

1 JEREMY TALCOTT  
CA Bar No. 311490  
2 Pacific Legal Foundation  
1212 West Amerige Avenue  
3 Fullerton, CA 92833-2709  
Telephone: (916) 419-7111  
4 Facsimile: (916) 419-7747  
JTalcott@pacificlegal.org

5 STEVEN M. SIMPSON  
6 CA Bar No. 336430  
CALEB KRUCKENBERG\*  
7 VA Bar No. 97609  
Pacific Legal Foundation  
8 3100 Clarendon Blvd., Suite 610  
Arlington, VA 22201  
9 Telephone: (202) 888-6881  
Facsimile: (916) 419-7747  
10 SSimpson@pacificlegal.org  
CKruckenberg@pacificlegal.org

11 *\*Admitted Pro Hac Vice*

12 *Attorneys for Plaintiffs*

13  
14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16  
17 JOHN DOE #1, *et al.*,  
18 Plaintiffs,  
19 v.  
20 U.S. DEPARTMENT OF JUSTICE, *et al.*,  
21 Defendants.

Case No. 5:22-cv-00855

**NOTICE OF MOTION AND UNOPPOSED  
MOTION FOR LEAVE TO PROCEED  
USING PSEUDONYMS**

DATE: December 5, 2022

TIME: 9:00 A.M.

PLACE:  
UNITED STATES COURTHOUSE, 3470  
TWELFTH STREET, RIVERSIDE CA  
92501-3801, COURTROOM 1

BEFORE: HON. JESUS G. BERNAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TO THE COURT, ALL PARTIES AND THEIR COUNSEL:**

NOTICE IS HEREBY GIVEN THAT on December 5, 2022, at 9:00 a.m., before the Honorable Jesus G. Bernal, in the United States Courthouse for the Central District of California, Eastern Division, Courtroom 1, 3470 Twelfth Street, Riverside CA 92501-3801, Plaintiffs, John Doe #1, John Doe #2, John Doe #3, John Doe #4 and the Alliance for Constitutional Sex Offense Laws (ACSOL), will and do move for leave for Plaintiffs Doe #1, Doe #2, Doe #3, and Doe #4 to proceed in this matter using pseudonyms.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on October 12, 2022.

Counsel for Defendants, U.S. Dept. of Justice and A.G. Merrick B. Garland, Kathryn L. Wyer and Jeremy S.B. Newman, do not oppose the requested relief, provided that Defendants have access to Plaintiffs Doe #1, Doe #2, Doe #3, and Doe #4's true identity under seal, pursuant to a protective order, or under similar circumstances designed to protect these plaintiffs' anonymity.

This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, attached declarations, and any further argument as may be offered at the time of the hearing of this motion.

DATED: October 19, 2022

Respectfully submitted,

JEREMY TALCOTT  
By s/ Jeremy Talcott  
JEREMY TALCOTT

STEVEN M. SIMPSON  
By s/ Steven M. Simpson  
STEVEN M. SIMPSON

CALEB KRUCKENBERG  
By s/ Caleb Kruckenberg  
CALEB KRUCKENBERG\*

*\*Admitted Pro Hac Vice  
Attorneys for Plaintiffs*

1 JEREMY TALCOTT  
CA Bar No. 311490  
2 Pacific Legal Foundation  
1212 West Amerige Avenue  
3 Fullerton, CA 92833-2709  
Telephone: (916) 419-7111  
4 Facsimile: (916) 419-7747  
JTalcott@pacificlegal.org

5 STEVEN M. SIMPSON  
CA Bar No. 336430  
6 CALEB KRUCKENBERG\*  
7 VA Bar No. 97609  
Pacific Legal Foundation  
8 3100 Clarendon Blvd., Suite 610  
Arlington, VA 22201  
9 Telephone: (202) 888-6881  
Facsimile: (916) 419-7747  
10 SSimpson@pacificlegal.org  
CKruckenberg@pacificlegal.org

11 *\*Admitted Pro Hac Vice*

12 *Attorneys for Plaintiffs*

13  
14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16  
17 JOHN DOE #1, *et al.*,

18 Plaintiffs,

19 v.

20 U.S. DEPARTMENT OF JUSTICE, *et al.*,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. 5:22-cv-00855

**MEMORANDUM OF LAW AND POINTS  
OF AUTHORITY IN SUPPORT OF  
UNOPPOSED MOTION FOR LEAVE TO  
PROCEED USING PSEUDONYMS**

1 Plaintiffs John Doe #1, John Doe #2, John Doe #3, and John Doe #4 move for leave to  
2 proceed using pseudonyms, and Defendants, U.S. Department of Justice, and Attorney  
3 General Merrick B. Garland, do not object to this relief. Plaintiffs Doe #1, Doe #2, and Doe #3  
4 were previously required to register as sex offenders, but, according to the State of California,  
5 they no longer must do so. Yet Defendants have ordered them to register once again, in a new  
6 rule. Plaintiff John Doe #4 meanwhile must currently register, but he is not yet required by the  
7 State of California to comply with the new rule's command concerning the disclosure of remote  
8 communication identifiers. As these plaintiffs argued in their amended complaint, Defendants'  
9 rule is unlawful—among other problems, the rule infringes on their First Amendment right to  
10 anonymous speech. Regardless of the merits of their arguments, though, if Plaintiffs are  
11 required to disclose their true names publicly, they would suffer the same harms as being  
12 required to register itself—harassment, serious harm to their reputation, and deprivation of  
13 their right to speak anonymously. Rather than force the named plaintiffs to suffer those  
14 consequences as a condition of accessing the courts, this Court should allow the plaintiffs to  
15 publicly shield their true names, while providing Defendants appropriate access to that  
16 information under seal or similar protective measures.

