



1 to the U.S. asylum system through unlawful policies and practices. The Individual  
2 Plaintiffs seek asylum in the United States due to their fears of physical injury and  
3 death in their home countries, Mexico and Honduras, which they attribute to drug  
4 cartels, gang violence, and, for some, severe domestic violence. They filed the  
5 Complaint using pseudonyms (ECF No. 1) and now move the Court for an order  
6 expressly permitting them to proceed pseudonymously (ECF No. 128). They contend  
7 that their fears of harm and the risks to their safety will be heightened if they are not  
8 allowed to proceed pseudonymously because their present locations will be exposed  
9 during the course of this public judicial proceeding. (*Id.* at 1.) Each Individual  
10 Plaintiff has filed a declaration in support of the motion, which describes the harm he  
11 or she faced in his or her home country. While the Defendants do not oppose the  
12 motion, neither have they agreed to stipulate to its requested relief. (ECF No. 88.)  
13 For the reasons stated herein, the Court grants the Individual Plaintiffs’ motion.

14 **I. BACKGROUND**

15 **A. Factual Background**

16 The Individual Plaintiffs are non-U.S. citizens who allege that they attempted  
17 to seek asylum in the United States on multiple occasions, but were denied access  
18 by Defendants’ policies, practices, and procedures concerning asylum seekers who  
19 present themselves at ports of entry (“POE”) along the U.S.–Mexico border. (ECF  
20 No. 1 [hereinafter “Compl.”] ¶¶1–3.) Whereas organizational Plaintiff Al Otro  
21 Lado, Inc. filed the Complaint using its name, the Individual Plaintiffs used  
22 pseudonyms. (*See generally id.*) The Complaint describes the harms the Individual  
23 Plaintiffs faced in their home countries, which caused them to seek asylum and to  
24 use pseudonyms.

25 Individual Plaintiffs Abigail Doe (“A.D.”), Beatrice Doe (“B.D.”), and  
26 Carolina Doe (“C.D.”) are natives and citizens of Mexico, each of whom fled with  
27 their families to Tijuana, Mexico, where they attempted to seek asylum in the United  
28 States. (Compl. ¶¶19–21.) Plaintiff A.D. alleges that in May 2017 her husband

1 disappeared after he refused to allow a drug cartel to use his tractor-trailer to  
2 transport drugs. (*Id.* ¶¶1, 39.) A.D. reported her husband’s disappearance to  
3 governmental authorities; she was subsequently abducted by members of the drug  
4 cartel at gunpoint who threatened to kill her and her family if she continued to  
5 investigate her husband’s disappearance. (*Id.* ¶¶19, 40.) One cartel member told  
6 her she had to flee if she wanted to live. (*Id.* ¶40.) A.D. fled with her two children  
7 to Tijuana. (*Id.*) Plaintiff B.D. alleges that her nephew was targeted by the Zetas, a  
8 Mexican drug cartel in southern Mexico, for failure to pay fees and to join the cartel,  
9 and was threatened with death. (*Id.* ¶¶20, 46.) B.D. also alleges that she suffered  
10 severe domestic violence at the hands of her husband, which she reported to two  
11 Mexican government agencies. (*Id.* ¶47.) Her husband told the authorities he would  
12 continue treating his wife as he wanted. (*Id.*) She fled with her three children and  
13 nephew to Tijuana. (*Id.* ¶20, 48.) Plaintiff C.D. alleges that her brother-in-law, a  
14 high-ranking police official, was kidnapped, tortured, and dismembered by a drug  
15 cartel in Mexico. (*Id.* ¶¶21, 55.) C.D.’s husband witnessed the kidnapping and was  
16 threatened by the cartel after the murder, with the same van used in the kidnapping  
17 driving by C.D.’s house twice. (*Id.* ¶55.) C.D. alleges that two men followed her  
18 and her daughters on the way home from work one day, and several men came to  
19 her house at night, causing the family to hide in their bathroom. (*Id.*) C.D. fled with  
20 her three children to Tijuana. (*Id.* ¶¶21, 56.)

21 Individual Plaintiffs Dinora Doe (“D.D.”), Ingrid Doe (“I.D.”), and Jose Doe  
22 (“J.D.”) are natives and citizens of Honduras. (Compl. ¶¶22–24.) Plaintiff D.D.  
23 alleges that MS-13 gang members repeatedly threatened to kill her and her daughter  
24 if they did not leave their house. (*Id.* ¶61.) She and her daughter were held captive  
25 by three members for three days, who repeatedly raped both of them. (*Id.* ¶¶22, 62.)  
26 D.D. and her daughter fled to a shelter in Mexico, but were threatened by MS-13  
27 gang members there. (*Id.* ¶63.) They fled to Tijuana, where they attempted to seek  
28 asylum in the United States. (*Id.* ¶¶22, 64.) Plaintiff I.D. alleges that 18th Street

