government’s intent. *See Stone v. Trump*, No. CV GLR-17-2459, 2018 WL 6305131, at \*7 (D. Md. Nov. 30, 2018) (“[D]eliberative process privilege does not apply to the documents Plaintiffs requested [including documents relating to Transgender Service Member Ban] because the government’s intent is at the heart of the issue in this case.”); *Bethune-Hill v. Va. State Bd. of Elections*, 114 F. Supp. 3d 323, 339 (E.D. Va. 2015) (“Unlike other cases, where the deliberative process privilege or the legislative privilege may be employed to prevent [the government’s] decision-making process from being swept up unnecessarily into the public domain, this is a case where the decisionmaking process is the case.”). This conclusion has been reached by a number of courts across the country. *See, e.g., In re Subpoena Duces Tecum Served on Office of Comptroller of Currency*, 156 F.3d 1279, 1279 (D.C. Cir. 1998) (holding that the deliberative process privilege only applies when the government’s decisionmaking process is “collateral” to the claim and not “when a cause of action is directed at the government’s intent”); *Jones v. City of Coll. Park*, 237 F.R.D. 517, 521 (N.D. Ga. 2006) (the deliberative process privilege is “simply inapplicable” where government intent is “at the heart of the issue in this case”); *United States v. Lake Cty. Bd. of Comm’rs*, 233 F.R.D. 523, 526 (N.D. Ind. 2005) (“[T]he deliberative process privilege simply does not apply in civil rights cases in which the defendant’s intent to discriminate is at issue.”); *McPeck v. Ashcroft*, 202 F.R.D. 332, 335 (D.D.C. 2001) (“It is certainly

true that this privilege yields when the lawsuit is directed at the government's subjective motivation in taking a particular action.”).

When the deliberative process privilege has been applied, it is “not absolute and courts may balance the ‘public interest in nondisclosure with the need for the information as evidence.’” *Stone*, 2018 WL 6305131 at \*6 (quoting *Cipollone*, 812 F.2d 1400). Under the balancing test, courts consider: “(1) the relevance of the evidence to the lawsuit; (2) the availability of alternative evidence on the same matters; (3) the government’s role (if any) in the litigation; and (4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions.” *Cipollone*, 1987 WL 36515 at \*2.<sup>4</sup> When applicable, the deliberative process privilege must “be construed narrowly, and the burden rests upon the government to be precise and conservative in its privilege claims.” *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1248 (4th Cir. 1994). Additionally, it protects only *deliberative* and *predecisional* documents (*i.e.*, “policy-oriented judgment”). *Id.* Documents “peripheral to actual policy formation” are not protected. *Id.* Nor is information that is “essentially technical and facilitative.” *Am. Bird Conservancy v. U.S. Fish & Wildlife Serv.*, No. 1:13-CV-723, 2014 WL 12662300, at \*5 (E.D. Va. June 24, 2014). It covers only opinions, not facts. *Cipollone*, 1987 WL 36515 at \*3. “One possible corollary of the fact/opinion distinction is that ‘informational dialogue’ such as that between the scientists who collaborated on [the reports] is not covered by the privilege at all.” *Id.*

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<sup>4</sup> While lower courts have used the *Cipollone* balancing test in cases where the government is a defendant, the *Cipollone* court noted that this balancing test was only necessary “when a party to a *separate lawsuit* seeks agency material.” 1987 WL 36515 at \*2 (emphasis added). Thus *Cipollone* and *In re Subpoena Duces Tecum* are not in tension with each other.

## ARGUMENT

The 161 documents sought by this motion are at the heart of this case and must be produced for three reasons. *First*, the deliberative process privilege cannot be invoked to hide or obfuscate the reasons for the unconstitutionally discriminatory regulations and conduct underlying Plaintiffs' claims. *Second*, even if the deliberative process privilege applies, that privilege is overcome by applying the four-factor balancing test used in this circuit. *Third*, hundreds of documents withheld simply do not fall within the ambit of the privilege.

### **I. The Deliberative Process Privilege Is Inapplicable Because of the Nature of Plaintiffs' Constitutional Challenges**

Although Plaintiffs assert APA challenges to Defendants' policies and the application of those policies to Plaintiffs Roe and Voe, Plaintiffs are also challenging the constitutionality of DoD and Air Force regulations that prevent or limit the military service of people living with HIV, in light of the medical advancements rendering this diagnosis irrelevant to their ability to serve. Dkt. 1 ¶¶ 2-100. Specifically, Plaintiffs allege that these regulations violate the equal protection guarantee incorporated by the Due Process Clause of the Fifth Amendment, because they impermissibly discriminate against people living with HIV. *Id.* ¶¶ 93-94. Plaintiffs have further alleged that this discrimination "bears all the indicia of a suspect classification requiring heightened scrutiny by the courts." *Id.* ¶ 98. The appropriate level of scrutiny to apply to Plaintiffs' equal protection claims remains a live issue in this case. To prove their case, Plaintiffs will need to establish that the justifications offered for Defendants' disparate treatment of people living with HIV are pretextual to conceal an improper animus or purpose, or that those justifications are not appropriately related to a legitimate, important, or compelling governmental interest, depending on the level of scrutiny applied. Because the Plaintiffs allege disparate treatment under the Constitution and proof of their claims is likely to involve Defendants' intent

and actual reasons for the disparate treatment, the deliberative process privilege is *per se* inapplicable.

**A. The Deliberative Process Privilege Is Inapplicable Because the Government’s Intent Is at Issue**

The deliberative process privilege applies only “to circumstances where the government decisionmaking process is ‘collateral’ to a plaintiff’s claim” and where the cause of action is not directed at the “government’s intent.” *See In re Subpoena Duces Tecum*, 156 F.3d at 1279. Defendants’ intent is material to the Plaintiffs’ constitutional claims in this case.

Plaintiffs argue that heightened scrutiny should be applied here because the group against whom the Defendants are discriminating—people living with HIV— bears all the indicia of a suspect classification. *See* Dkt. 34 at 12-13. If the Court decides that heightened scrutiny is appropriate, the actual intent and reasons for the Defendants’ disparate treatment of people living with HIV is directly at issue and the offering of pretextual justifications would indicate an equal protection violation. *See United States v. Virginia*, 518 U.S. 515, 535–36 (1996) (“In cases of this genre [equal protection cases applying heightened scrutiny], our precedent instructs that ‘benign’ justifications proffered in defense of categorical exclusions will not be accepted automatically; a tenable justification must describe actual state purposes, not rationalizations for actions in fact differently grounded.”); *Califano v. Goldfarb*, 430 U.S. 199, 212–13 (1977) (engaging in an “‘inquiry into the actual purposes’ of the discrimination” (citing *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 (1975))).

But even under rational basis review, inequitable treatment “motivated by an improper animus or purpose” is unconstitutional. *Windsor v. United States*, 570 U.S. 744, 770 (2013). In analyzing a challenged policy under rational basis review, “the disadvantage imposed” on a discrete group of individuals may not be “born of animosity toward the class of persons affected.”

*Romer v. Evans*, 517 U.S. 620, 634 (1996). Making either of the showings above necessarily requires Plaintiffs to take discovery directed at Defendants' intent when crafting and implementing the regulations at issue here.

The Court understood this when it ordered in *Harrison* that Plaintiffs are entitled to discovery "to prove that the reasons that [Defendants] are saying they use are not justified and [do] not have a legitimate basis, [and] are only pretextual." *Harrison*, Dkt. 85-8, Nov. 30 Hr'g at 18:23-25. This encompasses discovery regarding the evolution of the regulations at issue, including the information considered and the intent and reasons for the decisions that were made during the creation or amendment of those regulations. *See id.* at 31:24-32:22. Defendants should not be allowed to withhold this critical discovery under the guise of the deliberative process privilege, because in effect they are seeking to preclude Plaintiffs from understanding their true motives.

**B. Since Government Misconduct Is Alleged In This Case, The Deliberative Process Privilege is Inapplicable**

The deliberative process privilege also "disappears altogether when there is any reason to believe government misconduct occurred." *In re Sealed Case*, 121 F.3d 729, 746 (D.C. Cir. 1997). That is because "public policy (as embodied by the law) demands that the misconduct not be shielded merely because it happens to be predecisional and deliberative." *Alexander v. FBI*, 186 F.R.D. 170, 177-78 (D.D.C. 1999). Discrimination against a discrete and insular minority, like HIV-positive individuals, creates a suspicion of governmental misconduct. *See Waters v. U.S. Capitol Police Bd.*, 216 F.R.D. 153, 162-63 (D.D.C. 2003) ("it is inconceivable" that Congress intended deliberative process privilege to apply to information bearing on alleged agency discrimination); *see also Dominion Cogen, D.C., Inc. v. District of Columbia*, 878 F. Supp. 258, 268 (D.D.C. 1995) (holding that allegations of decision-making based on "illegitimate political motives" raised questions of governmental misconduct sufficient to place deliberative processes

in issue); *Chaplaincy of Full Gospel Churches v. Johnson*, 217 F.R.D. 250 (D.D.C. 2003) (finding documents alleged to show unlawful “discrimination against non-liturgical chaplains” implicated misconduct exception and could not be withheld under deliberative process privilege), *rev’d in part, vacated in part on other grounds sub nom., In re England*, 375 F.3d 1169 (D.C. Cir. 2004).

Because Plaintiffs have alleged misconduct in violation of the Constitution on the part of Defendants, the deliberative process privilege does not apply in this case. Plaintiffs have alleged and argued that the DoD’s and Air Force’s HIV policies do not arise from a sound review of relevant medical and military concerns, but stem from the stigma surrounding people living with HIV. Dkt. 1, at ¶ 90. As alleged in the Complaint, there is a history of fear and discrimination against individuals with HIV in the United States. *See* Dkt. 1 at ¶ 98. Plaintiffs’ claims are sufficient to implicate the misconduct exception to the deliberative process privilege.

This should end the inquiry, and Plaintiffs submit that the Court should order the production of the documents withheld solely on the basis of the deliberative process privilege.

## **II. Even if the Deliberative Process Privilege Applies, the Balancing Test Still Favors Compelling Production of These Documents**

Even if the deliberative process privilege were applicable, the balancing test used in the Fourth Circuit favors production of the withheld documents. Under the balancing test, courts consider: “(1) the relevance of the evidence to the lawsuit; (2) the availability of alternative evidence on the same matters; (3) the government’s role (if any) in the litigation; and (4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions.” *Cipollone*, 1987 WL 36515 at \*2. *See also Harrison*, Dkt. 128, Order Granting Pls.’ Mot. to Compel at 2. The balancing test favors discovery where the crux of the lawsuit is the process that led to a particular governmental decision. *See Holmes v. Hernandez*, 221 F. Supp. 3d 1011, 1021 (N.D. Ill. 2016) (“Where a plaintiff directly challenges a government

agency's deliberative process, courts routinely find that there is a particularized need for disclosure," especially where the issue "is the deliberative process"); *Children First Found., Inc. v. Martinez*, 2007 WL 4344915, at \*7 (N.D.N.Y. Dec. 10, 2007) ("[W]hen the decision-making process itself is the subject of the litigation, the deliberative process privilege cannot be a bar to discovery."); *United States v. Bd. of Educ. of the City of Chi.*, 610 F. Supp. 695, 699–700 (N.D. Ill. 1985) (a party "make[s] a very powerful showing of necessity" where "the decisionmaking process . . . is the case"). All factors set forth in *Cipollone* favor disclosure in this case.

**A. The Requested Information Is Highly Relevant to This Case**

The "deliberative process privilege should seldom be upheld in a case where there is any need for the evidence because it rests on such a puny instrumental rationale." 26A Charles Alan Wright et al., *Federal Practice and Procedure* § 5680 (1st ed.). There is certainly a need here. Examples of documents currently being withheld that are highly relevant to the case include: a draft memo regarding the disposition of asymptomatic HIV-positive Airmen (US00031087), a draft HIV clarification memo (US00031090), an email "discussing adjudications of HIV cases in broader discussion of HIV retention policy" (US00031189), an email chain "discussing Army and Navy HIV retention policies" (US00031295), and emails discussing "information to be provided to Board members prior to adjudication of HIV cases" (US00031294).

Also, the documents concerning an inquiry from the House Armed Services Committee and the Air Force's response to that inquiry go to the heart of not just Plaintiffs' APA claims, but also Plaintiffs' constitutional claims. This inquiry, and the Air Force's response to that inquiry, reveal the information considered in coming up with the challenged regulations, and whether Defendants had a rational, *i.e.* non-arbitrary, reason for those regulations. *See Harrison*, Dkt. 85-8, Nov. 30, 2018 Hr'g at 43:21-44:4 ("If OutServe is arguing that . . . the Air Force regulation concerning how we commission or deploy, whatever, people who have HIV, then they have the

right to get information concerning *what was considered in coming up with that regulation* to determine whether or not there's a legitimate government interest that justifies that regulation . . . as well because their justification may be pretext." (emphasis added)). Defendants have themselves pointed to statements they have made to Congress as the alleged rational basis for their policies and decisions. *See* (Defs.' Responses to Plfs.' Second Interrogatories, Ex. D at Response 16). And Defendants have asserted as an affirmative defense that there is a rational basis for their policies. *See* Dkt. 90, Defs.' Answ. To Pls.' Compl. at 1. The information provided to Congress by the Air Force is therefore squarely at issue in this case.