### 17 **I. Relevant Facts**

18 Plaintiffs John Doe #1, John Doe #2, and John Doe #3, were previously required to  
19 register as sex offenders under California (and federal) law. Ex. A at ¶ 5 (Decl. of John Doe  
20 #1); Ex. B. at ¶ 4 (Decl. of John Doe #2); Ex. C at ¶ 5 (Decl. of John Doe #3). However, in  
21 2002, Mr. Doe #1's conviction was expunged, and then in 2012, he was given a certificate of  
22 rehabilitation by a California court. Ex. A at ¶ 12. He no longer must register under California  
23 law. *Id.* at ¶ 15. Mr. Doe #2's conviction was likewise expunged, and he too need not currently  
24 register in California. Ex. B at ¶ 9. Mr. Doe #3 was granted relief from registration under  
25 California law, relieving him of the obligation to register as well. Ex. C at ¶ 11.

26 According to the rule challenged in this case, however, Mr. Doe #1, Mr. Doe #2, and  
27 Mr. Doe #3 must once again register as sex offenders. Ex. A at ¶¶ 17-18; Ex. B at ¶ 12; Ex. C  
28 at ¶ 14. They must also provide detailed information such as "remote communication

1 identifiers” that they might use online. Ex. A at ¶¶ 19, 23-24; Ex. B at ¶¶ 13, 17-18; Ex. C at  
2 ¶¶ 15, 18-19.

3 If these plaintiffs are required to register once again, they will once again face the same  
4 consequences that attend registration—social opprobrium, harassment, and exclusion from  
5 work, school, and Church. Ex. A at ¶ 21; Ex. B at ¶ 19; Ex. C at ¶ 17. In addition, because of  
6 the remote communication identifier requirement, these plaintiffs will be forced to give up their  
7 right to anonymous online speech and will be forced to forego their right to speak freely about  
8 issues of public concern because of concerns that it will lead to their identification in the public.  
9 Ex. A at ¶¶ 22-24; Ex. B at ¶¶ 16-18; Ex. C at ¶¶ 18-20.

10 Of course, if Mr. Doe #1, Mr. Doe #2, or Mr. Doe #3 are required to proceed in this case  
11 using their real names, they will suffer all of the same consequences that they might face from  
12 registering. Ex. A at ¶ 28; Ex. B at ¶ 19; Ex. C at ¶¶ 17, 19, 26. They will be forced to publicly  
13 identify themselves as putative sex offenders and will face the same harassment, exclusion,  
14 and loss of free speech rights. *Id.* Indeed, if they are not able to pursue this litigation under  
15 pseudonyms, they will not be able to litigate this important case at all. Ex. A at ¶ 29; Ex. B at  
16 ¶ 23; Ex. C at ¶ 27.

17 Mr. Doe #4 must still register as a sex offender in California. Ex. D at ¶ 6 (Decl. of John  
18 Doe #4). However, because California does not currently collect the “remote communication  
19 identifiers” information required by the new rule, it does not currently collect information that  
20 forfeits Mr. Doe #4’s right to anonymous speech. *Id.* at ¶¶ 13-14. Still, for fear that California  
21 will soon comply with federal law, Mr. Doe #4 has refrained from exercising his right to  
22 anonymous speech. *Id.* at ¶ 15. If Mr. Doe #4 is required to proceed in this case using his real  
23 name, he will suffer the same loss of free speech rights. *Id.* at ¶ 17. Moreover, if he is not able  
24 to pursue this litigation under a pseudonym, he will likely not be able to litigate this important  
25 case at all. *Id.* at ¶ 18.

## 26 **II. Argument**

27 Federal Rule of Civil Procedure 10(a) provides that complaints must “include the name  
28 of all parties.” However, the Ninth Circuit has held that “a party may preserve his or her

1 anonymity in judicial proceedings in special circumstances when the party's need for  
2 anonymity outweighs prejudice to the opposing party and the public's interest in knowing the  
3 party's identity." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir.  
4 2000). This happens, for instance, when "nondisclosure of a party's identity is necessary to  
5 protect a person from harassment, injury, ridicule, or personal embarrassment." *Id.* at 1067–  
6 68. Thus, a court weighs three factors: (1) the harm to the plaintiff; (2) the harm to the  
7 defendant; and (3) the public interest. *See id.*

8 The first factor—the potential harm to the plaintiff seeking anonymity—favors the use  
9 of a pseudonym in this case. Anonymity is appropriate, for instance, "where necessary to  
10 protect a person from injury or harassment[.]" *United States v. Doe*, 488 F.3d 1154, 1155 n.1  
11 (9th Cir. 2007). Likewise, a "litigant may overcome the presumption [of anonymity] by  
12 demonstrating a social interest in favor of protecting his identity." *Doe v. State of Alaska*, 122  
13 F.3d 1070 (9th Cir. 1997) (unpublished table decision), *affirmed by* 259 F.3d 979, 983 (9th Cir.  
14 2001), *rev'd on other grounds by* *Smith v. Doe*, 538 U.S. 84 (2003). And when a plaintiff is  
15 advancing a strong public "interest in resolving [a] challenge to a governmental policy," and  
16 "disclosure will deny them the very relief they seek," anonymity is appropriate, and "the public's  
17 right of access is subordinate." *Id.* Thus, the Ninth Circuit has held that it was error for a district  
18 court to deny pseudonymous status to a group of litigants who were challenging their inclusion  
19 in a sex offender registry. *See id.* District courts have followed this same reasoning to  
20 recognize that, even without direct threats of violence or harassment, sex offender registrants  
21 have an interest in anonymity when they litigate sensitive matters like a "constitutional  
22 challenge with the potential for publicity" to a sex offender registry. *See Doe v. Cnty. of El*  
23 *Dorado*, No. 2:13-cv-01433-KJM, 2013 WL 6230342, at \*4 (E.D. Cal. Dec. 2, 2013). No wonder  
24 then that the Federal Reporter is filled with decisions involving pseudonymous plaintiffs  
25 challenging sex offender registries. *See, e.g., Doe v. Harris*, 772 F.3d 563, 564 (9th Cir. 2014)  
26 (pseudonymous challenge to disclosure requirements for sex offense registrants).

