

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, a project of the
Urban Justice Center, Inc., on behalf of
itself and its clients; HIAS, Inc., on behalf
of itself and its clients; ALLAN HAKKY;
SAMANEH TAKALOO; JOHN DOES #
1-4; and JANE DOE #1,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States; DEPARTMENT OF
HOMELAND SECURITY;
DEPARTMENT OF STATE; OFFICE OF
THE DIRECTOR OF NATIONAL
INTELLIGENCE; JOHN KELLY,
Secretary of Homeland Security; REX
TILLERSON, Secretary of State; and
MICHAEL DEMPSEY, Acting Director
National Intelligence,

Defendants.

Civil Action No.: 8:17-cv-00361-TDC

**DOE PLAINTIFFS' MOTION FOR
LEAVE TO PROCEED UNDER
PSEUDONYMS & MEMORANDUM OF
LAW IN SUPPORT THEREOF**

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I. INTRODUCTION AND STATEMENT OF FACTS AND ISSUES

Plaintiffs Jane Doe #1, John Doe #1, John Doe #2, John Doe #3, and John Doe #4 (collectively, the “Doe Plaintiffs”) respectfully request leave to proceed under pseudonyms. In this action, the Doe Plaintiffs, along with several other named organizational and individual plaintiffs, challenge the Executive Order signed by President Trump on January 27, 2017 entitled, “Protecting the Nation from Terrorist Entry into the United States” (hereinafter, the “Executive Order”). The Doe Plaintiffs’ motion is supported by several independent grounds.

First, public disclosure of the Doe Plaintiffs’ true identities and participation in this action could seriously jeopardize their ability participate in this lawsuit and vindicate their constitutional rights. The Doe Plaintiffs reasonably fear that if their identities were to become public, they and/or their family members would be subjected to retaliation by federal government officials, particularly in the form of adverse immigration consequences, such as adverse decisions on pending or future petitions; unwarranted scrutiny, interrogation, or detention; and/or the initiation of removal proceedings.

Second, the Doe Plaintiffs reasonably fear that, in light of the current heated debate over immigration generally and the Executive Order in particular, revealing their true identities and personal stories would subject them to harassment and even physical harm from members of the public at large. In addition, some fear for the safety of their family members, both here and abroad, if sensitive details about their religious faith and immigration status become public.

Third, the public’s interest in open judicial proceedings will only be minimally affected if the Doe Plaintiffs are permitted to proceed anonymously. This a case against the government, not a private party, and it turns on legal questions, not on the identities of any particular individuals, which are not material to the resolution of any issues presented by the case.

1 Fourth, Defendants will not be prejudiced if the Doe Plaintiffs are permitted to proceed
2 anonymously. Plaintiffs' standing cannot reasonably be disputed; they seek only equitable relief,
3 and not damages; and the case turns solely on the legality of the Executive Order. Under these
4 circumstances, there is simply no need for Defendants to know the Doe Plaintiffs' true identities.

5 **II. THE COURT SHOULD GRANT THE DOE PLAINTIFFS' MOTION TO**
6 **PROCEED UNDER PSEUDONYMS**

7 When a party seeks to litigate under a pseudonym, the court must "ensure that extraordinary
8 circumstances support such a request by balancing the party's stated interest in anonymity against
9 the public's interest in openness and any prejudice that anonymity would pose to the opposing
10 party." *Doe v. Public Citizen*, 749 F.3d 246, 274 (4th Cir. 2014). When performing such a
11 balancing test, courts consider the following nonexclusive factors:
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13 whether the justification asserted by the requesting party is merely to avoid the
14 annoyance and criticism that may attend any litigation or is to preserve privacy in
15 a matter of sensitive and highly personal nature; whether identification poses a risk
16 of retaliatory physical or mental harm to the requesting party or even more
17 critically, to innocent non-parties; the ages of the persons whose privacy interests
are sought to be protected; whether the action is against a governmental or private
party; and, relatedly, the risk of unfairness to the opposing party from allowing an
action against it to proceed anonymously.

18 *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) (citations omitted). The court must "carefully
19 review all the circumstances of a given case and then decide whether the customary practice of
20 disclosing the plaintiff's identity should yield to the plaintiff's privacy concerns." *Doe v.*
21 *Pittsylvania County*, 844 F. Supp. 2d 724, 729 (W.D. Va. 2012) (internal punctuation and citation
22 omitted).

