

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

NICHOLAS HARRISON, ET AL.,

PLAINTIFFS,

V.

MARK T. ESPER, ET AL.,
DEFENDANTS.

CIVIL ACTION NO. 1:18-CV-00641

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Nicholas Harrison and the Modern Military Association of America (“MMAA”) (collectively, “Plaintiffs”) move for summary judgment. As elaborated on in Plaintiffs’ memorandum in support, Defendants’ refusal to commission Plaintiff Nicholas Harrison based on his HIV status, and the policies and practices underlying that decision, including Defendants’ categorical bar to the contingency deployment of service members with HIV, violate the equal protection components of the United States Constitution. Accordingly, Plaintiffs’ motion for summary judgment should be granted.

Dated: May 4, 2020

Scott A. Schoettes*
SSchoettes@lambdalegal.org
Kara Ingelhart*
KIngelhart@lambdalegal.org
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
105 W. Adams St., Suite 2600
Chicago, IL 60603
T: (312) 663-4413

Peter E. Perkowski*
PeterP@modernmilitary.org
MODERN MILITARY ASSOCIATION OF
AMERICA, INC.
P.O. Box 65301
Washington, DC 20035-5301
T: (800) 538-7418

**pro hac vice*

Respectfully submitted,
/s/ John W. H. Harding

John W.H. Harding
Virginia State Bar No. 87602
JWHarding@winston.com
Lauren Gailey*
LGailey@winston.com
Alexandra J. Hemmings*
AHemmings@winston.com
WINSTON & STRAWN LLP
1901 L St., NW
Washington, DC 20036
T: (202) 282-5000

Julie A. Bauer*
JBauer@winston.com
WINSTON & STRAWN LLP
35 W. Wacker Dr.
Chicago, IL 60601
T: (312) 558-560

Andrew R. Sommer
Virginia State Bar No. 70304
Sommera@gtlaw.com
GREENBERG TRAUERIG, LLP
1750 Tysons Boulevard
Suite 1000
McLean, VA 22102
T: (703) 749-1370

CERTIFICATE OF SERVICE

I certify that, on the 4th day of May, 2020, 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: May 4, 2020

Respectfully submitted,

/s/ John W. H. Harding

John W.H. Harding

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

NICHOLAS HARRISON, ET AL.,

PLAINTIFFS,

V.

MARK T. ESPER, ET AL.,
DEFENDANTS.

CIVIL ACTION NO. 1:18-CV-00641

PROPOSED ORDER

Upon consideration of Plaintiffs' Motion for Summary Judgment, the Court **GRANTS** the motion, finding that there are no disputes of fact, and that Defendants' refusal to Commission Plaintiff Nicholas Harrison based on his HIV status, and the policies and practices underlying that decision, including Defendants' categorical bar to the contingency deployment of service members with HIV, violate the equal protection components of the United States Constitution. It is hereby **ORDERED** that:

1. Defendants' policies and procedures prohibiting contingency deployment based on HIV status are unconstitutional and Defendants, and anyone acting on their behalf or at their direction or under their authority, are enjoined from enforcing the HIV-focused provisions of their policies and procedures prohibiting the contingency deployment of Plaintiff Nick Harrison or any similarly situated service member with HIV.
2. Defendants' policies and practices prohibiting commissioning as an officer based on HIV status are unconstitutional and Defendants, and anyone acting on their behalf or at their direction or under their authority, are enjoined from enforcing the provisions of their

policies and procedures that prohibit the accession of Plaintiff Harrison or any similarly situated service member based on the service member's HIV status.

It is **FURTHER ORDERED** that Defendants decision to deny Plaintiff Harrison a commission is **VACATED** and the Secretary of the Army must reevaluate this decision without applying any of the regulations and policies enjoined above.

Entered this ____ day of _____, 2020.

United States District Judge