27 Here, John Doe #1, John Doe #2, and John Doe #3 face two distinct harms justifying  
28 proceeding under a pseudonym. First, as individuals who would have to register anew as sex

1 offenders, they face serious reputational injury and potential harassment. See Ex. A at ¶ 21;  
2 Ex. B at ¶ 19; Ex. C at ¶ 17. As their attached declarations make clear because they have not  
3 had to register as sex offenders in California, if they were required to register again then they  
4 would likely suffer the loss of their careers, professional licenses, restrictions on visiting their  
5 children at school, and they fear harassment and potential violence from members of the  
6 public. *Id.*

7 Second, and perhaps more significantly, just as in *Doe v. State of Alaska*, this lawsuit  
8 is a constitutional challenge to their wrongful inclusion on a sex offender registry. John Doe  
9 #1, John Doe #2, and John Doe #3 raise claims based on the fact that but-for the new rule  
10 they would not have to register on any sex offender registry. See Amended Complaint, Counts  
11 I, II.

12 Finally, all four individuals raise First Amendment challenges that they would be forced  
13 to forfeit entirely if they were forced to use their real names. They each object to the new rule's  
14 requirement that would prevent them from speaking anonymously about issues of public  
15 concern. See *id.*, Count IV. Thus, if they were required to disclose their true names publicly,  
16 "disclosure will deny them the very relief they seek." *Doe v. Alaska*, 122 F.3d at 1070. They  
17 would suffer the same reputational harms and loss of anonymous speech rights just for filing  
18 the lawsuit that they seek to stop by filing the lawsuit. Ex. A at ¶¶ 22-24; Ex. B at ¶¶ 16-18;  
19 Ex. C at ¶¶ 18-20; Ex. D at ¶¶ 13-15, 17. Because their "constitutional challenge with the  
20 potential for publicity" is designed to prevent a registration requirement that unlawfully forces  
21 disclosures, both the plaintiffs and the public have a strong interest in not forcing the plaintiffs  
22 to suffer those same consequences as a condition to challenge the government action. See  
23 *Doe v. El Dorado*, 2013 WL 6230342, at \*4.

24 The second factor, prejudice to the defendant, likewise favors the use of pseudonyms.  
25 The named plaintiffs seek only to proceed using pseudonyms in public filings. They have no  
26 objection to disclosing their true name to the parties under seal or similar protective measures.

1 And Defendants do not object to this relief.<sup>1</sup> Since this is a “purely legal” challenge that “do[es]  
2 not depend on identifying the specific plaintiffs” it is difficult to imagine any harm to the  
3 defendants from the use of a pseudonym. *Doe v. State of Alaska*, 122 F.3d at 1070.

4 Third, the public interest also favors anonymity. When a litigant challenges  
5 governmental action, anonymity often does not “obstruct public scrutiny of the important  
6 issues,” and the public interest instead militates in favor of “seeing [the] case decided on the  
7 merits.” *Advanced Textile*, 214 F.3d at 1072–73. Indeed, anonymity will “serve the public’s  
8 interest in [the] lawsuit by enabling it to go forward.” *Id.* at 1073. Thus, when a registrant  
9 challenges his inclusion on a registry “the public’s right of access is subordinate to the interest  
10 in resolving this challenge to a governmental policy.” *Doe v. State of Alaska*, 122 F.3d at 1070.  
11 “The public, as well as the plaintiffs, will benefit when the case proceeds to a resolution on the  
12 merits.” *Id.* Because the named plaintiffs seek to challenge an agency rule of general  
13 applicability on statutory and constitutional grounds, the public interest is likewise best served  
14 by ensuring this case goes forward to the merits. And since they cannot do so using their real  
15 names in public filings without also facing many of the same harms they seek to avoid with  
16 their rule challenge, anonymity is entirely appropriate. See Ex. A at ¶¶ 22-24; Ex. B at ¶¶ 16-  
17 18; Ex. C at ¶¶ 18-20; Ex. D at ¶¶ 13-15, 17. Indeed, if they are denied the opportunity to  
18 proceed using a pseudonym, the named plaintiffs will likely be forced to abandon their  
19 constitutional rights and the public might be denied a ruling on the merits of this case. Ex. A  
20 at ¶ 29; Ex. B at ¶ 23; Ex. C at ¶ 27; Ex. D at ¶ 18.

### 21 **III. Conclusion**

22 This Court should allow Mr. Doe #1, Mr. Doe #2, Mr. Doe #3, and Mr. Doe #4 to proceed  
23 using pseudonyms, and be required to disclose their true identities to Defendants only under  
24 seal, pursuant to a protective order, or with other similar protective measures. Defendants do  
25 not object to this relief.