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24 In this case, all these factors are relevant except for the one pertaining to the ages of the
25 Doe Plaintiffs, who are all adults over the age of eighteen. As discussed below, the remaining
26 factors weigh heavily in favor of each of the Doe Plaintiffs.
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1 A. THE DOE PLAINTIFFS SEEK TO PRESERVE PRIVACY IN A MATTER OF
2 SENSITIVE AND HIGHLY PERSONAL NATURE

3 Each of the Doe Plaintiffs has been directly affected by the Executive Order insofar as each
4 Doe Plaintiff has a relative or relatives whom the Executive Order bars from entering the United
5 States because of those relatives' nationality, alienage, and/or actual or perceived religious
6 affiliation. The immigration status of not only these relatives but also the Doe Plaintiffs themselves
7 is highly sensitive information that is routinely protected from public disclosure in cases, like this
8 one, where requiring plaintiffs to disclose it could dissuade a reasonable person in their position
9 from seeking to vindicate their legal rights at all. *See, e.g., Keller v. City of Fremont*, No. 8:10-cv-
10 0270-LSC-FG3, 2011 WL 41902, at *2 (D. Neb. Jan. 5, 2011) (“[F]ederal courts have recognized
11 that inquiries into immigration status can have an *in terrorem* effect, limiting the willingness of
12 plaintiffs to pursue their rights out of fears of the consequences of an exposure of their position”);
13 *see also Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1169 (9th Cir. 2000)
14 (crediting plaintiffs' “highly vulnerable [immigration] status” as one of several factors weighing
15 in favor of allowing plaintiffs to proceed anonymously); *Lozano v. Hazleton*, 496 F. Supp. 2d 477,
16 508-09 (M.D. Pa. 2007), *aff'd in relevant part*, 620 F.3d 170, 194-96 (3d Cir. 2010). As discussed
17 in further detail below, the immigration status of the Doe Plaintiffs and their relatives exposes
18 them to retaliation by federal immigration officials, as well as to harassment and even violence by
19 anti-immigrant, anti-refugee, and/or anti-Muslim segments of the general public, and therefore
20 represents a “specific sensitive and personal privacy interest” far beyond the normal “annoyance
21 and criticism that comes with litigation.” *Doe v. Alger*, 317 F.R.D. 37, 40 (W.D. Va. 2016). This
22 factor therefore weighs in favor of anonymity.
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1 B. IDENTIFICATION POSES A RISK OF RETALIATION, HARASSMENT, AND
2 EVEN VIOLENCE TO THE DOE PLAINTIFFS AND TO THEIR FAMILIES

3 The recent upsurge in anti-immigrant and anti-Muslim attacks strongly counsels in favor
4 of allowing each of the Doe Plaintiffs to proceed anonymously, as do the threats to the Doe
5 Plaintiffs' families in their home countries. *See Lozano*, 620 F.3d at 195 (anonymity warranted
6 where "ethnic tensions had escalated" and plaintiffs "would face an 'exponentially greater' risk of
7 harassment, and even physical danger, if their identities were revealed") (citation omitted); *Roe v.*
8 *Aware Woman Ctr. for Choice*, 253 F.3d 678, 687 (11th Cir. 2001) (anonymity warranted in
9 abortion case, where the abortion issue had elsewhere "led to death, injury, harassment, [and] fear
10 . . ."); *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981) (anonymity warranted where plaintiffs
11 faced "extensive harassment and perhaps even violent reprisals if their identities are disclosed to
12 a . . . community hostile to the viewpoint reflected in plaintiffs' complaint"); *see also* Order
13 Granting Mot. to Proceed Under Pseudonyms at 4-5, *Hispanic Interest Coal. of Ala. v. Bentley*,
14 No. 11-cv-2484 (N.D. Ala. filed Aug. 12, 2011) ("*HICA* Order") (finding "sufficient evidence of
15 genuine threat of harassment and violence to the Doe plaintiffs and/or their families should their
16 identities be revealed publically" to outweigh presumption of openness in judicial proceedings),
17 attached as Ex. A to Decl. of Nicholas Espíritu ("*Espíritu Decl.*"); Order Granting Motion to
18 Proceed Anonymously, *Friendly House v. Whiting*, No. 10-cv-1061 (D. Ariz. filed June 21, 2010)
19 ("*Friendly House* Order") (allowing individual with lawful presence to proceed anonymously due
20 to concerns of revealing immigration status information), Espíritu Decl. Ex. B.

