

Nos. 23-35440 & 23-35450

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee*

v.

THE STATE OF IDAHO  
*Defendant-Appellant*

---

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee*

v.

THE STATE OF IDAHO  
*Defendant*

v.

MIKE MOYLE, Speaker of the Idaho House of Representatives; et al.,  
*Movant-Appellants*

---

On Appeal from the United States District Court  
for the District of Idaho  
No. 1:22-cv-00329-BLW  
Hon. B. Lynn Winmill

---

**BRIEF OF *AMICI CURIAE* GLOBAL JUSTICE CENTER, AMNESTY  
INTERNATIONAL, AND IPAS IMPACT NETWORK  
IN SUPPORT OF PLAINTIFF-APPELLEE**

---

Christina G. Hioureas  
Nicholas M. Renzler  
FOLEY HOAG LLP  
1301 Avenue of the Americas  
25th Floor  
New York, NY 10019  
*Counsel for Amici Curiae*

## TABLE OF CONTENTS

|                                                                                                                                                                                            |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES .....                                                                                                                                                                 | ii |
| CORPORATE DISCLOSURE STATEMENT .....                                                                                                                                                       | 1  |
| INTEREST OF <i>AMICI</i> .....                                                                                                                                                             | 1  |
| INTRODUCTION AND SUMMARY OF ARGUMENT .....                                                                                                                                                 | 3  |
| ARGUMENT .....                                                                                                                                                                             | 4  |
| I. Idaho’s Near-Total Abortion Ban Jeopardizes the Life, Health and Well-Being of Pregnant People, and Restricts Their Federally Mandated Access to Essential Reproductive Healthcare..... | 4  |
| A. Idaho’s Law Harms the Lives, Health and Well-Being of Pregnant People .....                                                                                                             | 4  |
| B. Idaho’s Law Criminalizes Emergency Care Required by EMTALA...9                                                                                                                          |    |
| C. The Harms of Abortion Restrictions Fall Disproportionately on Marginalized Groups.....                                                                                                  | 15 |
| II. Idaho’s Near-Total Abortion Ban Violates International Human Rights Law.....                                                                                                           | 17 |
| A. The Right to Life .....                                                                                                                                                                 | 18 |
| B. The Right to Be Free from Torture and Other Cruel, Inhuman, or Degrading Treatment.....                                                                                                 | 21 |
| C. The Right to Non-Discrimination .....                                                                                                                                                   | 23 |
| D. The Right to Privacy.....                                                                                                                                                               | 25 |
| E. The Right to Health .....                                                                                                                                                               | 26 |
| III. The Preliminary Injunction Should Be Affirmed.....                                                                                                                                    | 27 |
| CONCLUSION .....                                                                                                                                                                           | 30 |
| CERTIFICATE OF COMPLIANCE.....                                                                                                                                                             | 32 |
| CERTIFICATE OF SERVICE .....                                                                                                                                                               | 33 |

## TABLE OF AUTHORITIES

### Cases

|                                                                                                                                                |         |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| <i>767 Third Ave. Assocs. v. Permanent Mission of Republic of Zaire</i> ,<br>787 F. Supp. 389 (S.D.N.Y. 1992) .....                            | 28      |
| <i>Adkins et al. v. State of Idaho</i> , Case No. CV01-23-14744, Complaint<br>(4th Dist. Idaho 2023) .....                                     | 12      |
| <i>Assoc. Gen. Contractors v. Coal. For Econ. Equity</i> , 950 F.2d (9th Cir. 1991) .....                                                      | 28      |
| <i>Brief of Amici Curiae Economists in Support of Respondents</i> ,<br><i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022) ..... | 16      |
| <i>Ventress v. Japan Airlines</i> , 486 F.3d 1111 (9th Cir. 2007) .....                                                                        | 28      |
| <i>Coriat v. U.S.</i> , No. 22-22788-Civ-Scola, 2023 U.S. Dist. LEXIS 96560<br>(S.D. Fla. June 2, 2023) .....                                  | 29      |
| <i>Flores v. Southern Peru Copper Corp.</i> , 414 F.3d 233 (2d Cir. 2003).....                                                                 | 17      |
| <i>Mora v. New York</i> , 524 F.3d 183 (2d Cir. 2008) .....                                                                                    | 18      |
| <i>Moyle v. U.S.</i> , 144 S. Ct. 2015 (2024) .....                                                                                            | 6, 7, 9 |
| <i>Murray v. The Schooner Charming Betsy</i> , 6 U.S. 64 (1804).....                                                                           | 28      |
| <i>U.S. v. Arizona</i> , 641 F.3d 339 (9th Cir. 2011) .....                                                                                    | 28      |
| <i>U.S. v. Idaho</i> , 623 F. Supp. 3d 1096 (D. Idaho 2022) .....                                                                              | 27      |

### Statutes

|                                |        |
|--------------------------------|--------|
| 42 U.S.C. § 1395 .....         | 13     |
| Idaho Code § 18–604 .....      | 11, 20 |
| Idaho Code § 18-622.....       | 7, 9   |
| La. R.S. § 40:1061 (2023)..... | 8      |

## Constitutional Provisions

U.S. Const. art VI(2) .....28

## Treaties

Convention Against Torture (adopted Dec. 10, 1984,  
entered into force June 26, 1987), 1465 U.N.T.S. 85 ..... 21, 28, 30

Convention on the Elimination of All Forms of Discrimination Against Women  
(adopted Dec. 18, 1979, entered into force Sept. 3, 1981),  
1249 U.N.T.S 13 .....23

Convention on the Rights of the Child (adopted Nov. 20, 1989,  
entered into force Sept. 2, 1990), 1577 U.N.T.S 3 ..... 23, 26

Convention on the Rights of Persons with Disabilities (adopted  
Mar. 30, 2007, entered into force May 3, 2008), 2515 U.N.T.S 3 .....26

International Covenant on Civil and Political Rights(adopted  
Dec. 16, 1966, entered into force Mar. 23, 1976), 999 U.N.T.S. 171 ..... 18, 21, 23

International Convention on the Elimination of All Forms of Racial Discrimination  
(adopted Dec. 21, 1965, entered into force Jan. 4, 1969),  
660 U.N.T.S. 195 ..... 25, 28

International Covenant on Economic, Social and Cultural Rights (adopted Dec. 16,  
1966, entered into force Jan. 3, 1976), 993 U.N.T.S. 3 .....23

Vienna Convention on the Law of Treaties (adopted May 23, 1969, entered into  
force Jan. 27, 1980), 1155 U.N.T.S. 331 ..... 18, 28

## Other Authorities

A. Njoku *et al.*, Listen to the Whispers before They Become Screams: Addressing  
Black Maternal Morbidity and Mortality in the United States,  
11 HEALTHCARE 3 (2023), <https://www.mdpi.com/2227-9032/11/3/438> .....17

A. Redinger & H. Nguyen, Incomplete Abortions, National Library of Medicine  
(June 27, 2022), <https://www.ncbi.nlm.nih.gov/books/NBK559071/>.....5, 8

A. Schmitt *et al.*, Authoritarian Regimes Have More Progressive Abortion Policies  
Than Some U.S. States, American Progress (July 8, 2022),