1 gang members murdered her mother and three siblings, and threatened to kill her.  
2 (*Id.* ¶¶23, 71.) She and her three children were subjected to severe abuse by her  
3 partner, who regularly raped her, sometimes in front of her children. (*Id.* ¶72.) Her  
4 partner burned and beat her, and, at gunpoint, threatened to kill her. (*Id.*) In June  
5 2017, I.D. and her children fled to Tijuana, where they attempted to seek asylum in  
6 the United States. (*Id.* ¶¶22, 73.) Plaintiff J.D. alleges that he was brutally attacked  
7 by 18th Street gang members in Honduras with a machete when he fell behind on  
8 extortion payments. (*Id.* ¶¶24, 78.) In 2016, the gang kidnapped and killed his  
9 wife’s cousin after she resisted the gang, and threatened to kidnap and sexually  
10 assault J.D.’s two teenage daughters. (*Id.* ¶¶24, 79.) The gang subsequently killed  
11 two of his wife’s uncles. (*Id.* ¶79.) In June 2017, J.D. fled Honduras to Nuevo  
12 Laredo, Mexico, taking various buses in Honduras and Guatemala to avoid  
13 detection. (*Id.* ¶80.) In Nuevo Laredo, he was accosted by other gang members.  
14 (*Id.*) He subsequently attempted to seek asylum in Laredo, Texas. (*Id.*) After he  
15 was denied access to asylum, he was accosted once more by gang members and  
16 subsequently fled to Monterrey, Mexico. (*Id.* ¶¶24, 80, 82.)

17 All Individual Plaintiffs allege that they remain in fear for their lives and that  
18 of their families. (*Id.* ¶¶19–24.) They allege that they cannot remain in Mexico and  
19 that the United States is the only place where they can seek safety. (*Id.*)

## 20 **B. Procedural Background**

21 On July 12, 2017, Plaintiff Al Otro Lado, Inc. and the Individual Plaintiffs  
22 filed a putative class action complaint claiming that Defendants’ alleged policies,  
23 practices, and procedures violate statutory and regulatory rights under the  
24 Immigration and Nationality Act (“INA”) and the Administrative Procedure Act  
25 (“APA”), 8 U.S.C. §§1158, 1225; 8 C.F.R. §§235.3, 235.4; constitutional due  
26 process rights under the Fifth Amendment of the U.S. Constitution; and the duty of  
27 *non-refoulement* under international law. (ECF No. 1.) Prior to the transfer of the  
28 case to this Court from the United States District Court for the Central District of

1 California, the Individual Plaintiffs moved for an order permitting them to proceed  
2 pseudonymously on October 16, 2017. (ECF No. 61.) Defendants filed a statement  
3 of non-opposition to the motion, stating that while they did not oppose that motion,  
4 they declined to stipulate to the relief sought. (ECF No. 88.) On November 21,  
5 2017, the transferor court denied without prejudice the Individual Plaintiffs’  
6 unopposed motion to proceed pseudonymously. (ECF No. 113.) The Individual  
7 Plaintiffs filed the present motion on December 13, 2017. (ECF No. 128.) They  
8 represent that Defendants’ position has not changed. (*Id.* at 2.) In support of their  
9 motion, each Individual Plaintiff has filed a declaration detailing his or her fears of  
10 retaliation. (ECF Nos. 128-2, 128-3, 128-4, 128-5, 128-6, 128-7.) The Court now  
11 considers the Individual Plaintiffs’ motion.

## 12 **II. LEGAL STANDARD**

13 The public has a common law right of access to judicial proceedings. *Does I*  
14 *Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000). Federal  
15 Rule of Civil Procedure 10(a) also requires that the title of every complaint “includes  
16 the names of all the parties.” FED. R. CIV. P. 10(a). This requirement is construed  
17 as a mandate that parties use their true names in pleadings. *See John Doe 140 v.*  
18 *Archdiocese of Portland in Or.*, 248 F.R.D. 358, 359 (D. Or. 2008).

19 However, “in the unusual case”, a party may proceed pseudonymously if it “is  
20 necessary . . . to protect a person from harassment, injury, ridicule or personal  
21 embarrassment.” *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981). The  
22 decision whether to permit a party to proceed pseudonymously is a matter of a  
23 court’s discretion. *See Advanced Textile*, 214 F.3d at 1068. The fundamental  
24 question a court seeks to answer is whether “the party’s need for anonymity  
25 outweighs prejudice to the opposing party and the public’s interest in knowing the  
26 party’s identity.” *Id.* When a party asserts a fear of retaliation, a court must assess  
27 a party’s need for anonymity by evaluating: (1) the severity of the threatened harm,  
28 (2) the reasonableness of the party’s fears, and (3) the party’s vulnerability to

1 retaliation. *Id.* In addition to these considerations, a court must always consider the  
2 precise prejudice to the opposing party of permitting a party to proceed  
3 pseudonymously at the particular stage of the proceedings, and whether the public  
4 interest is best served by requiring the litigants seeking anonymity to reveal their  
5 true identities or permitting non-disclosure. *Id.*

### 6 **III. DISCUSSION**

#### 7 **A. The Individual Plaintiffs’ Need for Anonymity**

8 Because the Individual Plaintiffs have asserted a fear of retaliation if their true  
9 identities are revealed in this litigation, the Court first considers (1) the severity of  
10 the harm they allege they will face if they are not permitted to proceed  
11 pseudonymously, (2) the reasonableness of their fears, (3) and their particular  
12 vulnerability to retaliation. *See Advanced Textile*, 214 F.3d at 1068. Carefully  
13 reviewing these considerations, the Court concludes that the Individual Plaintiffs  
14 have sufficiently established their need to proceed with pseudonyms in this  
15 litigation.

