

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

AARON TOBEY,)	
)	
Plaintiff,)	
)	
V.)	Civil Action No. 3:11cv154-HEH
)	
JANET NAPOLITANO, et al.,)	
)	
Defendants.)	

**MOTION TO FILE FIRST AMENDED COMPLAINT
UNDER SEAL**

COMES NOW Plaintiff Aaron Tobey, by counsel, and herewith seeks leave of court to file his First Amended Complaint under seal, and states as follows:

1. By Order entered on May 17, 2011, pursuant to agreement between counsel, plaintiff was given leave to file his First Amended Complaint.
2. On May 26, 2011, the United States filed its unopposed Motion for Stipulated Protective Order (the "Protective Order Motion").
3. Under the proposed Protective Order attached to the Protective Order Motion, the publicly filed version of plaintiff's First Amended Complaint contains pseudonyms for the Federal "John Smith" defendants, but the original First Amended Complaint, containing the John Smith defendants' actual names, is to be filed under seal.
4. In light of the fact that as of this time the Court has not yet considered or entered the proposed Stipulated Protective Order submitted on May 26, 2011, plaintiff is enclosing, attached to this Motion, the original, signed First Amended Complaint identifying by name the "John Smith" defendants in a sealed brown envelope marked

“UNDER SEAL”, and hereby requests that the Clerk hold it under seal and file it in the case file for this case, assuming the Proposed Stipulated Protected Order is entered by the Court, and/or otherwise hold the said original First Amended Complaint under seal until further Order of Court.

WHEREFORE, for the reasons stated herein, and subject to the terms and conditions stated herein, plaintiff hereby respectfully requests leave of Court to file the original First Amended Complaint under seal.

Dated this 27th day of May, 2011

Respectfully submitted,

By: /s/ James J. Knicely

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Participating Attorneys for

THE RUTHERFORD INSTITUTE

Attorneys for Plaintiff, AARON TOBEY

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2011, the foregoing Motion to File First Amended Complaint Under Seal (without attachment) was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

Carlotta P. Wells, Esquire
U.S. Department of Justice – Civil Division
20 Massachusetts Avenue NW – Rm. 7152
Washington, D.C. 20530
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I also hereby certify that on May 27, 2011, the attachment will be sent by certified U.S. mail to:

Carlotta P. Wells, Esquire
U.S. Department of Justice – Civil Division
20 Massachusetts Avenue NW – Rm. 7152
Washington, D.C. 20530,

and will be served on May 31, 2011, by personal service on:

Robin Perrin Meier, Esquire

Office of the United States Attorney for the Eastern District of Virginia
600 East Main St., Suite 1800
Richmond, Virginia 23219-2447

and by personal service on May 31, 2011, on:

Paul W. Jacobs, II, Esquire
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Respectfully Submitted,

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