

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELEWARE**

JUANA DOE I individually and as representative of her deceased husband, JUAN DOE I; JUANA DOE II individually and as representative of her deceased husband, JUAN DOE II; JUANA DOE III individually and as representative of her deceased husband, JUAN DOE III; JUANA DOE IV individually and as representative of her deceased husband, JUAN DOE IV; JUANA DOE V individually and as representative of her deceased husband, JUAN DOE V; JUAN DOE VI; JUANA DOE VI in her individual capacity; JUAN DOE VII individually and as representative of his deceased father, JUAN DOE XVIII; JUAN DOE VIII; JUAN DOE IX in his individual capacity and on behalf of all others similarly situated, and on behalf of his minor daughter, JUANA DOE VIII; JUAN DOE X; JUAN DOE XII; JUAN DOE XIII individually and on behalf of all others similarly situated; JUAN DOE XIV; JUAN DOE XVI individually and as representative of his deceased father, JUAN DOE XV; JUAN DOE XVII and on behalf of all others similarly situated,

Plaintiffs

v.

IFC ASSET MANAGEMENT COMPANY, LLC
2121 Pennsylvania Ave, NW
Washington, D.C., 20433

Defendant

Civil Action No. _____.

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS'
MOTION FOR LEAVE TO
PROCEED IN PSEUDONYM**

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. STATEMENT OF FACTS 2

III. ARGUMENT..... 5

 A. Courts regularly permit plaintiffs to file under pseudonym where, as here,..... 5
disclosure of their identities would place them at risk of severe harm. 5

 B. Plaintiffs easily meet the Third Circuit’s Court’s multifactor balancing test for proceeding
 anonymously. 8

 C. Those similarly situated to the Plaintiffs have been granted “Doe” status in..... 11
 other cases. 11

IV. CONCLUSION..... 12

I. INTRODUCTION

Plaintiffs respectfully submit this memorandum in support of the Motion for Leave to Proceed in Pseudonym in order to protect their identities. Plaintiffs, or their family members, are farmers who live in the Bajo Aguán Valley of Honduras – a region that is widely regarded as the most dangerous place in the world for lands rights defenders like Plaintiffs.

Plaintiffs and the farmer cooperative groups to which they belong have been the subjects of violence – including battery, kidnapping, and murder – by public and private security forces working on behalf of local palm oil tycoons as retaliation for Plaintiffs’ advocacy activities asserting rights to land which they have farmed for decades. These violent acts of retaliation and Defendant’s role in those acts are the subject of Plaintiffs’ complaint against the IFC Asset Management Company (“Defendant”), lodged concurrently with this motion. Plaintiffs allege that the Defendant financed and enabled these attacks against them and their family members through its relationship with the Honduran palm oil company, Corporación Dinant (“Dinant”), which Plaintiffs allege is responsible for killing scores of farmers in the Bajo Aguán region of Honduras since the mid-1990s. The violence Plaintiffs complain of continues to this day. Only last month, security forces working on behalf of Dinant violently murdered a farmer who resided in Plaintiffs’ community while he was cultivating a small plot of corn beside a river that abuts a Dinant farm. *See* Declaration of Juliana Bird (“Bird Decl.”) ¶ 57, filed herewith.

Due to the highly sensitive nature of this case and the very real potential that Plaintiffs and their immediate family members could be physically harmed if their identities were connected with the subject matter of this lawsuit, Plaintiffs respectfully request that this Court allow them to proceed via pseudonym. Plaintiffs would be extremely hesitant to continue to seek legal redress in this case should they be denied this request, as they fear the litigation would put

their lives and the lives of their families at substantial risk. Plaintiffs justifiably fear physical and mental harm, and even death, against themselves and their families, committed in retaliation against their complaint. They easily meet the test for proceeding as Doe Plaintiffs, and this Court should grant Plaintiffs' motion to file this lawsuit under pseudonym in order to ensure their safety.¹

II. STATEMENT OF FACTS

Plaintiffs are farmers – or the family members of farmers – who live in the Bajo Aguán Valley of Honduras. Since at least the mid 1990's, farmer groups in the Bajo Aguán region of Honduras have struggled to defend their lands against large palm oil tycoons, including the notorious Dinant Corporation and its late owner Miguel Facussé. Plaintiffs complain that Dinant has used fraud, deception, coercion and outright violence to deprive Plaintiffs of their land; and for nearly two decades they and the farmer groups to which they belong have openly challenged Dinant's claims to their land – including in multiple lawsuits in Honduras. In response to these efforts, Dinant security personnel – which includes a dangerous array of several hundred private guards; active military working under a memorandum of understanding with Dinant; and, on information and belief, dangerous paramilitary groups and hitmen – have terrorized Plaintiffs and the farmer groups to which they belong in retaliation for their advocacy. Even the lawyers who have represented the farmers groups have been violently killed. *See* Bird Decl. ¶¶ 32, 51. This bloodshed has increased dramatically since the Defendant's parent company, the International Finance Corporation (IFC), began financing and backing Dinant in 2009. This bloodshed further intensified when Defendant IFC-AMC began channeling additional funding

