

Plaintiffs again ask this Court to hold that broad categories of deliberative and predecisional documents are wholly unprotected by the deliberative process privilege. In their motion, Plaintiffs decline to meaningfully identify specific documents for which Plaintiffs' need outweighs the Government's interest in nondisclosure. Instead, Plaintiffs ask this Court to make the sweeping judgment that the deliberative process privilege is unavailable in this case as a matter of law, despite citing no Fourth Circuit or Supreme Court authority for that proposition, and despite this Court having implicitly rejected Plaintiffs' argument in the related *Harrison* case. In addition to being contrary to law, such a holding would undermine effective military decision-making by telegraphing to military policymakers that previously confidential discussions about sensitive policy matters are available to any plaintiff alleging that a government decision was driven by some vague and undefined bias.

Defendants are mindful of the Court's ruling on a similar motion to compel in the *Harrison* case, but respectfully maintain that each of the documents at issue in the present motion have been appropriately withheld.¹ These documents are predecisional and deliberative, and the

¹ Plaintiffs state that there were originally 222 documents at issue in this motion, but that Plaintiffs withdrew their challenge to 61 voting sheets. However, there are 68 voting sheets (rather than 61) included in the original set of 222 documents. Thus, there were properly 154 documents at issue at the time Plaintiffs filed their motion. Since that time, and in an effort to narrow the issues before the Court, the Air Force has decided to withdraw its assertions of the deliberative process privilege for 20 documents concerning a particular board, 31 documents related to an inquiry from the House Armed Services Committee, and 11 documents that include Air Force personnel requesting information about Air Force HIV policy. Additionally, there are 3 documents that Defendants do not consider to be in dispute because they are protected by the attorney-client privilege as well as the deliberative process privilege. The Bates numbers of those documents are US00031827, US00031948, and US00031964.

In sum, Defendants believe that 89 documents remain in dispute. Defendants have attached (as Exhibit A) a declaration describing those documents and explaining why they are protected by the deliberative process privilege. Twenty-one of the withheld documents contain predecisional

Government's interest in nondisclosure far outweighs any purported benefit that Plaintiffs would gain by receiving them. And because Plaintiffs have not meaningfully explained why they seek to compel specific documents, the only question properly before the Court is whether the deliberative process privilege is entirely unavailable in this case. That question must be answered in the negative.

ARGUMENT

Plaintiffs' motion relies primarily on their contention that the deliberative process privilege is unavailable in this case as a matter of law, and includes only conclusory and unsupported assertions that none of the challenged documents would satisfy the privilege. Plaintiffs do not meaningfully dispute that the documents the Government has withheld under the deliberative process privilege are predecisional and deliberative. *See City of Va. Beach v. Dep't of Commerce*, 995 F.2d 1247, 1253 (4th Cir. 1993). Instead, Plaintiffs contend that the privilege does not apply as a matter of law either because the Government's intent is at issue or because the Government's "discriminatory" policy amounts to misconduct. But neither contention finds any basis in Fourth Circuit precedent. Nor do Plaintiffs' overbroad and conclusory assertions permit the Court to meaningfully balance Plaintiffs' asserted need for deliberative documents with the Government's interest in nondisclosure of deliberative information concerning the development of a military policy. Moreover, even if the Court chooses to balance Plaintiffs' general assertions of need with the Government's general interest in nondisclosure, rather than conduct a document-by-document

deliberations concerning individual cases within the Disability Evaluation System. A list of those documents is attached as Exhibit B. The remaining 68 documents contain predecisional deliberations concerning the development of policy regarding the retention of HIV-positive Airmen. A list of those documents is attached as Exhibit C.

review, it is clear that the Government's interest outweighs Plaintiffs'.

I. The Deliberative Process Privilege Is A Well-Established Protection of Internal Government Functions.

The deliberative process privilege protects the Government's decision-making process by shielding from disclosure documents "reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975) (citation omitted). "This privilege is designed to protect the quality of administrative decisionmaking by ensuring that it is not done 'in a fishbowl.'" *City of Va. Beach*, 995 F.2d at 1252 (quoting *EPA v. Mink*, 410 U.S. 73, 87 (1973)).

Thus, the privilege encourages free-ranging discussion of alternatives; prevents public confusion that might result from the premature release of such nonbinding deliberations; and insulates against the chilling effect likely were officials to be judged not on the basis of their final decisions, but "for matters they considered before making up their minds."

Id. at 1252-53 (citations omitted); *see also Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8-9 (2001) ("The deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance the quality of agency decisions, by protecting open and frank discussion among those who make them within the Government." (quotation omitted)).

"Documents withheld or redacted pursuant to the deliberative process privilege must be both 'predecisional' and 'deliberative.'" *Rein v. U.S. Patent & Trademark Office*, 553 F.3d 353, 372 (quoting *City of Va. Beach*, 995 F.2d at 1253). "Predecisional documents are 'prepared in order to assist an agency decisionmaker in arriving at his decision.'" *City of Va. Beach v. Dep't of*

Commerce, 995 F.2d 1247, 1253 (quoting *Renegotiation Bd. v. Grumman Aircraft Eng'g Corp.*, 421 U.S. 168, 184 (1975)). “Deliberative material ‘reflects the give-and-take of the consultative process,’ by revealing the manner in which the agency evaluates possible alternative policies or outcomes.” *Id.* (quoting *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980)).