#### 16 **1. The Severity of the Harm the Individual Plaintiffs Fear is** 17 **Substantial**

18 First, the Individual Plaintiffs contend that the “risks to their safety” will be  
19 “unnecessarily heightened” if their identities and present whereabouts are exposed  
20 during the course of this litigation. (ECF No. 128-1 at 1, 2.) They contend that such  
21 risks are particularly pronounced because they are asylum seekers who face  
22 “significant physical threats and, in some cases, death.” (*Id.* at 3.) The Individual  
23 Plaintiffs further argue that they remain at risk even if they are permitted to enter the  
24 United States because if their asylum applications are denied, they will be returned  
25 to their home countries where the individuals who harmed them remain.

26 Anonymity is allowed when identification “creates a risk of . . . physical or  
27 mental harm.” *Advanced Textile*, 214 F.3d at 1068. In their declarations filed with  
28 the instant motion, the Individual Plaintiffs each detail physical harm they have

1 faced or threats of physical harm they have received, which echo the factual  
2 allegations in the Complaint and underlie their fears of future retaliation if their true  
3 names are revealed.

4 Plaintiff A.D. states that after she reported her husband's disappearance by a  
5 Mexican drug cartel, she was kidnapped at gunpoint by three men who threatened to  
6 kill her and her children if she continued to ask about the disappearance. (ECF No.  
7 128-2 ¶¶4–6 [“A.D. Decl.”].) The men seemed to know where she lived, her phone  
8 number, and what happened to her husband. (*Id.* ¶7.) She remains in fear that the  
9 men will find her and her family. (*Id.* ¶18.) Plaintiff B.D. states that her nephew,  
10 for whom she cares, was targeted by the Zetas' members for extortion for nearly a  
11 year, who beat him and threatened to kill him and his family if he did not make the  
12 payments. (ECF No. 128-3 ¶¶4–6 [“B.D. Decl.”].) She states that her nephew has  
13 received multiple alerts that the Zetas know he fled and are looking for him in order  
14 to kill him. (*Id.* ¶¶7, 23.) Plaintiff C.D. states that her brother-in-law, a police  
15 officer, was kidnapped, tortured, and murdered by a Mexican drug cartel and that  
16 her husband, also a police officer, received multiple threats in person and by phone  
17 from a different cartel. (ECF No. 128-4 ¶¶4–6 [“C.D. Decl.”].) Members of the  
18 drug cartel appeared at her brother-in-law's funeral and threatened to kill him,  
19 causing her husband to go into hiding. (*Id.* ¶7.) Plaintiff C.D. subsequently was  
20 threatened and followed, and her house was searched. (*Id.* ¶¶8–10.) She fears that  
21 the men who killed her brother-in-law may find her in Tijuana. (*Id.* ¶28.)

22 Plaintiff D.D. states that she received several notes from MS-13 gang  
23 members threatening to kill her and her daughter if they did not leave their home in  
24 Honduras, which was located in MS-13 territory. (ECF No. 128-5 ¶¶3–4 [“D.D.  
25 Decl.”].) MS-13 gang members repeatedly raped her and her daughter over the span  
26 of three days. (*Id.* ¶5.) She and her daughter fled to southern Mexico, where MS-  
27 13 gang members approached them and indicated that the members knew where she  
28 and her daughter were stayed. (*Id.* ¶7.) Plaintiff D.D. states that she received a call

1 from woman who she believes tried to determine D.D.’s location for MS-13; she  
2 fears that MS-13 will find her and her daughter. (*Id.* ¶20.) Plaintiff I.D. states that  
3 she fled Honduras because her ex-boyfriend physically abused and raped her, and  
4 tried to kill her and her daughter.<sup>3</sup> (ECF No. 128-6 ¶¶6–7 [“I.D. Decl.”].) She states  
5 that he tried to kill her the day before she fled and threatened her at gunpoint that he  
6 would kill her if she left. (*Id.* ¶¶8–9.) She fears that her ex-partner will find and kill  
7 her. (*Id.* ¶20.) Plaintiff J.D. states that he and his family left Honduras because they  
8 received threats from the 18th Street, which extorted money from his business.  
9 ((ECF No. 128-7 ¶4 [“J.D. Decl.”].) He was physically attacked with a machete by  
10 gang members and his wife’s cousin was kidnapped and found dead after resisting  
11 the gang. (*Id.* ¶¶4, 6.) The gang subsequently threatened to kidnap his daughter on  
12 multiple occasions. (*Id.* ¶¶7–8.) Plaintiff J.D. fears that the gang will seek  
13 retribution against him and his family, and he cites anecdotal accounts of the gang  
14 murdering persons who fled his neighborhood. (*Id.* ¶¶8, 16, 20.)