¹ Should the Court so desire, Plaintiffs are prepared to file under seal an affidavit containing the true identities of all named plaintiffs and plaintiff decedents.

and support to Dinant in 2011. Since that time, forces linked to Dinant have killed dozens of farmers and their advocates.

The bloodshed in the region is one piece of an increasingly dangerous landscape in Honduras. Honduras is recognized by intergovernmental organizations, human rights organizations and the United States government as one of the most violent countries in the world. Globally, Honduras features one of the highest murder rates; and the violence in the Bajo Aguán is one of the reasons Honduras ranks so highly. Bird Decl. ¶¶ 21, 46 & Ex. W. Moreover, land activists in Honduras face the highest number of killings per capita in the world. Bird Decl. ¶ 23 & Ex. J. The high murder rate is linked to powerful corporate interests, and most murders remain unsolved. Bird Decl. ¶¶ 24–7.

The risk of violence against land defenders in Honduras is exacerbated in the Bajo Aguán Valley – the home of the Plaintiffs. The Bajo Aguán is a “no go zone.” Bird Decl. ¶ 28. Even personnel at the U.S. Embassy in Honduras are forbidden from taking overnight trips to the area because it is one of the most dangerous travel destinations in the country. Bird Decl. ¶ 47. Farmers and land rights activists are among the most vulnerable in the Bajo Aguán, especially those that are members of farmer movement organizations that challenge land grabbing by Dinant and other agribusinesses. *See* Bird Decl. ¶¶ 21–8. The murders of farmers and activists in the Bajo Aguán account for the majority of all killings in Honduras. Bird Decl. ¶¶ 21–3 & Ex. G. And this excludes the many others that have disappeared. Bird Decl. ¶¶ 15, 28 & Ex. G.

According to a 2013 report by Juliana Bird, there were at least eighty-eight killings linked to the farmer movements in the Bajo Aguán between November 2009 and February 2013. Bird Decl. ¶ 18 & Ex. D. Many of these murders are associated with Dinant’s security personnel. Bird Decl. ¶¶ 19–20, 51. Lawyers associated with the farmer movements have also been killed. In 2012, Antonio Trejo Cabrera was murdered shortly after he scored a judicial victory against

Dinant over disputed land. Bird Decl. ¶ 32. Mr. Trejo's murder was widely reported and condemned by the United Nations. Bird Decl. ¶¶ 32, 51 & Ex. L.

The risk of physical reprisals also extends to those who seek to publicize the systemic violence in the Bajo Aguán. As a result, few independent media outlets or journalists attempt to report on the situation. Bird Decl. ¶ 19. Journalists who undertake to expose human rights violations in the region have been threatened and intimidated. *Id.* Even the author of the declaration filed in support of this motion, who is an expert on the human rights situation in Honduras, has faced many death threats because of her efforts to challenge and broadcast Dinant's complicity in the violence in the Aguán. Bird Decl. ¶¶ 20, 45.

Plaintiffs also face a distinct danger as members of the following farmer movement organizations: "Movimiento Campesino Recuperación del Aguán" (MOCRA), "Movimiento Campesino Fundación Gregorio Chávez" (MCRGC), Movimiento Unificado Campesino del Aguán" (MUCA), and "Movimiento Auténtico Reivindicador Campesino del Aguán (MARCA)." On May 8, 2014, the Inter-American Commission on Human Rights (IACHR) granted Precautionary Measures to members of these groups. Bird Decl. ¶¶ 11–5 & Ex. B. The IACHR concluded that the members of the groups, "have been subject to killings, disappearances, kidnappings, torture, threats, violent evictions, persecution, and accusations, for the alleged purpose of forcing them to sell their lands." Bird Decl. ¶ 15. Precautionary Measures are only granted in severe circumstances in which the beneficiary is at risk of grave and irreparable harm against her life and physical integrity. States are ordered to adopt measures to protect the beneficiary such as creating a security plan. Honduras has yet to adopt adequate or effective protection measures for the Plaintiffs. Bird Decl. ¶ 17.