“The deliberative process privilege is a qualified one; that is, where a party can establish the existence of a sufficient need for the information that outweighs any harm from its production, the privilege may be overcome.” *Heyer v. Bureau of Prisons*, No. 5:11-CT-03118-D, 2014 WL 4545946, at *3 (E.D.N.C. Sept. 12, 2014) (citing *Scott v. PPG Indus., Inc.*, 142 F.R.D. 291, 294 (N.D.W. Va. 1992)). “The burden of showing an overriding need for the information rests with the party seeking it.” *Id.* (citing *Redland Soccer Club, Inc. v. Dep’t of Army*, 55 F.3d 827, 853 (3d Cir. 1995) (“The party seeking discovery bears the burden of showing that its need for the documents outweighs the government’s interest.”)).² Courts have used a four-factor test in balancing the deliberative process privilege with the need of the party seeking disclosure: “(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 v. Liggett Grp. Inc.*, 812 F.2d 1400 (4th Cir. 1987) (unpublished disposition) (quoting *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984)); *see also Heyer*, 2014 WL 4545946, at *3

² *See also United States v. Farley*, 11 F.3d 1385, 1389 (7th Cir. 1993) (stating that the plaintiff had to show a “particularized need” for specific documents to overcome the privilege); *Marriott Int’l Resorts, L.P. v. United States*, 437 F.3d 1302, 1307 (Fed. Cir. 2006) (stating that a plaintiff must show a “compelling need” to overcome the privilege).

(quoting *Scott*, 142 F.R.D. at 294).

The *Cipollone* balancing test is to be applied on a document-by-document basis. See *Brown v. Meehan*, No. 3:14-CV-442, 2014 WL 4701170, at *3 (E.D. Va. Sept. 22, 2014) (concluding that the court must analyze whether the deliberative process privilege applies “on a case-by-case basis by balancing the damage to the executive department or the public interest and the potential harm to the plaintiffs from nondisclosure”); *Spell v. McDaniel*, 591 F. Supp. 1090, 1116 (E.D.N.C. 1984) (concluding that the deliberative process privilege “must be demonstrated on a case by case basis by performance of a balancing function”); see also *Murray Energy Corp. v. McCarthy*, No. 5:14-CV-39, 2016 WL 6902359, at *4 (“[T]he deliberative process privilege is so dependent upon the individual document and the role it plays in the administrative process.”) (quoting *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 867 (D.C. Cir. 1980)). Thus, a challenge to an assertion of the privilege requires analysis that is particularized to specific documents.

II. Plaintiffs’ Contention That the Deliberative Process Privilege Does Not Apply As A Matter Of Law Is Meritless.

A. No Fourth Circuit Authority Supports Plaintiffs’ Arguments.

Plaintiffs argue that the deliberative process privilege is “*per se* inapplicable” in cases where the complaint alleges any generalized form of governmental misconduct or improper motivation. Pls.’ Mem. at 8-11. That sweeping proposition is incorrect, and, tellingly, Plaintiffs cite no Fourth Circuit or Supreme Court authority to support it. Plaintiffs instead rely on two cases from the D.C. Circuit, *see id.* at 9-11, but those cases, as discussed below, are inapplicable. In any event, there is no real dispute as to how this Court should analyze the deliberative process privilege: in the Fourth Circuit, district courts routinely apply the balancing test outlined by

Cipollone,³ even when intent is at issue or misconduct is alleged. *See, e.g., Murray Energy Corp. v. McCarthy*, No. 5:14-CV-39, 2015 WL 7017009, at *3 (N.D.W. Va. Nov. 12, 2015) (“[P]ossible government misconduct or deficiencies in the deliberative process are factored into any analysis and, where present, weigh in favor of denying the privilege.”); *FDIC v. Hatziyannis*, 180 F.R.D. 292, 294 (D. Md. 1998) (applying the balancing test even when defendants “raised allegations of bad faith and unfair dealing”); *Heyer*, 2014 WL 4545946, at *4-6 (applying the balancing test even where plaintiffs alleged deliberate indifference); *cf. Bethune-Hill v. Va. State Bd. of Elections*, 114 F. Supp. 3d 323, 339 (E.D. Va. 2015) (applying the balancing test from the deliberative process privilege context to the state legislative privilege context, even where plaintiffs alleged unlawful racial gerrymanders in violation of the Equal Protection Clause).

Plaintiffs’ contrary authority is unpersuasive. They cite *In re Subpoena Duces Tecum Served on the Office of the Comptroller of the Currency*, 145 F.3d 1422 (D.C. Cir. 1998), for the blanket statement that the deliberative process does not apply when governmental “intent” is put at issue. Pls.’ Mem. at 9-10. But that case involved a fraudulent transfer action in which the plaintiff was required to show that the transfers were made “with actual intent to hinder, delay, or defraud.” 145 F.3d at 1423. It was thus a far cry from the allegations in this case in which Plaintiffs vaguely speculate that the Government might have had some improper motive in promulgating its health regulations dealing with HIV. Moreover, the Fourth Circuit has not followed *In re Subpoena*, and other courts have expressed skepticism of its categorical approach. *See, e.g., In re Delphi Corp.*,

³ In footnote 4 of their motion, Pls.’ Mem. at 7, Plaintiffs seem to argue that the *Cipollone* analysis is not required in cases where the Government is a party. However, various district courts in the Fourth Circuit have applied the same balancing test borrowed from other Circuits without reference to *Cipollone* or this purported restriction. *See, e.g., Murray Energy Corp. v. McCarthy*, No. 5:14-CV-39, 2016 WL 6902359, at *4 (N.D.W. Va. July 20, 2016).

276 F.R.D. 81, 84-85 (S.D.N.Y. 2011) (rejecting plaintiff’s argument that the deliberative process privilege “is not applicable where the litigation ‘involves a question concerning the intent of the governmental decisionmakers or the decisionmaking process itself’” and instead applying a balancing test); *First Heights Bank, FSB v. United States*, 46 Fed. Cl. 312, 321-22 (2000) (“declin[ing] to follow the reasoning of *In re Subpoena*[] to the extent that it supports an automatic bar on assertions of deliberative process privilege in any case where the Government’s intent is potentially relevant,” and instead applying a balancing test).

