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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and INDIGENOUS IDAHO ALLIANCE,

Plaintiffs,

v.

RAÚL LABRADOR, in his capacity as the Attorney General of the State of Idaho,

Defendant.

Case No. 1:23-cv-00323-DKG

RESPONSE TO MOTION FOR PROTECTIVE ORDER [DKT. 79]

INTRODUCTION

This is a case defending the rights of parents to protect their children from interlopers and strangers to the parent-child relationship from intervening in the medical decision making that parents have a fundamental right to determine. *See, e.g.*, *Matter of Doe*, 170 Idaho 901, 907, 517 P.3d 830, 836 (2022) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)); *Parham v. J.R.*, 442 U.S. 584, 602 (1979). Plaintiffs disagree, arguing that the case is "about honoring the dignity and autonomy of young people to decide for themselves what their reproductive futures will be." Dkt. 79-2 at 2. But Plaintiffs' belief that their cause is just, and sufficient reason to violate Idaho's laws requiring parental consent for abortions and medical procedures,[1] or that Defendant's defenses will fail, do not govern the appropriate bounds of civil discovery. The Rules of Civil Procedure are broad and allow parties to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). Two defenses, apparent on the pleadings, are relevant here.

First, Plaintiffs appear to lack standing—one going so far as to admit plainly in the instant motion that she hasn't yet "assist[ed]" minors in obtaining abortions. Dkt. 79-2 at 8. Standing is always relevant, and Plaintiff bears the burden of showing standing as to every claim they press, all of the relief that they seek, and to do so with greater sufficiency at each stage of litigation. Because showing standing is essential to Plaintiffs' claims, Defendant is entitled to inquire into that standing, not only probing whether Plaintiffs are actually doing (or intend to do) anything that is constitutionally protected and covered by Idaho's abortion trafficking statute, but to probe whether they are actually doing (or intend to do) anything that is not constitutionally protected but

[1] *See* Idaho Code §§ 18-609A (requiring consent from a pregnant unemancipated minor's parent or guardian before an abortion may be performed on that pregnant minor); 32-1015(3) (requiring prior parental consent before a health care provider may authorize or furnish a health care service to a minor).

proscribed by that same law or similar laws. The same goes for specific elements of standing—traceability and redressability.

Second, Plaintiffs appear to lack clean hands, not only by potentially violating other statutes prohibiting custodial interference or enticement of minors, but also by usurping the State's role in protecting minors from abuse, neglect or abandonment—taking it upon themselves to intervene in such cases rather than (and without) making a report to the Idaho Department of Health and Welfare or law enforcement as Idaho law requires. These are not idle inquiries asking if Plaintiffs regularly jaywalk or file correct tax returns—these questions go to the same relationship at the core of this case, the right of parents to make medical decisions for their children, and the ability of the State to protect that right of parents—as well as the State's right and duty to intervene to protect minors. Plaintiffs are asserting a constitutional right to help minors obtain abortions with the intent to conceal that abortion from the minor's parents and have asserted that they have already assisted minors obtain abortions in situations in which they believe the minor was abused or neglected by her parents. Dkt. 1 ¶ 55. Plaintiffs cannot come into Court seeking equitable relief when that relief would be used to assist in violating other statutes that protect children, nor when they pretend to assist children by providing abortion in cases of abuse while ignoring the very proscriptions intended to protect such children by ensuring mandatory reporting.

Plaintiffs have no special right to come into Court, sue the Defendant, and then shrink away when the Defendant asks questions they don't like. Defendants need not take Plaintiffs' word for their factual allegations, and a blanket prohibition on inquiring into the identity of specific minors Plaintiffs claim to have helped obtain abortions would prohibit Defendant from being able to obtain, potentially, relevant information that puts the Plaintiffs factual allegations to the test.

These areas of inquiry are relevant and important, and Plaintiffs' arguments to the contrary fail.

