CONSENSUS STATEMENT ON THE CRIMINALIZATION OF HIV IN THE UNITED STATES

We the undersigned agree:

- The criminal law has been unjustly used in the United States to target people with HIV.
- HIV-specific criminal laws, the use of felony laws such as attempted murder and aggravated assault, and the use of sentence enhancements to prosecute HIV positive individuals are based on outdated and erroneous beliefs about the routes, risks, and consequences of HIV transmission.
- Legal standards applied in HIV criminalization cases regarding intent, harm, and proportionality deviate from generally accepted criminal law principles and reflect stigma toward HIV and HIV-positive individuals.
- Prosecutions involving allegations of non-disclosure, exposure, or transmission of HIV conflict with public health priorities and violate basic principles of justice.
- Punishments imposed for non-disclosure of HIV status, exposure, or HIV transmission are grossly out of proportion to the actual harm inflicted and reinforce the fear and stigma associated with HIV.

Public health leaders and global policy makers agree that HIV criminalization is unjust, bad public health policy and is fueling the epidemic rather than reducing it.

Therefore, to ensure a just application of the criminal law to transmission of sexually transmitted infections, we demand that Federal and State officials modernize criminal laws to eliminate HIV-specific statutes and ensure that any prosecution on the basis of HIV or any other STIs requires:

1. proof of an intent to harm;
2. conduct that is likely to result in that harm;
3. proof that the conduct of the accused in fact resulted in the alleged harm; and
4. punishment that is proportionate to the actual harm caused by the defendant's conduct.

Furthermore, we demand that Federal and state officials review the HIV-specific convictions, penalties, sentence enhancements and other restrictions imposed on people living with HIV, such as mandated sex-offender registration and civil commitment or quarantine orders, in their jurisdictions. In the event that such convictions or sentence enhancements fail to conform to the principles outlined above, federal and state officials should take appropriate measures (e.g., through executive clemency, pardon, sentence reconsideration, parole, probation, community work release, etc.) to mitigate the harm caused to individuals through inappropriate application of the criminal law and other civil restrictions to HIV-positive individuals.

The Positive Justice Project (PJP) is a movement of people with HIV, their health care providers, attorneys, community advocates, public health officials, law enforcement professionals, service providers and others devoted to ending the abuse of the criminal law against HIV-positive people. PJP includes HIV advocates, researchers, health and social service providers, media representatives, policy analysts, law enforcement and people living with HIV. We engage in federal and state policy advocacy, legal resource creation and support, and on educating and mobilizing communities and policy makers in the United States.

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RATIONALE FOR CONSENSUS STATEMENT ON THE CRIMINALIZATION OF HIV IN THE UNITED STATES

THE CRIMINAL LAW HAS BEEN UNJUSTLY USED IN THE UNITED STATES TO TARGET PEOPLE WITH HIV

Thirty-four U.S. states and territories have criminal statutes based on perceived exposure to HIV; most of these laws were adopted before the availability of effective antiretroviral treatment for HIV and at a time when data about the limited routes and risks of HIV transmission were not widely available.

1. Prosecutions for allegations of non-disclosure, exposure, or transmission of HIV have occurred in at least thirty-nine (39) states under HIV-specific laws or under general criminal laws.
2. People living with HIV have been charged under aggravated assault, attempted murder and even bioterrorism statutes, and face more severe penalties because law enforcement, prosecutors, courts, and legislators continue to view and characterize people living with HIV and their bodily fluids as inherently dangerous, even as "deadly weapons".

HIV-SPECIFIC CRIMINAL LAWS, THE USE OF FELONY LAWS SUCH AS ATTEMPTED MURDER AND AGGRAVATED ASSAULT, AND THE USE OF SENTENCE ENHANCEMENTS TO PROSECUTE HIV-POSITIVE INDIVIDUALS ARE BASED ON OUTDATED AND ERRONEOUS BELIEFS ABOUT THE ROUTES, RISKS, AND CONSEQUENCES OF HIV TRANSMISSION

3. Despite the fact that correct and consistent condom use and effective antiretroviral therapy reduce the risk of HIV transmission to near-zero, most state HIV-specific laws and prosecutions do not treat condom use or an undetectable viral load and the extreme unlikelihood that transmission will occur as evidence of a lack of intent to harm.
4. Saliva does not transmit HIV, yet many states criminalize spitting and biting, with prison sentences as long as 35 years.
5. HIV disease is today a chronic, manageable illness for those with access to appropriate care and treatment. Those who discover their infection in a timely fashion and have access to quality health care can expect a near-normal life span.
6. The relative risk of HIV transmission varies widely based on the type of sexual activity, the viral load of the person with HIV and whether or not the person at risk has other sexually transmitted infections (STIs); for instance, oral sex in general poses an extremely low to zero risk of transmission.

