

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

RICHARD ROE, ET AL.,

PLAINTIFFS,

v.

MARK T. ESPER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-cv-01565

NICHOLAS HARRISON, ET AL.,

PLAINTIFFS,

v.

MARK T. ESPER, ET AL.,

DEFENDANTS.

CIVIL ACTION NO. 1:18-CV-00641

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO SEAL
PLAINTIFFS' COMBINED REPLY IN SUPPORT OF PLAINTIFFS' MOTIONS FOR
SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT AND EXHIBITS 64, 70 AND 76**

Pursuant to Local Civil Rule 5, Plaintiffs move to seal Plaintiffs' Combined Reply in Support of Plaintiffs' Motions for Summary Judgment and Opposition to Defendants' Motions for Summary Judgment and Exhibits 64, 70, and 76. In support of this motion to seal, Plaintiffs state as follows:

1. Defendants have marked Exhibit 64 as confidential.
2. Exhibit 70 includes Plaintiff Harrison's personal health information.
3. Exhibit 76 includes excerpts of the Deposition of Dr. Jason Okulicz. Defendants have marked the Deposition of Dr. Jason Okulicz as confidential.

4. With this Memorandum in Support of Plaintiffs' Motion to File Under Seal, Plaintiffs have also filed a Notice of Motion to File Under Seal, Motion to File Under Seal, and a Proposed Order to seal the materials, pursuant to Local Rule 5.

5. 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). Plaintiffs have complied with these requirements.

6. First, as mentioned above, Plaintiffs have filed along with this Motion a Notice of Motion to File Under Seal. Should Defendants or any interested member of the public object to the motion, they may raise their objections with the Court.

7. Second, there are no less drastic alternatives to sealing. Some of these documents include Plaintiffs' personal health information. Where appropriate, Plaintiffs will publicly file redacted versions of these documents so that the public may have the greatest access possible, while still protecting this private information.

8. Third, a decision to seal these documents would be supported by Fourth Circuit precedent. The Court has already determined that documents marked as confidential by the Defendants are subject to the Court's protective orders in these case. *See Harrison*, ECF No. 128, 175–76; *Roe*, ECF No. 158. The protective order provides that "Protected Material . . . shall not be filed on the public record," and "[t]o the extent that Protected Material is relied upon by the Parties in briefs, it should be redacted." *Roe*, ECF No. 158. These documents are marked as confidential or contain the personal health information of Plaintiffs. Their contents must therefore

be redacted prior to being placed on the public record. Plaintiffs seek to file unredacted versions under seal for the benefit of the Court and Defendants.

Accordingly, Plaintiffs respectfully request that the Court enter an order sealing the unredacted versions of Plaintiffs' Combined Reply in Support of Plaintiffs' Motions for Summary Judgment and Opposition to Defendants' Motions for Summary Judgment and Exhibits 64, 70, and 76.

Dated: July 2, 2020

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Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that, on the 2nd day of July, 2020, 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: July 2, 2020

Respectfully submitted,

/s/ John W. H. Harding
John W.H. Harding