

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JANE DOE #1,

JANE DOE #2,

JOHN DOE #1,

JANE DOE #3,

JANE DOE #4,

JOHN DOE #2,

and

JOHN DOE #3,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY

3801 Nebraska Avenue NW,
Washington, DC 20016

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES

20 Massachusetts Ave NW,
Washington, DC 20008

U.S. DEPARTMENT OF STATE

2201 C Street NW,
Washington, DC 20037

ELAINE DUKE, in her official capacity as
Acting Secretary of Homeland Security
3801 Nebraska Avenue NW,
Washington, DC 20016

Civil Action No.: _____

JAMES MCCAMENT, in his official capacity as
Acting Director of United States Citizenship
and Immigration Services
20 Massachusetts Ave NW,
Washington, DC 20008

JOSEPH LANGLOIS, in his official capacity as
District Director of United States Citizenship
and Immigration Services,
9500 Rome Place
Washington, DC 20521

REX W. TILLERSON, in his official capacity as
Secretary of State
2201 C Street NW,
Washington, DC 20037

and

JOHN DOES #1-5, in their official capacities as
the consular officials responsible for issuing
immigration visas in Lebanon,

Defendants.

**PLAINTIFFS' UNOPPOSED MOTION TO PROCEED ANONYMOUSLY AND
TO FILE SUPPORTING EXHIBIT UNDER SEAL**

Plaintiffs respectfully move for leave to proceed anonymously in this litigation and to file under seal an exhibit in support of this motion and an un-redacted copy of the complaint. The parties have conferred pursuant to Local Rule 7m and Defendants consent to this motion, without prejudice to their ability to file a motion to unseal. Accordingly, Plaintiffs respectfully request that this Court permit them to proceed under pseudonyms in this action and to file under seal an exhibit to this motion that matches the John and Jane Doe names used in the publicly filed complaint to the Plaintiffs'

actual names and alien numbers, as well as a copy of the complaint that contains Plaintiffs' actual names.

INTRODUCTION

This action, brought under the Mandamus Act, 28 U.S.C. § 1361, the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 11001 *et seq.*, and its implementing regulations, challenges Defendants' unlawful application of Executive Order 13780 and their corresponding delay in issuing Plaintiffs' immigration visas, which were approved nearly six months ago. Because Plaintiffs would be at risk of great harm if their identities were revealed, they respectfully request leave to proceed anonymously in this litigation. In addition, Plaintiffs request leave to file under seal Exhibit A, which includes Plaintiffs' true names and alien numbers, matched with the pseudonyms they seek to use in this lawsuit, as well as a copy of the complaint that includes Plaintiffs' true names. Plaintiffs do not seek to remain anonymous with respect to Defendants.

Plaintiffs' motion is supported by several independent grounds. As an initial matter, the record in this case will reveal sensitive, private, and personal details concerning Plaintiffs' immigration status, nationalities, and religious faith. The record will also reveal that six of the seven Plaintiffs are attempting to leave Syria. This fact alone counsels in favor of granting Plaintiffs' motion to proceed anonymously. Moreover, Plaintiffs reasonably fear for their own safety and well-being—as well as the safety and well-being

of their family members, both here and abroad—if details about their immigration status, nationalities, religious faith, and participation in this lawsuit become public. Finally, John Doe #3 is a minor and the privacy protections afforded to him under the Federal Rules of Civil Procedure would be eviscerated unless both he and his family members are permitted to proceed anonymously in this litigation.

In contrast to Plaintiffs’ strong interest in confidentiality, the countervailing interests in disclosure of Plaintiffs’ identities are minimal or nonexistent. The public’s interest, if any, in knowing Plaintiffs’ identities is negligible and its interest in open judicial proceedings will only be minimally affected if Plaintiffs are permitted to proceed anonymously. Moreover, granting Plaintiffs’ request to proceed under pseudonyms will serve the public interest by allowing this case to go forward. Finally, Defendants will not be prejudiced if Plaintiffs are permitted to proceed anonymously, particularly because Plaintiffs do not seek to withhold their identities from Defendants.