23 **1. John Doe #1**

24 John Doe #1 is a legal permanent resident of Iranian origin. Decl. of John Doe #1 ¶ 1. John
25 Doe #1 came to the United States on a J-1 visa and obtained lawful permanent resident status
26 through the National Interest Waiver program for people whose work concerns an area of
27 substantial intrinsic merit, is national in scope, and benefits the interests of the United States. *Id.* ¶
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1 2. John Doe #1 married an Iranian national and has submitted a spousal immigration visa petition
2 on her behalf. *Id.* ¶ 3. The application was approved, the processing fees have been paid, and they
3 await the embassy interview. *Id.*

4 John Doe #1 worries that if his name is made public as part of this lawsuit, his spouse's
5 visa petition could be subject to heightened scrutiny and denied on pretextual grounds. *Id.* ¶ 7.
6 Additionally, John Doe #1 has family in Iran and he reasonably fears that his public association
7 with this case could put his family members there in jeopardy. *Id.* ¶¶ 10, 14. Moreover, numerous
8 events since issuance of the Executive Order—including attacks on mosques in Texas and Quebec,
9 and the harassment of prominent Muslim activists through social media and other outlets—make
10 John Doe #1 fear that he and his family could also be targeted by members of the general public
11 for harassment or even violence if their true identities and association with this case were revealed.
12 *See id.* ¶¶ 8, 12-14. These privacy concerns are substantial and strongly support permitting John
13 Doe #1 to proceed anonymously. *See Lozano*, 496 F. Supp. 2d 477, 508-09; *Keller*, 2011 WL
14 41902 at *2; *Friendly House Order* at 2.

17 **2. John Doe #2**

18 John Doe #2 is a United States citizen of Iraqi origin. Decl. of John Doe #2 ¶ 1. John Doe
19 #2 came to the United States with his wife and two daughters as refugees after his uncle and cousin
20 were killed in Iraq, he subsequently received death threats, and he and his family fled to Syria,
21 where they lived for three years. *Id.* ¶ 2, 4. They are all now United States citizens, as is John Doe
22 #2's third daughter, who was born in the United States. *Id.* John Doe #2 has filed a family-based
23 I-130 immigration visa petition for his parents, who remain in Iraq. *Id.* ¶ 6. John Doe #2's parents
24 had an immigration interview at the United States Embassy in Baghdad in 2016 and their visas
25 were subsequently approved. *Id.* As of December 2016, their cases were still pending
26 administrative processing. *Id.* In anticipation of their emigration to the United States, John Doe
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1 #2's parents have sold their furniture and prepared to move. *Id.* ¶ 7. Now, the Executive Order
2 prevents them from joining John Doe #2 in the United States. *Id.*

3 John Doe #2 is understandably quite worried about his parents' safety. *Id.* ¶ 8. They live in
4 a dangerous part of Iraq, and have received letters threatening to harm them because they are John
5 Doe #3's parents. *Id.* They are currently moving between the houses of various friends and
6 relatives to ensure that they are not targeted, and John Doe #2 cannot visit them because he fears
7 for his own life and is afraid of endangering his family. *Id.*

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9 While John Doe #2 believes that participating in this lawsuit is important because it could
10 ultimately aid his parents' efforts to escape the dangerous conditions in which they live, he
11 nonetheless fears that his public participation could lead to him and his family, both here and in
12 Iraq, being targeted for harassment or even violence. *See id.* ¶ 10. Like John Doe #1, John Doe #2
13 is aware of recent attacks on mosques. *See id.* Moreover, John Doe #2 lives in an area of Maryland
14 where support for President Trump and his policies is strong, and he is concerned about the reaction
15 of his neighbors if they find out that he is participating in this lawsuit. *Id.* He is particularly
16 concerned about how his children and family could be affected. *Id.* John Doe #2 does not want his
17 children to be harassed in school by students or school personnel because of his participation in
18 this lawsuit. *Id.*

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20 The balancing in this case weighs strongly in favor of allowing John Doe #2 to proceed
21 under a pseudonym. Public disclosure of John Doe #2's identity creates a risk that he, his parents
22 in Iraq, and his children will be subject to retaliatory treatment. The balance of interests in
23 permitting a party to proceed anonymously tips sharply in favor of anonymity particularly in cases
24 where the identification poses a risk of harassment to innocent non-parties, such as John Doe #2's
25 parents, who have been threatened in Iraq because they are his parents, and his children, who risk
26 harassment if their father's participation in this lawsuit becomes public knowledge. *See James*, 6
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1 F.3d at 238 (placing special weight on the risk of retaliatory physical or mental harm to “innocent
2 non-parties”). In addition, in similar cases where plaintiffs risked backlash and harassment if their
3 names were disclosed, the courts routinely grant leave to proceed anonymously. *See, e.g., Lozano*,
4 620 F.3d at 194-96 (unlawful status plus risk of harassment); *Stegall*, 653 F.2d at 186 (risk of
5 harassment and potential violence); *Doe v. Barrow County*, 219 F.R.D. 189, 193 (N.D. Ga. 2003)
6 (exposure of religious affiliation plus risk of harassment); *HICA* Order at 5 (threat of harassment
7 and violence).

