

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

NICHOLAS HARRISON, ET AL.,

Plaintiffs,

v.

JAMES N. MATTIS, ET AL.,

Defendants.

CIVIL ACTION NO. 1:18-CV-00641

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO FILE UNDER SEAL
EXHIBITS F & G TO PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs respectfully request that Exhibits F and G to Plaintiffs' Memorandum in Support of its Motion for Preliminary Injunction be filed under seal pursuant to Local Civil Rule 5. In support of this position, Plaintiffs state as follows:

1. Plaintiffs have moved the Court to file under seal two declarations in support of their Motion for Preliminary Injunction, which seeks the suspension of the Department of Defense's new Retention Policy as applied to any service member classified as non-deployable based solely on their HIV status.

2. Exhibit F is a declaration by an active duty service member whose promotion to the rank of Commander was withdrawn based on his HIV status and his superiors interpretation of the Retention Policy.

3. Exhibit G is a declaration by an active duty service member who is being discharged from the Air Force because of his HIV status and non-deployable designation. He is currently appealing this decision.

4. With this Memorandum in Support of Plaintiffs' Motion to Seal, Plaintiffs have also filed a Notice of Motion to Seal, Motion to Seal, and a Proposed Order to seal the materials pursuant to Local Rule 5.

5. Under established Fourth Circuit precedent, there are three requirements for sealing court filings: (1) public notice of the request to seal with an opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings supporting a decision to seal and rejecting alternatives to sealing. *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000).

6. Declarants have requested that their declarations be sealed because of the stigma and discrimination against people living with HIV. As more fully described in Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction, the stigma connected with HIV is unprecedented for any medical condition in history. "Individuals living with HIV have been detrimentally affected in every aspect of life, including experiencing denial and termination of employment; denial of needed medical care; loss of insurance coverage; erosion of social support networks; eviction from homes; disruption of family relationships; social isolation; depression; unwarranted criminal prosecution; and excessive criminal sentences." Lambda Legal, *HIV Stigma and Discrimination in the U.S.: An Evidence-Based Report* (November 2010), https://www.lambdalegal.org/sites/default/files/publications/downloads/fs_hiv-stigma-and-discrimination-in-the-us_1.pdf. This discrimination not only continues but has remained stable and may be on the rise.

7. Both declarants fear that if their identities become public knowledge they will be discriminated against or otherwise harmed because they are living with HIV. This fear is a legitimate reason to seal their declarations. *See, e.g., Patient v. Corbin*, 37 F. Supp. 2d 433, 434 (E.D. Va. 1998) (Brinkema, J.) (finding proceeding anonymously appropriate because "[b]eing

HIV positive carries a significant stigma in many parts of today's society"); *S.G. v. Mears Transp. Grp., Inc.*, No. 6:14-CV-917-ORL-37, 2014 WL 4637139 (M.D. Fla. Aug. 12, 2014) (granting motion to proceed under pseudonym due to HIV status); *Doe v. William Shapiro, Esquire, P.C.*, 852 F. Supp. 1256 (E.D. Pa. 1994) (sealing a motion for summary judgment involving an individual with AIDS to "preserve the privacy and dignity of the individual").

8. Less drastic measures to protect declarants' identities are insufficient because the factual information provided in the declarations could be used to identify declarants. 852 F. Supp. at 1257 (sealing a document because it "includes a great deal of personal information which may make it more likely that a reader would recognize the plaintiff [who was diagnosed with AIDS]").

Accordingly, Plaintiffs respectfully request that the Court enter an order sealing Exhibits F and G to Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction.

Dated: July 19, 2018

Respectfully submitted,

/s/ Scott A. Schoettes

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July 2018, I served a true and correct copy of the foregoing by first class mail on the following:

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Respectfully submitted,

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