|                                                                                                                                                                                                                                                                                                                                                                                                 |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| <a href="https://www.americanprogress.org/article/authoritarian-regimes-have-more-progressive-abortion-policies-than-some-u-s-states/">https://www.americanprogress.org/article/authoritarian-regimes-have-more-progressive-abortion-policies-than-some-u-s-states/</a> .....                                                                                                                   | 29 |
| ACOG, <u>Understanding and Navigating Medical Emergency Exceptions in Abortion Bans and Restrictions</u> (Aug. 14, 2022), <a href="https://www.acog.org/news/news-articles/2022/08/understanding-medical-emergency-exceptions-in-abortion-bans-restrictions">https://www.acog.org/news/news-articles/2022/08/understanding-medical-emergency-exceptions-in-abortion-bans-restrictions</a> ..... | 12 |
| Amnesty International, <u>Ireland: She is not a criminal: The impact of Ireland’s abortion law</u> , Index No. EUR 29/1597/2015 (2015), <a href="https://www.amnesty.org/en/documents/eur29/1597/2015/en/">https://www.amnesty.org/en/documents/eur29/1597/2015/en/</a> .....                                                                                                                   | 13 |
| ANSIRH, <u>Care Post-Roe: Documenting cases of poor-quality care since the Dobbs decision – Preliminary Findings</u> (May 2023), <a href="https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf">https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf</a> .....                                            | 20 |
| ANSIRH, <u>The Harms of Denying a Woman a Wanted Abortion: Findings from the Turnaway Study</u> , <a href="https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf">https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf</a> .....                     | 5  |
| B. Frederiksen <i>et. al.</i> , <u>A National Survey of OBGYNs’ Experiences After Dobbs</u> , Kaiser Fam. Found. (June 21, 2023), <a href="https://www.kff.org/report-section/a-national-survey-of-obgyns-experiences-after-dobbs-report/">https://www.kff.org/report-section/a-national-survey-of-obgyns-experiences-after-dobbs-report/</a> .....                                             | 16 |
| B. Thornburg <i>et. al.</i> , <u>Anxiety and Depression Symptoms After the Dobbs Abortion Decision</u> , 331 JAMA 4 (2024), <a href="https://jamanetwork.com/journals/jama/article-abstract/2814133">https://jamanetwork.com/journals/jama/article-abstract/2814133</a> .....                                                                                                                   | 5  |
| CAT Committee, <u>Concluding Observations on the Third Periodic Report of the Philippines</u> , U.N. Doc. CAT/C/PHL/CO/3 (June 2, 2016) .....                                                                                                                                                                                                                                                   | 22 |
| CEDAW Committee, <u>Views of the Committee under Article 7(3) of the Optional Protocol, Concerning Commc’n No. 22/2009</u> , U.N. Doc. CEDAW/C/50/D/222009 (Nov. 4, 2011) (“ <i>L.C. v Peru</i> ”) .....                                                                                                                                                                                        | 26 |
| Committee Against Torture (“CAT Committee”), <u>Concluding Observations on the Seventh Periodic Report of Poland</u> , U.N. Doc. CAT/C/POL/CO/7 (29 Aug. 2019) .....                                                                                                                                                                                                                            | 22 |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                    |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Committee on Economic, Social and Cultural Rights (“CESCR”), <u>General Comment 22 on the Right to Sexual and Reproductive Health</u> , U.N. Doc. E/C.12/GC/22 (May 2, 2016).....                                                                                                                                                                                                                                                                  | 25, 27 |
| Committee on the Elimination of Racial Discrimination, <u>Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America</u> , U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022) .....                                                                                                                                                                                                                              | 30     |
| Committee on the Rights of Persons with Disabilities and Committee on the Elimination of All Forms of Discrimination against Women (“CEDAW Committee”), <u>General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19</u> , U.N. Doc. CEDAW/C/GC/35 (July 26, 2017) .....                                                                                                                        | 22     |
| D. Grossman <i>et al.</i> , <u>Care Post-Roe: Documenting Cases of Poor-Quality Care Since the <i>Dobbs</i> Decision</u> .....                                                                                                                                                                                                                                                                                                                     | 5      |
| E. Howell, <u>Reducing Disparities in Severe Maternal Morbidity and Mortality</u> , 61 CLIN OBSTET. GYNECOL. 2 (2018) .....                                                                                                                                                                                                                                                                                                                        | 4      |
| F. Sellers & F. Nirappil, <u>Confusion Post-Roe Spurs Delays, Denials for Some Lifesaving Pregnancy Care</u> , Washington Post (July 16, 2022), <a href="https://www.washingtonpost.com/health/2022/07/16/abortion-miscarriage-ectopic-pregnancy-care">https://www.washingtonpost.com/health/2022/07/16/abortion-miscarriage-ectopic-pregnancy-care</a> .....                                                                                      | 7      |
| Global Justice Center <i>et al.</i> , <u>Submission to the Human Rights Committee (2023)</u> , <a href="https://www.globaljusticecenter.net/report-to-human-rights-committee-on-us-abortion-bans-as-violations-of-international-covenant-on-civil-and-political-rights/">https://www.globaljusticecenter.net/report-to-human-rights-committee-on-us-abortion-bans-as-violations-of-international-covenant-on-civil-and-political-rights/</a> ..... | 6      |
| Human Rights Committee, <u>Concluding Observations on the Fifth Periodic Report of the United States of America</u> , U.N. Doc. CCPR/C/USA/CO/5 (Dec. 7, 2023) .....                                                                                                                                                                                                                                                                               | 20     |
| Human Rights Committee, <u>General Comment 28 (Article 3: the Equality of Rights Between Men and Women)</u> , U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000) .....                                                                                                                                                                                                                                                                               | 24     |
| Human Rights Committee, <u>General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant</u> , U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).....                                                                                                                                                                                                                                                     | 28     |

|                                                                                                                                                                                                                                                                                                                                                                                                         |            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Human Rights Committee, <u>General Comment 36 (Article 6: Right to Life)</u> ,<br>UN Doc. CCPR/C/GC/36 (Sept. 3, 2019). .....                                                                                                                                                                                                                                                                           | 19         |
| Human Rights Committee, <u>Views Adopted by the Committee Under Article 5(4)<br/>of the Optional Protocol, Concerning Commc’n No. 1153/2003 (“K.L. v. Peru”)</u> ,<br>U.N. Doc. CCPR/C/85/D/1153/2003.....                                                                                                                                                                                              | 25, 26     |
| Human Rights Committee, <u>Views Adopted by the Committee Under Article 5(4)<br/>of the Optional Protocol, Concerning Commc’n No. 1608/2007 (“LMR v.<br/>Argentina”)</u> ,<br>U.N. Doc. CCPR/C/101/D/1608/2007 (Apr. 28, 2011) .....                                                                                                                                                                    | 21, 25, 26 |
| Human Rights Committee, <u>Views Adopted by the Committee Under Article 5(4)<br/>of the Optional Protocol, Concerning Commc’n No. 2324/2013 (“Mellet v.<br/>Ireland”)</u> ,<br>U.N. Doc. CCPR/C/116/D/2324/2013 (Nov. 17, 2016).....                                                                                                                                                                    | 23         |
| Human Rights Committee, <u>Views Adopted by the Committee Under Article 5(4)<br/>of the Optional Protocol, Concerning Commc’n No. 2425/2014 (“Whelan v.<br/>Ireland”)</u> ,<br>U.N. Doc. CCPR/C/119/D/2425/2014 (June 12, 2017) .....                                                                                                                                                                   | 24, 26     |
| International Law Commission, <u>Draft Articles on Responsibility of States for<br/>Internationally Wrongful Acts</u> , U.N. Doc A/56/10 (2001) .....                                                                                                                                                                                                                                                   | 28         |
| J. Lang, <u>What Happens to Women Who are Denied Abortions</u> , N.Y. Times<br>(June 12, 2013), <a href="https://www.nytimes.com/2013/06/16/magazine/study-women-denied-abortion.html?_r=0">https://www.nytimes.com/2013/06/16/magazine/study-women-denied-abortion.html?_r=0</a> .....                                                                                                                 | 5          |
| J. Luchetta, <u>As Emergency Airlifts for Pregnant Patients Increases in Idaho, U.S.<br/>Supreme Court Abortion Case Starts</u> , NPR (Apr. 24, 2024),<br><a href="https://www.boisestatepublicradio.org/health/2024-04-24/moyle-idaho-supreme-court-airlift-abortion-emergency">https://www.boisestatepublicradio.org/health/2024-04-24/moyle-idaho-supreme-court-airlift-abortion-emergency</a> ..... | 11         |
| J. Luchetta, <u>Idaho’s Biggest Hospital Says Emergency Flights For Pregnant<br/>Patients Up Sharply</u> , NPR (Apr. 26, 2024),<br><a href="https://www.npr.org/2024/04/25/1246990306/more-emergency-flights-for-pregnant-patients--in-idaho">https://www.npr.org/2024/04/25/1246990306/more-emergency-flights-for-pregnant-patients--in-idaho</a> .....                                                | 6, 10      |
| K. Backes Kozhimannil <i>et. al.</i> , <u>Abortion Access as a Racial Justice Issue</u> ,<br>387 NEW ENG. J. MED. (2022), <a href="https://pubmed.ncbi.nlm.nih.gov/36069823/">https://pubmed.ncbi.nlm.nih.gov/36069823/</a> .....                                                                                                                                                                       | 16         |

