

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE,
Plaintiff,

v.

DELAWARE COUNTY et al.,
Defendants.

:
:
: Case No.: 5:22-cv-01405
:
:

**PLAINTIFF’S MOTION
FOR LEAVE TO PROCEED UNDER
PSEUDONYM**

COMES NOW Plaintiff, John Doe, through his undersigned counsel, and respectfully moves the Court to permit him to pursue this action, under the pseudonym “John Doe.” In support of this Motion, Plaintiff submits the accompanying memorandum of law and proposed order. Defendants do not oppose this motion.

Respectfully submitted,

Dated: November 30, 2022

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**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF’S MOTION
FOR LEAVE TO PROCEED UNDER
PSEUDONYM**

COMES NOW Plaintiff, John Doe, through his undersigned counsel, and respectfully moves the Court to permit him to pursue this action under the pseudonym “John Doe,” and in support thereof state as follows:

I. FACTUAL BACKGROUND

Plaintiff John Doe filed the instant action with the United States District Court for the Eastern District of Pennsylvania on April 8, 2022, against Defendants Delaware County, GEO Group, David Byrne, Laura Williams, Debra McFadden, Kristin [Last Name Unknown (“LNU”)], Joseph [LNU], and Unknown GWHCF Health Services Administration Staff. ECF No. 1. On June 24, 2022, Plaintiff filed his Amended Complaint against Defendants Delaware County, Laura Williams, the GEO Group, Inc., Debra McFadden, Kristen Grady, Joseph [Last Name Unknown (“LNU”)], and Unknown GWHCF Health Services Administration Staff. ECF No. 33. And on October 7, 2022, Plaintiff filed notices of voluntary dismissal for Joseph [LNU] and Unknown GWHCF Health Services Administration Staff. ECF Nos. 46 and 47.

Plaintiff’s Amended Complaint concerns Defendants’ discriminatory denial of programs and services because of John Doe’s disability (as defined in the applicable statutes and case law),

HIV, and the unlawful disclosure of his HIV-related information. Plaintiff seeks relief under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, Pennsylvania’s Confidentiality of HIV-related Information Act, 35 P.S. § 7601, *et seq.*, and applicable state law.

Plaintiff seeks leave of Court to pursue this action under the pseudonym “John Doe.” Plaintiff has a reasonable fear that widespread knowledge of his HIV-related information might lead to severe harm, including further stigma and discrimination and safety issues. Denial of this motion would force Plaintiff to publicly disclose his HIV-positive status, and Plaintiff would not be likely to pursue this litigation under such circumstances. Plaintiff has no illegitimate motive in seeking to proceed anonymously. Furthermore, Defendants will suffer no prejudice if this motion is granted, because Defendants are aware of the true identity of Plaintiff. Defendants do not oppose this motion.

II. LEGAL ANALYSIS

A. Plaintiff’s Names May Be Modified Because Plaintiff Has a Reasonable Fear of Severe Harm.

Courts allow plaintiffs to proceed anonymously in exceptional cases. *See Doe v. Megless*, 654 F.3d 404, 408 (3d Cir. 2011). To receive permission to proceed anonymously, a plaintiff must show “both (1) a fear of severe harm, and (2) that the fear of severe harm is reasonable.” *Id.* (quoting *Doe v. Kamehameha Schs./Bernice Pauahi Bishop Est.*, 596 F.3d 1036, 1043 (9th Cir. 2010)). When a plaintiff sufficiently alleges these factors, the court should “balance a plaintiff’s interest and fear against the public’s strong interest in an open litigation process.” *Id.*

The Court of Appeals for the Third Circuit has instructed district courts to consider the following factors when deciding a motion to proceed under pseudonym: (1) the extent to which

the identity of the litigant has been kept confidential; (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases; (3) the magnitude of the public interest in maintaining the confidentiality of the litigant's identity; (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities; (5) 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; (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives." *Id.* at 409 (quoting *Doe v. Provident Life and Accident Ins. Co.*, 176 F.R.D. 464, 467-68 (E.D. Pa. 1997)). In contrast, the following factors weigh against granting anonymity: "(1) the universal level of public interest in access to the identities of litigants; (2) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant's identities, beyond the public's interest which is normally obtained; and (3) whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated." *Megless*, 654 F.3d at 409 (quoting *Provident Life.*, 176 F.R.D. at 467-68). These factors are not comprehensive, and courts are required to consider all the relevant facts of a particular case. *Id.* at 410.

1. Courts Routinely Permit Plaintiffs To Proceed Under Pseudonym in Cases Involving HIV Status

Courts have routinely permitted a person living with HIV to proceed under pseudonym. *Megless*, 654 F.3d at 408 (listing factors that commonly justify a reasonable fear of severe harm, including positive HIV status) (citing *Doe v. Borough of Morrisville*, 130 F.R.D. 612, 614 (E.D. Pa.1990)). This court and others have allowed people living with HIV to proceed anonymously. *See Jones v. Stephen G. Diamontoni, M.D. & Associates Family Med. Prac.*, No. 14-6796 (E.D.