15 The harms that the Individual Plaintiffs identify, and which they fear will  
16 occur again if their true names are revealed, fall squarely within the types of harms  
17 that establish a need to proceed pseudonymously. “[P]hysical harm presents the  
18 paradigmatic case for allowing anonymity . . .” *Doe v. Amazon.com, Inc.*, No. 11-  
19 1709, 2011 WL 13073281, at \*3 (W.D. Wash. Dec. 23, 2011). Some courts have  
20 observed that the retaliation a party fears must have some nexus with the lawsuit in  
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22 <sup>3</sup> The Court does not believe that Plaintiff I.D.’s allegations concerning the  
23 violence she faced from the 18th Street gang some eight years before the instant  
24 litigation would warrant permitting her to use a pseudonym. (I.D. Decl. ¶¶4, 20.)  
25 She has not proffered sufficient facts that establish the requisite nexus between that  
26 harm and the risk of her name being made public, such as more recent threats. *Senior*  
27 *Execs. Ass’n v. U.S.*, No. 8:12-cv-02297-AW, 2012 WL 6109108, at \*2 (D. Md.  
28 Dec. 7, 2012). Relatedly, without additional facts, a reasonable person would not  
find that harm so temporally remote from the present day would actually be carried  
out in the future. *See Advanced Textile*, 214 F.3d at 1071 (plaintiff must show that  
“a reasonable person would believe that the threat might actually be carried out”).



1 which the party seeks to proceed pseudonymously. *See, e.g., Doe v. Cty. of El*  
2 *Dorado*, No. 2:13-CV-1433-KJM, 2013 WL 6230342, at \*2 (Dec. 2, 2013). That  
3 nexus is especially strong when the retaliation a party fears is from the opposing  
4 party. For example, in *Advanced Textile*, the Doe plaintiffs feared retaliation from  
5 their defendant employer, which they sued for violations of the Fair Labor Standards  
6 Act. 214 F.3d at 1068. In this case, the Individual Plaintiffs do not allege that they  
7 fear retaliation at the hands of the Defendants. However, while the *Advanced Textile*  
8 standard was set forth in the context of retaliation from a party to the litigation, the  
9 standard does not foreclose third-party retaliation as a valid basis for permitting a  
10 party to proceed pseudonymously. Various courts have permitted the use of  
11 pseudonyms to protect a party from third-party retaliation. *See, e.g., Doe v. Stegall*,  
12 653 F.2d 180, 186 (5th Cir. 1981) (evidence indicated that the plaintiffs “may expect  
13 extensive harassment and perhaps even violent reprisals if their identities are  
14 disclosed to a . . . community hostile to the[ir] viewpoint.”); *Doe v. Alger*, 317 F.R.D.  
15 37 (W.D. Va. 2016) (Doe plaintiff’s identification “would likely increase his risk of  
16 such harm from other persons.”). The Complaint and the Individual Plaintiffs’  
17 declarations publicly reveal details about the violence they faced, where they faced  
18 it, from whom, and their current locations. Under these circumstances, the Court  
19 believes that the third-party retaliation the Individual Plaintiffs fear will occur if their  
20 true identities are made public bears a sufficient nexus with their participation in this  
21 lawsuit that they have established their need for anonymity.

22 In addition to the physical harm faced by all Individual Plaintiffs, the Court  
23 believes that Plaintiffs D.D. and I.D. warrant anonymity on the ground that their  
24 allegations of harm also concern sexual assault. “[F]ictitious names are allowed  
25 when necessary to protect the privacy of . . . rape victims.” *Doe v. Blue Cross &*  
26 *Blue Shield United of Wisc.*, 112 F.3d 869, 872 (7th Cir. 1997); *Doe v. Penzato*, No.  
27 CV10-5154 MEJ, 2011 WL 1833007 at \*3 (N.D. Cal. May 13, 2011); *cf. Jordan v.*  
28 *Gardner*, 986 F.2d 1521, 1525 n.4 (9th Cir. 1990) (“In keeping with the tradition of

1 not revealing names of the victims of sexual assault, we use initials here to protect  
2 the privacy.’’). Such allegations do not require substantiation of future harm to shield  
3 the identities of sexual assault survivors from the public because anonymity is also  
4 warranted if it “is necessary to preserve privacy in a matter of sensitive and [a] highly  
5 personal nature.” *Advanced Textile*, 214 F.3d at 1068. Anonymity for sexual assault  
6 survivors is particularly appropriate given that a rule to the contrary might deter  
7 public disclosure of such conduct. *Penzato*, 2011 WL 1833007 at \*3; *Doe No. 2 v.*  
8 *Kolko*, 242 F.R.D. 193, 195 (E.D.N.Y.2006). *But See Doe v. Cty. of Kern*, No. 1:16-  
9 cv-01469-JLT, 2017 WL 5291687, at \*4 (E.D. Cal. Nov. 11, 2017) (determining that  
10 plaintiff’s allegations of sexual assault were insufficient to warrant use of  
11 pseudonym because they were akin to allegations that would be brought in a sex  
12 discrimination case under Title VII). Accordingly, the Court finds that these  
13 particular Individual Plaintiffs have set forth factual allegations that establish  
14 another ground for their need for anonymity.

