

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

THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
(NAACP), AMERICAN FEDERATION OF
TEACHERS, AFL-CIO, AND UNITED FOOD
AND COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as
President of the United States, JEFFERSON
BEAUREGARD SESSIONS, III, in his official
capacity as Attorney General of the United
States, ELAINE C. DUKE, in her official
capacity as acting Secretary of Homeland
Security, U.S. CITIZENSHIP AND
IMMIGRATION SERVICES, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT, DEPARTMENT OF
HOMELAND SECURITY, UNITED STATES
OF AMERICA,

Defendants.

**ASSOCIATION PLAINTIFFS' MOTION
FOR NINE DECLARANTS TO PROCEED
BY PSEUDONYM AND MEMORANDUM
OF LAW IN SUPPORT THEREOF**

Civil Action No. 17-cv-1907 (CRC)

THE TRUSTEES OF PRINCETON
UNIVERSITY, MICROSOFT
CORPORATION, and
MARIA DE LA CRUZ PERALES SANCHEZ,

Plaintiffs,

v.

UNITED STATES OF AMERICA, U.S.
DEPARTMENT OF HOMELAND
SECURITY, and KRISTJEN NIELSON, in her
official capacity as Secretary of the Department
of Homeland Security,

Defendants.

Civil Action No. 17-cv-2325 (CRC)

Plaintiffs respectfully seek leave to submit declarations from nine declarants by pseudonym. Each declarant is a member of either the National Association for the Advancement of Colored People (“NAACP”), American Federation of Teachers, AFL-CIO (“AFT”) or the United Food and Commercial Workers International Union, AFL-CIO, CLC (“UFCW”) (collectively, the “Association Plaintiffs”) who seeks to submit a declaration in support of Plaintiffs’ Motion for Summary Judgment and/or Preliminary Injunction. Defendants do not oppose the Association Plaintiffs’ request to file the declarations via pseudonym, but take the position that Defendants should be entitled to know the declarants’ identities. The Association Plaintiffs oppose disclosing their identities to Defendants for the reasons set forth below.

FACTUAL BACKGROUND

Association Plaintiffs brought suit to challenge Defendants’ September 5, 2017 rescission of the Deferred Action for Childhood Arrival Program (DACA) under the Administrative Procedure Act (APA), the Regulatory Flexibility Act, and the U.S. Constitution. Pursuant to the Court’s November 22, 2017 Scheduling Order (Dkt. 7), Association Plaintiffs will file a motion for a preliminary injunction or for summary judgment on December 15, 2017. In connection with that motion, the Association Plaintiffs seeks to file declarations on behalf of nine declarants who wish to withhold their identities from Defendants and the public (hereinafter, the “Doe declarants”).

The Doe declarants are DACA recipients who are currently members of either the NAACP, the AFT, or the UFCW. *See* Ex. 1-9 (Doe declarations). Their declarations describe the crucial role that DACA has played in the declarants’ lives and the consequences for them, and for the Association Plaintiffs stemming from DACA’s rescission. The declarations generally relate to the legal issues of standing, facts that Defendants failed to consider in deciding to

rescind DACA, the irreparable harm the declarants will suffer if DACA is rescinded, and the public interest to be weighed in assessing Plaintiffs' motion for injunctive relief.

The Doe declarants currently have protections arising from their DACA status. Barring injunctive relief, however, they will be subject to arrest, detention, and removal by immigration authorities once their DACA status expires.

The Government has "urge[d] DACA recipients to use the time remaining on their work authorizations to prepare for and arrange their departure from the United States."¹ Furthermore, the Government possesses the Doe declarants' personal information, including their home addresses, which was collected from DACA applicants as part of the application process.² Though it promised at the time not to use that information for enforcement purposes, the Government has asserted its ability to revise that information-sharing policy without notice at any time. Defs.' Mem. in Support of Mot. to Dismiss the Association Plaintiffs at 38-39 (Dkt. 15). Thus, Defendants claim the right, and have the ability, to deport the Doe declarants and/or their family members.