Indeed, this Court has already rejected Plaintiffs’ *per se* approach when it ruled on a motion to compel in the related case *Harrison v. Shanahan*. There, the Court applied the familiar *Cipollone* balancing test instead of adhering to Plaintiffs’ unsupported *per se* approach. See Order Granting Pls.’ Mot. to Compel, *Harrison v. Shanahan*, No. 1:18-cv-641, Dkt. 128. The Court should again reject Plaintiffs’ approach; to hold otherwise would allow complainants to make an end-run around the deliberative process privilege simply by asserting that a government classification was driven by an improper motive. See *In re United States*, 678 F. App’x 981, 990 (Fed. Cir. 2017) (“The privilege would be meaningless if all a litigant had to do was raise a question of intent to warrant disclosure.”); *Utah Med. Prods. v. McClellan*, No. 2:03-cv-525-PGC, 2004 WL 988877, at *8 (D. Utah Mar. 31, 2004) (finding that a *per se* rule that the deliberative process privilege did not apply when a party challenges the decision-making process would lead plaintiffs to “recast [their] complaint[s] as a challenge to the decision-making ‘process’”).

B. The Government’s Intent Is Not At Issue In This Case.

In any event, Plaintiffs’ argument that the deliberative process privilege does not apply when governmental intent is at issue is beside the point because the Government’s intent is wholly irrelevant to this case. The Plaintiffs’ challenges to the Defendants’ regulations in no way rely on

or put at issue the Defendants' intent in promulgating or applying those regulations because those regulations are subject only to rational basis review.

As an initial matter, Plaintiffs are incorrect in claiming that the proper standard of review is "a live issue" in this case. In considering Plaintiffs' claim that classifications based on HIV-status should face heightened scrutiny, the District Court recognized "the Fourth Circuit has broadly stated that 'classifications based on disability are subject to minimal scrutiny'" and that "HIV status is not a suspect classification." Memo. Opinion at 33 n.31, Dkt. 72 (quoting *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 486 (4th Cir. 2005) and *Doe v. Univ. of Md. Med. Sys. Corp.*, 50 F.3d 1261, 1267 (4th Cir. 1995)). The District Court proceeded to analyze Plaintiffs' claims solely under rational basis review.

Undeterred, Plaintiffs argue that actual intent is still relevant to challenges subject to rational basis review. Pls.' Mem. at 9. That argument is baseless. It is beyond dispute that under rational basis review it is "constitutionally irrelevant [what] reasoning in fact underlay the legislative decision" *R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980) (internal citation omitted). Indeed, when rational basis review applies, "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation *unsupported by evidence* or empirical data." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) (emphasis added). The Court's review only "require[s] that a purpose may conceivably or may reasonably have been the purpose and policy of the relevant governmental decisionmaker." *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992); *see also, e.g., Thomasson v. Perry*, 80 F.3d 915, 928 (4th Cir. 1996) (holding that under rational basis review a government classification "must be sustained if there is any reasonably conceivable state of facts that could provide a rational basis," and "the burden is on the one

attacking the legislative arrangement to negative every conceivable basis which might support it.” (quotations omitted)).

Moreover, the deference afforded under rational basis review is especially appropriate when, as here, the Government’s decision implicates military personnel policy. Deference to military policy judgments stems from the Supreme Court’s recognition that the Constitution vests control of the armed forces in the Executive and Legislative branches. *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973). Courts therefore “give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008) (quotation omitted). Military deference is thus a constitutionally-mandated prerequisite for an Article III court’s review of a decision involving military affairs. *See Morgan*, 413 U.S. at 10; *Rostker v. Goldberg*, 453 U.S. 57, 65-66 (1981). To apply deference, the court looks only at whether the decision at issue involves “the composition, training, equipping, and control of a military force.” *Morgan*, 413 U.S. at 10. If it does, then deference to policy judgments must be applied. *See Winter*, 555 U.S. at 27; *cf. Trump v. Hawaii*, 138 S. Ct. 2392, 2420 (2018) (a policy implicating national security will be “uph[eld] so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds”).

Plaintiffs’ position stands the doctrine of military deference on its head. As should be apparent, many military policy judgments, to which deference is owed as a matter of law, are the result of a deliberative process. If candid assessments and opinions by military officials were subject to probing based on allegations of improper intent, the very notion of deference would be eliminated, in disregard of its Constitutional underpinnings. Put simply, because the Court’s inquiry is limited to determining whether the policy at issue is “plausibly related to the

Government's stated objective," the Government's subjective intent is not relevant and the need for this information cannot outweigh the Government's interest in protecting frank and independent policy discussions.

C. Plaintiffs Have Made No Clear Showing Of Misconduct.

Plaintiffs also argue that the deliberative process privilege is unavailable because they have alleged "misconduct in violation of the Constitution on the part of Defendants." Pls.' Mem. at 11. Even assuming that such a restriction is recognized in this Circuit, Plaintiffs have entirely failed to show that it should apply to prevent Defendants, as a matter of law, from relying on the deliberative process privilege in this case. First, Plaintiffs do not cite any allegations of misconduct in their Complaint because they have not in fact made any. Their general statement that "there is a history of fear and discrimination against individuals with HIV in the United States," *id.*, is not a claim of any relevant or specific wrongdoing by any of the Defendants, nor does it sufficiently allege facts that could make such a claim facially plausible. The closest Plaintiffs come to alleging "misconduct" is their unsupported speculation that an improper motive might have influenced the promulgation of Defendants' HIV policies. That simply is insufficient to break through the deliberative process privilege on a wholesale basis as a matter of law.