---

26  
27  
28 <sup>1</sup> In fact, undersigned counsel has already provided their true identities to counsel for Defendants pursuant to an agreement to maintain the confidentiality of that information.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: October 19, 2022

Respectfully submitted,

JEREMY TALCOTT  
By s/ *Jeremy Talcott*  
JEREMY TALCOTT

STEVEN M. SIMPSON  
By s/ *Steven M. Simpson*  
STEVEN M. SIMPSON

CALEB KRUCKENBERG  
By s/ *Caleb Kruckenberg*  
CALEB KRUCKENBERG\*

*\*Admitted Pro Hac Vice  
Attorneys for Plaintiffs*

# EXHIBIT

## A

1 JEREMY TALCOTT  
CA Bar No. 311490  
2 Pacific Legal Foundation  
1212 West Amerige Avenue  
3 Fullerton, CA 92833-2709  
Telephone: (916) 419-7111  
4 Facsimile: (916) 419-7747  
JTalcott@pacifical.org

5 STEVEN M. SIMPSON  
CA Bar No. 336430  
6 CALEB KRUCKENBERG\*  
VA Bar No. 97609  
Pacific Legal Foundation  
8 3100 Clarendon Blvd., Suite 610  
Arlington, VA 22201  
9 Telephone: (202) 888-6881  
Facsimile: (916) 419-7747  
10 SSimpson@pacifical.org  
CKruckenberg@pacifical.org

11 \* *Admitted Pro Hac Vice*

12 *Attorneys for Plaintiffs*

13  
14  
15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17  
18 JOHN DOE #1, ET AL.,

19 v.

20 U.S. DEPARTMENT OF JUSTICE, ET  
21 AL.,

Case No. 5:22-cv-00855

**DECLARATION OF JOHN DOE  
#1**

22  
23  
24  
25  
26  
27  
28

1 I, John Doe #1, declare under penalty of perjury that the following is true and  
2 correct to the best of my present knowledge, information, and belief:

3 1. I am a resident of the State of California.

4 2. "John Doe" is a fictitious name. With my signature, I will nevertheless  
5 affirm the truth of the statements in this declaration.

6 3. I enlisted in the U.S. Marine Corps at age 17 and was honorably  
7 discharged in 1996.

8 4. In 1994, while I was 23 and still serving in the Marines, I engaged in an  
9 otherwise-consensual encounter with a 16-year-old girl. This incident did not involve  
10 sexual intercourse.

11 5. In 1996, I pled no contest to a single misdemeanor count of sexual  
12 battery under California Penal Code § 243.4(a) and was sentenced to no jail time and  
13 three years' probation. I was then required to register as a sex offender in the State  
14 of California.

15 6. In 1998, the California Department of Probation requested that I be  
16 given early termination of my probation, which a court accepted.

17 7. After the conviction, I obtained my bachelor's degree, followed by a  
18 master's degree, and rose through the ranks of various companies.

19 8. In 2005, I was engaged to be married and rented a second home for me  
20 and my future wife. I did not, however, move into the home. I did not understand,  
21 however, that my obligation to register as a sex offender included registering my  
22 rental home address, where I did not live. I did not immediately update my  
23 registration information to include the future home as an additional residence  
24 address.

25 9. In 2006, I was charged with a misdemeanor count of failing to register  
26 under California Penal Code § 290(g)(1). I pled no contest and was sentenced to three  
27 years' probation.

28 10. I then got married and had two children.

1           11. Today, I am a successful businessman, an involved father and husband,  
2 and a dedicated member of my church.

3           12. Because of my rehabilitation, a state court expunged my original  
4 conviction in 2002 pursuant to Cal. Penal Code § 1203.4, which set aside my  
5 conviction and replaced it with a plea of not guilty.

6           13. In 2010 a state court expunged my failure to register conviction, also  
7 pursuant to Cal. Penal Code § 1203.4.

8           14. Then in 2012, a state court issued a “Certificate of Rehabilitation” to  
9 me, under Cal. Penal Code § 4852.01, which officially recommended me for an  
10 unqualified pardon.

11           15. Under California law, I am no longer required to register as a sex  
12 offender and have no criminal convictions.

13           16. If not vacated, my original offense of conviction, Cal. Penal Code §  
14 243.4(a), likely requires lifetime registration under SORNA.

15           17. On December 8, 2021, the Department of Justice issued a rule,  
16 *Registration Requirements Under the Sex Offender Registration and Notification Act*,  
17 86 Fed. Reg. 69,856 (Dec. 8, 2021), which became effective on January 7, 2022.

18           18. According to the new rule, because my original conviction was only  
19 expunged, instead of being set aside due to factual innocence or vacated, I am  
20 required to register as a sex offender in California.

21           19. The rule orders me to provide information in person to California  
22 officials, such as my social security number, my “remote communication identifiers”  
23 (e.g., internet usernames), my work and school information, and information  
24 concerning any international travel, passport, and vehicle registration, or professional  
25 licenses to local authorities, in person at least yearly.

26           20. I must also report, in person, changes in address within three days, give  
27 advance notice if I plan to change residences jobs or schools, report changes in  
28

1 remote communication identifiers within three days, and international travel plans  
2 prior to any trip.

3 21. If I am forced to register as a sex offender, I will no longer be allowed  
4 to freely visit my children at their schools, I will likely face ostracization from my  
5 community and church, and will lose out on work and career opportunities. When I  
6 was previously required to register, I suffered instances of harassment and had faced  
7 adverse employment and social consequences, including rescinded job offers. These  
8 consequences were, in part, what motivated me to seek an expungement and then  
9 certification of rehabilitation. If I am forced to re-register, I will suffer these  
10 consequences once again.

