

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

BROCK STONE, et al.)	
)	
Plaintiffs,)	
v.)	Case No. 17-cv-02459
)	
DONALD J. TRUMP, et al.)	
)	
Defendants.)	
)	

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF MOTION FOR PERMISSION
FOR PLAINTIFF JOHN DOE TO PROCEED UNDER PSEUDONYM, AND TO
OMIT INDIVIDUAL PLAINTIFFS’ HOME ADDRESSES FROM CAPTION**

As described in further detail in the Complaint, Individual Plaintiffs are transgender individuals serving in various branches of the United States armed forces. *See* Declarations of Individual Plaintiffs in Support of Motion for Permission to Omit Individual Plaintiffs’ Home Addresses From Caption (together, “Pls. Decls.”) at ¶ 1. Prior to the Department of Defense’s 2016 directive permitting transgender service members to serve openly in the military (the “Open Service Directive”), the Individual Plaintiffs were required to conceal their gender identity and transgender status in order to pursue careers serving in the armed forces and protecting and defending the United States of America. Pls. Decls. at ¶ 2. The Open Service Directive provided Individual Plaintiffs with the opportunity to identify themselves as transgender to military personnel and formally seek medically necessary and recommended treatment in relatively safe and private environments.

Research shows that transgender individuals face high rates of harassment just because they are transgender. Approximately 54% of transgender individuals experience verbal harassment, and 84% of victims reported that their gender identity was the reason for the verbal

harassment. *See* Exhibit A to the Declaration of Chase Strangio in Support of Motion to Permit John Doe to Proceed Under Pseudonym and to Omit Individual Plaintiffs' Home Addresses From Caption (the "Strangio Decl.") at 198-199. Similarly, a comprehensive study of over 25,000 transgender individuals showed that 13% of survey respondents had experienced physical violence at some point in their lifetime and 66% of those individuals identified their transgender status as the cause of the violence. *See* Strangio Decl. (Ex. A) at 202-203. In the same survey, 47% of respondents reported experiencing sexual assault at some point in their lives. *See* Strangio Decl. (Ex. A) at 205. Indeed, an August 2017 study found a 29% increase in LGBTQ-related hate violence and homicides from 2016 to 2017, with transgender women as a particular target. *See* Strangio Decl. (Ex. B) at 6. These crimes based on victims' gender identity and sexual orientation continue to rise. *See* Strangio Decl. (Ex. B) at 6. The risks that Individual Plaintiffs face are compounded here by the nature of this lawsuit, which challenges a highly-publicized and politically charged action of President Donald J. Trump at a time that politically motivated violence and bias crimes are on the rise.

I. Plaintiff John Doe should be permitted to proceed under pseudonym

Courts in the Fourth Circuit have recognized that the public has an "important interest in open judicial proceedings." *Doe v. Public Citizen*, 749 F.3d 246, 273 (4th Cir. 2014). However, "compelling concerns relating to personal privacy or confidentiality may warrant some degree of anonymity in judicial proceedings, including use of a pseudonym." *Id.* at 273. In determining whether to allow a party to proceed under a pseudonym, a court must balance "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." *Id.* at 274. To assist with this inquiry, the Fourth Circuit has identified the following non-exhaustive list of relevant factors: "(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 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.” *James v. Jacobsen*, 6 F.3d 233, 238 (4th Cir. 1993). Noting that transgender individuals face particular societal stigma, courts have considered a person’s transgender status and gender identity to be important factors in permitting plaintiffs to proceed anonymously. *See 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, 72-74 (D.R.I. 1992) (“a transsexual, plaintiff’s privacy interest is both precious and fragile, and this Court will not cavalierly permit its invasion.”)). These factors weigh heavily in favor of Plaintiff Doe’s motion to proceed under pseudonym.

Plaintiff John Doe is specifically concerned with his own safety, as well as the safety of his girlfriend and her family, all of whom live in Arkansas, and his own family members, who live in Texas. *See Declaration of John Doe in Support of Motion to Permit John Doe to Proceed Under Pseudonym, and to Omit Individual Plaintiffs’ Home Addresses From Caption* (the “Doe Decl.”) at ¶¶ 5-8 (filed under seal). Arkansas is regarded as one of the most anti-transgender states in the country. The state has no formal legal protections for individuals who are transgender, and in 2017 alone, Arkansas lawmakers introduced several pieces of legislation that targeted transgender individuals and sought to effectively make it “illegal to be transgender” in the state. *See Strangio Decl. (Ex. C)*. Texas, where John Doe’s family resides, is also a state

extremely hostile to transgender individuals. *See* Doe Decl. at ¶ 8. Plaintiff John Doe is further concerned about the impact that pursuing this litigation will have on his career. John Doe is 25 years old and intends to serve a full 20 years. *See* Doe Decl. at ¶ 3. John Doe fears that being named in this litigation will cause him to suffer humiliation and unjust roadblocks in his career. *See* Doe Decl. at ¶ 8. He is also interested in pursuing defense contracting, and if he is separated because he is transgender or that information becomes public after his retirement, he is concerned that it would negatively impact his job prospects in that field. *See* Doe Decl. at ¶ 8.

Threats of harassment and violence favor allowing John Doe to proceed with anonymity. *See Doe v. New Ritz, Inc.*, No. WDQ-14-2367, 2015 WL 4389699, *2 n.12 (citing *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir., 1981) (threats of harassment and violence favored anonymity)). If John Doe's identity becomes publicly available by virtue of this litigation, his safety, as well as the safety of his girlfriend and her family, as well as his own family, will be jeopardized. John Doe will also suffer serious harm to his career and job prospects.