Second, even if Plaintiffs had made such an allegation, they have failed to set out a factual basis for that claim, and a naked assertion of unspecified misconduct is insufficient to preclude the Government's use of the deliberative process privilege. *See, e.g., Heyer*, 2014 WL 4545946, at *4-5 (collecting cases); *Worsham v. Dep't of the Treasury*, No. ELH-12-2635, 2013 WL 5274358, at *14 n.10 (D. Md. Sept. 17, 2013). The out-of-circuit cases cited by Plaintiffs for this proposition do not suggest that a bald claim of misconduct is sufficient to negate the privilege. *See Chaplaincy*

of *Full Gospel Churches v. Johnson*, 217 F.R.D. 250, 257⁴ (D.D.C. 2003) (“To invoke the government-misconduct exception, the party seeking discovery *must provide an adequate factual basis* for believing that the requested discovery would shed light upon government misconduct.”) (emphasis added); *Alexander v. FBI*, 186 F.R.D. 154, 164 (D.D.C. 1999) (“[T]he deliberative process privilege does not apply if there is a discrete factual basis for the belief that the deliberative information sought may shed light on government misconduct.” (internal citation omitted)).⁵ Moreover, the principal case on which Plaintiffs rely, *In re Sealed Case*, 121 F.3d 729, 746 (D.C. Cir. 1997), is off-point. *In re Sealed Case* has been recognized as “provid[ing] little or no guidance” for evaluating a deliberative process privilege claim because it discussed the deliberative process privilege only “in order to contrast it with the higher standard for overcoming the Presidential privilege, which is the actual subject matter of the case.” *City of Colton v. Am. Promotional Events, Inc.*, No. CV 05-01479 JFW (Ex), 2011 WL 13223955, at *3 (C.D. Cal. Nov. 14, 2011).

Finally, it is the law of this Circuit that a “presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.” *Almy v. Sebelius*, 679 F.3d 297, 309 (4th Cir. 2012) (quoting *United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926)); *see also, e.g., Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362, 1368 (4th Cir. 1975) (“There is a presumption of regularity in the performance by a public official of his public duty.”). Plaintiffs have alleged no facts to

⁴ Rev’d in part, vacated in part on other grounds sub nom., *In re England*, 375 F.3d 1169 (D.C. Cir. 2004).

⁵ Plaintiffs cite another opinion in the same case, decided the same day, *Alexander v. FBI*, 186 F.R.D. 170 (D.D.C. 1999).

overcome this presumption—much less provided clear evidence—so as to permit a finding of alleged government misconduct that would prohibit application of the deliberative process privilege as a matter of law in this case.

III. The Documents Withheld By Defendants Satisfy The Conditions Of The Deliberative Process Privilege.

Plaintiffs do not meaningfully dispute that the documents withheld by Defendants are predecisional and deliberative, the only conditions required by Fourth Circuit law. *See, e.g., Solers, Inc. v. IRS*, 827 F.3d 323, 329-30 (4th Cir. 2016); *City of Virginia Beach*, 995 F.2d at 1253.⁶ However, Plaintiffs do contend that if their blanket arguments concerning intent and misconduct fail, the Court should balance their alleged need for the withheld information against the Government’s interest in nondisclosure, using the factors outlined in *Cipollone*. But Plaintiffs have failed to provide the Court with the necessary material to conduct that analysis. Assertions of the deliberative process privilege must be considered “on a case-by-case basis by balancing the damage to the executive department or the public interest and the potential harm to the plaintiffs from nondisclosure.” *Brown*, 2014 WL 4701170, at *3. Ignoring that requirement of individualization, Plaintiffs ask the court to hold that broad categories of documents must be disclosed. Because Plaintiffs declined to meaningfully argue why specific documents are unprotected by the deliberative process privilege, and because Plaintiffs cannot show that the privilege is inapplicable as a matter of law, their motion may be denied for those reasons alone.

But even if the Court were to apply the balancing test to large *categories* of documents as

⁶ Although the leading cases in this Circuit occur primarily in the FOIA context, the deliberative process privilege recognized by FOIA Exemption 5 is the same privilege that is otherwise applicable in civil litigation. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975) (construing “Exemption 5 to exempt those documents, and only those documents, normally privileged in the civil discovery context.”).

Plaintiffs suggest, their motion should still be denied because the relevant factors weigh heavily in favor of applying the privilege to the documents withheld by Defendants. As noted above, pursuant to 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*, 812 F.2d at 1400 (citation omitted). To the extent this analysis applies, it is clear that the factors weigh in favor of permitting reliance on the deliberative process privilege.⁷

A. The Withheld Information Is Immaterial To Plaintiffs’ Case.

First, the information Plaintiffs seek to compel is immaterial to their claims in this case, and this factor weighs heavily in maintaining the deliberative process privilege. As discussed *supra*, Plaintiffs’ claims must be evaluated under rational basis review. Because intent has no bearing on a determination of rational basis, the content of Defendants’ deliberative materials cannot assist Plaintiffs in establishing any of their claims. Rather, the Court must evaluate Defendants’ regulations to determine if they are rational under any conceivable set of facts regardless of the actual reasons underlying their promulgation. Indeed, under this level of scrutiny, the “deference afforded to the government . . . is so deferential that even if the government’s actual purpose in creating classifications is not rational, a court can uphold the regulation if the court can *envision* some rational basis for the classification.” *Guerra v. Scruggs*, 942 F.2d 270, 279 (4th Cir. 1991). Regardless of the Government’s actual intent, “[a] statutory discrimination will not be set aside if

⁷ It is undisputed that the Government’s role in this lawsuit is as a party. Plaintiffs have not explained why they believe this factor weighs in favor of disclosure, nor does their cited authority, *Stone v. Trump*, No. CV GLR-17-2459, 2018 WL 6305131 (D. Md. Nov. 30, 2018), explain this aspect of the balance.

any state of facts reasonably may be conceived to justify it.” *Id.* (quoting *McGowan v. Maryland*, 366 U.S. 420, 426 (1961)). And in the context of military personnel decisions, even facially discriminatory policies must be upheld “so long as [they] can reasonably be understood to result from a justification independent of unconstitutional grounds.” *Hawaii*, 138 S. Ct. at 2420.