K. Surana, Abortion Bans Have Delayed Emergency Care. In Georgia, Experts Say This Mother’s Death Was Preventable, ProPublica (Sept. 16, 2024), <https://www.propublica.org/article/georgia-abortion-ban-amber-thurman-death>..8

K. Zernike, She Needed an Emergency Abortion. Doctors in Idaho Put Her on a Plane, N.Y. Times (June 28, 2024), <https://www.nytimes.com/2024/06/28/us/emergency-abortion-idaho-mother.html>.....11

L. Gallup and R. Sun, Number of Idaho Abortion Patients Traveling to Washington Up 56% After Roe Overturned, Oregon Public Broadcasting (July 11, 2023), <https://www.opb.org/article/2023/07/10/idaho-abortion-patients-traveling-to-washington-increases-56-percent-after-roe-overturned/> .....16

L. Hill *et. al.*, Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them, Kaiser Fam. Found. (Nov. 1, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities-in-maternal-and-infant-health-current-status-and-efforts-to-address-them/#:~:text=Black%20and%20American%20Indian%20and,care%20compared%20to%20White%20women>.....15

L. Hill *et. al.*, What are the Implications of the Dobbs Ruling for Racial Disparities?, Kaiser Fam. Found. (Apr. 24, 2024), <https://www.kff.org/womens-health-policy/issue-brief/what-are-the-implications-of-the-dobbs-ruling-for-racial-disparities/>.....15

L. Ross, What is Reproductive Justice?, Reproductive Justice Briefing Book: A Primer on Reproductive Justice and Social Change (2007) .....16

Letter from U.N. High Commissioner for Human Rights (May 17, 2021), <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session36/US/HCLetter-USA.pdf> .....30

M. Murray, Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade, 134 HARV. L. REV. 2025 (2021).....16

P. Belluck, They Had Miscarriages, and New Abortion Laws Obstructed Treatment, N.Y. Times (July 17, 2022), <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html> .....5



Physicians for Human Rights, Criminalized Care: How Louisiana’s Abortion Bans Endanger Patients and Clinicians (Mar. 19, 2024), <https://phr.org/wp-content/uploads/2024/03/PHR-Report-Criminalized-Care-March-2024.pdf>.....8

R. Kaye & S. Samaniego, Idaho’s Murky Abortion Law Is Driving Doctors Out of the State, CNN (May 13, 2023), <https://www.cnn.com/2023/05/13/us/idaho-abortion-doctors-drain/index.html>/ .....5

Sens. Elizabeth Warren *et al.*, Post-Roe Abortion Bans Threaten Women’s Lives: Health Care Providers Speak Out on the Devastating Harm Posed by Abortion Bans and Restrictions (Oct. 2022), <https://www.warren.senate.gov/imo/media/doc/Abortion%20Care%20Oversight%20Report1.pdf> .....9

T. Weinberg, Missouri doctors fear vague emergency exception to abortion ban puts patients at risk, Missouri Independent (July 2, 2022), <https://missouriindependent.com/2022/07/02/missouri-doctors-fear-vague-emergency-exception-to-abortion-ban-puts-patients-at-risk/> .....9

UN Working Group on the Issue of Discrimination Against Women in Law and in Practice, Report of the Working Group, UN Doc. A/HRC/32/44 (Apr. 8, 2016).....24

UN Working Group on the Issue of Discrimination Against Women in Law and Practice, Women’s Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends (Oct. 2017), <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf> .....26

Z. Abrams, Abortion Bans Cause Outsized Harm for People of Color, 54 MONITOR ON PSYCH. 4 (2023), <https://www.apa.org/monitor/2023/06/abortion-bans-harm-people-of-color>.....15

## CORPORATE DISCLOSURE STATEMENT

*Amici* are nonprofit organizations that have no parents and issue no stock.

### INTEREST OF *AMICI*<sup>1</sup>

**Global Justice Center** is a non-partisan, non-profit organization dedicated to promoting the enforcement of international law in a progressive, non-discriminatory manner. Global Justice Center works for peace, justice, and security by enforcing international laws that protect human rights and promote gender equality. The organization focuses on and advocating for change in two primary areas: advocating for sexual and reproductive rights and seeking justice for sexual and gender-based violence.

**Amnesty International** is a non-governmental, non-profit organization representing the largest grassroots human rights movement in the world with more than ten million members and supporters. Its mission is to advocate for global compliance with international human rights law, the development of human rights norms, and the effective enjoyment of human rights by all persons. It engages in advocacy, litigation, and education to prevent and end human rights violations and to seek accountability. Amnesty International has researched, documented, and

---

<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. All parties consented to the submission of this brief.

campaigned on the human rights impact and rights violations due to restrictive abortion laws.

**The Ipas Impact Network** works globally to advance reproductive justice. Ipas believes that all people have the right to make fundamental decisions about their own bodies and health. It works with partners across Africa, Asia and the Americas to ensure that reproductive health services, including abortion and contraception, are available and accessible to all.

Together, *amici* share a commitment to ensuring that the United States complies with its obligations under international human rights law.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Idaho's "Defense of Life Act" ("Act" or "Idaho's Law"), a near-total abortion ban, restricts access to necessary emergency reproductive healthcare, exacerbating preventable maternal mortality and morbidity and otherwise negatively impacting pregnant people. The law's narrow exception for life-saving care will not prevent or mitigate these harms and will leave patients without access to emergency reproductive healthcare.

The United States has ratified several human rights treaties that require it to guarantee access to safe and legal reproductive health services, in particular in emergencies or acute medical crises governed by the Emergency Medical Treatment and Active Labor Act ("EMTALA"). Under these treaties, the U.S. is required to respect, protect and fulfil the rights to life; freedom from torture and cruel, inhuman and degrading treatment; non-discrimination; and privacy. Idaho's draconian abortion law fails to respect these rights and violates the U.S.'s treaty obligations.

This violation of the U.S.'s treaty obligations militates in favor of affirming the preliminary injunction issued by the District Court. Causing the U.S. to violate its international obligations will result in irreparable harm and is not in the public interest.

## ARGUMENT

### **I. Idaho’s Near-Total Abortion Ban Jeopardizes the Life, Health and Well-Being of Pregnant People, and Restricts Their Federally Mandated Access to Essential Reproductive Healthcare**

Idaho’s law places pregnant people<sup>2</sup> at significant risk of preventable maternal mortality and morbidity. Evidence from other jurisdictions with similar abortion restrictions demonstrates the devastating impact of denying access to emergency reproductive healthcare, particularly on marginalized individuals and groups that already face barriers to reproductive health and suffer disproportionate rates of preventable maternal mortality and morbidity.<sup>3</sup>

#### *A. Idaho’s Law Harms the Lives, Health and Well-Being of Pregnant People*

Restricting access to reproductive healthcare, including abortion care, harms the physical and mental health and well-being of pregnant people. Denial of abortion care can lead to a broad range of long-lasting harms, including higher rates of eclampsia, postpartum hemorrhage, chronic headaches or migraines, gestational

---

<sup>2</sup> *Amici* refer to pregnant people or pregnant individuals in this brief, recognizing that while the majority of personal experiences with abortion relate to cisgender women and girls, people with other gender identities may have the reproductive capacity to become pregnant. Where statistics or quotes refer specifically to women or girls, this language has been retained for accuracy, but is not meant to exclude other pregnant individuals.

<sup>3</sup> E. Howell, Reducing Disparities in Severe Maternal Morbidity and Mortality, 61 CLIN OBSTET. GYNECOL. 2 (2018) (noting disproportionate rates of maternal mortality and morbidity for Black, American Indian/Alaska Native, and certain Hispanic populations).

hypertension, life-threatening sepsis, and impacted future fertility.<sup>4</sup> Abortion bans have also led to increased depression and anxiety, particularly among individuals aged 18 to 45.<sup>5</sup> Pregnant people who are denied abortions are also more likely to suffer hypertension and chronic pelvic pain, to fall below the poverty line, and to become unemployed.<sup>6</sup>

In the two years since its enactment, the near-total abortion ban has had devastating consequences. Reproductive healthcare providers are leaving the state, driven away by the risk of facing felony charges for their work.<sup>7</sup> As Justice Kagan

---

<sup>4</sup> ANSIRH, The Harms of Denying a Woman a Wanted Abortion: Findings from the Turnaway Study, [https://www.ansirh.org/sites/default/files/publications/files/the\\_harms\\_of\\_denying\\_a\\_woman\\_a\\_wanted\\_abortion\\_4-16-2020.pdf](https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf); P. Belluck, They Had Miscarriages, and New Abortion Laws Obstructed Treatment, N.Y. TIMES (July 17, 2022), <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html>; A. Redinger & H. Nguyen, Incomplete Abortions, National Library of Medicine (June 27, 2022), <https://www.ncbi.nlm.nih.gov/books/NBK559071/>; D. Grossman *et. al.*, Care Post-Roe: Documenting Cases of Poor-Quality Care Since the *Dobbs* Decision at 8.