## 15 **2. The Individual Plaintiffs’ Fears Are Objectively Reasonable**

16 Second, the Individual Plaintiffs contend that their fears of severe physical  
17 harm should their true identities and locations be revealed are reasonable in light of  
18 the prior physical harm and threats they faced. (ECF 128-1 at 5.) The Court agrees.

19 To proceed anonymously, a party’s fear of harm must be objectively  
20 reasonable. *See Advanced Textile*, 214 F.3d at 1063; *EEOC v. ABM Indus.*, 249  
21 F.R.D. 588, 594 (E.D. Cal. 2008). The party is “not required to prove” that the harm  
22 will in fact be carried out, but rather must show she was threatened and “a reasonable  
23 person would believe that the threat might actually be carried out.” *Advanced*  
24 *Textile*, 214 F.3d at 1071. A court is required to “consider the surrounding context  
25 and other listeners’ reactions to the threats.” *Doe v. Kamehameha Sch.*, 596 F.3d  
26 1036, 1044 (9th Cir. 2010). The Individual Plaintiffs fear that they will be subjected  
27 to the very harms they sought to flee if they are not permitted to proceed  
28 anonymously. (ECF No. 128-1 at 5.) The Complaint and the declarations filed in

1 support of the instant motion detail harms to which the Individual Plaintiffs or their  
2 family members were subjected, including kidnapping and murder, disappearance  
3 of family members, extortion, rape, and death threats by members of drug cartels,  
4 gangs, and, for some, their partners. (*See supra* III.A.1.) A reasonable person would  
5 believe that persons who make public allegations of the type the Individual Plaintiffs  
6 in this case have made might actually face further harm from the perpetrators the  
7 Individual Plaintiffs have identified, if their names are publicly revealed. Under  
8 these circumstances, the Court is reticent to place the Individual Plaintiffs in a  
9 position that would unreasonably jeopardize their safety by precluding them from  
10 using pseudonyms and resulting in disclosure of their current locations.

11 Reports from the United States State Department reinforce this Court’s view  
12 that Plaintiffs’ fears of harm from gang and drug cartel-related violence are  
13 objectively reasonable.<sup>4</sup> The country reports for Mexico and Honduras describe  
14 violence stemming from drug cartels and gangs, including the specific forms of harm  
15 the Individual Plaintiffs raise here. *See* U.S. STATE DEP’T BUREAU OF DEMOCRACY,  
16 *Honduras, Human Rights and Labor Country Reports on Human Rights Practices*  
17 *for 2016*, at 1, 4–5, 19 (2016), [https://www.state.gov/documents/organization/](https://www.state.gov/documents/organization/265808.pdf)  
18 [265808.pdf](https://www.state.gov/documents/organization/265808.pdf); U.S. STATE DEP’T BUREAU OF DEMOCRACY, *Mexico, Human Rights and*  
19 *Labor Country Reports on Human Rights Practices for 2016*, 3, 17, 19 (2016),  
20 <https://www.state.gov/documents/organization/265812.pdf> [hereinafter “2016  
21 Human Rights Report for Mexico”]. With respect to the Individual Plaintiffs from  
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23 <sup>4</sup> The Court *sua sponte* takes judicial notice of these reports, pursuant to Rule  
24 201. *See* Fed. R. Evid. 201(c) (“The Court may take judicial notice on its own.”).  
25 The Court concludes that the information contained in these United States State  
26 Department Human Rights reports are proper subjects of judicial notice pursuant to  
27 Rule 201(b) for the limited purpose of determining the objective reasonableness of  
28 the harm the Individual Plaintiffs fear. *See, e.g., Castillo-Villagra v. I.N.S.*, 972 F.2d  
1017, 1030 (9th Cir. 1992) (taking judicial notice of State Department country report  
for the limited purpose of determining whether the petitioner’s claims were  
sufficiently plausible).

1 Honduras who fled due to the gang violence they allege to have suffered, the 2016  
2 Human Rights Report for Mexico indicates that “Central American gang presence  
3 spread farther into [Mexico] and threatened migrants who fled the same gangs in  
4 their home countries.” *See 2016 Human Rights Report for Mexico*, at 17. For the  
5 limited purposes of the instant motion, the Court finds that these reports confirm the  
6 objective reasonableness of the Individual Plaintiffs’ fear of further harm if their  
7 names are publicly revealed in this litigation. Accordingly, the Court finds that the  
8 Individual Plaintiffs’ fears are objectively reasonable in light of the circumstances.

