

<p>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac Street Centennial, CO 80112</p>	<p>DATE FILED January 28, 2025 11:40 AM FILING ID: F810C2B6B3D43 CASE NUMBER: 2025CV30241</p>
<p>Plaintiffs: John Doe and Jane Roe, individuals,¹</p> <p>v.</p> <p>Defendant: Nancy Dominguez and Avi Schwalb, individuals; PHS Rent, a limited liability corporation.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Plaintiffs:</i></p> <p>Timothy R. Macdonald, #29180 Emma Mclean-Riggs, #51307 Anna I. Kurtz, #51525 American Civil Liberties Union Foundation of Colorado 303 E. 17th Ave., Suite 350 Denver, Colorado 80203 tmacdonald@aclu-co.org emcleanriggs@aclu-co.org akurtz@aclu-co.org (720) 402-3151</p> <p>Kelly L. Reeves, #58170 CED Law 1600 N Downing St. Suite 600 Denver, CO 80238 kelly.reeves@cedlaw.org (720) 248-6492</p>	<p>Case Number:</p> <p>Div:</p> <p>Ctrm:</p>
<p style="text-align: center;">MOTION FOR LEAVE TO FILE COMPLAINT UNDER PSEUDONYM</p>	

Plaintiffs respectfully request leave to file the attached Complaint and Jury Demand under pseudonym, based on the serious risk of retaliatory harm to themselves and their children that could result from the public disclosure of their names. If permitted to file under pseudonym,

¹ John Doe and Jane Roe are pseudonyms.

Plaintiffs will provide their legal names to the Defendants and the Court upon entry of an appropriate protective order.

BACKGROUND

1. Plaintiffs are a Venezuelan couple who live in Aurora with their two sons, who are fifteen and three years old. Plaintiffs have pending applications for asylum in the United States. Defendants are the landlords of the apartment building where Plaintiffs reside. Since Plaintiffs moved into their home, Defendants have repeatedly subjected Plaintiffs to discrimination, harassment, and intimidation based on Plaintiffs' Venezuelan national origin and perceived immigration or citizenship status. Plaintiffs allege this conduct violated the Immigrant Tenant Protection Act, the Colorado Anti-Discrimination Act, and constituted an unlawful, extrajudicial eviction.

ARGUMENT

2. Pseudonymous filings are appropriate where a plaintiff has a substantial privacy right outweighing the presumption of openness in judicial proceedings. *Doe v. Heitler*, 26 P.3d 539, 541 (Colo. App. 2001); *see also Does 1 – 11 v. Bd. of Regents of Univ. of Colorado*, No. 21-CV-2637, 2022 WL 43897 at *3-4 (D. Colo. Jan. 5, 2022).

3. When determining whether to allow a complaint to be filed pseudonymously, Colorado courts consider the following factors:

[1] [W]hether 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 sensitive and highly personal nature;

[2] whether identification poses a risk of retaliatory physical or mental harm to the requesting party or to innocent non-parties;

[3] whether the action is against a governmental or private party;

[4] whether the plaintiff would be compelled to admit his or her intention to engage in illegal conduct [...], and

[5] the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Heitler, 26 P.3d at 541.

4. Here, Plaintiffs must reveal highly personal and sensitive information about the immigration status of themselves and their children to effectuate their right to be free from discrimination and abuse on that basis. Should their names be disclosed, Plaintiffs and their children risk retaliation by the Venezuelan government and by members of the public due to the extreme anti-immigrant sentiment focused specifically on Venezuelan migrants in Aurora. This risk is so substantial that it outweighs any minimal risk of unfairness to the private party Defendants.. Thus, the *Heitler* factors weigh in favor of allowing Plaintiffs to proceed under pseudonym.

a. Plaintiffs' Immigration Status is a Highly Sensitive and Personal Matter

5. The first *Heitler* factor asks whether there are significant privacy interests at stake. *Heitler*, 26 P.3d at 542 (citing, e.g., *Doe v. BlueCross & Blue Shield*, 794 F.Supp. 72 (D.R.I. 1992)).

