

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

RICHARD ROE, ET AL.,

PLAINTIFFS,

v.

MARK T. ESPER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-cv-01565

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Richard Roe, Victor Voe, and the Modern Military Association of America (“MMAA”) (collectively, “Plaintiffs”) move for summary judgment. As elaborated on in Plaintiffs’ memorandum in support, Defendants’ decisions to separate Roe and Voe, and the policies underlying those decisions, including Defendants’ categorical bar to the contingency deployment of service members with HIV, are arbitrary and capricious, an abuse of discretion, and otherwise contrary to law, in violation of the Administrative Procedure Act. They also 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**

RICHARD ROE, ET AL.,

PLAINTIFFS,

v.

MARK T. ESPER, ET AL.,
DEFENDANTS.

CIVIL ACTION NO. 1:18-cv-01565

PROPOSED ORDER

Upon consideration of Plaintiffs' Motion for Summary Judgment, the Court **GRANTS** the motion, finding that the material facts are undisputed, and that Defendants' decisions to separate Plaintiffs Roe and Voe based on their HIV status, and the policies and practices underlying those decisions, including Defendants' categorical bar to the contingency deployment of service members with HIV, are arbitrary and capricious, an abuse of discretion, and/or otherwise contrary to law in violation of the Administrative Procedure Act and 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 arbitrary, capricious, an abuse of discretion, or otherwise contrary to law, and unconstitutional. 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 contingency deployment of Plaintiffs Roe and Voe or any similarly situated service member based on their HIV status.
2. Defendants, and anyone acting on their behalf or at their direction or under their authority, are enjoined from separating any service members with HIV based on their purported inability to engage in contingency deployments as a result of their HIV status.

It is **FURTHER ORDERED** that Defendants decisions to separate Plaintiffs Roe and Voe and all other similar decisions are **VACATED** and the Secretary of the Air Force must reevaluate such decisions without regard to any of the policies and practices enjoined above.

Entered this _____ day of _____, 2020.

United States District Judge