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 10 Attorneys for the
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11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 13 SOUTHERN DIVISION

14 JANE DOE, et al.,
 15 Plaintiffs,
 16 v.
 17 DONALD J. TRUMP, et al.,
 18 Defendants.

No. 8:20-cv-00858-SVW-JEM
 Opposition to Plaintiffs' Motion to Proceed
 Using Pseudonyms (ECF 35)
 Hearing Date: August 17, 2020
 Time: 1:30 p.m.
 Courtroom: 10A
 Location: 350 W. 1st Street
 Los Angeles, CA 90012

Hon. Stephen V. Wilson

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1 The United States of America (Government) hereby submits its Opposition to
2 Plaintiffs' Motion to Proceed Using Pseudonyms (motion, ECF 35).

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4 Dated: July 27, 2020

Respectfully submitted,

5 NICOLA T. HANNA
6 United States Attorney
7 THOMAS D. COKER
8 Assistant United States Attorney
9 Chief, Tax Division

10 _____/s/ John D. Ellis
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs seek an order authorizing them (as well as the putative class) to litigate
4 this case using pseudonyms. (ECF 35.) However, plaintiffs provide no evidence
5 describing threatened harm or reasonable fear specific to their particular circumstances.
6 Rather, plaintiffs rely exclusively on generalities derived from various internet resources.
7 Because plaintiffs have not proven circumstances justifying departure from the ordinary
8 presumption that litigants must use their true names, their motion should be denied.

9 **II. ARGUMENT**

10 Because of “the paramount importance of open courts[,] . . . the default
11 presumption is that the plaintiffs will use their true names”. *Doe v. Kamehameha*
12 *Sch./Bernice Pauahi Bishop Estate (Kamehameha)*, 596 F.3d 1036, 1046 (9th Cir. 2010).
13 Allowing a party to proceed pseudonymously, then, is the “exception, rather than the
14 rule” in the Ninth Circuit. *Doe v. Ayers*, 789 F.3d 944, 946 (9th Cir. 2015). In
15 determining whether to allow a litigant to proceed pseudonymously, a district court must
16 balance five factors: “(1) the severity of the threatened harm, (2) the reasonableness of
17 the anonymous party’s fears, . . . (3) the anonymous party’s vulnerability to []
18 retaliation,’ (4) the prejudice to the opposing party, and (5) the public interest.”
19 *Kamehameha*, 596 F.3d at 1042 (9th Cir. 2010) (ellipsis in original) (quoting *Does I*
20 *Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1068, 1069 (9th Cir. 2000)). But “[t]he
21 two most important factors” are the “severity of the threatened harm and the
22 reasonableness of the plaintiffs’ fears.” *Kamehameha*, 596 F.3d at 1043.

23 Plaintiffs contend that there are “exceptional circumstances” which would allow
24 them to litigate using pseudonyms. Plaintiffs state that they “are vulnerable parties and
25 are forced to proceed anonymously as a result of the immigration status of their
26 respective spouses, who include in many instances, but are not limited to, undocumented
27 immigrants.” (ECF 35 at 8.) Plaintiffs’ motion refers to and relies on publications

1 describing general implications and impacts of the United States' immigration policies.
2 Plaintiffs, however, do not explain why pseudonymity is appropriate for their particular
3 circumstances. Their motion is not supported by declarations or any other evidence
4 regarding specific threatened harm against plaintiffs, much less evidence sufficient for
5 the Court to judge the severity of the threatened harm and the reasonableness of each
6 plaintiff's fears. *See Kamehameha*, 596 F.3d at 1043-45 (affirming district court's
7 determination that plaintiffs' fear was not reasonable and the denial of plaintiffs' motion
8 to proceed using pseudonyms).

9 The Government notes that there are similarly situated plaintiffs pursuing similar
10 cases against the Government. However, the plaintiffs in the other cases have generally
11 litigated using their true names. In both *Amador v. Mnuchin*, 1:20-cv-01102 (D. Md.),
12 and *Uzoegwu v. Mnuchin*, 1:20-cv-03264 (S.D.N.Y.), the named plaintiffs have
13 identified themselves. In *R.V. v. Mnuchin*, 8:20-cv- 01148 (D. Md.), the plaintiffs are
14 proceeding pseudonymously in accordance with the judicial protection traditionally
15 provided to minors by Federal Rule of Civil Procedure 5.2. It is unclear why the
16 plaintiffs here would require anonymity when the named plaintiffs in *Amador* and
17 *Uzoegwu*, who would all appear to be part of the purported class in this case, do not.
18 And unlike the plaintiffs in *R.V.*, each plaintiff in this case is an adult. It is not
19 surprising, then, that the plaintiffs in *Doe v. Trump*, No. 1:20-cv-02531 (N.D. Ill. July 1,
20 2020), who are represented by plaintiffs' counsel in this case, were denied leave to
21 proceed under a pseudonym in a nearly identical lawsuit. *See Doe v. Trump*, No. 1:20-
22 cv-02531 (N.D. Ill. July 1, 2020), Docket 42 (attached as Attachment A).

23 Further, the Government would be prejudiced if the plaintiffs were permitted to
24 proceed pseudonymously. Plaintiffs' first amended complaint alleges that plaintiffs and
25 the purported class members are eligible individuals who would be entitled to an
26 advance refund under section 6428(f) but for their spouse's lack of a Social Security
27 number (SSN). *See* ECF 28, ¶¶ 40-45. The plaintiffs contend the Government will not

1 be prejudiced if their motion is granted because “the Internal Revenue Service is
2 certainly aware of the Putative Class’s identities as taxpayer identification information is
3 already in the possession of the IRS.” *See* ECF 35 ¶¶ 25-26. Although the plaintiffs
4 have brought this case as a class action, no class has been certified. Because the
5 Government does not know the plaintiffs’ identities, it cannot confirm their allegations
6 that they are otherwise eligible individuals under section 6428 and are adequate
7 representatives of the proposed class. The fact that the Internal Revenue Service has
8 records for most taxpayers does not mean it can identify these specific plaintiffs’ records
9 or evaluate whether they can fairly and adequately represent the putative class members
10 without knowing plaintiffs’ identities.

11 In the event that the Court is inclined to grant the plaintiffs’ motion, plaintiffs
12 should be required to disclose their identities to the Government under a protective order
13 so that the Government can determine whether plaintiffs are eligible individuals as
14 defined by 26 U.S.C. § 6428 and adequately defend this case. The Government would
15 require, at a minimum, the name and the SSN of each plaintiff and the name and
16 Individual Taxpayer Identification Number of each plaintiff’s spouse.

17 **III. CONCLUSION**

18 Plaintiffs’ motion should be denied.

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20 Dated: July 27, 2020

Respectfully submitted,

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