6. Federal courts have recognized the highly private and sensitive nature of uncertain immigration status and regularly permitted people with that status to proceed under pseudonym. *M.A. v. U.S. Citizenship & Immigr. Serv.*, No. 1:24-cv-02040-JMC, 2024 WL 3757873 at *2 (D. Md. Aug. 12, 2024) (“a plaintiff’s vulnerable immigration status may be properly considered “a

matter of sensitive and highly personal nature” warranting the use of a pseudonym”); *Doe v. Hobson*, 300 F.R.D. 576, 578 (M.D. Ala. 2014) (granting undocumented plaintiffs’ motion to proceed under pseudonyms); *Cent. Alabama Fair Hous. Ctr. v. Magee*, 835 F. Supp. 2d 1165, 1169 (M.D. Ala. 2011) (individual noncitizen plaintiffs challenging an Alabama statute proceeded under pseudonym), *vacated on other grounds sub nom. Cent. Alabama Fair Hous. Ctr. v. Comm’r, Alabama Dep’t of Revenue*, No. 11-16114-CC, 2013 WL 2372302 (11th Cir. May 17, 2013); *see also, e.g., Int’l Refugee Assistance Project v. Trump*, No. CV TDC-17-0361, 2017 WL 11725964, at *2 (D. Md. Mar. 17, 2017); *Hisp. Int. Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1247 n.8 (11th Cir. 2012); *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 370-72 (S.D.N.Y. 2019); *Lozano v. City of Hazelton*, 620 F.3d 170, 194-95 (3d Cir. 2010), *vacated on other grounds*, 563 U.S. 1030 (2011); *Ga. Latino All. for Hum. Rts. v. Deal*, 793 F. Supp. 2d 1317 (N.D. Ga. 2011), *aff’d in part, rev’d in part on other grounds sub nom. Ga. Latino All. for Hum. Rts. v. Gov. of Ga.*, 691 F.3d 1250 (11th Cir. 2012); *Plyler v. Doe*, 457 U.S. 202 (1982). Even the Federal Rules of Civil Procedure recognize how sensitive immigration status is and require privacy restrictions in immigration cases. Fed. R. Civ. P. 5.2(c) (limiting CM/ECF access only to parties in immigration cases); *see also* Hon. Wm. Terrell Hodges, Chair, Comm. on Court Admin. & Case Mgmt. of the Jud. Conf. of the U.S., Privacy Concern Regarding Social Security and Immigration Opinions, May 1, 2018, https://www.uscourts.gov/sites/default/files/18-ap-c-suggestion_cacm_0.pdf (recommending that judges not use litigants’ full names in immigration opinions).

7. Where disclosure of a plaintiff’s true name would necessarily reveal sensitive information about innocent non-parties, federal courts have been inclined to grant permission to proceed under pseudonym. *See AsylumWorks v. Wolf*, 1:20-cv-03815, 2020 WL 13460835,

(D.D.C. Dec. 23, 2020) (granting immigrant parents leave to proceed pseudonymously where identifying them would reveal the immigration status of their minor children); *Doe v. Eason*, No. 98-2454, 1999 WL 33942103, at *3 (N.D. Tex. Aug. 4, 1999) (granting pseudonym status to parents where identifying them would necessarily expose sensitive information about their minor child); *Doe v. Trs. of Dartmouth Coll.*, No. 18-040, 2018 WL 2048385, at *6 (D.N.H. May 2, 2018) (permitting anonymous filing where forcing plaintiff to use his true name would expose innocent non-party to a risk of retaliatory harm). Here, Plaintiffs' two sons are fifteen and three. Their parents' immigration status is sensitive information of theirs. It also may reveal their own immigration status, and exposes them to all the risks, discussed below, that their parents face.

8. Plaintiffs have a strong privacy interest in not being forced to reveal the highly personal and sensitive fact of their uncertain legal status, and expose their sons to potential harassment or retaliation, in order to vindicate their right to be free from discrimination on that very basis.

b. Plaintiffs Face a Serious Risk of Retaliatory Harm by the Venezuelan Government and the Public if they are Identified

9. The next *Heitler* factor asks whether identification poses the risk of physical or mental harm. *Heitler*, 26 P.3d at 542. Plaintiffs run a serious risk of retaliatory harm for them and their family from the Venezuelan government should they be identified as asylum seekers fleeing persecution at home, and from members of the public, given the extreme anti-immigrant sentiment directed specifically at Venezuelan immigrants who have settled in the city of Aurora.

