IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

NAVY SEALS 1-26, et al., Plaintiffs, v. **JOSEPH R. BIDEN, JR.**, in his official capacity as President of the United States, et al., Defendants.	Case No. 4:21-cv-01236-O

DEFENDANTS' OPPOSITION
TO PLAINTIFFS' MOTION TO PROCEED ANONYMOUSLY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

INTRODUCTION

All 35 Plaintiffs have moved to proceed anonymously in this case. Under our system of justice, there is a presumption that judicial proceedings be open to the public and for the identities of the parties to be public knowledge. A plaintiff may overcome this presumption only by making an extraordinary showing justifying the request to proceed anonymously. Plaintiffs fail to make the extraordinary showing required to meet this burden.

BACKGROUND

Plaintiffs are 35 anonymous service members in the U.S. Navy's Special Warfare ("NSW") community who do not wish to take a COVID-19 vaccine. *See* Compl. ¶ 1, ECF No. 1. They filed this suit to challenge the Department of Defense's ("DoD") COVID-19 vaccine directive, as well as the Navy's guidance implementing that directive. Compl. ¶¶ 100–257. They seek, among other things, to enjoin the DoD and the Navy from implementing the COVID-19 vaccine directive. *Id.* at 37 (Prayer for Relief ¶ (D)).

Plaintiffs filed a motion for a protective order under Federal Rule of 26(c), seeking to proceed pseudonymously in this action. Pls.' Mot., ECF No. 26. Plaintiffs claim they face risks to the operational security of their missions and of future inability to participate in certain missions if their identities are revealed, fears of being ostracized within the NSW community, risks to their personal security, and a desire not to disclose their religious beliefs. *Id.* at 2. All Plaintiffs submitted declarations, many of which are identical and lack details supporting their reasons for wishing to remain anonymous. *See generally* Pls.' Mot. for Protective Order App. (hereinafter "Pls.' App."), ECF No. 29.

LEGAL STANDARDS

There is "a clear and strong First Amendment interest in ensuring that '[w]hat transpires in

the courtroom is public property.'" *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981) (quoting *Craig v. Harney*, 331 U.S. 367, 374 (1947)); *see also Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 492 (1975) (recognizing the importance of openness in judicial proceedings); *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992) ("Lawsuits are public events."). Federal Rule of Civil Procedure 10(a) thus "require[s] plaintiffs to disclose their names in the instrument they file to commence a lawsuit." *Stegall*, 653 F.2d at 185 (citing Fed. R. Civ. P. 10(a)). "Public access to this information is more than a customary procedural formality; First Amendment guarantees are implicated when a court decides to restrict public scrutiny of judicial proceedings." *Id.* (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S. Ct. 2814, 2829 & n.17 (1980)); *see also In re U.S. Off. of Pers. Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 81 (D.C. Cir. 2019) (Williams, J., concurring in part and dissenting in part) (stating that "pseudonymous filing impinges on values key to fair adjudication and a free society"). Accordingly, the Fifth Circuit has recognized that there is a "constitutionally-embedded presumption of openness in judicial proceedings." *Stegall*, 653 F.2d at 186; *see also Doe ex rel. Doe v. Harri*s, No. CIV.A. 14-0802, 2014 WL 4207599, at *1 (W.D. La. Aug. 25, 2014) (noting a "strong presumption that the proceedings and records should be subject to public scrutiny" (citing *Richmond Newspapers*, 448 U.S. 555)), *aff'd*, No. CIV.A. 14-0802, 2015 WL 5664255 (W.D. La. Sept. 24, 2015)).