9 **3. John Doe #3**

10 John Doe #3 is a legal permanent resident of Iranian origin. Decl. of John Doe #3 ¶ 1. John
11 Doe #3 came to the United States through the greencard lottery. *Id.* ¶ 2. His wife, who is also an
12 Iranian national, lives in Iran. *Id.* John Doe has applied for a visa on his wife’s behalf. *Id.* ¶ 3. She
13 has had her consular interview for the visa and has been in administrative processing since then.
14 *Id.*

15 John Doe #3 worries that his involvement in this lawsuit could jeopardize his wife’s visa
16 application, as well as his own plans to naturalize and become a United States citizen. *Id.* ¶ 4. John
17 Doe #3 and hopes that, in light of the temporary restraining order currently in effect, the National
18 Visa Center will resume processing applications from Iranian nationals; he fears, however, that his
19 participation in this lawsuit could adversely affect her application. *Id.* John Doe #3 also fears that
20 his participation in this case could result in the harassment of his wife and himself by the Iranian
21 government when he visits her in Iran. *Id.* ¶ 5. As a result, he has canceled his plans to visit his
22 wife in February and he is also afraid to travel outside the United States because he fears that he
23 will not be readmitted. *Id.*

24 John Doe #3 also fears he and his family could be targeted, both in public and on the Internet,
25 by anti-immigrant segments of the general public. *Id.* ¶¶ 8, 12-14. Like John Does #1 and #2, he
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1 has read reports that a mosque was set on fire by arsonists in Texas the day after President Trump
2 signed the Executive Order. *Id.* ¶ 7. He is also aware that the New York judge who issued an order
3 prohibiting the deportation of foreign nationals otherwise subject to the Executive Order has had
4 her home phone number and husband’s name published on an “alt right” website, along with other
5 derogatory comments about the judge. *Id.* ¶ 9. Reports of incidents like these make John Doe #3
6 fearful for the personal security of himself and his family and have led him to seek leave to proceed
7 under a pseudonym. *Id.* ¶¶ 6, 10.

9 John Doe #3 should be permitted to proceed under a pseudonym. The public disclosure of
10 his name would expose intimate information about his immigration status and that of his family
11 and create a risk that he and his wife will be subject to retaliatory treatment. *See Lozano*, 496 F.
12 Supp. 2d at 508-09; *Keller*, 2011 WL 41902 at *2; *Friendly House Order* at 2; *see also Advanced*
13 *Textile*, 214 F.3d at 1070-71. Under these circumstances, the sensitive nature of the information
14 surrounding John Doe #3 and his wife’s immigration statuses, the risk of retaliation and
15 harassment, and the overall privacy concerns strongly support anonymity for John Doe #3.

17 **4. John Doe #4**

18 John Doe #4 is a United States citizen of Iraqi origin. Decl. of John Doe #4 ¶ 1. John Doe
19 #4 immigrated to the United States at the age of three and grew up here. *Id.* ¶ 2. His wife, Jane
20 Doe #1, who is also an Iraqi national, came to the United States as a refugee and is now a United
21 States citizen. *Id.*

22 John Doe #4 and Jane Doe #1 are expecting their first child; Jane Doe #1 is scheduled for a
23 Caesarian section this month. *Id.* Jane Doe’s parents currently live in Iraq and have valid
24 immigration visas, but are unable to come to the United States to witness the birth of their
25 grandchild if the Executive Order is in effect. *Id.*

1 John Doe #4 and his wife are afraid to reveal their names in this lawsuit. *Id.* ¶ 4. They fear
2 that Jane Doe #1’s parents might be targeted if, because of this lawsuit, people in Iraq learn of their
3 connection to the United States. *Id.*; *see also* Decl. of Jane Doe #1 ¶¶ 5-6. John Doe #4 is also
4 aware that Muslims in the United States are at risk of harassment for their religious and political
5 beliefs, and he is afraid that if he reveals his name in this lawsuit, he could also become a target of
6 the current-anti-Muslim sentiment in the United States. Decl. of John Doe #4. ¶ 5.

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8 As with the other plaintiffs in this lawsuit, John Doe #4 fears that if his name is made public
9 in the context of this lawsuit, he and his family could be targets of backlash and retaliation, both
10 here and in the United States. In similar cases where plaintiffs risked backlash and harassment if
11 their names were disclosed, the courts have granted leave to proceed anonymously. *See, e.g.,*
12 *Lozano*, 620 F.3d at 194-96 (unlawful status plus risk of harassment); *Stegall*, 653 F.2d at 186 (risk
13 of harassment and potential violence); *Barrow County*, 219 F.R.D. at 193 (exposure of religious
14 affiliation and harassment); *HICA* Order at 5 (threat of harassment and violence).