### 9                   **3. The Individual Plaintiffs Are Vulnerable to Retaliation**

10           Third, the Individual Plaintiffs contend that they fall within a vulnerable class  
11 of persons for whom confidentiality is particularly important because they fled or  
12 are attempting to flee their home countries to seek asylum in the United States. (ECF  
13 No. 128-1 at 3.) They point to United Nations guidance and federal regulations, both  
14 of which seek to protect the confidentiality of information pertaining to asylum  
15 seekers, as confirming the particular vulnerability of asylum seekers. (*Id.* at 34.)  
16 The Court agrees.

17           “Vulnerability is established by the party’s dependence on anonymity to avoid  
18 retaliatory harm.” *A.B.T.*, 2012 WL 2995064 at \*4 (citing *Advanced Textile*, 214  
19 F.3d at 1071–72.). Certain parties are particularly vulnerable. For example, “child-  
20 plaintiffs” are deemed to be especially vulnerable, warranting their anonymity. *See*  
21 *Kamehameha*, 596 F.3d at 1042–43; *Stegall*, 653 F.2d at 186 (“[W]e view the youth  
22 of these plaintiffs as a significant factor in the matrix of considerations arguing for  
23 anonymity here.”). But none of the Individual Plaintiffs here is a child plaintiff.<sup>5</sup>

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25           <sup>5</sup> The Individual Plaintiffs suggest that because five of them are parents of  
26 minor children, the vulnerability of their children warrants permitting the Individual  
27 Plaintiffs to proceed pseudonymously. (ECF No. 128-1 at 6.) The Court rejects this  
28 suggestion. Although a party may point to harm faced by others in identifying the  
potential retaliatory harm faced by disclosure of her true name, *see James v.*  
*Jacobson*, 6 F.3d 233 (4th Cir. 1993) (harm includes “whether identification poses

1 However, a plaintiff may nevertheless be vulnerable to retaliation, even if she does  
2 not belong to a class of persons deemed as categorically vulnerable. For example,  
3 in *Advanced Textile*, the Ninth Circuit recognized the vulnerability of “nonresident  
4 foreign workers” over whom the defendant employer exercised significant control  
5 in their working conditions. 214 F.3d at 1072. These specific attributes showed the  
6 particular vulnerability of the plaintiffs. The inquiry thus focuses on whether the  
7 circumstances demonstrate that the party is vulnerable in a way that other litigants  
8 generally are not.

9 This Court is persuaded that the Individual Plaintiffs are particularly  
10 vulnerable, as asylum seekers, to the retaliation they fear if their true names are  
11 revealed. The authorities provided by the Individual Plaintiffs inform this  
12 determination. “[P]rivacy and its confidentiality requirements are especially  
13 important for an asylum-seeker, whose claim inherently supposes a fear of  
14 persecution by the authorities of the country of origin and whose situation can be  
15 jeopardized if protection of information is not ensured.” UNITED NATIONS HIGH  
16 COMMISSIONER FOR REFUGEES (UNHCR), *UNHCR Advisory Opinion on the Rules*  
17 *of Confidentiality Regarding Asylum Information*, at 2 (Mar. 31, 2005),  
18 <http://www.refworld.org/docid/42b9190e4.html>. As the Individual Plaintiffs  
19 observe, federal asylum regulations in the United States in turn protect the  
20 confidentiality of asylum applicants. See 8 C.F.R. §§208.6, 1208.6. The regulations  
21 establish a “right” of asylum seekers “to keep confidential any information contained  
22 in or pertaining to an asylum application that allows a third party to link the identity  
23 of the applicant to: (1) the fact that the applicant has applied for asylum; (2) specific  
24 facts or allegations pertaining to the individual asylum claim contained in an asylum  
25 application; or (3) facts or allegations that are sufficient to give rise to a reasonable

26 \_\_\_\_\_  
27 a risk of retaliatory physical or mental harm to the requesting party or even more  
28 critically, to innocent non-parties”), the vulnerability consideration concerns the  
particular party before the court, see *Advanced Textile*, 214 F.3d at 1072.

1 inference that the applicant has applied for asylum.” *A.B.T. v. U.S. Citizenship &*  
2 *Immigration Servs.*, No. 2:11-cv-02108 RAJ, 2012 WL 2995064, at \*5 (W.D. Wash.  
3 July 20, 2012). These regulations “safeguard[] information that, if disclosed  
4 publicly, could subject the claimant to retaliatory measures by government  
5 authorities or non-state actors in the event that the claimant is repatriated, or  
6 endanger the security of the claimant’s family members who may still be residing in  
7 the country of origin.” See U.S. DEP’T OF HOMELAND SECURITY, U.S. Citizenship  
8 & Immigration Servs. Asylum Div., *Fact Sheet: Federal Regulations Protecting the*  
9 *Confidentiality of Asylum Applications* (Oct. 12, 2011). Although the Individual  
10 Plaintiffs have disclosed certain details about their personal histories, they have  
11 never publicly disclosed their true identities in filings accessible to the public.<sup>6</sup> The  
12 federal asylum regulations counsel that the Individual Plaintiffs have a right to  
13 maintain the confidentiality of that information to prevent retaliation they face by  
14 virtue of being asylum seekers. Accordingly, the Court concludes that the Individual  
15 Plaintiffs are vulnerable because they are particularly dependent on anonymity to  
16 avoid retaliatory harm.

