

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**JOSE OSCAR CHAVEZ, ANA PATRICIA)
CHAVEZ, HAYDEE DURAN, CECILIA)
SANTOS, JOSE FRANCISCO CALDERON,)
JANE DOE I AND JANE DOE II,)**

Plaintiffs,

v.

NICOLAS CARRANZA,

Defendant.

) **No.** _____

) **JURY TRIAL**

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' *EX PARTE* MOTION FOR LEAVE
TO FILE COMPLAINT AS PSEUDONYMOUS PLAINTIFFS**

Plaintiffs Jane Doe I and Jane Doe II seek authorization to file the Complaint in the above-captioned matter as pseudonymous plaintiffs. In light of the serious nature of the allegations in Plaintiffs' complaint, Plaintiffs Jane Doe I and Jane Doe II are justifiably concerned about the possibility of acts of reprisal that could inflict severe physical and mental harm, and even death, upon them in El Salvador. *See* Declaration of Matthew J. Eisenbrandt in Support of Plaintiffs' *Ex Parte* Motion for Leave to File Complaint With Pseudonymous Plaintiffs ("Eisenbrandt Decl."), attached hereto. Plaintiffs are prepared to provide a statement of the true identities of Jane Doe I and Jane Doe II under seal, upon the Court's request.

STATEMENT OF FACTS

Plaintiff Jane Doe I is a citizen of El Salvador and resides in the United States. She faces a serious threat of reprisal if she returns to El Salvador. She currently lives in the United States

without valid, proper immigration documentation. If her identity is revealed, she could be subject to removal from the United States to El Salvador. In this situation, the exposure of her identity and the fact that she has accused Defendant Carranza of responsibility for serious human rights abuses would make her vulnerable to severe physical and mental harm, and even death, in El Salvador.

Plaintiff Jane Doe II is a citizen of El Salvador and resides in El Salvador. Her husband, John Doe, was assassinated in one of the most notorious crimes in Salvadoran history. Through the complaint in this case, she accuses Defendant Carranza of responsibility for that crime, namely the murder of her husband and five other leaders of the democratic opposition group *Frente Democratico Revolucionario* (Democratic Revolutionary Front, “FDR”). This very serious allegation will make her vulnerable to severe physical and mental harm, and even death, if her identity is revealed.

Persons who allegedly participated in the killings of Juan Francisco Calderon and John Doe, including subordinates of Defendant Carranza and former high-ranking members of the Salvadoran Armed Forces who supported Defendant Carranza, continue to live freely in El Salvador. Many of Defendant’s fellow officers are believed to have authorized or participated in other politically motivated assassinations and abductions. See Eisenbrandt Decl., ¶ 3. As Amnesty International noted in its 2003 report on human rights in El Salvador, “those responsible for the massive human rights violations committed during the country’s 11-year conflict ha[ve] not yet been brought to justice.” Amnesty International Report 2003, “*El Salvador*,” AI Index: POL 10/03/2003 (“Amnesty Report”) (attached as Exhibit A to Eisenbrandt Decl.). The amnesty law passed by the Salvadoran Legislative Assembly in 1993

makes prosecution of those responsible for human rights abuses nearly impossible. *See* Eisenbrandt Decl., ¶ 3.

In addition, Plaintiffs reasonably fear retaliation given the continued violence in El Salvador perpetrated against individuals involved in investigating and reporting human rights violations. Human rights spokespersons recently have received death threats, including some apparently made in response to statements made in connection with killings during the period at issue in this case. In March 2002, the Office of the Human Rights Ombudsman (Procurator) published a report recommending that the case of the assassination of Archbishop Oscar Romero be reopened. The Ombudsman received numerous death threats during the year. *See* U.S. Department of State, Country Reports on Human Rights Practices for 2002, El Salvador, Section 3 (March 31, 2003) (attached as Exhibit B to Eisenbrandt Decl.). Although the Ombudsman filed a formal complaint with the El Salvador Attorney General's Office in January 2002 that she had received death threats, according to the Ombudsman, the Attorney General's office took no action on the complaint. *Id.*

International election observers in El Salvador reported numerous acts of violence, threats, and assassinations against political activists and candidates during the campaign for legislative and municipal elections held across the country on March 16, 2003. Centro de Intercambio y Solidaridad, International Observer Mission, "Election Observers – Final Report 2003," (May 1, 2003) (attached as Exhibit C to Eisenbrandt Decl.).

Further, in October 2002, the President of the Salvadoran Medical Association, the Association of Doctors in the National Health Service, the Secretary General of a doctor's union, and approximately 27 other health care professionals received telephoned death threats to their homes in connection with their opposition to government plans to privatize health services. The

threats reportedly came from a self-styled “death squad,” calling itself the “Extermination Command.” *See* Amnesty Report (attached as Exhibit A to Eisenbrandt Decl.).

