

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

RICHARD ROE, ET AL.,

Plaintiffs,

v.

PATRICK M. SHANAHAN, ET AL.,

Defendants.

CIVIL ACTION NO. 1:18-cv-01565

**MEMORANDUM IN SUPPORT OF PLAINTIFF OUTSERVE-SLDN'S
MOTION TO AMEND PRELIMINARY INJUNCTION**

Plaintiff OutServe-SLDN, Inc. hereby moves the Court to amend the preliminary injunction entered on this date. This Court has “both statutory and equitable authority to modify” an injunctive relief. *Transp. Inc. v. Mayflower Servs., Inc.*, 769 F.2d 952, 954 (4th Cir. 1985). Plaintiff OutServe is mindful that injunctive relief must be “limited to the adequacy that produced the injury in fact that the plaintiff has established.” *Lewis v. Casey*, 518 U.S. 343, 357 (1996).

Here, the Order enjoining Defendants is limited by its terms to “active-duty member[s] of the Air Force.” Dkt. 73. However, as established by Plaintiffs, Senior Airman Q.S. is also being discharged on Tuesday, February 19, 2019¹ on the basis of his HIV status and inability to deploy because of that status. *See* Decl. of Peter Perkowski in Support of Motion for Preliminary Injunction ¶¶ 28-30 (Dkt. 40). Senior Airman Q.S. is, however, not an active-duty Airman, but

¹ The declaration of Peter Perkowski states that Senior Airman Q.S. is being separated on Monday, February 18, 2019. However, Monday, February 18, 2019 is a federal holiday. Accordingly, Senior Airman Q.S. will be separated on Tuesday, February 19, 2019.

is instead a member of the Air National Guard. *Id.* As reflected by this Court’s Memorandum Opinion,

the apparent inadequacy giving rise to imminent, irreparable injury is that service members like Roe and Voe face separation based on the arbitrary policy that they are categorically ineligible for deployment to CENTCOM. The solution, then, is the mirror image of that defect: defendants will be prohibited from making or enforcing discharge determinations based on that policy.

Dkt. 72.

To prevent the improper discharge of this Airman and those who may be similarly situated with him, Plaintiffs respectfully request that the Court issue an order amending the preliminary injunction to remove the words “active-duty” from the second paragraph of the order.

Dated: February 15, 2019

Respectfully submitted,

/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

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

Attorneys for Plaintiffs
**pro hac vice*

/s/ Andrew R. Sommer
Andrew R. Sommer
Virginia State Bar No. 70304
ASommer@winston.com
Lauren Gailey*
LGAiley@winston.com
Laura Cooley
Virginia State Bar No. 93446
LCooley@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

CERTIFICATE OF SERVICE

I certify that, on the 15th day of February, 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: February 15, 2019

Respectfully submitted,

/s/ Andrew R. Sommer
Andrew R. Sommer

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

RICHARD ROE, ET AL.,

Plaintiffs,

v.

PATRICK M. SHANAHAN, ET AL.,

Defendants.

CIVIL ACTION NO. 1:18-cv-01565

PROPOSED ORDER

After consider Plaintiff OutServe-SLDN’s Motion to Amend Preliminary Injunction, the Court GRANTS Plaintiff’s Motion, and amends its Order to delete the words “active duty.”

Entered this ____ day of February, 2019.

Alexandria, Virginia

United States District Judge