Pa. Dec. 12, 2014) (Dkt. No. 7) (granting motion for leave to proceed under pseudonym where a person living with HIV brought a discrimination claim against healthcare provider); *Smith v. Milton Hershey Sch.*, No. CV 11-7391, 2012 WL 1966125 (E.D. Pa. June 1, 2012), ECF No. 3 (allowing mother of minor child living with HIV to proceed under pseudonym); *see also Roe v. City of New York*, 151 F. Supp. 2d 495, 510 (S.D.N.Y. 2001) (collecting authorities, and granting permission to proceed anonymously to a person living with HIV); *EW v. New York Blood Center*, 213 F.R.D. 108, 110, 112 (E.D.N.Y. 2003) (holding that the prejudice of embarrassment and fear of stigmatization because plaintiff had a “sexually and blood-transmitted disease ... is real.”); *W.G.A. v. Priority Pharmacy, Inc.*, 184 F.R.D. 616, 617 (E.D. Mo. 1999) (granting motion of a person living with HIV to proceed with initials and finding that “[p]ersons with AIDS may be subjected to discrimination in the workplace, schools, social settings and public accommodations”; in so holding, the court relied on a state statute which restricted disclosure of HIV status, similar to Pennsylvania’s Confidentiality of HIV-related Information Act); *Roe v. City of Milwaukee*, 37 F. Supp. 2d 1127, 1129 (E.D. Wis. 1999) (holding that plaintiff’s HIV-positive status was a “compelling reason” to allow him to proceed under a pseudonym, because “... in modern society one’s HIV-positive status, unlike most other medical conditions, is still considered a stigma”); *Doe v. Deer Mountain Day Camp, Inc.*, 682 F. Supp. 2d 324 (S.D.N.Y. 2007), ECF No. 4 (permitting minor and his parent alleging HIV discrimination against camp to proceed under pseudonym); *Patient v. Corbin*, 37 F. Supp. 2d 433, 434 (E.D. Va. 1998) (“Being HIV positive carries a significant stigma in many parts of today’s society. ... Therefore, proceeding anonymously is appropriate.”).

The consensus of the authorities is that people living with HIV have a compelling reason to proceed anonymously. Those same fears of discrimination and stigmatization continue to

exist. *See* Office of National AIDS Policy, White House Domestic Policy Council, National HIV/AIDS Strategy for the United States 2022–2025 (2021). This case is no different, and Plaintiff should be permitted to proceed under pseudonym.

2. Plaintiff’s Interest in Proceeding Under Pseudonym Outweighs Public Disclosure

Here, the Court should permit Plaintiff to proceed under pseudonym because using his full name would disclose his HIV-positive status and other information about his HIV and it is reasonable to believe this could place him at risk of severe harm. The *Megless* factors support granting Plaintiff’s motion.

First, Plaintiff’s identity has been kept confidential in all filings by both Plaintiff and Defendants thus far in the court. Plaintiff has only disclosed his HIV status to his medical provider, a few family members, and a small number of close friends. Here, Defendants’ impermissible disclosures were not consented to by Plaintiff and should not weigh against Plaintiff’s motion to proceed anonymously. *See Delaware Valley Aesthetics, PLLC v. Doe I*, No. CV 20-0456, 2021 WL 2681286, at *3 (E.D. Pa. June 30, 2021) (suggesting that party seeking to proceed anonymously should not suffer from the disclosure of someone else, as long as party has “taken steps to keep [their] identity confidential from at least the larger community”). *See also Doe v. Pennsylvania Dep’t of Corr.*, No. 120-CV-00023-SPB-RAL, 2022 WL 446370, at *3 (W.D. Pa. Feb. 14, 2022) (disclosures that are not “initiated or condoned” by plaintiff should not weigh against them in the first factor). Because, the Plaintiff has kept his identity substantially confidential prior to the litigation, the first *Megless* factor favors him.

Second, Plaintiff has a reasonable basis to fear severe harm if his HIV-related information is disclosed. HIV continues to be a highly stigmatized medical condition subjecting people to discrimination and harm. The Pennsylvania General Assembly has recognized the

confidential status of HIV related information and established "confidentiality requirements which protect individuals from inappropriate disclosure and subsequent misuse of confidential HIV-related information." Confidentiality of HIV-Related Information Act, 35 P.S. § 7602.

Notably, Plaintiff has *already* faced harm and stigma because of his HIV status: he was denied participation in a program or service offered by the Defendants, taunted and harassed by other incarcerated people who assumed or had knowledge of his HIV-positive status, and feared that disclosure of his HIV-related information while incarcerated at GWHCF would make him a target of further harassment and sexual violence. Plaintiff reasonably fears similar stigma outside of the prison walls. Thus, Plaintiff has a substantial interest in maintaining the confidentiality of his HIV-related information, which will not be protected unless he is permitted to proceed under pseudonym.

Third, if Plaintiff is not permitted leave to proceed under pseudonym, he may not be willing to proceed with this lawsuit. Plaintiff's primary concern is protecting himself against further discrimination, which may reasonably result if his identity is revealed. It would be a gross injustice if Defendants' discriminatory conduct remained unaddressed because Plaintiff could not proceed under pseudonym. Thus, the fifth *Megless* factor favors granting this motion. This consideration is also relevant to the third and fourth *Megless* factors: if Plaintiff's motion is denied, other people living with HIV will be discouraged from accessing the courts to redress injustice—and the overall public interest will be harmed. *Megless*, 654 F.3d at 410 (considering whether "other similarly situated litigants [will] be deterred" by disclosure). Thus, the public has a strong interest in protecting Plaintiff's identity, and a weak interest in learning his identity.

Finally, Plaintiff has no illegitimate motives in seeking to proceed anonymously. For similar reasons, the *Megless* factors that weigh against anonymity are not germane to Plaintiff's

situation: Plaintiff is not a public figure, such that there would be a particularly strong public interest in knowing his identity. Likewise, Defendants will suffer no prejudice because they are aware of the Plaintiff's identity and they will not be in any way hindered in presenting their defense if this motion is granted. Defendants do not oppose this motion.

These factors strongly support granting Plaintiff's Motion.¹

III. CONCLUSION

For the reasons discussed above, Plaintiff's Motion should be granted and Plaintiff should be permitted to proceed under pseudonym.

Dated: November 30, 2022

Respectfully submitted,

/s/ Richard Saenz

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¹ If the Court so requires, Plaintiffs will submit a complaint under seal bearing his full name.

