

The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,

Defendants.

Case No. 2:17-cv-01297-MJP

**PLAINTIFF JANE DOE’S MOTION
TO PROCEED UNDER PSEUDONYM**

NOTE ON MOTION CALENDAR:
September 29, 2017

INTRODUCTION

Plaintiff Jane Doe (“Plaintiff” or “Jane Doe”), through counsel, respectfully moves for an order allowing her to proceed under a pseudonym in this matter. Plaintiff is a transgender woman currently serving in the military who has not yet transitioned to living openly as a woman. In light of President Trump’s decision to bar transgender people from military service, she reasonably fears that disclosure of identifying information will result in her separation from the military. This motion is based on the legal authority and argument presented below, the contemporaneously filed declaration of Plaintiff Jane Doe in support of both this motion and Plaintiffs’ motion for a preliminary injunction, Plaintiffs’ First Amended Complaint, and the accompanying [Proposed] Order. Wherefore, Plaintiff respectfully requests that her Motion to Proceed Under Pseudonym be granted.

ARGUMENT

The law is well-settled that parties to litigation may proceed using a pseudonym with leave of the court. *See, e.g., Santa Fe Independent School District v. Doe*, 530 U.S. 290, 294, 120

1 S.Ct. 2266, 147 L.Ed.2d 295 (2000). In the Ninth Circuit, parties are allowed to use pseudonyms
2 in special circumstances “when the party’s need for anonymity outweighs prejudice to the
3 opposing party and the public’s interest in knowing the party’s identity.” *Does I thru XXIII v.*
4 *Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). For example, courts have
5 permitted plaintiffs to use pseudonyms in the following situations: “(1) when identification
6 creates a risk of retaliatory physical or mental harm; (2) when anonymity is necessary to preserve
7 privacy in a matter sensitive and highly personal nature; and (3) when the anonymous party is
8 compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal
9 prosecution.” *Id.* (internal citations and quotations omitted).

10 District courts generally evaluate five factors in deciding whether to permit a party to
11 proceed anonymously: “(1) the severity of the threatened harm, (2) the reasonableness of the
12 anonymous party’s fears, (3) the anonymous party’s vulnerability to such retaliation, (4) the
13 prejudice to the opposing party, and (5) the public interest.” *Doe v. Kamehameha/Bernice Pauali*
14 *Bishop Estate*, 596 F.3d 1036, 1042 (9th Cir. 2010) (internal quotation marks and alterations
15 omitted). All these factors weigh in favor of granting Plaintiff’s request to proceed using
16 pseudonyms in this case.

17 **1. The harm to Plaintiff is severe and her fear of harm is reasonable.**

18 The Ninth Circuit allows parties to use pseudonyms when nondisclosure of the party’s
19 identity “is necessary ... to protect a person from harassment, injury, ridicule or personal
20 embarrassment.” *Advanced Textile*, 214 F.3d at 1067-68 (citations omitted). Two of the most
21 important factors are the severity of the harm and the reasonableness of the fear of harm. These
22 two factors are “intricately related” and can “be addressed together.” *See Kamehameha*, 596 F.3d
23 at 1043. Courts have, for example, allowed non-minor transgender plaintiffs to proceed
24 anonymously due to the social stigma often experienced by transgender people. *Bd. of Educ. of the*
25 *Highland Local School District v. U.S. Dep’t of Educ.*, No. 2:16-CV-524, 2016 WL 4269080, at *5
26 (S.D. Ohio Aug. 15, 2016) (citing *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992); *Doe v. Blue*
27 *Cross & Blue Shield of R.I.*, 794 F. Supp. 72, 72-73 (D.R.I. 1992)).
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1 Here, Jane Doe is a transgender woman serving in the military. She has not transitioned to
2 living openly as a woman, however, and the fact that she is transgender is not generally known to her
3 fellow service members or to the community at large. *See* Declaration of Jane Doe (“Doe Decl.”), ¶¶
4 3, 9-10. Plaintiff reasonably fears that she will be separated from the military due to the President’s
5 decision to ban transgender people from military service. Doe Decl. ¶¶ 9-10. The President’s
6 subsequent implementation of his ban, through a formal directive to the military, also supports the
7 reasonableness of her fear. The loss of Plaintiff’s military career and all the benefits that flow from it
8 is undoubtedly a severe harm. Accordingly, these factors weigh in favor of Plaintiff being permitted
9 to proceed pseudonymously.