11 22. I also wish to engage in anonymous speech on the internet through the  
12 use of anonymous remote communication identifiers, such as email addresses and  
13 social media usernames. I wish to remain anonymous to preserve my privacy, and to  
14 avoid adverse reputational and other risks related to my past offenses. I also wish to  
15 speak anonymously about issues of public concern, including sex offender  
16 registration requirements and the unfairness of the new SORNA rule.

17 23. The new rule requires me to disclose my remote communication  
18 identifiers as a part of registration, which could be accessible by members of the  
19 public. Because of this disclosure requirement, I am worried that I cannot speak  
20 freely about issues of public concern, particularly the new SORNA rule, without  
21 jeopardizing my reputation, privacy, and the safety of my family. I have refrained  
22 from speaking on these matters of public concern using my anonymous remote  
23 communication identifiers because of the new rule.

24 24. Even though I cannot currently register under California law, I am  
25 concerned that California may attempt to comply with the new rule at any time. I  
26 have therefore refrained from speaking anonymously online for fear that this  
27 information will eventually need to be disclosed as a part of my registration.  
28



# EXHIBIT B

1 JEREMY TALCOTT  
CA Bar No. 311490  
2 Pacific Legal Foundation  
1212 West Amerige Avenue  
3 Fullerton, CA 92833-2709  
Telephone: (916) 419-7111  
4 Facsimile: (916) 419-7747  
JTalcott@pacifical.org

5 STEVEN M. SIMPSON  
CA Bar No. 336430  
6 CALEB KRUCKENBERG\*  
VA Bar No. 97609  
Pacific Legal Foundation  
8 3100 Clarendon Blvd., Suite 610  
Arlington, VA 22201  
9 Telephone: (202) 888-6881  
Facsimile: (916) 419-7747  
10 SSimpson@pacifical.org  
CKruckenberg@pacifical.org

11 \* *Admitted Pro Hac Vice*

12 *Attorneys for Plaintiffs*

13  
14  
15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17  
18 JOHN DOE #1, ET AL.,

19 v.

20 U.S. DEPARTMENT OF JUSTICE, ET  
21 AL.,

Case No. 5:22-cv-00855

**DECLARATION OF JOHN DOE  
#2**

1 I, John Doe #2, declare under penalty of perjury that the following is true and  
2 correct to the best of my present knowledge, information, and belief:

3 1. I am a resident of the State of California.

4 2. "John Doe #2" is a fictitious name. With my signature, I will  
5 nevertheless affirm the truth of the statements in this declaration.

6 3. I was convicted in 2005 of one count of sexual battery under California  
7 Penal Code § 243.4(a), for conduct involving a child under 10.

8 4. My conviction was a felony "wobbler" and got reduced to a  
9 misdemeanor in 2012, for which I was sentenced to 60 days in jail and three years'  
10 probation. I was also required to register as a sex offender for life in the State of  
11 California. This remains my only criminal offense.

12 5. After my conviction I began intensive treatment, almost all of it  
13 voluntary, including completing an inpatient residential sex offender treatment  
14 program, more than 600 hours of individual psychotherapy, and becoming a leader  
15 in a local chapter of Sex Addicts Anonymous.

16 6. While attending an intensive inpatient program, I experienced an  
17 epiphany about my prior behavior. In a group session, nearly every one of my fellow  
18 patients reported suffering prior abuse. It was then that I realized the devastating, life-  
19 altering toll, that my own behavior had taken on my victim.

20 7. I then devoted my personal and professional life to helping others  
21 suffering from addictions, and more specifically, to trying to prevent future instances  
22 of sexual abuse. I obtained a certification for alcohol and drug addiction counseling  
23 from the state of California (2010), a bachelor's degree in psychology (2012) and  
24 then a master's degree in clinical forensic Social Work (2015). I currently hold a  
25 provisional license with the CA BBS as an associate social worker. From 2016 until  
26 2020 I worked full-time as a case manager and substance abuse counselor for a non-  
27 profit serving chronically homeless individuals in Los Angeles.

28

1           8.     In 2021 I began treating patients with sexual addictions full time. I also  
2 organized volunteer support groups for registrants and their families. My goal was,  
3 and remains, to make living amends, for my own misconduct. Recognizing that I can  
4 never make direct amends to my victim without causing further harm, I hope to help  
5 my patients recognize and stop their own destructive and harmful behaviors before  
6 they offend, and help those who have offended to repair the damage they have caused.

7           9.     Because of my rehabilitation, a California court expunged my  
8 conviction in 2012. Then in 2016 it issued a “Certificate of Rehabilitation,” under  
9 Cal. Penal Code § 4852.01. Under California law, I am no longer required to register  
10 as a sex offender.

11           10.    If not vacated, my original offense of conviction, Cal. Penal Code §  
12 243.4(a), likely requires me to register for at least 25 years under SORNA.

13           11.    On December 8, 2021, the Department of Justice issued a rule,  
14 *Registration Requirements Under the Sex Offender Registration and Notification Act*,  
15 86 Fed. Reg. 69,856 (Dec. 8, 2021), which became effective on January 7, 2022.

16           12.    According to the new rule, because my original conviction was only  
17 expunged, instead of being set aside, I am required to register as a sex offender in  
18 California.