The Doe declarants reasonably fear retaliation for submitting declarations in support of the Plaintiffs in this case. Specifically:

- Declarant Jane Doe II was brought to the United States when she was two years old. She is the first person in her family to attend college. Receiving DACA protection has allowed her to go to college and become a special education teacher. DACA's rescission

¹ Talking Points - DACA Rescission, MSNBC, <http://msnbcmedia.msn.com/i/MSNBC/Sections/NEWS/z-pdf-archive/170905-DACA-Talking-Points.pdf>; *see also* Kristen Welker & Daniel Arkin, *Trump Administration Memo: DACA Recipients Should Prepare for 'Departure,'* NBC NEWS (Sept. 5, 2017), <https://www.nbcnews.com/news/us-news/white-house-memo-dacarecipients-should-prepare-departure-n799026>.

² *See* Instructions for Consideration of Deferred Action for Childhood Arrivals, USCIS Form I-821D at 13 (Jan. 9, 2017), <https://www.uscis.gov/sites/default/files/files/form/i-821dinstr.pdf>.

would lead to a significant economic hardship for her, and for her students, as the District she teaches in has a shortage of teachers qualified to teach deaf students. Disclosure of her identity to the Government would cause her extreme mental stress; she is already exhausted from the fear and emotional turmoil of the uncertainty that now overwhelms her life.

- Declarant Jane Doe III was brought to the United States when she was only eight years old. Before DACA, she never thought she would be able to go to college, as she would have no way of receiving financial aid. After graduating high school as the class salutatorian, she matriculated in the University of Texas, Austin. After graduating from college, Jane Doe III began teaching Spanish in a public high school, and also facilitates a program designed for students who are underrepresented in higher education. In addition to experiencing feelings of shame, fear, and not belonging since Attorney General Sessions announced the plan to end DACA on September 5, 2017, she is terrified that she will be deported and torn from the only community and home she has ever known. Disclosing her identity would compound that terror.
- Declarant Jane Doe IV was brought to the United States when she was seven years old. She grew up without being able to go to the doctor, because her parents were afraid that her status would be discovered. She was overjoyed when she was finally old enough to receive DACA protection in 2014 and received employment authorization for the first time. She now lives in constant fear of deportation to a country she does not know, and of being torn from her brother and sister, who are U.S. Citizens. Disclosing her identity would cause her a tremendous amount of stress and anguish.

- Declarant Jane Doe V was brought to this country at age nine, and has a brother who was later born here, as a U.S. Citizen. She excelled in school, but because she was undocumented, she could not obtain any academic scholarships so she could attend any of the elite institutions that tried to recruit her. She is currently a student at the City University of New York (“CUNY”), and she wants to become a lawyer. She is now fearful that she will be separated from her little brother, and that she will be unable to finish college or ever become a lawyer. She is also afraid of being deported to a country where she has no close family or friends and does not know the customs. Disclosing her identity would increase the fearfulness she feels now by magnitudes of order.
- Declarant Jane Doe VI was brought to the United States when she was four years old. She has lived in fear since the age of eight, when she first learned she did not have documents. She describes living in fear of being caught as undocumented while trying to attend school and get a job. Before DACA, she could see no future for herself, and often worked two part-time jobs without benefits to make ends meet. Because of DACA, she was able to receive work authorization and a much better job, where she earns \$15.20 per hour. This is enough for her to provide a home for her twin children, and health insurance, which she receives through her employer. Now that DACA is threatened, Jane Doe VI feels hopeless about her future goal of becoming a paralegal, and worried that she will no longer be able to financially assist her parents. She is terrified, because her twins are only 19 months old, and they are American citizens. She does not know what will happen if she is removed from the United States. Revealing her identity would add to her deep feelings of fear and the stress she is currently experiencing.