10 **2. Jane Doe is uniquely vulnerable to additional harm.**

11 Because of the sweeping scope of President Trump’s exclusion of transgender people
12 from military service, all transgender service members are vulnerable to harm. Plaintiff is
13 uniquely vulnerable to additional harm caused by the disclosure of her identity, however,
14 because she has not disclosed her transgender status to her chain of command. The Defendants in
15 this case are Defendants for the sole reason that they seek to take action against individuals based on
16 their status as transgender. The risk of retaliation for revelation of Jane Doe’s transgender status
17 accordingly is the primary issue in this litigation. As such, this factor weighs in favor of allowing
18 Jane Doe to proceed anonymously.

19 **3. There is no risk of prejudice to Defendants.**

20 The crux of this lawsuit is whether, by reversing the previous policy of the Department of
21 Defense permitting transgender people to serve openly in the military, Defendants violated the
22 constitutional rights of transgender individuals. Plaintiff’s individual identity has little, if any,
23 bearing on Defendants’ ability to address these legal issues. *See Doe v. Barrow Cty., Ga.*, 219 F.R.D.
24 189, 194 (N.D. Ga. 2003) (granting a motion to proceed under a pseudonym where the “plaintiff
25 plays a relatively minor role”). Accordingly, allowing Plaintiff to proceed anonymously would not
26 unfairly prejudice Defendants.

4. The public interest weighs in favor of allowing Jane Doe to proceed anonymously in this matter.

Where, as here, the defendants are either government entities or government officials being sued in their 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.. The ramifications of forcing Jane Doe to reveal her identity to enforce her constitutional rights would be sweeping and would function to limit access to the courts for any citizen with a legitimate fear of retaliation by the government. For these reasons, the public interest weighs in favor of allowing Jane Doe to proceed using a pseudonym.

CONCLUSION

Jane Doe – if forced to disclose her identity to the government to assert her constitutional rights – would invite the harms of the very policy that she seeks to challenge. Conversely, by pursuing this case under a pseudonym, Jane Doe will be able to vindicate her rights without precluding Defendants from being able to litigate this case or detracting from the public’s ability to appreciate the issues at stake. For the foregoing reasons, Plaintiff Jane Doe respectfully requests that her Motion to Proceed Under Pseudonym be granted.

Respectfully submitted September 14, 2017.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that on September 14, 2017, I caused true and correct copies of the foregoing documents to be served by the method(s) listed below on the following interested parties:

By Hand Delivery:

US Attorney’s Office
700 Stewart St., Suite 5220
Seattle, WA 98101-1271

By Registered or Certified Mail:

Attorney General of the United States	Department of Defense
U.S. Department of Justice	1400 Defense Pentagon
950 Pennsylvania Avenue, NW	Washington, DC 20301-1400
Washington, DC 20530-0001	

Secretary of Defense James N. Mattis	President Donald J. Trump
1000 Defense Pentagon	1600 Pennsylvania Ave. NW
Washington, DC 20301-1000	Washington, DC 20500

I hereby certify under the penalty of perjury that the foregoing is true and correct. Executed on September 14, 2017 at Seattle, Washington.



Rachel Horvitz, *Paralegal*

The Honorable Marsha J. Pechman

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**[PROPOSED] ORDER GRANTING
PLAINTIFF JANE DOE’S MOTION
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NOTE ON MOTION CALENDAR:
September 29, 2017

This matter, having come before the Court on Plaintiff Jane Doe’s Motion to Proceed Under Pseudonym, and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiff Jane Doe’s Motion to Proceed Under Pseudonym is hereby GRANTED.

DATED this ____ day of September, 2017.

The Honorable Marsha J. Pechman
United States District Court Judge

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s/Rachel Horvitz

Rachel Horvitz, *Paralegal*