19           13.    The rule orders me to provide information in person to California  
20 officials, such as my social security number, my “remote communication identifiers”  
21 (e.g., internet usernames), my work and school information, and information  
22 concerning any international travel, passport, and vehicle registration, or professional  
23 licenses to local authorities, in person at least yearly.

24           14.    I must also report, in person, changes in address within three days, give  
25 advance notice if I plan to change residences jobs or schools, report changes in  
26 remote communication identifiers, and international travel plans prior to any trip.

27           15.    If I am forced to register as a sex offender, I will likely lose my license  
28 to practice therapy and be forced to cease my practice. I will also likely face

1 ostracization from my community. When I was previously required to register, I  
2 suffered instances of harassment and had faced adverse employment and social  
3 consequences, including rescinded job offers. These consequences were, in part,  
4 what motivated me to seek an expungement and then certification of rehabilitation.  
5 If I am forced to re-register, I will suffer these consequences once again.

6 16. I also wish to engage in anonymous speech on the internet through the  
7 use of anonymous remote communication identifiers, such as email addresses and  
8 social media usernames. I wish to remain anonymous to preserve my privacy, and to  
9 avoid adverse reputational and other risks related to my past offenses. I also wish to  
10 speak anonymously about issues of public concern, including sex offender  
11 registration requirements and the unfairness of the new SORNA rule.

12 17. The new rule requires me to disclose my remote communication  
13 identifiers as a part of registration, which could be accessible by members of the  
14 public. Because of this disclosure requirement, I am worried that I cannot speak  
15 freely about issues of public concern, particularly the new SORNA rule, without  
16 jeopardizing my reputation, privacy, and the safety of my family. I have refrained  
17 from speaking on these matters of public concern using my anonymous remote  
18 communication identifiers because of the new rule.

19 18. Even though I cannot currently register under California law, I am  
20 concerned that California may attempt to comply with the new rule at any time. I  
21 have therefore refrained from speaking anonymously online for fear that this  
22 information will eventually need to be disclosed as a part of my registration.

23 19. If my true identity is disclosed as a result of this lawsuit, I will face all  
24 of the same negative consequences of registering. I will again face harassment,  
25 negative social and career consequences, and will have to surrender my anonymity  
26 just to protect my right to anonymous speech.

27 20. I also regularly travel outside of the State of California and intend to do  
28 so in the future. Because of my travel and my current inability to register in California

1 as directed under the new rule I am concerned that I may be subject to criminal  
2 liability under federal law at any time.

3 21. Because of this concern I have attempted to register as a sex offender in  
4 California. I have been unable to do so, however, and been told by local law  
5 enforcement that I cannot register as required.

6 22. The new rule, however, informs me otherwise, and I am concerned that  
7 I could be arrested and prosecuted by federal authorities, despite these assurances  
8 from local law enforcement.

9 23. I will not be able to maintain this lawsuit if my true identity is publicly  
10 disclosed as the adverse reputational consequences will deter me from trying to  
11 vindicate my constitutional rights.

12 DATED: October 9, 2022

13 John Doe #2

14 \_\_\_\_\_  
15 John Doe #2  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT C

1 JEREMY TALCOTT  
CA Bar No. 311490  
2 Pacific Legal Foundation  
1212 West Amerige Avenue  
3 Fullerton, CA 92833-2709  
Telephone: (916) 419-7111  
4 Facsimile: (916) 419-7747  
JTalcott@pacifical.org

5 STEVEN M. SIMPSON  
CA Bar No. 336430  
6 CALEB KRUCKENBERG\*  
VA Bar No. 97609  
Pacific Legal Foundation  
8 3100 Clarendon Blvd., Suite 610  
Arlington, VA 22201  
9 Telephone: (202) 888-6881  
Facsimile: (916) 419-7747  
10 SSimpson@pacifical.org  
CKruckenberg@pacifical.org

11 \* *Admitted Pro Hac Vice*

12 *Attorneys for Plaintiffs*

13  
14  
15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17  
18 JOHN DOE #1, ET AL.,

19 v.

20 U.S. DEPARTMENT OF JUSTICE, ET  
21 AL.,

Case No. 5:22-cv-00855

**DECLARATION OF JOHN DOE**  
**#3**

1 I, John Doe #3, declare under penalty of perjury that the following is true and  
2 correct to the best of my present knowledge, information, and belief:

3 1. I am a resident of the State of California.

4 2. "John Doe #3" is a fictitious name. With my signature, I will  
5 nevertheless affirm the truth of the statements in this declaration.

6 3. I was convicted in 1997 of violating Cal. Penal Code § 288(a) ("Lewd  
7 Acts With a Minor Under 14"). My original offense involved unlawful contact with  
8 a 13 year-old.

9 4. I was imprisoned for two years, and then served a period of parole  
10 supervision.

11 5. I was then required to register as a sex offender in California for life.

12 6. While in prison I completed intensive sex offender treatment, which I  
13 continued after release.

14 7. After my release from prison in 1999 I started a business and married. I  
15 have two stepsons, and two grandchildren. I am currently 62 years old.

16 8. In 2011 I was convicted of misdemeanor failing to register under  
17 California Penal Code § 290(g)(1), but have no other criminal convictions since my  
18 1997 conviction.

19 9. In 2015 my 2011 misdemeanor conviction was expunged pursuant to  
20 Cal. Penal Code § 1203.4.

21 10. I have aspirations to travel interstate and internationally.

22 11. In 2021 I petitioned to be removed from the California registry under  
23 Cal. Penal Code 290.5, which was granted. I am no longer required to register as a  
24 sex offender under California law.