BACKGROUND

Plaintiffs challenge Idaho Code § 18-623, which prohibits "an adult . . . with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion, as described in section 18-604, Idaho Code, or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within this state." *See generally* Dkt. 1. Plaintiffs specifically seek injunctive relief to, among other things "provid[e] transport services or any other support to minors," including, "[f]unding or otherwise financially supporting such transport," "[d]riving or otherwise traveling in order to seek abortion services where such services are legal," and "[h]ousing or otherwise helping to effectuate travel in order to access abortion services where such services are legal." Dkt. 1 at 33. Plaintiffs NWAAF and IIA pled that they seek to engage in these acts in circumstances where minors have been subject to sexual assault, i.e., in circumstances of abuse, neglect or abandonment. Dkt. 1 ¶ 55.

Because the conduct pled in the Complaint may violate other statutes in Idaho's system of laws protecting both the integrity of the parent-child relationship, because the injunctive relief sought could be used by Plaintiffs to violate other Idaho statutes, and because of the State's duty to protect children who have been abused, abandoned or neglected, Defendant's answer pled three relevant affirmative defenses. First, Plaintiffs lack standing. Dkt. 65 at 17. Second, Plaintiffs come to the Court with unclean hands. *Id.* Third (and relatedly) Plaintiffs seek relief that is inconsistent with issues of state law. *Id.*

LEGAL STANDARD[2]

A party must show good cause for the issuance of a protective order under Rule 26(c). Good cause requires a party to show "that specific prejudice or harm will result" in the absence of the specified protection. *In re Roman Catholic Archbishop of Portland in Ore.*, 661 F.3d 417, 424 (9th Cir. 2011).

Ordinarily, discovery is broad, "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1). "The scope of discovery permissible under Rule 26 should be liberally construed; the rule contemplates discovery into any matter that bears on or that reasonably could lead to other matter that could bear on any issue that is or may be raised in a case." *McArthur v. Rock Woodfired Pizza & Spirits*, 318 F.R.D. 136, 143 (W.D. Wash. 2016) (citation omitted).

ARGUMENT

I. Plaintiffs have failed to show good cause related to the identification of minors.

Plaintiffs' arguments for the protective order fail. The information sought is relevant because it relates to claims and defenses that have yet to be adjudicated—and the legal merit of

[2] Much of the recitation of the legal standard in Plaintiffs' motion is irrelevant. *See* Dkt. 79-2 at 3–5. This is because it is geared towards circumstances where the alternatives are public disclosure or a protective order prohibiting discovery. Here, Defendant (again) agrees to the entry of the District of Idaho Model Protective Order. Designation of material as confidential obviates this dilemma, notwithstanding the motion's bare assertions to the contrary.

those claims and defenses is not before the Court. Even if the Court could adjudicate the standing arguments now, Plaintiffs have not shown good cause for precluding discovery in this way.

A. The information sought is relevant.

Of all grounds to challenge discovery, this is the highest hurdle for Plaintiffs. "Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Fed. R. Evid. 401. "[A] party is entitled to seek discovery on its theory of the facts and the law, and is not limited in discovery by the opponent's theory." *Big City Dynasty v. FP Hldgs, L.P.*, 336 F.R.D. 507, 511 (D. Nev. 2020) (citing Wright and Miller and *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1192 (10th Cir. 2009)). Courts have "repeatedly rejected attempts to define the bounds of appropriate discovery by challenging the merits of existing claims or defenses in briefing discovery motions." *Id.* (collecting fifteen cases). A basic flaw in Plaintiffs' approach is that they argue that, if the standing and equitable defense arguments fail, Defendant cannot take discovery on challenged matters because their lack of legal merit renders them irrelevant. But this argument reads Rule 26(b)(1) to mean '"matter that is relevant to any party's *legally meritorious* claim or defense,' which is simply not how the rule is written." *Id.* (emphasis added). Further, "[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1). Put another way, Defendant does not need to try his defenses now to show the relevance of sought discovery.

Whether or not Plaintiffs have standing is unquestionably relevant to the determination of the action. It is an "indispensable part of the Plaintiff's case" and must be "supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). It is relevant to whether *each* Plaintiff is entitled to equitable relief. *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (limiting injunctive relief to "each plaintiff with

standing to sue"). It is relevant to whether each Plaintiff is entitled to *all* of the relief it seeks on *each* of its claims. *Friends of the Earth, Inc. v. Laidlaw Env't. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000); *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017); *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1195 (9th Cir. 2024) (citation omitted).

