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13  
14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE DISTRICT OF ARIZONA

16  
17 JANE DOE # 1; JANE DOE # 2; NORLAN  
FLORES, on behalf of themselves and all  
18 others similarly situated,

19 Plaintiffs,

20 v.

21 Jeh Johnson, Secretary, United States  
Department of Homeland Security, in his  
22 official capacity; R. Gil Kerlikowske,  
Commissioner, United States Customs &  
23 Border Protection, in his official capacity;  
Michael J. Fisher, Chief of the United States  
24 Border Patrol, in his official capacity; Jeffrey  
Self, Commander, Arizona Joint Field  
25 Command, in his official capacity; Manuel  
Padilla, Jr., Chief Patrol Agent-Tucson Sector,  
26 in his official capacity,

27 Defendants.

Case No. 4:15-cv-00250-DCB

**MOTION TO PROCEED  
UNDER PSEUDONYMS AND  
FOR A PROTECTIVE ORDER**

CLASS ACTION

Oral Argument Requested

(Assigned to the  
Honorable David C. Bury)

Action Filed: June 8, 2015

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1                   **PLAINTIFFS JANE DOE # 1'S AND JANE DOE # 2'S MOTION**  
2                   **TO PROCEED UNDER PSEUDONYMS AND FOR A PROTECTIVE ORDER**

3                   Pursuant to Federal Rule of Civil Procedure 5.2(e), Plaintiffs Jane Doe # 1 and Jane  
4 Doe # 2 request this Court's leave to proceed under pseudonyms to protect their identities  
5 from public disclosure. Plaintiffs will disclose their identities to the Court and the  
6 Defendants. Plaintiffs also move the Court to order Defendants to maintain the  
7 confidentiality of their identities by using only pseudonyms in all of their filings,  
8 including all exhibits in which their names appear.

9                   Plaintiff Jane Doe # 1 is a noncitizen who fled from her home in El Salvador out of  
10 fear for her life. (Declaration of Elizabeth Balassone ("Balassone Decl.") in Support of  
11 Motion to Proceed Under Pseudonyms, Ex. A, Decl. Jane Doe # 1 ¶ 2.)<sup>1</sup> She is afraid that  
12 if she returns to El Salvador she will be harmed or killed. (*Id.*) She came to the United  
13 States in order to seek protection from the danger and persecution that she faced in El  
14 Salvador and she intends to file an asylum application with the Department of Homeland  
15 Security ("DHS"). (*Id.*, Ex. A ¶¶ 3 and 4.)

16                   Plaintiff Jane Doe # 2 is the younger sister of Plaintiff Jane Doe #1 and fled  
17 El Salvador for the same reasons as her sister. (*Id.*, Ex. B, Decl. Jane Doe # 2 ¶ 2.)  
18 Plaintiff Jane Doe # 2 also intends to apply for asylum. (*Id.*, Ex. B ¶¶ 3 and 4.)

19                   Plaintiffs Jane Doe # 1 and # 2 move this Court to appear under pseudonyms in  
20 order to protect their identities as asylum seekers from public disclosure. Indeed, DHS's  
21 own regulations confer this protection upon individuals who are pursuing asylum. *See*  
22 8 C.F.R. § 208.6(b) (barring disclosure of records indicating that a specific noncitizen has  
23 applied for asylum); *cf. id.* § 1208.6(b) (same). These strict confidentiality requirements  
24 are necessary and appropriate to protect the identities of asylum seekers from their  
25

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26                   <sup>1</sup> Publicly filed versions of Exhibits A and B, the signed declarations of the two  
27 Doe plaintiffs, have been redacted so as not to reveal their real names. Plaintiffs' counsel  
28 has conferred separately with Defendants' counsel and the Court clerk, and will provide  
unredacted copies to Defendants' counsel and unredacted courtesy copies for Chambers.

