

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

RICHARD ROE; VICTOR VOE; and)
OUTSERVE-SLDN, 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,)

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

Defendants.)

**MEMORANDUM IN SUPPORT OF DEFENDANTS’ MOTION TO
FILE UNDER SEAL EXHIBITS A-D TO DECLARATION OF COL. DAMON
MENENDEZ FILED SIMULTANEOUSLY WITH DEFENDANTS’ MOTION
TO MODIFY THE PRELIMINARY INJUNCTION**

Pursuant to Local Civil Rule 5, Defendants move the Court to seal Exhibits A-D to the Declaration of Col. Damon Menendez, filed simultaneously with Defendants’ Motion to Modify the Preliminary Injunction. In support of its motion, Defendants state as follows:

1. Ex. A is the written statement of A1C J.H. explaining his voluntary wish to be excepted from the Court’s February 15, 2019 Order and separate from the Air Force. Menendez Decl., Ex. A.
2. Ex. B is the written statement of A1C E.R. explaining his voluntary wish to be excepted from the Court’s February 15, 2019 Order and separate from the Air Force. Menendez Decl., Ex. B.

3. Ex. C is the written statement of SrA D.R. explaining his voluntary wish to be excepted from the Court's February 15, 2019 Order and separate from the Air Force. Menendez Decl., Ex. C.
4. Ex. D is the written statement of SrA K.P. explaining his voluntary wish to be excepted from the Court's February 15, 2019 Order, proceed with his Disability Evaluation System case, and separate from the Air Force if that is the decision of the Boards. Menendez Decl., Ex. D.

These exhibits contain information that discloses the identities and medical information of these four HIV+ Airmen. 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 seal. *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000).

Defendants have complied with the first *Ashcraft* factor because Defendants have also filed a Notice of Under Seal Filing, this public memorandum, and a Proposed Order to seal the materials pursuant to Local Rule 5. Should Plaintiffs, or any interested member of the public object to the instant motion, he or she may raise his or her objections with the Court.

Second, this is the least drastic alternative available in compliance with the second *Ashcraft* factor. The Declaration of Col. Damon Menendez is filed in the public record. The Declaration summarizes the circumstances and wishes of these Airmen while maintaining their anonymity. *See* Menendez Decl. ¶ 11. There is no practical way the personal written statements themselves could be placed in the public record, because each contains the Airman's name, a

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