The spreadsheet containing personal notes of Air Force Personnel Board Members regarding more than 300 cases is relevant for similar reasons. How the Air Force implements and applies DoD and Air Force policies is the heart of its APA claim.

Accordingly, these documents are relevant to the government's intent and/or whether the expressed intent is pretextual in promulgating the HIV policies," *Harrison*, Dkt. 128, Order Granting Pls.' Mot. to Compel at 2, or concerning the government's inconsistent, and therefore arbitrary, decisionmaking with respect to Service members living with HIV.

#### **B. Defendants Are the Only Source of This Information**

Like the information at issue in *Cipollone* and *Harrison*, the need for this information "cannot be satisfied in other ways." *Cipollone*, 1987 WL 36515 at \*3. "Defendants are the only source of the information" sought by Plaintiffs. *Harrison*, Dkt. 128, Order Granting Pls.' Mot. to Compel at 2. This situation is "on all fours" with *Stone v. Trump*, where the court noted that "no alternative evidence on government intent is available to Plaintiffs" which "weigh[ed] strongly in favor of disclosure." 2018 WL 6305131 at \*7. This factor therefore also weighs in favor of disclosure.

**C. The Government Is Integral to the Case**

The Government is integral to this case because Defendants are the governmental entities that promulgated and enforce the regulations being challenged by the Plaintiffs. *Harrison*, Dkt. 128, Order Granting Pls.’ Mot. to Compel at 2. Again, this case is “on all fours” with *Stone*, where the court found that “the Government plays a central role in the litigation because Defendants—the parties being sued—are government officials and the parties that created the challenged [regulations].” *Id.* The third factor thus weighs in favor of disclosure.

**D. Disclosure Would Not Hinder Frank and Independent Discussion Regarding the Alleged Discriminatory Policies**

The court in *Stone* held that the first three factors weighed so strongly in favor of disclosure that they overpowered the “risk that disclosure will chill future policymaking discussions.” *Id.* It also noted that something more than mere speculation of a chilling effect was necessary. *Id.* at n.10. Here, too, there is no risk of chilling. As in *Cipollone*, there is a protective order in this case, which would prevent the public disclosure of any documents to the extent they are appropriately designated as confidential. See *Harrison*, Dkt. 128, Order Granting Pls.’ Mot. to Compel at 3. The only risk to Defendants is that the production would provide evidence of their animus toward and discriminatory treatment of people living with HIV, which is again highly relevant to the case. The Government’s interest in nondisclosure is “de minimis at best.” *Cipollone*, 1987 WL 36515 at \*3.

In sum, considering all four factors of the *Cipollone* balancing test, the deliberative process privilege is inapplicable to the case.

**III. Defendants’ Privilege Logs Show They Have Withheld Documents Not Subject to the Deliberative Process Privilege**

Even if the Court finds that the deliberative process privilege is applicable here, despite the clear mandate of the case law on this subject, and despite the clear ruling by the Court in *Harrison*

that Defendants had withheld documents not covered by the privilege, *see Harrison*, Dkt. 128, Order Granting Pls.' Mot. to Compel at 1-2, several documents Defendants claim privilege over in this case also fall outside the confines of the deliberative process privilege, because they contain only factual information, are related to the implementation of existing policy, or are otherwise not covered by the deliberative process privilege. That suggests neither a narrow construction nor a "precise and conservative" application of the deliberative process privilege.

For example, Defendants withheld documents discussing the manning of personnel boards. *See* (Ex. C, US0031517; US0031518; US0031519). These documents are not related to policy formulation, but rather the staffing of the personnel boards that apply the policies. Additionally, Defendants withheld documents "discussing which materials can be presented in considering cases," and documents "discussing information to be provided to Board members prior to adjudication of HIV cases." *See id.* at US00031531; US00031294. This is also not deliberative, but factual information related to the implementation of already existing policy. The documents do not "reflect a decision-making process," or "reveal an opinion or recommendation by a speaker." *See Harrison*, Dkt. 128, Order Granting Pls.' Mot. to Compel at 1-2. They therefore cannot be withheld under the deliberative process privilege.

Plaintiffs have fully reviewed and analyzed Defendants' privilege logs and have identified the documents withheld on the grounds of deliberative process privilege according to three categories: (1) documents and information related to drafting, updating, clarifying, or implementing DoD and military branch regulations pertaining to HIV; (2) documents concerning an inquiry from the House Armed Services Committee and the Air Force's response to that inquiry; (3) a spreadsheet containing personal notes of Air Force Personnel Board Members regarding more than 300 cases; and (4) documents that provide only factual information, are merely related to the implementation of existing policies or are otherwise not

covered by the deliberative process privilege.<sup>5</sup> See Ex. C. Should the Court wish to perform an *in camera* review of less than all of the documents being withheld by Defendants, Plaintiffs request they be allowed to identify a representative sample of the withheld documents for the Court to review.

### CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court compel Defendants to produce all documents withheld or redacted on the basis of the deliberative process privilege, to supplement prior responses to discovery requests if necessary, and to offer any witnesses who were instructed not to answer questions on the basis of the privilege to testify as to those matters, and for such further relief as this Court deems just and proper.

Dated: March 22, 2019

Respectfully submitted,

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Julie A. Bauer\*

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<sup>5</sup> As noted, Plaintiffs have identified a fifth category of documents, vote sheets related to service members with HIV, but who are not plaintiffs in this case. However, Plaintiffs do not include that category here, as Plaintiffs have agreed to not challenge the assertion of privilege with respect to this category.

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**CERTIFICATE OF SERVICE**

I certify that, on the 22nd day of March, 2019, I caused this document to be filed electronically through the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

Dated: March 22, 2019

Respectfully submitted,

*/s/ Andrew R. Sommer*

\_\_\_\_\_  
Andrew R. Sommer

# EXHIBIT A

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

RICHARD ROE, ET AL.,

Plaintiffs,

v.

PATRICK M. SHANAHAN, ET AL.,

Defendants.

CIVIL ACTION NO. 1:18-cv-01565

**PLAINTIFFS' FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANTS (NOS. 1-10)**

Pursuant to Federal Rule of Civil Procedure 34 and Local Civil Rule 26, Plaintiffs Richard Roe, Victor Voe, and Outserve-SLDN, Inc., by and through their undersigned counsel, propound their First Set of Requests for Production of Documents and Things (Nos. 1-10), to which Defendants Patrick M. Shanahan, Heather A. Wilson, and the United States Department of Defense (collectively "Defendants") shall respond within the time prescribed by the Federal Rules of Civil Procedure and the Local Rules, and produce to lead counsel for Plaintiffs the following documents and things within thirty (30) days of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with the Definitions and Instructions set forth herein.

**DEFINITIONS**

Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests for Production of Documents and Things ("Requests for Production") is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. In these Requests for Production, the following terms are to be given their ascribed definitions:

1. The term "Plaintiffs" means Richard Roe, Victor Voe, and Outserve-SLDN, Inc.

2. The term “Individual Defendants” means Patrick M. Shanahan and Heather A. Wilson, including their predecessors.

3. The term “DoD” means the United States Department of Defense, including its various components and agencies (including but not limited to the Military Services), current or former officials, officers, subordinates, employees, contractors, agents, and attorneys.

4. The terms “Defendants,” “you” and/or “your” refers to the Individual Defendants and the DoD.

5. The term “AFI 44-178” means Air Force Instruction 44-178, Human Immunodeficiency Virus Program (March 4, 2014, certified current June 28, 2016).

6. The term “AFI 10-403” means Air Force Guidance Memorandum to Air Force Instruction 10-403, Deployment Planning and Execution (February 23, 2018).

7. The term “AFI 48-122” refers to Air Force Instruction 48-122, Deployment Health, (revised August 18, 2014).

8. The term “person” or “persons” means and includes any natural person, corporation, company, proprietorship, partnership, joint venture, association, firm, government entity or any other entity recognized in law, and shall include the owners, officers, directors, agents, trustees, parents, subsidiaries, affiliates, assignees, predecessors, and successors of each such “person.”

9. The phrase “third party” means and includes any person or persons other than Plaintiffs or Defendants.

10. “Communication” means any oral, written, electronic, or other exchange of words, thoughts, information or ideas to another person or entity, whether in person, in a group, by telephone, by letter, by Telex, by facsimile, or by any other process, electric, electronic or

otherwise. All such communications in writing shall include, without limitation, printed, typed, handwritten, or other readable documents, correspondence, memoranda, reports, contracts, drafts (both initial and subsequent), computer discs or transmissions, e-mails, instant messages, tape or video recordings, voicemails, diaries, log books, minutes, notes, studies, surveys and forecasts, and any and all copies thereof. The definition is not limited to transfers between persons, but also includes other transfers, such as records and memoranda to file; any written letter, memorandum, or other document that was sent by one or more individuals to another or others; any telephone call between one or more individuals and another or others, whether such call was by chance or prearranged, formal or informal; and any conversation or meeting between one or more individuals and another, whether such contact was by chance or prearranged or not, formal or informal.

11. “Document” and “documents” shall have the broadest possible meaning allowed by Rule 34(a) of the Federal Rules of Civil Procedure, and includes (without limitation) any writing of any kind, including originals and all non-identical copies (whether different from the original by reason of any notation made on such copies or otherwise). The terms “document” and “document(s)” shall include electronically stored information (“ESI”) and shall also include, without limitation, the following items, whether printed or reproduced by any process, or written or produced by hand or stored in computer memory, magnetic or hard disk or other data storage medium, and whether or not claimed to be privileged, confidential or otherwise excludable from discovery, namely, notes, letters, correspondence, communications, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or meetings, diaries, reports, laboratory and research reports and notebooks, recorded experiments, charts, plans, drawings, diagrams, illustrations, requests for proposals,

press releases, drafts of documents, and all other materials fixed in a tangible medium of whatever kind known to you or in your possession, custody, or control.

12. The terms “thing” and “things” mean and include any tangible item other than a Document, and includes objects of every kind and nature.

13. “Identify,” “identity,” or “identification” means:

- a. when used with reference to a natural person, to state the person's full name, address, and telephone number, and state the person's present or last known position and employer.
- b. when used with reference to any entity (including without limitation corporation, company, firm, partnership, joint venture, association, governmental body or agency, or persons other than a natural person), to state the full legal name of the entity, the place of incorporation or organization, the address and telephone number of the principal place of business, and the nature of the business conducted by that entity.
- c. when used with reference to any document or ESI, to summarize the substance of the document or ESI and state the document's or ESI's title, date, form (e.g., letter, memorandum, email, etc.), production number range, author(s), recipients), the present location of the document or ESI, and the name of its present custodian; if the document or ESI existed at one time but does not presently exist, the reason(s) why it no longer exists and the identity of the last person having custody of it; and, if the document or ESI is in a foreign language, whether an English translation of the document or ESI exists, whether partial or complete.

- d. when used with reference to a tangible thing, to provide: (i) any model or catalogue number; (ii) any article or model name; (iii) any technical or promotional materials describing the article or its use; and (iv) the dates and locations of its production.
- e. when used with reference to any communication, to (i) summarize the substance of the communication; (ii) state the date and place of the communication; (iii) identify each person who was present at, involved in, connected with or who participated in the communication; (iv) state the form of communication (e.g., telephone call, meeting, letter, etc.); and (v) identify each document and ESI memorializing or referring to the communication.

14. As used herein, the present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. “All” means “any and all,” “any” means “any and all.” “Including” means “including but not limited to.” “And” and “or” encompass both “and” and “or.” Words in the masculine, feminine, or neutral form shall include each of the other genders.

15. The terms “reflect,” “reflecting,” “relate to,” “refer to,” “relating to,” and “referring to” shall mean relating to referring to, referencing, concerning, mentioning, reflecting, pertaining to, evidencing, involving, describing, discussing, commenting on, embodying, containing, comprising, consisting of, responding to, supporting, showing, summarizing, memorializing, contradicting, or constituting (in whole or in part), as the context makes appropriate, including having any legal, logical, or factual connection with the designated subject matter referred to in the request.

## INSTRUCTIONS

1. These Requests for Production are continuing in nature, so as to require prompt supplemental production and/or written responses if further or different information, documents, or things become known or available to Defendants.

2. If in responding to these Requests for Production, Defendants contend that an ambiguity exists with respect to construing a request or definition, the response shall set forth the matter deemed ambiguous and the construction used in responding.

3. Whenever in these Requests you are asked to identify or produce a document which is deemed by you to be properly withheld from production:

a. If you are withholding the document under a claim of privilege not covered by the exemptions covered by the Memorandum in Support of the Joint Motion To Modify the Scheduling Order in the *Harrison* Case and for Entry of Briefing Schedule and Scheduling Order in the *Roe* Case (ECF No. 30, ¶ 8), please provide the information set forth in Federal Rule of Civil Procedure 26(b)(5), including:

- i. The date of the privileged information;
- ii. The author(s) of the privileged information;
- iii. The recipient(s) of the privileged information;
- iv. The subject matter of the privileged information; and
- v. The basis of the claim of privilege.

b. If production of any requested document(s) is objected to on the grounds that production is unduly burdensome, describe the burden or expense of the proposed discovery;

c. If you are withholding the document for any reason other than an objection that

it is beyond the scope of discovery or that a request is unduly burdensome, please provide the reason for withholding the document, and the information requested in sections 3(a) above. Regardless of whether a protective order is entered by the Court, in all instances in which you are withholding documents or things on the ground of confidentiality, please so indicate in your responses.

4. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, you must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.

**5. To the extent that a particular Request for Production requires the production of any document that contains sensitive financial information such as social security numbers, taxpayer identification numbers, birth dates, or financial account information, please redact that information prior to producing the document.**

6. If the requested documents are maintained in a file, the file folder is to be included in the production of those documents.

7. If Defendants' response to a particular Request for Production is a statement that Defendants lack the ability to comply with that Request, Defendants must specify whether the inability to comply is because the particular item or category of information never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in Defendants' possession, custody, or control, in which case the name and address of any person or

entity known or believed by you to have possession, custody, or control of that information or category of information must be identified.

## **REQUESTS FOR PRODUCTION**

### **DOCUMENT REQUEST NO. 1**

All Documents and things contained in the military or Air Force personnel files of Plaintiff Richard Roe, and all documents and things related to the Disability Evaluation System review of Plaintiff Roe, his appeal of the adverse determinations by the Informal Physical Evaluation Board and the Formal Physical Evaluation Board, and the decision of the Secretary of the Air Force.

### **DOCUMENT REQUEST NO. 2**

All Documents and things contained in the military or Air Force personnel files of Plaintiff Victor Voe, and all documents and things related to the Disability Evaluation System review of Plaintiff Voe, his appeal of the adverse determinations by the Informal Physical Evaluation Board and the Formal Physical Evaluation Board, and the decision of the Secretary of the Air Force.

### **DOCUMENT REQUEST NO. 3**

All Documents that Defendants considered or relied upon in drafting or promulgating changes to AFI 44-178 since 2006.

### **DOCUMENT REQUEST NO. 4**

All Documents that Defendants considered or relied upon in drafting or promulgating changes to AFI 10-403 since 2006.

**DOCUMENT REQUEST NO. 5**

All Documents that Defendants considered or relied upon in drafting or promulgating changes to AFI 48-122 since 2006.

**DOCUMENT REQUEST NO. 6**

All Documents concerning the number of individuals with a diagnosis of HIV who have been separated from the Air Force, and all documents concerning the number of individuals with a diagnosis of HIV who have been retained in the Air Force, with identifying information redacted pursuant to the protective order entered by the Court in this matter (ECF No. 45).

**DOCUMENT REQUEST NO. 7**

All Documents regarding any decision to retain an individual as a member of the Air Force after learning of that individual's HIV diagnosis, with identifying information redacted pursuant to the protective order to be entered by the Court in this matter (ECF No. 45).

**DOCUMENT REQUEST NO. 8**

All Documents regarding any decision to separate an individual as a member of the Air Force after learning of that individual's HIV diagnosis, with identifying information redacted pursuant to the protective order to be entered by the Court in this matter (ECF No. 45).

**DOCUMENT REQUEST NO. 9**

All Documents regarding any Airman living with HIV with an ALC-C code who has received a waiver to deploy or be assigned overseas, including but not limited to those referenced in the Declaration of Martha Soper in *Harrison, et al. v. Shanahan, et al.*, No. 1:18 cv-641-LMB-IDD (E.D. Va.) (ECF No. 48, at ¶ 8.b.), with identifying information redacted pursuant to the protective order to be entered by the Court in this matter (ECF No. 45).

**DOCUMENT REQUEST NO. 10**

All Documents on which you will rely to rebut or defend against any of the claims in this action.

Dated: January 23, 2019

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the above document was served on this 23 day of January, 2019 to the following counsel of record via electronic mail:

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Dated: January 23, 2019

Respectfully submitted,

/s/ Andrew R. Sommer  
Andrew R. Sommer

# EXHIBIT B

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

RICHARD ROE; VICTOR VOE; and	)	
OUTSERVE-SLDN, INC.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
PATRICK M. SHANAHAN, in his official	)	
capacity as Acting Secretary of Defense;	)	
HEATHER A. WILSON, in her official	)	
capacity as Secretary of the Air Force; and	)	
the UNITED STATES DEPARTMENT OF	)	
DEFENSE,	)	
	)	
Defendants.	)	

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No. 1:18-cv-1565-LMB-IDD

**DEFENDANTS’ OBJECTIONS TO PLAINTIFFS’  
FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS TO DEFENDANTS (NOS. 1-10)**

Pursuant to Local Rule 26(C) and Federal Rule of Civil Procedure and 34(b), Defendants, Partrick M. Shanahan, in his official capacity as Acting Secretary of Defense, the Department of Defense (together, the “Department of Defense”) and Heather A. Wilson, in her official capacity as Secretary of the U.S. Air Force (“U.S. Air Force”) (collectively, “Defendants”), through undersigned counsel, note the following objections to Plaintiffs’ Requests for Production of Documents and Things to Defendants (Nos. 1-10).

Although these objections are being filed within the period provided by Local Rule 26(C), Defendants’ counsel have not yet had a sufficient opportunity to review all material and information that may be responsive to Plaintiffs’ requests for production. Defendants may later elect to waive any of the below objections with respect to any particular fact. Such waiver, should it occur, shall not be construed as a waiver of objections to other information.

In accordance with Local Rule 37(E), counsel will also endeavor in good faith to resolve with Plaintiffs any controversy that may arise with respect to any discovery matter or to narrow any issue in dispute.

Additionally, Defendants hereby reaffirm that the Administrative Procedure Act provides the proper vehicle for Plaintiffs' constitutional challenges to agency action, including agency policies, and therefore Plaintiffs' claims should be reviewed by the Court on an administrative record and discovery should not be permitted. *See* 5 U.S.C. § 706.

**OBJECTIONS APPLICABLE TO DEFINITIONS AND INSTRUCTIONS  
THAT PLAINTIFFS STATE WILL APPLY TO EACH REQUEST**

1. Defendants object to Plaintiffs' interrogatories to the extent they seek information protected by the attorney-client privilege, the attorney work-product privilege, or the deliberative process privilege.

2. Defendants object to Plaintiffs' Definition No. 3 to the extent that it seeks information in the custody of the U.S. Army, U.S. Navy, U.S. Marine Corps, or U.S. Coast Guard. Plaintiffs Roe and Voe, who are airmen in the U.S. Air Force, are the only Plaintiffs to have alleged an injury in this case. Information in the custody and control of Military Departments to which Plaintiffs Roe and Voe do not belong have no bearing on this case and responding to requests for that information would impose a significant burden on these Military Departments. Defendants further object further to Plaintiffs' Definition No. 3 as overly broad and unduly burdensome to the extent that it encompass all "current or former officials, subordinates, employees, contractors, agents, and attorney." The Department of Defense is a large, worldwide organization with millions of employees. There is no way to gather information or records from every military unit, every Navy ship, every Air Force wing, and every Coast Guard cutter. And the time, expense, and effort to conduct such a worldwide search is not proportionate to the needs of this case.

3. Defendants object to Definition No. 10 to the extent that it seeks information that is protected by the deliberative process privilege, as is inherent in the inclusion of “thoughts,” “ideas,” “drafts (both initial and subsequent),” “diaries,” “minutes,” “memoranda,” and “any conversation or meeting between one or more individuals and another, whether such contact was by chance or prearranged or not, formal or informal.” Defendants also object to this definition on the ground that the category of information it seeks is overly broad and unduly burdensome given the size of the organizations identified by Plaintiffs and the time period encompassed by the request for production.

4. Defendants object to Definition No. 11 to the extent that it seeks drafts or any other information or documents that are protected by the deliberative process privilege, as is inherent in the inclusion of “summaries or records of personal conversations or meetings,” “diaries,” “notes,” and “drafts.” Defendants also object to this definition on the ground that the category of information it seeks is overly broad and unduly burdensome given the size of the organizations identified by Plaintiffs and the time period encompassed by the request for production.

5. Defendants object to Definition No. 13, including its five subparts, to the extent that it seeks to require Defendants to create or otherwise produce documents not already in existence. *See* Fed. R. Civ. P. 34.

6. Defendants object to Definition No. 15 to the extent that it seeks information that is protected by the deliberative process privilege, as is inherent in in the phrases “reflecting,” “discussing,” “commenting on,” and “memorializing.”

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**OBJECTIONS TO SPECIFIC REQUESTS FOR PRODUCTION**

**DOCUMENT REQUEST NO. 1**

All Documents and things contained in the military or Air Force personnel files of Plaintiff Richard Roe, and all documents and things related to the Disability Evaluation System review of Plaintiff Roe, his appeal of the adverse determinations by the Informal Physical Evaluation Board and the Formal Physical Evaluation Board, and the decision of the Secretary of the Air Force.

**OBJECTIONS:** Defendants object to this request because Plaintiffs' claims should properly be reviewed on the administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Modified Scheduling Order (ECF No. 32), Defendants object to this request on the basis that "all documents and things related to" is overly broad, unduly burdensome, and not proportionate to the needs of the case. Defendants further object to the undefined phrases "military or Air Force personnel files," "Disability Evaluation System review," and "appeal of adverse determinations" as vague. Defendants also object to this request to the extent it seeks information protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege.

**DOCUMENT REQUEST NO. 2**

All Documents and things contained in the military or Air Force personnel files of Plaintiff Victor Voe, and all documents and things related to the Disability Evaluation System review of Plaintiff Voe, his appeal of the adverse determinations by the Informal Physical Evaluation Board and the Formal Physical Evaluation Board, and the decision of the Secretary of the Air Force.

**OBJECTIONS:** Defendants object to this request because Plaintiffs' claims should properly be reviewed on the administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Modified Scheduling Order (ECF No. 32), Defendants object to this request on the basis that "all documents and things related to" is overly broad, unduly burdensome, and not proportionate to the needs of the case. Defendants further object to the undefined phrases "military or Air Force personnel files," "Disability Evaluation System review," and "appeal of adverse determinations" as vague. Defendants also object to this request to the extent it seeks information protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege.

**DOCUMENT REQUEST NO. 3**

All Documents that Defendants considered or relied upon in drafting or promulgating changes to AFI 44-178 since 2006.

**OBJECTIONS:** Defendants object to this request on the basis that it is overly broad and unduly burdensome because Plaintiffs' claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Modified Scheduling Order (ECF No. 32), Defendants object to the extent this request seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege. Defendants further object to this request on the basis that it is overly broad and unduly burdensome because this request seeks information about Defendant's policies other than the current version of AFI 44-178, in effect at the time of Plaintiffs' alleged injuries, and therefore does not seek information that is both relevant to any party's claim or defense and proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Defendants further object to this request on

the basis that it is overly broad and unduly burdensome as to “considered or relied upon” and that it is not limited to a reasonable and relevant period of time, and therefore does not seek information that is both relevant to any party’s claim or defense and proportional to the needs of the case. *Id.* Defendants also object to this request on the ground that the phrase “considered or relied upon” is vague and ambiguous.

**DOCUMENT REQUEST NO. 4**

All Documents that Defendants considered or relied upon in drafting or promulgating changes to AFI 10-403 since 2006.

**OBJECTIONS:** Defendants object to this request on the basis that it is overly broad and unduly burdensome because Plaintiffs’ claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, see Modified Scheduling Order (ECF No. 32), Defendants object to the extent this request seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege. Defendants further object to this request on the basis that the request is overly broad and unduly burdensome because it seeks information about Defendant’s policies other than the current version of AFI 10-403, the instruction in effect at the time of Plaintiffs’ alleged injuries, and therefore does not seek information that is both relevant to any party’s claim or defense and proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Defendants also object to this request on the basis that it is overly broad and unduly burdensome because it seeks information on AFI 10-403, which is a policy that was inapplicable to the Plaintiffs and offers no guidelines, criteria, or duty limiting conditions but rather contains logistics and administrative directions for deployment planning, therefore it does not seek information that is

both relevant to any parties claim or defense and proportional to the needs of the case. *Id.* Defendants further object to this request on the basis that it is overly broad and unduly burdensome as to “considered or relied upon” and that it is not limited to a reasonable and relevant period of time, and therefore does not seek information that is both relevant to any party’s claim or defense and proportional to the needs of the case. *Id.* Defendants also object to this request on the ground that the phrase “considered or relied upon” is vague and ambiguous.

**DOCUMENT REQUEST NO. 5**

All Documents that Defendants considered or relied upon in drafting or promulgating changes to AFI 48-122 since 2006.

**OBJECTIONS:** Defendants object to this request on the basis that it is overly broad and unduly burdensome because Plaintiffs’ claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, see Modified Scheduling Order (ECF No. 32), Defendants object to the extent this request seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege. Defendants further object to this request on the basis that it is overly broad and unduly burdensome because it seeks information about Defendant’s policies other than the current version of AFI 48-122, in effect at the time of Plaintiffs’ alleged injuries, and therefore does not seek information that is both relevant to any party’s claim or defense and proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Defendants also object to this request on the basis that it is overly broad and unduly burdensome because it seeks information on AFI 48-122, which was not applied to the Plaintiffs because it is a regulation regarding the completion of a

health questionnaire designed to collect medical information about airmen that have been selected to deploy. AFI 48-122 sets forth no standards for whether an airman would be allowed to deploy, and it is only concerned with the collection of the information which would ultimately be used to determine deployability. Therefore, this request does not seek information that is both relevant to any parties claim or defense and proportional to the needs of the case. *Id.* Defendants further object to this request on the basis that it is overly broad and unduly burdensome as to “considered or relied upon” and it is not limited to a reasonable and relevant period of time, and therefore does not seek information that is both relevant to any party’s claim or defense and proportional to the needs of the case. *Id.* Defendants also object to this request on the ground that the phrase “considered or relied upon” is vague and ambiguous.

