

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

CATHLEEN COLVIN, et al.,

Plaintiffs,

v.

SYRIAN ARAB REPUBLIC,

Defendant.

Civil No. _____

**PLAINTIFFS' *EX PARTE* MOTION FOR WAIVER OF LOCAL CIVIL RULES 5.1(c)(1)
AND 11.1 AND MEMORANDUM IN SUPPORT THEREOF**

Plaintiffs, by and through their counsel, hereby move the Court *ex parte* for an order waiving the requirement of Local Civil Rules 5.1(c)(1) and 11.1 that the “full residence address of the party” be included in the caption of the initial pleading and seek approval to substitute with their counsel’s business address instead. Plaintiffs further move the Court to permit the filing of their residence address with the Court *ex parte* and under seal. Plaintiffs have a well-founded fear of reprisal for the allegations of human rights abuses and terrorism raised in this case.

In support of this Motion, Plaintiffs state as follows:

1. This action is brought under the terrorism exception to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605A. Plaintiffs allege that the Syrian Arab Republic (“Syria”), under the authoritarian regime of President Bashar al-Assad (the “Assad regime”), deliberately assassinated Marie Colvin, a celebrated American journalist, hours after she appeared on CNN in February 2012 and reported on the killing of civilians by Syrian government forces. Plaintiffs are surviving family members of Marie Colvin. Given the serious nature of the allegations,

Plaintiffs fear that disclosure of their residence address will subject them to reprisal and harassment from the Assad regime and its supporters.

2. This Court has discretion to waive the requirement of Local Civil Rules 5.1(c)(1) and 11.1 and to permit the filing under seal of a party's address where the circumstances so require. *Yaman v. U.S. Dep't of State*, 786 F. Supp. 2d 148, 151 (D.D.C. 2011). In considering whether to waive the requirement, this Court applies the five-factor balancing test also used to determine whether to allow a plaintiff to proceed anonymously using a pseudonym. *See Yaman*, 786 F. Supp. 2d at 152–53; *Doe v. Cabrera*, 307 F.R.D. 1, 5 (D.D.C. 2014). The factors are: “(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[.]” *Cabrera*, 307 F.R.D. at 5.

3. Here, all factors weigh in favor of preserving the confidentiality of Plaintiffs' residence address. First, and most critically, Plaintiffs fear that disclosing their residence address may subject them to retaliation from supporters or members of the Syrian government. Courts frequently permit plaintiffs to proceed anonymously and withhold personal information from defendants and the general public where there is a reasonable threat of physical or emotional harm. *See, e.g., Doe v. U.S. Dep't of State*, 2015 WL 9647660, at *3 (D.D.C. Nov. 3, 2015) (noting that “protecting [plaintiff] and innocent family members from retaliation” warranted permitting plaintiff to proceed with the action anonymously); *Yaman v. U.S. Dep't. of State*, 786

F. Supp. 2d 148, 153 (D.D.C. 2011) (permitting mother to file residence address and other identifying information about her minor children under seal and *ex parte* because disclosure of the information had “the potential to place them at grave risk of physical and emotional harm at the hands of their father”); *Onsongo v. Republic of Sudan*, No. 1:08-cv-01380 (D.D.C. Aug. 7, 2008) (order waiving requirement of residence address in a terrorism action) (attached as Exhibit A); *Nikbin v. Islamic Republic of Iran*, No. 1:04-cv-00008 (D.D.C. Jan. 5, 2004) (same) (attached as Exhibit B).

4. The risk of harm to Plaintiffs by supporters or members of the Assad regime is serious. Syria has been designated a state sponsor of terrorism by the United States since 1979. *See* U.S. Dep’t of State, *Country Reports on Terrorism 2014*, 287–88 (June, 2015) (attached as Exhibit C). Information in the public record shows that the Assad regime and its supporters have monitored and threatened perceived critics around the world—including within the United States. *See* Jay Solomon and Nour Malas, *Syria Threatens Dissidents Around Globe, U.S. Says*, WALL STREET J., Aug. 17, 2011, (attached as Exhibit D). For example, in 2012, an unregistered agent of the Syrian intelligence services was convicted in the U.S. District Court for the Eastern District of Virginia for conducting unlawful surveillance of individuals in Washington, D.C during 2011. *See* Position of the United States with Respect to Sentencing at 3, *U.S. v. Soueid*, Crim. No. 1:11-cr-494 (E.D.Va. July 13, 2012) (attached as Exhibit E). The intelligence agent’s communications, seized by the Federal Bureau of Investigation, showed that Syrian intelligence were particularly focused on targeting international media, whom they accused of engaging in “a psychological, *media* and military war that seeks to destroy Syria and its political independence.” Sentencing Position of the United States at 5, *U.S. v. Soueid*, Crim. No. 1:11-cr-494 (E.D.Va. July 13, 2012) (emphasis added) (attached as Exhibit F).

5. Syria's pattern of global surveillance and harassment of critics extends into cyberspace. In June 2014, the United States brought criminal computer hacking charges against members of the "Syrian Electronic Army," a Syrian collective of pro-Assad regime hackers that allegedly targeted U.S. persons and interests. *See* Criminal Complaint, *U.S. v. Agha*, No. 1:14-MJ-292 (E.D.Va. June 12, 2014) (unsealed March 22, 2016) (attached as Exhibit G). Given the global reach of the Assad regime and its network of supporters, Plaintiffs have a compelling safety interest in keeping their residence address under seal. Not only would disclosure of this private information render Plaintiffs vulnerable to possible retaliation by regime supporters, but it would cause Plaintiffs severe psychological trauma, stress, and anxiety due to fear of reprisal. *See Cabrera*, 307 F.R.D. at 6 (noting risk of trauma weighs against disclosing plaintiff's identity). Under the first two factors, these interests warrant protection.

6. These interests are all the more compelling under the third and fourth factors because Plaintiffs seek to protect minor children in an action brought against a government. "Where an action is brought against a government entity . . . , or where it involves the privacy interests of minor children, courts are more likely to allow a plaintiff to proceed anonymously." *Yaman*, 786 F. Supp. 2d at 153; *see also Doe v. Porter*, 370 F.3d 558, 561 (6th Cir. 2004) (affirming district court's decision to permit plaintiffs to proceed anonymously, where case was "brought on behalf of very young children, to whom we grant a heightened protection"); *see also, Doe v. Dep't. of State*, 2015 WL 9647660, at *3 (noting that protection of plaintiff's minor children from harm by anti-U.S. insurgents warranted allowing plaintiff to proceed with the action anonymously).

7. Finally, under the fifth factor, Defendant will not be prejudiced as Plaintiffs will provide their attorneys' business address in lieu of Plaintiffs' residence address.

WHEREFORE, for the reasons set forth above, Plaintiffs respectfully request that this Motion be granted and that the Court enter an order (i) waiving the requirements of Local Civil Rules 5.1(c)(1) and 11.1 such that Plaintiffs may substitute their residence address with the business address of their counsel, and (ii) permitting Plaintiffs' residence address to be filed with the Court *ex parte* and under seal.

Dated: July 9, 2016

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