1 persecutors. Plaintiffs Jane Doe # 1 and # 2 have articulated fear of the consequences of  
 2 exposure—the precise risk these regulations are designed to guard against Balassone  
 3 Declaration Exhibit A, Declaration Jane Doe # 1 ¶ 6 (expressing fear that if her name  
 4 were used in this lawsuit it would get back to her persecutors and she would not be safe  
 5 even in the United States); *id.*, Exhibit B, Declaration Jane Doe # 2 ¶ 6 (same). A wide  
 6 body of research demonstrates that victims (including, as here, victims of persecution) feel  
 7 particularly vulnerable to further harassment. *See, e.g.*, Linda Piwowarczyk, *Seeking*  
 8 *Asylum: A Mental Health Perspective*, 16 *Geo. Immigr. L.J.* 155, 168 (Fall 2011) (“In  
 9 general, those who have been intentionally victimized by another human being feel  
 10 unprotected and unsafe”) (citations omitted); *Doe 140 v. Archdiocese of Portland in Or.*,  
 11 249 F.R.D. 358, 361 (D. Or. 2008) (recognizing ongoing trauma to victims of sexual  
 12 abuse).

13 As shown below, Plaintiffs’ requests satisfy the Ninth Circuit’s standard for  
 14 determining whether a party may appear under a pseudonym. *See Does I thru XXIII v.*  
 15 *Advanced Textile Corp.*, 214 F.3d 1058, 1068-69 (9th Cir. 2000). The special  
 16 circumstances of their situation demonstrate that Plaintiffs reasonably fear serious harm—  
 17 and would be vulnerable to such harm—were their identities disclosed to the public.  
 18 Their need for privacy outweighs the public’s interest in knowing their identities and any  
 19 harm to the Defendants from failure to disclose their names. Because Plaintiffs do not  
 20 seek to withhold their identities from Defendants, granting this motion would cause no  
 21 prejudice to the opposing parties. Upon issuance of the protective order requested here,  
 22 Plaintiffs are prepared to provide Defendants the full names of Plaintiffs Jane Doe #1 and  
 23 #2 and unredacted copies of their declarations.

24 Plaintiffs’ counsel informed Defendants’ counsel about this motion prior to filing  
 25 and Defendants’ counsel agreed not to oppose this motion. (Balassone Decl. ¶ 5.)

## 26 ARGUMENT

### 27 A. Legal Standards

28 Although the public holds a “common law right of access to judicial proceedings,”

1 federal courts allow parties to remain anonymous “when special circumstances justify  
2 secrecy.” *Advanced Textile Corp.*, 214 F.3d at 1067. Appearing under a pseudonym is  
3 appropriate when “nondisclosure of the party’s identity ‘is necessary. . . to protect a  
4 person from harassment, injury, ridicule, or personal embarrassment.’” *Id.* at 1067-68  
5 (quoting *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981)). In accord with this,  
6 a number of courts have allowed asylum seekers to proceed anonymously. *See, e.g.*,  
7 *Doe v. Holder*, 736 F.3d 871, 872 n.1 (9th Cir. 2013); *John Doe v. Gonzales*, 484 F.3d  
8 445 (7th Cir. 2007); *Doe v. United States Immigration & Naturalization Servs.*, 867 F.2d  
9 285, 286 n.1 (6th Cir. 1989); *A.B.T. v. United States Citizenship & Immigration Servs.*,  
10 No. 2:11-cv-02108, 2012 WL 2995064 (W.D. Wash. July 20, 2012). Other courts have  
11 allowed similarly vulnerable plaintiffs to proceed anonymously. *See, e.g.*, *Doe v. Blue*  
12 *Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir. 1997) (“fictitious names  
13 are allowed when necessary to protect the privacy of . . . rape victims, and other  
14 particularly vulnerable parties or witnesses”); *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir.  
15 1981) (holding that the district court erred in denying pseudonym motion in light of, *inter*  
16 *alia*, the possibility of extensive harassment, including possible violence, against the  
17 plaintiffs who challenged religious ceremonies in public school); *Doe v. Penzato*, No.  
18 CV10-5154, 2011 WL 1833007, at \*5 (N.D. Cal. May 13, 2011) (granting motion to  
19 proceed anonymously where foreign national plaintiff alleged sexual assault by  
20 defendant).