- Declarant Jane Doe VII was brought to the United States when she was two years old; she is now 21 years old. Her parents are also undocumented, and she recalls growing up in fear of being caught by immigration. Before DACA, she was only able to secure low wage positions where she earned only \$6.00 per hour; she often needed to work two jobs to pay her bills. Because of DACA, she now has a job making \$15.50 per hour, plus health insurance, vision and dental coverage, and personal time. She is afraid that if her protections under DACA end, she will go back to having to work low level jobs, be unable to legally drive a car, and be unable to make ends meet. She most fears being removed from the United States and returned to a country she does not know, where she has no family and friends. Revealing her identity would intensify these fears.
- Declarant Jane Doe VIII was brought to the United States at the age of nine, and is a 24 year old single mother with two children, age 5 and 7, who are citizens of the United States. She did not learn she was undocumented until high school, when her parents told her why she could not take driver's education or get a part time job, because I did not have the proper papers. After graduating high school, she was paid \$4.00 per hour to work at a bakery, because the employer knew she was undocumented. She had no choice, because she was pregnant and had to support herself. Since 2013, she has been receiving DACA protection, and she began working at the same place she currently works, where she earns \$15.75 per hour, with insurance for her and her children and other employee benefits. She is already very nervous and anxious about what is going to happen, and reports that the stress is negatively affecting her. This anxiety would be far worse if her identity is revealed.

- Declarant Jane Doe IX was brought to the United States at age nine, and discovered she was undocumented at age 11, when she wanted to go to boarding school but was informed she could not receive financial aid without a social security card. Before DACA, she worked minimum wage jobs earning \$8.25 per hour. She also attended college after high school, and received a scholarship. Once she became a DACA registrant, she was able to get a better paying job, earning \$12 per hour, and move into student housing on campus. She is studying to receive a psychology degree. She is afraid that if her DACA protection is lost, she will no longer be able to finish school, live independently from her parents, drive, plan for her future, or help her parents when they are old. Revealing her identity would compound the concerns she is currently experiencing.
- Declarant John Doe III was brought to the United States when he was seven years old. He was told by his high school guidance counselor that being undocumented meant he had no real educational future, so he should either go to community college or work upon graduation. He went to community college, and then after registering with DACA, was able to transfer into UCLA in 2013. He is currently a member of the Teach for America Program and teaches 9th grade history in New York. He is very afraid that if his DACA is lost, he will have to leave his sister, who is a U.S. citizen and still in high school, that he will not be able to help his aging parents, and that all of his hard work will be down the drain. He also fears that his students will be detrimentally affected. Revealing his identity will add to the enormous amount of stress he is experiencing.

LEGAL STANDARD

Courts may exercise discretion to authorize the submission of materials by anonymous parties and declarants. *Does I Through III v. District of Columbia*, 216 F.R.D. 5, 6 n.1 (D.D.C. 2003) (noting that plaintiffs were granted leave to file via pseudonym); *Oah v. Tabor*, No. 90-1023, 1991 WL 120087, at *1 n.1 (D.D.C. June 18, 1991) (same). Courts authorize parties to proceed without disclosing their identity to the public in cases involving “matters of a sensitive and highly personal nature,” exercising their discretion in balancing the circumstances of each case with the tradition of openness in judicial proceedings. *Doe v. Cabrera*, 307 F.R.D. 1, 4 (D.D.C. 2014). Courts may also authorize parties to proceed without revealing their identities to the defendants when there is a particularly high risk of retaliation or harassment balanced against a low risk of prejudice to the defendants. *See, e.g., Women Prisoners of the D.C. Dep’t of Corrs. v. District of Columbia*, 877 F. Supp. 634, 639 n.1 (D.D.C. 1994) (allowing prisoners to proceed under pseudonyms due to the risk of retaliation by prison guards), *vacated and modified in part on other grounds*, 899 F. Supp. 659 (D.D.C. 1995); *Campbell v. U.S. Dep’t of Agric.*, 515 F. Supp. 1239, 1246 (D.D.C. 1981) (allowing plaintiffs to proceed anonymously in an action challenging the agency’s interpretation of the Food Stamp Act); *Gomez v. Buckeye Sugars*, 60 F.R.D. 106, 107 (N.D. Ohio 1973) (allowing plaintiffs to proceed under pseudonyms in a Fair Labor Standards Act because the plaintiffs feared retaliation from defendants who were their employers); *Yaman v. U.S. Dep’t of State*, 786 F. Supp. 2d 148 (D.D.C. 2011) (allowing plaintiff to file her residential address under seal and ex parte to protect safety of her minor children)

Although the District of Columbia Circuit has not articulated a precise test for whether to allow persons to proceed anonymously, courts have applied the following five 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 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.