LEGAL STANDARDS APPLIED IN HIV CRIMINALIZATION CASES DEVIATE FROM GENERALLY ACCEPTED CRIMINAL LAW PRINCIPLES AND REFLECT STIGMA TOWARD HIV AND HIV-POSITIVE INDIVIDUALS

7. In most jurisdictions, proof of a person's intent to cause harm or to transmit HIV is neither required for a finding of guilt nor a factor in determining the level of punishment.
8. HIV-specific laws do not include actual HIV transmission as a specific element of the harm or conduct that is prohibited and punished and, in fact, HIV transmission is rarely a factor in HIV

criminalization prosecutions.

9. In most states, even extremely low-risk or no-risk sexual activity, without disclosure, is subject to equally serious charges and sentences.

PROSECUTIONS INVOLVING ALLEGATIONS OF NON-DISCLOSURE, EXPOSURE, OR TRANSMISSION OF HIV CONFLICT WITH PUBLIC HEALTH PRIORITIES AND VIOLATE BASIC PRINCIPLES OF JUSTICE

10. The use of the criminal law to try to influence sexual behaviors conflicts with public health principles. Research demonstrates that HIV-specific laws do not reduce transmission, and a growing body of research shows that they may fuel the epidemic because they increase stigma, may discourage testing and make it more difficult for people with HIV to disclose their HIV status.

11. Placing legal responsibility for preventing disease transmission exclusively on people diagnosed with HIV undermines the most basic public health message concerning sexual health -- that all people should practice behaviors that protect themselves and their partners from HIV and other sexually transmitted infections.

PUNISHMENTS IMPOSED FOR NON-DISCLOSURE OF HIV STATUS, EXPOSURE, OR HIV TRANSMISSION ARE GROSSLY OUT OF PROPORTION TO THE ACTUAL HARM INFLICTED AND REINFORCE THE FEAR AND STIGMA ASSOCIATED WITH HIV

12. Many people living with HIV have been sentenced to prison terms of 10-50 years, exceeding punishments sometimes imposed on convicted murderers.

13. Because serious felony charges and imprisonment are reserved for intentional or reckless conduct that causes another person serious harm, the adoption of HIV-specific criminal laws reinforces unfounded beliefs that people living with HIV are inherently dangerous and that “intentional transmission” is a sufficiently common problem to warrant the criminal law’s intervention.

14. The use of sex offender registries and related civil commitment laws to impose life-long surveillance and incarceration on individuals for engaging in consensual sex after testing positive for HIV minimizes the seriousness of actual sexual assault and the consequences for survivors, and misdirects resources used for monitoring and surveillance away from actual sexual predators.

15. The very decision to charge an individual with an HIV-specific crime creates a public record of that individual’s HIV status. In turn, the identities of people with HIV who are criminalized—and sometimes their personal medical information and forensic reports—are subject to sensationalized media coverage that compounds the harm to individuals and their families through this intrusion on the person’s right to medical privacy.

PUBLIC HEALTH AND POLICY LEADERS AROUND THE GLOBE AGREE ON THE NEED TO MODERNIZE CRIMINAL JUSTICE RESPONSES TO HIV

16. The National HIV/AIDS Strategy (NHAS), released in 2010, includes a statement on the problem and public health consequences of HIV criminalization and maintains that many state HIV-specific criminal laws reflect long-outdated misperceptions of HIV's modes and relative risks of transmission. The NHAS recommends that legislators reconsider whether these laws further the public interest and support public health approaches to preventing and treating HIV.

17. The National Alliance of State and Territorial AIDS Directors (NASTAD), an organization that represents public health officials who administer state and territorial HIV/AIDS programs, released a statement in 2011 supporting efforts to end HIV-specific criminal laws and policies that perpetuate stigma and discrimination against HIV-positive persons.