25 12. DOJ has asserted that my original offense of conviction, Cal. Penal  
26 Code § 288(a), likely requires me to register for life under SORNA.

27  
28

1           13. On December 8, 2021, the Department of Justice issued a rule,  
2 *Registration Requirements Under the Sex Offender Registration and Notification Act*,  
3 86 Fed. Reg. 69,856 (Dec. 8, 2021), which became effective on January 7, 2022.

4           14. According to the new rule, even though I am no longer required to  
5 register under California law, I am required to register as a sex offender in California.

6           15. The rule orders me to provide information in person to California  
7 officials, such as my social security number, my “remote communication identifiers”  
8 (e.g., internet usernames), my work and school information, and information  
9 concerning any international travel, passport, and vehicle registration, or professional  
10 licenses to local authorities, in person at least yearly.

11           16. I must also report, in person, changes in address within three days, give  
12 advance notice if I plan to change residences jobs or schools, report changes in  
13 remote communication identifiers, and international travel plans prior to any trip.

14           17. If I am forced to register as a sex offender, I will likely suffer serious  
15 reputation injuries. I will also likely face ostracization from my community. When I  
16 was previously required to register, I suffered instances of harassment and had faced  
17 adverse employment and social consequences, including rescinded job offers. These  
18 consequences were, in part, what motivated me to seek relief from registration. If I  
19 am forced to re-register, I will suffer these consequences once again.

20           18. I also wish to engage in anonymous speech on the internet through the  
21 use of anonymous remote communication identifiers, such as email addresses and  
22 social media usernames. I wish to remain anonymous to preserve my privacy, and to  
23 avoid adverse reputational and other risks related to my past offenses. I also wish to  
24 speak anonymously about issues of public concern, including sex offender  
25 registration requirements and the unfairness of the new SORNA rule.

26           19. The new rule requires me to disclose my remote communication  
27 identifiers as a part of registration, which could be accessible by members of the  
28 public. Because of this disclosure requirement, I am worried that I cannot speak

1 freely about issues of public concern, particularly the new SORNA rule, without  
2 jeopardizing my reputation, privacy, and the safety of my family. I have refrained  
3 from speaking on these matters of public concern using my anonymous remote  
4 communication identifiers because of the new rule.

5 20. Even though I cannot currently register under California law, I am  
6 concerned that California may attempt to comply with the new rule at any time. I  
7 have therefore refrained from speaking anonymously online for fear that this  
8 information will eventually need to be disclosed as a part of my registration.

9 21. I also intend to travel outside of the State of California in the future.  
10 Because of my intent to travel and my current inability to register in California as  
11 directed under the new rule I am concerned that I may be subject to criminal liability  
12 under federal law at any time.

13 22. Because of this concern I have attempted to register as a sex offender in  
14 California to comply with SORNA. I have been unable to do so, however, and been  
15 told that I cannot register as required.

16 23. In September 2020, with the assistance of counsel I inquired with my  
17 local registry office whether they could either register me to satisfy my SORNA  
18 obligation or whether the office could direct me to “any location where federal  
19 registration can be accomplished if [the] department does not offer that service.”

20 24. A detective with the relevant County Sheriff’s Office responded in an e-  
21 mail, “Due to the conviction being in CA and his obligation to register is terminated,  
22 Mr. [Doe #3] would not need to register federally. ... The federal sex offender  
23 registry is just a database of State records. The requirement to register is handled on  
24 the state side not the federal side, so we do not offer federal registration and I do not  
25 know of any agency that offers it.”

26 25. The new rule, however, informs me otherwise, and I am concerned that  
27 I could be arrested and prosecuted by federal authorities, despite these assurances  
28 from local law enforcement.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

26. If my true identity is disclosed as a result of this lawsuit, I will face all of the same negative consequences of registering. I will again face harassment, negative social and career consequences, and will have to surrender my anonymity just to protect my right to anonymous speech.

27. I will not be able to maintain this lawsuit if my true identity is publicly disclosed as the adverse reputational consequences will deter me from trying to vindicate my constitutional rights.

DATED: October 10, 2022

John Doe #3  
John Doe #3

1 JEREMY TALCOTT  
CA Bar No. 311490  
2 Pacific Legal Foundation  
1212 West Amerige Avenue  
3 Fullerton, CA 92833-2709  
Telephone: (916) 419-7111  
4 Facsimile: (916) 419-7747  
JTalcott@pacificlegal.org

5 STEVEN M. SIMPSON  
CA Bar No. 336430  
6 CALEB KRUCKENBERG\*  
7 VA Bar No. 97609  
Pacific Legal Foundation  
8 3100 Clarendon Blvd., Suite 610  
Arlington, VA 22201  
9 Telephone: (202) 888-6881  
Facsimile: (916) 419-7747  
10 SSimpson@pacificlegal.org  
CKruckenberg@pacificlegal.org

11 *\*Admitted Pro Hac Vice*

12 *Attorneys for Plaintiffs*

13  
14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16  
17 JOHN DOE #1, *et al.*,  
18  
19 Plaintiffs,  
20 v.  
21 U.S. DEPARTMENT OF JUSTICE, *et al.*,  
22 Defendants.