**DOCUMENT REQUEST NO. 6**

All Documents concerning the number of individuals with a diagnosis of HIV who have been separated from the Air Force, and all documents concerning the number of individuals with a diagnosis of HIV who have been retained in the Air Force, with identifying information redacted pursuant to the protective order entered by the Court in this matter (ECF No. 45).

**OBJECTIONS:** Defendants object to this request on the basis that it is overly broad and unduly burdensome because Plaintiffs’ claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Modified Scheduling Order (ECF No. 32), Defendants object to the extent that this request seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege. Defendants further object to this request on the basis that it is overly broad and unduly

burdensome. Specifically, this request is not limited to a reasonable and relevant period of time and therefore does not seek information that is both relevant to any party's claim or defense and proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Furthermore, this request seeks documents and information related to the medical conditions of service members who are parties to the case and who have not consented to the disclosure of their personal medical information. Defendants object to producing records containing the medical information of any individual other than Plaintiffs because such records are covered by the Privacy Act, 5 U.S.C. § 552(a), or by other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548. Defendants further object because this request is not limited to a reasonable and relevant period of time, and therefore does not seek information that is both relevant to any party's claim or defense and proportional to the needs of the case, and because "[a]ll documents" is overly broad and unduly burdensome. Defendants also object to this request because the phrases "concerning the number of individuals with a diagnosis of HIV," "separated from the Air Force," and "retained in the Air Force" are vague and ambiguous. Defendants further object to this request to the extent that it seeks to require Defendants to create or otherwise produce documents not already in existence. *See* Fed. R. Civ. P. 34. Defendants also object to this request on the ground that the phrases "diagnosed with HIV" and "have been separated" are vague and ambiguous.

**DOCUMENT REQUEST NO. 7**

All Documents regarding any decision to retain an individual as a member of the Air Force after learning of that individual's HIV diagnosis, with identifying information redacted pursuant to the protective order to be entered by the Court in this matter (ECF No. 45).

**OBJECTIONS:** Defendants object to this request on the basis that it is overly broad and unduly burdensome because Plaintiffs' claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Modified Scheduling Order (ECF No. 32), Defendants object to the extent that this request seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege. Defendants further object to this request on the basis that it is overly broad and unduly burdensome because it is not limited to a reasonable and relevant period of time and therefore does not seek information that is both relevant to any party's claim or defense and proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Defendants further object to this request on the grounds that it is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, a request for "[a]ll Documents" is overbroad and unduly burdensome, and because the phrase "regarding any decision to retain an individual as a member of the Air Force" embraces, among other things, the primary medical and personnel records for airmen over an unlimited time period, requiring a search of potentially hundreds or thousands of individual medical records. Thus, this request impinges upon the personal privacy of potentially thousands of current and former Airmen. Defendants object to producing medical records and personnel records from any individual other than Plaintiffs Roe and Voe because such records are covered by the Privacy Act, 5 U.S.C. § 552(a), or by other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548. Defendants further object to this request on the ground that the phrases "any decision," "retain," "learning of," and "HIV diagnosis" are vague and ambiguous. Defendants also object to this request as overbroad, disproportionate to the needs of the case and irrelevant to the applicable claims and defenses in this case relating to the facial and as-applied constitutional and APA challenges to the military's retention policy

for individuals with laboratory evidence of HIV.

**DOCUMENT REQUEST NO. 8**

All Documents regarding any decision to separate an individual as a member of the Air Force after learning of that individual's HIV diagnosis, with identifying information redacted pursuant to the protective order to be entered by the Court in this matter (ECF No. 45).

**OBJECTIONS:** Defendants object to this request on the basis that it is overly broad and unduly burdensome because Plaintiffs' claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Modified Scheduling Order (ECF No. 32), Defendants object to the extent that this request seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege. Defendants further object to this request on the basis that it is overly broad and unduly burdensome because it is not limited to a reasonable and relevant period of time and therefore does not seek information that is both relevant to any party's claim or defense and proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Defendants further object to this request on the grounds that it is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, a request for "[a]ll Documents" is overbroad and unduly burdensome, and because the phrase "regarding any decision to separate an individual as a member of the Air Force after learning of that individual's HIV diagnosis" embraces, among other things, the primary medical and personnel records for airmen over an unlimited time period, requiring a search of potentially hundreds or thousands of individual medical records. Thus, this request impinges upon the personal privacy of potentially thousands of current and former airmen. Defendants object to producing medical records and personnel records from any individual

other than Plaintiffs Roe and Voe because such records are covered by the Privacy Act, 5 U.S.C. § 552(a), or by other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548. Defendants further object to this request on the ground that the phrases “any decision,” “separate,” “learning of,” and “HIV diagnosis” are vague and ambiguous. Defendants also object to this request as overbroad, disproportionate to the needs of the case, and irrelevant to the applicable claims and defenses in this case relating to the facial and as-applied constitutional and APA challenges to the military’s retention policy for individuals with laboratory evidence of HIV.

**DOCUMENT REQUEST NO. 9**

All Documents regarding any Airman living with HIV with an ALC-C code who has received a waiver to deploy or be assigned overseas, including but not limited to those referenced in the Declaration of Martha Soper in Harrison, et al. v. Shanahan, et al., No. 1:18 cv-641-LMB-IDD (E.D. Va.) (ECF No. 48, at ¶ 8.b.), with identifying information redacted pursuant to the protective order to be entered by the Court in this matter (ECF No. 45).

**OBJECTIONS:** Defendants object to this request on the basis that it is overly broad and unduly burdensome because Plaintiffs’ claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Modified Scheduling Order (ECF No. 32), Defendants object to the extent this request seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege. Defendants further object to this request on the basis that it is overly broad and unduly burdensome because it is not limited to a reasonable and relevant period of time and therefore does not seek information that is both relevant to any party’s claim or defense and proportional to the needs

of the case. See Fed. R. Civ. P. 26(b)(1). Defendants further object to this request on the grounds that it is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, a request for “[a]ll Documents” is overbroad and unduly burdensome, and because the phrase “ regarding any Airman living with HIV with an ALC-C code who has received a waiver to deploy or be assigned overseas” embraces, among other things, the primary medical and personnel records for airmen over an unlimited time period. Defendants object to producing medical records and personnel records from any individual other than Plaintiffs Roe and Voe because such records are covered by the Privacy Act, 5 U.S.C. § 552(a), or by other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548. Defendants further object to this request on the ground that the phrases “living with HIV,” “deploy,” and “be assigned” are vague and ambiguous. Defendants also object to this request as overbroad, disproportionate to the needs of the case, and irrelevant to the applicable claims and defenses in this case relating to the facial and as-applied constitutional and APA challenges to the military’s retention policy for individuals with laboratory evidence of HIV.

**DOCUMENT REQUEST NO. 10**

All Documents on which you will rely to rebut or defend against any of the claims in this action.

**OBJECTIONS:** Defendants object to this request on the basis that it is overly broad and unduly burdensome because Plaintiffs’ claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Modified Scheduling Order (ECF No. 32), Defendants object to this request as a premature contention request, and also to the extent that it seeks to impose obligations greater than those set forth in Federal Rule of Civil Procedure

26(a) and 26(b) and the Court's Modified Scheduling Order. Defendant further objects to this request on the ground that "rely" is vague and ambiguous.

DATE: February 7, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above document was served on February 7, 2019, to the following counsel of record via electronic mail:

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*Counsel for the Government*

# EXHIBIT C

Roe v. Shanahan,  
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Air Force Privilege Log for Production 13

BEGIN BATES	END BATES	REDACTIONS	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00030060	US00030060	No	2/20/2018			AC - Attorney Client Privilege	Gregory Girard, AF/JA review of 10-403 dated 2/8/18.
US00030135	US00030152	Yes	2/13/2019	winston schmidt		AC - Attorney Client Privilege	AFLOA JAC and AF/JA attorney (Quitugua) comments on draft instruction.
US00030153	US00030159	Yes	2/13/2019	Nathalie Lawrence		AC - Attorney Client Privilege	Redactions are legal advice from AF/JA (Dina Bernstein) and AFLOA (Kennard Keeton) regarding instruction.
US00031016	US00031016	No	11/7/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email dated 11/7/18 from John Vallario to Col Shane Prater discussing content of decision memo for particular case.
US00031060	US00031060	No	10/15/2018	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	Sutton, Melinda L CIV (US) <melinda.l.sutton2.civ@mail.mil>; Dvorak, Mary D Col USAF AFRBA (US) <mary.d.dvorak.mil@mail.mil>; Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email within medical division of AFPB discussing contents of case files for HIV cases.
US00031085	US00031085	No	2/13/2019	1069511070C		PII - Personal Privacy; DP - Deliberative Process	Spreadsheet containing personal notes of AFPB member regarding 300+ cases, discussing internal thoughts and questions about adjudication.
US00031086	US00031086	No	8/6/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email within SAFPC discussing inputs for Clarification Memo for HIV Cases
US00031087	US00031087	No	7/24/2018	Lt Col Tom Joyce, SAF/MRM		DP - Deliberative Process	Unsigned, Undated draft Memo Airmen with Asymptomatic HIV Disposition
US00031088	US00031088	No	6/20/2018	1081079567A		DP - Deliberative Process	Document titled summaries of 3 recent HIV cases. Gives 3 examples of cases adjudicated by SAFPC in discussion of potential impact of new HIV Clarification memo.
US00031090	US00031090	No	7/24/2018	Lt Col Tom Joyce, SAF/MRM		DP - Deliberative Process	Unsigned draft HIV Clarification Memo
US00031091	US00031091	No	6/11/2018	1081079567A		DP - Deliberative Process	Spreadsheet discussing 3 HIV cases and applying criteria set forth in draft HIV clarification memo.
US00031092	US00031092	No	10/26/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email discussing draft wording for SAFPC memos.
US00031115	US00031115	No	6/25/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	HERN, TAMMY L CIV USAF AFPC AFPC/DPFFF (tammy.hern@us.af.mil)	DP - Deliberative Process	Email between SAFPC and AFPC requesting information on CENTCOM deployment policy.

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BEGIN BATES	END BATES	REDACTIONS	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031117	US00031117	No	11/20/2018	Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>; Uiselt, Thomas R (Tom) CIV USAF AFRBA (US) <thomas.r.uiselt.civ@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email dfated 11/20/18 discussing draft response to HASC inquiry into HIV adjudications.
US00031133	US00031133	No	10/26/2018	SSgt Smejkal		DP - Deliberative Process	Draft of rationale for SAFPC decision memo.
US00031189	US00031189	No	7/24/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email discussing adjudications of HIV cases in broader discussion of HIV retention policy.
US00031190	US00031190	No	6/22/2018	1081079567A		DP - Deliberative Process	Spreadsheet setting forth possible analysis for HIV cases under proposed HIV policy memo.
US00031216	US00031216	No	10/15/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>	DP - Deliberative Process	Email dated 10/15/18 within AFBP discussing information to be considered in adjudication of cases on 10/18/18 board.
US00031217	US00031217	No	11/30/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Brady, Jamie S (Scott) CIV USAF SAF-MR (US) <jamie.s.brady.civ@mail.mil>	DP - Deliberative Process	Email chain discussing response to HASC inquiry.
US00031222	US00031222	No	7/16/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email dated 7/16/18 within SAF/MR discussing drafting of HIV Policy clarification.
US00031234	US00031234	No	11/26/2018	Uiselt, Thomas R (Tom) CIV USAF AFRBA (US) <thomas.r.uiselt.civ@mail.mil>	Toth, Charles B (Charlie) Lt Col USAF SAF-LL (US) <charles.b.toth.mil@mail.mil>Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>; Nuckles, David P (Crackin) Lt Col USAF SAF-LL (US) <david.p.nuckles.mil@mail.mil>	DP - Deliberative Process	Email chain deliberating response to HASC inquiry.
US00031235	US00031235	No	11/26/2018	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 11/26/18 discussing response to HASC inquiry.

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BEGIN BATES	END BATES	REDACTIONS	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031236	US00031236	No	11/19/2018	Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Hodges, Michael G Col USAF 6 MDG (USA) <michael.g.hodges10.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 11/19/18 discussing HASC inquiry
US00031240	US00031240	No	11/19/2018	1081079567A		DP - Deliberative Process	Draft response to HASC inquiry regarding HIV adjudications.
US00031243	US00031243	No	11/16/2018	Fedrigio, John A SES USAF SAF-MR (US) <john.a.fedrigio.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain dated 11/16/18 discussing response to HASC inquiry.
US00031249	US00031249	No	11/27/2018	Fedrigio, John A SES USAF SAF-MR (US) <john.a.fedrigio.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain dated 11/27/18 discussing response to HASC inquiry.
US00031250	US00031250	No	12/18/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Vallario, John K CIV USAF SAF-MR (US) (john.k.vallario.civ@mail.mil)	DP - Deliberative Process	Email chain dated 12/18/18 discussing response to HASC inquiry.
US00031251	US00031251	No	11/20/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain dated 11/20/18 discussing response to HASC inquiry.
US00031267	US00031267	No	1/22/2019	Vallario, John K CIV USAF SAF-MR (USA) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Morgan, Gregory J Maj USAF AFLOA (US) <gregory.j.morgan.mil@mail.mil>; Gartland, Charles J Lt Col USAF AFLOA (USA) <charles.j.gartland.mil@mail.mil>	AC - Attorney Client Privilege; WP - Work Product	Email between SAF/MR and AF attorneys (Morgan & Gartland) discussing litigation.
US00031294	US00031294	No	9/28/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email within SAF/MR discussing information to be provided to Board members prior to adjudication of HIV cases. Dated 9/28/18.
US00031295	US00031295	No	7/2/2018	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>	DP - Deliberative Process	SAF/MR email chain discussing Army and Navy HIV retention policies.

