

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 18-24145-Civ-WILLIAMS/TORRES

JOHN DOE, Nos. 1-5,

Plaintiffs,

v.

RICHARD L. SWEARINGEN, in
his official capacity as Commissioner
of the Florida Department of Law
Enforcement,

Defendant.

ORDER ON PLAINTIFFS' MOTION FOR CLARIFICATION

This matter is before the Court on John Does Nos. 1-5's ("Plaintiffs") motion for clarification on Plaintiffs' prior motion to proceed anonymously. [D.E. 41]. Richard L. Swearingen ("Defendant" or "FDLE") responded to Plaintiffs' motion on June 4, 2019 [D.E. 44] to which Plaintiffs did not reply and the time to do so has passed. Therefore, Plaintiffs' motion is now ripe for disposition. After careful consideration of the motion, response, relevant authority, and for the reasons discussed below, Plaintiffs' motion is **GRANTED in part** and **DENIED in part**.

I. ANALYSIS

Plaintiffs are registered sex offenders challenging the constitutionality of Fla. Stat. § 943.0435 as infringing on their rights to be free from ex post facto laws, from deprivations of their substantive and procedural due process rights, and from cruel

and unusual punishment. Plaintiffs claim that they have a substantial privacy right that outweighs any need for their identities to be disclosed to the public. They allege that they belong to one of the most reviled group of people in the community whose members experience constant harassment, ostracism, hostility, and violent vigilantism because of public notifications.

On January 3, 2019, the Court granted in part and denied in part Plaintiffs' motion to proceed anonymously. [D.E. 25]. The Court found that Plaintiffs presented good cause to preclude Defendants from the public dissemination of Plaintiffs' identities. We also determined that Defendant was entitled to know the identity of his accusers and to alleviate the concerns of both parties, we directed them to confer and agree upon a stipulated protective order. The agreement would "protect Plaintiffs' substantial privacy interests while allowing Defendant[] to efficiently defend against Plaintiffs' claims." *Doe v. Strange*, 2016 WL 1168487, at *2 (M.D. Ala. Mar. 24, 2016).

Since that time, the parties have conferred but have been unable to agree upon a stipulated protective order. Plaintiffs claim that the disagreement concerns whether the protective order should restrict the disclosure of Plaintiffs' identities to only those agents of FDLE who are "needed" to defend this case. Plaintiffs contend that FDLE employs 1,900 people and that there is only a fraction of those individuals who might be involved in pretrial proceedings. Plaintiffs are therefore concerned that, if a protective order is not narrowly tailored to the individuals defending this case, the disclosure of their identities to the remainder of FDLE's

employees will substantially increase the risk that their identities will be disclosed to the public. Because any disclosure makes them a target for harassment and violence, Plaintiffs request that the Court require FDLE to only disclose Plaintiffs' identities to those employees and agents necessary for the defense of this case.

We agree with Plaintiffs that the public dissemination of their identities – as sex offenders in their quest to invalidate a Florida statute – subjects them to a real threat of violence and danger. We also agree to some extent that a protective order should include language that only relevant FDLE employees are knowledgeable of Plaintiffs' identities. On the other hand, we are aware that FDLE is an extremely large state agency with a vast array of programs and functions, some of which may overlap. FDLE is responsible, for example, of maintaining information for Florida's registrants and it is certainly possible that employees may inevitably learn of Plaintiffs' identities in the performance of their official duties. While those employees may not be considered “necessary” for the defense of this case, the limitation that Plaintiffs propose could conceivably render FDLE in violation of the protective order through the performance of official duties.

With that being said, we find that a compromise between the two competing proposals is the best way to resolve the dispute presented. Plaintiff requests that we limit the dissemination of their identities to *only* those FDLE agents that are deemed necessary in this defense of this action. But, as Defendant points out, that limitation might be too restrictive given that some employees involved with the registry of sex offenders may need to know this information as part of their official

job duties. Yet, Defendant's proposal is overbroad because there is no need for 1900 employees to have access to Plaintiffs' identities even if the terms of a protective order prohibit any dissemination to the public. To strike the appropriate balance, Plaintiffs' identities shall be restricted to those agents of FDLE that are necessary to defend this case and to any employee that has a reasonable connection, in their official job duties, to know of this information. This limitation ensures that Plaintiffs' identities are restricted only to relevant employees so that FDLE may defend this case and so that agents may perform their official duties without fear of violating the Court's protective order. Accordingly, Plaintiffs' motion for clarification is **GRANTED in part** and **DENIED in part**.¹

II. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that Plaintiffs' motion for clarification is **GRANTED in part** and **DENIED in part**. [D.E. 41]. The parties shall confer and submit a stipulated protective order that safeguards Plaintiffs' identities and that complies with the terms set forth above.

DONE AND ORDERED in Chambers at Miami, Florida, this 13th day of June, 2019.

/s/ Edwin G. Torres

EDWIN G. TORRES
United States Magistrate Judge

¹ Although the dissemination of Plaintiffs' identities is restricted to the terms set forth above, any employee of FDLE who discovers, albeit accidentally, Plaintiffs' names is precluded from sharing that information with any member of the public.