Plaintiffs claim that Defendant cannot credibly challenge NWAAF and IIA's past "assist[ance]" to minors, future plans to do so, and Plaintiff Matsumoto's supposedly "concrete plans" to do so. Dkt. 79-2. Not so. The very statement admits the relevance: the past conduct of NWAAF and IIA is relevant to what activities they can and will do in the absence of a law forbidding abortion trafficking. Past conduct may bolster claims of standing, or defeat claims of standing if all Plaintiffs have ever had are "mere some day" intentions, especially when there was no law to challenge forbidding the conduct at issue. *Lujan*, 504 U.S. at 565. By way of example, if Plaintiffs have had the goal of assisting abortions but never (as the Complaint states that they plan to do) drove minors across state lines, that lessens the credibility of their claim that they have concrete plans to do so, and thus supports an argument that they lack standing to challenge the statute as violating the right to interstate travel. And if Plaintiff Matsumoto has never assisted a minor in the past, that's at least relevant to a determination of whether she plans to do so in the future for purposes of standing, or whether these are instead, "mere some day" ideas.

In any event, it doesn't matter for any of the discovery at issue here whether, at the end of the day Defendant's arguments on the law of standing or unclean hands are correct. He's pled them as affirmative defenses, and unless stricken or disposed of by summary judgment or trial, he can advance those theories. *Big City*, 336 F.R.D. at 511. Plaintiffs lack good cause to the extent that they rely on merits arguments to justify the protective order—the questions are not ripe.

In a word, Defendant need not take Plaintiffs' word for the factual allegations in the Complaint, and Defendant need not stick within the four-corners' of Plaintiffs' "sworn testimony that goes to their standing" and can "test the veracity of those statements" by a variety of means, including those that do not fit within Plaintiffs' theory of the case. Dkt. 79-2 at n.3. Defendant need not wait to read such testimony in a statement of facts attached to a dispositive motion before anticipating it, and seeking evidence to impeach it. *See Duran v. Cisco Sys., Inc.*, 258 F.R.D. 375, 378 (C.D. Cal. 2009) (internal citations and quotation marks omitted). As Plaintiffs necessarily acknowledge, Dkt. 79-2 at n.3, standing has been and will continue to be a live issue from start to finish of this case, and until the case concludes Defendant will be entitled to verify or impeach Plaintiffs' statements including by asking about, and talking to, if necessary,[3] the minors or their parents allegedly "helped" by Plaintiffs.

B. Plaintiffs lack standing to assert minor privacy interests, and even if they could, the interest in discovery outweighs the interest.

Plaintiffs argue that Defendants have standing to assert the privacy interests of unrelated minors. They don't. Buried in a footnote, Dkt. 79-2 at n.1, Plaintiff cites cases that don't concern discovery rulings (*Yellowhammer Fund*), and do not deny the discovery and instead offer a protective order that designates names or unedited video as confidential (*Moore*; *Stewart*, and

[3] To be sure, the Defendant does not know if it will be necessary to talk to any minors or parents. That is because Defendant does not know the answers to many of his discovery requests because Plaintiffs are hiding behind semantics and, in their words, questions that could be more "artfully phrased." Dkt. 79-2 at 3. For example, in order to avoid providing answers to certain interrogatories, Plaintiffs assert that they "do not know the emancipation status of the minors they assist." *Id.* at 2. But, a "responding party is obligated to respond to the fullest extent possible." *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013). Further, "a reasonable effort to respond must be made." *Id.* Thus, rather than hiding behind an assertion that they do not know whether any particular minor is emancipated, the Plaintiffs should have answered the interrogatories "to the fullest extent possible," which could include simply asserting that for each answer they do not know if the minor was emancipated. But, rather than file a motion to compel, Defendant sent re-worded interrogatories to try to obtain the necessary information.