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BEGIN BATES	END BATES	REDACTIONS	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031360	US00031360	No	7/2/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 7/2/18 discussing Army and Navy HIV policies.
US00031425	US00031425	No	6/11/2018	Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR discussing Army and Navy HIV policies.
US00031427	US00031427	No	6/25/2018			DP - Deliberative Process	SSS signed by John Fedrigo dated 6/22/18 requesting review of HIV adjudications policy.
US00031428	US00031428	No	6/20/2018			DP - Deliberative Process	Draft staff summary sheet dated 6/21/18 from SAF/MRBP requesting review from SAF/MR of HIV policy memo.
US00031429	US00031429	No	7/24/2018	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain discussing draft of SAF/MR HIV clarification memo.
US00031430	US00031430	No	7/24/2018	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing draft HIV policy memo.
US00031431	US00031431	No	7/23/2018	svetlana.bilenkina		DP - Deliberative Process	Undated draft of HIV disposition memo.
US00031432	US00031432	No	6/13/2018	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>	DP - Deliberative Process	Email chain dated 6/13/18 discussing draft HIV policy memo.
US00031433	US00031433	No	6/11/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email discussing interpretation of HIV policy memo within SAF/MR dated 6/11/18
US00031435	US00031435	No	7/24/2018	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain discussing conflicting policy documents.

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BEGIN BATES	END BATES	REDACTIONS	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031436	US00031436	No	1/22/2019	Vallario, John K CIV USAF SAF-MR (USA) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Gartland, Charles J Lt Col USAF AFLOA (USA) <charles.j.gartland.mil@mail.mil>	AC - Attorney Client Privilege	Attorney (Gartland) client communication email dated 1/22/19.
US00031438	US00031438	No	11/20/2018	1081079567A		DP - Deliberative Process	Draft response to HASC inquiry.
US00031439	US00031439	No	11/20/2018	1081079567A		DP - Deliberative Process	Draft response to HASC inquiry.
US00031445	US00031445	No	10/15/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	HERN, TAMMY L CIV USAF AFPC AFPC/DPFFF (tammy.hern@us.af.mil)	DP - Deliberative Process	Email from SAF/MR to AFPC requesting information to be used in adjudication of IDES cases.
US00031446	US00031446	No	6/7/2018	PALUMBO, GUY M GS-15 USAF AFPC AFPC/DPFD <guy.palumbo.1@us.af.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email between AFPC and SAF/MR discussing HIV clarification memo.
US00031452	US00031452	No	6/21/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	HERN, TAMMY L CIV USAF AFPC AFPC/DPFFF (tammy.hern@us.af.mil)	DP - Deliberative Process	Email chain between AFPC and SAF/MR discussing dispositions of HIV cases.
US00031453	US00031453	No	11/19/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	STANGLE, JENNIFER A Lt Col USAF AFPC AFPC/DP2NP <jennifer.stangle@us.af.mil>	DP - Deliberative Process	Email between SAF/MR and AFPC discussing response to HASC inquiry.
US00031454	US00031454	No	11/19/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Palumbo, Guy M CIV USAF AFPC (US) <guy.palumbo.1@us.af.mil>; Hern, Tammy L CIV USAF (US) <tammy.hern@us.af.mil>; STANGLE, JENNIFER A Lt Col USAF AFPC AFPC/DP2NP <jennifer.stangle@us.af.mil>; Gartland, Charles J Lt Col USAF AFLOA (US) <charles.j.gartland.mil@mail.mil>; Jolly, Savannah K 1st Lt USAF SAF-MR (USA) <savannah.k.jolly.mil@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>; Toth, Charles B (Charlie) Lt Col USAF SAF-LL (US) <charles.b.toth.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>;	DP - Deliberative Process	Email chain dated 11/19/18 discussing response to HASC inquiry.
US00031455	US00031455	No	11/19/2018	1081079567A		DP - Deliberative Process	Draft response to HASC inquiry.

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US00031475	US00031475	No	5/1/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Downes, Karen M Lt Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>	DP - Deliberative Process	Email from SAF/MR seeking updates on HIV policy.
US00031477	US00031477	No	1/3/2019	Downes, Karen M Col USAF SAF-MR (USA) <karen.m.downes2.mil@mail.mil>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email within SAF/MR discussing Navy HIV policy.
US00031516	US00031516	No	11/7/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email within SAF/MR discussing language used in decision memos.
US00031517	US00031517	No	10/1/2018	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email within SAF/MR discussing staffing of 11 Oct 18 personnel board.
US00031518	US00031518	No	9/28/2018	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email discussion within SAF/MR discussing manning of personnel board.
US00031434	US00031434	No	7/31/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV> - on behalf of - Fedrigo, John A SES USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.A.FEDRIGO.CIV>	PALUMBO, GUY M GS-15 USAF AFPC AFPC/DPPD <guy.palumbo.1@us.af.mil>	AC - Attorney Client Privilege	Email chain containing attorney (Brian Arnold) client communications regarding HIV litigation.
US00031519	US00031519	No	10/1/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email within SAF/MR discussing manning of personnel board.

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US00031520	US00031520	No	10/16/2018	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>; Overton, Suellen Col USAF (US) <suellen.overton.mil@mail.mil>; Donato, Robin A Lt Col USAF (US) <robin.a.donato.mil@mail.mil>; Teeter, Mary R Col USAF 89 AW (US) <mary.teeter@us.af.mil>;Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Dvorak, Mary D Col USAF AFRBA (US) <mary.d.dvorak.mil@mail.mil>; Sutton, Melinda L CIV (US) <melinda.l.sutton2.civ@mail.mil>; Segura, Edward C Col USAF SAF-MR (US) <edward.c.segura.mil@mail.mil>	DP - Deliberative Process	Email discussing review of materials for 18 Oct 18 personnel board.
US00031521	US00031521	No	10/15/2018	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>;Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email discussing information to be presented at 18 Oct 18 personnel board.
US00031522	US00031522	No	10/16/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>; Overton, Suellen Col USAF (US) <suellen.overton.mil@mail.mil>; Donato, Robin A Lt Col USAF (US) <robin.a.donato.mil@mail.mil>; Teeter, Mary R Col USAF 89 AW (US) <mary.teeter@us.af.mil>;Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Dvorak, Mary D Col USAF AFRBA (US) <mary.d.dvorak.mil@mail.mil>; Sutton, Melinda L CIV (US) <melinda.l.sutton2.civ@mail.mil>; Segura, Edward C Col USAF SAF-MR (US) <edward.c.segura.mil@mail.mil>	DP - Deliberative Process	Email discussing information to be presented at 10/18/18 personnel board.

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US00031523	US00031523	No	10/16/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN= =JOHN.K.VALLARIO.CIV>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>; Overton, Suellen Col USAF (US) <suellen.overton.mil@mail.mil>; Donato, Robin A Lt Col USAF (US) <robin.a.donato.mil@mail.mil>; Teeter, Mary R Col USAF 89 AW (US) <mary.teeter@us.af.mil>;Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Dvorak, Mary D Col USAF AFRBA (US) <mary.d.dvorak.mil@mail.mil>; Sutton, Melinda L CIV (US) <melinda.l.sutton2.civ@mail.mil>; Segura, Edward C Col USAF SAF-MR (US) <edward.c.segura.mil@mail.mil>	DP - Deliberative Process	Email discussing cases to be heard at 10/18/18 personnel board.
US00031524	US00031524	No	10/15/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN= =JOHN.K.VALLARIO.CIV>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>	DP - Deliberative Process	Email discussing information to be presented at 10/18/18 personnel board.
US00031525	US00031525	No	10/15/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN= =JOHN.K.VALLARIO.CIV>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>	DP - Deliberative Process	Email discussing information to be presented at 10/18/18 personnel board.
US00031527	US00031527	No	10/16/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN= =JOHN.K.VALLARIO.CIV>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>	DP - Deliberative Process	Email dated 10/16/18 discussing scheduling of HIV cases at SAFPC.
US00031528	US00031528	No	11/30/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN= =JOHN.K.VALLARIO.CIV>	Brady, Jamie S (Scott) CIV USAF SAF-MR (US) <jamie.s.brady.civ@mail.mil>	DP - Deliberative Process	Email dated 11/30/18 within SAF/MR discussing response to HASC inquiry.
US00031529	US00031529	No	11/30/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN= =JOHN.K.VALLARIO.CIV>	Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 11/30/18 discussing response to HASC inquiry.
US00031530	US00031530	No	11/30/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN= =JOHN.K.VALLARIO.CIV>	Brady, Jamie S (Scott) CIV USAF SAF-MR (US) <jamie.s.brady.civ@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 11/30/18 discussing response to HASC inquiry.
US00031531	US00031531	No	1/17/2018	Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR discussing which materials can be presented in considering cases dated 1/17/18.

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BEGIN BATES	END BATES	REDACTIONS	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031532	US00031532	No	7/13/2018	Peel, Brooks T Capt USAF SAF-MR (US) <brooks.t.peel@mail.mil>	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Sams, Kelly M Lt Col USAF SAF-MR (US) <kelly.m.sams.mil@mail.mil>Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 7/13/18 discussing scheduling of meetings for HIV policy discussions.
US00031533	US00031533	No	7/16/2018	Fedrigio, John A SES USAF SAF-MR (US) <john.a.fedrigio.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 7/16/18 discussing scheduling of meetings for HIV policy discussions.
US00031534	US00031534	No	10/26/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email dated 10/26/18 discussing draft of language to be used in AFBP decisions.
US00031535	US00031535	No	10/26/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>	DP - Deliberative Process	Email dated 10/26/18 discussing draft of language to be used in AFBP decisions.
US00031538	US00031538	No	7/23/2018	Sutton, Melinda L CIV (US) <melinda.l.sutton2.civ@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email dated 7/23/18 within SAF/MR discussing scheduling of meetings regarding development of HIV policy.
US00031743	US00031743	No	1/31/2018	Craig, Lisa M Col USAF SAF-MR (US) <lisa.m.craig25.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 2/1/18 discussing draft changes to HIV policy clarification memo.
US00031744	US00031744	No	7/24/2018	Fedrigio, John A SES USAF SAF-MR (US) <john.a.fedrigio.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email dated 7/24/18 discussing proposed changes to HIV evaluation through the DES.
US00031745	US00031745	No	7/18/2018	McCants, Latoya E MSgt USAF SAF-MR (US) <latoya.e.mccants.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 7//18/18 discussing logistics for HIV policy changes.

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US00031746	US00031746	No	10/4/2018	Carson, Horace R CIV USAF AFRBA (US) <horace.r.carson.civ@mail.mil>	Ohman, Mynda L G Col USAF AFRBA (US) <mynda.l.ohman.mil@mail.mil>Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Uiselt, Thomas R (Tom) CIV USAF AFRBA (US) <thomas.r.uiselt.civ@mail.mil>; Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>	DP - Deliberative Process	10/4/18 email within AFRBA discussing possible policy changes within AFRBA due to publication of DoDI 1332.45
US00031747	US00031747	No	11/20/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Toth, Charles B (Charlie) Lt Col USAF SAF-LL (US) <charles.b.toth.mil@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 11/20/18 discussing response to HASC inquiry.
US00031748	US00031748	No	11/20/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Toth, Charles B (Charlie) Lt Col USAF SAF-LL (US) <charles.b.toth.mil@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 11/20/18 discussing response to HASC inquiry.
US00031749	US00031749	No	11/19/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Hodges, Michael G Col USAF 6 MDG (USA) <michael.g.hodges10.mil@mail.mil>	DP - Deliberative Process	Email chain dated 11/19/18 within SAF/MR discussing response to HASC inquiry.
US00031750	US00031750	No	11/19/2018	1081079567A		DP - Deliberative Process	Draft response to HASC inquiry in HIV cases.
US00031766	US00031766	No	11/27/2018	Uiselt, Thomas R (Tom) CIV USAF AFRBA (US) <thomas.r.uiselt.civ@mail.mil>	Nuckles, David P (Crackin) Lt Col USAF SAF-LL (US) <david.p.nuckles.mil@mail.mil>Toth, Charles B (Charlie) Lt Col USAF SAF-LL (US) <charles.b.toth.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain dated 11/27/18 discussing response to HASC inquiry.
US00031767	US00031767	No	11/27/2018	Uiselt, Thomas R (Tom) CIV USAF AFRBA (US) <thomas.r.uiselt.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain dated 11/27/18 discussing response to HASC inquiry.
US00031768	US00031768	No	11/27/2018	Nuckles, David P (Crackin) Lt Col USAF SAF-LL (US) <david.p.nuckles.mil@mail.mil>	Uiselt, Thomas R (Tom) CIV USAF AFRBA (US) <thomas.r.uiselt.civ@mail.mil>Toth, Charles B (Charlie) Lt Col USAF SAF-LL (US) <charles.b.toth.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain dated 11/27/18 discussing response to HASC inquiry.
US00031769	US00031769	No	11/26/2018	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 11/26/18 within SAF/MR discussing response to HASC inquiry.

