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34 **UNITED STATES DISTRICT COURT**
 35 **SOUTHERN DISTRICT OF CALIFORNIA**

36 AL OTRO LADO, INC., a California
 37 Corporation;
 38 HAITIAN BRIDGE ALLIANCE, INC.,
 39 a California Corporation;
 40 DIEGO DOE, ELENA DOE,
 41 GUADALUPE DOE, LAURA DOE,
 42 LUISA DOE, MICHELLE DOE,
 43 NATASHA DOE, PABLO DOE, AND
 44 SOMAR DOE, individually and on

Case No. 3:23-cv-1367-AGS-BLM
 Hon. Andrew G. Schopler

**PLAINTIFFS' MEMORANDUM
 OF POINTS AND AUTHORITIES
 IN SUPPORT OF THEIR
 UNOPPOSED MOTION TO
 PROCEED PSEUDONYMOUSLY**

1 behalf of all others similarly situated,

2 Plaintiffs

3 vs.

4 ALEJANDRO N. MAYORKAS,
5 Secretary, U.S. Department of
6 Homeland Security, in his official
7 capacity;

8 TROY A. MILLER, Senior Official
9 Performing the Duties of Commissioner,
10 U.S. Customs and Border Protection, in
11 his official capacity;

12 DIANE J. SABATINO, Acting
13 Executive Assistant Commissioner,
14 Office of Field Operations, U.S.
15 Customs and Border Protection, in her
16 official capacity,

17 Defendants.

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Class Representatives move the Court for an Order permitting them to proceed under pseudonyms and requiring Defendants to maintain the confidentiality of their identities. Class Representatives so move because they are attempting to flee persecution and are currently seeking asylum in the United States due to their credible fears of physical injury and death in their home countries, and these risks of harm will be unnecessarily exacerbated should their identities and present whereabouts be exposed during the course of this litigation. This Court permitted the plaintiffs in the related case to proceed pseudonymously, and its reasons for doing so apply with equal force here. *See, e.g., Al Otro Lado, Inc. v. Nielsen*, No. 17-cv-2366, 2017 WL 6541446, at *8 (S.D. Cal. Dec. 20, 2017) (“*AOL One*”).

Courts regularly permit asylum seekers to proceed under pseudonyms, particularly where, as here, they challenge government action and where the government will face no prejudice should the plaintiffs’ identities be temporarily shielded from public notice while they diligently pursue their right to seek protection from persecution. *AOL One*, 2017 WL 6541446, at *8. Further, because of the very nature of claims of persecution and corresponding fears of physical harm, applicable federal regulations require that the identity of asylum seekers be protected from public disclosure.

Based on the special circumstances of this case, Class Representatives’ need for privacy outweighs any minimal potential prejudice to others. Defendants have been provided with the Class Representatives’ identifying information and will not suffer any prejudice in defending against this action. In addition, the public has a countervailing interest in ensuring that the litigation of Class Representatives’ challenge to the government’s alleged misconduct proceeds, and forcing vulnerable plaintiffs to disclose their identity may chill their willingness to prosecute their claims. The balance of relevant factors thus heavily favors permitting Class

1 Representatives to remain anonymous in connection with public filings in this action.

2 **II. ARGUMENT**

3 Although the Federal Rules of Civil Procedure generally require complaints to
4 include the names of all parties, *see* Fed. R. Civ. P. 10(a), it is well established that
5 district courts have discretion to permit parties to proceed pseudonymously when
6 special circumstances justify anonymity. *See Does I thru XXIII v. Advanced Textile*
7 *Corp.*, 214 F.3d 1058, 1067–68 (9th Cir. 2000) (collecting cases); *Sealed Plaintiff v.*
8 *Sealed Defendant #1*, 537 F.3d 185, 189-90 (2d Cir. 2008) (collecting cases).

9 In the Ninth Circuit, appearing under a pseudonym is appropriate when
10 “nondisclosure of the party’s identity ‘is necessary . . . to protect a person from
11 harassment, injury, ridicule or personal embarrassment.’” *Advanced Textile*, 214 F.3d
12 at 1067-68 (quoting *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981)); *see*
13 *also Doe v. Amazon.com, Inc.*, 2011 WL 13073281, at *3 (W.D. Wash. 2011)
14 (risk of “physical harm presents the paradigmatic case for allowing anonymity”).
15 Courts should permit a party to proceed under a pseudonym “when the party’s need
16 for anonymity outweighs prejudice to the opposing party and the public’s interest in
17 knowing the party’s identity.” *Advanced Textile*, 214 F.3d at 1068. As explained
18 below, Class Representatives need protection from severe harassment, injury and
19 threats. At the same time, Defendants cannot show that they will be prejudiced, or
20 the public interest undermined, if Class Representatives proceed under pseudonyms.
21 Defendants do not oppose this Motion.