21 Other courts have recognized the particular vulnerability of undocumented  
22 immigrants and allowed them to proceed anonymously. *See, e.g.*, *Lozano v. City of*  
23 *Hazelton*, 620 F.3d 170, 194-95 (3d Cir. 2010), *vacated on other grounds*, 131 S. Ct. 2958  
24 (2011); *Ga. Latino Alliance for Human Rights v. Deal*, 793 F. Supp. 2d 1317 (N.D. Ga.  
25 2011), *aff’d in part, rev’d in part on other grounds*, *Ga. Latino Alliance for Human Rights*  
26 *v. Governor of Ga.*, 691 F.3d 1250 (11th Cir. 2012). Additionally, in the landmark  
27 decision addressing the rights of undocumented children, the plaintiffs were allowed to  
28 proceed anonymously. *Plyler v. Doe*, 457 U.S. 202 (1982).

1 In determining whether a plaintiff may proceed anonymously, the Ninth Circuit  
2 balances the harm faced by the party requesting anonymity, prejudice to the opposing  
3 party, and the public interest, including the public's interest in the withheld information.  
4 *Advanced Textile Corp.*, 214 F.3d at 1068. Where, as here, a party seeks to keep his  
5 identity or personal information confidential based upon risk of retaliation were that  
6 information revealed, the Ninth Circuit also considers "(1) the severity of the threatened  
7 harm, (2) the reasonableness of the anonymous party's fears, and (3) the anonymous  
8 party's vulnerability to such retaliation." *Id.* (citations omitted).

9 **B. Plaintiffs Jane Doe # 1 and Jane Doe # 2 have a reasonable fear of**  
10 **facing severe retaliatory harm if their identities are made public and**  
11 **would be vulnerable to such harm.**

12 Anonymity is appropriate where identification of a plaintiff could cause retaliatory  
13 harm to the plaintiff greater than what a typical plaintiff would face. *Advanced Textile*  
14 *Corp.*, 214 F.3d at 1068, 1070-71. Here, Plaintiffs Jane Doe # 1 and Jane Doe # 2 are  
15 asylum-seekers who intend to apply for asylum when permitted to do so under the policies  
16 of DHS and the immigration courts. Plaintiffs took the first step in the asylum process by  
17 informing CBP agents who interviewed them of their fear of death if they are returned to  
18 El Salvador and of their intent to apply for asylum. (Balassone Decl., Ex. A, Decl. Jane  
19 Doe # 1 ¶ 4; *id.*, Ex. B, Decl. Jane Doe # 2 ¶ 4.) They fear that if their names are  
20 disclosed in relation to this lawsuit that information on their whereabouts could get back  
21 to individuals in El Salvador who wish to harm them. (*Id.*, Ex. A, Decl. Jane Doe # 1 ¶ 6;  
*id.*, Ex. B, Decl. Jane Doe # 2 ¶ 6.)

22 The risk of harm for Plaintiffs Jane Doe # 1 and Jane Doe # 2 would be severe if  
23 they were to proceed in a non-confidential manner. As asylum-seekers, Plaintiffs fall  
24 within a particularly vulnerable class of immigrants. "Privacy and its confidentiality  
25 requirements are especially important for an asylum-seeker, whose claim inherently  
26 supposes a fear of persecution by the authorities of the country of origin and whose  
27 situation can be jeopardized if protection of information is not ensured." (Balassone Decl.  
28 Ex. C, *Advisory Opinion on the Rules of Confidentiality Regarding Asylum Information*,



1 United Nations High Comm'r for Refugees at. p. 2 (March 31, 2005) *available at*  
2 <http://www.refworld.org/pdfid/42b9190e4.pdf> (last visited June 19, 2015).)