The granting of Precautionary Measures attests to the risks Plaintiffs face daily, as members in farmer movement organizations challenging Dinant. Because of their membership

and activism, Dinant's security personnel have physically terrorized, or even killed, some of the Plaintiffs and their family members. There is no indication that the violence will end any time soon. In fact, only one month ago, a farmer who lived and worked alongside Plaintiffs was murdered in broad daylight by security forces working on behalf of Dinant while he peacefully cultivated a small plot of corn. *See* Bird Decl. ¶ 57. Plaintiffs legitimately fear that publicizing their names here in a lawsuit against one of Dinant's financiers will put them and their families at risk for even more terror. Indeed, as recently as last November 2016, hitmen killed two family members of an advocate for the farmers after she allowed some of the Plaintiffs to hold a meeting in her home. Bird Decl. ¶ 54.

Thus, in light of the ongoing abuses and murders committed by private, military and paramilitary forces, Plaintiffs seek to proceed anonymously.

III. ARGUMENT

A. Courts regularly permit plaintiffs to file under pseudonym where, as here, disclosure of their identities would place them at risk of severe harm.

Proceeding under a pseudonym is permitted where a plaintiff can show "(1) a fear of severe harm, and (2) that the fear of severe harm is reasonable." *Doe v. Megless*, 654 F. 3d 404, 408 (3d Cir. 2011) (quoting *Doe v. Kamehamecha Sc./Bernice Pauahi Bishop Estate*, 596 F.R.D. 612, 614 (E.D.Pa. 1990)).

In *Doe v. Megless*, the United States Court of Appeals for the Third Circuit recognized the need for a balancing test to "determine if a litigant's reasonable fear of severe harm outweighs the public's interest in open judicial proceedings." 654 F. 3d at 408 (quoting *Kamehamecha*, 596 F.3d at 1043). *See also Doe v. C.A.R.S. Protection Plus, Inc.*, 527 F.3d 358, 371 n. 2 (3d Cir. 2008). The Third Circuit ultimately endorsed the test set forth in *Doe v. Provident Life and Acc. Ins. Co.*, 176 F.R.D. 464 (E.D.Pa.1997), which lays out a "non-exhaustive list of factors to be weighed both in favor of anonymity and also factors that favor the traditional rule of openness." *Megless*,

654 F. 3d at 409 (citing *Provident Life*, 176 F.R.D. at 467). Factors in favor of allowing plaintiffs to proceed anonymously include:

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.

Factors that weigh against allowing plaintiffs to proceed anonymously include:

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;
3. Whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated

Megless, 654 F. 3d at 409 (citing *Provident Life*, 176 F.R.D. at 467–68). The Third Circuit emphasized that this list of factors is neither exhaustive nor comprehensive. *Id.*

Although this Court has not yet applied the test endorsed by the Third Circuit to evaluate motions to proceed under pseudonym, other District Courts in this Circuit have successfully done so. Indeed, the Third Circuit acknowledged in *Megless* that many District Courts had already been applying the nine factors “successfully and without further guidance.” 654 F. 3d at 409–10 (citing *Doe v. United Behavioral Health*, No. 10-5192, 2010 WL 5173206, *2 (E.D.Pa. Dec. 10, 2010); *F.B. v. East Stroudsburg Univ.*, No. 3:09cv525, 2009 WL 2003363, *2 (M.D.Pa. July 7, 2009); *Doe v. Hartford Life and Acc. Ins. Co.*, 237 F.R.D. 545, 548 (D.N.J.2006); *Doe v. Evans*, 202 F.R.D. 173, 175–76 (E.D.Pa.2001)).

Since the *Megless* ruling, sister courts in this Circuit have continued to apply the *Provident Life* balancing test, and have granted motions to proceed pseudonymously on numerous occasions. *See, e.g., Doe v. Osbrin*, 299 F.D.R. 100, 103–04 (D.N.J.2014) (permitting an alleged victim of child pornography to proceed anonymously due to “risk of continued and/or future harm in the event Plaintiff’s identity is publically disclosed); *Jones v. OSS Orthopaedic Hospital*, 1:16-cv-1258, 2016 WL 3683422, *1 (M.D.Pa. July 12, 2016) (permitting plaintiff to proceed anonymously because “disclosure of her identity will result in an [sic] social stigma in some quarters” due to her HIV positive status); *L.A. v. Hoffman*, No. 14-6895, 2015 WL 4461852, *2 (D.N.J. July 21, 2015) (permitting plaintiffs to proceed anonymously after finding that they had “raised particularized concerns regarding the fear of harassment and retribution at work.”).