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US00031771	US00031771	No	1/3/2018	Craig, Lisa M Col USAF SAF-MR (US) <lisa.m.craig25.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain dated 1/3/18 discussing drafting of AFPB memos for HIV cases.
US00031772	US00031772	No	1/3/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Craig, Lisa M Col USAF SAF-MR (US) <lisa.m.craig25.mil@mail.mil>; Storm, Aimee L Col USAF AFRBA (US) <aimee.l.storm.mil@mail.mil>Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 1/3/18 discussing drafting of AFPB memos for HIV cases.
US00031773	US00031773	No	11/7/2018	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR discussing completion of decision memos for HIV cases.
US00031774	US00031774	No	10/17/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	HERN, TAMMY L CIV USAF AFPC AFPC/DPF-QA <tammy.hern@us.af.mil>	DP - Deliberative Process	Email chain between SAF/MR and AFPC discussing data to be used in adjudicating DES cases.
US00031775	US00031775	No	6/8/2018	PALUMBO, GUY M GS-15 USAF AFPC AFPC/DPFD <guy.palumbo.1@us.af.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email between AFPC and SAF/MR discussing changes to adjudication of cases due to clarification memo.
US00031776	US00031776	No	6/8/2018	PALUMBO, GUY M GS-15 USAF AFPC AFPC/DPFD <guy.palumbo.1@us.af.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain between AFPC and SAF/MR dated 6/8/18 discussing HIV clarification memo and proposing discussions about resolving adjudication issues.
US00031777	US00031777	No	6/7/2018	PALUMBO, GUY M GS-15 USAF AFPC AFPC/DPFD <guy.palumbo.1@us.af.mil>	Danaher, Patrick J Col USAF AFMOA (US) <patrick.j.danaher6.mil@mail.mil>; Downes, Karen M Lt Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Hern, Tammy L CIV USAF (US) <tammy.hern@us.af.mil>; Stangle, Jennifer A Lt Col USAF (US) <jennifer.stangle@us.af.mil>Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Tillery, Randy G CIV USAF AFPC (US) <randy.tillery.1@us.af.mil>; Menendez, Damon L Col USAF (US) <damon.menendez@us.af.mil>	DP - Deliberative Process	Email between AFMOA and AFPC discussing June 2018 clarification memo and proposed future actions in regard to DES processing of HIV cases.
US00031778	US00031778	No	6/7/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>	DP - Deliberative Process	Email dated 6/7/18 within SAF/MR discussing HIV clarification memo.

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US00031779	US00031779	No	6/11/2018	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>	DP - Deliberative Process	Email dated 6/7/18 within SAF/MR discussing HIV clarification memo.
US00031780	US00031780	No	9/28/2018	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email dated 9/28/18 within SAF/MR discussing specific information to be addressed in board proceedings prior to board votes.
US00031781	US00031781	No	9/27/2018	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email within SAF/MR discussing preparations for hearing cases after publication of September HIV policy memo.
US00031782	US00031782	No	9/28/2018	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email dated 9/28/18 within SAF/MR discussing preparations for hearing cases after publication of September HIV policy memo.
US00031783	US00031783	No	11/7/2018	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>Dvorak, Mary D Col USAF AFRBA (US) <mary.d.dvorak.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email dated 11/7/18 discussing drafting of memos for final decision.
US00031784	US00031784	No	11/8/2018	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	Dvorak, Mary D Col USAF AFRBA (US) <mary.d.dvorak.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Hodges, Michael G Col USAF 6 MDG (US) <michael.g.hodges10.mil@mail.mil>Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Donato, Robin A Lt Col USAF (US) <robin.a.donato.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR discussing use of fitness assessment scores in DES adjudications.
US00031785	US00031785	No	6/7/2018	Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Lowry, Cheryl L Col USAF AF-SG (US) <cheryl.l.lowry.mil@mail.mil>	DP - Deliberative Process	Email dated 6/7/18 discussing Army and Navy HIV policy.
US00031786	US00031786	No	7/2/2018	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain dated 7/2/18 discussing Army and Navy HIV policies.

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US00031787	US00031787	No	6/21/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email discussing draft staff summary sheet for HIV policy discussion. From within SAF/MR dated 6/21/18.
US00031788	US00031788	No	6/21/2018			DP - Deliberative Process	Staff summary sheet from SAF/MR requesting policy clarification on the HIV clarification memo.
US00031789	US00031789	No	6/20/2018			DP - Deliberative Process	Draft Staff Summary sheet dated 6/21/18 requesting additional review of HIV policy.
US00031791	US00031791	No	6/25/2018			DP - Deliberative Process	Draft staff summary sheet dated 6/22/18 requesting additional review of HIV policy.
US00031792	US00031792	No	6/20/2018			DP - Deliberative Process	Staff summary sheet dated 6/21/18 requesting additional clarification on HIV policy.
US00031793	US00031793	No	11/19/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	STANGLE, JENNIFER A Lt Col USAF AFPC AFPC/DP2NP <jennifer.stangle@us.af.mil>	DP - Deliberative Process	Email chain between AFPC and SAF/MR discussing response to HASC inquiry.
US00031798	US00031798	No	11/20/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR discussing response to HASC inquiry. Dated 11/20/18.
US00031799	US00031799	No	11/20/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR discussing response to HASC inquiry. Dated 11/20/18.
US00031800	US00031800	No	11/20/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Gartland, Charles J Lt Col USAF AFLOA (US) <charles.j.gartland.mil@mail.mil>; Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Palumbo, Guy M CIV USAF AFPC (US) <guy.palumbo.1@us.af.mil>; Hern, Tammy L CIV USAF (US) <tammy.hern@us.af.mil>; Stangle, Jennifer A Lt Col USAF (US) <jennifer.stangle@us.af.mil>; Jolly, Savannah K 1st Lt USAF SAF-MR (USA) <savannah.k.jolly.mil@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>; Toth, Charles B (Charlie) Lt Col USAF SAF-LL (US) <charles.b.toth.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Hodges, Michael G Col USAF 6 MDG	AC - Attorney Client Privilege	Email seeking legal advice from Lt Col Gartland regarding HIV policy.

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US00031801	US00031801	No	11/20/2018	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	Gartland, Charles J Lt Col USAF AFLOA (US) <charles.j.gartland.mil@mail.mil>; Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Palumbo, Guy M CIV USAF AFPC (US) <guy.palumbo.1@us.af.mil>; Hern, Tammy L CIV USAF (US) <tammy.hern@us.af.mil>; Stangle, Jennifer A Lt Col USAF (US) <jennifer.stangle@us.af.mil>; Jolly, Savannah K 1st Lt USAF SAF-MR (USA) <savannah.k.jolly.mil@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>; Toth, Charles B (Charlie) Lt Col USAF SAF-LL (US) <charles.b.toth.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Hodges, Michael G Col USAF 6 MDG	AC - Attorney Client Privilege	Email seeking legal advice from Lt Col Gartland regarding HASC inquiry.
US00031802	US00031802	No	11/20/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JOHN.K.VALLARIO.CIV>	PALUMBO, GUY M GS-15 USAF AFPC AFPC/DPFD <guy.palumbo.1@us.af.mil>; Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Hern, Tammy L CIV USAF (US) <tammy.hern@us.af.mil>; Stangle, Jennifer A Lt Col USAF (US) <jennifer.stangle@us.af.mil>; GARTLAND, CHARLES J Lt Col USAF AFLOA AFLOA/JACL <charles.gartland@us.af.mil>; Jolly, Savannah K 1st Lt USAF SAF-MR (USA) <savannah.k.jolly.mil@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>; TOTH, CHARLES B Lt Col US Air Force SAF SAF/LL <charles.toth@us.af.mil>; Prater, Shane T Col USAF SAF-MR (USA) <shane.t.prater.mil@mail.mil>; Russo, John P Col USAF SAF-MR (US) <john.p.russo.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Hodges, Michael G Col USAF 6 MDG	DP - Deliberative Process	Email discussing response to HASC inquiry.
US00031803	US00031803	No	6/20/2018	Sutton, Melinda L CIV (US) <melinda.l.sutton2.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email within SAF/MR discussing processing of HIV cases after publication of June clarification memo.

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US00031804	US00031804	No	11/1/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	PII - Personal Privacy; DP - Deliberative Process	Email dated 11/1/18 within SAF/MR discussing particulars of non-plaintiff's condition and board deliberations.
US00031805	US00031805	No	11/1/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email dated 11/1/18 within SAF/MR discussing particulars of non-plaintiff's condition and board deliberations.
US00031806	US00031806	No	11/1/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	PII - Personal Privacy; DP - Deliberative Process	Email dated 11/1/18 within SAF/MR discussing particulars of non-plaintiff's condition and board deliberations.
US00031807	US00031807	No	11/1/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	PII - Personal Privacy; DP - Deliberative Process	Email dated 11/1/18 within SAF/MR discussing particulars of non-plaintiff's condition and board deliberations.
US00031808	US00031808	No	7/24/2018	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>	Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.
US00031809	US00031809	No	7/24/2018	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.

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US00031810	US00031810	No	7/24/2018	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>; Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.
US00031811	US00031811	No	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo.
US00031812	US00031812	No	7/24/2018	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.
US00031813	US00031813	No	7/24/2018	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.

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US00031814	US00031814	No	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo.
					Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>; Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil> Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>		
US00031815	US00031815	No	7/24/2018	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>		DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.
US00031816	US00031816	No	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV memo.
					Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil> Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>		
US00031817	US00031817	No	7/24/2018	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>		DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.
US00031818	US00031818	No	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV memo.

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US00031819	US00031819	No	7/24/2018	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.
US00031820	US00031820	No	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo.
US00031821	US00031821	No	7/24/2018	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.
US00031822	US00031822	No	7/24/2018	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.
US00031823	US00031823	No	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition Memo.

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BEGIN BATES	END BATES	REDACTIONS	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031824	US00031824	No	7/24/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =JOHN.K.VALLARIO.CIV>	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>; Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>; Combs, Steven C Col USAF SAF-MR (US) <steven.c.combs2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 7/24/18 discussing proposals for draft of HIV policy memo.
US00031825	US00031825	No	6/12/2018	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>; Harp, Mary J CIV (US) <mary.j.harp.civ@mail.mil>	DP - Deliberative Process	Email within SAF/MR discussing meaning of June 2018 policy letter.
US00031826	US00031826	No	6/13/2018	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email within SAF/MR discussing HIV policy memo.
US00031827	US00031827	No	6/20/2018	Ohman, Mynda L G Col USAF AFRBA (US) <mnynda.l.ohman.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	AC - Attorney Client Privilege; DP - Deliberative Process	Attorney (Ohman) client email discussing HIV policy memo dated 6/20/18.
US00031828	US00031828	No	6/22/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>Vallari o, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>; McCants, Latoya E MSgt USAF SAF- MR (US) <latoya.e.mccants.mil@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	DP - Deliberative Process	Email chain dated 6/22/18 discussing HIV policy clarification memo.
US00031829	US00031829	No	7/24/2018	Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.civ@mail.mil>; Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>	DP - Deliberative Process	Email dated 7/24/18 within SAF/MR discussing HIV policy memo.

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BEGIN BATES	END BATES	REDACTIONS	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031830	US00031830	No	1/6/2018	Teskey, Mark S SES USAF SAF-MR (US) <mark.s.teskey.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email chain within SAF/MR dated 1/6/18 discussing meeting on HIV policy.
US00031831	US00031831	No	1/4/2018	Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Craig, Lisa M Col USAF SAF-MR (US) <lisa.m.craig25.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Storm, Aimee L Col USAF AFRBA (US) <aimee.l.storm.mil@mail.mil>; Snyder, Lisa K Col USAF NGB SG (US) <lisa.k.snyder2.mil@mail.mil>	DP - Deliberative Process	Email chain dated 1/4/18 within SAF/MR and A1 discussing 2017 HIV memo.
US00031832	US00031832	No	6/11/2018	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>	DP - Deliberative Process	Email chain dated 6/11/18 discussing HIV policy memo within SAF/MR.
US00031833	US00031833	No	6/6/2018	1081079567A		DP - Deliberative Process	List of questions for discussion between SAFPC and SAF/MR.
US00031834	US00031834	No	6/25/2018			DP - Deliberative Process	Staff summary sheet dated 6/22/18 requesting additional guidance on HIV policy.
US00031835	US00031835	No	6/20/2018			DP - Deliberative Process	Draft staff summary sheet dated 6/21/18 requesting additional information on HIV policy.
US00031838	US00031838	No	6/11/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	Fedrico, John A SES USAF SAF-MR (US) <john.a.fedrico.civ@mail.mil>Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>; Vallario, John K CIV USAF SAF-MR (US) <john.k.vallario.civ@mail.mil>; Pinkston, Brian S Col USAF (US) <brian.s.pinkston.mil@mail.mil>	DP - Deliberative Process	Email dated 6/11/18 within SAF/MR discussing ongoing development of HIV policy.
US00033252	US00033252	No	6/22/2018	1081079567A		DP - Deliberative Process	Spreadsheet containing deliberative application of DODI 1332.18 fitness criteria.
US00033253	US00033253	No	7/24/2018	Lt Col Tom Joyce, SAF/MRM		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo
US00033254	US00033254	No	11/20/2018	1081079567A		AC - Attorney Client Privilege	Draft response to HASC with legal advice from agency counsel.
US00033255	US00033255	No	11/19/2018	1081079567A		DP - Deliberative Process	Draft response to HASC inquiry.
US00033261	US00033261	No	6/25/2018			DP - Deliberative Process	Draft Staff Summary Sheet requesting review of HIV policy dated 6/22/18 by SAF/MRB
US00033262	US00033262	No	6/20/2018			DP - Deliberative Process	Draft staff summary sheet requesting review of HIV discharge policy by SAF/MRB dated 6/21/18.
US00033265	US00033265	No	9/5/2018	Lt Col Tom Joyce, SAF/MRM		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo

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US00033266	US00033266	No	2/8/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV memo
US00033267	US00033267	No	5/9/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of memo titled Airmen with Chronic and/or Progressive diseases
US00033272	US00033272	No	2/14/2019	Snyder, Lisa K Col USAF NGB SG (USA) <lisa.k.snyder2.mil@mail.mil>	Herrera, Christina H MSgt USAF SAF-MR (USA) <christina.h.herrera.mil@mail.mil>	DP - Deliberative Process	Email chain dated 11/7/18 discussing drafting of SAFPC decision memos for HIV cases.