<sup>5</sup> B. Thornburg *et. al.*, Anxiety and Depression Symptoms After the *Dobbs* Abortion Decision, 331 JAMA 4, 294-301 (2024), <https://jamanetwork.com/journals/jama/article-abstract/2814133>.

<sup>6</sup> ANSIRH, *supra*; see also J. Lang, What Happens to Women Who are Denied Abortions, N.Y. TIMES (June 12, 2013), [https://www.nytimes.com/2013/06/16/magazine/study-women-denied-abortion.html?\\_r=0](https://www.nytimes.com/2013/06/16/magazine/study-women-denied-abortion.html?_r=0).

<sup>7</sup> R. Kaye & S. Samaniego, Idaho's Murky Abortion Law Is Driving Doctors Out of the State, CNN (May 13, 2023), <https://www.cnn.com/2023/05/13/us/idaho-abortion-doctors-drain/in dex.html/>.

noted, concurring with the recent *Moyle v. U.S.* decision, the “on-the-ground impact” of Idaho’s abortion ban was:

immediate. To ensure appropriate medical care, the State’s largest provider of emergency services had to airlift pregnant women out of Idaho roughly every other week, compared to once in all of the prior year (when the injunction was in effect).<sup>8</sup>

Idaho’s law has turned it into a reproductive healthcare desert. The state has lost 22% of its OB/GYNs since the Act went into effect,<sup>9</sup> negatively impacting access to sexual and reproductive healthcare across Idaho.

For pregnant people left to seek treatment from Idaho’s remaining reproductive healthcare providers, accessing necessary medical services is increasingly difficult. One abortion provider in Idaho reported treating a patient who had to visit three hospitals and travel hundreds of miles because she was repeatedly denied care, resulting in an invasive surgery, blood transfusion, and multi-day hospital stay.<sup>10</sup> Delays in care for pregnant patients in critical condition are

---

<sup>8</sup> 144 S. Ct. 2015, 2017 (2024) (Kagan, J., concurring).

<sup>9</sup> J. Luchetta, Idaho’s Biggest Hospital Says Emergency Flights For Pregnant Patients Up Sharply, NPR (Apr. 26, 2024), <https://www.npr.org/2024/04/25/1246990306/more-emergency-flights-for-pregnant-patients--in-idaho>.

<sup>10</sup> Global Justice Center *et al.*, Submission to the HRC at 17 (2023), <https://www.globaljusticecenter.net/report-to-human-rights-committee-on-us-abortion-bans-as-violations-of-international-covenant-on-civil-and-political-rights/>.

unavoidable under the Idaho law, as observed by Justice Jackson in her *Moyle* concurrence:

[U]nless a doctor could actually say that the abortion was necessary to prevent a patient's death, that doctor could no longer provide abortion care that she viewed as reasonably necessary to keep a patient from losing her uterus, going into organ failure, or avoiding any number of other health risks.<sup>11</sup>

Pregnant people in Idaho are not alone. Pregnant individuals across the U.S. living under similar bans have faced serious complications after being denied abortions, including fertility loss and sepsis, psychological and emotional harms, and even death.<sup>12</sup> The Act's narrow exception, permitting abortion only in cases when the pregnant person's life is threatened,<sup>13</sup> does not prevent such permanent and deadly consequences. For example, in 2022, hospital staff in Wisconsin refused to remove fetal tissue from a patient with an incomplete miscarriage for fear that it would violate that state's abortion ban. While the patient survived, it was only after she was left to bleed at home for weeks.<sup>14</sup> Delayed miscarriage care—now common

---

<sup>11</sup> 144 S. Ct. at 2023 (Jackson, J., concurring in part and dissenting in part).

<sup>12</sup> Global Justice Center *et al.*, *supra*, at 12-17.

<sup>13</sup> *See* Idaho Code § 18-622(2)(a)(i), (2)(b)(i).

<sup>14</sup> F. Sellers & F. Nirappil, Confusion Post-Roe Spurs Delays, Denials for Some Lifesaving Pregnancy Care, WASHINGTON POST (July 16, 2022), <https://www.washingtonpost.com/health/2022/07/16/abortion-miscarriage-ectopic-pregnancy-care>.



in states with strict abortion laws—can have fatal consequences, including organ failure, hemorrhaging, and sepsis.<sup>15</sup>

In Georgia, a six-week abortion ban constrains OB/GYNs from providing necessary treatment, resulting in preventable maternal deaths.<sup>16</sup> Though Georgia’s law includes narrow exceptions like Idaho’s, providers in Georgia note the near-impossibility of interpreting and applying the law’s vague, conflicting language, particularly in settings of medical emergencies and under threat of criminal prosecution.<sup>17</sup>

Healthcare providers in Louisiana—a state with an abortion law less restrictive than Idaho’s<sup>18</sup>—have also confirmed the chilling effect of criminalizing abortion. They report “increas[ing] the use of medical procedures and treatments that do not meet the standard of care—heightening risk to patients—and which could have been avoided if they had been able to provide abortion care.”<sup>19</sup>

---

<sup>15</sup> See A. Redinger & H. Nguyen, Incomplete Abortions, National Library of Medicine (June 27, 2022), <https://www.ncbi.nlm.nih.gov/books/NBK559071/>.

<sup>16</sup> See K. Surana, Abortion Bans Have Delayed Emergency Care. In Georgia, Experts Say This Mother’s Death Was Preventable, PROPUBLICA (Sept. 16, 2024), <https://www.propublica.org/article/georgia-abortion-ban-amber-thurman-death>.

<sup>17</sup> *Id.*

<sup>18</sup> La. R.S. § 40:1061 (2023).

<sup>19</sup> Physicians for Human Rights, Criminalized Care: How Louisiana’s Abortion Bans Endanger Patients and Clinicians at 22 (Mar. 19, 2024), <https://phr.org/wp-content/uploads/2024/03/PHR-Report-Criminalized-Care-March-2024.pdf>.

*B. Idaho's Law Criminalizes Emergency Care Required by EMTALA*

There is no dispute that the Idaho abortion law directly criminalizes emergency care that the U.S. reads EMTALA to require.<sup>20</sup> While the near-total abortion ban contains an exception to save a pregnant person's life,<sup>21</sup> in practice, the right to life-saving treatment is undermined by the threat of criminal prosecution and the uncertainty, complexity, and speed associated with urgent medical decisions. This results in healthcare providers delaying or denying abortion care and other necessary reproductive healthcare.<sup>22</sup> Justice Jackson emphasizes that this result is far from speculative; it is reality:

[A] doctor, observing the different legal thresholds for action under state and federal law—not to mention the severe criminal penalties for a miscalculation—would surely be cowed into not providing abortion care that medical standards warrant and federal law requires. Do not take my word for this; *it is already happening*.<sup>23</sup>

---

<sup>20</sup> See 144 S. Ct. at 2024 (Jackson, J., concurring in part and dissenting in part).

<sup>21</sup> See Idaho Code § 18-622(2)(a)(i).

<sup>22</sup> See Sens. Elizabeth Warren *et al.*, Post-Roe Abortion Bans Threaten Women's Lives: Health Care Providers Speak Out on the Devastating Harm Posed by Abortion Bans and Restrictions (Oct. 2022), <https://www.warren.senate.gov/imo/media/doc/Abortion%20Care%20Oversight%20Report1.pdf>; T. Weinberg, Missouri doctors fear vague emergency exception to abortion ban puts patients at risk, MISSOURI INDEPENDENT (July 2, 2022), <https://missouriindependent.com/2022/07/02/missouri-doctors-fear-vague-emergency-exception-to-abortion-ban-puts-patients-at-risk/>.

<sup>23</sup> 144 S. Ct. at 2025 (Jackson, J., concurring in part and dissenting in part) (emphasis in original).