Beebe). None of the cases address the privacy interests of minors in information provided to unrelated third parties, like Plaintiffs. Plaintiffs also cite some abortion cases that relate to the pre-*Dobbs* period, a time in which courts severely distorted standards of law around the abortion decision. *SisterSong Women of Color Reprod. Just. Collective v. Gov. of Georgia*, 40 F.4th 1320, 1327–28 (11th Cir. 2022) (citing *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 286–87 (2022)).

Ultimately, Plaintiffs cite no case where groups like them, who assert the right to provide an abortion behind the backs of a parent, can simultaneously assert the right to protect that information from a court proceeding, even when a protective order would otherwise bar public disclosure. Plaintiffs cite no case where voluntarily disclosed information, to groups that are neither doctors nor medical providers, nor enjoy any special relationship with the minor whatsoever, can somehow be protected by way of asserting the minor's privacy interest.

Even if Plaintiffs could raise these interests, the harm they describe is nonexistent. In fact, Plaintiffs' perfunctory assertion of harm when a protective order in place is pure *ipse dixit*. It is simply "evident." Dkt. 79-2 at 7. Asking about an abortion is not a cognizable harm, and certainly not when public disclosure is not permitted under the Model Protective Order. Plaintiff cites no cases where an opposing party is barred from asking about the abortion of a third party, per se, let alone when the party seeking to prevent disclosure has no special relationship with the third party. Plaintiffs' HIPAA footnote at n.2 is especially problematic: even though they admit that they are not covered entities under HIPAA, they somehow expect to assert privacy protections over material that they claim is "functionally equivalent" to HIPAA protected material. *Id.* at n.2; *see also* 42 U.S.C. § 1320d-6(A); *see generally* 45 C.F.R. § 164.502. That's a plain distortion of privacy interests to serve Plaintiffs' litigation tactics.

By contrast, Defendant needs to be able to inquire as to whether, for instance, Plaintiffs have ever actually procured an abortion. If not, that decreases the likelihood that they have standing. If it comes down to it, and a Plaintiff says they have provided, for instance, a single abortion to an Idaho minor, then it would be relevant to Plaintiffs' standing to find out if that abortion actually took place, what Plaintiff's assistance was, and the like. Same with procurements in the future; just who are the minors with whom Plaintiff has real plans to provide an abortion? Are there any plans that would suffice to make the dispute concrete? *See Arizona v. Yellen*, 34 F.4th 841, 850 (9th Cir. 2022) ("[a] concrete plan need not be 'cast in stone' but must be 'more than a hypothetical intent to violate the law'") (quoting *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000)). Even where a "valid privacy concern exists over the disclosure of nonparty names, that concern does not outweigh the parties' right to obtain relevant discovery." *Moore v. Battelle Energy All.*, No. 4:21-cv-00230-CRK, 2023 WL 1767391 at *5 (D. Idaho Feb. 3, 2023) (citing Fed. R. Civ. P. 26(b)(1) and *Barrington v. United Airlines, Inc.*, 339 F.R.D. 644, 647 (D. Colo. 2021)). Standing is always relevant, even if the parties disagree about the application of standing principles.

C. The First Amendment does not protect these identities from disclosure.

Plaintiffs offer a vestigial First Amendment privilege claim. It fails for two principal reasons. Dkt. 79-2 at 10–11. First, there simply is no right of association related to the relationship between a minor and adult who procures an abortion for the minor. The Ninth Circuit has already addressed *this* question with respect to *this* statute and *these* Plaintiffs. It said, "Section 18-623 does not restrict typical rights of association protected by the First Amendment." *Matsumoto v. Labrador*, 122 F.4th 787, 806 (9th Cir. 2024).

Even looking beyond the law of the circuit at issue, the claim of associational freedom fails on its face. Freedom of association has two branches, intimate association (not at issue) and

expressive association. *City of Dallas v. Stanglin*, 490 U.S. 19, 24 (1989). While expressive association "extends to groups organized to engage in speech that does not pertain directly to politics" *id.* at 25, it does not extend to those who are merely distributing and receiving a service, whether that is rollerblading past curfew in *City of Dallas*, or obtaining an abortion here. *Id.* Even if the Court disagrees with respect to adults, there is nothing in the record to suggest that the hypothetical *minor* is engaged in obtaining an abortion as a means of expression. The procurement of an abortion is no more expressive than "walking down the street" is expressive, and a mere "kernel [of expression] is not sufficient to bring the activity within the protection of the First Amendment." *Id.*