10. Asylum seekers are, by definition, seeking refuge from persecution in their home country. Federal law acknowledges that the mere act of seeking asylum in the United States can provoke further persecution and protects such claims from disclosure to third parties. *See* 8 C.F.R.

§§ 208.6, 1208.6. Federal courts routinely permit pseudonymous filings for asylum seekers like Plaintiffs, in recognition that should they lose their asylum claim, they could be returned to their country of origin, and further persecuted for seeking safety in the United States from their own government. *See Doe v. U.S. Customs & Immigr. Enforcement*, No. 1:23-cv-00971-MLG-JMR, 2024 WL 4389461 (D. N.M. Oct. 3, 2024) (granting asylum seekers from Venezuela leave to proceed pseudonymously, in light of their risk of persecution should they be returned to their home country); *AsylumWorks v. Wolf*, 1:20-cv-03815, 2020 WL 13460835, (D.D.C. Dec. 23, 2020) (permitting plaintiffs to proceed pseudonymously because the record that they sought asylum could endanger them in their country of origin); *Doe v. Holder*, 736 F.3d 871, 872 n.1 (9th Cir. 2013); *United States v. Doe*, 655 F.3d 920, 922 (9th Cir. 1981); *Doe v. Gonzales*, 484 F.3d 445, 446 (7th Cir. 2007); *Doe v. U.S. Dep't of Justice*, 867 F.2d 285 (6th Cir. 1989); *C.M. v. United States*, No. 2:19-cv-05217 (D. Ariz. Sept. 23, 2019), ECF No. 7; *Al Otro Lado, Inc. v. Nielsen*, No. 17-cv-02366-BAS-KSC, 2017 WL 6541446, at *3–4, *6 (S.D. Cal. Dec. 20, 2017); *A.B.T. v. U.S. Citizenship & Immig. Servs.*, No. 2:11-cv-02108 RAJ, 2012 WL 2995064, at *5 (W.D. Wash. July 20, 2012).

11. Courts have found pseudonymous filing appropriate where there is a serious risk of physical or mental harm to the Plaintiff if they are identified, due to a volatile political climate surrounding the suit. *See Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981) (permitting pseudonymous filing where plaintiffs faced extensive harassment and violent reprisal if their identities were disclosed, because of the community's hostility to their viewpoint); *Doe v. Alger*, 317 F.R.D. 37, 40, (W.D. Va. Mar. 31, 2016) (permitting pseudonymous filing where plaintiff risked harm from the public due to national climate around sexual assault and local press attention);

Doe v. Germany, 680 F.Supp. 3d. 1, 5 (D.D.C. 2023) (granting plaintiff’s motion to proceed pseudonymously where others engaged in reporting on a particular subject had been retaliated against, even without direct threat against the plaintiff). Concerns regarding retaliatory harm are especially high when a plaintiff is personally connected to the politicized issue. *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 687 (11th Cir. 2001) (against backdrop of intense political debate around abortion, plaintiff’s having had an abortion justified granting leave to proceed anonymously); *Doe v. Ladapo*, No. 4:23CV114-RH-MAF, 2023 WL 3833848, at *6 (N.D. Fla. June 6, 2023) (plaintiffs challenging Florida law prohibiting transgender minors from receiving puberty blockers proceeded under pseudonym).

12. The conditions in Aurora for Venezuelan immigrants further support a pseudonymous filing. In 2024, then-presidential candidate Donald Trump spread misinformation and fear about Venezuelan migrants in Aurora, amplifying a claim that the city had been taken over by Venezuelan gangs. Johnathan Wiseman, *How the False Story of a Gang ‘Takeover’ in Colorado Reached Trump*, N.Y. TIMES, (September 15, 2024), <https://www.nytimes.com/2024/09/15/us/politics/trump-aurora-colorado-immigration.html>. In a speech he gave in Aurora, then-candidate Trump promised to call his effort to “hunt down” immigrants “Operation Aurora,” stoking fear in the city. Chase Woodruff, *After Months of Deportation Rhetoric, Trump’s First Hours in Office Put Aurora on Edge*, COLO. NEWSLINE, (January 21, 2025) <https://coloradonewsline.com/2025/01/21/deportation-rhetoric-trump-aurora-on-edge/>.