In the section of their memorandum discussing the purported relevance of the withheld documents, Plaintiffs identified three categories of documents that they assert are relevant to their case: (1) five documents that include discussions of the military’s HIV policy, (2) an unknown number of documents relating to an inquiry by the House Armed Services Committee (HASC), and (3) a spreadsheet “containing personal notes of Air Force Personnel Board Members regarding more than 300 cases.” Pls.’ Mem. at 12-13. None of these documents have any actual relevance given the standard of review. But even if that were not the case, Plaintiffs’ categorical approach would be improper.

As to the five identified documents discussing the military’s HIV policy, Plaintiffs have not attempted to demonstrate that these five documents are representative of other documents withheld by Defendants, and Plaintiffs do not show why the need for any individual document would outweigh the harm from disclosure. Defendants have conducted a document-by-document review and have determined to withdraw their assertion of the privilege over one of those documents (US00031294) and to maintain it over three. The remaining document (US00031189) is being withheld under the attorney-client privilege as well as the deliberative process privilege, so Defendants do not understand it to be at issue.

With respect to the other documents discussed by Plaintiffs, the Air Force will withdraw its assertion of the deliberative process privilege over the thirty-one documents relating to the HASC

inquiry, but will stand on its privilege assertions regarding the spreadsheet referenced by Plaintiffs.⁸ *See* Russo Decl. ¶ 7.a. That spreadsheet is voluminous, containing personal and pre-decisional notes regarding hundreds of cases before the Air Force Personnel Board, the large majority of which do not involve HIV-positive individuals. Moreover, since the spreadsheet contains a Board member's predecisional considerations regarding how to decide various cases, it is a quintessential example of a document protected by the deliberative process privilege.

B. Evidence Relevant To Plaintiffs' Claims Is Otherwise Available.

Second, information necessary to support Plaintiffs' challenge is already available and information concerning Defendants' intent is immaterial. Plaintiffs assert that Defendants' regulations are unconstitutional because the regulations are arbitrary and capricious in view of the current state of medical advancement related to HIV. *See* Pls.' Compl. ¶¶ 126-46, Dkt. 1. To prevail, Plaintiffs must establish that there is no possible rational relationship between the content of Defendants' regulations and a legitimate government interest in light of the state of medical science. Defendants' regulations, and indeed Defendants' explanations and justifications for their regulations, in the form of the 2014 and 2018 Reports to Congress, are publicly available. The medical and scientific information that Plaintiffs purport to base their claims on is either publicly available or available to Plaintiffs through their retention of medical experts. For Plaintiffs to prevail, they must prove that these publicly available explanations and justifications are not rationally related to the Government's interests under any conceivable set of facts. Therefore this factor also weighs in favor of applying the deliberative process privilege to Defendants' withheld documents.

⁸ The spreadsheet's Bates number is US00031085.

C. Disclosure Of Defendants' Withheld Documents Would Greatly Hinder Frank And Independent Discussion.

Even if the first two factors favored Plaintiffs (and they do not), Plaintiffs still could not overcome the harm to the military's policy deliberations that would result from the wholesale disclosure of Defendants' predecisional deliberations. Indeed, Plaintiffs barely acknowledge the existence of the fourth factor of the balancing test and they ignore the extensive body of law concerning the purpose of the deliberative process privilege. Plaintiffs merely assert that disclosure here poses "no risk of chilling," but their only support for that contention is the presence of a protective order in this case. *See* Pls.' Mem. at 14 But while judicial discussion of the deliberative process privilege often focuses on the danger of *public* release of nonbinding deliberations, the privilege is not so narrowly conceived. Indeed, if a protective order alone were sufficient, the deliberative process privilege would cease to exist because a protective order could simply be entered in every case. That is not the law, and courts regularly recognize that the deliberative process exists in order to shield deliberative discussions *from discovery*. *See Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1226 (10th Cir. 2007) ("Recognizing that officials will not communicate candidly among themselves if each remark *is a potential item of discovery*, the deliberative process privilege is primarily designed to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government." (quotations omitted, emphasis added)); *cf. Perry v. Schwarzenegger*, 591 F.3d 1147, 1163-64 (9th Cir. 2010) (granting defendants' mandamus petition and overruling a district court's order compelling the production of documents whose disclosure threatened to "inhibit[] internal campaign communications that are essential to effective association and expression," while emphasizing that "[a] protective order limiting dissemination of this information will ameliorate

but cannot eliminate these threatened harms”).

“[T]he privilege encourages free-ranging discussion of alternatives . . . and insulates against the chilling effect likely were officials to be judged not on the basis of their final decisions but ‘for matters they consider before making up their minds.’” *City of Va. Beach*, 995 F.2d at 1252-53 (quoting *Jordan v. DOJ*, 591 F.2d 753, 772-73 (D.C. Cir. 1978) (en banc)). For the core issue implicated by Plaintiffs’ lawsuit—military service and HIV—it is unreasonable for Plaintiffs to contend that individuals making difficult and far-reaching decisions in this complicated and delicate area would not be chilled in the exercise of their expertise and discretion by the threat of disclosure in litigation. *See, e.g., Hinckley v. United States*, 140 F.3d 277, 285 (D.C. Cir. 1998) (explaining that in cases of “substantial public interest” the possibility of outside scrutiny “would almost certainly hamper the candor of future discussions”). Indeed, the declaration submitted with this opposition explains the significant chilling effect that release of deliberative information will have on policy development within the Air Force. Russo Decl. ¶¶ 6, 8-9.

Consequently, three of the four balancing factors weigh heavily in favor of applying the deliberative process privilege to Defendants’ withheld documents.