22 **A. Pseudonyms Are Necessary to Protect Class Representatives**
23 **from Harm.**

24 Where plaintiffs fear harm based on the disclosure of personal information, the
25 Ninth Circuit has instructed trial courts to consider “(1) the severity of the threatened
26 harm; (2) the reasonableness of the anonymous party’s fears; and (3) the anonymous
27 party’s vulnerability to such retaliation.” *Advanced Textile*, 214 F.3d at 1068
28 (citations omitted). These concerns are particularly pronounced where, as here, the

1 plaintiffs are asylum seekers who face significant physical threats and, in some cases,
2 death. *See A.B.T. v. U.S. Citizenship & Immigr. Servs.*, No. 11-cv-2108, 2012 WL
3 2995064, at *3 (W.D. Wash. July 20, 2012) (permitting asylum seekers challenging
4 government action to proceed under pseudonyms because “the severity of threatened
5 harm is great . . . [i]f . . . plaintiffs may be persecuted, imprisoned under hostile
6 conditions, tortured, or killed”); *see also Int’l Refugee Assistance Project v. Trump*,
7 No. 17-cv-361, 2017 WL 818255, at *2-3 (D. Md. Mar. 1, 2017) (“Potential
8 retaliatory physical or mental harm against individuals in another country can form
9 the basis for permitting plaintiffs to use pseudonyms.”).

10 As in *AOL One*, all Class Representatives are attempting to flee their home
11 countries because they were persecuted or feared that they would be persecuted if
12 they remained. *AOL One*, 2017 WL 6541446, at *3–4 (finding that the harms the
13 asylum seeker-plaintiffs identified “fall squarely within the types of harms that
14 establish a need to proceed pseudonymously”). Thus, they fall within a particularly
15 vulnerable class of non-citizens for whom confidentiality about the nature of their
16 cases is particularly important. *See* U.N. High Comm’r for Refugees, *Advisory*
17 *Opinion on the Rules of Confidentiality Regarding Asylum Information* 3 (Mar. 31,
18 2005), <http://www.refworld.org/pdfid/42b9190e4.pdf>; *see also id.* at 2 (“[P]rivacy
19 and its confidentiality requirements are especially important for an asylum-seeker,
20 whose claim inherently supposes a fear of persecution by the authorities of the
21 country of origin and whose situation can be jeopardized if protection of information
22 is not ensured.”); *id.* at 1 (“Effective measures need to be taken to ensure that
23 information concerning a person’s private life does not reach the hands of third
24 parties that might use such information for purposes incompatible with international
25 human rights law.”).

26 Federal asylum regulations specifically protect the confidentiality of asylum
27 applicants, including confidentiality about the fact that the individual filed an asylum
28 application. *See* 8 C.F.R. §§ 208.6, 1208.6. DHS has acknowledged the importance

1 of these confidentiality regulations to the future safety of asylum applicants:

2 As DHS recognizes, the confidentiality regulations are of utmost
3 importance in protecting asylum applicants because the “regulations
4 safeguard information that, if disclosed publicly, could subject the
5 claimant to retaliatory measures by government authorities or non-state
6 actors in the event that the claimant is repatriated, or endanger the
7 security of the claimant’s family members who may still be residing in
8 the country of origin.”

9 *Anim v. Mukasey*, 535 F.3d 243, 253 (4th Cir. 2008) (quoting U.S. Customs &
10 Immigr. Servs. Asylum Div., U.S. Dep’t of Homeland Sec., *Fact Sheet: Federal*
11 *Regulations Protecting the Confidentiality of Asylum Applicants* (2005)).

12 A number of circuit courts also have recognized the importance of
13 confidentiality for asylum applicants, allowing them to proceed with pseudonyms
14 even through the appeals process in their asylum cases. *See, e.g., Doe v. Gonzales*,
15 484 F.3d 445, 446 (7th Cir. 2007); *Doe v. INS, U.S. Dep’t of Justice*, 867 F.2d 285,
16 286 & n.1 (6th Cir. 1989). Indeed, in light of the distinct harm asylum seekers face
17 if their identities are exposed, courts recognize that a breach of confidentiality may
18 itself create grounds for asylum. *See, e.g., Anim*, 535 F.3d at 256 (remanding asylum
19 case to Board of Immigration Appeals so that the petitioner could have the
20 opportunity to present new claims for asylum based upon the U.S. government’s
21 breach of her confidentiality); *see also Zhen Nan Lin v. U.S. Dep’t of Justice*, 459
22 F.3d 255, 268 (2d Cir. 2006) (noting that violation of the confidentiality regulation
23 may place an asylum applicant in even greater peril).