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16 **5. Jane Doe #1**

17 Jane Doe #1 is a United States citizen of Iraqi origin. Decl. of Jane Doe ¶ 1. Jane Doe #1
18 came to the United States as a refugee in 2009 after fleeing from Iraq to Jordan in 2005. *Id.* ¶ 2.
19 She became a United States citizen in 2015. *Id.* ¶ 2. Her husband, John Doe #4, who is also from
20 Iraq, immigrated to the United States at the age of three and is also a naturalized U.S. citizen. *Id.*
21 ¶ 3.

22 Jane Doe #1 is pregnant and scheduled for a Caesarian section in a matter of days. *Id.* ¶ 4.
23 In 2016, she filed a family-based IR-5 visa petition for her parents, who live in Baghdad, so they
24 could come to the United States and live safely. *Id.* The visa petition was approved and is valid
25 until May 2017. *Id.* Should the Executive Order go back into effect, however, it would prevent
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1 Jane Doe #1's parents from traveling to the United States to witness the birth and first few days of
2 their grandchild's life. *Id.*

3 Jane Doe #1 and her husband are also unable to return Iraq to visit her parents because they
4 fear for their safety. *Id.* ¶ 5. For example, Jane Doe #1's parents have received threats when people
5 in their neighborhood learned that Jane Doe #1's youngest brother emigrated to the United States.
6 *Id.* In addition, Jane Doe #1, her husband, and her father are Sunni Muslims, but Jane Doe #1's
7 parents live in a predominantly Shiite neighborhood, and therefore Jane Doe #1 and John Doe #4
8 do not feel safe in her parents' neighborhood. *Id.* For similar reasons, Jane Doe #1 and her husband
9 are afraid to reveal their names in this lawsuit. *Id.* ¶ 6. They fear that Jane Doe #1's parents, who
10 are still in Iraq, might be targeted if people in Iraq are able to identify them and learn not only of
11 their relationship to the United States, but also the religion of Jane Doe #1's father. *Id.* Jane Doe
12 #1 is also aware that Muslims in the United States are at risk of harassment for their religious and
13 political beliefs, and she is afraid that if she reveals her name in this lawsuit, she could also become
14 a target of the current-anti-Muslim sentiment in the United States. *Id.* ¶ 7.

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17 Like her husband, Jane Doe #1 fears that if her name is made public as a plaintiff in this
18 lawsuit, she and her family, including her parents in Iraq, could be subject to significant
19 harassment, retaliation, and even physical violence. Anonymity is warranted under such
20 circumstances. *See, e.g., Lozano*, 620 F.3d at 194-96; *Stegall*, 653 F.2d at 186; *Barrow County*,
21 219 F.R.D. at 193; *HICA Order* at 5.

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23 C. THE DOE PLAINTIFFS RISK SOCIAL STIGMA, HARASSMENT, AND EVEN
24 VIOLENCE IF THEIR IDENTITIES ARE MADE PUBLIC

25 Recent events have illustrated a significant escalation in the targeting of Muslim and Arab-
26 Americans in the United States for harassment and even criminal behavior, demonstrating the
27 objective reasonableness of the Doe Plaintiffs' fears regarding the consequences of proceeding
28 under their real identities. *See Lozano*, 620 F.3d at 195.

1 As was widely reported, for example, the most recent FBI report documents that hate
2 crimes against American Muslims have soared to their highest levels since the aftermath of the
3 September 11, 2001 attacks.¹ Over the course of 2015—the most recent year for which such data
4 is available—hate crimes against American Muslims were up 67 percent from the previous year.²
5 The months leading up to the November 2016 presidential election, moreover, saw a series of
6 police and media reports of attacks against individuals wearing traditional Muslim garb or who
7 were perceived as Middle Eastern.³ Brian Levin, the director of the Center for the Study of Hate
8 and Extremism at the San Bernardino campus of the University of California, argued that the
9 “stereotypes and derogative statements [that] bec[a]me part of the political discourse,” including
10 then-candidate Trump’s call for a Muslim ban and a Muslim registry,⁴ drove the violent backlash
11 against American Muslims.⁵

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13 Additionally, since the election, there have been numerous reported instances of hate crimes
14 against Muslims, particularly Muslim immigrants. The day after the election, for example,
15 attackers in San José grabbed a woman’s hijab and pulled her to the ground.⁶ In the following
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18 ¹ See Pew Research Center, *Anti-Muslim Assaults Reach 9/11-era Levels, FBI Data Show*,
19 Nov. 21, 2016, available at <http://pewrsr.ch/2liw5pY>, Espíritu Decl. Ex. C.