During the period that the District Court’s injunction was stayed, and Idaho’s law was fully in effect, emergency room doctors in Idaho had to ask themselves: “Is she sick enough? Is she bleeding enough? Is she septic enough for me to do this abortion and not risk going to jail and losing my license?”<sup>24</sup> The chief physician at St. Luke’s hospital in Idaho describes doctors’ dilemma: “[W]hen the guessing game gets too uncomfortable, we transfer the patients out at a very high cost to another state where the doctors are allowed to practice medicine.”<sup>25</sup>

Pregnant patients with serious health risks are denied care under Idaho’s law. In critical condition, they are left with no choice but to seek urgent treatment out-of-state, even as travel risks permanent or fatal harm. In June 2024, Idaho resident Nicole Miller suffered heavy bleeding in the twentieth week of pregnancy. When she sought care in a Boise emergency room, the only assistance the treating doctor could provide was to place her on a Utah-bound plane. Despite actively hemorrhaging and leaking amniotic fluid, Ms. Miller was denied care in Idaho because of the Act. Ms. Miller recalls, “He told me he wasn’t willing to risk his 20-year career” running afoul of the Act’s broad prohibition on abortion. At the time, Ms. Miller “couldn’t comprehend” how it could be that she was “standing in front of doctors who know exactly what to do and how to help and they’re refusing to do

---

<sup>24</sup> J. Luchetta, *supra*.

<sup>25</sup> *Id.*

it.”<sup>26</sup> Ms. Miller’s story is one example among many of patients air-lifted out of Idaho to receive emergency care.<sup>27</sup>

In 2023, Idaho amended the Act’s definition of abortion to exclude “the removal of a dead unborn child” and “the removal of an ectopic or molar pregnancy,” thus purportedly exempting these procedures from criminal sanctions.<sup>28</sup> However, this fails to resolve the Act’s conflict with EMTALA’s mandates and does nothing to mitigate the chilling effect on medical practitioners. Justice Jackson notes, “it is both legally and factually implausible to say that Idaho’s current litigating position actually mitigates the conflict between that State’s law and EMTALA. The conflict between state and federal law still exists—in real life.”<sup>29</sup>

As the American College of Obstetricians and Gynecologists (“ACOG”) recognizes, “it is critical for clinicians to be able to use and rely upon their expertise and medical judgment to determine the treatments indicated for each clinical situation and level of care.” It may not become clear until too late that an abortion

---

<sup>26</sup> K. Zernike, She Needed an Emergency Abortion. Doctors in Idaho Put Her on a Plane, N.Y. TIMES (June 28, 2024), <https://www.nytimes.com/2024/06/28/us/emergency-abortion-idaho-mother.html>.

<sup>27</sup> J. Luchetta, As Emergency Airlifts for Pregnant Patients Increases in Idaho, U.S. Supreme Court Abortion Case Starts, NPR (Apr. 24, 2024), <https://www.boisestatepublicradio.org/health/2024-04-24/moyle-idaho-supreme-court-airlift-abortion-emergency>.

<sup>28</sup> Idaho Code §§ 18–604(1)(b), (c).

<sup>29</sup> 144 S. Ct. at 2025.

was necessary “to prevent the death of the pregnant [person]” because “[n]o single patient’s condition progresses at the same pace” and “[a] patient may experience a combination of medical conditions or symptoms that, together, become life-threatening.”<sup>30</sup> Physicians may therefore realize too late that the life of the patient was at stake or may believe that an abortion is necessary to save the life of the pregnant person, but nevertheless decline to provide the treatment given the risk of felony charges based on that judgment.

The risks to the health of pregnant individuals in Idaho in emergency situations have already been documented, with women reporting “suffer[ing] unimaginable tragedy and health risks due to Idaho’s abortion bans.”<sup>31</sup> In one case, a physician described having to send a pregnant patient home while she was miscarrying because, without absolute certainty regarding the pregnancy outcome, the physician feared that Idaho’s law prevented them from providing immediate care to manage the miscarriage.<sup>32</sup>

---

<sup>30</sup> ACOG, Understanding and Navigating Medical Emergency Exceptions in Abortion Bans and Restrictions (Aug. 14, 2022), <https://www.acog.org/news/news-articles/2022/08/understanding-medical-emergency-exceptions-in-abortion-bans-restrictions>.

<sup>31</sup> *Adkins et al. v. State of Idaho*, Case No. CV01-23-14744, Complaint, ¶ 10 (4th Dist. Idaho 2023).

<sup>32</sup> *Id.*, ¶¶ 254-255.

These avoidable medical emergencies should be prevented by EMTALA's preemption of Idaho's law. EMTALA guarantees access to stabilizing emergency medical care, including abortions, for patients seeking care in the emergency departments of hospitals that receive Medicare funds.<sup>33</sup> EMTALA recognizes the complexity of medical decision-making during reproductive emergencies and provides doctors with appropriate latitude to make the best possible decisions for their patients. EMTALA also accounts for the reality that it is often impossible to predict whether a situation could rapidly become life-threatening.<sup>34</sup>

EMTALA's protections apply to any condition:

manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in ... (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.<sup>35</sup>

This nuanced approach, reflecting the complex reality of medical decision-making and the importance of emergency treatment, is absent from Idaho's near-total abortion ban.

---

<sup>33</sup> 42 U.S.C. § 1395dd; *see* 144 S. Ct. at 2023-24 (Jackson, J., concurring in part and dissenting in part).

<sup>34</sup> Amnesty International, Ireland: She is not a criminal: The impact of Ireland's abortion law, Index No. EUR 29/1597/2015, p. 35 (2015), <https://www.amnesty.org/en/documents/eur29/1597/2015/en/>.

<sup>35</sup> 42 U.S.C. § 1395dd(e)(1).

The Act's narrow exception for life-threatening circumstances creates an unavoidable conflict between what it permits and EMTALA's requirement that a pregnant person be provided stabilizing care for life *or* health-threatening conditions. Justice Kagan elaborated:

By their terms, the two laws differ. What falls in the gap between them are cases in which continuing a pregnancy does not put a woman's life in danger, but still places her at risk of grave health consequences, including loss of fertility. In that situation, federal law requires a hospital to offer an abortion, whereas Idaho law prohibits that emergency care. And the record shows that, as a matter of medical reality, such cases exist.”<sup>36</sup>

And, as Justice Jackson explained, “under federal law, a hospital *must* provide an emergency abortion that is reasonably necessary to preserve a patient's health within the meaning of EMTALA. But, under Idaho law, a doctor cannot provide this care (required by federal law) without committing a criminal act.”<sup>37</sup> This presents a “straightforward” case of preemption: “Idaho law prohibits what federal law requires, so ... under the Supremacy Clause, Idaho's law is pre-empted.”<sup>38</sup> Even in its revised form, Idaho's law prohibits emergency care federally mandated by EMTALA, presenting an irreconcilable conflict and would forcing practitioners and hospitals throughout the state to violate federally-mandated standards of care.

---

<sup>36</sup> 144 S. Ct. at 2017 (Kagan, J., concurring).

<sup>37</sup> *Id.* (emphasis in original)

<sup>38</sup> *Id.* at 2026.

C. *The Harms of Abortion Restrictions Fall Disproportionately on Marginalized Groups*

Idaho’s near-total abortion ban does not affect all Idahoans equally. Abortion restrictions have a disproportionate impact on low-income and other marginalized populations, such as racial and ethnic minorities and rural residents. These individuals and groups already lack access to maternal and prenatal care and suffer the highest rates of preventable maternal mortality and morbidity across the country.<sup>39</sup>

Restrictions on reproductive healthcare like Idaho’s near-total abortion ban will affect Black, Indigenous, and other people of color (“BIPOC”) at higher rates.<sup>40</sup> “In 2019, the abortion rate was 23.8 per 1,000 Black women, 11.7 per 1,000 Hispanic women, 13 per 1,000 Asian American, Native American, and other women—and just 6.6 per 1,000 white women.”<sup>41</sup> These discrepancies are exacerbated by structural

---

<sup>39</sup> L. Hill *et. al.*, Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them, Kaiser Fam. Found. (Nov. 1, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities-in-maternal-and-infant-health-current-status-and-efforts-to-address-them/#:~:text=Black%20and%20American%20Indian%20and,care%20compared%20to%20White%20women>.