Second, Plaintiffs offer no evidence whatsoever of a deterrent to *association*. The best they offer is a single study pointing to deterrent effects of non-confidentiality on obtaining an *abortion*. Those aren't the same thing. Evidence that a minor is less likely to obtain an abortion procured by a Plaintiff is not evidence that the same minor would not be willing to join the advocacy efforts of such a Plaintiff. Plaintiff has nothing but the transmutation of pure conduct into expressive association to save this argument. By contrast, cases involving First Amendment privilege, like *Perry v. Schwarzenegger* or *Mi Familia Vota v. Fontes*, 344 F.R.D. 496, 514 (D. Ariz. 2023) have "all dealt with the disclosure of either the identity of association members or internal communications—not communications with third parties." *Mi Familia Vota*, 344 F.R.D. at 513 (quoting *La Union Del Pueblo Entero v. Abbott*, SA-21-CV-00844-XR, 2022 WL 17574079, at *8 (W.D. Tex. Dec. 9, 2022)). Minors are third parties, Plaintiffs nowhere suggest that they are associational members with NWAAF and IIA, or Matsumoto. The protection does not apply.

Last, even if the Court found the First Amendment to be implicated, the proper response is ordering production of a privilege log, as *Perry v. Schwarzenegger* and every subsequent First

Amendment privilege case instructs. *See, e.g.*, 591 F.3d 1126, 1133 n.1 (9th Cir. 2009); *Mi Familia Vota*, 344 F.R.D. at 514. Indeed, to the extent that these identities were responsive to any previous discovery request, this privilege has been waived for failure to assert it and failure to produce a privilege log.[4] *See* Fed. R. Civ. P. 26(b)(5), 33(b)(4), 34(b)(2)(C), 36(a)(5).

II. Plaintiffs have failed to show good cause related to the equitable defenses.

Defendant has, as noted above, raised the equitable defense of unclean hands in response to Plaintiffs' allegations that they are 1) transporting minors in contexts that constitute child custody interference, kidnapping, enticing a minor, or sheltering a runaway (Idaho Code §§ 18-1509, -1510, -4501(2), -4506; or 2) usurping the role of the state in protecting minors from abuse, neglect or abandonment. Idaho Code § 16-1605. This directly relates to the same relationship that Idaho Code Section 18-623 is meant to protect, the right of parents to raise children without surreptitious interference from strangers to that relationship and the right of the State to protect minors subject to abuse. Plaintiffs cannot come to the Court and seek an injunction authorizing them to engage in conduct that violates other statutes not being challenged that address the same harms also protected by Idaho Code Section 18-623.

A. Plaintiffs' arguments against the defense of unclean hands and standing as they relate to conduct proscribed under other statutes are premature and fail.

As discussed above, Defendants are not bound by Plaintiffs' legal theories, and even if it turns out that Defendant loses on his equitable defenses at dispositive motion or trial, until those claims or defenses are vanquished, he can pursue them. *Big City*, 336 F.R.D. at 511. Same with traceability and causation, while Plaintiffs disagree with Defendant's theory of the case, that is

[4] To be sure, on October 7, 2025, Plaintiffs added several such objections for the first time in a supplemental response. This was over two months past the (August 2, 2025) deadline to respond to Defendant's discovery requests, and their untimeliness waived these objections. *Safeco Ins. Co. of Am. v. Rawstrom*, 183 F.R.D. 668, 671–72 (C.D. Cal. 1998).

insufficient to preclude inquiry into standing on traceability and causation grounds. Whatever the merit of these arguments on a dispositive motion, a discovery motion is not the appropriate time or place to make them. With these defenses properly raised in the answer, Defendant is entitled to explore them.

