

**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 EXHIBIT A TO REPLY BRIEF 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 Exhibit A to the reply 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 the Roe Declaration in support of their Motion, which is based on the declarant’s personal experiences concerning barriers the encountered in assignment or deployment based on their HIV status.
2. 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).

3. Declarant has requested that their declaration 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).¹ This discrimination not only continues but has remained stable and may be on the rise.

4. The declarant fears that if their identity becomes public knowledge they will be discriminated against or otherwise harmed because they are living with HIV. This fear is a legitimate reason to seal Exhibit A to the reply. *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

¹ https://www.lambdalegal.org/sites/default/files/publications/downloads/fs_hiv-stigma-and-discrimination-in-the-us_1.pdf.

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.

5. Less drastic measures to protect declarant’s identity are insufficient because the factual information provided in the declaration could be used to identify the declarant. *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]”). This has been recognized by the Court’s order granting the use of pseudonyms for plaintiffs in these related cases. (Case No.: 1:18-cv-1565). Plaintiffs are willing to submit redacted versions at the Court’s instruction.

6. 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.

Accordingly, Plaintiffs respectfully request that the Court enter an order sealing Exhibit A to the reply.

Dated: June 16, 2023

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on June 16, 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.

Dated: June 16, 2023

Respectfully submitted,

/s/ Ashley R. Phillips

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