3 The reasonableness of Plaintiffs Jane Doe # 1's and Jane Doe # 2's fears are  
4 confirmed by the array of government policies prohibiting or limiting the public  
5 availability of information related to asylum claims. *See, e.g.*, 8 C.F.R. §§ 208.6; *id.*  
6 § 1208.6 (barring disclosure of information relating to asylum applications); 8 C.F.R.  
7 § 208.9(b) (requiring asylum interviews to be held "separate and apart from the general  
8 public"); Fed. R. Civ. P. 5.2 & cmt. c. (limiting remote access to immigration electronic  
9 case files due to "the prevalence of sensitive information in such cases"). As DHS has  
10 acknowledged,

11 [C]onfidentiality regulations are of utmost importance in protecting asylum  
12 applicants because the "regulations safeguard information that, if disclosed  
13 publicly, could subject the claimant to retaliatory measures by government  
14 authorities or non-state actors in the event that the claimant is repatriated, or  
endanger the security of the claimant's family members who may still be  
residing in the country of origin."

15 *Anim v. Mukasey*, 535 F.3d 243, 253 (4th Cir. 2008) (quoting U.S. Customs &  
16 Immigration Servs. Asylum Div., U.S. Dep't of Homeland Sec., *Fact Sheet: Federal*  
17 *Regulations Protecting the Confidentiality of Asylum Applicants* (2005) , *available at*  
18 [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/fctsheetconf061505.pdf)  
19 [Static\\_Files\\_Memoranda/Archives%201998-2008/2005/fctsheetconf061505.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/fctsheetconf061505.pdf) (last  
20 visited June 19, 2015) (copy attached for convenience to Balassone Declaration as Exhibit  
21 D); *see also* Balassone Decl. Ex. E, *Memorandum: Confidentiality of Asylum Applications*  
22 *& Overseas Verification of Documents*, Bo Cooper, Gen. Counsel, Immigration &  
23 Naturalization Servs. at pp. 39-45 (June 21, 2001), *available at* [https://web.archive.org/](https://web.archive.org/web/20061130221925/http://judiciary.house.gov/Legacy/82238.pdf)  
24 [web/20061130221925/http://judiciary.house.gov/Legacy/82238.pdf](https://web.archive.org/web/20061130221925/http://judiciary.house.gov/Legacy/82238.pdf) (last visited June 19,  
25 2015); *id.*, Ex. F, *Asylum Officer Basic Training Course Participant Workbook*, USCIS at  
26 pp. 14-15 (Sept. 14, 2006) (noting that asylum applicants may be hesitant to disclose  
27 information that is not kept confidential because, "applicants may fear for the lives and  
28 safety of family members and friends"), *available at* [http:// www.uscis.gov/ sites/default/](http://www.uscis.gov/sites/default/)

1 files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/  
2 AOBTC%20Lesson%20Plans/Interview%20Part-Overview-Nonadversarial-Asylum-  
3 Interview-31aug10.pdf (last visited June 19, 2015); *id.*, Ex. G, *Immigration Court*  
4 *Practice Manual*, Executive Office of Immigration Review at 62 (2015) (allowing for  
5 closed asylum hearings), *available at* [http://www.justice.gov/eoir/pages/attachments/](http://www.justice.gov/eoir/pages/attachments/2015/02/02/practice_manual_review.pdf)  
6 [2015/02/02/practice\\_manual\\_review.pdf](http://www.justice.gov/eoir/pages/attachments/2015/02/02/practice_manual_review.pdf) (last visited June 19, 2015).)