Case No. 5:22-cv-00855

**[PROPOSED] ORDER ON MOTION FOR  
LEAVE TO PROCEED USING  
PSEUDONYMS**



**From:** [caed\\_ecfmail@caed.uscourts.gov](mailto:cacd_ecfmail@caed.uscourts.gov)  
**To:** [noreply@ao.uscourts.gov](mailto:noreply@ao.uscourts.gov)  
**Subject:** Activity in Case 5:22-cv-00855-JGB-SP John Doe et al v. U.S Department of Justice et al Motion for Leave  
**Date:** Wednesday, October 19, 2022 11:44:10 AM

---

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**Notice of Electronic Filing**

The following transaction was entered by Talcott, Jeremy on 10/19/2022 at 8:43 AM PDT and filed on 10/19/2022

**Case Name:** John Doe et al v. U.S Department of Justice et al  
**Case Number:** [5:22-cv-00855-JGB-SP](#)  
**Filer:** John Doe  
John Doe  
John Doe  
The Alliance for Constitutional Sex Offense Laws

**Document Number:** [45](#)

**Docket Text:**

**NOTICE OF MOTION AND MOTION to For Plaintiffs Doe #1, Doe #2, Doe #3, and Doe #4 to proceed in this matter using pseudonyms filed by plaintiff John Doe, John Doe, John Doe(#4), John Doe(#3), The Alliance for Constitutional Sex Offense Laws. Motion set for hearing on 12/5/2022 at 09:00 AM before Judge Jesus G. Bernal. (Attachments: # (1) Memorandum, # (2) Exhibit, # (3) Exhibit, # (4) Exhibit, # (5) Exhibit, # (6) Proposed Order) (Talcott, Jeremy)**

**5:22-cv-00855-JGB-SP Notice has been electronically mailed to:**

Caleb J. Kruckenberg [ckruckenberg@pacificlegal.org](mailto:ckruckenberg@pacificlegal.org)

Jeremy Brennan Talcott [jtalcott@pacificlegal.org](mailto:jtalcott@pacificlegal.org), [cpiett@pacificlegal.org](mailto:cpiett@pacificlegal.org),  
[incominglit@pacificlegal.org](mailto:incominglit@pacificlegal.org), [tdyer@pacificlegal.org](mailto:tdyer@pacificlegal.org)

Joanne I. Osinoff [USACAC.Civil@usdoj.gov](mailto:USACAC.Civil@usdoj.gov), [caseview.ecf@usdoj.gov](mailto:caseview.ecf@usdoj.gov),  
[joanne.osinoff@usdoj.gov](mailto:joanne.osinoff@usdoj.gov), [Karen.Caceres.Renderos@usdoj.gov](mailto:Karen.Caceres.Renderos@usdoj.gov), [louisa.lin@usdoj.gov](mailto:louisa.lin@usdoj.gov)

Kathryn L Wyer kathryn.wyer@usdoj.gov, fedprog.ecf@usdoj.gov

Steven Simpson ssimpson@pacificlegal.org

**5:22-cv-00855-JGB-SP Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\fakepath\Notice of Motion, Doe #1 v. DOJ (Pseudonymous).pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=10/19/2022] [FileNumber=34757066-0] [0e7faf725e400ef118758e963ce2ed13a31b0258b9fa44c2b437709b711a2716ed27b1dadcd22bdc2ce6123a3d335d7a531f46108bab67e846d45fc0e930f85]]

**Document description:**Memorandum

**Original filename:**C:\fakepath\Mem Law in Supp Motion for Leave Unopp Doe 1 v. DOJ.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=10/19/2022] [FileNumber=34757066-1] [38c9c923a8fa9b52f0c34b4c4c607b4c118d3dafa252654e559360c4b6bcb05ce0cc233f48237ad6c192d93169f0ec53fb09ea0a0aee5e0e49ff82347755f3c5]]

**Document description:**Exhibit

**Original filename:**C:\fakepath\Exhibit A, Declaration of John Doe #1 - 10.10.22.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=10/19/2022] [FileNumber=34757066-2] [4ee71abefcabf33b3ee0a7c7f0d14b0a4fdacef697fd997b59f3a5decc15c798eb b239af11cadcf6662e0c5e1914637cdbb11b14c4f051085ed815dc6197402]]

**Document description:**Exhibit

**Original filename:**C:\fakepath\Exhibit B, Declaration of John Doe #2 (signed).pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=10/19/2022] [FileNumber=34757066-3] [b37bbe440457da0d19867d4292b0e960f2393503ec257c711b5f6777c8ea9ecc85e37006e9195f5b658d10a11907436dc533dbf35781c3adb65ec0a02f606dcf]]

**Document description:**Exhibit

**Original filename:**C:\fakepath\Ex. C, Declaration of John Doe #3 (revised) (signed).pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=10/19/2022] [FileNumber=34757066-4] [92d1b209b2526d7e170c933674603a6888d39cf36963a333233f9e21d97e8502fe854ea001f5cf3c0c41ad914114db3b178d591d666e414c4e62edce03e14f5c]]

**Document description:**Exhibit

**Original filename:**C:\fakepath\Exhibit D, Declaration of John Doe #4.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=10/19/2022] [FileNumber=34757066-5] [b0f814eff191b4351435c381bc04260124b2d511725f6f72015968724ced3a2d14d6f221ffdac4318790ec5d6722aca449107c30680272710d291718ed1cb4be]]

**Document description:**Proposed Order

**Original filename:**C:\fakepath\Proposed Order, Doe #1 v. DOJ (pseudonym).pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=10/19/2022] [FileNumber=34757066-6] [2010a96dc66a5876f7c8c37a5b024641c517f455c493dbbb8d2d3ca79171b1f960

e4fef52e8453208f71ff38ecc3aea29536757de0ccddd6cace6f743846c1de]]