

May 19, 2022

The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Austin:

We, the undersigned organizations, write to ask you to end the categorical bars to the enlistment, deployment, and commissioning of people living with HIV. Though some of these limitations on the military service of people living with HIV may have been justified at one time, they have outlived their usefulness by more than a decade. We now know that people living with HIV do not present any meaningful risk of transmission in a combat setting and, thanks to highly effective medications, providing care to deployed servicemembers living with HIV is as practical as providing care for many other conditions with which people are allowed to deploy. Dismantling these policies—as well as those that punish people living with HIV for consensual sexual conduct—will eliminate the last vestiges of HIV discrimination perpetuated by the federal government.

We understand that you did not implement but rather inherited these outdated and unnecessary restrictions on the service of people living with HIV; nonetheless, it falls to you, as the current Secretary of Defense, to eliminate them. As you are undoubtedly aware, after nearly four years of litigation—including the unsuccessful appeal of a preliminary injunction to the U.S. Court of Appeals for the Fourth Circuit¹—a federal district court in Virginia recently ruled that the current bars to the deployment and commissioning of people living with HIV are not supported by any rational basis and are therefore unconstitutional as a violation of the Equal Protection Clause.² We are asking you to recognize that an appeal of this well-reasoned decision is futile and to exercise your power to end this legal battle by accepting the ruling of the district court and changing all policies that flow from the irrational bar to the deployment of people living with HIV, including the bar to their enlistment.

In taking this course of action, you will have the support of President Biden, who pledged as a candidate to end discrimination by the military against people living with HIV by allowing them to enlist and serve fully.³ Your actions will be supported by the National HIV/AIDS Strategy (updated in 2021) and advance one of its core goals by reducing stigma and discrimination against people living with HIV. Outdated and misguided policies that perpetuate myths about HIV and its transmission, such as those at issue here, are barriers to engaging people living with HIV in testing, treatment, and care and to ending the HIV epidemic.⁴ And the elimination of these discriminatory restrictions would be hailed by the nearly 2,000 brave servicemembers currently living with HIV—including the plaintiffs in these cases, who have demonstrated a tremendous reserve of strength, leadership, and perseverance in pursuing this litigation; the very qualities the military seeks to engender in its ranks—and all people living with HIV, who will benefit from its echoing impacts.

If it would be useful, representatives of this group would be happy to engage further on this subject and offer our respective expertise on the subject. We look forward to the new Department of Defense policies

¹ *Roe v. U.S. Dep't of Def.*, 947 F.3d 207 (4th Cir. 2020), available at <https://casetext.com/case/roe-v-us-dept-of-def#p217>.

² Memorandum Opinion (DKT. 307), *Harrison v. Austin*, Case No. 18-CV-641 (LMB/IDD) (EDVA April 6, 2022), available at <http://files.eqcf.org/cases/118-cv-00641-307/>.

³ 2020 HIV Presidential Candidate Questionnaire, Question 9 (June 2020), available at https://aidsunited.org/wp-content/uploads/2021/11/Biden_HIVSurvey_2020.pdf.

⁴ The White House, *National HIV/AIDS Strategy for the United States 2022-2025* (Dec. 2021) at 49, available at <https://hivgov-prod-v3.s3.amazonaws.com/s3fs-public/NHAS-2022-2025.pdf>.

that will place it squarely in the 21st century with respect to HIV and the military service of people living with this chronic but manageable medical condition.

Sincerely,

Ace and Aro Alliance of Central Ohio	MCAVHN Care and Prevention Network
Advocacy House Services, Inc.	Minority Veterans of America
AIDS Action Baltimore	NASTAD
AIDS Alabama	National Working Positive Coalition
AIDS Foundation of Chicago (AFC)	NMAC
AIDS Legal Referral Panel (ALRP)	North Carolina AIDS Action Network
AIDS United	one-n-ten
APLA Health	Our Family Coalition
Atlanta Pride Committee	OutFront Kalamazoo
Bay Area Lawyers for Individual Freedom (BALIF)	OutNebraska
Black AIDS Institute	Pacific Pride Foundation
Brave Space Alliance	PFLAG National
Brooklyn Community Pride Center	PGH Equality Center
CenterLink: The Community of LGBT Centers	Pride Center West Texas
Council for Global Equality	Rainbow Center
Direct patient care, education, advocacy	Rainbow Rose Center
Equality California	Resource Center
Equality Florida	San Francisco AIDS Foundation
Equality Illinois	Sero Project
Fenway Health	Silver State Equality-Nevada
First City Pride Center	Stonewall Columbus, Inc
G III Associates, LLC	The AIDS Institute
Gay City: Seattle's LGBTQ Center	The Lesbian, Gay, Bisexual & Transgender
Gay Elders of Metro Detroit (dba SAGE Metro Detroit)	Community Center
Georgia Equality	The LGBT Center of Greater Reading
GLBTQ Legal Advocates & Defenders	The LGBTQ Community Center of Southern
GLMA: Health Professionals Advancing LGBTQ Equality	Nevada
HIV + Hepatitis Policy Institute	the Montrose Center
HIV Dental Alliance	The Pride Center at Equality Park
HIV Medicine Association	The Spahr Center
Hudson Pride Center	The Well Project
Human Rights Campaign	Treatment Action Group
International Association of Providers of AIDS Care	Uptown Gay and Lesbian Alliance (UGLA)
LGBT Detroit	Waves Ahead Corp Puerto Rico
LGBTQ+ Spectrum of Findlay	Whitman-Walker Institute
Los Angeles LGBT Center	

cc: The Honorable Xavier Becerra, Secretary, Department of Health and Human Services
 Admiral Rachel L. Levine, M.D., Assistant Secretary for Health, Department of Health and Human Services
 B. Kaye Hayes, Office of Infectious Disease and HIV/AIDS Policy
 Harold Phillips, Director, White House Office of National AIDS Policy