20 ² Espíritu Decl. Ex. C.

21 ³ Espíritu Decl. Ex. C; see also Eric Lichtblau, *Hate Crimes Against American Muslims Most*
Since Post-9/11 Era, NY Times, Sept. 17, 2016, <http://nyti.ms/2jQWWbj>, Espíritu Decl. Ex. D.

22 ⁴ See Patrick Healy & Michael Barbaro, *Donald Trump Calls for Barring Muslims From*
Entering U.S., NY Times, Dec. 7, 2015, <http://nyti.ms/2kYQIUC>, Espíritu Decl. Ex. E (reporting
23 then-candidate Trump’s call for a Muslim ban and a Muslim registry)

24 ⁵ See Ex. D to Espíritu Decl.; see also Isaac Chotiner, *Donald Trump & the Spike in Anti-*
Muslim Hate Crimes in the U.S., Slate Magazine, May 9, 2016, <http://slate.me/1OkFMrG>, Espíritu
25 Decl. Ex. F (reporting on study documenting linkages between the hate crimes perpetrated against
26 Muslims and Arab-Americans and the perpetrators’ avowed support for President Trump).

27 ⁶ See Jason Green, *Hijab-wearing Woman Describes San Jose State Attack*, San Jose
28 Mercury News, Nov. 11, 2016, <http://bayareane.ws/2fFIajz>, Espíritu Decl. Ex. G.

1 days, a Muslim-owned business in El Cajon, California received a note that said, in all-caps, “Be
2 prepared to go back to go back to your country with ISIS. . . Donald Trump will kick all of your
3 ass back where you came from,”⁷ and a Muslim high school teacher in Georgia received an
4 anonymous note that said her “headscarf isn’t allowed anymore” and that she should “hang
5 yourself with it.”⁸ Similarly, Somali-born Minnesota State Representative Ilhan Omar was
6 subjected to harassment on a trip to Washington D.C. for a White House training, with, her taxicab
7 driver referring to her as “ISIS” and threatening to forcibly remove her hijab.⁹ In total, the
8 Southern Poverty Law Center reported over 30 incidents against Muslims in the five days
9 following the election.¹⁰

11 This pattern of harassment, threats of violence, and assaults directed at Muslims and Arab-
12 Americans have continued in the subsequent two months. In December, a NYC transit worker
13 wearing a hijab was shoved down a flight of stairs in Grand Central, with the attacker yelling,
14 “You’re a terrorist, go back to your own country. You shouldn’t work here.”¹¹ That same month,
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16 ⁷ See Kate Morrissey, *Post-election note to El Cajon business: ‘BE PREPARED TO GO*
17 *BACK TO YOUR COUNTRY WITH ISIS’*, San Diego Tribune, Nov. 30, 2016,
18 [http://www.sandiegouniontribune.com/news/immigration/sd-me-hate-incidents-20161130-](http://www.sandiegouniontribune.com/news/immigration/sd-me-hate-incidents-20161130-story.html)
19 [story.html](http://www.sandiegouniontribune.com/news/immigration/sd-me-hate-incidents-20161130-story.html), Espíritu Decl. Ex. H;

20 ⁸ See Kristine Guerra, *A Muslim Teacher Receives an Anonymous Note About Her*
21 *Headscarf: ‘Hang Yourself With It’*, Wash. Post, Nov. 12, 2016, <http://wapo.st/2lip1JU>, Espíritu
22 Decl. Ex. I.

23 ⁹ See Samantha Schmidt, *She Became the Nation’s First Somali American Lawmaker. A*
24 *Month Later, She Was Harassed in a D.C. Cab for Being Muslim*, Wash. Post, Dec. 8,
25 2016, <http://wapo.st/2kOH5D6>, Espíritu Decl. Ex. J.

26 ¹⁰ See Southern Poverty Law Center, *Update: More Than 400 Incidents of Hateful*
27 *Harassment and Intimidation Since the Election, available at*
28 [https://www.splcenter.org/hatewatch/2016/11/15/update-more-400-incidents-hateful-harassment-](https://www.splcenter.org/hatewatch/2016/11/15/update-more-400-incidents-hateful-harassment-and-intimidation-election)
[and-intimidation-election](https://www.splcenter.org/hatewatch/2016/11/15/update-more-400-incidents-hateful-harassment-and-intimidation-election), Espíritu Decl. Ex. K.