18. There is growing national support for legislation, such as H.R. 3053 the REPEAL ("Repeal Existing Policies that Encourage and Allow Legal") HIV Discrimination Act, to address the harms of HIV criminalization by providing incentives for states to review laws and practices that punish people with HIV for consensual sex and conduct that poses no real risk of HIV transmission, including

spitting and biting.

19. The Joint United Nations Programme on HIV/AIDS (UNAIDS), in a 2008 policy brief, urged nations to avoid introducing HIV-specific criminal laws, stating that there are no data to support the application of criminal law to HIV transmission and exposure, either to achieve justice or to prevent HIV transmission.
20. In July, 2012, the Global Commission on HIV and the Law, of the United Nations Development Programme (UNDP) issued a report, *HIV and the Law: Risks, Rights & Health* that catalogs the damage to individuals, communities and public health goals caused by HIV criminalization and calls for the end of all HIV-specific laws and prosecutions based on HIV status.

CRIMINALIZATION HARMS PEOPLE WITH HIV, THEIR COMMUNITIES AND PUBLIC HEALTH

21. Criminalization harms already-marginalized communities affected by HIV by crediting and reinforcing outdated fears and beliefs about HIV and by stripping people living with HIV of the right to sexual intimacy.
22. Criminalization harms women with HIV in several ways (i.e., it creates a tool for control by abusers who threaten prosecution of women who want to leave abusive relationships; complicates custody disputes and pregnancies; imprisons women for non-disclosure without regard for the complex reasons, such as fear of violence, that disclosure may not be advisable; and over-targets sex workers, against whom condom possession may be used as evidence of intent to commit a crime).
23. Criminalization harms young people, for whom negotiating sex and relationships while cultivating acceptance and community is additionally complex. For all young people, but especially for those perinatally infected who have never known a life without HIV, the criminalization of HIV is particularly destructive as it compounds the difficulties of learning how to safely disclose HIV status and maintain safer sexual relationships.
24. Criminalization of HIV, which disproportionately affects Black men and women, creates another basis for singling out people of color for arrest and imprisonment.
25. HIV criminalization harms society, especially people with HIV, gay men, transgender women, black men and others from communities most directly affected by HIV, by reinforcing demeaning stereotypes that define their sexuality as inherently dangerous, predatory or deviant.
26. HIV criminalization can provide an effective proxy for a homophobic, transphobic, and/or racist application of the law that is otherwise legally or politically prohibited.

It is time to modernize existing laws and their application to individuals with HIV to conform them to current scientific, legal and human rights standards.

Therefore, the undersigned agree that:

- All U.S. law should be consistent with current medical and scientific knowledge and accepted human rights-based approaches to disease control and prevention that respect the right to be free of discrimination and the imposition of unwarranted, punitive rules of conduct based on health and disability status.
- Singling out HIV status or any other health condition or disability as an element of a crime or proof of an intent to harm is unjust and unwarranted from legal, ethical, and public health perspectives.
- Incarceration or isolation under either the criminal or civil law should never be based on unsupported beliefs or assumptions about HIV or an individual’s HIV or STI status, disability,

guilt or dangerousness.

- Cases in which people living with HIV engage in conduct with the specific intent and actual likelihood to inflict harm through transmission of HIV are exceedingly rare and, regardless, can be addressed through existing criminal assault statutes.
- In cases of intended and actual transmission of a sexually transmitted infection, punishment must be proportionate to the nature of the harm and should include diversion program options and alternatives to incarceration, such as restorative justice approaches, that constructively address the needs of the individual who has been harmed.
- Officials considering prosecution of the alleged non-disclosure, exposure, or transmission of HIV or any other STI should exercise restraint and caution and should always consult qualified public health experts before proceeding. In the rare instance where sufficient evidence of intent to harm may warrant prosecution, such prosecutions should never be conducted in a manner that could undermine public health efforts to prevent the spread of STIs, or reinforce societal prejudices, misconceptions, or irrational fears regarding STIs.
- A just application of the criminal law requires that Federal and State officials modernize criminal laws to eliminate HIV-specific statutes and ensure that any prosecution on the basis of HIV or any other STIs must require:
    - **a.** proof of an intent to harm;
    - **b.** conduct that is likely to result in that harm;
    - **c.** proof that the conduct of the accused in fact resulted in the alleged harm; and
    - **d.** punishment that is proportionate to the actual harm caused by the defendant's conduct.