Given this "strong presumption" of openness in judicial proceedings, "[o]nly in rare instances have parties been allowed to proceed anonymously." *Victoria W. v. Larpenter*, No. CIV. A. 00-1960, 2001 WL 406334, at *1, *2 (E.D. La. Apr. 17, 2001). In determining whether to grant this exception to its ordinary practices, the Court must "balanc[e] . . . considerations calling for maintenance of a party's privacy against the customary and constitutionally embedded presumption of openness in judicial proceedings." *Stegall*, 653 F.2d at 186. Courts have found

anonymity warranted "in a select number of cases involving matters of a sensitive and highly personal nature, such as birth control, abortion, homosexuality, and the welfare rights of illegitimate children and abandoned families." *Rose v. Beaumont Indep. Sch. Dist.*, 240 F.R.D. 264, 266 (E.D. Tex. 2007) (citing *S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe* ("*SMU*"), 599 F.2d 707, 712–13 (5th Cir. 1979)).

The Fifth Circuit has identified three factors "common to those exceptional cases in which the need for party anonymity overwhelms the presumption of disclosure":

> (1) plaintiffs seeking anonymity [are] suing to challenge governmental activity;
>
> (2) prosecution of the suit compel[s] plaintiffs to disclose information 'of the utmost intimacy;' and
>
> (3) plaintiffs [are] compelled to admit their intention to engage in illegal conduct, thereby risking criminal prosecution.

Stegall, 653 F.2d at 185 (citing *SMU*, 599 F.2d 707). These factors do not, however, form a "rigid, three-step test for the propriety of party anonymity," as there is "no hard and fast formula for ascertaining whether a party may sue anonymously." *Id.* Thus, "[i]n addition to these three commonly cited factors, courts have also considered the relevant facts and circumstances of a particular case when assessing whether a plaintiff may proceed under a fictitious name." *Rose*, 240 F.R.D. at 266. Courts have considered, for example, "a party's age and related vulnerability," as well as "potential threats of violence, in conjunction with the other factors," though courts have cautioned that "the threat of a hostile public reaction to a lawsuit, standing alone, will rarely justify anonymity." *Id.*; *see also Doe v. Beaumont Indep. Sch. Dist.*, 172 F.R.D. 215, 217 (E.D. Tex. 1997) (finding that even the threat of hostile public reaction to a lawsuit will only "with great rarity warrant public anonymity" (quoting *Stegall*, 653 F.2d at 186)). "In the end, the primary concern underlying the relevant factors is whether the plaintiff likely would suffer real and serious harm if she were not permitted to use a pseudonym." *Harris*, 2014 WL 4207599, at *2 (citing *Larpenter*,

2001 WL 406334, at *2).

ARGUMENT

Plaintiffs have not met their burden of demonstrating exceptional circumstances that would justify their use of pseudonyms in this case. Application of the *Stegall* factors here shows that the presumption of openness in judicial proceedings outweighs any privacy interest that Plaintiffs have advanced.

A. Plaintiffs' Challenge to Government Activity Does Not Weigh in Favor of Granting Plaintiffs' Request for Anonymity.

First, although Plaintiffs challenge government activity (i.e., the DoD COVID-19 directive and the Navy's implementation of that directive), the fact that "the defendants here are government officials does not move the needle toward anonymity." Order Denying Motion for Leave to Proceed Anonymously at 3, *Doe v. Austin*, 3:21-cv-01211-AW-HTC (N.D. Fla. Dec. 1, 2021), ECF No. 49 (denying service members' motion for leave to proceed anonymously in a challenge to the DoD directive). Indeed, "in only a very few cases challenging governmental activity can anonymity be justified." *Stegall*, 653 F.2d at 186; *see also Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 686 (11th Cir. 2001) ("[N]o published opinion that we are aware of has ever permitted a plaintiff to proceed anonymously merely because the complaint challenged government activity.").

Whether a plaintiff is suing the government or an individual "is significant because governmental bodies do not share the concerns about 'reputation' that private individuals have when they are publicly charged with wrongdoing." *Rose*, 240 F.R.D. at 266–67. "Thus, basic fairness dictates that litigants suing a private party participate in the suit under their real names." *Doe v. El Paso Cty. Hosp. Dist.*, No. EP-13-CV-00406-DCG, 2015 WL 1507840, at *3 (W.D. Tex. Apr. 1, 2015).

