

FILED

APR 23 2020

Clerk, U.S. District & Bankruptcy
Court for the District of Columbia**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**C.G.B., *et al.*

Plaintiffs,

v.

CHAD WOLF, *et al.*

Defendants.

Case: 1:20-cv-01072

Assigned To : Cooper, Christopher R.

Assign. Date : 4/23/2020

Civil Action No. Description: TRO/PI (D-DECK)

Chief Judge Beryl A. Howell

MEMORANDUM AND ORDER

The plaintiffs in this action, “thirteen asylum-seeking transgender women who are being held at various immigration detention centers in the United States,” Pls.’ Mot. for Leave to File Under Pseudonyms (“Pls.’ Mot.”) at 1, have moved to proceed under pseudonym in their instant action seeking “to vindicate” their purported “constitutional and statutory rights to reasonable protection from the COVID-19 pandemic,” Compl. ¶ 1. For the reasons set forth below, the motion is granted, subject to any further consideration by the United States District Judge to whom this case is randomly assigned.¹

I. BACKGROUND

This action arises out of the current global pandemic and nationwide emergency caused by COVID-19. Plaintiffs are transgender individuals being held in immigration detention centers by Immigration and Customs Enforcement (“ICE”). Compl. ¶ 2. They allege that despite federal recognition of “the severe risks posed by outbreaks of the COVID-19 virus,” ICE has “fail[ed] to follow even its own basic safety and health rules” for detainees in its facilities. *Id.* ¶¶ 1–2. Indeed, they claim “ICE has not provided and cannot implement

¹ Under Local Civil Rule 40.7(f), the Chief Judge shall “hear and determine . . . motion[s] to file a pseudonymous complaint.” LCvR 40.7(f).

sufficient measures to curb the spread of COVID-19 in its facilities.” *Id.* ¶ 2. Furthermore, according to plaintiffs, “[t]ransgender people in civil immigration detention . . . are among the most vulnerable during the current pandemic.” *Id.* As such, they seek “immediate release on parole or other supervised release” and an order directing ICE to “immediately implement all protocols designed to prevent the transmission of COVID-19.” *Id.* at 41–42. They have also moved for a temporary restraining order (“TRO”) requesting the same relief. Pls.’s Mot. for Temporary Restraining Order and Request for Emergency Hr’g (“Pls.’s TRO Mot.”) at 1.

II. LEGAL STANDARD

Generally, a complaint must state the names of the parties and address of the plaintiff. FED. R. CIV. P. 10(a) (“The title of the complaint must name all the parties.”); LCvR 5.1(c)(1) (“The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party,” and “[f]ailure to provide the address information within 30 days of filing may result in the dismissal of the case against the defendant.”); LCvR 11.1 (same requirement as LCvR 5.1(c)(1)). The Federal Rules thus promote a “presumption in favor of disclosure [of litigants’ identities], which stems from the ‘general public interest in the openness of governmental processes,’ . . . and, more specifically, from the tradition of open judicial proceedings.” *In re Sealed Case*, 931 F.3d 92, 96 (D.C. Cir. 2019) (internal citations omitted) (quoting *Wash. Legal Found. v. U.S. Sentencing Comm’n*, 89 F.3d 897, 899 (D.C. Cir. 1996)). Accordingly, “parties to a lawsuit must typically openly identify themselves in their pleadings,” with “[b]asic fairness dictat[ing] that those among the defendants’ accusers who wish to participate . . . as individual party plaintiffs must do so under their real names.” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1463–64 (D.C. Cir. 1995) (per curiam) (internal quotation marks and citations omitted).

Nevertheless, courts have, in special circumstances, permitted a party to proceed anonymously. The D.C. Circuit has instructed that “the appropriate way to determine whether a litigant may proceed anonymously is to balance the litigant’s legitimate interest in anonymity against countervailing interests in full disclosure.” *In re Sealed Case*, 931 F.3d at 96. When weighing those concerns, five factors, initially drawn from *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993), serve as “guideposts from which a court ought to begin its analysis.” *In re Sealed Case*, 931 F.3d at 97. These five factors are:

(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 relatedly, (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Id. (citing *James*, 6 F.3d at 238).