# EXHIBIT D

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

RICHARD ROE; VICTOR VOE; and	)	
OUTSERVE-SLDN, INC.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
PATRICK M. SHANAHAN, in his official	)	
capacity as Acting Secretary of Defense;	)	
HEATHER A. WILSON, in her official	)	
capacity as Secretary of the Air Force; and	)	
the UNITED STATES DEPARTMENT OF	)	
DEFENSE,	)	
	)	
Defendants.	)	

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No. 1:18-cv-1565-LMB-IDD

**DEFENDANTS’ OBJECTIONS AND RESPONSES TO PLAINTIFFS’  
SECOND SET OF INTERROGATORIES TO DEFENDANTS (NOS. 14-20)**

Pursuant to Local Rule 26(C) and Federal Rule of Civil Procedure 33, Defendants, through undersigned counsel, provide the following objections and responses to Plaintiffs’ Second Set of Interrogatories (Nos. 14-20). In presenting these objections, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

In Defendants’ Objections to Plaintiffs’ First Set of Interrogatories (Nos. 1-13), Defendants objected that some of Plaintiffs’ interrogatories contained multiple discrete subparts. Plaintiffs’ Second Set of Interrogatories contain an additional seven interrogatories. Defendants therefore object to Plaintiffs’ having served more than the allowed 20 interrogatories.

Additionally, Defendants reaffirm that the Administrative Procedure Act provides the

proper vehicle for Plaintiffs' constitutional challenges to agency action, including agency policies, and therefore Plaintiffs' claims should be reviewed by the Court on an administrative record and discovery should not be permitted. *See* 5 U.S.C. § 706.

**OBJECTIONS APPLICABLE TO DEFINITIONS AND INSTRUCTIONS THAT PLAINTIFFS STATE WILL APPLY TO EACH INTERROGATORY**

1. Defendants object to Plaintiffs' interrogatories to the extent they seek information protected by the attorney-client privilege, the attorney work-product privilege, or the deliberative process privilege.

2. Defendants object to Plaintiffs' Definition No. 3 contained in Plaintiffs' First Set of Interrogatories to the extent that it seeks information in the custody of the U.S. Army, U.S. Navy, U.S. Marine Corps, or U.S. Coast Guard. Plaintiffs Roe and Voe, who are airmen in the U.S. Air Force, are the only Plaintiffs to have alleged an injury in this case. Information in the custody and control of Military Departments to which Plaintiffs Roe and Voe do not belong have no bearing on this case, and responding to requests for that information would impose a significant burden on these Military Departments. Defendants further object to Plaintiffs' Definition No. 3 contained in Plaintiffs' First Set of Interrogatories as overly broad and unduly burdensome to the extent that it encompass all "current or former officials, officers, subordinates, employees, contractors, agents, and attorneys." The Department of Defense is a large, worldwide organization with millions of employees. There is no way to gather information or records from every military unit, every Navy ship, every Air Force wing, and every Coast Guard cutter. And the time, expense, and effort to conduct such a worldwide search is not proportionate to the needs of this case.

3. Defendants object to Definition No. 8 contained in Plaintiffs' First Set of Interrogatories to the extent that it seeks information that is protected by the deliberative

process privilege, as is inherent in the inclusion of “transfers between persons,” “memoranda to file,” “any written letter,” “any telephone call,” “any conversation or meeting,” and “formal or informal.” Defendants also object to this definition on the ground that the category of information it seeks is overly broad and unduly burdensome given the size of the organizations identified by Plaintiffs and the time period encompassed by these interrogatories. Defendants further object to Definition No. 8 contained in Plaintiffs’ First Set of Interrogatories to the extent it seeks versions of policy documents that have been superseded and therefore have no bearing on the claims in this case.

4. Defendants object to Definition No. 9 contained in Plaintiffs’ First Set of Interrogatories to the extent that it seeks information that is protected by the deliberative process privilege, as is inherent in the inclusion of “notes,” “memoranda,” “summaries or records of telephone conversations,” “summaries or records of personal conversations or meetings,” “diaries,” “plans,” and “drafts of documents.” Defendants also object to this definition on the ground that the category of information it seeks is overly broad and unduly burdensome given the size of the organizations identified by Plaintiffs and the time period encompassed by these interrogatories. Defendants further object to Definition No. 9 contained in Plaintiffs’ First Set of Interrogatories to the extent it seeks versions of policy documents that have been superseded and therefore have no bearing on the claims in this case.

5. Defendants object to Definition No. 11 contained in Plaintiffs’ First Set of Interrogatories, including its five subparts, to the extent that it seeks to require Defendants to create or otherwise produce documents not already in existence. *See* Fed. R. Civ. P. 34.

6. Defendants object to Definition No. 13 contained in Plaintiffs’ First Set of Interrogatories to the extent that it seeks information that is protected by the deliberative process privilege, as is inherent in the phrases “reflecting,” “discussing,” “commenting on,”

“contradicting,” and “memorializing.”

**OBJECTIONS AND RESPONSES TO SPECIFIC INTEROGATORIES**

**INTERROGATORY NO. 14**

Identify all reasons that an Airman with a diagnosis of HIV cannot be deployed to the CENTCOM Area of Responsibility.

**OBJECTIONS:** Defendants object to this interrogatory on the basis that it is overly broad and unduly burdensome because Plaintiffs’ claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Scheduling Order (ECF No. 32), Defendants object to the extent this interrogatory seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege.

Defendants further object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of this case. Specifically, Plaintiffs Roe and Voe are the only individuals alleged to have been injured by Defendants’ regulations and policies. Requests for this substantial amount of information are neither relevant to any party’s claims or defenses nor proportional to the needs of this case. *See* Fed. R. Civ. P. 26(b)(1).

To the extent it could be construed as a contention interrogatory, pursuant to Federal Rule of Civil Procedure 33(a)(2), Defendants object to this interrogatory on the grounds that it is premature in light of the present stage of discovery. Defendants further object to this interrogatory because “‘contention interrogatories’ are overly broad and unduly burdensome on their face if they seek ‘all facts’ supporting a claim or defense, such that the answering party is required to provide a narrative account of its case.” *Mach. Sols., Inc. v. Doosan Infracore Am. Corp.*, 323 F.R.D. 522, 528 (D.S.C. 2018).

Defendants further object to this interrogatory to the extent it seeks information

regarding individuals other than Plaintiffs Roe and Voe that is covered by the Privacy Act, 5 U.S.C. § 552(a), or by any other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548.

Furthermore, because the answer to this interrogatory can be derived from publicly available regulations and policies, or documents that Defendants have produced or will produce to Plaintiffs, the burden of deriving or ascertaining the answer is substantially the same for both parties and Plaintiffs cannot shift the cost of doing so to Defendants. *See* Fed. R. Civ. P. 33(d).

Defendants further object to this interrogatory on the ground that Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1).

Defendants further object to this interrogatory on the ground that the terms “diagnosis of HIV” and “deployed” are undefined, vague, and ambiguous.

Defendants further object to this interrogatory to the extent that it is properly the subject of expert testimony. Defendants will disclose and permit discovery in connection with the opinions of the experts that they intend to call at trial only as required by the schedule established by the Court and in accordance with Rule 26 of the Federal Rules of Civil Procedure.

**RESPONSE:** Subject to and without waiving the foregoing objections and construing this interrogatory as a single request to set forth the primary medical rationale for classifying HIV as a deployment-limiting condition within DoDI 6490.07 and CENTCOM MOD 13, and construing “with a diagnosis of HIV” to mean any stage of the disease, Defendants respond that the following considerations informed the decision to classify HIV as a deployment-limiting condition within DoDI 6490.07 and CENTCOM MOD 13: (1) the safety of the

military blood supply; (2) the potential adverse health consequences to an Airman with an HIV diagnosis who is unable to receive treatment; (3) the risk to the Airman should the condition worsen if there is inadequate compliance with medical therapy; (4) the risk for secondary infection during trauma management in a deployed setting; (5) the consumption of finite medical resources to obtain necessary screening and management of medical issues both related and unrelated to HIV; and (6) the possible mission degradation should the Airman not be able to complete their assigned duties due to any of the foregoing concerns.

**INTERROGATORY NO. 15**

Identify any Airmen or groups of Airmen (by condition) who have been allowed to deploy even though they cannot donate blood (e.g., individuals who recently completed treatment for malaria; individuals who recently received tattoos in states that do not regulate tattoo facilities; sexually active gay or bisexual men).

**OBJECTIONS:** Defendants object to this interrogatory on the basis that it is overly broad and unduly burdensome because Plaintiffs' claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Scheduling Order (ECF No. 32), Defendants object to the extent this interrogatory seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege.

Defendants further object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of this case. This interrogatory places no time limits whatsoever on the information it seeks and therefore calls for a substantial amount of information that is neither relevant to any party's claims or defenses nor proportional to the needs of this case. *See* Fed. R. Civ. P. 26(b)(1). Additionally, this interrogatory places no limits on the deploying agency or type of deployment, and therefore calls for a substantial

amount of information that is neither relevant to any party's claims or defenses nor proportional to the needs of this case.

Defendants further object to this interrogatory to the extent it seeks information regarding individuals other than Plaintiffs Roe and Voe that is covered by the Privacy Act, 5 U.S.C. § 552(a), or by any other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548.

Defendants further object to this interrogatory on the ground that the terms "Airmen or groups of Airmen," "(by condition)," "allowed," "deploy," and "cannot donate blood" are undefined, vague, and ambiguous.

Defendants further object to this interrogatory on the ground that Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1).

**RESPONSE:** Subject to and without waiving the foregoing objections and construing this interrogatory as a single request directed to the Armed Services Blood Program ("ASBPO") to identify categories of Service members who have been allowed to serve during a contingency deployment, as defined in DoDI 6490.07, and who are not eligible to donate blood, Defendants respond that DoD does not maintain a list of categories of individuals who have been permitted to deploy even though they cannot donate blood due to the variables presented in the donation of blood.

The ASBPO is chartered by the DoD to coordinate the provisions of blood products throughout the Services to meet medical requirements during national emergencies and overseas military operations. ASBP Blood Program Letters (BPLs) are issued by ASBPO on items that affect one or multiple components of the ASBP. Addressed within the BPLs are updates to the Standardized Donor Deferral Lists, which are used to determine donor eligibility.

While the BPLs address several areas including tattoos, foreign travel, medication, and medical conditions, they do not expressly address deployment in support of contingency or combat operations.

**INTERROGATORY NO. 16**

Explain in detail each of the reasons underlying DoD's policies that, absent a medical waiver or exception to policy, prohibit HIV-positive persons from deploying to regular operations or contingency operations areas, as set forth in, *inter alia*, DoDI 6490.07.

**OBJECTIONS:** Defendants object to this interrogatory on the basis that it is overly broad and unduly burdensome because Plaintiffs' claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Scheduling Order (ECF No. 32), Defendants object to the extent this interrogatory seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege.

To the extent it could be construed as a contention interrogatory, pursuant to Federal Rule of Civil Procedure 33(a)(2), Defendants object to this interrogatory on the grounds that it is premature in light of the present stage of discovery. Defendants further object to this interrogatory because "'contention interrogatories' are overly broad and unduly burdensome on their face if they seek 'all facts' supporting a claim or defense, such that the answering party is required to provide a narrative account of its case." *Mach. Sols., Inc. v. Doosan Infracore Am. Corp.*, 323 F.R.D. 522, 528 (D.S.C. 2018).

Defendants object to this interrogatory's use of "regular operations" and "contingency operations," which are vague and ambiguous. Defendants further object to this interrogatory's use of "HIV-positive persons" because that phrase is vague and undefined. Defendants also object to this interrogatory because "DoD's policies" and "*inter alia*" are vague and

ambiguous, and also because those phrases are overly broad and unduly burdensome.

Defendants further object to this interrogatory on the ground that Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Plaintiffs request a detailed explanation of the reasons underlying each version of an undefined number of DoD policies. Thus, this interrogatory contains an unknown number of policies with an unknown number of distinct subparts, and Plaintiffs have served more than the allowed 20 interrogatories.