Nat'l Ass'n of Waterfront Emp'rs v. Chao, 587 F.Supp.2d 90, 99 (D.D.C. 2008); *see also J.W. v. District of Columbia*, 318 F.R.D. 196, 198 (D.D.C. 2016) (applying the same factors to parents' request for anonymity for themselves while bringing a suit on behalf of their minor child); *Doe v. Cabrera*, 307 F.R.D. 1, 8 (D.D.C. 2014) (applying the same factors to a plaintiff alleging sexual assault). All of these factors are relevant in this case except for the one pertaining to the ages of the declarants, who are all adults over the age of eighteen. The remaining factors militate heavily in favor of allowing each of the Doe declarants in this case to proceed via pseudonym.

ARGUMENT

The declarations submitted by nine Doe declarants contain highly sensitive and personal information, and each declarant faces a significant risk of retaliatory harm. Moreover, protecting their identities from the public and the Government—from whom they fear retaliatory immigration enforcement action—would not pose a risk of unfairness to Defendants. The Doe declarants are not parties to this case, and the Government has no need to know their identities in order to brief the legal matters before the Court.

I. Anonymity is Necessary to Protect Highly Sensitive and Personal Information.

The Doe declarants should be allowed to proceed via pseudonym because immigration status is a highly sensitive and personal issue.

Numerous federal courts have recognized that information related to immigration status is highly sensitive and may warrant protection from disclosure. *See, e.g., Hispanic Interest Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1247 & n.8 (11th Cir. 2012) (noting that revealing immigration status of school children could lead to “criminal prosecution, harassment and intimidation” and identifying cases in which courts allowed undocumented immigrant plaintiffs to proceed anonymously); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1169 (9th Cir. 2000) (crediting plaintiffs’ “highly vulnerable [immigration] status” as one of several factors weighing in favor of allowing plaintiffs to proceed anonymously); *In re Reyes*, 814 F.2d 168, 170 (5th Cir. 1987) (stating in a protective order ruling that allowing defendant employers to seek discovery regarding plaintiffs’ immigration status could inhibit them from pursuing their rights “because of possible collateral wholly unrelated consequences, [and] because of embarrassment and inquiry into their private lives”); *Oah v. Tabor*, 1991 WL 120087, at *1 n.1 (allowing an immigrant plaintiff to proceed anonymously).

The sensitivity of information relating to immigration status is further heightened when the action is against a governmental entity, which could use the information to arrest, detain, or even deport undocumented immigrants involved in the lawsuit (in case of the federal government) or facilitate those actions by the federal government (in cases of state or local governmental entities). For that reason, courts are especially inclined to shield the identity of immigrants with uncertain or undocumented status challenging laws that implicate their status. *See, e.g., Lozano v. City of Hazelton*, 620 F.3d 170, 195 (3d Cir. 2010), *rev’d on other grounds*,

563 U.S. 1030 (2011) (mem.) (allowing plaintiffs to proceed without disclosing their identities to the defendants, because plaintiffs “could legitimately fear that defendant [municipality] was determined to expose their legal status to federal authorities”), *aff’d in relevant part*, 620 F.3d 170 (3d Cir. 2010), *vacated and remanded on other grounds*, 563 U.S. 1030 (2011); *Puente Az. v. Arpaio*, No. CV14-1356-PHX-DGC, 2014 U.S. Dist. LEXIS 166223, at *5 (D. Ariz. Dec. 1, 2014) (allowing undocumented immigrants to file Doe declarations in a challenge against state statutes criminalizing seeking employment without federal work authorization); *Keller v. City of Fremont*, No. 8:10-cv-270, 2011 WL 41902, at *1-*3 (D. Neb. Jan. 5, 2011) (allowing undocumented immigrants to proceed anonymously as plaintiffs in a case challenging a ballot initiative making it unlawful for any entity to knowingly or recklessly lease or rent property to undocumented immigrants); Order Granting Pltfs.’ Mot. to Proceed Under Pseudonyms, *Hispanic Interest Coal. of Ala. v. Governor of Ala.*, No. 5:11-cv-2736-SLB (N.D. Ala. Aug. 12, 2011) (ECF No. 54) (allowing plaintiffs to proceed under pseudonyms and protecting their identities from the state government defendant because the challenged statute would enable state officials to detain undocumented immigrants on the basis of their immigration status). “[F]ederal courts have recognized that inquiries into immigration status can have an *in terrorem* effect, limiting the willingness of plaintiffs to pursue their rights out of fears of the consequences of an exposure of their position.” *Keller*, 2011 WL 41902, at *2.

