

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

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

**DEFENDANTS’ UNOPPOSED MOTION TO
MODIFY PRELIMINARY INJUNCTION**

Defendants move to modify the Court’s February 15, 2019 Order (“February 15 Order”) granting in part Plaintiffs’ motion for a preliminary injunction. ECF No. 73. The February 15 Order states that Defendants are enjoined from “separating or discharging from military service Richard Roe, Victor Voe, and any similarly situated active-duty member of the Air Force because they are classified as ineligible for worldwide deployment or deployment to the United States Central Command (“CENTCOM”) area due to their HIV-positive status.” *Id.* But, not all airmen similarly-situated to Roe and Voe seek the same relief sought by the Plaintiffs. Indeed, some HIV-positive Airmen wished for their separation to proceed as scheduled and their plans were disrupted when the Air Force rescinded their separation orders in compliance with the February 15 Order.

Plaintiffs do not oppose Defendants’ Motion to Modify the Preliminary Injunction. Accordingly, Defendants request that the Court modify its Order to allow for similarly-situated Airmen who wish to separate to be allowed to do so. The parties met and conferred and

respectfully propose that the Court amend the February 15 Order by adding the following to the end to allow the Air Force to separate HIV+ airmen who voluntary wish to end their service: “If an Airman wishes to be excepted from this Order and be separated or discharged, the Air Force shall provide them a written notice that their consent to separation is not required and that a federal lawsuit may result in his or her retention. After receiving such a notice, the Airman may make a written request to proceed with his or her separation or discharge, and then the Air Force may proceed with the separation or discharge.”

DATE: April 5, 2019

Respectfully submitted,

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/s/

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PROPOSED ORDER

Upon consideration of Defendants’ Unopposed Motion to Modify the Preliminary Injunction, the Court hereby GRANTS Defendants’ Motion, and AMENDS its February 15, 2019 Order, ECF No. 73, to state that it is “ORDERED, ADJUDGED, and DECREED that defendants be and are ENJOINED from separating or discharging from military service Richard Roe, Victor Voe, and any other similarly situated active-duty member of the Air Force because they are classified as ineligible for worldwide deployment or deployment to the United States Central Command (“CENTCOM”) area due to their HIV-positive status. If an Airman wishes to be excepted from this Order and be separated or discharged, the Air Force shall provide them a written notice that their consent to separation is not required and that a federal lawsuit may result in his or her retention. After receiving such a notice, the Airman may make a written request to proceed with his or her separation or discharge, and then the Air Force may proceed with the separation or discharge.”

Entered this ____ day of April, 2019.

Alexandria, Virginia

Leonie M. Brinkema
United States District Judge