

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

NICHOLAS HARRISON, et al.,

Plaintiffs,

v.

LLOYD J. AUSTIN, Secretary of Defense, et al.,

Defendants.

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

RICHARD ROE, et al.,

Plaintiffs,

v.

LLOYD J. AUSTIN, Secretary of Defense, et al.,

Defendants.

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

**MEMORANDUM IN SUPPORT OF MOTION TO FILE UNDER SEAL  
EXHIBITS C THROUGH F TO PLAINTIFFS' AMENDED AND SUPPLEMENTAL  
EVIDENCE IN SUPPORT OF MOTION TO ENFORCE AND ORDER TO SHOW  
CAUSE**

Plaintiffs Richard Roe and Modern Military Association of America, Inc. (“MMAA”) respectfully request that Exhibits C, D, E, and F in support of their Motion to Enforce and Order to Show Cause (“Motion”) be filed under seal in accordance with Local Civil Rule 5. In support of this motion, Plaintiffs state as follows:

1. Plaintiffs have moved the Court to file under seal four declarations in support of their Motion, which is based on these declarants’ personal experiences concerning barriers the encountered in assignment or deployment based on their HIV status.

2. Exhibit C is a declaration by a member of the Army National Guard whose unit was mobilized for deployment to Saudi Arabia, who was required to undergo a lengthy and

frustrating waiver process because he is still considered presumptively non-deployable due to HIV.

3. Exhibit D is a declaration by an Army First Lieutenant who could not obtain interviews to join deployable units because he is still considered presumptively non-deployable due to HIV.

4. Exhibit E is a declaration by a Navy Petty Officer who was disqualified from a prestigious and coveted assignment because he has HIV.

5. Exhibit F is a declaration by an Army Sergeant First Class who was required to go through a waiver process to apply to an Army commissioning program because he is still considered presumptively non-deployable (and presumptively non-commissionable) due to HIV.

6. 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 sealing. *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000).

7. Declarants have requested that their declarations be sealed because of the stigma and discrimination against people living with HIV. As this Court is aware, the stigma connected with HIV is unprecedented for any medical condition in history. “Individuals living with HIV have been detrimentally affected in every aspect of life, including experiencing denial and termination of employment; denial of needed medical care; loss of insurance coverage; erosion of social support networks; eviction from homes; disruption of family relationships; social isolation; depression; unwarranted criminal prosecution; and excessive criminal sentences.” Lambda Legal, *HIV Stigma and Discrimination in the U.S.: An Evidence-Based Report*

(November 2010).<sup>1</sup> This discrimination not only continues but has remained stable and may be on the rise.

8. All four declarants—none of whom is a party in this case—fear that if their identities become public knowledge they will be discriminated against or otherwise harmed because they are living with HIV. This fear is a legitimate reason to seal their declarations. *See, e.g., Patient v. Corbin*, 37 F. Supp. 2d 433, 434 (E.D. Va. 1998) (Brinkema, J.) (finding proceeding anonymously appropriate because “[b]eing HIV positive carries a significant stigma in many parts of today’s society”); *S.G. v. Mears Transp. Grp., Inc.*, No. 6:14-CV-917-ORL-37, 2014 WL 4637139 (M.D. Fla. Aug. 12, 2014) (granting motion to proceed under pseudonym due to HIV status); *Doe v. William Shapiro, Esquire, P.C.*, 852 F. Supp. 1256 (E.D. Pa. 1994) (sealing a motion for summary judgment involving an individual with AIDS to “preserve the privacy and dignity of the individual”). For these reasons, this Court has previously sealed similar declarations in both of these cases.

9. Less drastic measures to protect declarants’ identities are insufficient because the factual information provided in the declarations could be used to identify declarants. *See Doe*, 852 F. Supp. at 1257 (sealing a document because it “includes a great deal of personal information which may make it more likely that a reader would recognize the plaintiff [who was diagnosed with AIDS]”). Plaintiffs are willing to submit redacted versions at the Court’s instruction.

10. With this Memorandum, Plaintiffs have also filed a Notice of Motion to Seal, Motion to Seal, and a Proposed Order to seal the materials in accordance with Local Rule 5.

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<sup>1</sup> [https://www.lambdalegal.org/sites/default/files/publications/downloads/fs\\_hiv-stigma-and-discrimination-in-the-us\\_1.pdf](https://www.lambdalegal.org/sites/default/files/publications/downloads/fs_hiv-stigma-and-discrimination-in-the-us_1.pdf).

Accordingly, Plaintiffs respectfully request that the Court enter an order sealing Exhibits C, D, E and F in support of the Motion.

Dated: June 2, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that, on June 2, 2023, 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.

Respectfully submitted,

/s/ Ashley R. Phillips

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