7 A number of courts also have recognized the importance of confidentiality for  
8 asylum applicants, allowing them to proceed with pseudonyms in their asylum cases. *See,*  
9 *e.g., Lin v. United States Dep't of Justice*, 459 F.3d 255, 268 (2d Cir. 2006) (recognizing  
10 that disclosure of asylum information may “potentially expose[] [an asylee] and his family  
11 to risks beyond those that he claims caused him to flee China”); *John Doe v. Gonzales*,  
12 484 F.3d 445 (7th Cir. 2007); *Doe v. United States Dep't of Justice*, 867 F.2d 285 (6th  
13 Cir. 1989). The potential of a breach of confidentiality to endanger an asylum-seeker is so  
14 great that where the government fails to maintain confidentiality in an asylum case, the  
15 breach of confidentiality may, in and of itself, create grounds for asylum or other  
16 humanitarian relief. *See, e.g., Owino v. Holder*, 771 F.3d 527, 534-36 (9th Cir. 2014)  
17 (remanding case to BIA to determine whether U.S. government’s breach of petitioner’s  
18 confidentiality created a new claim for protection under the Convention Against Torture);  
19 *Anim*, 535 F.3d at 253-56 (remanding so petitioner could present new asylum claims after  
20 breach of her confidentiality); *Lin*, 459 F.3d at 268 (same).

21 Courts also have recognized that the family members of asylum seekers risk  
22 retaliation if the asylum seekers’ identities become public. *See, e.g., Doe v. United States*  
23 *Dep't of Justice*, 867 F.2d at 286 n.1 (allowing asylum petitioner to sue under pseudonym  
24 to protect family in China from retaliation); *A.B.T.*, 2012 WL 2995064, at \*3 (recognizing  
25 that exposing the identity of plaintiffs may also jeopardize the freedom and physical  
26 safety of the plaintiffs' families).

27 Plaintiffs Jane Doe # 1 and Jane Doe # 2 face a reasonable threat of serious harm if  
28 they are publicly identified and are especially vulnerable to that harm due to their

1 involvement in this case. They should not be forced to forego confidentiality regarding  
2 their asylum claims in order to challenge the illegality of the conditions of detention under  
3 which they were held.

4 **C. Plaintiffs Jane Doe # 1's and Jane Doe # 2's interest in preserving**  
5 **confidentiality of their identities outweighs any prejudice to Defendants**  
6 **and the public's interest in disclosure of their identities.**

7 The Court must balance prejudice to the opposing party and public interest  
8 considerations, as well as the retaliatory harm that may come to the party seeking to  
9 proceed anonymously. *Advanced Textile Corp.*, 214 F.3d at 1068. Here, the prejudice  
10 and public interest factors weigh in favor of permitting Plaintiffs Jane Doe # 1 and Jane  
11 Doe # 2 to proceed under pseudonyms rather than their full names.

12 **1. Defendants will not be prejudiced if Plaintiffs Jane Doe # 1 and**  
13 **Jane Doe # 2 appear under pseudonyms in publicly filed**  
14 **documents.**

15 Courts must weigh the risk of harm to the parties requesting to appear under  
16 pseudonyms against prejudice to the opposing party. *Advanced Textile Corp.*, 214 F.3d at  
17 1069 (recognizing importance of “preserv[ing] the party’s anonymity to the greatest  
18 extent possible without prejudicing the opposing party’s ability to litigate the case” where  
19 plaintiffs have shown a need for anonymity). Here, Defendants will not be prejudiced if  
20 this motion is granted, because Plaintiffs do not seek to withhold their identities from  
21 Defendants. *Cf. id.* at 1072 (finding no prejudice to defendants even though they were not  
22 informed of plaintiffs’ identities). Upon this Court’s issuance of the protective order  
23 sought by this motion, Plaintiffs Jane Doe # 1 and Jane Doe # 2 will provide Defendants  
24 with their full names and unredacted versions of the declarations in support of this motion.

25 **2. The public interest weighs in favor of anonymity.**

26 In evaluating a request to proceed under a pseudonym the Ninth Circuit weighs the  
27 public’s interest in open proceedings against the public’s interest in anonymity. *See*  
28 *Advanced Textile Corp.*, 214 F.3d at 1068, 1072-73; *Doe v. Kamehameha Schools/Bernice*  
*Pauai Bishop Estate*, 596 F.3d 1036, 1043 (9th Cir. 2010). There is a strong public  
interest in protecting the confidentiality of asylum seekers. DHS’s own regulations

1 protect asylum-seekers from government disclosure of their information, protecting from  
2 disclosure even the fact that they have filed an asylum application. 8 C.F.R. § 208.6; *see*  
3 *also A.B.T.*, 2012 WL 2995064, at \*5 (W.D. Wash. Jul. 20, 2012) (“Given the clear  
4 mandate to protect asylum applicants and to prevent disclosure of their identities to the  
5 general public, the court has grave concerns of the role it would play in essentially  
6 requiring the parties to violate 8 C.F.R. §§ 208.6, 1208.6” were it to deny asylum-seekers’  
7 request to remain anonymous).