"But the reverse is not necessarily true: *SMU* does not stand 'for the proposition that there is more reason to grant a plaintiff's request for anonymity if the plaintiff is suing the government.'" *Id.* (quoting *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992)); *Freedom From Religion Found., Inc. v. Emanuel Cty. Sch. Sys.*, 109 F. Supp. 3d 1353, 1357 (S.D. Ga. 2015) ("It is not that suing the government weighs in favor of granting a request for anonymity; rather, the operative principle is that a suit against a private party weighs against a plaintiff's request for anonymity."). Thus, had Plaintiffs sought only declaratory or injunctive relief against government officials in their official capacity, this factor would be "neutral." *El Paso Cty. Hosp. Dist.*, 2015 WL 1507840, at *3; *see also Frank*, 951 F.2d at 324 ("[T]he fact that Doe is suing the Postal Service does not weigh in favor of granting Doe's request for anonymity.").

Two points illustrate why this factor is not just neutral, it actually leans against anonymity. First, Plaintiffs are seeking "[a]ctual damages, under *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020), in the amount of pay Plaintiffs will lose as a result of Defendants' [allegedly] discriminatory vaccine policies under the Religious Freedom Restoration Act." Compl. at 37 (Prayer for Relief ¶ (F)). Because Plaintiffs are seeking payment from public funds, the public has a heightened interest in their identities. *See A.N. v. Landry*, 338 F.R.D. 347, 352 n.5 (M.D. La. 2021) (noting that the plaintiffs sought restitution and finding that "[a]ny such restitution award would be paid through public funds, which arguably heightens the public's interest in Plaintiffs' identities"); *Rose*, 240 F.R.D. at 268 (finding that plaintiff's "pursuit of monetary relief" weighed against anonymity).

Second, the government is not the only defendant in this action. Plaintiffs chose to sue both Secretary of Defense Lloyd Austin and Secretary of the Navy Carlos Del Toro in their individual capacities. *See* Compl. at 1. Specifically, Plaintiffs allege that Secretary Austin and Secretary Del Toro "violat[ed] Plaintiffs' rights under the Religious Freedom Restoration Act"

and Plaintiffs seek nominal damages against them. Compl. at 37 (Prayer for Relief ¶ (G)). Therefore, even though "Plaintiff[s] challenge[] governmental activity, [they have] named individual parties as defendants in addition to the government, and the 'mere filing of a civil action against other private parties may cause damage to their good names and reputation and may also result in economic harm.'" *El Paso Cty. Hosp. Dist.*, 2015 WL 1507840, at *4 (quoting *SMU*, 599 F.2d at 713). Accordingly, "this factor weighs against anonymity." *Id.* (finding that this factor weighed against anonymity when plaintiff sued the government but also U.S. Customs and Border Protection agents in their individual capacities); *see also Rose*, 240 F.R.D. at 267 (finding the governmental activity factor to weigh against permitting anonymity where plaintiff sued a school district as well as individuals employed by the school district); *Doe v. City Univ. of N.Y.*, No. 21-cv-9544 (NRB), 2021 WL 5644642, at *4 (S.D.N.Y. Dec. 1, 2021) (finding that because plaintiff sued government officials "in both their official and individual capacities," "this factor does not weigh in favor of allowing plaintiff to proceed anonymously").

