

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

NICHOLAS HARRISON, *et al.*,

Plaintiffs,

v.

MARK ESPER, Secretary of Defense, *et al.*,

Defendants.

No. 1:18-cv-641 (LMB/IDD)

RICHARD ROE, *et al.*,

Plaintiffs,

v.

MARK ESPER, Secretary of Defense, *et al.*,

Defendants.

No. 1:18-cv-1565 (LMB/IDD)

DEFENDANTS' MOTION TO EXCLUDE EVIDENCE

Defendants hereby move to exclude consideration of certain irrelevant, unreliable, or otherwise inadmissible evidence relied upon by Plaintiffs in the above-captioned matters. As a threshold matter, Defendants respectfully renew their argument that the Court should not consider any extra-record evidence in these cases—either at summary judgment, or at any trial. In the alternative, Defendants move to exclude (1) any testimony from Dr. Hardy or Dr. Hendrix about the capabilities of the United States military; (2) any testimony from Dr. Hoppe; and (3) any expert or opinion testimony from Dr. Danaher. Further in the alternative, any of this evidence is entitled to no weight. The reasons for these requests are set forth in the memorandum in support that is being filed concurrently with this motion.

DATE: June 3, 2020

Respectfully submitted,

G. ZACHARY TERWILLIGER
United States Attorney

/s/

DENNIS C. BARGHAAN, JR.
Deputy Chief, Civil Division
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3891
Fax: (703) 299-3983
dennis.barghaan@usdoj.gov

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

ANTHONY J. COPPOLINO
Deputy Director
Federal Programs Branch

JOSHUA C. ABBUHL
KERI L. BERMAN
REBECCA CUTRI-KOHART
STEPHEN M. PEZZI
Trial Attorneys
U.S. Department of Justice
Civil Division
Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20530
Telephone: (202) 514-0265
Facsimile: (202) 616-8460
rebecca.cutri-kohart@usdoj.gov

Counsel for the Government