13. National news outlets have continued to cover immigration-related issues in Aurora. See Hannah Lambert & Alba Cuevas-Fantauzzi, *On the Ground in the Colorado City*

where *President-Elect Trump Promises to Remove ‘Savage Gangs’ of Illegals*, FOX NEWS, (Jan. 15, 2025), <https://www.foxnews.com/media/ground-colorado-city-president-elect-trump-promises-remove-savage-gangs-illegals>; Ashley Carnahan, *Incoming Trump ‘Border Czar’ has a Message for Aurora Chief of Police After Arrest of Suspected Gang Members*, FOX NEWS, (Dec. 18, 2024), <https://www.foxnews.com/media/incoming-trump-border-czar-has-message-aurora-chief-police-after-arrest-suspected-gang-members>. The online comments left on one such news article reveal the potential threats around this issue. One comment suggests a solution to migrant presence in Aurora: “1930s Chicago. Feds hired a lot of tough, pinned US Marshal badges on them, gave the automatic weapons, and told them to shoot Capone's thugs on sight. Cleaned up Chicago in a hurry.” *Id.* Another comment reads “when it comes to these gangs, just bag and tag them.” *Id.* Other comments describe Venezuelan migrants as “[j]ust a swarm of locusts” and “zombie invaders.” Hannah Lambert & Alba Cuebas-Fantauzzi, *On the Ground in the Colorado City where President-Elect Trump Promises to Remove ‘Savage Gangs’ of Illegals*, FOX NEWS, (Jan. 15, 2025), <https://www.foxnews.com/media/ground-colorado-city-president-elect-trump-promises-remove-savage-gangs-illegals>.

14. This political climate has already resulted in serious harm. The Haitian community in Springfield, Ohio, was the target of the same kind of anti-immigrant rhetoric that has been swirling around Aurora. Then-candidate Trump asserted that Haitians in Springfield were abducting and eating cats and dogs. Michael Rubinkam & Julie Carr Smyth, *What to Know about the Threats in Springfield, Ohio, After False Claims About Haitian Immigrants*, AP NEWS, (Sep. 22, 2024), <https://apnews.com/article/springfield-ohio-haitian-immigrants-threats-key-details->

[7594bae869fb05dc6f106098409418cc](#). As a result of the national attention, schools, government buildings, and homes of city officials were subject to hoax bomb threats. *Id.*

15. In this context, Plaintiffs fear that if they are identified as Venezuelan migrants in Aurora seeking to effectuate their right to be free of anti-immigrant discrimination, they will be subject to harassment, threats, and physical violence. Plaintiffs seek to remedy discrimination and harassment based on their immigration status, and they fear being identified in this lawsuit will subject them to just that kind of harm. *See Doe v. Frank*, 951 F.2d 320, (considering whether “the injury litigated against would be incurred as a result of the disclosure of the plaintiff’s identity,” in determining whether to permit pseudonymous filing).

16. Plaintiff also fear retaliatory harm to their minor sons. Their sons live with them and would be necessarily subjected to any harassment they experienced because they were identified in this case. Any online harassment of their fifteen-year-old son’s family on a public platform would be accessible to him. He also attends school. Public identification of his immigration status risks subjecting him to anti-immigrant bullying, especially prevalent during times of high anti-immigrant public sentiment. Catalina Amuedo-Dorantes & Esther Arenas-Arroyo, *Immigration Policies, Backlash, and School Bullying*, 114 Am. Econ. Assoc. Papers and Proceedings, 540, 545 (2024).

17. Where a lawsuit occurs in a heavily politicized context, “[t]hose with a more tenuous legal status have an exponentially greater concern over the dangers of participating.” *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 506 (M.D. Pa. 2007). *See also Keller v. City of Fremont*, 2011 WL 41902 (D. Neb.) (permitting plaintiffs currently in immigration proceedings to file pseudonymously, as they feared being deported and harassed based on their lack of certain

legal status). Plaintiffs' vulnerable immigration status as asylum seekers increases their concern for retaliatory harm.

18. Federal courts have also recognized that forcing litigants with uncertain legal status to publicly reveal that 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." *Lozano*, 496 F. Supp. 2d at 513–14 (cleaned up) (citing *Topo v. Dhir*, 210 F.R.D. 76, 78 (S.D.N.Y. 2002); *Zeng Liu v. Donna Karan International, Inc.*, 207 F. Supp. 2d 191, 193 (S.D.N.Y. 2002)); *Keller*, 2011 WL 41902, at *2 (noting fifth factor favoring pseudonymity: "the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified" (quoting *Lozano*, 496 F. Supp. 2d at 506)). Plaintiffs seek to effectuate their rights under the Immigrant Tenants Protection Act, a law enacted specifically to protect Colorado immigrant tenants. If no immigrant can enforce their rights under the Act without making themselves a public target of further anti-immigrant retaliation, the purpose of the law would be frustrated.

