IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

SOUTHEASTERN SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA *et al.*, Plaintiffs, v. STEVEN R. FINNEY *et al.*, Defendants.	**Case No.: 3:25-cv-684**

PLAINTIFF JOHN DOE'S REPLY IN SUPPORT OF HIS MOTION TO PROCEED UNDER A PSEUDONYM

ARGUMENT

In their opposition to Plaintiff John Doe's Motion to Proceed Under a Pseudonym, Defendants disregard both relevant precedent and the facts Doe presented in support of his motion. But this is exactly the sort of case in which "a plaintiff's privacy interests substantially outweigh the presumption of open judicial proceedings" and pseudonymity is warranted. *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004).

The *Porter* factors, which guide this Court's analysis, overwhelmingly favor granting Doe's pseudonym motion. Defendants admit that "[t]his case meets the first *Porter* factor" because Doe is challenging governmental activity, but they downplay the importance of that factor. Opp'n 3, ECF No. 33. Although no *Porter* factor is dispositive, Defendants fail to acknowledge that this is precisely the type of challenge against the government that courts in this circuit have held *most* warrants anonymity because it seeks to have a law declared invalid. *See, e.g.*, *Doe v. Ky. Cmty. & Tech. Coll. Sys.*, No. 20-CV-0006, 2020 WL 998809, at *2 (E.D. Ky. Mar. 2, 2020) ("[C]ourts are more likely to allow anonymity when a Plaintiff brings an action against a governmental entity and seeks to have a law or regulation declared invalid." (cleaned up)); *Doe v. Metro. Gov't of Nash. & Davidson Cnty.*, No. 3:20-CV-1023, 2022 WL 2293898, at *3 (M.D. Tenn. June 24, 2022) (citing a statutory challenge as an example of the type of suit "that has been recognized as weighing strongly in favor of permitting anonymity"). The first *Porter* factor therefore tips the balance strongly in favor of granting Doe's motion.

On the second *Porter* factor, Defendants cursorily dismiss the prevailing precedent recognizing the sensitive nature of immigration status as out of circuit and therefore nonbinding (although they themselves cite an out-of-circuit district court case). But Defendants overlook the highly persuasive reasoning of these cases. The Supreme Court, other federal courts of appeals,

and district courts across the country have routinely allowed plaintiffs to "proceed anonymously in immigration-related cases." *Hisp. Int. Coal. of Ala. (HICA) v. Governor of Ala.*, 691 F.3d 1236, 1247 n.8 (11th Cir. 2012) (collecting cases); *see also, e.g.*, *Plyler v. Doe*, 457 U.S. 202 (1982); *Does I-XXII v. Advanced Textile Corp*., 214 F.3d 1058, 1063 (9th Cir. 2000). Immigration status is highly personal and private, particularly given the considerable public animus against immigrants and the discrimination and harassment they face. *See Casa de Maryland, Inc. v. Trump*, No. 18-CV-0845, 2018 WL 1947075, at *2 (D. Md. Apr. 25, 2018); *see also Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1064-65 (9th Cir. 2004). As courts "nationwide" have recognized, "a plaintiff's vulnerable immigration status may be properly considered 'a matter of sensitive and highly personal nature' warranting the use of a pseudonym." *M.A. v. U.S. Citizenship & Immigr. Servs.*, No. 1:24-CV-2040, 2024 WL 3757873, at *2 (D. Md. Aug. 12, 2024) (quoting *Doe v. Doe*, 85 F.4th 206, 211 (4th Cir. 2023)).

Defendants offer no reason for this Court to depart from that consensus. They have not identified any in-circuit precedent declining to protect immigration status. And there is no exhaustive list of information traditionally recognized as sensitive; as Defendants' own citations demonstrate, district courts regularly recognize different sorts of information as sufficiently private. *See* Opp'n 4. What these matters have in common is that they include personal information that would cause a "social stigma" if publicly revealed. *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992); *see also Ky. Cmty. & Tech. Coll. Sys*., 2020 WL 998809, at *2 (explaining that anonymity may be warranted where a lawsuit would reveal information about plaintiffs "that could subject them to considerable harassment" (internal quotation marks omitted)). That is true for information about immigration status, particularly information that an individual lacks legal status. Like information about an individual's personal religious beliefs, their reproductive

choices, or their mental health struggles, immigration status information is both highly personal and the subject of charged public debate. *See Padres Unidos de Tulsa v. Drummond*, No. 24-CV-0511, 2025 WL 1573590, at *7 (W.D. Okla. June 3, 2025) (holding that immigration status "falls neatly within the category of matters of a highly sensitive and personal nature" (internal quotation marks omitted)), *appeal docketed*, No. 25-6080 (10th Cir. June 5, 2025). And as in cases involving those other issues, Doe's participation in this lawsuit could subject him and his family to "criminal prosecution, harassment, and intimidation." *HICA*, 691 F.3d at 1247.

