

**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 DEFENDANTS' CONSENT MOTION
TO ENLARGE TIME TO FILE TRIAL PRE-TRIAL DISCLOSURES**

Defendants 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 and a list of exhibits to be used at trial and copies of the exhibits, a list of the witnesses to be called at trial and a written stipulation of uncontested facts—on or before June 5, 2019; and (2) issue an order in *Roe v. Shanahan*, requiring the parties file the same on or before June 5, 2019. Defendants submit that there is good cause for this request, as more fully described below. Plaintiffs consent to the relief requested.

These two cases were consolidated for pre-trial discovery purposes by the Court on January 4, 2019. On May 14, 2019, the Court granted the parties an extension to file the pre-trial disclosures until May 30, 2019. See Dkt. 165. Defendants have been diligently preparing their disclosures, which are voluminous. However, on May 22, 2019, the Court overruled in part the Government's assertions of the deliberative process privilege and ordered the Government to produce additional documents. See Dkt. 176. As a result of the May 22 order, the Government must: (1) produce to the magistrate judge for *in camera* review a selection of documents relevant to a related pending motion in *Roe* (which occurred today), (2) produce to this Court for *in camera* review documents and a privilege log relating to the AR 600-110 policy revision by May 31, and (3) prepare to produce to Plaintiff the remainder of the documents subject to the Court's May 22 order by June 3. Because of the additional work required to comply with these deadlines, the Department of Justice's litigation support and document production staff requires additional time to prepare the trial exhibits and other pre-trial disclosures for exchange, which are currently due tomorrow.

For these reasons, Defendants respectively submit that good cause exists 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 June 5, 2019, and issue an order in *Roe v. Shanahan*, requiring the parties file the same on or before June 5, 2019.

Dated: May 29, 2019

Respectfully submitted,

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/s/

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