24 In a similar challenge by asylum seekers to the practices of a United States
25 immigration agency, the district court for the Western District of Washington relied
26 heavily on federal immigration regulations in permitting asylum-seeking plaintiffs to
27 proceed anonymously:
28

1 Asylum seekers have the right to keep confidential any information
2 contained in or pertaining to an asylum application that allows a third
3 party to link the identity of the applicant to: (1) the fact that the
4 applicant has applied for asylum; (2) specific facts or allegations
5 pertaining to the individual asylum claim contained in an asylum
6 application; or (3) facts or allegations that are sufficient to give rise to
7 a reasonable inference that the applicant has applied for asylum. 8
8 C.F.R. §§ 208.6, 1208.6 (2012). . . . If the court denied plaintiffs’
9 motion, the court would, in essence, be ordering plaintiffs and
10 Defendants to disclose plaintiffs’ identities to the public. Given the
11 clear mandate to protect asylum applicants and to prevent disclosure of
12 their identities to the general public, the court has grave concerns of the
13 role it would play in essentially requiring the parties to violate 8 C.F.R.
14 §§ 208.6 1208.6.

15 *A.B.T.*, 2012 WL 2995064, at *5 (citation and footnote omitted). The same
16 considerations pertain here, and compel the same result.

17 Class Representatives have reasonable fears of severe physical harm that form
18 the basis of their claims for asylum, as attested to in their concurrently filed
19 declarations. (*See* Decl. of Diego Doe, Ex. 1 ¶ 5 (describing attack and narrow escape
20 from an attempted kidnapping); Decl. of Elena Doe, Ex. 2 ¶¶ 7–9 (describing the
21 threat of severe domestic and cartel violence); Decl. of Guadalupe Doe, Ex. 3 ¶¶ 5–
22 7 (describing severe domestic abuse and threats towards her and her children by
23 estranged husband); Decl. of Laura Doe, Ex. 4 ¶¶ 5–12 (describing cartel
24 disappearing her husband and father-in-law and threats to her and her children); Decl.
25 of Luisa Doe, Ex. 5 ¶¶ 5–9 (describing brutal attack and threats after cooperating with
26 local authorities against narcotraffickers and after her children’s father’s refusal to
27 work for a criminal organization); Decl. of Michelle Doe, Ex. 6 ¶¶ 9–13 (describing
28 multiple assaults and threats by estranged ex-partner who is a member of the cartel);
Decl. of Natasha Doe, Ex. 7 ¶¶ 4–5 (describing brutal attack and threats and her
cousin’s abduction and murder after plaintiff fled Haiti); Decl. of Pablo Doe, Ex. 8
¶ 6 (describing weekly extortion by gangs at the threat of death and an attack when
he could not pay); Decl. of Somar Doe, Ex. 9 ¶ 6 (describing her son-in-law

1 threatening her life and frequently beating her daughter and grandchildren)).

2 Class Representatives remain at risk even once they are in the United States,
3 as it is possible that their asylum applications would be denied, and they would be
4 returned to their home countries, where their persecutors remain. Some are fleeing
5 persecution from powerful cartels or criminal organizations in Mexico. *See* Ex. 2
6 ¶¶ 7–9; Ex. 4 ¶¶ 5–12; Ex. 5 ¶¶ 5–9; Ex. 6 ¶¶ 9–13. Another plaintiff who fled gang
7 violence in Honduras was attacked and robbed by gang members of his life savings,
8 telephone, and personal items while traveling through Mexico. *See* Ex. 8 ¶ 7.
9 Because Class Representatives and their family members, including family members
10 who continue to reside in Mexico, would risk exposure to future persecution and
11 possibly death if the Class Representatives’ identities were made public in filings
12 before this Court, their interest in appearing anonymously in all public filings is great.
13 Further, five of the Class Representatives are parents traveling with minor children
14 (*See* Ex. 2 ¶¶ 5, 12; Ex. 3 ¶¶ 3, 7; Ex. 5 ¶ 3; Ex. 6 ¶¶ 3, 16; Ex. 7 ¶ 2) whose
15 vulnerability to threatened harm is particularly significant. *See Advanced Textile*,
16 214 F.3d at 1068 (noting specific need to protect child plaintiffs).

17 Class Representatives should not be forced to choose between waiving their
18 right to potentially life-preserving confidentiality and pursuing their right to seek
19 asylum in the United States; nor should the Court require the exposure of their
20 identities in a manner contrary to federal regulations. Class Representatives’ need
21 for protection from public exposure weighs heavily in favor of permitting them to
22 proceed under pseudonyms.