¹¹ See Samantha Schmidt, *Man Shoves Muslim New York City Transit Worker on Stairs,*
Shouting ‘You’re a Terrorist,’ Wash. Post, Dec. 6, 2016, <http://wapo.st/2kLoJuq> Espíritu Decl.
Ex. L; Andrew M. Cuomo, *Statement from Governor Andrew M. Cuomo on New York City Hate*
Crimes, Governor of New York Website, Dec. 5,

1 an off-duty Muslim NYPD officer was threatened by a man who called her “ISIS” and threatened
2 to slit her throat.¹² Likewise, in December, a man stabbed a worshipper outside a mosque in Simi
3 Valley, California.¹³ Additionally, that month, a dead pig was dumped at an Islamic center in
4 Oklahoma.¹⁴ Likewise, In January, a mosque outside Seattle was burned in an act of arson.¹⁵

5 Since the inauguration, the attacks on Muslim-Americans have continued. For example,
6 Linda Sarsour, a Muslim-American activist, has faced continuous anti-Muslim harassment and
7 threats online.¹⁶ These harassers have publicly accused her of being allied with ISIS and being a
8 “supporter of terrorism.”¹⁷ Indeed, the day after the signing of the Executive Order, a mosque in
9 Victoria, Texas, burned to the ground. Several weeks earlier, another mosque burned down in
10 Austin, Texas. Police are still investigating the causes.¹⁸

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15 2016, <https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-new-york-city-hate-crimes>, Espíritu Decl. Ex. M.

16 ¹² See Sarah Larimer, *We Can’t Allow This’: Man Accused of Threatening to Slit Throat of*
17 *Muslim NYPD Officer*, Wash. Post, Dec. 5, 2016, <http://wapo.st/2liDFRk>, Espíritu Decl. Ex. N.

18 ¹³ See Matt Stevens and Matt Hamilton, *Man Stabs Worshiper Near Simi Valley Mosque in*
19 *Hate Crime, Police Allege*, LA Times, Dec. 12, 2016, <http://lat.ms/2koRfSO>, Espíritu Decl. Ex. O.

20 ¹⁴ See Rhiannon Poolaw, *Lawton Islamic Center falls Victim to Potential Hate Crime*,
21 KSWO ABC 7 News, Dec. 8, 2016, <http://bit.ly/2k0Lflb>, Espíritu Decl. Ex. P.

22 ¹⁵ See Tony Marco, *Police: Mosque Outside Seattle Torched*, CNN, Jan. 15,
23 2017, <http://cnn.it/2kLmdVa>, Espíritu Decl. Ex. Q.

24 ¹⁶ See Nidhi Prakash, *A Muslim Organizer of the Women’s March Is Under Attack from*
25 *Islamophobic Trolls*, Fusion, Jan. 23, 2017, <http://fus.in/2loFnNU>, Espíritu Decl. Ex. R; see also
26 Assoc. Press, *Attacks Target Muslim-American Activist After DC march*, FOX News, Jan. 26,
27 2017, <http://fxn.ws/2kb4qq5>, Espíritu Decl. Ex. S.

28 ¹⁷ Espíritu Decl. Exs. R, S.

¹⁸ Sanya Mansoor, *Two Texas Mosques Burned to the Ground this Month*, Texas Trib., Jan.
30, 2017, <http://bit.ly/2loIjdj>, Espíritu Decl. Ex. T.

1 Even members of the judiciary have been targeted merely for doing their jobs. The
2 Honorable Ann Donnelly, the federal judge in the Eastern District of New York who, the day after
3 the Executive Order was signed, issued an order prohibiting the deportation of individuals detained
4 at airports nationwide, has drawn the ire of anti-immigrant nationalists on the Internet, who
5 published her phone number, her husband's name, and the description of her as, "Traitorous idiot
6 scum 'judge' Ann Marie Donnelly, appointed by the fake nigger president from Kenya, on the
7 recommendation of kike 'senator' Chuck Schumer."¹⁹ Even more publicly, President Trump
8 himself has referred to the Honorable James Robart, who issued a temporary restraining order of
9 parts of the Executive Order, as a "so-called judge," and has suggested that if there is a terrorist
10 attack in the coming days or weeks, Judge Robart will be to blame.²⁰

12 Given these numerous examples of harassment and violence directed at Muslim- and Arab-
13 Americans and even federal judges simply fulfilling their constitutional obligations, Plaintiffs
14 reasonably fear that if their identities were made public, they too would be subjected to harassment
15 and violence.

17 D. THIS ACTION IS AGAINST THE GOVERNMENT AND THEREFORE FAVORS
18 ANONYMITY

19 An additional factor weighing in favor of permitting the Doe Plaintiffs to proceed
20 anonymously is that this action is against the federal government, rather than a private party. *See*
21 *John Does 1-5 v. McCrory*, No. 1:13CV711, 2014 WL 29352, at *2 (M.D. N.C. Jan. 3, 2014)
22 ("Plaintiffs bring this action against a governmental party, which weighs in favor of anonymity.").

