IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOHN DOE 1, a minor, by and through his parent and natural guardian JANE DOE 1; JOHN DOE 2, a minor, by and through his parent and natural guardian JANE DOE 2; JOHN DOE 3, a minor, by and through his parent and natural guardian JANE DOE 3; on behalf of themselves and all others similarly situated Plaintiffs, v. NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY; EDDIE M. BUFFALOE, JR., Secretary of the North Carolina Department of Public Safety, in his official capacity; WILLIAM L. LASSITER, Deputy Secretary of the Division of Juvenile Justice and Delinquency Prevention, in his official capacity; PETER BROWN, Facility Director of the Cabarrus Regional Juvenile Detention Center, in his official capacity, Defendants.	**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO PROCEED PSEUDONYMOUSLY** ____-CV-_____

John Doe 1, John Doe 2, and John Doe 3 ("Plaintiffs"), by and through their undersigned counsel and parents and natural guardians Jane Doe 1, Jane Doe 2, and Jane Doe 3 (collectively, "Movants"), respectfully submit the following memorandum of law

and seek an Order from this Court permitting Movants to proceed in this action pseudonymously to safeguard their privacy and physical and emotional wellbeing.[1]

INTRODUCTION

Plaintiffs John Doe 1, John Doe 2, and John Doe 3 are juveniles held pre-adjudication in the Cabarrus Regional Juvenile Detention Center (the "Cabarrus Juvenile Jail") located in Concord, North Carolina. Movants, together with all other Plaintiffs similarly situated, bring this action against Defendants North Carolina Department of Public Safety, Eddie M. Buffaloe, Jr., William L. Lassiter, and Peter Brown (collectively, the "Defendants") challenging the solitary confinement of juveniles at detention centers across North Carolina and alleging violations of the Eighth and Fourteenth Amendments to the United States Constitution.

Movants seek leave to proceed pseudonymously because of John Doe 1, John Doe 2, and John Doe 3's ages, to protect their privacy, and to prevent harm or retaliation while Plaintiffs remain in Defendants' custody. Movants fear for the personal safety of John Doe 1, John Doe 2, and John Doe 3 should their identities become known. Plaintiffs are juvenile detainees subject to the oversight and custody of the Defendants whose very conduct they seek to challenge. As minors in a vulnerable position, John Doe 1, John Doe 2, and John Doe 3 are at risk of discrimination, harassment, violence, and other forms of retribution due to their status as named Plaintiffs. Plaintiffs' parents and natural guardians, Jane Doe

[1] To protect their privacy pending consideration of this Motion, Movants have used the pseudonyms they seek permission to proceed under in both the Complaint and this Motion.

1, Jane Doe 2, and Jane Doe 3 also seek to proceed pseudonymously to further protect the identities of their minor children, as disclosure of the parents' identity would necessarily disclose the identity of their children. Accordingly, Plaintiffs and their parents and natural guardians respectfully move for leave to proceed under the pseudonyms John Doe 1, John Doe 2, John Doe 3, and Jane Doe 1, Jane Doe 2, Jane Doe 3, respectively.

ARGUMENT

While the Federal Rules of Civil procedure require a complaint state the names of all parties, the decision whether to allow a plaintiff to proceed anonymously is within the discretion of the trial court. Fed. R. Civ. P. 10(a); *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993). The Fourth Circuit has recognized that in "appropriate circumstances anonymity may, as a matter of discretion, be permitted. This simply recognizes that privacy or confidentiality concerns are sometimes sufficiently critical that parties or witnesses should be allowed this rare dispensation." *James*, 6 F.3d at 238.

Significantly, Rule 5.2 of the Federal Rules of Civil Procedure specifically recognizes the need to protect a minor's identity, providing that litigants may not use a minor's name and can only use a minor's initials in filings. *See* Fed. R. Civ. P. 5.2(a)(3). A plaintiff may proceed under a pseudonym if the Court concludes the plaintiff's "privacy interests substantially outweigh the presumption of open judicial proceedings." *Doe v. Pub. Citizen*, 749 F.3d 246, 274 (4th Cir. 2014).