At the same time, a court must not simply “engage in a wooden exercise of ticking the five boxes.” *Id.* Rather, “district courts should take into account other factors relevant to the particular case under consideration.” *Id.* (quoting *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189–90 (2d Cir. 2008)). In exercising discretion “to grant the rare dispensation of anonymity . . . the court has ‘a judicial duty to inquire into the circumstances of particular cases to determine whether the dispensation is warranted’ . . . tak[ing] into account the risk of unfairness to the opposing party, as well the customary and constitutionally-embedded presumption of openness in judicial proceedings.” *Microsoft Corp.*, 56 F.3d at 1464 (quoting *James*, 6 F.3d at 238 (other internal citations and quotation marks omitted)).

III. DISCUSSION

At this early stage of the litigation, this Court is persuaded that the plaintiffs have met their burden of showing that their privacy interests outweigh the public's presumptive and substantial interest in knowing the details of judicial litigation. The public's interest in the litigants' identities is *de minimis* compared to the significant privacy interests of the plaintiffs, asylum seekers who "fear[] persecution, death or torture should they be returned to their countries of origin." Pls.'s Mot. at 1.

The first factor courts are instructed to consider when ruling on these kinds of motions plainly weighs in the plaintiffs' favor. Plaintiffs do not hope to avoid mere "annoyance" or "criticism," *Sealed Case*, 931 F.3d at 97, but to prevent the public airing of their past "persecution and torture." Pls.'s Mot. at 3. These incidents undeniably qualify as "sensitive and highly personal" matters. *Sealed Case*, 931 F.3d at 97.

The plaintiffs also contend, with respect to the second factor, that "identification creates a risk of retaliatory physical or mental harm." Pls.'s Mot. at 3. Plaintiffs fled significant violence including "beatings and rape." *Id.* One plaintiff was "detained and tortured" merely for "participating in a transgender rights group." *Id.* Not only are they at risk should their identities be revealed, so too are "their families" both in the United States and in their home countries. *Id.* at 4. The danger of revealing their identities is clearly not illusory. Indeed, it was to escape that very threat that plaintiffs sought asylum or other relief from deportation in the first place.²

Allowing the plaintiffs to proceed under pseudonyms will have no impact on any private rights, as the only defendants are government agencies and officers. Nor will allowing

² The third factor, "the ages of the persons whose privacy interests are sought to be protected," is irrelevant to this motion. *Sealed Case*, 931 F.3d at 97.

the plaintiffs to proceed pseudonymously prejudice the defendants in any way. The plaintiffs' identities are already known to the defendants in connection with their asylum applications. Moreover, the plaintiffs are willing to "reveal[] their names to the government Defendants." Pls.'s Mot. at 4. A pseudonymous filing thus will not compromise the defendants' ability to defend this action and poses little "risk of unfairness to the opposing party." *Nat'l Ass'n of Waterfront Emp'rs v. Chao*, 587 F. Supp. 2d 90, 99 (D.D.C. 2008). Indeed, defendants understand the need to maintain the anonymity of asylum applicants and have therefore prohibited the disclosure of their identities during the processing of asylum applications. *See* 8 C.F.R. § 208.6. Finally, any public interest in disclosing the identity of the plaintiffs is significantly outweighed by privacy interests of the asylum-seekers in this case.

In sum, weighed against the minimal apparent interest in disclosure, the plaintiffs' significant interest in maintaining their anonymity at this early stage in the litigation is more than sufficient to overcome any general presumption in favor of open proceedings. *See Horowitz v. Peace Corps*, 428 F.3d 271, 278 (D.C. Cir. 2005) ("If there is no public interest in the disclosure of certain information, 'something, even a modest privacy interest, outweighs nothing every time.'" (quoting *Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989))).

IV. CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the plaintiffs' Motion for Leave to File Under Pseudonyms is **GRANTED**, subject to any further consideration by the United States District Judge to whom this case is randomly assigned, and the plaintiffs may proceed herein using the pseudonyms listed in their complaint; and it is further

ORDERED that the defendants are prohibited from publicly disclosing the plaintiffs' identities or any personal identifying information that could lead to the identification of the plaintiffs by nonparties, except for the purposes of investigating the allegations contained in the Complaint and for preparing an answer or other dispositive motion in response.

SO ORDERED.

Date: April 23, 2020



A handwritten signature in cursive script that reads "Beryl A. Howell".

BERYL A. HOWELL
Chief Judge