Federal and state officials should review the HIV-specific convictions, penalties, sentence enhancements and other restrictions imposed on people living with HIV, such as mandated sex-offender registration and civil commitment or quarantine orders, in their jurisdictions. In the event that such convictions or sentence enhancements fail to conform to the principles outlined above, federal and state officials should take appropriate measures (e.g., through executive clemency, pardon, sentence reconsideration, parole, probation, community work release, etc.) to mitigate the harm caused to individuals through inappropriate application of the criminal law and other civil restrictions to HIV-positive individuals.

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Asian & Pacific Islander American Health Forum
Asian & Pacific Islander Wellness Center
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Babes-Network YWCA
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Broadway Cares/Equity Fights AIDS
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California Communities United Institute (CCUI)
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Chicago House & Social Service Agency
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Chicago Women's Aids Project
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Colorado AIDS Project
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Community HIV/Hepatitis Advocates of Iowa Network (CHAIN)
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CORAZONES UNIDOS
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Daytop Village Inc.
Desert AIDS Project
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Equality Illinois
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First Congregational Church of Chicago UCC
Fondulac Congregational UCC
Founders Metropolitan Community Church
Friends For Life
Garden of Peace Project
Gay and Lesbian Medical Association (GLMA: Health Professionals Advancing LGBT Equality)

Gay City Health Project
Gay Men's Health Crisis (GMHC)
Gay-Straight Alliance Network
Georgia Equality
GLAD (Gay & Lesbian Advocates & Defenders)
GLBTQ Association Of Middle Eastern Americans (Al GAMEA)
Grace Church
GRACE of Greater Kansas City
Harm Reduction Coalition
Harris County Democratic Party
Haymarket Center
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Health GAP (Global Access Project)
HIPS
HIV a Southern Epidemic
HIV Health & Human Services Planning Council of New York
HIV Justice Network
HIV Medicine Association (HIVMA)
HIV Prevention Justice Alliance (HIV-PJA)
HIV/AIDS Alliance of Michigan and HIV/AIDS Resource Center
hiv/aidslove group
Housing Works
Howard Brown Health Center
Human Rights Campaign
Hyacinth AIDS Foundation
I'm Still Josh - HIV Digital Publication
Illinois Alliance for Sound AIDS Policy (IL ASAP)
Illinois Maternal and Child Health Coalition
Immigration Equality
International Rectal Microbicide Advocates (IRMA)
Iris house, Inc.
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Knew Choices
Lambda Legal
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Latino Commission on AIDS
Leopard Film llc
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Louisiana Latino Health Coalition (LLHC)
MassEquality
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Miami Valley Positives for Positives

Michigan Positive Action Coalition (MI-POZ)
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New Jersey Association on Correction
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Ohio AIDS Coalition
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OLB Research Institute,
Online Buddies, Inc.
Open Door Clinic
Open Studio Project
Out & Equal Workplace Advocates
Paterson Counseling Center
People of Color Against AIDS Network
Perceptions for People with Disabilities
PeterCares House
Pittsburgh AIDS Task Force
Positive Champions Speakers Bureau
Positive Iowans Taking Charge (PITCH)
Positive Mind & Body Support Group Network
Positive Opportunities, Inc.
Positive Resource Center
Positive Women's Network - USA
Positive Womens Network- Philadelphia
Positively U, Inc
Poz Charlotte
Prax(us)
Pridelines Youth Services

Proceed Inc.
Project Inform
Project Uplift - (Pro-U)
Project VIDA, Inc
Puerto Rican Cultural Center -Vida/SIDA
PWN-OHIO
Q Center (LGBTQ Community Center Fund)
Queer Behavior
QUEEROCRACY
Resource Center Dallas
Rural Women's Health Project
Salaam Legal Network & Citizen's Council for Human Rights
Salvadoran American National Network
San Francisco Bay Area Physician Assistants
San Mateo County HIV Program Community Board
San Mateo County STD/HIV Program
Sero Project
Services & Advocacy for GLBT Elders (SAGE)
Siloam
SisterLove Inc.
SMART/SMART Youth
South Suburban HIV/AIDS Regional Clinics (SSHARC)
START at Westminster
Street Works
Tennessee Association of People With AIDS
Test Positive Aware Network (TPAN)
The Center for Health Care Services
The Center for Sex & Culture
The Center for Sexuality and Health Disparities at the University of Michigan
The Global Network of People Living with HIV, North America (GNP+NA)
The Issue of Blood Outreach and Consulting Services
The Lesbian, Gay, Bisexual & Transgender Community Center
The LGBT Resource Center for the Seven Rivers Region Inc.
The NAMES Project/AIDS Memorial Quilt
The National Viral Hepatitis Roundtable
The Philadelphia Center
The Pride Center of the Capital Region
The Project of The Quad Cities
The Southern Tier AIDS Program
The Triangle Community Center
The Well Project
The Women's Collective
Theatre of the Oppressed NYC
TheBody.com
Tibotec Pharmaceuticals Ltd.
Trans Community Organizer

