

**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,	)	
	)	
Defendants.	)	

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

**MEMORANDUM IN SUPPORT OF DEFENDANTS’ MOTION TO  
FILE UNDER SEAL EXHIBITS A, D, F-M, and P FILED SIMULTANEOUSLY WITH  
DEFENDANTS’ RENEWED MOTION TO DISMISS PLAINTIFF  
OUTSERVE-SLDN**

Pursuant to Local Civil Rule 5, Defendants move the Court to seal Exhibits A, D, F-M, and P, filed simultaneously with Defendants’ Renewed Motion to Dismiss Plaintiff OutServe-SLDN. In support of its motion, Defendants state as follows:

1. Ex. A is Plaintiff OutServe’s Response to Defendants’ Interrogatories.
2. Ex. D is the Deposition of Anthony Blevins.
3. Ex. F is the Deposition of *Harrison* Declarant 1.
4. Ex. G is the Deposition of Richard Roe
5. Ex. H is the Deposition of Victor Voe
6. Ex. I is the Deposition of K.R.
7. Ex. J is Plaintiff OutServe’s Supplemental Response to Defendants’ Interrogatories.

8. Ex. K is the Deposition of S.H.
9. Ex. L is the Deposition of D.N.
10. Ex. M is the Deposition of Q.S.
11. Ex. P contains Various OutServe Facebook Pages, which list the participants in the Facebook groups.

These exhibits contain information that discloses the identities of seven HIV-positive members of the military. 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 exhibits contain identifying information, such as name, rank, assignments, and other personal details regarding seven HIV-positive members of the military. Though Defendants request that the exhibits be sealed, it is possible to provide redacted exhibits to ensure compliance with the second *Ashcraft* factor. Accordingly, Defendants would like time to confer with Plaintiffs regarding appropriate redactions of information that could disclose the identities of the individuals referred to in the exhibits. Defendants intend to file a public,

redacted version by May 17, 2019 to make public any information that does not fall into these categories.

Third, considering the identities revealed in the personal written statements, the decision to seal is supported by existing Fourth Circuit precedent, the Court's January 18, 2019 Order, ECF No. 42, the Court's January 28, 2019 Order, ECF No. 59, the Court's February 8, 2019 Order, ECF No. 69, the Court's March 1, 2019 Order, ECF. No. 84, and the Court's April 8, 2019 Order, ECF No. 110.

The Court has already considered the "discrimination facing those living openly with HIV," found "good cause" for Plaintiffs Richard Roe and Victor Voe to proceed pseudonymously, and ordered the protection of the plaintiffs' identities. ECF No. 42 (citing *In re Knight Pub. Co.*, 743 F.2d 231,235 (4th Cir. 1984)). These seven individuals, who are HIV-positive and similarly situated to Roe and Voe, are equally deserving of the Court's permission to proceed pseudonymously. Therefore, Defendants request that this information be sealed consistent with the Court's reasoning in its January 18, 2019 Order, ECF No. 42.

Accordingly, Defendants respectfully request that the Court enter an order sealing Exhibits A, D, F-M, and P, and order a redacted version of these exhibits be filed by May 17, 2019.

DATE: May 3, 2019

Respectfully submitted,

G. ZACHARY TERWILLIGER  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date, I filed the foregoing using the Court's CM/ECF system, which will send a notification of electronic filing (NEF) to the following counsel of record:

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