<sup>40</sup> L. Hill *et. al.*, What are the Implications of the Dobbs Ruling for Racial Disparities?, Kaiser Fam. Found. (Apr. 24, 2024), <https://www.kff.org/womens-health-policy/issue-brief/what-are-the-implications-of-the-dobbs-ruling-for-racial-disparities/>.

<sup>41</sup> Z. Abrams, Abortion Bans Cause Outsized Harm for People of Color, 54 *Monitor on Psych.* 4 (2023), <https://www.apa.org/monitor/2023/06/abortion-bans-harm-people-of-color>.



and economic inequalities.<sup>42</sup> As patients with greater resources travel outside Idaho’s borders to access necessary reproductive care,<sup>43</sup> low-income BIPOC individuals burdened by the costs and other challenges of interstate travel<sup>44</sup> will be left without access to essential healthcare. Indeed, 70% of OB/GYNs say racial and ethnic inequities in maternal health have already worsened since the decision in *Dobbs v. Jackson Women’s Health Organization*,<sup>45</sup> which permitted laws such as Idaho’s to proliferate. In contrast, EMTALA seeks to protect access to care for the most marginalized groups.

Idaho’s restrictive law primarily endangers those with limited resources who already face barriers to accessing essential healthcare—the very same groups that

---

<sup>42</sup> See L. Ross, What is Reproductive Justice?, REPRODUCTIVE JUSTICE BRIEFING BOOK: A PRIMER ON REPRODUCTIVE JUSTICE AND SOCIAL CHANGE at 4 (2007); see also M. Murray, Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade, 134 Harv. L. Rev. 2025, 2093 (2021).

<sup>43</sup> L. Gallup and R. Sun, Number of Idaho Abortion Patients Traveling to Washington Up 56% After Roe Overturned, OREGON PUBLIC BROADCASTING (July 11, 2023), <https://www.opb.org/article/2023/07/10/idaho-abortion-patients-traveling-to-washington-increases-56-percent-after-roe-overturned/>.

<sup>44</sup> *Brief of Amici Curiae Economists in Support of Respondents* at 21, *Dobbs v. Jackson Women’s Health Org.* 597 U.S. 215 (2022) (“For instance, an increase in travel distance from 0 to 100 miles increases births [that is, reduces abortions] for . . . Black women by 3.3% versus by 2.1% for white women.”).

<sup>45</sup> B. Frederiksen *et. al.*, A National Survey of OBGYNs’ Experiences After Dobbs, Kaiser Fam. Found. (June 21, 2023), <https://www.kff.org/report-section/a-national-survey-of-obgyns-experiences-after-dobbs-report/>; K. Backes Kozhimannil *et. al.*, Abortion Access as a Racial Justice Issue, 387 NEW ENG. J. MED. (2022), <https://pubmed.ncbi.nlm.nih.gov/36069823/>.

EMTALA is designed to protect. EMTALA’s emergency protections are especially crucial for pregnant BIPOC individuals, for whom pregnancy is already more dangerous, and particularly for Black women, who face a worsening maternal mortality and morbidity crisis.<sup>46</sup>

## **II. Idaho’s Near-Total Abortion Ban Violates International Human Rights Law**

Idaho’s near-total abortion ban also denies pregnant people rights protected by international human rights treaties.

The U.S. is “legally obligated to uphold the principles embodied in [ratified treaties],”<sup>47</sup> including the International Covenant for Civil and Political Rights (“ICCPR”), the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), and the Convention Against Torture (“CAT”). It must also refrain from taking actions that “defeat the object and purpose” of treaties it has signed but not ratified—the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”); the International Covenant on Economic, Social and Cultural Rights (“ICESCR”); the Convention on the Rights of

---

<sup>46</sup> A. Njoku *et al.*, Listen to the Whispers before They Become Screams: Addressing Black Maternal Morbidity and Mortality in the United States, 11 HEALTHCARE 3 (2023), <https://www.mdpi.com/2227-9032/11/3/438>.

<sup>47</sup> *Flores v. Southern Peru Copper Corp.*, 414 F.3d 233, 256 (2d Cir. 2003).

the Child (“CRC”) and the Convention on the Rights of Persons with Disabilities (“CRPD”).<sup>48</sup>

Idaho’s near-total abortion ban denies pregnant people rights recognized by these instruments, including the rights to: (1) life; (2) be free from torture and other cruel, inhuman, or degrading treatment or punishment; (3) nondiscrimination; (4) privacy; and (5) health. That puts the U.S. in breach of its international legal obligations.

A. *The Right to Life*

Idaho’s near-total abortion ban contravenes the U.S.’s obligation under the ICCPR to respect the right to life of people capable of pregnancy. Article 6 provides that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of [their] life.” The UN Human Rights Committee (“HRC”)—which provides authoritative guidance on the Convention’s implementation<sup>49</sup>—has confirmed that this right should not be interpreted narrowly: it is not simply a right to be “free from acts and omissions that are intended or may

---

<sup>48</sup> See Vienna Convention on the Law of Treaties (“VCLT”) (adopted May 23, 1969, entered into force Jan. 27, 1980), 1155 U.N.T.S. 331, art. 18(a). The VCLT’s provisions are considered customary international law. See *Mora v. New York*, 524 F.3d 183, 196 n.19 (2d Cir. 2008).

<sup>49</sup> ICCPR (adopted Dec. 16, 1966, entered into force Mar. 23, 1976), 999 U.N.T.S. 171, art. 40.

be expected to cause their unnatural or premature death,” but also the right to “enjoy a life with dignity.”<sup>50</sup>

According to the HRC, States are generally obliged not to deny access to reproductive health services. The HRC has confirmed that, while ICCPR parties may regulate abortion, “such measures must not result in violation of the right to life of a pregnant [person], or [their] other rights under the Covenant.” States “should not introduce new barriers” to abortion and “should remove existing barriers to effective access by [pregnant people] to safe and legal abortion.”<sup>51</sup>

The HRC has further explained that ICCPR parties must not enact abortion restrictions that “jeopardize [pregnant people’s] lives, subject them to physical or mental pain or suffering ..., discriminate against them or arbitrarily interfere with their privacy.” Parties also must “provide safe, legal and effective access to abortion where the life and health of the pregnant [person] is at risk, or where carrying a pregnancy to term would cause the pregnant [person] substantial pain or suffering, most notably [*inter alia*,] where the pregnancy ... is not viable.”<sup>52</sup> And with respect to the U.S. specifically, the HRC confirmed in 2023 that to comply with its obligations under the ICCPR, it must, *inter alia*, (a) provide legal, effective, safe,

---

<sup>50</sup> HRC, General Comment 36 (Article 6: Right to Life), UN Doc. CCPR/C/GC/36, ¶ 3 (Sept. 3, 2019).

<sup>51</sup> *Id.*, ¶ 8.

<sup>52</sup> *Id.*

and confidential access to abortion; (b) decriminalize abortion; and (c) remove barriers that impede access to abortion care.<sup>53</sup>

But Idaho’s near-total abortion ban renders life-saving abortion care—and abortion care to preserve a patient’s quality-of-life—virtually inaccessible. By criminalizing nearly all abortions, the ban impedes pregnant people suffering from severe medical emergencies from accessing care, including to prevent life-long physical complications. Such complications include losing a uterus, death from sepsis, hemorrhage, or the irreversible progression of terminal illness left untreated during pregnancy.<sup>54</sup> These inevitable consequences of Idaho’s ban plainly demonstrate why it violates the U.S.’s obligations.

The recent amendment’s exclusion of certain procedures from the definition of abortion<sup>55</sup> does not resolve this contravention of the U.S.’s treaty obligations. Section I of this brief showed that medical providers are still deterred from making

---

<sup>53</sup> HRC, Concluding Observations on the Fifth Periodic Report of the United States of America, U.N. Doc. CCPR/C/USA/CO/5, ¶ 29 (Dec. 7, 2023).

<sup>54</sup> See ANSIRH, Care Post-Roe: Documenting cases of poor-quality care since the Dobbs decision – Preliminary Findings (May 2023), <https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf> (“One physician described a case of a patient who had ruptured membranes at 16-18 weeks’ gestation but was denied an abortion because of a new state law. She was sent home and developed a severe infection requiring management in the intensive care unit. The patient subsequently delivered her fetus but required a procedure to remove her placenta.”).