The Fourth Circuit has outlined several non-exhaustive considerations when a plaintiff requests to proceed under a pseudonym. They include:

> (1) the justification asserted by the requesting party and whether it is to preserve privacy in a matter of sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm; (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; and (5) the risk of unfairness to the opposing party.

Doe v. Doe, 85 F.4th 206, 211 (4th Cir. 2023) (citing *James*, 6 F.3d at 238). These factors all support Plaintiffs' requested relief.

I. Movants Should be Permitted to Proceed Pseudonymously Because They Are Minors.

Plaintiffs' ages weigh heavily in favor of proceeding anonymously. As the Fifth Circuit has noted, "we view the youth of these plaintiffs as a significant factor in the matrix of considerations arguing for anonymity here." *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981).

Fed. R. Civ. P. 5.2(a)(3) requires that minors' identities are protected in court filings by the required use of their initials unless they affirmatively waive that protection. However, "[t]o identify initials of the minors and the full name of any guardian appointed would appear to defeat the purpose of Rule 5.2." *Doe v. United States*, No. 1:17CV183, 2017 WL 11610523, at *1 (M.D.N.C. Sept. 12, 2017). To remedy this, Courts can also enter an order requiring the redaction of "additional information," including initials, upon a showing of "good cause." *See* Fed. R. Civ. P. 5.2(e). Courts frequently allow minor plaintiffs to proceed under pseudonyms due to heightened privacy protections. *Yacovelli*

v. Moeser, No. 1:02CV596, 2004 WL 1144183, at *7 (M.D.N.C. May 20, 2004) (citing *Stegall*, 653 F.2d at 186).

By virtue of their ages, Plaintiffs have been ordered to the custody of Defendants and held in the Cabarrus Juvenile Jail. As discussed above, requiring John Doe 1, John Doe 2, and John Doe 3, ages 15, 16, and 17, respectively, to proceed under their names or even initials, will effectively disclose their identities and place them at risk of retaliation, harm, and disclosure of highly sensitive information. Similarly, requiring Jane Doe 1, Jane Doe 2, and Jane Doe 3 to proceed under their real names has the same affect. The Complaint necessarily pleads highly detailed experiential information which could be used to identify Plaintiffs especially when combined with their parents' names or initials.

Courts have additionally permitted parents and guardians suing on behalf of minors to proceed anonymously to protect the children's identities recognizing that a minor child and "his parents' privacy interests are intractably intertwined" and that "a parent's identity, if disclosed, could jeopardize the child's confidentiality." *G.D. v. Kannapolis City Sch. Bd. of Educ.*, No. 1:22cv1001, 2023 WL 2538927, at *4 (M.D.N.C. Mar. 16, 2023) (quoting *J.W. v. District of Columbia*, 318 F.R.D. 196, 199 (D.D.C. 2016)); *see also B.J. v. D.C.*, No. 1:19-CV-02163, 2019 WL 13394150, at *3 (D.D.C. July 19, 2019) (weighing plaintiff's mother's request to proceed pseudonymously under the *James* five-part test and holding the child's identity would effectively be revealed if the mother was not permitted to proceed under a pseudonym); *Eley v. D.C.*, No. 16-CV-806, 2016 WL 6267951, at *2 (D.D.C. Oct. 25, 2016) (the protections extended to a child by Federal Rule 5.2(a)(3) would

be eviscerated unless the parent or guardian is granted anonymity as the child's identity would effectively be revealed through a combination of the name of the parent or guardian and the child's initials).

Accordingly, the age of Plaintiffs weighs heavily in favor of allowing Movants to proceed pseudonymously.

II. This Action Concerns Sensitive and Highly Personal Matters.

It is acknowledged that while privacy concerns of general embarrassment are valid, these do not weigh as heavily as in other circumstances involving a more serious risk of disclosure of more intimate personal information. *Doe v. North Carolina Central University*, No. 1:98CV01095, 1999 WL 1939248, at *1 (M.D.N.C. April 15, 1999).