8 Public interest also may favor anonymity where a case raises important issues, such  
9 as violations of statutory or constitutional rights, which would not be resolved on the  
10 merits absent the plaintiff’s ability to proceed under a pseudonym. *See Advanced Textile*  
11 *Corp.*, 214 F.3d at 1072-73; *Roe v. Wade*, 410 U.S. 113 (1973) (woman proceeded  
12 anonymously in challenge to Texas statute criminalizing abortions).

13 Finally, anonymity also is more likely to be warranted in cases against government  
14 Defendants. *See, e.g., Sealed Plaintiff v. Sealed Defendant # 1*, 537 F.3d 185, 190 (2d Cir.  
15 2008); *EW v. New York Blood Ctr.*, 213 F.R.D. 108, 111 (E.D.N.Y. 2003) (“[W]here a  
16 plaintiff attacks governmental activity, for example a governmental policy or statute, the  
17 plaintiff’s interest in proceeding anonymously is considered particularly strong.”).  
18 Plaintiffs challenge systemic detention policies and practices of CBP—one of the largest  
19 federal enforcement agencies. These policies and practices are applied throughout the  
20 entire Tucson Border Patrol Sector, which is one of the largest, busiest Sectors within the  
21 Border Patrol. (*See* Pls.’ Comp. ¶ 71, ECF No. 1.) Withholding Plaintiffs Jane Doe # 1’s  
22 and Jane Doe # 2’s identities will not prevent the public from examining the  
23 constitutionality of the challenged detention conditions, but denying their requests to keep  
24 their identities confidential will require them to choose between their safety and  
25 vindicating their rights.

26 Consequently, this is not a case in which the public’s interest would be best served  
27 by requiring public disclosure of Plaintiffs’ identities. The public interest, the risk of  
28 serious harm to Plaintiffs Jane Doe # 1 and Jane Doe # 2 were their identities disclosed to

1 the public, and the lack of prejudice to Defendants all weigh in favor of granting  
2 Plaintiffs' motion.

3 **CONCLUSION**

4 Plaintiffs Jane Doe # 1 and Jane Doe # 2 respectfully request that the Court grant  
5 this motion and permit them to proceed under pseudonyms. Plaintiffs additionally request  
6 that, pursuant to Federal Rule of Civil Procedure 5.2(e), this Court orders all parties to use  
7 Plaintiff Jane Doe # 1's and Jane Doe # 2's pseudonyms in all documents filed in this  
8 action.

9  
10 Dated: June 23, 2015

By:  /s/ Harold J. McElhinny

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of June, 2015, I caused a PDF version of the documents listed below 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 and non-registered parties.

- **MOTION TO PROCEED UNDER PSEUDONYMS AND FOR A PROTECTIVE ORDER**
- **DECLARATION OF ELIZABETH BALASSONE IN SUPPORT OF PLAINTIFFS’ MOTION TO PROCEED UNDER PSEUDONYMS AND FOR A PROTECTIVE ORDER**
- **INDEX OF EXHIBITS TO ELIZABETH BALASSONE DECLARATION IN SUPPORT OF MOTION TO PROCEED UNDER PSEUDONYMS AND FOR A PROTECTIVE ORDER with attached exhibits**
- **[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION TO PROCEED UNDER PSEUDONYMS AND FOR A PROTECTIVE ORDER**

\_\_\_\_\_  
Harold J. McElhinny  
(typed)

\_\_\_\_\_  
*/s/ Harold J. McElhinny*  
(signature)