17 **B. The Use of Pseudonyms Presents No Prejudice to the Defendants**

18 Next, the Court considers the prejudice to the Defendants if the Court permits  
19 the Individual Plaintiffs to proceed anonymously. The Court concludes that the  
20 Defendants face no risk of prejudice, and thus this consideration does not weigh  
21 against permitting the Individual Plaintiffs to proceed pseudonymously.

22 \_\_\_\_\_  
23 <sup>6</sup> These regulations create an exception for disclosures of information to any  
24 federal, state, or local court in the United States concerning any legal action. See 8  
25 C.F.R. §§208.6(c)(2), 1208.6(c)(2). At least one court has found that this exception  
26 does not mean that disclosure to a federal court permits disclosure to the public. See  
27 *A.B.T.*, 2012 WL 2995064, at \*5. Although it is not clear that the regulations are  
28 properly construed in such a manner given that federal court disclosure generally  
presupposes public access, see *Doe v. Kamehameha Sch.*, 596 F.3d 1036, 1042–43  
(9th Cir. 2010), the Individual Plaintiffs’ non-disclosure of their names makes  
unnecessary an interpretation about the proper scope of the regulations.

1 Anonymity must have a limited prejudicial impact on the opposing party's  
2 ability to litigate the case, investigate the claims, and mount a defense. *Advanced*  
3 *Textile*, 214 F.3d at 1072. A court must assess the potential for these types of  
4 prejudice to the opposing party at each stage of the judicial proceeding. *Id.*  
5 Defendants have not claimed they will suffer any prejudice by permitting the  
6 Individual Plaintiffs to proceed pseudonymously. Indeed, the Defendants previously  
7 filed a non-opposition to the request. (ECF No. 88.) An opposing party is in the  
8 best position to articulate the specific prejudices it may face if a party proceeds  
9 pseudonymously. The failure of the Defendants to articulate such prejudices would  
10 suggest little to no prejudice. Even so, the Court has a duty to independently  
11 consider the potential for prejudice.

12 The Court finds no prejudice here because Defendants know the true identities  
13 of the Individual Plaintiffs. “[W]hatever knowledge defendants have of plaintiffs’  
14 identities . . . lessens their claims to be prejudiced by the use of pseudonyms.”  
15 *Advanced Textile*, 214 F.3d at 1069 n.11. Before the case was transferred to this  
16 Court, the parties stipulated to an order that the Individual Plaintiffs would provide  
17 Defendants with their true names and A-numbers, permitting the Defendants to  
18 match their identities with the pseudonyms in the Complaint. (ECF No. 57.)  
19 Pursuant to the stipulation, Defendants further agreed to protect the confidentiality  
20 of this information, including by utilizing the pseudonyms assigned to the named  
21 Plaintiffs in the Complaint and sealing information filed with the Court that could  
22 reasonably be used to identify or locate any Plaintiff. (*Id.*) The transferor court  
23 entered a corresponding order on the stipulation on October 16, 2017. (ECF No.  
24 60). Plaintiffs represent that they have since provided their names and A-numbers  
25 to the Defendants. (ECF No. 128-1 at 1.) Because the Defendants know the  
26 Individual Plaintiffs’ names, they have the information they need to defend against  
27 the claims of the Individual Plaintiffs. Accordingly, the Court finds that there is no  
28 prejudice to the Defendants that would countervail the need the Individual Plaintiffs

1 have established for proceeding pseudonymously at this stage of the proceedings.

2 **C. The Public Interest is Best Served by Permitting the Individual**  
3 **Plaintiffs to Use Pseudonyms**

4 Finally, the Court considers whether the public’s interest is best served by  
5 requiring the Plaintiffs to proceed using their true names. The Individual Plaintiffs  
6 assert that whereas the issues raised in this case are a matter of significant public  
7 concern, revealing their true identities will not add to the public’s understanding of  
8 those issues. (ECF No. 128-1 at 7.) The Court concludes that the public interest is  
9 best served by permitting the Individual Plaintiffs to proceed pseudonymously.

10 In reaching this conclusion, the Court recognizes, on the one hand, the  
11 “public’s right to open courts” by which “there is a ‘general right to inspect and copy  
12 public records and documents, including judicial records and documents.’” *See*  
13 *Kamehameha*, 596 F.3d at 1042–43 (quoting *Kamakana v. City of Honolulu*, 447  
14 F.3d 1172, 1178 (9th Cir. 2006)). Indeed, generally, “the public has a right to know  
15 who is utilizing the federal courts that its tax dollars support.” *Coe v. Cook Cty.*,  
16 162 F.3d 491, 498 (7th Cir. 1998). Permitting the Individual Plaintiffs to use  
17 pseudonyms would seemingly contravene this facet of the public interest.