IV. The Deliberative Process Privilege Applies To All Documents For Which Defendants Are Maintaining The Privilege, And To The Extent Plaintiffs Claim It Does Not, Those Documents Must Be Individually Assessed.

Plaintiffs finally argue that if the deliberative process privilege is available in this case it still should not cover “several” documents withheld by Defendants because those documents “contain only factual information, are related to the implementation of existing policy, or are otherwise not covered by the deliberative process privilege.” Pls.’ Mem. at 15. Plaintiffs appear to apply this argument only to what they have identified as “Category 4” documents. *See* Pls.’ Mem. at 15-16. In other words, if the privilege is available as described *supra*, Plaintiffs have not

contested that it has been appropriately asserted for the documents they set out in Category 1 or Category 3, i.e. “(1) documents and information related to drafting, updating, clarifying, or implementing DOD and military branch regulations pertaining to HIV” and “(3) a spreadsheet containing personal notes of Air Force Personnel Board Members regarding more than 300 cases.”⁹ *Id.* at 15.

Plaintiffs provide only a few examples of the “factual” documents that they assert comprise Category 4. First, Plaintiffs identify three documents (US0031517, US00031518, and US00031519) that “discuss[] the manning of personnel boards.” *Id.* After additional review of these documents, the Air Force has decided to withdraw its privilege assertions over them, as well as an additional seventeen documents that relate to the same Air Force Personnel Board meeting. That set of documents also includes US00031294, which Plaintiffs also include in their list of Category 4 documents. The only remaining example of Category 4 documents provided by Plaintiffs is US00031531, which falls squarely within the deliberative process privilege, since it concerns deliberations of a board adjudicating a non-party’s case within the Disability Evaluation System. *See* Russo Decl. ¶ 7.a. The foregoing helps demonstrate why dealing with the privilege on a document-by-document basis is the correct path forward, and Plaintiffs have provided no further guidance as to what documents they assert are contained in Category 4 and purportedly fall outside of the deliberative process privilege. Defendants are unable to guess what other documents Plaintiffs believe are “factual” and therefore unprotected.

But even if Plaintiffs had provided a complete list of purportedly “factual” documents,

⁹ As discussed above, the Air Force is no longer asserting the deliberative process privilege over documents contained in Category 2 (the thirty-one documents relating to the House Armed Services Committee Inquiry).

Plaintiffs' attempts to impose blanket restrictions on the application of the deliberative process privilege would again be unsupported by law. It is true that "purely factual material" is not protected by the privilege; however, when facts are "inextricably intertwined with policymaking processes" such that revelation of the factual material would simultaneously expose protected deliberation," the privilege applies. *City of Va. Beach*, 995 F.2d at 1253 (quoting *Mink*, 410 U.S. at 92).¹⁰ Moreover, courts have determined that certain informational documents that may appear to be purely factual are entitled to protection because they incorporate judgment calls and other decision-making. *See, e.g., Fla. House of Representatives v. Dep't of Commerce*, 961 F.2d 941, 949-50 (11th Cir. 1992); *Quarles v. Dep't of Navy*, 893 F.2d 390, 392-93 (D.C. Cir. 1990); *Chem. Weapons Working Group v. EPA*, 185 F.R.D. 1, 2-4 (D.D.C. 1999).¹¹

Plaintiffs' classification of an unknown number of documents as unprivileged by the mere assertion that they might contain facts is based entirely on unsupported assumptions and ignores Fourth Circuit authority. The clear import of the Fourth Circuit's standards is that withheld

¹⁰ Plaintiffs do not explain what types of information they believe would be considered "merely related to the implementation of existing policies," Pls.' Mem. at 15, but they would logically be subject to the same considerations as factual information.

¹¹ The Fourth Circuit has not directly addressed this issue; however, other Circuits also recognize that even purely factual material can be privileged where its disclosure "may . . . expose the deliberative process within an agency." *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977); *see also Trentadue*, 501 F.3d at 1227-28; *Nat'l Wildlife Fed'n v. U.S. Forest Serv.*, 861 F.2d 1114, 1119 (9th Cir. 1988) (adopting a "process-oriented" or "functional" test that exempts "[f]actual materials . . . to the extent that they reveal the mental processes of decisionmakers"); *Brockway v. Dep't of the Air Force*, 518 F.2d 1184, 1194 (8th Cir. 1975); *Montrose Chem. Corp. of Cal. v. Train*, 491 F.2d 63 (D.C. Cir. 1974); *Cofield v. City of LaGrange*, 913 F. Supp. 608, 615 (D.D.C. 1996) ("If the act of compiling information, such as separating significant facts from those that are insignificant, would require the exercise of judgment by agency personnel, the facts are privileged under the deliberative process privilege[.]").

information should be considered on a document-by-document basis and assessed for their actual content rather than what Plaintiffs speculate they might contain. For these same reasons, Plaintiffs' request that they be allowed to identify a "representative sample" of withheld documents for the Court to review *in camera* is not appropriate and does not sufficiently protect the Defendants' entitlement to the privilege. First, Plaintiffs' overbroad categorization does not properly identify documents that contain "facts," or otherwise make meaningful analytical distinctions among groups of withheld documents. For instance, Plaintiffs incorrectly assert that a document "discussing which materials can be presented in considering cases"¹² cannot be deliberative, but that document concerns predecisional deliberations relating to a service member being processed through the Disability Evaluation System. *See* Russo Decl. ¶ 7.a. The Court thus cannot rely on Plaintiffs' speculative characterizations of a handful of withheld documents to determine whether those documents contain deliberative information, factual information, or both.

Second, even if Plaintiffs had categorized the withheld documents in a manner that would have allowed a sample of discrete categories to be considered, the degree to which factual information is intertwined with deliberative information in any given document would be impossible to predict from other documents in that category. Therefore, it is clear that the Plaintiffs' request that the Court find broad categories of withheld documents to be unprotected by the deliberative process privilege should be rejected.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' motion to compel.