When District Courts in the Third Circuit have denied motions to proceed pseudonymously under the *Provident Life* test, it is typically because the moving party has alleged only the possibility of “embarrassment or economic harm” or has not taken sufficient steps to conceal his or her identity. *See, e.g., Doe v. Temple University*, No. 14-04729, 2014 WL 4375613, *1–2 (E.D.Pa. Sept. 3, 2014); *B.L. v. Zong*, No. 3:15-cv-1327, 2017 WL 1036474, *4 (M.D.Pa. March 17, 2017).

Other circuits have acknowledged that the risk of violent reprisals weighs in favor of permitting plaintiffs to proceed anonymously. *See Doe v. I.N.S.*, 867 f.2D 285, 286 n.1 (6th Cir. 1989) (permitting petitioner to proceed anonymously in order to protect petitioner’s family from possible reprisals by Chinese government or others in China); *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981) (permitting plaintiffs to proceed anonymously because they were at risk of harassment and violent reprisals by a “community hostile to the viewpoint reflected in plaintiffs’ complaint”); *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1980) (noting that a government witness could face deadly retaliation from fellow prison inmates if his identity were revealed);

Does I Thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1062–63 (9th Cir. 2000) (permitting plaintiffs filing under the Fair Labor Standards Act to proceed anonymously due to their “objectively reasonable fear of extraordinary retaliation” if their identities were disclosed and they were deported back to China).

B. Plaintiffs easily meet the Third Circuit’s Court’s multifactor balancing test for proceeding anonymously.

On balance, the elements weigh in favor of allowing Plaintiffs to proceed anonymously. The Plaintiffs easily meet the multifactor balancing test endorsed by the Third Circuit in *Megless*. To begin, the Plaintiffs clearly satisfy the six factors that militate in favor of permitting anonymity:

1. The Plaintiffs have taken “significant efforts” to keep identifying information and their involvement in this case concealed. *Osbrin*, 299 F.D.R. at 103 (citing *Megless*, 654 F. 3d at 409). They are filing this Motion simultaneously with their Complaint, and have “diligently attempted to prevent disclosing their involvement in this case” by removing any reference to their identities in any of the pleadings, motions, and/or exhibits included in this filing. *Hoffman*, 2015 WL 4461852, at *2. In a previous civil suit filed and subsequently voluntarily dismissed in the U.S. District Court for the District of Columbia, the court granted the Plaintiffs’ motion to proceed anonymously, finding that Plaintiffs had made “a satisfactory showing . . . of a legitimate interest in avoiding retaliatory physical harm for filing this case that might occur if their identities were publically disclosed.” Order Granting Motion for Leave to Proceed in Pseudonym, *Juana Doe 1 v. International Finance Corp.*, No. 1:17-cv-003663 (D.D.C. March 9, 2017). Plaintiffs’ identifying information was consistently concealed in filings before that court.
2. The Plaintiffs have substantial and significant bases to fear disclosure. They and their families have suffered from a campaign of violence financed by the Defendant, and have a strong and well-founded fear that they will face even more violence and psychological

- trauma if their names and addresses are disclosed. The “substantiality of th[e] bases” of this fear is evidenced through the accompanying Declaration of Juliana Bird and Exhibits, which demonstrate the climate of violence and impunity that dominates the Bajo Aguán region where Plaintiffs reside. Land rights defenders like the Plaintiffs have been killed in recent months and years for speaking out against human rights abuses. Bird Decl. ¶ 8, 54. The potential for violent reprisals threatens the physical and mental health of the Plaintiffs and of their family members, who are innocent non-parties.
3. The public’s interest in encouraging these kinds of suits militates in favor of allowing the plaintiffs to proceed anonymously. Courts in this Circuit have found that it is in the public interest to allow victims of crimes such as sexual assault and child pornography to proceed anonymously, “so that other victims will feel more comfortable suing to vindicate their rights.” *Osbrin*, 299 F.D.R. at 104 (citing *Doe v. Evans*, 202 F.R.D. 173, 176 (E.D.Pa.2001)). The same logic applies to this case. The public has a strong interest in providing victims of horrific violence a forum in which they can safely seek a remedy for the abuses they have suffered. It is therefore in the public interest to ensure that plaintiffs that are alleging human rights violations and fear retributive violence can proceed anonymously, so that future victims will “feel more comfortable suing the vindicate their rights.” *Id.*
 4. Conversely, there is little public interest in ascertaining the identities of the Plaintiffs. Public interest in this case hinges not on the specific identities of the individual plaintiffs, but rather on the legal issues raised by the case. *Hoffman*, No. 14-6895, 2015 WL 4461852, at *2 (citing *Lozano v. city of Hazelton*, 496 F.Supp.2d 477, 513 (M.D.Pa. 2007)). Although the Plaintiffs are moving to conceal their identities, the proceedings will remain public, “thereby preserving any general public interest in the subject matter of

