

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

INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

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

**PLAINTIFF JANE DOE #2'S MOTION  
FOR LEAVE TO PROCEED UNDER  
PSEUDONYM AND MEMORANDUM  
OF LAW IN SUPPORT THEREOF**



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## **INTRODUCTION AND STATEMENT OF FACTS AND ISSUES**

Plaintiff Jane Doe #2 respectfully requests leave to proceed under a pseudonym. In this action, Jane Doe #2, along with several other named organizational and individual plaintiffs, some of whom are already proceeding pseudonymously as Doe Plaintiffs, challenge the Executive Order signed by President Trump on March 6, 2017 entitled, “Protecting the Nation from Terrorist Entry into the United States” (hereinafter, the “Executive Order”). This Court previously granted Plaintiffs’ motion to proceed anonymously for plaintiffs similarly situated to Plaintiff Jane Doe #2 and Defendants did not oppose Plaintiffs’ prior motion. *See* Dkt. No. 66. Jane Doe #2’s motion is supported by several independent grounds. *See generally* Decl. of Jane Doe #2, attached as Exhibit A.

First, public disclosure of Jane Doe #2’s true identity and participation in this action could seriously jeopardize her ability participate in this lawsuit and vindicate her constitutional rights. Jane Doe #2 reasonably fears that if her identity were to become public, she and/or her family members would be subjected to retaliation by federal government officials, particularly her sister, a refugee in Saudi Arabia, who has a pending I-130 petition.

Second, Jane Doe #2 shares the same fear as other the Doe Plaintiffs in this litigation—that, in light of the current heated debate over immigration generally and the Executive Order in particular, revealing the true identities and personal stories of all the Doe Plaintiffs would subject them to harassment and even physical harm from members of the public at large.

Third, the public’s interest in open judicial proceedings will only be minimally affected if Jane Doe #2 is 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.

Fourth, Defendants will not be prejudiced if the Jane Doe #2 is permitted to proceed anonymously.

## **ARGUMENT**

### **I. LEGAL STANDARD**

When a party seeks to litigate under a pseudonym, the court must “ensure that extraordinary circumstances support such a request by balancing the party’s stated interest in anonymity against the public’s interest in openness and any prejudice that anonymity would pose to the opposing party.” *Doe v. Public Citizen*, 749 F.3d 246, 274 (4th Cir. 2014). When performing such a balancing test, courts consider the following nonexclusive factors:

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 sensitive and highly personal nature; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more 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.

*James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) (citations omitted). The court must “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 privacy concerns.” *Doe v. Pittsylvania County*, 844 F. Supp. 2d 724, 729 (W.D. Va. 2012) (internal punctuation and citation omitted).

In this case, all these factors are relevant except for the one pertaining to age; Jane Doe #2 is an adult over the age of eighteen. As discussed below, the remaining factors weigh heavily in favor of allowing Jane Doe #2 to proceed pseudonymously.

## **II. THE COURT SHOULD GRANT JANE DOE #2'S MOTION TO PROCEED UNDER A PSEUDONYM**

### **A. Jane Doe #2 Seeks To Preserve Privacy in a Matter of Sensitive and Highly Personal Nature**

As already noted in the Doe Plaintiffs' Motion for Leave to Proceed Under Pseudonyms ("Doe Plaintiff Motion"), Dkt. No. 5, and the First Amended Complaint, Dkt. No. 89, the Doe Plaintiffs in this litigation are directly affected by the Executive Order insofar as each Doe Plaintiff has a relative or relatives whom the Executive Order bars from entering the United States because of those relatives' nationality, alienage, and/or actual or perceived religious affiliation. The immigration status of not only these relatives but also the Doe Plaintiffs themselves is 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 at all. *See, e.g., Keller v. City of Fremont*, No. 8:10-cv-0270-LSC-FG3, 2011 WL 41902, at \*2 (D. Neb. Jan. 5, 2011); *see also Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1169 (9th Cir. 2000); *Lozano v. Hazleton*, 496 F. Supp. 2d 477, 508-09 (M.D. Pa. 2007), *aff'd in relevant part*, 620 F.3d 170, 194-96 (3d Cir. 2010). This factor therefore weighs in favor of anonymity.

### **B. Identification Poses a Risk of Retaliation, Harassment, and Even Violence to Jane Doe #2 and to Her Family**

In addition to the recent upsurge in anti-immigrant and anti-Muslim attacks in this country, Jane Doe #2's personal circumstances, as well as threats to her family members abroad, strongly counsel in favor of allowing her to proceed anonymously. *See Lozano*, 620 F.3d at 195 (anonymity 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); *Roe v. Aware Woman Ctr. for Choice*, 253 F.3d 678, 687 (11th Cir.

2001) (anonymity warranted in abortion case, where the abortion issue had elsewhere “led to death, injury, harassment, [and] fear . . .”).

Jane Doe #2 is a United States citizen of Syrian origin living in Mecklenburg County, North Carolina. Decl. of Jane Doe #2 at ¶ 1. Even as a United States citizen, she is fearful of leaving the United States because she is afraid the Executive Order may result in difficulty or harassment upon her return to the United States. *Id.* ¶ 13. Jane Doe #2 is also aware that Muslims in the United States are at risk of harassment for their religious and political beliefs, and she is afraid that if she reveals her name in this lawsuit, she could also become a target of the current anti-Muslim sentiment in the United States. *Id.* ¶¶ 12, 14; *see also* Dkt. No. 5.