Transgender Law Center
Transgender Resource Center of New Mexico
Twin States Network
Two-Spirit Society of Denver
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Unique & Unified CBO
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Derren Frank (Loyola University Maryland)
Devon Reichelt (Loyola University Maryland)
Dexter Buckhanon
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Dinah Lewis
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James Greco
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John Anthony Eddie (Community Health Action of Staten Island)
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John Earl (Activist, Orange County, CA)
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John Morrison (Loyola Univesity Maryland)
John Nelson (NewYork-Presbyterian Hospital - Columbia University Campus)
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Jorge Romero (Proceed Inc.)
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Jose Diaz (APPIA)
Jose Hernandez
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Kenny Rose
Keri Calkins
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Kevin DeLuca
Kevin McAsker (Loyola University Maryland)
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Kim Daugherty (Friends For Life)
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Krishne Ditto (Loyola University Maryland)
Krista Martel (The Well Project)
Kristen Witte (Loyola University Maryland)
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Krysty Dice (Loyola University Maryland)
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Lane Brafford (Catawba Care Coalition)
Lara Brooks (Howard Brown Health Center)
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Larry Mayhew
Larry Rogers (Community Project Services)
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Laura Pegram (Women with a Vision)
Laura Treadway (Lifelong AIDS Alliance)
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Lauren Manasia (Loyola University Maryland)
Lauren O'Brien (Loyola University Maryland)
Lauren Sese (Loyola University Maryland)
Leanne Savola
Lee Swislow
Leon Mercer
Leonard Dawson
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Leslie Wolfe (Center for Women Policy Studies)
Leticia Martinez
Levi Kreis
Levirt Lathen (Open Door Clinic)
Lexi Brunno (Loyola University Maryland)

Lexie Lanfrank Loyola University Maryland
Lily Amodee
Linda Lopez (Arizona State Senator)
Linda Reynolds (Loyola University Maryland)
Lindsay Anderson (Loyola University Maryland)
Lindsay Hamilton (Loyola University Maryland)
Lindsay Martin
Lindsey Rennie (Loyola University Maryland)
Lisa Diane White (SisterLove Inc.)
Lisa Schergen
Lizy Swain (Loyola University Maryland)
Loren Jones (PWN-USA)
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Magalie Lerman (Prax(us))
Maggie Dwyer (Loyola University Maryland)
Maggie Romero (Loyola University Maryland)
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Mahalia Brown (Community Health of South Florida)
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Malaka Castle
Mara Danoghve (Loyola University Maryland)
Marcelo Maia (C2P-NYC)
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Margo Rohrer (Loyola University Maryland)
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Mark Metzler (Loyola University Maryland)
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Mark Petroelje (Center on Halsted)
Mark Reese (Northside Holistic Center)
Mark Wilcox
Mark Woodall (Loyola University Maryland)
Marlene Bennett (Health Legal Services)
Marlon Woodward (Leopard Film llc)
Marsha Jones (AFIYA Center)
MartÃ-n Anderson
Marvin Ellis
Mary Ellen Mackesy-Amiti (University of Illinois - Chicago)
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Mary Holmes (Loyola University Maryland)
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Mary Odell (Loyola University Maryland)
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Matt Hassey (Loyola University Maryland)
Matt McKenna (Loyola University Maryland)
Matthew Franck
Matthew Gillen (Loyola University Maryland)
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Megan Ferguson (Loyola University Maryland)
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Megan Ingraham (Loyola University Maryland)
Megan Lee (Loyola University Maryland)
Megan Linz Dickison (Loyola University Maryland)
Megan Orlando
Megan Rosenberger (Loyola University Maryland)
Megan Ryan (Loyola University Maryland)
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Melissa Eldredge
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