In light of the relationship between Defendant Carranza and persons who allegedly participated in the killings of Juan Francisco Calderon and John Doe, including subordinates of Defendant Carranza and former high-ranking members of the Salvadoran Armed Forces who supported him, and continuing threats against figures in the movement for human rights in El Salvador, Plaintiffs Jane Doe I and Jane Doe II should be permitted to protect their identities by filing the Complaint under pseudonyms. Plaintiffs and their attorneys are prepared to address measures to protect the confidentiality of the identities of Jane Doe I and Jane Doe II should the Court require disclosure to Defendant or his attorneys at a later stage in the proceedings.

ARGUMENT

Many federal courts have permitted parties to proceed anonymously when special circumstances arise. Generally courts allow the use of pseudonyms “[w]here it is necessary...to protect a person from harassment, injury, ridicule or personal embarrassment...” *U.S. v. Doe*, 655 F.2d 920, 922 (9th Cir. 1977) (*citing U.S. v. Doe*, 556 F.2d 391, 393 (6th Cir. 1977)). Courts have also been willing to allow a plaintiff to remain anonymous in order to protect the plaintiff or her family from “possible reprisals.” *Doe v. INS*, 867 F.2d 285, 286 n.1 (6th Cir. 1989). In *Doe v. INS*, the court allowed a student from the People’s Republic of China to use a pseudonym in his asylum proceedings. The petitioner alleged that his conversion to Christianity and involvement in political activities during his stay in the United States would subject him and his family members to torture and arrest in China. The Sixth Circuit stated in a footnote, “Although the use of pseudonyms is not favored, we have resorted to it here to protect the petitioner’s family, who remain in China, from possible reprisals.” *Id.*

Courts “must balance the need for anonymity against the general presumption that parties’ identities are public information and the risk of unfairness to the opposing party.” *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058 (9th Cir. 2000). This balancing test generally allows plaintiffs to use pseudonyms in three situations: (1) when “identification creates a risk of retaliatory physical or mental harm;” (2) “when anonymity is necessary to preserve privacy in a matter of sensitive and highly personal nature;” and (3) when “the anonymous party is compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal prosecution.” *Id.* Where plaintiffs seek the use of pseudonyms to shield them from retaliation, the following factors must be considered: (1) the severity of the threatened harm; (2) the reasonableness of the anonymous party’s fear; (3) the anonymous party’s vulnerability to the retaliation; (4) prejudice to the opposing party; and (5) whether the public’s interest would be better served if the parties were identified. *Id.*

In *Advanced Textile Corporation*, a class of Chinese employees working in the garment industry in Mariana Islands sued their employers under the Fair Labor Standards Act, but desired to remain anonymous for fear of retaliation against them or their families in China. Specifically, Plaintiffs stated that if their identities were disclosed, they would be fired and immediately deported to China, and upon arriving in China, they would likely be arrested and imprisoned. Their families could also face similar threats of physical and economic retaliation. *See* 214 F.3d at 1063. The court found these possible repercussions sufficient to allow the plaintiffs to proceed under pseudonyms.

Courts have recognized that Doe status is appropriate in cases concerning alleged human rights violations. Although reported decisions have not addressed the pseudonym issue directly, it is clear that the plaintiffs in those cases were permitted to proceed using pseudonyms. *See*,

e.g., Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995) (two Jane Doe plaintiffs); *Xuncax v. Gramajo*, 886 F. Supp. 162, 170 (D. Mass. 1995) (one Juan Doe plaintiff); *Doe v. Islamic Salvation Front*, 993 F. Supp. 3 (D.D.C. 1998) (all plaintiffs proceeding as Does).

As in those cases, the Court should allow Plaintiffs Jane Doe I and Jane Doe II to employ pseudonyms because they have alleged that Defendant Carranza is responsible for human rights abuses, including extrajudicial killings and crimes against humanity. As demonstrated above, exposure of their identities will create a risk of retaliatory physical or mental harm to them in El Salvador.

The factors analyzed in *Advanced Textile Corporation* weigh heavily in favor of permitting Plaintiffs Jane Doe I and Jane Doe II to remain anonymous. The severity of the threatened harm is very high, including a possible risk of death. The fears of Plaintiffs Jane Doe I and Jane Doe II are entirely reasonable. Members of their families already have been assassinated in El Salvador. Both women are highly vulnerable to retaliation because persons who allegedly participated in the killings of Juan Francisco Calderon and John Doe, including subordinates of Defendant Carranza and former high-ranking members of the Salvadoran Armed Forces who supported Defendant Carranza, continue to live freely in El Salvador.

The interests of Defendant Carranza and the public will not be harmed if Jane Doe I and Jane Doe II remain anonymous. Through the Complaint, it is publicly known that Jane Doe I alleges that Defendant Carranza is responsible for the murder of Juan Francisco Calderon. Defendant Carranza and the public will not be deprived of the opportunity to investigate all the facts of his murder. Similarly, Jane Doe II alleges that Defendant Carranza is liable for the murder of her husband, who was one of six FDR leaders killed. Defendant Carranza and the

public will be able to fully examine those killings and will not be prejudiced by not knowing the identity of Jane Doe II.

CONCLUSION

For these reasons and such other reasons as may appear just to the Court, Plaintiffs Jane Doe I and Jane Doe II request that their *Ex Parte* Motion for Leave to File Complaint as Pseudonymous Plaintiffs be granted.

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