Jane Doe #2’s sister, who is married and has two young children, is currently in Saudi Arabia. Decl. of Jane Doe #2 ¶ 3. Jane Doe #2’s sister originally fled from her home town of Damascus in 2012 because their neighborhood was bombed and their home was destroyed. *Id.* In Yemen, she registered with the U.N. High Commissioner for Refugees and received a temporary protection certificate explaining that she should be protected from forcible return to Syria. *Id.* ¶ 5. The war in Yemen, however, forced Jane Doe #2’s sister to flee again, this time to Saudi Arabia, where her family now lives in a refugee hotel close to the Saudi-Yemen border. *Id.* ¶¶ 6, 7. They remain under constant threat from nearby rocket fire and military conflict. *Id.* ¶ 7.

Jane Doe #2 is concerned that her participation in this lawsuit could jeopardize her sister’s visa application, which is currently pending. *Id.* ¶ 10. If and when the visa application is approved, Jane Doe #2’s sister will be able to access the U.S. Refugee Admissions Program (“USRAP”) through the Priority-2 Direct Access Program for Iraqi and Syrian Beneficiaries of Form I-130 Petition for Alien Relatives. *Id.* Jane Doe #2 worries that her participation in this



lawsuit may adversely impact her sister's visa or refugee applications. *Id.* Any delay in the processing of her application will prolong the period that Jane Doe #2's sister and her family must remain in their current, extremely dangerous living situation.

In addition to these concerns, Jane Doe #2 fears that her participation in this case could result in harassment of her sister. *Id.* ¶ 11. Discrimination against Syrians in Saudi Arabia is severe, and the Saudi Arabian government tries to make conditions in the country difficult for Syrian refugees. *Id.* ¶¶ 8, 11. Jane Doe #2 fears that if she reveals her name in this lawsuit, it will be easy to identify her sister and make her susceptible to harassment or further persecution. *Id.* ¶ 11.

Under these circumstances, anonymity is warranted. *See, e.g., Lozano*, 620 F.3d at 194-96; *Stegall*, 653 F.2d at 186; *Barrow County*, 219 F.R.D. at 193.

**C. Jane Doe #2 Risks Social Stigma, Harassment, and Even Violence if Her Identity is Made Public**

As already set out in the previously filed Doe Plaintiffs' Motion, recent events have illustrated a significant escalation in the targeting of Muslim and Arab-Americans in the United States for harassment and even criminal behavior, demonstrating the objective reasonableness of Jane Doe #2's fear regarding the consequences of proceeding under her real identity. *See Lozano*, 620 F.3d at 195; *see also* Dkt. No. 5. Given the numerous examples of recent harassment and violence directed at Muslim- and Arab-Americans, Jane Doe #2 reasonably fears that if her identity were made public, she and her family would also be subjected to harassment and violence.

**D. This Action is Against the Government and Therefore Favors Anonymity**

An additional factor weighing in favor of permitting Jane Doe #2 to proceed anonymously is that this is an action against the federal government, rather than a private party. *See John Does 1-5 v. McCrory*, No. 1:13CV711, 2014 WL 29352, at \*2 (M.D.N.C. Jan. 3, 2014). As courts have

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

**E. There is no risk of unfair prejudice to the government if Jane Doe #2 is allowed to proceed anonymously**

Similarly, there is no risk of unfair prejudice to the Defendants if the Court permits Jane Doe #2 to proceed anonymously, as this case involves strictly legal issues and does not turn on questions of the individual Doe Plaintiffs’ background or credibility. *See Pittsylvania County*, 844 F. Supp. 2d at 731. Because the issues presented in this case are purely legal, the Doe Plaintiffs’ particularized facts and circumstances play “a relatively minor role in this litigation,” and therefore “the risk of unfairness to defendants by allowing plaintiff[s] to proceed anonymously is relatively low.” *Id.* at 731. Indeed, Defendants declined to oppose the previous Doe Plaintiffs’ Motion.

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

**F. Permitting the Doe Plaintiffs to Proceed Anonymously Will Not Harm the Public Interest in Open Proceedings**

Finally, in the circumstances of this case, anonymity does not compromise in any way the public interest in open judicial proceedings. This particular case turns on legal questions, not the identities of individuals. If the Doe Plaintiffs are granted leave to proceed under pseudonym, “the

public is not denied its right to attend the proceedings or inspect the orders or opinions of the court on the underlying constitutional issue.” *Pittsylvania County*, 844 F. Supp. 2d at 728 (citing *Barrow County*, 219 F.R.D. at 193).

### CONCLUSION

Jane Doe #2 and her family members would be at risk of great harm if her identity were made public in this litigation. Permitting her to proceed anonymously would neither materially harm the public interest in open court proceedings nor risk unfair prejudice to the government. Jane Doe #2 therefore respectfully requests that this Court permit her to proceed under a pseudonym in this action.

Dated: March 10, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of March, 2017, I caused a PDF version of the foregoing document and any accompanying exhibits 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.

Dated: March 10, 2017

Respectfully submitted,

/s/ Justin B. Cox