Although they do not challenge any of the assertions Doe makes in his declaration about the risks he and his family would face if he were identified by name in this lawsuit—that they could be "a target for immigration enforcement," could be detained or deported, could be "racially profiled … and targeted and harassed," and could even be subjected to violence, Doe Decl. ¶¶ 9-10, ECF No. 8-5—Defendants nevertheless argue that the harms are merely speculative. But the risks of publicizing an individual's immigration status are well recognized by courts. *See Rivera*, 364 F.3d at 1064-65. Doe is not currently subject to retaliation and harassment for participating in this lawsuit only because he has not revealed his identity and drawn public attention to himself at this point. But his fears "are nonetheless legitimate" given the public hostility toward immigrants and the government's stated intent to deport as many people as possible. *Casa de Maryland*, 2018 WL 1947075, at *2; *see also Pacito v. Trump*, 768 F. Supp. 3d 1199, 1216 n.3 (W.D. Wash. 2025) ("Given the heated political climate surrounding immigration issues and the other plaintiff-specific harms alleged in their declarations, these fears

are reasonable."), *appeal docketed*, No. 25-1313 (9th Cir. Mar. 3, 2025). The second *Porter* factor therefore weighs strongly in favor of granting Doe's motion to proceed under a pseudonym.[1]

Defendants' argument on the third *Porter* factor rests entirely on their objection to the merits of Plaintiffs' claims, including Plaintiffs' reading of Section 5. But for the purpose of resolving the pseudonym motion, and especially at this early stage in the litigation, the Court assumes that Doe's claims are correct. *See Doe v. Yackulic*, No. 4:18-CV-0084, 2018 WL 11443619, at *1 n.2 (E.D. Tex. June 15, 2018) ("The Court does not reach the merits of Plaintiff's claims at this time but takes as true the facts as pled by Plaintiff solely for the purposes of determining the appropriateness of granting Plaintiff's Application [to Proceed as a Fictitious Plaintiff]."); *see also A.T.P. v. MTR Hotels LLC*, No. 6:21-CV-0647, 2021 WL 5772826, at *1 (D.S.C. Mar. 12, 2021); *Doe v. Cuyahoga County*, No. 1:24-CV-0878, 2024 WL 5074555, at *2 (N.D. Ohio Dec. 11, 2024). And in any event, as Plaintiffs will explain at greater length in their forthcoming Reply in Support of their Motion for a Preliminary Injunction, Doe is engaged in conduct that is criminalized by Section 5, and he faces a credible threat of prosecution. His participation in this lawsuit would increase that risk should his name become public. The third *Porter* factor therefore favors pseudonymity.

[1] For similar reasons, the public interest also weighs in favor of pseudonymity. Any plaintiff proceeding under his own name would face similar retaliation and harassment, and requiring those who themselves lack legal status or who have family members who do to litigate under their real names "would effectively place a target on their backs simply for seeking judicial review of a state law they claim … is likely preempted." *Padres Unidos*, 2025 WL 1573590, at *7 (internal quotation marks omitted)). Requiring Doe to proceed under his own name would not only deter him from bringing this suit, it would also chill similarly situated plaintiffs from vindicating their own rights. That does not turn the *Porter* analysis backwards—it recognizes that such a chill may go beyond an individual plaintiff and undermine the public's interest in having the constitutionality of laws tested.

Finally, Defendants are incorrect that Doe cannot proceed under a pseudonym because he represents a class. Pseudonymous plaintiffs frequently serve as class representatives, especially in cases like this one where Plaintiffs seek to enjoin a uniform policy that they allege is unlawful in all instances. *See, e.g.*, *Advanced Textile Corp*., 214 F.3d at 1064; *Doe v. Hochul*, 139 F.4th 165, 174 (2d Cir. 2025); *Doe v. Stegall*, 653 F.2d 180, 182 (5th Cir. Unit A Aug. 1981); *Doe v. Mundy*, 514 F.2d 1179, 1180 (7th Cir. 1975); *Barbara v. Trump*, No. 25-CV-0244, 2025 WL 1904338, at *8 (D.N.H. July 10, 2025); *E.B. v. Landry*, No. 19-CV-0862, 2020 WL 5775148, at *6 (M.D. La. Sept. 28, 2020). Moreover, this is a putative class action under Rule 23(b)(2), from which class members cannot opt out; they therefore do not have the same interest in obtaining identifying information about class representatives as members of (b)(3) classes, who do have the opt-out option and who may prefer to consider the identities of the class representatives and the adequacy of their representation in deciding whether to participate. *See, e.g.*, *Barbara*, 2025 WL 1904338, at *8. Doe has provided plenty of information for Defendants, the Court, class members, and the public to assess whether he is an adequate representative, and Defendants fail to offer any reason why knowing his name would aid in that inquiry.

CONCLUSION

The Court should permit Plaintiff John Doe to proceed under a pseudonym.

Respectfully submitted this 18th of July, 2025,

/s/ Michael C. Holley

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**Motion for admission pro hac vice pending.*

CERTIFICATE OF SERVICE

I hereby certify that, on July 18, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will serve all counsel of record.

/s/ Michael C. Holley
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