Under these circumstances, there is simply no need for Plaintiffs’ identities to be publicly disclosed. Accordingly, their motion should be granted.

LEGAL STANDARD

When a party seeks to litigate under a pseudonym, the court must ensure that “special circumstances” exist such that the party’s “need for anonymity outweighs prejudice to the opposing party and the public’s interest

in knowing [Doe's] identity.” *John Doe Co. No. 1 v. CFPB*, 195 F. Supp. 3d 9, 23 (D.D.C. 2016) (citation omitted). When performing such a balancing test, the court considers the following nonexclusive factors:

(1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; and (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

CFPB, 195 F. Supp. 3d at 23 (citation omitted). “No single factor is necessarily determinative.” *Doe v. Teti*, No. 1:15-MC-01380, 2015 WL 6689862, at *2 (D.D.C. Oct. 19, 2015). Instead, the court “should carefully review all the circumstances of a given case and then decide whether the customary practice of disclosing the plaintiff’s identity should yield” to the plaintiff’s request for anonymity. *Id.* (quotation marks omitted). The burden on the party seeking to proceed under a pseudonym is not a heavy one: it need only make a “colorable argument in support of the request” that is “not frivolous.” *Qualls v. Rumsfeld*, 228 F.R.D. 8, 10 (D.D.C. 2005).

ARGUMENT

As detailed below, Plaintiffs would be at risk of great harm if their identities were publicly revealed. In contrast, permitting them to proceed anonymously would neither materially harm the public interest in open court

proceedings nor risk unfair prejudice to Defendants. Accordingly, Plaintiffs' motion to proceed anonymously should be granted.

I. Plaintiffs Have a Compelling Need to Retain Their Anonymity

Plaintiffs have a strong interest in proceeding anonymously in this litigation and are not simply attempting to avoid the normal "annoyance and criticism that comes with litigation." *CFPB*, 195 F. Supp. 3d at 16.

As an initial matter, Plaintiffs' immigration status constitutes highly sensitive information that is routinely protected from public disclosure in cases, like this one, where requiring Plaintiffs to disclose it could dissuade a reasonable person in their position from seeking to vindicate their legal rights. *See, e.g., Int'l Refugee Assistance Project v. Trump*, No. CV TDC-17-0361, 2017 WL 818255, at *2 (D. Md. Mar. 1, 2017) ("*IRAP*") (explaining that a plaintiffs' religious faith and immigration status "have been deemed to be sufficiently sensitive and personal in nature to support plaintiffs' use of pseudonyms under appropriate circumstances" and collecting cases); *see also, e.g., Keller v. City of Fremont*, No. 10-cv-0270-LSC-FG3, 2011 WL 41902, at *2 (D. Neb. Jan. 5, 2011) ("[F]ederal courts have recognized that inquiries into immigration status can have an *in terrorem* effect, limiting the willingness of plaintiffs to pursue their rights out of fears of the consequences of an exposure of their position"); *Does I thru XXII v. Advanced Textile Corp.*, 214 F.3d 1058, 1169 (9th Cir. 2000) (crediting plaintiffs' "highly vulnerable [immigration] status"

as one of several factors weighing in favor of allowing plaintiffs to proceed anonymously).

Moreover, Plaintiffs should be allowed to proceed pseudonymously because they reasonably fear that disclosure of their identities will lead to retaliation or harassment from violent actors in Syria. Indeed, the U.S. State Department recently reported that “persons who unsuccessfully sought asylum in other countries . . . [have been prosecuted] upon their return to the country.” U.S. State Dep’t, Country Report on Human Rights Practices for 2013: Syria 28 (2013), *available at* <http://www.state.gov/documents/organization/220588.pdf>. Although the Plaintiff Family is not seeking asylum, its desire to immigrate to the U.S. is sufficiently similar to present the risk of retaliation from violent actors in Syria. Indeed, the Secretary of State recently redesignated Syria for Temporary Protected Status (TPS) because the “ongoing armed conflict in Syria and other extraordinary and temporary conditions would pose a serious threat to the personal safety of Syrian nationals if they were required to return to their country.” Extension and Redesignation of Syria for Temporary Protected Status, 81 Fed. Reg. 147 (Aug. 1, 2016). The threat to the Plaintiff Family and their relatives in Syria if Plaintiffs’ identities are disclosed strongly counsels in favor of allowing them to proceed anonymously in this litigation. *See Doe v. U.S. Dep’t of State*, 2015 WL 9647660, at *3 (D.D.C. Nov. 3, 2015) (granting request to proceed under pseudonym where plaintiff faced credible fear of violence in country of origin);