<sup>55</sup> See Idaho Code § 18-604(1).

appropriate decisions according to their medical ethical obligations under uncertain, complex, and fast-evolving circumstances. Patients are left to suffer extremely dangerous complications—and even death—by being forced to wait for their condition to worsen to such severity that their physician can definitively conclude their life is in danger. By that time, it is often too late to save them or to preserve their quality of life. That, too, violates their right to life.

*B. The Right to Be Free from Torture and Other Cruel, Inhuman, or Degrading Treatment*

The ICCPR and the CAT require the U.S. to refrain from adopting policies that subject pregnant people to torture or to cruel, inhuman or degrading treatment.<sup>56</sup> The prohibition against torture “relates not only to acts that cause physical pain but also to acts that cause mental suffering.”<sup>57</sup>

According to the Committee Against Torture—the UN body charged with interpreting the CAT—denial of access to safe and legal abortion can result in “physical and mental suffering so severe in pain and intensity as to amount to torture.”<sup>58</sup> Abortion bans with narrow exceptions only to save the life of the pregnant

---

<sup>56</sup> ICCPR, art. 7; CAT (adopted Dec. 10, 1984, entered into force June 26, 1987), 1465 U.N.T.S. 85, art. 16.

<sup>57</sup> HRC, Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Commc’n No. 1608/2007 (“LMR v. Argentina”), U.N. Doc. CCPR/C/101/D/1608/2007, ¶ 9.2 (Apr. 28, 2011).

<sup>58</sup> *See* Committee Against Torture (“CAT Committee”), Concluding Observations on the Seventh Periodic Report of Poland, U.N. Doc. CAT/C/POL/CO/7, ¶ 33(d) (29

person, but not to preserve their health, are not sufficient to comply with a State’s CAT obligations.<sup>59</sup>

Idaho’s draconian law is that type of non-compliant abortion ban. By prohibiting abortion care when the health of a pregnant person is in danger, except in very narrow circumstances, pregnant people are left to suffer a wide variety of medical emergencies without access to necessary stabilizing emergency care. The Act requires pregnant individuals and their healthcare providers to make healthcare decisions in the shadow of criminalization, causing physicians to deny emergency care and to send patients home without essential care during miscarriages. This amounts to cruel, inhuman and degrading treatment.

Furthermore, Idaho’s near-total abortion ban forces many pregnant people to travel long distances, including out-of-state, to obtain appropriate emergency medical care. Thus, pregnant people must, for example, endure hours of travel while

---

Aug. 2019). *See also* Committee on the Rights of Persons with Disabilities and Committee on the Elimination of All Forms of Discrimination against Women (“CEDAW Committee”), General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, U.N. Doc. CEDAW/C/GC/35, ¶ 18 (July 26, 2017) (“criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, [and] forced continuation of pregnancy... may amount to torture or cruel, inhuman or degrading treatment.”).

<sup>59</sup> *See* CAT Committee, Concluding Observations on the Third Periodic Report of the Philippines, U.N. Doc. CAT/C/PHL/CO/3, ¶ 40(b) (June 2, 2016) (urging the state to “[r]eview its legislation in order to allow for legal exceptions to the prohibition of abortions in specific circumstances such as when the pregnancy endangers the life *or health* of the woman ...”) (emphasis added).

experiencing physical pain, emotional trauma, and medical uncertainty, and, in certain cases, suffer pregnancy loss in an unfamiliar facility, far from home, and without the support of loved ones. As the HRC has recognized, compelling pregnant people to travel far for abortion care can amount to subjecting them to “conditions of intense ... suffering” in violation of the prohibition of cruel, inhuman and degrading treatment.<sup>60</sup>

*C. The Right to Non-Discrimination*

The U.S. must also respect the right of pregnant people to be free from discrimination of any kind, including on the grounds of race, sex, or other status, which is guaranteed by various treaties, including the ICCPR.<sup>61</sup>

The HRC has explained that interfering with pregnant people’s access to reproductive health care, including denying access to abortion, violates their right to

---

<sup>60</sup> HRC, Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Commc’n No. 2324/2013 (“Mellet v. Ireland”), U.N. Doc. CCPR/C/116/D/2324/2013, ¶ 7.4 (Nov. 17, 2016); HRC, Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Commc’n No. 2425/2014 (“Whelan v. Ireland”), U.N. Doc. CCPR/C/119/D/2425/2014, ¶ 7.7 (June 12, 2017).

<sup>61</sup> See ICCPR, art. 26; ICESCR (adopted Dec. 16, 1966, entered into force Jan. 3, 1976), 993 U.N.T.S. 3, art. 2.2; CEDAW (adopted Dec. 18, 1979, entered into force Sept. 3, 1981), 1249 U.N.T.S. 13, art. 1; CRC (adopted Nov. 20, 1989, entered into force Sept. 2, 1990), 1577 U.N.T.S. 3, art. 2.



non-discrimination.<sup>62</sup> Guaranteeing the right to non-discrimination “obligates States to ensure that State regulations, including with respect to access to health services, accommodate the fundamental biological differences between men and women in reproduction and do not directly or indirectly discriminate on the basis of sex.”<sup>63</sup> Accordingly, countries violate women’s rights when they “neglect women’s health needs, fail to make gender-sensitive health interventions, deprive women of autonomous decision-making capacity and criminalize or deny them access to health services that only women require.”<sup>64</sup>

Idaho’s law is incompatible with the rights of women to non-discrimination because reproductive healthcare restrictions disproportionately impact women and those who have the capacity to become pregnant. It inherently limits women’s access to emergency reproductive care. By depriving only those Idahoans with the capacity to become pregnant of access to life-saving and health-stabilizing emergency medical services, Idaho’s near-total abortion ban targets one group of people, denying their basic human rights and jeopardizing their lives and health.

---

<sup>62</sup> HRC, General Comment 28 (Article 3: the Equality of Rights Between Men and Women), U.N. Doc. CCPR/C/21/Rev.1/Add.10, ¶ 20 (Mar. 29, 2000). *See also Whelan v. Ireland*, ¶ 7.12 ; *Mellet v. Ireland*, ¶ 7.11.

<sup>63</sup> *Mellet v. Ireland*, ¶ 7 (Cleveland, S., concurring).

<sup>64</sup> UN Working Group on the Issue of Discrimination Against Women in Law and in Practice, Report of the Working Group, UN Doc. A/HRC/32/44, ¶ 14 (Apr. 8, 2016).

The law is also racially discriminatory. As explained in Section I, Idaho’s abortion restrictions disproportionately harm BIPOC individuals and deepens racial inequality with respect to public health outcomes and access to medical care. Allowing the law to enter into force will violate the U.S.’s obligations under the ICERD to take measures to eliminate “racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law,” including with respect to “[t]he right to public health ... [and] medical care.”<sup>65</sup>

*D. The Right to Privacy*

Idaho’s law also directly violates pregnant people’s right to privacy. Article 17 of the ICCPR provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy.” The HRC has concluded that restrictions on abortion infringe upon this right of privacy—including in cases where abortion is prohibited except in narrow circumstances.<sup>66</sup>

---

<sup>65</sup> ICERD (adopted Dec. 21, 1965, entered into force Jan. 4, 1969), 660 U.N.T.S. 195, art. 5(e)(iv).

<sup>66</sup> *Mellet v. Ireland*, ¶ 7.7; *LMR v. Argentina*, ¶¶ 9.3, 9.4; HRC, Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Commc’n No. 1153/2003 (“K.L. v. Peru”), U.N. Doc. CCPR/C/85/D/1153/2003, ¶¶ 2.3, 6.4 (Nov. 22, 2005) (finding law that permitted abortion only when termination was the only way to save the pregnant person’s life or avoid “serious and permanent damage to her health” violated ICCPR). *See also* Committee on Economic, Social and Cultural Rights (“CESCR”), General Comment 22 on the Right to Sexual and Reproductive Health, U.N. Doc. E/C.12/GC/22, ¶¶ 28-29 (May 2, 2016) (to “respect

Specifically, denying a pregnant person access to abortion, imposing barriers to abortion, and interfering with their decision to undergo an abortion violates their right to privacy.<sup>67</sup> *See* Section I, *supra*.

Fundamentally, the power to control every aspect of one’s reproductive health is “at the very core of [individuals’] fundamental right[s] to equality and privacy.”<sup>68</sup> By decimating the reproductive autonomy of people capable of pregnancy, Idaho’s near-total abortion ban violates these rights.