B. Plaintiffs Will Not Be Required to Disclose Information of Utmost Intimacy.

1. Job Title

As to the second *Stegall* factor, Plaintiffs argue that this suit will require them to disclose their positions in the U.S. Navy, which they claim is information of the "utmost intimacy" because disclosure would "jeopardize[]" "both the operational security of respective [*sic*] their missions and their own personal security." Pls.' Mot. 3. Plaintiffs specifically claim that "anonymity in their positions is often of the highest importance." *Id.* at 5 (citing all of Plaintiffs' declarations). And all Plaintiffs submitted declarations with the following language (tailored to their position in the Navy):

> 3. Due to the nature of my service as a U.S. Navy SEAL, the protection of my identity is of the utmost importance. Proceeding without a protective order would

> risk the operational security of my mission with the United States Navy by disclosing my name, location, and my position as a U.S. Navy SEAL to enemy forces.
>
> 4. Further, disclosing such information would risk my personal security, as well as the security of my family.
>
> 5. Finally, certain duties in my job require that my identity as a U.S. Navy SEAL remain anonymous.

See, e.g., Decl. of U.S. Navy SEAL 1 ¶¶ 3–5 (Pls.' App. 000003), ECF No. 29. These contentions are unsupported by any record evidence, and, for some Plaintiffs, are belied by information that they voluntarily posted about themselves on social media.

As an initial matter, it is the military, not Plaintiffs, that determines whether disclosure of Plaintiffs' identities will jeopardize the operational security of their missions. The military has not concurred in Plaintiffs' purported "operational security" concerns and, thus, those concerns are unfounded. *See* Navy Social Media Handbook, App029–30 (showing a list of categories of information that should not be posted on social media that does not include a service member's name or job title); COMNAVSPECWARCOM Instruction 3432.2A, App051–52 (same).[1] The Court should therefore disregard Plaintiffs' argument that disclosure of their identities will comprise the mission of the Navy.

In any event, a job title is not the type of intimate information for which courts in this circuit typically grant anonymity. *See SMU*, 599 F.2d at 712–13 (collecting cases and listing "birth control, abortion, homosexuality, [and] the welfare rights of illegitimate children or abandoned families" as examples of "matters of a sensitive and highly personal nature" (footnotes omitted)). Plaintiffs cite to one out-of-circuit case, *Bird v. Barr*, for the proposition that the sensitive nature

[1] The instruction governing the Navy Special Warfare community prohibits posting "Personally Identifying Information," which is, for example, an individual's date of birth or Social Security Number, but is not an individual's name or job title. *See* COMNAVSPECWARCOM Instruction 3432.2A, App051–52; *see also* Fed. R. Civ. P. 5.2.

of their job duties requires anonymity. *See* Pls.' Mot. 4–5 (citing *Bird v. Barr*, No. 19-cv-1581, 2019 WL 2870234, at *5 (D.D.C. July 3, 2019)). But in *Bird*, the defendants did not dispute the operational concerns of revealing the identities of members of federal law enforcement and intelligence communities; indeed, the *Bird* defendants had not yet been served and defense counsel had not yet entered an appearance at the time the court granted the plaintiffs' motion to proceed anonymously. *See generally* 2019 WL 2870234. Thus, the circumstances underlying the court's opinion in *Bird* are entirely different from this case, where the Navy has not embraced Plaintiffs' purported operational concerns.

In addition, Plaintiffs' conclusory allegations concerning the alleged risks to their personal safety and the safety of their families if their identities are disclosed are insufficient to meet their burden to proceed anonymously. *See United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978) (stating that a party seeking a protective order under Rule 26(c) must make "a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements"); *Choice, Inc. of TX v. Graham*, 226 F.R.D. 545, 547 (E.D. La. 2005) (citing *Garrett*, 571 F.2d at 1326 n.3); *Fields v. City of Sherman, Tex.*, No. 418CV00821ALMCAN, 2018 WL 11339879, at *3 (E.D. Tex. Nov. 28, 2018) (finding that the plaintiff's "conclusory . . . assertions do not justify allowing Plaintiff to proceed under a pseudonym"). All Plaintiffs claim that "disclosing such information would risk my personal security, as well as the security of my family." *See, e.g.*, Decl. of U.S. Navy SEAL 1 ¶ 4 (Pls.' App. 000003), ECF No. 29. But no Plaintiff explains why they fear any risk to their personal safety or the safety of their families or provide any evidence concerning the likelihood that they will suffer any harm. *See, e.g.*, *id.* One Plaintiff, U.S. Navy Special Warfare Combatant Craft Crewman ("SWCC") 1, makes the bare allegation that "[m]embers of Naval Special Warfare whose identities have been made public have been