¹² Bates number US00031531.

DATE: March 27, 2019

Respectfully submitted,
G. ZACHARY TERWILLIGER
United States Attorney

/s/

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

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

ANTHONY J. COPPOLINO
Deputy Director
Federal Programs Branch

JOSHUA C. ABBUHL
KERI L. BERMAN
REBECCA CUTRI-KOHART
ROBERT M. NORWAY
Trial Attorneys
U.S. Department of Justice
Civil Division
Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20530
Telephone: (202) 353-0889
Facsimile: (202) 616-8460
robert.m.norway@usdoj.gov

Counsel for the Government

EXHIBIT A

2. In the exercise of my official duties, I have been made aware of this lawsuit by counsel from the Air Force's Litigation Division.

3. The information in this declaration is based on my personal knowledge and upon my personal review of information made available to me in my official capacity.

4. I base this declaration on my personal knowledge and on information made available to me in the performance of my official duties, my background, training, and experience.

Purpose of this Declaration

5. This declaration is submitted in support of Defendants' Opposition to Plaintiffs' Motion to Compel Documents and Information Withheld on the Basis of Deliberative Process Privilege.

6. I hereby formally assert the deliberative process privilege, on behalf of the Department of the Air Force, over certain information described in and sought by Plaintiffs' motion to compel. Release of Air Force information protected by the deliberative process privilege would have a substantial and immediate chilling effect on the adjudication of Disability Evaluation System cases, as well as policy deliberation and development within the Air Force.

7. The documents that are being withheld pursuant to the deliberative process privilege contain highly sensitive material reflecting the pre-decisional thought processes of Air Force officials. These documents can be placed into 2 general categories: 1) deliberations regarding individual Disability Evaluation System cases and 2) deliberations regarding the development of policy governing the retention or separation of Airmen living with HIV. The following examples illustrate the Air Force's analysis and implementation of the deliberative process privilege:

a. Of the documents discussed in Plaintiffs' motion to compel and withheld solely pursuant to the deliberative process privilege, 21 are documents containing deliberations regarding the adjudication of Disability Evaluation System cases of individuals who are not party to this lawsuit. These documents quite literally contain the deliberations of the individuals charged with deciding Disability Evaluation System cases. The Bates numbers of these documents are: US00031016; US00031085; US00031092; US00031133; US00031531; US00031534; US00031535; US00031771; US00031772; US00031804; US00031805; US00031806; US00031807; US00032215; US00032500; US00032764; US00032838; US00031773; US00031783; US00031784; US00032644. One document, US00031085, is a spreadsheet that contains one member's personal and predecisional notes about hundreds of decisions of the Secretary of the Air Force Personnel Council, including appeals of non-HIV related Disability Evaluation System cases, clemency and parole of Air Force prisoners, requests for discharge in lieu of trial by courts-martial, requests for early separation due to hardship, discharges of conscientious objectors, and the issuance of decorations and awards to members of the Air Force.

b. There are 68 documents which contain deliberations regarding the development of policy regarding the retention of airmen living with HIV. This set of documents contains emails, draft documents, and other communications which reflect the individual input and opinions of Air Force officials regarding these policies. The Bates numbers of these documents are: US00031086; US00031087; US00031088; US00031090; US00031091; US00031115; US00031189; US00031190; US00031222; US00031295; US00031360; US00031425; US00031429; US00031430; US00031431; US00031432; US00031433; US00031435; US00031446; US00031452; US00031475; US00031477; US00031516;

US00031532; US00031533; US00031538; US00031743; US00031744; US00031745;
US00031746; US00031775; US00031776; US00031777; US00031778; US00031779;
US00031785; US00031786; US00031808; US00031809; US00031810; US00031811;
US00031812; US00031813; US00031814; US00031815; US00031816; US00031817;
US00031818; US00031819; US00031820; US00031821; US00031822; US00031823;
US00031824; US00031825; US00031826; US00031828; US00031829; US00031830;
US00031831; US00031832; US00031833; US00031838; US00033252; US00033253;
US00033265; US00033266; US00033267.

c. The Air Force is no longer asserting the deliberative process privilege over numerous documents sought by the Plaintiffs' motion. In their Opposition to Plaintiffs' Motion to Compel, Defendants describe the categories of documents for which the Air Force is no longer asserting the deliberative process privilege.

8. The Air Force's decision making process is reliant on open and candid conversations between leadership, advisors, and analysts to advise and inform decision makers across the service on various courses of action for any decision. Due to the geographically dispersed nature of Air Force activities and the high operational tempo with which many Air Force activities are conducted, deliberative and pre-decisional conversations frequently occur over email. The forced release of such communications would directly and immediately impair the open and candid discussions occurring at both the operational and strategic level if participants knew that their thoughts, impressions, and opinions on various topics (including DoD HIV policy as well as other policies) would be open to scrutiny, regardless of any judicial protective order.

9. Without assurance that their opinions on aspects of HIV policy and individual Disability Evaluation System cases would be protected from disclosure, medical providers, policy makers, adjudicators, and other leaders will be much more likely to withhold their honest views in future policy discussions. This is especially true because of the high-profile and controversial nature of some Air Force personnel issues, as well as the allegations of irrational discriminatory treatment made by Plaintiffs in this matter. Subject matter experts, including those with battlefield experience, may decline to lend their unique expertise for fear that they would be subject to unfair accusations and opprobrium. As a result, the Air Force's decision-making process would suffer because it would not benefit from the practical experiences of those most qualified to opine on unique aspects of military experience.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 27th day of March, 2019.