Even if the Court looks at the merits prematurely, the equitable defense of unclean hands clearly applies. "To establish unclean hands, a defendant must demonstrate (1) inequitable conduct by the plaintiff; (2) that the plaintiff's conduct directly relates to the claim which it has asserted against the defendant; and (3) plaintiff's conduct injured the defendant." *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F.Supp.2d 1197, 1223 (C.D. Cal. 2007) (citation omitted). Importantly, the application of the doctrine is "a fact intensive inquiry." *Morfin-Arias v. Knowles*, No. 16-cv-06114-BLF, 2018 WL 1710369, at *8 (N.D. Cal. Apr. 9, 2018).

The State of Idaho, in its exercise of its general police power, has recognized its interest in protecting the fundamental rights of parents to control the care and custody of their children. *See Bond v. United States*, 572 U.S. 844, 854 (2014) (defining police power); Idaho Code § 32-1010. "Governmental entities [also] have a traditional and transcendent interest in protecting children within their jurisdiction from abuse." *IDHW v. Jane Doe (2024-04)*, 174 Idaho 401, 414, 555 P.3d 1091, 1104 (2024) (quoting *Kottmyer v. Maas*, 436 F.3d 684, 690 (6th Cir. 2006)).

Contrasted with the State's obligation to protect children, Plaintiffs' action seeks to protect behavior that vitiates those efforts and would result in constitutional protection of kidnapping, failure to report abuse or neglect, and other crimes that they do not contest may constitutionally be prohibited. This is inequitable, meeting prong one. *See Metro-Goldwyn-Mayer*, 518 F.Supp.2d at 1223. It is inequitable for Plaintiffs to use this Court's equitable power to sanction conduct that is broadly criminal, violates the rights of parents, and runs roughshod over the State's obligation to

protect children from abusive or neglectful homes. Put another way, these acts as pled or intimated in the Complaint violate the rights of the State and the rights of others the State aims to protect, meeting prong two. *Id.* And this conduct constitutes an injury to the State, whether in terms of its obligation to protect children by requiring the reporting of abuse or neglect, or in the State's general prerogative to enforce its laws. All prongs are met. *Id.*

Plaintiffs' own complaint suggests that they do not come to Court with clean hands—they come into Court intruding on these state and parental interests, with the end goal of this Court exercising its equitable power to protect Plaintiffs' usurpation of authority. And unlike in *Idaho Org. of Res. Councils v. Labrador*, 780 F.Supp.3d 1013, 1037–38 (D. Idaho 2025), where the defense was based on, what the Court found to be, a mis-match between a *federal* violation and a challenge to *state* law, here Plaintiffs appear to straightforwardly seek relief against one *state law* so as to violate other *state* laws protecting the same state and public interests. These laws are all germane—not merely all relating to children but forming the framework for the State of Idaho's protection of minors and parental rights, alongside Section 18-623. Plaintiffs' mere assertion that the *other* statutes Idaho uses to protect these interests are "unrelated" is incorrect. *See* Dkt. 79-2 at 14.

Similarly, while Plaintiff argues that Defendant's arguments as to Plaintiffs' traceability and redressability fail (Dkt. 79-2 at 13–14), this merits argument does not bear on the relevance of sought discovery. *Big City*, 336 F.R.D. 507, 511. And even if it did, Plaintiffs misapply the cases they cite. Starting with what *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013) described, when a government has multiple means to impose a burden on Plaintiff, and Plaintiffs' argument rests on speculation that the challenged statute alone is the one that the government will exercise, a Plaintiff lacks standing because the asserted injury is not traceable to the challenged conduct. *Id.*

at 412–13. Assume that's true, as the Ninth Circuit did—that question has only been tested at the level of pleadings and allegations, not at the greater "manner and degree" of evidence required at successive stages of the case. *See Matsumoto*, 122 F.4th at 800–01; *but see Lujan*, 504 U.S. at 561. Further, the Ninth Circuit only considered whether *some* conduct proscribed by Section 18-623 was not proscribed by a separate statute. *Id.* If Plaintiffs lack standing as to some relief sought because not *all* of their injury is traceable to Section 18-623, then any injunction this Court issues must be similarly truncated and narrowed to fit Plaintiffs' standing. *Flathead-Lolo-Bitterroot*, 98 F.4th at 1195 ("The scope of the injunction must be no broader and no narrower than necessary to redress the injury shown by the plaintiffs.") (quoting *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018)) (cleaned up). Whether geared towards unclean hands or standing, these defenses are not only relevant to *whether* Defendant prevails, but also *how much* Defendant prevails.