threatened on social media by extremist groups." *See, e.g.*, Decl. of U.S. Navy SWCC 1 ¶ 4 (Pls.' App. 000107). But Plaintiff SWCC 1's implication that "'it has happened before, therefore it *might* happen here' argument [is] insufficient to justify a protective order concealing Plaintiffs' identities." *Beaumont Indep. Sch. Dist.*, 172 F.R.D. at 217 (citing *Garrett*, 571 F.2d at 1326 n.3); *see also Doe v. Heritage Acad., Inc.*, No. CV-16-03001-PHX-SPL, 2017 WL 6001481, at *9 (D. Ariz. June 9, 2017) (finding same); *Doe v. Pittsylvania Cnty., Va.*, 844 F. Supp. 2d 724, 733–34 (W.D. Va. 2012) (same); *Freedom From Religion Found., Inc. v. Cherry Creek Sch. Dist. # 5*, No. CIV.A.07-CV-02126-MS, 2009 WL 2176624, at *6 (D. Colo. July 22, 2009) (same).

Plaintiffs' declarations provide no evidence that they or their families have been subject to any threats of physical harm, and no evidence to support a finding that they are at a risk of harm. Without such evidence, the Court should reject their unsubstantiated assertions. *See Stegall*, 653 F.2d at 186 ("Evidence on the record indicates that the Does may expect extensive harassment and perhaps even violent reprisals if their identities are disclosed . . . ."); *Doe v. Compact Info. Sys., Inc.*, No. 3:13-CV-5013-M, 2015 WL 11022761, at *7 (N.D. Tex. Jan. 26, 2015) (finding that the plaintiff's "claims of potential abuse are simply unsubstantiated" because she did not provide evidence that she "was subjected to any physical abuse, or that she is at risk of any future abuse from her former abuser"); *Beaumont Indep. Sch. Dist.*, 172 F.R.D. at 217 (noting that unlike in *Stegall*, "the record in this case contains no threats of violence").

Finally, Plaintiffs' claim that "anonymity in their positions is often of the highest importance," Pls.' Mot. 5 (citing all of Plaintiffs' declarations), rings especially hollow as to four Plaintiffs in particular—Plaintiff SWCC 4, Explosive Ordnance Disposal Technician ("EOD") 1, Navy Diver 1, and Navy Diver 3—who have clearly identified their job titles and their locations on their public LinkedIn pages. *See* SealedApp001 (Plaintiff SWCC 4 identifying their job title,

membership in the NSW community, and location, as well as including a profile picture); SealedApp005 (Plaintiff EOD 1 identifying both their job title and location, as well as including a profile picture), SealedApp008 (Plaintiff Navy Diver 1 identifying both their job title and location), SealedApp010 (Plaintiff Navy Diver 3 identifying both their job title and location). Plaintiffs SWCC 4 and EOD 1 even included profile pictures of the individual Plaintiffs in uniform on their LinkedIn pages. *See* SealedApp001, SealedApp005. Plaintiffs' voluntary and public assertions of their job titles, locations, and, in the case of Plaintiffs SWCC 4 and EOD 1, a profile picture, entirely undercut those Plaintiffs' purported concerns for their personal safety and the safety of their families if their identities as members of the NSW community are revealed.[2] Thus, while none of the Plaintiffs have substantiated their claim to proceed anonymously, Plaintiffs SWCC 4, EOD 1, Navy Diver 1, and Navy Diver 3 in particular have no basis to argue that "[d]ue to the nature of my service as a U.S. Navy SWCC," "EOD" or "Diver," disclosure of their identities "would risk the operational security of my mission with the United States Navy by disclosing my name, location, and my position as a U.S. Navy SWCC [or EOD or Diver] to enemy forces." *See* SWCC 4 Decl. ¶ 3 (Pls.' App. 000119), EOD 1 Decl. ¶ 3 (Pls.' App. 000127), Navy Diver 1 Decl. ¶ 3 (Pls.' App. 000131), Navy Diver 3 Decl. ¶ 3 (Pls.' App. 000139), ECF No. 29; *cf. Rose*, 240 F.R.D. at 268 (finding that because the plaintiff "helped promote media coverage of the events" at issue in the lawsuit, "she cannot now complain to the court about the potential for future coverage").