Here, submitting a declaration in support of the Plaintiffs’ challenge against the administration could attract unwanted attention to the Doe declarants’ immigration status. Moreover, having the declarants’ names “in the public domain, especially in the Internet age,” could subject the declarants to “unnecessary interrogation, criticism, or psychological trauma,” in addition to the significant risk of retaliation they face, as discussed below. *Cabrera*, 307 F.R.D.

at 7 (allowing a plaintiff alleging sexual assault to proceed anonymously). Given the risk of such scrutiny and harassment as recognized by numerous courts, disclosing the Doe declarants' immigration status would lead to harm that is well beyond the "mere[] . . . annoyance and criticism that may attend any litigation." *J.W.*, 318 F.R.D. at 200 (internal quotation and citation omitted).

II. Disclosure of the Doe Declarants' Identities Would Create a Significant Risk of Physical and Psychological Harm to Themselves and Their Families.

Disclosure of the Doe declarants' identities would expose them to a heightened risk of arrest, detention, and removal. Since the rescission announcement on September 5, 2017, DACA recipients have been living in fear that they are no longer shielded from the threat of deportation—a threat of being separated from their families, workplaces, and communities.

Their fear is warranted. *First*, DACA recipients are particularly vulnerable to retaliation because they have furnished personal identification information to the Government as part of their DACA application process, and the Government has stated that it may modify its information-sharing policy at any moment, without any notice. Mem. in Support of Defs.' Mot. to Dismiss the Association Plaintiffs at 38-39 (Dkt. 15). *Second*, the number of immigration-related arrests have increased by 40% in the fiscal year 2017.³ *Third*, the Government has "urge[d] DACA recipients to use the time remaining on their work authorizations to prepare for and arrange their departure from the United States"⁴; *see also Batalla Vidal v. Duke*, No. 16-cv-

³ U.S. Immigration & Customs Enforcement, *DHS Announces Progress in Enforcing Immigration Laws, Protecting Americans* (Dec. 5, 2017), available at <https://www.ice.gov/news/releases/dhs-announces-progress-enforcing-immigration-laws-protecting-americans>.

⁴ Talking Points - DACA Rescission, MSNBC, <http://msnbcmedia.msn.com/i/MSNBC/Sections/NEWS/z-pdf-archive/170905-DACA-Talking-Points.pdf>; Kristen Welker & Daniel Arkin, *Trump Administration Memo: DACA Recipients Should Prepare for 'Departure,'* NBC

4756, 2017 WL 5201116, at *16 (E.D.N.Y. Nov. 9, 2017) (quoting a statement by Acting Director of ICE Thomas Homan that undocumented immigrants “should be uncomfortable” and “should look over [their] shoulder[s]” and “be worried”). When asked whether DACA recipients are subject to deportation, Attorney General Jeff Sessions stated that “[w]e can’t promise people who are here unlawfully that they’re not going to be deported.”⁵ *Fourth*, at least one DACA recipient who had spoken out against the Trump Administration has been detained.⁶

