

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

NICHOLAS HARRISON; and OUTSERVE-
SLDN, INC.,

Plaintiffs,

v.

PATRICK M. SHANAHAN, in his official
capacity as Acting Secretary of Defense;
MARK T. ESPER, in his official capacity as
Secretary of the Army; and the UNITED
STATES DEPARTMENT OF DEFENSE,

Defendants.

No. 1:18-cv-641-LMB-IDD

RICHARD ROE; VICTOR VOE; and
OUTSERVE-SDLN, INC.,

Plaintiffs,

v.

PATRICK M. SHANAHAN, in his official
capacity as Acting Secretary of Defense;
HEATHER A. WILSON, in her official
capacity as Secretary of the Air Force; and the
UNITED STATES DEPARTMENT OF
DEFENSE,

Defendants.

No. 1:18-cv-1565-LMB-IDD

**MEMORANDUM IN SUPPORT OF JOINT MOTION
TO ENLARGE TIME TO FILE PRETRIAL DISCLOSURES**

The parties respectfully request that this Court (1) amend the scheduling order entered in *Harrison v. Shanahan*, see Dkt. 64, to permit the parties to file the pre-trial disclosures required by that order—the Rule 26(a)(3) disclosures, the witness list, and the trial exhibit list and exhibits—on or before May 30, 2019, and (2) issue an order in *Roe v. Shanahan*, requiring the parties file the same on or before May 30, 2019. The Parties submit that there is good cause for this request, as more fully described below.

These two cases were consolidated for pre-trial discovery purposes by the Court on January 4, 2019. Under the consolidated discovery plan approved by the Court, fact discovery closed on March 15, 2019. Fact discovery has been extensive. For example, the parties deposed twenty-eight fact witnesses in *Harrison* and *Roe*. Expert discovery closed on May 10, 2019, except for the deposition of one of Plaintiffs' experts on May 14, 2019. Expert discovery was extensive as well, involving five separate expert witness depositions. Given the extent of discovery in these cases, the parties have identified hundreds of potential exhibits and many potential witnesses; however, if given additional time, the parties can attempt to winnow their exhibit and witness lists to the maximum extent.

For these reasons, the parties respectively submit that good cause is shown to grant this request, amend the scheduling order entered in *Harrison v. Shanahan*, see Dkt. 64, to permit the parties to file the required pretrial disclosures on or before May 30, 2019, and issue an order in *Roe v. Shanahan*, requiring the parties file their pre-trial disclosures on or before May 30, 2019.

Dated: May 14, 2019

/s/ Scott Schoettes

Scott 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

Anthony Pinggera*
APinggera@lambdalegal.org
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
4221 Wiltshire Blvd., Suite 280
Los Angeles, CA 90010
T: (213) 382-7600

Peter E. Perkowski*
PeterP@outserve.org
OUTSERVE-SLDN, INC.
P.O. Box 65301
Washington, DC 20035-5301
T: (800) 538-7418

/s/ John Harding

John W.H. Harding
Virginia State Bar No. 87602
JWHarding@winston.com
Lauren Gailey*
LGailey@winston.com
Laura Cooley
Virginia State Bar No. 93446
LCooley@winston.com
Alexandra J. Hemmings*
AHemmings@winston.com
WINSTON & STRAWN LLP
1700 K St., NW
Washington, DC 20006
T: (202) 282-5000

Julie A. Bauer*
JBauer@winston.com
WINSTON & STRAWN LLP
35 W. Wacker Dr.
Chicago, IL 60601
T: (312) 558-5600

Andrew R. Sommer
sommerra@gtlaw.com
GREENBERG TRAURIG, LLP
1750 Tysons Boulevard
Suite 1000
McLean, VA 22102
T: (703) 749-1370

** pro hac vice*

DATE: May 14, 2019

Respectfully submitted,

G. ZACHARY TERWILLIGER
United States Attorney

/s/

R. TRENT MCCOTTER
Assistant United States Attorney
2100 Jamieson Avenue
Branch Alexandria, Virginia 22314
Tel: (703) 299-3845
Fax: (703) 299-3983
trent.mccotter@usdoj.gov

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

ANTHONY J. COPPOLINO
Deputy Director
Federal Programs

JOSHUA C. ABBUHL
REBECCA CUTRI-KOHART
ROBERT M. NORWAY
Trial Attorneys
U.S. Department of Justice
Civil Division
Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20530
Telephone: (202) 353-0889
Facsimile: (202) 616-8460
robert.m.norway@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that, on the 14 day of May, 2019, 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 14, 2019

Respectfully submitted,

/s/ John Harding
John Harding

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

NICHOLAS HARRISON; and OUTSERVE-)
SLDN, INC.,)
)
Plaintiffs,)

v.)

PATRICK M. SHANAHAN, in his official)
capacity as Acting Secretary of Defense;)
MARK T. ESPER, in his official capacity as)
Secretary of the Army; and the UNITED)
STATES DEPARTMENT OF DEFENSE,)
)
Defendants.)

No. 1:18-cv-641-LMB-IDD

RICHARD ROE; VICTOR VOE; and)
OUTSERVE-SDLN, INC.,)
)
Plaintiffs,)

v.)

PATRICK M. SHANAHAN, in his official)
capacity as Acting Secretary of Defense;)
HEATHER A. WILSON, in her official)
capacity as Secretary of the Air Force; and the)
UNITED STATES DEPARTMENT OF)
DEFENSE,)
)
Defendants.)

No. 1:18-cv-1565-LMB-IDD

PROPOSED ORDER

After considering the Parties' Joint Motion to Enlarge Time to File Pretrial Disclosures in these cases, and for good cause shown, it is hereby

ORDERED that the Parties' Joint Motion to Enlarge Time to File Pretrial Disclosures is granted, and that the Parties shall file the pretrial disclosures required by the scheduling order entered in *Harrison v. Shanahan*, *see* Dkt. 64 on or before May 30, 2019.

Entered this ____ day of _____, 2019.