23 **B. Defendants Will Not Be Prejudiced if Class Representatives**
24 **Use Pseudonyms in Publicly Filed Documents.**

25 Granting Class Representatives’ request for pseudonymity will not prejudice
26 Defendants’ “ability to litigate the case.” *Advanced Textile*, 214 F.3d at 1069. Class
27 Representatives do not seek to withhold their identities from Defendants, but only to
28 protect themselves from public exposure that could lead to severe harm. The parties

1 have agreed to informally exchange identifying information concerning the
2 Individual Plaintiffs subject to certain confidentiality assurances. Because they know
3 the true identities of the individual plaintiffs, Defendants “face no risk of prejudice.”
4 *AOL One*, 2017 WL 6541446, at *6; *see also E.A.R.R. v. U.S. Dep’t of Homeland*
5 *Sec.*, No. 20-cv-2146, 2021 WL 5177775, at *1 (S.D. Cal. 2021).

6 Further, Class Representatives are challenging government action, and
7 “challeng[es] [to] the constitutional, statutory or regulatory validity of government
8 activity . . . involve no injury to the Government’s ‘reputation.’” *S. Methodist Univ.*
9 *Ass’n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979);
10 *see also EW v. N.Y. Blood Ctr.*, 213 F.R.D. 108, 111 (E.D.N.Y. 2003)
11 (“[T]he government is viewed as having a less significant interest in protecting its
12 reputation from damaging allegations than the ordinary individual defendant.”).
13 Defendants will suffer no harm, nor will they face any barriers to mounting a defense
14 to Plaintiffs’ claims, should Class Representatives proceed under pseudonyms. Class
15 Representatives’ need for protection significantly outweighs any potential prejudice
16 to Defendants.

17 **C. The Public Interest Weighs in Favor of Allowing Class**
18 **Representatives to Challenge Government Action**
19 **Pseudonymously.**

20 In contrast to Class Representatives’ heightened interest in confidentiality, the
21 public’s interest in knowing the identities of the Class Representatives is minimal.
22 *Asylum Seekers Trying to Assure Their Safety v. Johnson*, No. 23-cv-163, 2023 WL
23 417910, at *3 (D.D.C. Jan. 26, 2023) (finding that the public’s interest in asylum
24 seekers’ identities was “*de minimis*” relative to “the significant privacy interests of
25 the plaintiffs, who reasonably fear that proceeding under their real names will expose
26 them and their families to the risk of retaliatory harm, including retribution [from]
27 persecutors from whom they fled to the United States”). While the issues that
28 Plaintiffs raise in this lawsuit are a matter of significant public concern, revealing the

1 particular identities of the Class Representatives will add little or nothing to the
2 public’s understanding of the lawfulness of the U.S. government’s alleged
3 misconduct at issue in this case. *See Advanced Textile*, 214 F.3d at 1068–69 (“[P]arty
4 anonymity does not obstruct the public’s view of the issues joined or the court’s
5 performance in resolving them.”) (quoting *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir.
6 1981)).

7 To the contrary, “lawsuits that enforce statutes and constitutional rights
8 generally benefit the public.” *A.B.T.*, 2012 WL 2995064, at *6 (citing *Advanced*
9 *Textile*, 214 F.3d at 1073; *Plyler v. Doe*, 457 U.S. 202 (1982)). Thus, “[c]onsidering
10 the severity of the retaliatory harm in this case, forcing plaintiffs to disclose their
11 identity would likely chill their willingness to challenge statutory and constitutional
12 violations” and contravene public policy. *Id.*; accord *Advanced Textile*, 214 F.3d at
13 1069 (“We also conclude, based on the extreme nature of the retaliation threatened
14 against plaintiffs coupled with their highly vulnerable status, that plaintiffs
15 reasonably fear severe retaliation, and that this fear outweighs the interests in favor
16 of open judicial proceedings.”); see also *Lozano v. City of Hazleton*, 620 F.3d 170,
17 195 (3d Cir. 2010) (finding pseudonymity in the public interest because without it,
18 plaintiffs would be “deterred from bringing cases clarifying constitutional rights”),
19 *vacated and remanded on other grounds*, 563 U.S. 1030 (2011).

20 The public interest weighs in favor of granting Class Representatives’ motion
21 to proceed under pseudonyms so that Class Representatives may pursue their right to
22 enforce access to the asylum system as is required under U.S. law.

23 * * *

24 Class Representatives’ need for protection from threats of severe bodily harm
25 weighs strongly in favor of granting pseudonymity. In contrast, there is neither
26 prejudice to the Defendants nor harm to the public should Class Representatives’
27 identities be protected from public view. The balance of factors overwhelmingly
28 favors permitting Class Representatives to proceed under pseudonyms.

1 **III. CONCLUSION**

2 For the foregoing reasons, Class Representatives respectfully request that this
3 Court grant their Motion to permit them to proceed under pseudonyms.

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