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

NICHOLAS HARRISON, *et al.*, Plaintiffs, v. LLOYD J. AUSTIN III, *et al.*, Defendants.	No. 1:18-cv-641 (LMB/IDD)
RICHARD ROE, *et al.*, Plaintiffs, v. LLOYD J. AUSTIN III, *et al.*, Defendants.	No. 1:18-cv-1565 (LMB/IDD)

DEFENDANTS' MEMORANDUM IN SUPPORT OF
MOTION TO FILE UNDER SEAL

Pursuant to Local Civil Rule 5, Defendants move to seal the unredacted versions of certain filings associated with Defendants' Opposition to Plaintiffs' Motion to Enforce Judgment and for an Order to Show Cause: Exhibits 7, 9, 10, and 11. In support of this motion, Defendants state as follows:

1. Exhibit 7 is the Curry Declaration.
2. Exhibit 9 is a declaration of a Lieutenant Colonel in the National Guard.
3. Exhibit 10 is a declaration of a Master Sergeant in the Air Force.
4. Exhibit 11 is a declaration of a Lieutenant Colonel in the Army.

5. Portions of the unredacted versions of each of these exhibits contain information that could potentially be used to identify the pseudonymous individuals living with HIV that are discussed in Plaintiffs' motion and Defendant's response.

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

7. Defendants have complied with the first *Ashcraft* factor because Defendants are filing concurrently with their motion to seal a Notice of Sealed Filing, this public memorandum, and a Proposed Order to seal the materials pursuant to Local Civil Rule 5. Should anyone object to this motion (including non-parties to the litigation), he or she may raise objections with the Court.

8. Second, this is the least drastic alternative available in compliance with the second *Ashcraft* factor. Defendants believe that some of the currently redacted information can ultimately be filed on the public docket, but Defendants recognize that the redacted material poses some risk of identifying the pseudonymous individuals, and filing the motions under seal will allow Plaintiffs the opportunity to determine whether they believe the entirety of the redacted information should remain under seal. Although Defendants request that the unredacted versions of the specified filings be sealed, Defendants are also concurrently filing redacted versions on the public docket, where appropriate, to ensure compliance with the second *Ashcraft* factor. Defendants have endeavored to redact these filings as lightly as possible without revealing any information that is inappropriate for public release.

9. Third, Defendants' request to seal is supported by existing Fourth Circuit precedent and also is in accord with previous orders of the Court granting motions to seal in this case.

10. For example, the Court has already found "good cause" for Plaintiffs Richard Roe and Victor Voe to proceed pseudonymously, and ordered the protection of their identities. *Roe* ECF 42 (citing *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984)). The Court has granted motions to seal similar information with respect to Plaintiff Harrison, and individuals other than the plaintiffs. *See, e.g.*, Order, *Harrison* ECF 231.

11. Accordingly, Defendants respectfully request that the Court enter an order sealing the specified filings.

12. Plaintiffs do not oppose the relief requested in this motion.

DATE: June 2, 2023

Respectfully submitted,

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/s/
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