Additionally, permitting John Doe to proceed anonymously recognizes the right of transgender individuals to maintain medical confidentiality in light of the increased hostility they often face. *See Powell v. Schriver*, 175 F.3d 107, 111-12 (2d Cir. 1999) ("individuals who are transsexuals are among those who possess a constitutional right to maintain medical confidentiality [because] transsexualism is the unusual condition that is likely to provoke both an intense desire to preserve one's medical confidentiality, as well as hostility and intolerance from others.").

Conversely, there is no risk of prejudice to the opposing parties in this matter, particularly since the Defendants are federal government agencies and officials, and Doe's identity has no bearing on Defendants' ability to address the legal issues raised in this case. *E.W. v. N.Y. Blood Center*, 213 F.R.D. 108, 111 (E.D.N.Y. 2003) ("where a plaintiff attacks governmental activity, for

example a governmental policy or statute, the plaintiff's interest in proceeding anonymously is considered particularly strong.”). For these reasons, Plaintiffs respectfully request that the Court permit John Doe to proceed under pseudonym in this action.

II. Individual Plaintiffs’ addresses should be omitted from the case caption

Local Rule 102.2(a) provides in part that the case caption of the original complaint “shall contain the names and addresses of all parties and the county of residence of any Maryland party.” The counties of residence of Maryland parties are included in the caption of the Complaint. However, Individual Plaintiffs fear that including their personal addresses on the public record, available to any person with access to PACER or other source of litigation filings, including public news sources that are likely to take interest in this action, presents particular risks in light of the widespread harassment and violence against transgender individuals, and the reported rise in hate crimes and politically motivated violence taking place in the United States at this time.

The general principles that apply to filing under a pseudonym similarly apply to the Individual Plaintiffs’ request to omit their home addresses. *See Public Citizen*, 749 F.3d at 273 (“in exceptional circumstances, compelling concerns relating to personal privacy or confidentiality may warrant some degree of anonymity in judicial proceedings”). The factors set forth in *James* support omitting Individual Plaintiffs’ addresses in this matter. Providing their home addresses in the caption will dramatically increase the scope of potential harassment and violence directed at Individual Plaintiffs and their families, merely for their efforts to enforce the rights they were promised, and on which they relied, when they first identified themselves as transgender to military personnel. Individual Plaintiffs fear that publicly listing their home addresses in the case caption will expose them and their families to a high risk of harassment, violence, or other injury. Pls. Decls. at ¶¶ 3-4. Individual Plaintiffs wish to omit information not

to avoid criticism, but to preserve the sensitive and private nature of their home addresses, especially in light of the risk of harassment and violence to Individual Plaintiffs and their innocent family members that this litigation presents. Courts have recognized that threats of harassment and violence especially favor anonymity. *See New Ritz, Inc.*, No. WDQ-14-2367, 2015 WL at *2 n.12 (citing *Stegall*, 653 F.2d at 186). In light of both the history of harassment and violence experienced by transgender Americans, and the particular passions that may be inflamed in a high-profile lawsuit against President Trump, Individual Plaintiffs' concerns are well-founded, and their request for the modest relief of omitting their home addresses from the case caption is a reasonable one.

There is also no risk of prejudice to the opposing parties in this matter. Plaintiffs, through their counsel, are willing to provide Individual Plaintiffs' home addresses to Defendants' counsel, if they request it and provide adequate assurances against public disclosure. Plaintiffs are also prepared to file a version of the caption listing the Individual Plaintiffs' home addresses under seal, if the Court wishes.

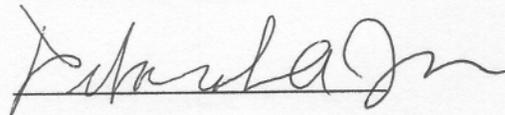
For these reasons, the motion should be granted.

Dated: August 28, 2017

David M. Zions*
Carolyn F. Corwin*
Jaclyn E. Martínez Resly*
Jeff Bozman*
Marianne F. Kies (Bar No. 18606)
Christopher J. Hanson*
Tom Plotkin*†
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001
Telephone: (202) 662-6000
Fax: (202) 778-5987
dzions@cov.com
ccorwin@cov.com
jmartinezresly@cov.com
jbozman@cov.com
mkies@cov.com
chanson@cov.com
tplotkin@cov.com

Mitchell A. Kamin*
Nicholas A. Lampros*
COVINGTON & BURLING LLP
1999 Avenue of the Stars, Suite 3500
Los Angeles, California 90067
Telephone: (424) 332-4800
Facsimile: (424) 332-4749
mkamin@cov.com
nlampros@cov.com

Respectfully submitted,



Deborah A. Jeon (Bar No. 06905)
David Rocah (Bar No. 27315)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF MARYLAND
3600 Clipper Mill Road, #350
Baltimore, MD 21211
Telephone: (410) 889-8555
Fax: (410) 366-7838
jeon@aclu-md.org
rocah@aclu-md.org

Joshua A. Block*
Chase B. Strangio*
James Esseks*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: 212-549-2627
Fax: 212-549-2650
jblock@aclu.org
cstrangio@aclu.org
jesseks@aclu.org

Attorneys for Plaintiffs

* *pro hac vice* application forthcoming

† Admitted to the Bars of Pennsylvania and New Jersey, admission to the Bar of the District of Columbia pending; and supervised by the principals of the firm.