IRAP, 2017 WL 818255, at *2 (“Potential retaliatory physical or mental harm against individuals in another country can form the basis for permitting plaintiffs to use pseudonyms.”); *see also Advanced Textile*, 214 F.3d at 1063 (considering possible retaliation by the Chinese government against both Chinese national plaintiffs working in Saipan and their family members who reside in China as grounds to support the use of pseudonyms).

Furthermore, given the pervasive climate of anti-Muslim and anti-Syrian immigrant sentiment in the United States, Plaintiffs—including Jane Doe #1, who already resides in the United States—reasonably fear social stigma, harassment, and even violence if their identities, immigration status, nationalities, and religious faiths are publicly disclosed. This fear is well-founded, as anti-Muslim hate crimes in the United States rose 67% in 2015, and an additional 44% in 2016. *See* FBI Hate Crime Statistics (Nov. 2016), *available at* <https://www.fbi.gov/news/stories/2015-hate-crime-statistics-released>; Council on American-Islamic Relations, *Civil Rights Report 2017: The Empowerment of Hate* (2017), *available at* <http://www.islamophobia.org/15-reports/188-the-empowerment-of-hate.html>. The Southern Poverty Law Center has reported that the number of anti-Muslim hate groups in the United States nearly tripled between 2015 and 2016, increasing from 34 to 101 in a single year. *See* SPLC, Hate Groups Increase for Second Consecutive Year as Trump Electrifies Radical Right (Feb. 15, 2017), *available at* <https://www.splcenter.org/news/2017/02/15/>

hate-groups-increase-second-consecutive-year-trump-electrifies-radical-right.

The Center further reported that “[a] shift in targets has also taken place recently with the Syrian refugee crisis, as anti-Muslim groups have increasingly directed their ire toward the American refugee program.

Refugees are commonly depicted as potential terrorist infiltrators by these organizations. Small anti-refugee groups have popped up across the country and fought the relocation of refugees at the hyper-local level.” *Id.*

In light of the pervasive hostility toward Syrian immigrants in some parts of the United States, Plaintiffs reasonably fear that if they are publicly associated with this litigation and their identities, nationalities, immigration status, and religious faith are made public, they will be subject to further harassment, including physical, emotional, and monetary harm by individuals in the United States. Accordingly, they should be permitted to proceed anonymously. *See Lozano v. City of Hazleton*, 620 F.3d 170, 195 (3d Cir. 2010) (concluding that anonymity was warranted where “ethnic tensions had escalated” and plaintiffs “would face an ‘exponentially greater’ risk of harassment, and even physical danger, if their identities were revealed”) (citation omitted).

Finally, John Doe # 3 is a minor and, as required by Federal Rule of Civil Procedure 5.2(a), he would be identified in this litigation at most only by his initials. *See Fed. R. Civ. P. 5.2(a)*. If his parents, siblings, and aunt are required to proceed under their own names, however, identifying John Doe #3

would be straightforward. Thus, only by permitting all Plaintiffs to proceed anonymously can the Court protect John Doe # 3's identity from disclosure. Indeed, this Court has recognized that Rule 5.2(a)'s protections "would be eviscerated unless the parent was also permitted to proceed using initials." *J.W. v. District of Columbia*, 318 F.R.D. 196, 199 (D.D.C. 2016). Because the "privacy interests of parents and their children in proceeding anonymously are intractably intertwined," *id.*, the Court should grant Plaintiffs' motion to proceed anonymously. *See also P.M. v. Evans-Brant Central Sch. Dist., No. 08-168A*, 2008 WL 4379490, at *3 (W.D.N.Y. Sept. 22, 2008) ("Since a parent must proceed on behalf of a minor child, the protection afforded to the minor would be eviscerated unless the parent was also permitted to proceed using initials.").