18 However, there are other facets of the public interest that persuade this Court  
19 that the public interest overall is best served by permitting the Individual Plaintiffs  
20 to use pseudonyms. First, as the Individual Plaintiffs recognize (ECF No. 128-1 at  
21 7), lawsuits that enforce constitutional and statutory rights benefit the public.  
22 *Advanced Textile*, 214 F.3d at 1073; *A.B.T.*, 2012 WL 2995064, at \*6. Indeed, the  
23 public has an interest in such cases being decided on the merits. *Advanced Textile*,  
24 214 F.3d at 1073; *see also Plyler v. Doe*, 457 U.S. 202 (1982) (undocumented  
25 immigrant plaintiffs proceeding anonymously in constitutional challenge to Texas  
26 law denying public school education to undocumented immigrants); *Roe v. Wade*,  
27 410 U.S. 959 (1973) (pregnant woman proceeding anonymously in constitutional  
28 challenge to Texas statute criminalizing certain abortions). Courts should be wary



1 of taking actions that may chill the willingness of a party from bringing  
2 constitutional and statutory challenges. *See Advanced Textile*, 214 F.3d at 1073  
3 (describing fear of employer reprisals that will chill an employee’s willingness to  
4 challenge employer violations of employee rights). In this case, the Individual  
5 Plaintiffs bring a constitutional due process challenge under the Fifth Amendment  
6 as well as statutory challenges under various provisions of the INA arising from  
7 Defendants’ alleged denial of access to the U.S. asylum system at POEs along the  
8 U.S.-Mexico border. (*See generally* ECF No. 1.) The Individual Plaintiffs allege  
9 that they presented themselves at POEs on multiple occasions and expressed a fear  
10 of returning to their home country, but were coerced by CBP officials into recanting  
11 their fears and signing forms in English falsely stating that they had no such fears.  
12 (*Id.* ¶¶19–24; A.D. Decl. ¶¶9–19; B.D. Decl. ¶¶11–22, 24–26; C.D. Decl. ¶¶14–29;  
13 D.D. Decl. ¶¶8–17; I.D. Decl. ¶¶12–18; J.D. Decl. ¶¶18–19.) The Individual  
14 Plaintiffs’ challenge, and the factual allegations underlying it, undoubtedly raise  
15 important issues, the resolution of which is in the interest of the public. Requiring  
16 the Individual Plaintiffs to use their true names despite their fear of harm from the  
17 persons they have sought to flee, creates an unnecessary risk of chilling the  
18 willingness of asylum seekers from litigating important issues like the ones raised in  
19 this case.

20         Second, “it is difficult to see ‘how disguising plaintiffs’ identities will obstruct  
21 public scrutiny of the important issues in this case.’” *Kamehameha*, 596 F.3d at  
22 1043 (quoting *Advanced Textile*, 214 F.3d at 1072). Although the public has an  
23 interest in open judicial proceedings, “[p]arty anonymity does not obstruct the  
24 public’s view of the issues joined or the court’s performance in resolving them.”  
25 *Stegall*, 653 F.2d at 185. Here, the Individual Plaintiffs raise claims of a “systematic,  
26 illegal practice” by CPB of denying certain asylum seekers access to the U.S. asylum  
27 system (ECF No. 1 at 16.) The identity of the Individual Plaintiffs is irrelevant to  
28 the legal merits of these claims, the resolution of which will be in full view of the


1 public. Accordingly, the Court concludes that the public interest is best served by  
2 permitting the Individual Plaintiffs to proceed pseudonymously.

3 **IV. CONCLUSION & ORDER**

4 Based on the Court’s review of the Individual Plaintiffs’ need for anonymity,  
5 the potential prejudice to the Defendants, and the public interest, the Court concludes  
6 that the need for anonymity in this case outweighs countervailing considerations.  
7 Therefore, the Court **GRANTS** the Individual Plaintiffs’ motion to proceed  
8 pseudonymously in this action.<sup>7</sup> (ECF No. 128.) However, because this Court must  
9 consider the particular prejudice to the opposing party at each stage of the  
10 proceedings, *Advanced Textile*, 214 F.3d at 1072, this grant is without prejudice to  
11 any future challenge by the Defendants at a later stage of the proceedings, and, in  
12 particular, trial. *See Doe v. Ayers*, 789 F.3d 944, 946 (9th Cir. 2015) (observing that  
13 a court should consider the “risk that the plaintiffs’ use of pseudonyms might  
14 prejudice the jury in their favor or undermine [defendants’] efforts to impeach them”)  
15 (citing *James v. Jacobson*, 6 F.3d 233, 240–41 (4th Cir. 1993)).

16 **IT IS SO ORDERED.**

17  
18 **DATED: December 20, 2017**

  
**Hon. Cynthia Bashant**  
**United States District Judge**

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26 <sup>7</sup> The Court cautions that its present determination bears solely on the legal  
27 standard applicable to the issue of whether the Individual Plaintiffs may proceed  
28 under the cloak of anonymity in this federal litigation. The Court does not express,  
and should not be construed as expressing, any view as to the merits of the Individual  
Plaintiffs’ claim for asylum, which are subject to a different legal standard.