this litigation” and allowing the public to follow the course of the proceedings. *Oshrin*, 299 F.D.R. at 104 (D.N.J.2014) (citing *Provident Life*, 176 F.R.D. at 468); *Doe v. Evans*, 202 F.R.D. 173, 176 (E.D.Pa.2001)). *See also*, *Freedom from Religion Found., Inc. v. Connellsville Area Sch. Dist.*, 2013 WL 2296075 (W.D.Pa. May 24, 2013). While the public has a “right to scrutinize government functioning,” that right is not “completely impaired by a grant of anonymity” as “[p]arty anonymity does not obstruct the public’s view of the issues joined or the court’s performance in resolving them.” *See Stegall*, 653 F.2d at 184.

5. As discussed above, the public has a significant interest in providing victims of horrific violence and abuse with a forum in which they can safely advance their claims without fear of retribution and further harm. That interest would be undermined were the Plaintiffs denied the opportunity to proceed under pseudonym here. Given the nature of the injuries Plaintiffs have suffered, along with the very real and ongoing violence in their communities, Plaintiffs would be extremely hesitant to continue to seek legal redress in this case should they be denied this request, as they fear the litigation would put their lives and the lives of their families at substantial risk.
6. The Plaintiffs’ sole motivation in seeking to proceed pseudonymously is to abate the threat of violent reprisals against themselves and their families. They have no illegitimate ulterior motives for wishing to proceed anonymously.

Against these six factors, which strongly weigh in favor of anonymity, the three factors weighing against it are weak or negligible:

1. For the reasons discussed above, there is no reason why the public would be especially interested in knowing the names of these plaintiffs, who are ordinary private citizens and subsistence farmers.

2. The plaintiffs are not public officials or figures “for whom the public possesses a heightened interest.” *Osbrin*, 299 F.D.R. at 104.
3. The Defendant not yet presented any opposition to anonymity, and their concerns can be addressed if and when they do so. The risk of unfairness to the Defendant in granting this Motion – a factor that has been considered in other Circuits when evaluating motions to proceed pseudonymously – is low, because they will be “fully apprised of all relevant information related to the Plaintiff[s].” *Doe v United States Dep’t of State*, 2015 U.S. Dist. LEXIS 173937 (D.D.C. Nov. 3, 2015). Plaintiffs are prepared to provide this court with a statement of their true identities and addresses under seal.

Finally, though not explicitly mentioned as a factor in the *Provident Life* test, at least one of the Plaintiffs is a minor. This Federal Rules of Civil Procedure recognize the special privacy interests of minors by specifically providing that minors’ names can always be redacted to include only their initials. Fed. Rules Civ. Proc. Rule 5.2 (a). Minor plaintiffs present a have a “special vulnerability” associated with their age, which weighs in favor of their being permitted to proceed pseudonymously. *See Stegall*, 653 F.2d at 186. In this case, this “special vulnerability” is compounded, given the threat of violent reprisals.

C. Those similarly situated to the Plaintiffs have been granted “Doe” status in other cases.

Plaintiffs facing violent reprisals are often permitted to file with their identifying information concealed when they allege human rights violations. *See Doe I v. Nestle USA, Inc.*, 766 F.3d 1013 (9th Cir. 2014); *Doe I v. Cisco Systems, Inc.*, 66 F. Supp. 3d 1239 (N.D. Cal. 2014); *Doe v. Drummond Co.*, No. 7:09-CV-01041-RDP, 2009 WL 9056091 (N.D. Ala. Nov. 9, 2009). Indeed, plaintiffs have proceeded anonymously in human rights cases, where, as here, they and their families continue to reside in the country where the abuses have occurred. *See Doe v. Saravia*, 348 F. Supp. 2d 1112 (E.D. Cal. 2004); *Doe v. INS*, 867 F.2d 285, 286 n.1 (6th Cir. 1989). Courts

have also permitted pseudonymous plaintiffs in cases alleging attacks by paramilitary forces, *see John Doe et al. v. Chiquita Brands Int'l et al.*, No. 08-80421 (S.D. Fla.) and military forces, *see Doe v. Unocal Corp.*, 248 F.3d 915 (9th Cir. 2001); *Doe v. Exxon Mobil Corp.*, 473 F.3d 345 (D.C. Cir. 2007), and they face retaliation from these groups. Accordingly, granting Plaintiffs a pseudonymous status here is appropriate.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that their Motion for Leave to Proceed under Pseudonym be granted.

Dated: October 24, 2017

Respectfully submitted,

/s/Misty A. Seemans

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