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President Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

**SUBJECT: Lifting the Bar on Enlistment and Deployment for People Living with HIV**

Dear President Biden,

We, the undersigned 45 organizations, collectively represent people living with and vulnerable to HIV and the communities that serve and support them. We request your administration lift the bar on the enlistment and appointment of people living with HIV and to clear the remaining barriers to their full military service.

In April 2022, the U.S. District Court for the Eastern District of Virginia (EDVA) imposed a permanent injunction on the Department of Defense (DoD) requiring it to eliminate the categorical bar to the deployment or commissioning of service members living with HIV. Rather than appeal that ruling, the DoD modified its HIV-related policies in June 2022 to bring the military services into compliance with the injunction. Despite urging from HIV advocates, the DoD declined to lift the bar to enlistment or appointment of people living with HIV.

In November 2022, three plaintiffs living with HIV filed a lawsuit in the same federal court seeking to join the military in various capacities (*Wilkins v. Austin*, No. 1:22-CV-1272 LMB/IDD (E.D. Va. Nov. 10, 2022)). After a year of limited discovery, the parties filed cross-motions for summary judgment, and the court heard oral argument on November 30, 2023. On August 20, 2024, the court granted the plaintiffs' motion for summary judgment and imposed another permanent injunction on the DoD, this time eliminating the categorical bar to the enlistment or appointment of people living with HIV. *See Wilkins v. Austin*, 2024 WL 3874873, 1:22-CV-1272 (LMB/IDD) (E.D. Va. Aug. 20, 2024).

In addition to rejecting *for a second time* the purported justifications for a policy devaluing the service of people living with HIV, the court found the DoD's only new argument—asserting increased healthcare costs as a rational basis for the policy—without merit (*Wilkins*, slip. op. at 20-27, 27-30). It is disappointing that the Department of Justice (DOJ) even made this argument on behalf of the DoD, given that the higher costs of HIV-related care are not the fault of people living with HIV and that the DOJ likely would sue any other employer who tried to justify an exclusionary policy on this basis. Notwithstanding the strong policy considerations against lodging it, the court thankfully rejected this argument as unsupported by the evidence (*Wilkins*, slip. op. at 26).

Because the circumstances are much the same, we ask the administration once again to not appeal this latest ruling, just as it did not appeal the rulings lifting the categorical bars to deployment and commissioning. The court's opinion is firmly grounded in the science of HIV and well supported by Fourth Circuit precedent, making any appeal likely futile. More importantly, continued support for the DoD's outdated and discriminatory policy is contrary to the National HIV/AIDS Strategy and this administration's statements in favor of the military service of people living with HIV.

The full and unencumbered service of people living with HIV includes removal of the requirement that service members with well-managed HIV obtain a waiver to deploy. Classification of service members with HIV as presumptively non-deployable and in need of a waiver places a shadow over their personnel file and presents a substantial logistical barrier to deployment.

Prior to the *Wilkins* decision, the only arguably valid reason for requiring such a waiver was the DoD's contention that it defers to host nations that have laws or rules against the entry of people living with HIV, making it ostensibly necessary to evaluate whether the service member could deploy to the location in question. While the legitimacy of such deference was called into question by the court's previous opinion, the opinion in *Wilkins* makes explicit that "diplomatic deference" to host nation restrictions is not a rational excuse or justification for the DoD's policies, as the DoD does not defer to host nation restrictions on other groups, such as women, LGBTQ people, or religious minorities (*Wilkins*, slip. op. at 30-34).

To place service members with HIV on the same footing as other service members with a chronic condition, the DoD and attendant service-level regulations must be changed to avoid application of the "non-deployable" classification(s) and to make deployment contingent solely on objective measurements of their HIV-related health. Such objective health criteria are regularly assessed as part of the pre-deployment medical review to which all service members are subject.

As the *Wilkins* opinion states: "Defendants' policies prohibiting the accession of asymptomatic HIV-positive individuals with undetectable viral loads into the military are irrational, arbitrary, and capricious. Even worse, they contribute to the ongoing stigma surrounding HIV-positive individuals while actively hampering the military's own recruitment goals" (*Wilkins*, slip. op. at 37). We know this administration is committed to reducing stigma surrounding people living with HIV, and we urge it to take the actions necessary to live up to that commitment.

Cordially,

A handwritten signature in black ink that reads "Carl Baloney, Jr." The signature is written in a cursive, flowing style.

Carl Baloney, Jr.  
Vice President for Public Affairs & Chief Policy Officer

AIDS United

CC: Kamala D. Harris, Vice President of the United States; The Honorable Ashish S. Vazirani, Undersecretary of Personnel and Readiness; The Honorable Lester Martinez-Lopez, Assistant Secretary of Defense for Health Affairs; Francisco Ruiz, Director of the White House Office of National AIDS Policy

Act Now: End AIDS (ANEA) Coalition  
AIDS Action Baltimore  
AIDS Alabama  
AIDS Foundation Chicago  
APLA Health  
Argus Community Inc  
Association of Nurses in AIDS Care  
Callen-Lorde Community Health Center  
Center for Health Law and Policy Innovation  
CHLP (Center for HIV Law & Policy)  
Clare Housing  
Delaware HIV Consortium  
Equality California  
Equality Federation  
Equity is the Word  
Fenway Health  
Five Horizons Health Services  
GMHC  
God's Love We Deliver, Inc.  
HealthHIV  
HIV Dental Alliance  
HIV Medicine Association  
HIV+Hepatitis Policy Institute  
My Brother's Keeper, Inc  
Nashville CARES  
NASTAD  
National Coalition for LGBTQ Health  
National Coalition of STD Directors  
National Working Positive Coalition  
NMAC  
North Carolina AIDS Action Network  
Positive Impact Health Centers  
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SAGE

San Francisco AIDS Foundation

Sero Project

Silver State Equality

The AIDS Institute

The Alliance for Positive Change

The Project of the Quad Cities

The Well Project

Treatment Action Group

U.S. People Living with HIV Caucus

Vivent Health, Inc