19. Because Plaintiffs risk retaliatory violence if their status as asylum seekers is revealed and they are returned to Venezuela and Plaintiffs and their minor children would face a serious risk of physical and mental harm if identified publicly in this litigation due to the dangerous, inflammatory public discourse, this factor strongly favors a pseudonymous filing and should be sufficient for this Court to grant the motion.

c. Whether the Defendant is a Governmental Entity or Private Party Carries Little Weight Here.

20. Third, *Heitler* asks whether the defendant is a governmental entity or private party. Here, Defendants are private parties. But the fact that a claim is against a private party does not

prohibit a pseudonymous filing. *See Doe v. Indiana Black Expo, Inc.*, 923 F. Supp. 137, 141 (S.D. Ind. 1996) (stating that a plaintiff with claims against private parties is not barred from pursuing those claims under a fictitious name). Where the plaintiff faces a risk of psychological and physical harm, as here, courts have allowed them to proceed pseudonymously against private parties. *See, e.g., Doe v. Smith*, 105 F. Supp. 2d 40, 42-45 (N.D.N.Y. 1999) (granting plaintiff's motion for reconsideration to proceed anonymously where plaintiff demonstrated the risk of psychological and emotional injury). Thus, this factor carries little weight here.

d. Whether Plaintiffs Would be Compelled to Admit Their Intention to Engage in Illegal Conduct is Inapplicable in This Matter

21. The next *Heitler* factor asks whether the plaintiff filing pseudonymously would be compelled to admit their intention to engage in illegal conduct. This factor is inapplicable where, as here, there is no risk that Plaintiffs would be compelled to admit conduct that would risk criminal prosecution. *Doe v. Heitler*, 26 P.3d 539, 543 (Colo. App. 2001).

e. Any Unfairness to Defendants Caused by Pseudonymous Filing is Overwhelmingly Outweighed by the Risk of Retaliatory Harm Against Plaintiffs.

22. The final factor the court considered in *Heitler* was the potential unfairness to the defendant created by an anonymous filing. 26 P.3d at 543. In *Heitler*, one private individual sued another, and the court found it unfair that the plaintiff could publicly “attack the defendant’s professional integrity” while remaining anonymous. *Id.* at 543. While, at least as to Defendants Schwalb and Dominguez, this case is a dispute between two individuals, the potential harms to the Plaintiffs are so imminent and serious as to outweigh any concern that it may be generally unfair for a person to accuse another of wrongdoing in a public forum while remaining anonymous. *See Doe v. Neverson*, 820 Fed.Appx. 984, 988 (11th Cir. 2020) (allowing a suit against an individual

perpetrator of sexual violence to proceed pseudonymously despite a risk of unfairness to the defendant, due to risk of harm to the plaintiff); *Doe I v. George Washington University*, 369 F.Supp.3d 49, 68 (D.C.C. 2019) (concluding that any unfairness to defendants caused by proceeding anonymously was outweighed by safety risks to student plaintiffs); *Balance Studios v. Cybernet Entertainment*, 204 F.Supp.3d 1098, 1098 (N.D. Cal. 2016) (finding that any unfairness to defendants was outweighed by safety risks to the plaintiff).

CONCLUSION

23. Plaintiffs' privacy interest and safety concerns for themselves and their children far outweigh any interest in their names being disclosed. The disclosure of Plaintiffs' names would publicize the sensitive and private information that they are asylum seekers, would risk subjecting them to retaliatory harm if they were returned to Venezuela, and would almost certainly subject them to retaliatory threats or violence, in the highly volatile political environment surrounding Venezuelan immigrants in Aurora. These unique safety concerns outweigh any public interest in the Plaintiffs' identity.

24. Plaintiffs therefore respectfully request leave to file the attached Complaint and Jury Demand pseudonymously.

Respectfully submitted this 28th day of January 2025.

/s/ Anna I. Kurtz

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