II. Any Interest in Disclosure of Plaintiffs' Identities Is Minimal

In contrast to Plaintiffs' strong interest in confidentiality, the countervailing interests in disclosure of their identities are minimal or nonexistent.

First, the public's interest, if any, in knowing the identities of Plaintiffs is negligible. To be sure, the issues that Plaintiffs raise in this lawsuit are important ones and may well be a matter of concern to the general public. However, that is not true of the identities of Plaintiffs: "[P]arty anonymity does not obstruct the public's view of the issues joined or the court's

performance in resolving them.” *Advanced Textile*, 214 F.3d at 1068-69 (quoting *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981)).

To the contrary, the public interest strongly supports allowing Plaintiffs to proceed pseudonymously, as the public has a strong interest in seeing the controversial and important issues raised by this case resolved on the merits. “[W]ithout the protection of anonymity,” Plaintiffs will “likely decline to participate in the lawsuit . . . and the public’s interest in testing the [legality]” of the actions of Defendants “could remain unexplored.” *Lozano*, 496 F. Supp. 2d at 512. Requiring disclosure of Plaintiffs’ names in this case would not only discourage them from bringing this action, it would allow Defendants to continue to engage in unlawful behavior without any repercussion. Accordingly, both Plaintiffs and the public at large have aligned interests in the maintenance of Plaintiffs’ anonymity in this litigation.

Nor would granting Plaintiffs’ motion create any risk of unfairness or prejudice to Defendants. As stated above, Plaintiffs do not seek to withhold their identities from Defendants, and there is no reason to believe a fact-finder would be influenced by the fact that Plaintiffs are proceeding anonymously. *See, e.g., James v. Jacobson*, 6 F.3d 233, 240-42 (4th Cir. 1993) (rejecting the notion that plaintiffs’ anonymity would limit the ability of defendant to impeach the credibility of plaintiffs or that it would create the assumption of liability in the defendant); *see also Doe No. 1 v. Williams*, 167 F. Supp. 2d 45, 46, n.1 (D.D.C. 2001) (granting plaintiffs leave to proceed by pseudonym on

condition that they disclose identity to defendants), *rev'd on other grounds*, 2003 WL 21466903 (D.C. Cir. June 19, 2003).

Moreover, courts “are more likely to permit plaintiffs to proceed under a pseudonym when they are pursuing a claim against the government rather than a private individual” because “although the mere filing of a lawsuit against a private party may cause the defendant reputational and economic harm, such that fairness requires the identification of the plaintiffs, the government is not vulnerable to similar reputational harm, particularly in a case involving a challenge to the constitutional, statutory, or regulatory validity of government activity.” *IRAP*, 2017 WL 818255, at *3 (collecting cases). *See also J.W.*, 318 F.R.D. at 201 (“[A]nonymous litigation is more acceptable when the defendant is a governmental body because government defendants do not share the concerns about reputation that private individuals have . . .”) (internal citation omitted).

In short, Defendants face no unfair prejudice if Plaintiffs are allowed to proceed under pseudonyms, particularly at this early stage of the litigation.

CONCLUSION

As detailed above, Plaintiffs would be at risk of great harm if their identities were revealed. Permitting them to proceed anonymously would neither materially harm the public’s interest in open court proceedings nor risk unfair prejudice to Defendants. Accordingly, Plaintiffs respectfully request that this Court permit them to proceed under pseudonyms in this

litigation and to file under seal an exhibit in support of this motion and an un-redacted copy of the complaint.

Respectfully submitted,

/s/ Mark H. Lynch

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