24 ¹⁹ Ryan Lenz, *Daily Stormer Targets Federal Judges Ruling Against Trump's Muslim Ban*,
25 Southern Poverty Law Center, Feb. 1, 2017,
26 <https://www.splcenter.org/hatewatch/2017/02/01/daily-stormer-targets-federal-judges-ruling-against-trumps-muslim-ban>, Espíritu Decl. Ex. U.

27 ²⁰ *See* Dean Obeidallah, *Donald Trump's Most Bone-chilling Tweet*, CNN, Feb. 6, 2017,
28 <http://cnn.it/2kFMESG>, Espíritu Decl. Ex. V.

1 As courts have recognized, “[a]ctions against the government do no harm to its reputation, whereas
2 suits filed against private parties may damage their good names and result in economic harm.”
3 *Pittsylvania County*, 844 F. Supp. 2d at 730 (citation omitted); *see also Candidate No. 452207 v.*
4 *CFA Institute*, 42 F. Supp. 3d 804, 810 (E.D. Va. 2012); *McCrary*, 2014 WL 29352, at *2.

5 E. THERE IS NO RISK OF UNFAIR PREJUDICE TO THE GOVERNMENT IF THE
6 DOE PLAINTIFFS ARE ALLOWED TO PROCEED ANONYMOUSLY

7 Similarly, there is no risk of unfair prejudice to the Defendants if the Court permits the Doe
8 Plaintiffs to proceed anonymously, as this case involves strictly legal issues and does not turn on
9 questions of the individual Doe Plaintiffs’ background or credibility. *See Pittsylvania County*, 844
10 F. Supp. 2d at 731 (“Case law indicates that any risk of unfairness to a defendant as a consequence
11 of allowing a plaintiff to proceed anonymously is minimized when the issues raised are purely
12 legal and do not depend on identifying the specific parties.” (internal punctuation and citation
13 omitted)); *HICA Order* at 5 (finding that “unfair prejudice to defendants is not sufficient reason to
14 deny plaintiffs the right to proceed anonymously in light of other circumstances”). Because the
15 issues presented in this case are purely legal, the Doe Plaintiffs’ particularized facts and
16 circumstances play “a relatively minor role in this litigation,” and therefore “the risk of unfairness
17 to defendants by allowing plaintiff[s] to proceed anonymously is relatively low.” *Pittsylvania*
18 *County*, 844 F. Supp. 2d at 731.

19
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21 Moreover, as already noted above, such a suit involving purely legal claims against the
22 government does no harm to the government’s reputation. *See Pittsylvania County*, 844 F. Supp.2d
23 at 730; *S. Methodist Univ. Ass’n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th
24 Cir. 1979) (noting that, unlike anonymous lawsuits against private parties, such suits “challenging
25 the constitutional, statutory, or regulatory validity of government activity . . . involve no injury to
26 the Government’s reputation (internal punctuation omitted)).
27
28

1 In short, the federal government faces no unfair prejudice if the Doe Plaintiffs are allowed
2 to proceed under pseudonyms, particularly at this early stage of the litigation. And if the
3 government can later articulate and substantiate a need for particularized information about the
4 Doe Plaintiffs, the Court can consider at that stage whether a different balance should be struck
5 regarding the Doe Plaintiffs' privacy.

6 F. PERMITTING THE DOE PLAINTIFFS TO PROCEED ANONYMOUSLY WILL
7 NOT HARM THE PUBLIC INTEREST IN OPEN PROCEEDINGS

8 Finally, in the circumstances of this case, anonymity does not compromise in any way the
9 public interest in open judicial proceedings. This particular case turns on legal questions, not the
10 identities of individuals. If the Doe Plaintiffs are granted leave to proceed under pseudonym, "the
11 public is not denied its right to attend the proceedings or inspect the orders or opinions of the court
12 on the underlying constitutional issue." *Pittsylvania County*, 844 F. Supp. 2d at 728 (citing *Barrow*
13 *County*, 219 F.R.D. at 193).

14
15 **III. CONCLUSION**

16 The Doe Plaintiffs would be at risk of great harm if their identities were revealed.
17 Permitting them to proceed anonymously would neither materially harm the public interest in open
18 court proceedings nor risk unfair prejudice to the government. The Doe Plaintiffs therefore
19 respectfully request that this Court permit them to proceed under pseudonyms in this action.
20

21
22 Respectfully submitted,

Dated: February 7, 2017

23
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CERTIFICATE OF SERVICE

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I hereby certify that on this 7th day of February, 2017, I caused a PDF version of the foregoing document to be electronically transmitted to the Clerk of the Court, using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

By: /s/ Justin B. Cox