Plaintiffs' juvenile court records, mental health records, and medical histories are among the sensitive and highly personal information at risk of disclosure in this matter. Plaintiffs are in Defendants' custody awaiting adjudication of their juvenile court cases. Disclosure of information related to those cases and Plaintiffs' broader juvenile record is prohibited by both state and federal law. For example, 18 U.S.C. § 5038 governs use of juvenile records and ensures records are safeguarded by prohibiting disclosure to unauthorized sources. Additionally, North Carolina General Statute§ 7B-3000(b) provides that all juvenile court records shall be withheld from public inspection and may be examined only by order of the court, subject to limited exceptions. Not only is it crucial that information regarding any juvenile court records remain confidential and not be made public, but other records created adjacent to a juvenile's court case, including a juvenile's

delinquency records, consultations with law enforcement, family background information, and reports of social, medical, psychiatric, or psychological information concerning a juvenile must also be withheld from public record and inspection pursuant to North Carolina statute. N.C.G.S. § 7B-3001(a)–(c); *see Vang v. Ashby*, No. 1:18CV565, 2020 WL 5764388, at *4 (M.D.N.C. Sept. 28, 2020) (the state's compelling interest in protecting a minors' privacy outweighs the public's right of access to confidential state court records).

Moreover, the Fourth Circuit has recognized that "a litigant's identity may not be as important in purely legal or facial challenges." *Doe v. Settle*, 24 F.4th 932, 939 n.5 (4th Cir. 2022) (citing *Doe v. Megless*, 654 F.3d 404, 409 (3d Cir. 2011)). The action before this Court concerns a purely legal challenge to the constitutionality of the conditions of confinement imposed by Defendants. Challenges of this nature may give rise to public interest; however, the public interest in knowing the specific minor litigants' identities is weak. It is entirely possible for the Court to keep the proceeding open to the public while still maintaining the confidentiality of Plaintiffs' identities. This is so because "[t]he crucial interests served by open judicial proceedings are not compromised by allowing a party to proceed anonymously. If a plaintiff is granted leave to proceed under a pseudonym, the public is not denied its right to attend the proceedings or inspect the court's opinions and orders on the underlying constitutional issue." *Doe v. Virginia Polytechnic Inst. & State Univ.*, No. 7:18-cv-170, 2018 WL 5929647, at *2 (W.D. Va. Nov. 13, 2018) (internal citations omitted). Therefore, as the personal information subject to disclosure here is patently "sensitive and highly personal", already subject to confidentiality

requirements under law, and the action presents a pure legal challenge, this factor weighs in favor of anonymity.

III. Plaintiffs Have Brought this Action Against the Government.

Another factor that weights in favor of Movants is that they filed this action against a governmental entity. When a plaintiff challenges a government entity or government activity, courts are more likely to permit a plaintiff to proceed under a pseudonym compared to when a plaintiff brings suit against private individuals accused publicly of wrongdoing. *See Doe v. N.C. Central Univ.*, 1999 WL 1939248, at *4. Pseudonyms in cases challenging the government differ from those involving private parties, as actions against private individuals may harm their reputations. *See Painter v. Doe*, No. 3:15-CV-369, 2016 WL 3766466, at *6 (W.D.N.C. July 13, 2016) (citing *Doe v. Pittsylvania Cnty., Va.,* 844 F.Supp.2d 724, 730 (W.D. Va. 2012)). Actions "challenging the constitutional, statutory or regulatory validity of government activity," on the other hand, generally "involve no injury to the Government's 'reputation.'" *Doe v. N. Carolina Cent. Univ.*, 1999 WL 1939248, at *4 (citing *S. Methodist Univ. Ass'n of Women L. Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979)).