B. No general right exists to refuse to answer discovery to avoid invoking the Fifth Amendment.

Plaintiff argues that, beyond simply having the right to assert a Fifth Amendment objection to a question, they can simply refuse to respond to discovery that they believe may implicate them criminally. But, Plaintiff has no cases on point. Dkt. 79-2. Again, what prompted Defendant to ask these questions were the allegations in the Complaint—not abstract speculation. Plaintiffs pled that they take minors without asking parental consent. That implicates the kidnapping, child custody interference, and runaway statutes. Plaintiffs pled that their work is especially important when rape or incest have occurred. This implicates the mandatory reporter statute. Idaho Code § 16-1605. There's precious little fishing about these interrogatories when Plaintiffs have publicly pled what they have done and what they will do that conceivably violates Idaho's statutes that protect the parent-child relationship. The only question is one of scope or degree—or credibility if it turns out (per the standing arguments above) that Plaintiffs' allegations are unsupported by the facts.

Plaintiff has *no* authority barring questions going to criminal conduct in civil litigation. That's because there is no such authority—a government plaintiff or defendant can inquire into criminal conduct in a civil case.[5] Indeed, Plaintiffs get the import of such an invocation *in a civil case* exactly backwards,[6] a civil court can *freely* "draw adverse inferences from their failure to offer proof," when it results from the invocation of a Fifth Amendment right not to testify. *SEC v. Strategic Glob. Invests.*, 262 F.Supp.3d 1007, 1023 (S.D. Cal. 2017) (citing *SEC v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998)); *see also Colello*, 139 F.3d at 677–78 (collecting cases). Much like Defendants in *Strategic Global*, "Defendants argue that public policy should preclude the shifting of the burden to the them because they invoked their Fifth Amendment rights to protect them from prosecution under . . . laws unrelated to the 'claims and allegations in this case.'" *SEC,* 262 F.Supp.3d at 1023. As in *Strategic Global* and *Colello*, that argument should fail. No blanket protection exists in the law against such inquiries, and Defendant (depending on the question asked, and the development of further discovery) may be entitled to an adverse inference in the event of such an invocation.

Defendant has the right to develop his theories of standing and equitable defenses, whether or not Plaintiffs agree with his theories and regardless of Defendant's likelihood of success at

[5] The best Plaintiff can do is a citation to *United States v. Heine*, which simply does not say "the government cannot use civil discovery to build a criminal case." Dkt. 79-2 at 15 (citing 314 F.R.D. 498, 509 (D. Or. 2016)). In fact, discussing *United States v. Stringer*, 535 U.S. 929, 937-41 (9th Cir. 2008), it says *the opposite*. 314 F.R.D. at 509. The limitation is on the *government* (rather than another plaintiff) bringing a civil action *solely* to obtain evidence—and the *remedy* in that case is not a civil discovery limitation, but foreclosing the use of that discovery (if received in violation of the Fourth or Fifth Amendment) in the criminal action. *Id.* (quoting *United States v. Kordel*, 397 U.S. 1, 11 (1970)). In this case, Plaintiffs sued the Attorney General, the Attorney General did not bring this lawsuit.

[6] Dkt. 79-2 at 15, asserting without citation that "a civil litigant maintains the ability to invoke her Fifth Amendment right not to answer a question, *and* ordinarily that invocation cannot be used against the litigant." (emphasis added).

dispositive motion. Plaintiffs have two choices, answer such questions or invoke the Fifth Amendment; there is "no absolute right not to be forced to choose between testifying in a civil matter and asserting [a] Fifth Amendment privilege." *Keating v. Off. of Thrift Supervision*, 45 F.3d 322, 326 (9th Cir. 1995). And if Plaintiff chooses the latter, Defendant may be entitled to adverse inferences against the Plaintiffs as the case proceeds.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion for Protective Order [Dkt. 79].

DATED: November 4, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ *Aaron M. Green*
AARON M. GREEN
Deputy Attorney General
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on November 4, 2025, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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