Defendants further object to this interrogatory to the extent that it is properly the subject of expert testimony. Defendants will disclose and permit discovery in connection with the opinions of the experts that they intend to call at trial only as required by the schedule established by the Court and in accordance with Rule 26 of the Federal Rules of Civil Procedure.

**RESPONSE:** Subject to and without waiving the foregoing objections and construing this interrogatory as a single request to identify DoD's rationale for the policies governing the availability of Service members to serve during a contingency deployment, as defined in DoDI 6490.07, Defendants respond that DoD set forth its complete reasoning underlying its policies in the 2014 and 2018 reports to Congress. The 2014 report to Congress is publically available at: <https://health.mil/Reference-Center/Reports/2014/09/22/DoD-Personnel-Policies-Regarding-Members-of-the-Armed-Forces-with-HIV-or-Hepatitis-B>. H.R. 3304, NDAA for FY 2014, Sec. 572. The 2018 report to Congress is publically available at: <https://www.health.mil/Reference-Center/Congressional-Testimonies/2018/08/27/Personnel-Policies-Regarding-Members-of-the-Armed-Forces-Infected-with-HIV>. H.R. 2810, HASC Report for FY 2018, 115-200, Pg. 148-149.

**INTERROGATORY NO. 17**

Identify all medical conditions other than HIV that require taking medication on a regular basis but do not inhibit or restrict an Airman's ability to deploy.

**OBJECTIONS:** Defendants object to this interrogatory on the basis that it is overly broad and unduly burdensome because Plaintiffs' claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Scheduling Order (ECF No. 32), Defendants object to the extent this interrogatory seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege.

To the extent it could be construed as a contention interrogatory, pursuant to Federal Rule of Civil Procedure 33(a)(2), Defendants object to this interrogatory on the grounds that it is premature in light of the present stage of discovery. Defendants further object to this interrogatory because "'contention interrogatories' are overly broad and unduly burdensome on their face if they seek 'all facts' supporting a claim or defense, such that the answering party is required to provide a narrative account of its case." *Mach. Sols., Inc. v. Doosan Infracore Am. Corp.*, 323 F.R.D. 522, 528 (D.S.C. 2018).

Because the answer to this interrogatory can be derived from publicly available regulations and policies, or documents that Defendants have produced or will produce to Plaintiffs, the burden of deriving or ascertaining the answer is substantially the same for both parties and the Plaintiffs cannot shift the cost of doing so to the Defendants. *See* Fed. R. Civ. P. 33(d).

Defendants further object to this interrogatory on the ground that Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1).

Defendants further object to this interrogatory to the extent it seeks information regarding individuals other than Plaintiffs Roe and Voe that is covered by the Privacy Act, 5 U.S.C. § 552(a), or by any other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548.

Defendants further object to this interrogatory on the ground that the terms “all medical conditions other than HIV,” “require taking medication,” “regular basis,” “inhibit or restrict,” and “ability to deploy” are undefined, vague, ambiguous, overly broad, and unduly burdensome.

Defendants further object to this interrogatory to the extent that it is properly the subject of expert testimony. Defendants will disclose and permit discovery in connection with the opinions of the experts that they intend to call at trial only as required by the schedule established by the Court and in accordance with Rule 26 of the Federal Rules of Civil Procedure.

**RESPONSE:** Subject to and without waiving the foregoing objections and construing this interrogatory as a single request to identify medical conditions that usually preclude service during contingency deployments, as defined in DoDI 6490.07, Defendants respond that Enclosure 3 to DoDI 6490.07 sets forth a non-exhaustive list of medical conditions that usually preclude contingency deployment. As stated in that document, “[a] list of all possible diagnoses and their severity that may cause an individual to be potentially non-deployable, pending further evaluation, would be too extensive. Medical evaluators must consider climate, altitude, rations, housing, duty assignment, and medical services available in theater when deciding whether an individual with a specific medical condition is deployable. In general, individuals with the conditions in paragraphs a. through h. of this enclosure, based upon a

medical assessment as described in Enclosure 2 and Reference (1), shall not deploy unless a waiver is granted.”

**INTERROGATORY NO. 18**

Identify all medical conditions other than HIV that require medical monitoring through a visit with a healthcare provider one or more times a year but do not inhibit or restrict an Airman’s ability to deploy.

**OBJECTIONS:** Defendants object to this interrogatory on the basis that it is overly broad and unduly burdensome because Plaintiffs’ claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Scheduling Order (ECF No. 32), Defendants object to the extent this interrogatory seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege.

To the extent it could be construed as a contention interrogatory, pursuant to Federal Rule of Civil Procedure 33(a)(2), Defendants object to this interrogatory on the grounds that it is premature in light of the present stage of discovery. Defendants further object to this interrogatory because “‘contention interrogatories’ are overly broad and unduly burdensome on their face if they seek ‘all facts’ supporting a claim or defense, such that the answering party is required to provide a narrative account of its case.” *Mach. Sols., Inc. v. Doosan Infracore Am. Corp.*, 323 F.R.D. 522, 528 (D.S.C. 2018).

Because the answer to this interrogatory can be derived from publicly available regulations and policies, or documents that Defendants have produced or will produce to Plaintiffs, the burden of deriving or ascertaining the answer is substantially the same for both parties and the Plaintiffs cannot shift the cost of doing so to the Defendants. *See* Fed. R. Civ. P. 33(d).

Defendants further object to this interrogatory on the ground that Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1).

Defendants further object to this interrogatory to the extent it seeks information regarding individuals other than Plaintiffs Roe and Voe that is covered by the Privacy Act, 5 U.S.C. § 552(a), or by any other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548.

Defendants further object to this interrogatory on the ground that the terms “all medical conditions other than HIV,” “require medical monitoring,” “visit with a healthcare provider,” “inhibit or restrict,” and “ability to deploy” are undefined, vague, ambiguous, overly broad, and unduly burdensome.

Defendants further object to this interrogatory to the extent that it is properly the subject of expert testimony. Defendants will disclose and permit discovery in connection with the opinions of the experts that they intend to call at trial only as required by the schedule established by the Court and in accordance with Rule 26 of the Federal Rules of Civil Procedure.

**RESPONSE:** Subject to and without waiving the foregoing objections and construing this interrogatory as a single request to identify medical conditions that do not usually preclude service during contingency deployments, as defined in DoDI 6490.07, Defendants respond that it is not possible to identify all medical conditions that require medical monitoring through a visit with a healthcare provider one or more times a year due to the individualized nature of healthcare. Enclosure 3 to DoDI 6490.07 enumerates the conditions that preclude deployment without a waiver from the Service and the Combatant Command to which the service member will deploy.

**INTERROGATORY NO. 19**

Identify all medical conditions other than HIV that require medical monitoring through blood testing one or more times a year but do not inhibit or restrict an Airman's ability to deploy.

**OBJECTIONS:** Defendants object to this interrogatory on the basis that it is overly broad and unduly burdensome because Plaintiffs' claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Scheduling Order (ECF No. 32), Defendants object to the extent this interrogatory seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege.

To the extent it could be construed as a contention interrogatory, pursuant to Federal Rule of Civil Procedure 33(a)(2), Defendants object to this interrogatory on the grounds that it is premature in light of the present stage of discovery. Defendants further object to this interrogatory because "'contention interrogatories' are overly broad and unduly burdensome on their face if they seek 'all facts' supporting a claim or defense, such that the answering party is required to provide a narrative account of its case." *Mach. Sols., Inc. v. Doosan Infracore Am. Corp.*, 323 F.R.D. 522, 528 (D.S.C. 2018).

Because the answer to this interrogatory can be derived from publicly available regulations and policies, or documents that Defendants have produced or will produce to Plaintiffs, the burden of deriving or ascertaining the answer is substantially the same for both parties and the Plaintiffs cannot shift the cost of doing so to the Defendants. *See* Fed. R. Civ. P. 33(d).

Defendants further object to this interrogatory on the ground that Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve

under Federal Rule of Civil Procedure 33(a)(1).

Defendants further object to this interrogatory to the extent it seeks information regarding individuals other than Plaintiffs Roe and Voe that is covered by the Privacy Act, 5 U.S.C. § 552(a), or by any other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548.

Defendants further object to this interrogatory on the ground that the terms “all medical conditions other than HIV,” “require medical monitoring,” “inhibit or restrict” and “ability to deploy” are undefined, vague, ambiguous, overly broad, and unduly burdensome.

Defendants further object to this interrogatory to the extent that it is properly the subject of expert testimony. Defendants will disclose and permit discovery in connection with the opinions of the experts that they intend to call at trial only as required by the schedule established by the Court and in accordance with Rule 26 of the Federal Rules of Civil Procedure.

**RESPONSE:** Subject to and without waiving the foregoing objections and construing this interrogatory as a single request to identify medical conditions that require blood testing and that do not usually preclude service during contingency deployments, as defined in DoDI 6490.07, Defendants respond that it is not possible to categorically state that any particular medical condition requiring medical monitoring through blood testing one or more times a year does not inhibit or restrict a service member’s ability to deploy. Based on an individual’s diagnosis and treatment for their medical condition(s), blood testing may be required one or more times a year to monitor the status of an acute or chronic disease state, and/or for medication treatment for adverse drug reactions. Determinations of deployability are made by trained DoD health-care providers based on information obtained in the medical assessment described in section 1 of Enclosure 2 of DoDI 6490.07. DoD personnel with any of the medical

conditions in Enclosure 3, and based on a medical assessment, shall not deploy unless a waiver is granted. Enclosure 3 to DoDI 6490.07 sets forth a non-exhaustive list of medical conditions that preclude deployment in support of a contingency or combat operation.

**INTERROGATORY NO. 20**

Identify all medical conditions other than HIV that are monitored while deployed, as contemplated by CENTCOM Mod 13, ¶ 15.C.1.C.

**OBJECTIONS:** Defendants object to this interrogatory on the basis that it is overly broad and unduly burdensome because Plaintiffs' claims should properly be reviewed on an administrative record and discovery should not be permitted. Recognizing, however, that discovery has been ordered in this case, *see* Scheduling Order (ECF No. 32), Defendants object to the extent this interrogatory seeks information that is protected by the attorney-client privilege, attorney work product, and/or deliberative process privilege.

To the extent it could be construed as a contention interrogatory, pursuant to Federal Rule of Civil Procedure 33(a)(2), Defendants object to this interrogatory on the grounds that it is premature in light of the present stage of discovery.

Defendants further object to this interrogatory because “‘contention interrogatories’ are overly broad and unduly burdensome on their face if they seek ‘all facts’ supporting a claim or defense, such that the answering party is required to provide a narrative account of its case.” *Mach. Sols., Inc. v. Doosan Infracore Am. Corp.*, 323 F.R.D. 522, 528 (D.S.C. 2018).

Because the answer to this interrogatory can be derived from publicly available regulations and policies, or documents that Defendants have produced or will produce to Plaintiffs, the burden of deriving or ascertaining the answer is substantially the same for both parties and the Plaintiffs cannot shift the cost of doing so to the Defendants. *See* Fed. R. Civ. P. 33(d).

Defendants further object to this interrogatory on the ground that Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1).

Defendants further object to this interrogatory to the extent it seeks information regarding individuals other than Plaintiffs Roe and Voe that is covered by the Privacy Act, 5 U.S.C. § 552(a), or by any other medical privacy laws such as HIPAA, P.L. 104-191, 100 Stat. 2548.

Defendants further object to this interrogatory on the ground that the terms “all medical conditions other than HIV,” “monitored,” “while deployed,” and “as contemplated” are undefined, vague, ambiguous, overly broad, and unduly burdensome.

**RESPONSE:** Subject to and without waiving the foregoing objections and construing this interrogatory as seeking an explanation of the primary purpose of paragraph 15.C.1.C of MOD 13, Defendants respond that within CENTCOM there is a population of personnel, primarily contractors, who are deployed within CENTCOM for years at a time. These personnel require periodic physicals to ensure their continued medical readiness and to renew their medical clearances and waivers. In conducting a physical contemplated by paragraph 15.C.1.C of MOD 13, medical personnel could monitor conditions such as diabetes, heart disease, anemia, asthma, or other conditions that could change while deployed. The nature or frequency of monitoring would be guided by the individual diagnosis and associated clinical standards subject to available medical resources.

DATE: March 15, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above document was served on this 15th day of March, 2019, to the following counsel of record via electronic mail.

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

RICHARD ROE, ET AL.,

Plaintiffs,

v.

PATRICK M. SHANAHAN, ET AL.,

Defendants.

NO. 1:18-CV-01565-LMB-IDD

**[Proposed] ORDER COMPELLING PRODUCTION OF DOCUMENTS AND  
INFORMATION**

Upon consideration of Plaintiffs’ Motion to Compel Documents and Information Withheld on the Basis of Deliberative Process Privilege, it is hereby

ORDERED that the Plaintiffs’ motion is GRANTED; and it is further

ORDERED that on or before March \_\_\_\_, 2019, at 5:00 p.m., Defendants shall supplement their production of documents and things to provide documents and information withheld on the basis of deliberative process privilege; and it is further

ORDERED that Defendants shall offer witnesses who were instructed not to answer questions on the basis of the deliberative process to be redeposed as to those matters.

Date: \_\_\_\_\_

\_\_\_\_\_

UNITED STATES MAGISTRATE JUDGE