This action has been brought against government entities and officials, not private individuals. While there is a "heightened public interest when an individual or entity files a suit against the government," *Pub. Citizen*, 749 F.3d at 274 (citing *Megless*, 654 F.3d at 411), there is nothing about the current proceedings that creates a need for transparency with respect to the minor Plaintiffs' identities. Like the plaintiffs in *Kannapolis City Sch.*

Bd. of Educ., Plaintiffs here challenge government action to primarily vindicate their own rights and those of individuals similarly situated, and anonymity is necessary to provide Plaintiffs the opportunity to defend those rights. "To deny Plaintiff's request under the circumstances of this case might not only prevent Plaintiff from proceeding on her claim, but might also discourage others . . . from asserting their claims. . . ." *Doe v. Standard Ins. Co.*, 1:15-cv-00105, 2015 WL 5778566, at *3 (D. Me. Oct. 2, 2015).

Accordingly, this factor additionally weighs in favor of permitting Movants to proceed under pseudonym.

IV. Identification Poses a Significant Risk of Retaliatory Harm.

The risk that Plaintiffs are identified and could face retaliatory harm also weighs in Plaintiffs' favor. If the identities of John Doe 1, John Doe 2, and John Doe 3 were disclosed, they could be targeted and subject to retaliatory physical or mental harm from the very parties they have filed this action against. Courts routinely look for "aggravating factors" or "evidence" as a means to determine whether a risk of harm truly exists. *Doe v. Doe,* 85 F.4th at 213. There can be no clearer aggravating factor to support the risk of harm here than the fact that Plaintiffs remain in the secure custody of Defendants while they challenge Defendants' unjustified, inhumane, and unconstitutional practice of holding juveniles in solitary confinement.

Plaintiffs raise this challenge on behalf of themselves and others similarly situated to redress the flagrant civil rights abuses being committed by Defendants. A greater degree of anonymity is heavily supported by the fact that it is likely that Plaintiffs would be

individually identified by use of initials considering the Cabarrus Juvenile Jail only has 62 cells. As Plaintiffs are challenging the conditions within Defendants' facilities, including confinement of juveniles to small cells for 23 hours a day or more for weeks to months without justification, the risk of retaliation is considerable.

Identification would be detrimental to John Doe 1, John Doe 2, and John Doe 3's physical and mental health. They could easily be targeted within the facility and subjected to further punitive measures for their lawsuit against Defendants. It is of the utmost importance to protect these juveniles by withholding their identities when they possess no means to remove themselves from the oversight, custody, and control of Defendants.

V. Defendants Face No Risk of Unfairness or Prejudice.

Finally, the last factor also weighs in favor of granting Plaintiffs' motion as Defendants would suffer no "risk of unfairness" if the motion were granted. *Yacovelli*, 2004 WL 1144183, at *8. Plaintiffs have pled no personal accusations or raised issues of credibility or reputational harm. Indeed, Plaintiffs solely challenge the existing, and documented, conditions of confinement and treatment within Defendants' facilities. The factual basis for which this suit was brought and the fact that Plaintiffs are held in Defendants' facilities are already known to Defendants. Defendants' preparation of this case will not be hindered by Plaintiffs proceeding pseudonymously, as they will still be able to obtain all the information necessary to respond to the constitutional challenges raised. Thus, allowing Plaintiff to proceed pseudonymously would not compromise Defendants' ability to defend this action.

CONCLUSION

The totality of the factors to be considered by this Court in deciding whether to allow Movants to proceed pseudonymously weigh in favor of granting Movants' motion. The age of the Plaintiffs, the nature of the action as a lawsuit against a governmental entity, the highly sensitive and private nature of the information at issue, and danger of harm or retaliation due to the ongoing conditions of custody, support granting the motion in this case. Moreover, granting this motion will not prejudice Defendants or the public. For these reasons, Movants respectfully request that the Court allow Movants to proceed pseudonymously.

Dated this 8th day of January, 2024.

[*signatures on next page*]

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the foregoing complies with the type-volume requirements of L.R. 7.3(d)(1) and contains 2,538 words, excluding those portions exempted by the rule.

Dated: January 8, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2024, I served each Defendant via certified mail upon their registered agent, Ashby T. Ray, Archdale Building, 14th Floor, 512 N. Salisbury Street, Raleigh, NC 27604-1159.

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