#### *E. The Right to Health*

Idaho’s law also plainly violates the U.S.’s obligation to respect the right to health. The ICESCR, CRC, CRPD, and CEDAW—all to which the U.S. is a signatory—each guarantees the right to health.<sup>69</sup> These treaties are intended to, *inter alia*, facilitate conditions of safe and healthy lives for those they protect (*e.g.*,

---

the right of women to make autonomous decisions,” states must provide access to abortion and other reproductive health services).

<sup>67</sup> *Whelan v. Ireland*, ¶ 3.5; *K.L. v. Peru*; CEDAW Committee, Views of the Committee under Article 7(3) of the Optional Protocol, Concerning Commc’n No. 22/2009, U.N. Doc. CEDAW/C/50/D/222009, ¶ 8.15 (Nov. 4, 2011) (“*L.C. v Peru*”); *Mellet v. Ireland*, ¶ 7.7; *LMR v. Argentina*, ¶¶ 9.3, 9.4.

<sup>68</sup> UN Working Group on the Issue of Discrimination Against Women in Law and Practice, Women’s Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends (Oct. 2017), <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf>.

<sup>69</sup> ICESCR, art. 12; CEDAW, art. 12; CRC, art. 24; CRPD (adopted Mar. 30, 2007, entered into force May 3, 2008), 2515 U.N.T.S 3, art. 25.

women, children, racial minorities). The Act discriminatorily denies access to reproductive health services, causing severe mental and physical harm and placing the U.S. out of line with the object and purpose of those treaties.

Moreover, because the right to health “include[s] the right to make free and responsible decisions and choices ... regarding matters concerning one’s body and sexual and reproductive health[, and entitles all people to] full enjoyment of the right to sexual and reproductive health,”<sup>70</sup> Idaho’s law plainly undermines the object and purpose of those treaties.

### **III. The Preliminary Injunction Should Be Affirmed**

The preliminary injunction should be affirmed because all three necessary criteria have been satisfied.<sup>71</sup> In particular, vacating the preliminary injunction would cause irreparable harm and the equities weigh in favor of affirming the decision below.<sup>72</sup>

As shown above, if the preliminary injunction is vacated, the enforcement of Idaho’s abortion ban will contravene the U.S.’s obligations to refrain from violating the human rights guaranteed under treaties to which the U.S. is a party.<sup>73</sup> That is

---

<sup>70</sup> CESCR, General Comment 22, ¶¶ 2, 5.

<sup>71</sup> *See U.S. v. Idaho*, 623 F. Supp. 3d 1096, 1105-06 (D. Idaho 2022).

<sup>72</sup> *Amici* do not address the first criterion—likelihood of success on the merits—as it has been amply briefed by the U.S.

<sup>73</sup> *See, e.g.*, HRC, General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, ¶

because, under international law, the conduct of a sovereign State's political subdivisions "shall be considered an act of that State under international law."<sup>74</sup>

This will cause irreparable harm to the U.S. This Court has recognized that "an alleged constitutional infringement will often alone constitute irreparable harm."<sup>75</sup> Because the Supremacy Clause places federal law and treaties on the same plane,<sup>76</sup> a state law that violates a treaty also amounts to an "alleged constitutional infringement." Additionally, "forc[ing] [the government] ... to violate its international obligations" has been recognized, on its own, to amount to a "considerable ... claim[] of irreparable injury."<sup>77</sup> Just as the Court should not interpret laws to violate international law,<sup>78</sup> it also should not vacate a preliminary injunction when doing so would cause a violation thereof.

---

6 (May 26, 2004); CAT, art. 2(1); ICERD, art. 2(1)(a). Even with respect to the rights embodied in treaties the U.S. has signed but not ratified, not defeating those treaties object and purpose, *see* VCLT, art. 18(a), requires not violating the human rights they recognize.

<sup>74</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, U.N. Doc A/56/10 (2001), art. 4(1).

<sup>75</sup> *U.S. v. Arizona*, 641 F.3d 339, 366 (9th Cir. 2011) (quoting *Assoc. Gen. Contractors v. Coal. For Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)).

<sup>76</sup> U.S. Const. art VI(2); *cf. Ventress v. Japan Airlines*, 486 F.3d 1111, 1115 (9th Cir. 2007) ("A treaty preempts inconsistent state law.").

<sup>77</sup> *767 Third Ave. Assocs. v. Permanent Mission of Republic of Zaire*, 787 F. Supp. 389, 395 (S.D.N.Y. 1992).

<sup>78</sup> *See Murray v. The Schooner Charming Betsy*, 6 U.S. 64, 118 (1804).

The equities also weigh in favor of affirming the preliminary injunction. To begin with, “impairing the Government’s ability to abide by its treaty obligations,” as vacating the preliminary injunction will do, will “harm the Government (and therefore the public interest).”<sup>79</sup>

Further, allowing Idaho to enforce its abortion ban will heighten the risk of reputational harm to the U.S. caused by its regressive abortion restrictions, which make the U.S. a global outlier. “Compared to the more than 50 countries that have liberalized their abortion laws since 1994, the United States has become only the fourth country to roll back abortion rights in the same time frame. Americans in states where abortion is outlawed now face similar circumstances as those in El Salvador, Poland, and Nicaragua.”<sup>80</sup> Permitting Idaho’s abortion ban to take effect will cause the U.S. to become a serial violator of international human rights law.

This will cause the U.S. to wield diminished moral influence in the human rights sphere. Indeed, the U.S. has already been reproached by the UN for its failure adequately to safeguard human rights related to reproductive rights, including being urged to “ensur[e] that women have effective access to reproductive health services

---

<sup>79</sup> *Coriat v. U.S.*, No. 22-22788-Civ-Scola, 2023 U.S. Dist. LEXIS 96560 at \*8 (S.D. Fla. June 2, 2023).

<sup>80</sup> A. Schmitt *et al.*, Authoritarian Regimes Have More Progressive Abortion Policies Than Some U.S. States, American Progress (July 8, 2022), <https://www.americanprogress.org/article/authoritarian-regimes-have-more-progressive-abortion-policies-than-some-u-s-states/>.

... including safe and legal abortion.”<sup>81</sup> In addition, the U.S. may face global public critique, as well as allegations of human rights violations by UN human rights bodies and special procedures, including under Article 21 of the CAT,<sup>82</sup> if the Idaho law is permitted to enter into effect. As a global leader that prides itself as a guardian of human rights, it is not in the public interest for the U.S. to face these heightened risks to its diplomatic standing and reputation. They therefore weigh in favor of affirming the preliminary injunction.

## CONCLUSION

For the foregoing reasons, *amici* respectfully submit that the order of the district court should be affirmed.

---

<sup>81</sup> Letter from U.N. High Commissioner for Human Rights at 7 (May 17, 2021), <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session36/US/HCLetter-USA.pdf>. *See also* Committee on the Elimination of Racial Discrimination, Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America, U.N. Doc. CERD/C/USA/CO/10-12, ¶ 36 (Sept. 21, 2022) (recommending the U.S. “take all measures necessary, at the federal and state levels, ... to provide safe, legal and effective access to abortion in accordance with the State party’s international human rights obligations.”).

<sup>82</sup> *See* CAT, art. 21 (“If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may ... bring the matter to the attention of that State Party. ... If the matter is not adjusted to the satisfaction of both States Parties ..., either State shall have the right to refer the matter to the Committee.”).

Dated: October 22, 2024

Respectfully submitted,

/s/ Christina G. Hioureas

Christina G. Hioureas  
Nicholas M. Renzler  
FOLEY HOAG LLP  
1301 Avenue of the Americas  
25th Floor  
New York, NY 10019  
*Counsel for Amici Curiae*



**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS**

**9th Cir. Case Number(s)** 23-35440 & 23-35450

I am the attorney or self-represented party.

**This brief contains** 6,759 words, including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
  - it is a joint brief submitted by separately represented parties.
  - a party or parties are filing a single brief in response to multiple briefs.
  - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated \_\_\_\_\_.
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

**Signature** /s/ *Christina Hioureas*

**Date** 10/22/2024

## **CERTIFICATE OF SERVICE**

I hereby certify that on October 22, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: 10/22/2024

/s/ Christina Hioureas

Christina Hioureas