In this context, revealing the Doe declarants’ identities would put their well-being and safety, as well as that of their families, at risk, because it would entail disclosing their immigration status to the very source of that retaliatory threat.⁷ *See Lozano*, 620 F.3d at 195 (allowing plaintiffs to not reveal their identities to the defendant because plaintiffs would be discouraged from vindicating their rights “if doing so would require alerting federal immigration authorities to their presence”); *Int’l Refugee Assistance Project (IRAP) v. Trump*, No. TDC-17-0361, 2017 WL 818255, at *2 (D. Md. Mar. 1, 2017) (allowing plaintiffs to proceed anonymously partly because disclosure of plaintiffs’ identities to the Government could dissuade them from pursuing their rights in court while their relatives’ visa applications were pending); *Puente Az.*, 2014 U.S. Dist. LEXIS 166223, at *5-*6 (finding that undocumented immigrant

NEWS (Sept. 5, 2007), <https://www.nbcnews.com/news/us-news/white-house-memo-dacarecipients-should-prepare-departure-n799026>.

⁵ Joel Achenbach, *Trump Aides Struggle to Clarify Policy on ‘Dreamers’ and Deportation*, WASH. POST, Apr. 23, 2017, <https://www.washingtonpost.com/news/post-politics/wp/2017/04/23/trump-aides-struggle-to-clarify-policy-on-dreamers-and-deportation>.

⁶ Christine Hauser, *A Young Immigrant Spoke Out About Her Deportation Fears. Then She Was Detained.*, N.Y. TIMES, Mar. 2, 2017, <https://www.nytimes.com/2017/03/02/us/immigrantdaca-detained.html>.

⁷ The fact that one of the Plaintiffs in this case is a named DACA recipient and other named DACA recipients have submitted declarations in their own names does not undercut this argument: one person’s bravery in standing up for her rights should not be counted against other DACA recipients’ well-founded fear that public criticism of Defendants may lead to adverse immigration outcomes.

declarants “reasonably fear serious consequences if their identities are disclosed” because defendants are seeking to prosecute the conduct discussed in the declarations); *Keller*, 2011 WL 41902, at *2 (allowing plaintiffs to not reveal their identities while challenging a local ordinance that would criminalize renting to undocumented immigrants).

III. This Action is Against the Government, Which Favors Anonymity.

The fact that this action is against the Government and not against a private party weighs in favor of allowing the Doe declarants to proceed via pseudonym. “[A]lthough the mere filing of a lawsuit against a private party may cause the defendant reputational and economic harm, such that fairness requires the identification of the plaintiffs, the government is not vulnerable to similar reputational harm, particularly in a case involving a challenge to the constitutional, statutory, or regulatory validity of government activity.” *IRAP*, 2017 WL 818255, at *3; *see also J.W.*, 318 F.R.D at 201 (“Courts have concluded that anonymous litigation is more acceptable when the defendant is a governmental body because government defendants do not share the concerns about reputation that private individuals have when they are publicly charged with wrongdoing.” (internal quotation omitted)); *S. Methodist Univ. Ass’n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979) (noting that, unlike anonymous lawsuits against private parties, suits “challenging the constitutional, statutory, or regulatory validity of government activity . . . involve no injury to the Government’s reputation”). Because there is no due process concern when the Government is the defendant, this factor weighs in Plaintiffs’ favor.

IV. Any Risk of Unfairness to Defendants is Minimal and Outweighed by the Doe Declarants’ Need for Anonymity.

Any risk of unfairness to Defendants is minimal and heavily outweighed by the Doe declarants’ need for anonymity. *First*, the Doe declarants are third parties. The tradition of public

access and open proceedings is implicated to a much lesser degree when involving third-party declarants, rather than parties to the case. *See Puente Az.*, No. CV14-1356 PHX DGC, No. 2016 WL 7743406, at *4 (D. Ariz. Jan. 22, 2016) (noting in a protective order ruling in favor of non-party Doe declarants that “the public’s interest in an open and fair adjudication is not seriously impaired” when plaintiffs are openly identified and the proceedings would be public); *cf. J.W.*, 318 F.R.D. at 201 (noting that courts are wary of permitting anonymous litigation when doing so would pose “litigation obstacles for defendants”). Here, the real parties-in-interest—Plaintiffs NAACP, AFT, and UFCW—are fully identified, so that allowing non-party declarants to proceed via pseudonym would not seriously hinder the Government’s defense.

