

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

JANE DOE 1, JANE DOE 2, JANE DOE 3,  
JANE DOE 4, and JANE DOE 5,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; JAMES N.  
MATTIS, in his official capacity as Secretary of  
Defense; JOSEPH F. DUNFORD, JR., in his  
official capacity as Chairman of the Joint Chiefs  
of Staff; the UNITED STATES DEPARTMENT  
OF THE ARMY; RYAN D. MCCARTHY, in  
his official capacity as Secretary of the Army;  
the UNITED STATES DEPARTMENT OF  
THE AIR FORCE; HEATHER A. WILSON, in  
her official capacity as Secretary of the Air  
Force; the UNITED STATES COAST GUARD;  
ELAINE C. DUKE, in her official capacity as  
Secretary of Homeland Security; and the  
UNITED STATES OF AMERICA,

Defendants.

Case No.: 17-cv-1597

**MOTION TO PROCEED  
UNDER PSEUDONYMS**

Plaintiffs Jane Doe 1, Jane Doe 2, Jane Doe 3, Jane Doe 4, and Jane Doe 5, through counsel, respectfully move for an order allowing them to proceed under pseudonyms in this matter. Plaintiffs, all transgender people currently serving in the Armed Forces, claim that President Trump’s decision to ban transgender people from serving openly in the military violates the Due Process Clause and the Equal Protection component of the Fifth Amendment. They further claim that Defendants are estopped from implementing this decision based on their previous policy permitting transgender people to serve openly in the military. As grounds for this motion, Plaintiffs refer the Court to the accompanying memorandum and proposed order, as well as to the Complaint filed contemporaneously with this motion.

Wherefore, Plaintiffs respectfully request that their Motion to Proceed Under Pseudonyms be granted.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO  
PROCEED UNDER PSEUDONYMS**

The law is well-settled that parties to litigation may proceed using a pseudonym with leave of the court. *Doe v. U.S. Dep't of State*, No. 1:15-cv-01971, 2015 WL 9647660, at \*1 (D.D.C. Nov. 3, 2015). “Leave is generally granted if the litigant makes a colorable argument in support of the request.” *Id.* (quoting *Qualls v. Rumsfeld*, 228 F.R.D. 8, 10 (D.D.C. 2005)). Courts in this district generally consider five factors in deciding whether to grant a plaintiff’s request to proceed using a pseudonym: (1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; and (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously. *Id.* at \*2. These factors weigh in favor of granting Plaintiffs’ request to proceed using pseudonyms in this case.

*1. The litigation concerns information of a sensitive and highly personal nature.*

Plaintiffs are all transgender people serving in the Armed Forces. While each has identified herself as transgender to her command, not all of them are out as transgender to their fellow soldiers or to the community at large. Some courts have allowed non-minor transgender plaintiffs to proceed anonymously due to the social stigma often experienced by transgender people. *Bd. of Educ. of the Highland Local School District v. U.S. Dep't of Educ.*, No. 2:16-CV-

524, 2016 WL 4269080, at \*5 (S.D. Ohio Aug. 15, 2016) (citing *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992); *Doe v. Blue Cross & Blue Shield of R.I.*, 794 F. Supp. 72, 72-73 (D.R.I. 1992)). While a person's interest in controlling the dissemination of her transgender status is strong even in the mine run of cases, *see, e.g., Doe*, 794 F. Supp. at 74 ("As a transsexual, plaintiff's privacy interest is both precious and fragile, and this Court will not cavalierly permit its invasion."), this concern is particularly acute here, as transgender people have been able to serve openly in the military only recently, and their ability to do so is now under threat. Plaintiffs should not be required to expose themselves to vitriol and scrutiny in order to vindicate their legal right to serve their country in the Armed Forces.

*2. Identification poses a risk of retribution and mental harm against Plaintiffs.*

This case comes at a critical time for Plaintiffs and other transgender people in the military, as they already are afraid that their careers will come to an early end due to the President's decision to ban transgender people from serving openly. Were they to be publicly identified as the litigants in this case, Plaintiffs could attract attention to themselves and potentially be made an example of as Defendants implement the President's policy. *Cf. Wayte v. United States*, 470 U.S. 598, 601-602 (1985) (noting that the government had a policy of prosecuting draft registration cases only against those who affirmatively identified themselves as not having registered for the draft or were identified by someone else as having failed to do so). In addition, as discussed above, the stigma associated with transgender status means that public association with this lawsuit could subject Plaintiffs to substantial harassment from unsupportive peers in the military and from the public at large, particularly given the national attention that this case will likely draw and given the outspokenness of many who use their public platform to express opposition to transgender people being permitted to serve openly in the military. *See,*

*e.g.*, Delingpole, “Trump’s Transgender Military Ban Is the Best Thing Ever,” Breitbart, *available at* <http://www.breitbart.com/big-government/2017/07/27/delingpole-trumps-transgender-military-ban-is-the-best-thing-ever/> (stating that the President’s decision to ban transgender people from serving openly in the military was “a step toward saving Western Civilization” and “the only possible thing for anyone who still believes in truth, justice, social order, commonsense, decency, [and] logic”). Accordingly, this factor weighs in favor of Plaintiffs being permitted to proceed pseudonymously.

*3. The action is against governmental parties.*

Each Defendant in this action is either a government entity or a government official being sued in his or her official capacity. Courts routinely count this factor as weighing in favor of leave to proceed under a pseudonym. *See, e.g., E.W. v. N.Y. Blood. Ctr.*, 213 F.R.D. 108, 111 (E.D.N.Y. 2003) (“[W]here a plaintiff attacks governmental activity ... the plaintiff’s interest in proceeding anonymously is considered particularly strong.”). This is because the plaintiff “presumably represents a minority interest (and may be subject to stigmatization), and there is arguably a public interest in a vindication of his rights,” while “the government is viewed as having a less significant interest in protecting its reputation from damaging allegations than the ordinary individual defendant.” *Id.*; *see also Doe*, 2015 WL 9647660, at \*3. As such, because Plaintiffs here sue only governmental defendants, this factor weighs in favor of allowing them to proceed using pseudonyms.

*4. There is no risk of unfairness to Defendants.*

The crux of this lawsuit is whether, by reversing the previous policy of the Department of Defense permitting transgender people to serve openly in the military, Defendants violated the constitutional rights of transgender servicemembers. Plaintiffs’ individual identities have little,

if any, bearing on Defendants' ability to address these legal issues. *See Doe v. Barrow Cty., Ga.*, 219 F.R.D. 189, 194 (N.D. Ga. 2003) (granting a motion to proceed under a pseudonym where the "plaintiff plays a relatively minor role"). Accordingly, allowing Plaintiffs to file this lawsuit using pseudonyms would not unfairly prejudice Defendants.

\* \* \*

In short, Plaintiffs—if forced to litigate this case using their real names—would encounter possible retribution from their superiors and almost certain harassment from peers and members of the public. Conversely, by pursuing this case under pseudonyms, Plaintiffs would be able to vindicate their rights in Court without detracting from Defendants' ability to litigate this case or from the public's ability to appreciate the issues at stake.

For the foregoing reasons, Plaintiffs respectfully request that their Motion to Proceed Under Pseudonyms be granted.

August 9, 2017

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Case No.: 17-cv-1597

**PROPOSED ORDER**

Upon consideration of Plaintiffs' motion to Proceed Under Pseudonyms, it is, this  
\_\_\_\_\_ day of \_\_\_\_\_, hereby

**ORDERED** that Plaintiffs' Motion to Proceed Under Pseudonyms is GRANTED.

BY: \_\_\_\_\_