2. Religious Beliefs

Plaintiffs also argue that they will be forced to disclose personal matters if they are not

[2] In addition to these LinkedIn pages, newspaper articles identify Plaintiff Navy SEAL 16 and Navy Diver 1 by name and job title. *See* SealedApp015, SealedApp021.

permitted to proceed anonymously because they are challenging the Navy's alleged "refusal to issue exemptions from the COVID-19 vaccine mandate based on the Plaintiffs' sincerely held religious beliefs." Pls.' Mot. 4. Although this Circuit has recognized that "religion is perhaps the quintessentially private matter," *Stegall*, 653 F.2d at 186, the law does not support granting pseudonym status merely because the case touches on a plaintiff's religious beliefs, *see Freedom From Religion Found.*, 109 F. Supp. 3d at 1357–58 ("While religion is certainly an individual matter of conscience that is constitutionally shielded from government intervention, it is generally practiced openly and communally, and no court from this or any other circuit has considered a plaintiff's religious beliefs to be a matter of such sensitivity as to automatically entitle the plaintiff to Doe status." (citing *Santa Fe Indep. School Dist. v. Doe*, 530 U.S. 290, 301–02 (2000); *Stegall*, 653 F.2d at 185–86)).

Plaintiffs rely on *Stegall* for their argument that because they will be "required to make revelations about their personal religious beliefs and practices," they are entitled to proceed anonymously.[3] Pls.' Mot. 4 (citing Pls.' Decls.) (brackets omitted). But the circumstances of this case are different from those in *Stegall*. In that case, a mother and her two children sought to proceed under "fictitious names with their suit challenging the constitutionality of prayer and Bible reading exercises in Mississippi public schools." 653 F.2d at 181. The court permitted anonymity based on the combination of three circumstances. First, the court found that the plaintiffs' claims necessarily involved "revelations about the[] [plaintiffs'] personal beliefs and practices," putting

[3] Plaintiffs also rely on *Compact Information Systems*, *see* Pls.' Mot. 3–4, but the plaintiff in that case sought to proceed anonymously because she was a former domestic violence victim, not because the case involved her religious beliefs, *see* 2015 WL 11022761, at *3. And in any event, as the *Compact Information Systems* court recognized, the fact that the case involves a plaintiff's "personal religious beliefs" "might"—but does not automatically—"justify allowing a plaintiff to proceed anonymously." 2015 WL 11022761, at *4.

their religious beliefs "at the core of th[eir] suit to vindicate establishment clause rights." *Id.* at 186. Second, the court determined that "[e]vidence on the record indicates that the Does may expect extensive harassment and perhaps even violent reprisals if their identities are disclosed to a Rankin County community hostile to the viewpoint reflected in plaintiffs' complaint." *Id.* And, third, the court found "especially persuasive . . . that plaintiffs are children," who faced "special vulnerability" from "threats of retaliation against the Does for filing [the] lawsuit." *Id.* In considering the totality of these circumstances, the *Stegall* court concluded that the plaintiffs' privacy outweighed the "customary and constitutionally-embedded presumption of openness in judicial proceedings." *Id.*; *see also Freedom From Religion Found.*, 109 F. Supp. 3d at 1358 (stating that even "[i]n Establishment Clause cases, . . . something more is required than just an intrusion into a plaintiff's religious privacy before a court will allow the plaintiff to proceed using a pseudonym" (citing *Pittsylvania Cnty.*, 844 F. Supp. 2d at 729; *Cherry Creek Sch. Dist.*, 2009 WL 2176624; *Beaumont Indep. Sch. Dist.*, 172 F.R.D. 215)).