Second, the issues in this case are primarily legal in nature and do not turn on individual DACA recipients’ background or credibility. In *Campbell v. U.S. Dep’t of Agric.*, 515 F. Supp. 1239 (D.D.C. 1981), a dispute over the proper interpretation of the Food Stamp Act, the court found that because the issues in the case were primarily legal in nature, Jane Doe plaintiffs were not required to divulge their identities to the defendants in seeking declaratory and injunctive relief that would affect all social security disability recipients. *Id.* at 1246; *see also Lozano*, 620 F.3d at 195 (agreeing with the district court’s conclusion that “because the Doe Plaintiffs’ identity information was not central to their claims, restricting [the defendant’s] access to that information would not be prejudicial”); *IRAP*, 2017 WL 818255, at *3 (finding that “any prejudice to defendants” in a case with anonymous plaintiffs is “limited because the Doe Plaintiffs are challenging the constitutional and statutory validity of a governmental order, such that the questions presented in this case do not depend on identifying the specific parties but instead are purely legal” (internal quotations and citations omitted)).

Here, the Doe declarants seek to provide the Court with information that contextualizes how DACA and its rescission have affected the Association Plaintiffs and their members. Defendants make primarily legal arguments about those issues, and have not seriously challenged the fact that DACA's rescission will negatively impact DACA beneficiaries. To the contrary, Defendants now contend that they rescinded DACA in an "orderly" manner precisely to *avoid* the harm that would come from a more abrupt termination. *See* Defs.' Mem. in Support of Mot. to Dismiss the Association Plaintiffs at 1-2 (Dkt. 15). Because the Plaintiffs' claims against Defendants do not depend on the particularized facts and circumstances of the Doe declarants, but rather revolve around the question of the legality of Defendants' decision to rescind DACA, the risk of unfairness from allowing the Doe declarants to proceed via pseudonym is minimal.

Third, the parties' agreed briefing schedule contemplates no discovery or presentation of testimony at the motions hearing scheduled for January 31, 2018. Accordingly, Defendants have no present need for the identity of the Doe declarants. Any assertion of *future* prejudice would be wholly speculative. In the unlikely event that Defendants determine later in the litigation that they have an actual need for the declarants' identities, they could then make a motion attempting to demonstrate such need, at which time Plaintiffs could move for a Protective Order.⁸

⁸ *See* Fed. R. Civ. P. 26(c); *see also* Order Granting Mot. for Protective Order, *Doe I v. Trump*, No. CV 17-1597 (D.D.C. Sept. 13, 2017) (ECF No. 38) (limiting disclosure of pseudonym plaintiffs' identities to counsel for defendants and those in the employ of counsel for defendants in a suit challenging the presidential memorandum prohibiting accession of transgender military members); *Alexander v. FBI*, 186 F.R.D. 54 (D.D.C. 1998) (limiting disclosure of plaintiffs' medical information to counsel of record and not the defendant agency); *Alexander v. Falk*, No. 16-cv-2268, 2017 WL 3749573 (D. Nev. Aug. 30, 2017) (ordering disclosure of plaintiffs' identity to defendants' counsel only, with a prohibition on disclosing plaintiffs' identity to counsel's clients); *see also D'Onofrio v. SFX Sports Grp.*, 256 F.R.D. 277, 280 (D.D.C. 2009) ("[T]here need not be a great deal of harm to justify protecting information when doing so would not prejudice the party who will be prevented from seeing the information.").

CONCLUSION

The relevant factors weigh in favor of allowing the Doe declarants to proceed via pseudonym. The Doe declarants would suffer significant harm if their identities were revealed, and permitting them to proceed via pseudonym would not unfairly prejudice the Government. The Association Plaintiffs therefore respectfully request that this Court permit the Doe declarants to proceed via pseudonym.

December 15, 2017

Respectfully submitted,

/s/ Joseph M. Sellers

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2017, I electronically filed the Plaintiffs' Motion For Nine Declarants To Proceed By Pseudonym And Memorandum Of Law In Support Thereof with the Clerk of the Court using the ECF filing system.

Dated December 15, 2015

/s/ Julia Ann Horwitz
Julia Ann Horwitz