3/27/2019

X 

JOHN P. RUSSO, Colonel, USAF
Chief, Air Force Personnel Board
Signed by: RUSSO.JOHN.PAUL.1019536706

EXHIBIT B

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031016	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.
US00031085	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.
US00031092	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.
US00031133	10/26/2018	SSgt Smejkal		DP - Deliberative Process	Draft of rationale for SAFPC decision memo.
US00031531	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.
US00031534	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 AFPB decisions.
US00031535	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 AFPB decisions.
US00031771	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>Vallari o, 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.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031772	1/3/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASAF/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	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.
US00031783	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	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.
US00031804	11/1/2018	Vallario, John K CIV USAF SAF-MR (US) </O=EASAF/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.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031805	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	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	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.
US00032215	12/14/2017	Kirzhner, Ilona CTR USAF SAF/US(M)X		PII - Personal Privacy; DP - Deliberative Process	Deliberative sheet containing coordination for SAFPC member recommendations.
US00032500	12/14/2017	Kirzhner, Ilona CTR USAF SAF/US(M)X		PII - Personal Privacy; DP - Deliberative Process	SAFPC coordination sheet with deliberative discussion regarding adjudication of individual case.
US00032644	2/14/2019			PII - Personal Privacy; DP - Deliberative Process	Attorney memorandum in support of individual appeal to SAFPC.
US00032764	5/4/2018	PINKSTON, BRIAN S Col USAF AFRC HQ AFRC/SGO		PII - Personal Privacy; DP - Deliberative Process	Pre-decisional letter setting forth recommendation in regard to retraining for airman.
US00032838	12/14/2017	Kirzhner, Ilona CTR USAF SAF/US(M)X		PII - Personal Privacy; DP - Deliberative Process	Predecisional SAFPC coordination sheet with deliberations regarding case.

EXHIBIT C

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031086	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	7/24/2018	Lt Col Tom Joyce, SAF/MRM		DP - Deliberative Process	Unsigned, Undated draft Memo Airmen with Asymptomatic HIV Disposition
US00031088	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	7/24/2018	Lt Col Tom Joyce, SAF/MRM		DP - Deliberative Process	Unsigned draft HIV Clarification Memo
US00031091	6/11/2018	1081079567A		DP - Deliberative Process	Spreadsheet discussing 3 HIV cases and applying criteria set forth in draft HIV clarification memo.
US00031115	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.
US00031189	7/24/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	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 discussing adjudications of HIV cases in broader discussion of HIV retention policy.
US00031190	6/22/2018	1081079567A		DP - Deliberative Process	Spreadsheet setting forth possible analysis for HIV cases under proposed HIV policy memo.
US00031222	7/16/2018	Prater, Shane T Col USAF SAF-MR (US) <shane.t.prater.mil@mail.mil>	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 7/16/18 within SAF/MR discussing drafting of HIV Policy clarification.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031295	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.
US00031360	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	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.
US00031429	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	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	7/23/2018	svetlana.bilenkina		DP - Deliberative Process	Undated draft of HIV disposition memo.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031432	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	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	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.
US00031446	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	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.
US00031475	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	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.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031516	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.
US00031532	7/13/2018	Peel, Brooks T Capt USAF SAF-MR (US) <brooks.t.peel.mil@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	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.
US00031538	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	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	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	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.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031746	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
US00031775	6/8/2018	PALUMBO, GUY M GS-15 USAF AFPC AFPC/DPPFD <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	6/8/2018	PALUMBO, GUY M GS-15 USAF AFPC AFPC/DPPFD <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	6/7/2018	PALUMBO, GUY M GS-15 USAF AFPC AFPC/DPPFD <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.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031778	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.
US00031779	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.
US00031785	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	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.

Roe v. Shanahan,
 No. 1:18-cv-1565
 Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031808	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	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.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031810	7/24/2018	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.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	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo.
US00031812	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.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031813	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>; 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>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.
US00031814	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo.
US00031815	7/24/2018	Soper, Martha P CIV USAF SAF-MR (US) <martha.p.soper.civ@mail.mil>	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.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.
US00031816	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV memo.

Roe v. Shanahan,
 No. 1:18-cv-1565
 Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031817	7/24/2018	Fedrigio, John A SES USAF SAF-MR (US) <john.a.fedrigio.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>;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.
US00031818	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV memo.
US00031819	7/24/2018	Downes, Karen M Col USAF SAF-MR (US) <karen.m.downes2.mil@mail.mil>	Fedrigio, John A SES USAF SAF-MR (US) <john.a.fedrigio.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	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo.

Roe v. Shanahan,
 No. 1:18-cv-1565
 Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031821	7/24/2018	Fedrigo, John A SES USAF SAF-MR (US) <john.a.fedrigo.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	7/24/2018	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>; 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	7/24/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition Memo.
US00031824	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.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031825	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	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.
US00031828	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>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>; 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	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.
US00031830	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.

Roe v. Shanahan,
No. 1:18-cv-1565
Air Force Privilege Log for Production 13

BEGIN BATES	DATE	AUTHOR	RECIPIENT(S)	PRIVILEGE(S)	PRIVILEGE BASIS
US00031831	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	6/11/2018	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>; 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	6/6/2018	1081079567A		DP - Deliberative Process	List of questions for discussion between SAFPC and SAF/MR.
US00031838	6/11/2018	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>; 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	6/22/2018	1081079567A		DP - Deliberative Process	Spreadsheet containing deliberative application of DODI 1332.18 fitness criteria.
US00033253	7/24/2018	Lt Col Tom Joyce, SAF/MRM		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo
US00033265	9/5/2018	Lt Col Tom Joyce, SAF/MRM		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV Disposition memo
US00033266	2/8/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of Airmen with Asymptomatic HIV memo
US00033267	5/9/2018	svetlana.bilenkina		DP - Deliberative Process	Draft of memo titled Airmen with Chronic and/or Progressive diseases