Two of the three circumstances that the *Stegall* court considered persuasive are not present here. Specifically, Plaintiffs present no record evidence that they will be subject to harassment or violent reprisals if their religious views are made public. *See* Order Denying Motion for Leave to Proceed Anonymously at 5, *Doe v. Austin*, 3:21-cv-01211-AW-HTC (N.D. Fla. Dec. 1, 2021), ECF No. 49 (in a related challenge to DoD's COVID-19 vaccine directive, denying the plaintiffs' motion to proceed anonymously because, among other reasons, "they have not asserted a need to keep their religious beliefs private"). And Plaintiffs are not minors and thus face no special vulnerability from threats. *See Doe v. Sante Fe Indep. Sch. Dist.*, 933 F. Supp. 647, 652 (S.D. Tex. 1996) (in a challenge to the constitutionality of various religious practices occurring in a public school system, allowing a trial to be partially closed to protect the identities the minor plaintiffs,

but not to protect the identities of the adult plaintiffs). Accordingly, even though Plaintiffs bring First Amendment and Religious Freedom Restoration Act claims, because no other circumstance in this case leans toward anonymity, Plaintiffs' motion should be denied. *See Doe v. Bush*, No. CIV. SA04CA1186FB, 2005 WL 2708754, at *4 (W.D. Tex. Aug. 17, 2005) (recommending that an Air Force service member's request to proceed anonymously be denied even though she challenged an Air Force policy that allegedly prevented users from accessing religiously based internet sites and the case involved her personal religious beliefs), *report and recommendation adopted sub nom. Sims v. Bush*, No. CIV.SA-04-CA-1186-FB, 2005 WL 3337501, at *3 (W.D. Tex. Sept. 6, 2005) (agreeing that "plaintiff has not established that her case falls within the narrow category of exceptional cases where the need for confidentiality outweighs the strong constitutional interest of openness of judicial proceedings"); *City Univ. of N.Y.*, 2021 WL 5644642, at *3 (denying a student's motion to proceed anonymously in a challenge to a university's COVID-19 vaccination policy even though the university had denied his request for a religious exemption and "his religious beliefs [were] at issue" in the case).

C. Plaintiffs Will Not Be Compelled to Admit Illegal Conduct and Thus Risk Criminal Prosecution.

As for the *Stegall* third factor, Plaintiffs concede that they will not be compelled to admit their intention to engage in illegal conduct and thus risk criminal prosecution. *See* Pls.' Mot. 3. Thus, this factor thus weighs against anonymity.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion to proceed anonymously should be denied.

Dated: December 16, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

ALEXANDER K. HAAS
Director, Federal Programs Branch

ANTHONY J. COPPOLINO
Deputy Director

/s/Courtney D. Enlow
ANDREW E. CARMICHAEL
AMY E. POWELL
Senior Trial Counsel
STUART J. ROBINSON
Senior Counsel
ZACHARY A. AVALLONE
COURTNEY D. ENLOW (NC Bar No. 46578)
LIAM HOLLAND
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20005
Tel: (202) 616-8467
Fax: (202) 616-8470
Email: courtney.d.enlow@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2021, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/Courtney D. Enlow
COURTNEY D. ENLOW
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20005
Tel: (202) 616-8467
Fax: (202) 616-8470
Email: courtney.d.enlow@usdoj.gov