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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

**REPLY IN SUPPORT OF ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT [Dkt. 137]**

## INTRODUCTION

Idaho's abortion trafficking statute is a lawful aid to parents, assisting them in their exercise of the rights to care, custody, and control of their children. Try as they might, Plaintiffs cannot get around what this case is about, the rights of parents to make decisions for their children. This case is not about the rights of Plaintiffs, whose rights to travel, speak, and associate are not burdened by Idaho Code § 18-623. Plaintiffs cannot manufacture a constitutional right to insert themselves into someone else's parent-child relationship—a relationship in which they have no lawful interest at all. Summary judgment should be granted to the Attorney General as to all Plaintiffs and causes of action, and/or certification made to the Idaho Supreme Court.

## ARGUMENT

### I. Plaintiffs lack standing on the summary judgment record.

The Attorney General is entitled to summary judgment on standing. Standing must be shown, "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). At summary judgment, a party must go beyond mere allegations and supply specific facts supporting standing, *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 412 (2013) (citation omitted).[1] Here, each Plaintiff was asked whether it (or she) had engaged in conduct that fell under Idaho Code § 18-623, and whether they had ever held the specific intent necessary to engage in abortion trafficking. Each disclaimed an intent to engage in conduct arguably proscribed by the statute, and thus they lack standing. *Susan B. Anthony List v.*

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[1] Plaintiffs' argument that the Ninth Circuit decided the standing question fails. Dkt. 139 at 11–12, 17. The standard to survive a motion to dismiss is lower than at summary judgment. *See Jones v. L.A. Cent. Plaza LLC*, 74 F.4th 1053, 1059–61 (9th Cir. 2023). It may be the law of the case that Plaintiffs have shown enough to survive a motion to dismiss, but that means nothing at summary judgment. *United States v. $31,000 in U.S. Currency*, 774 Fed. Appx. 288, 292–93 (6th Cir. 2019). This is especially true here as certain facts relied on by the Ninth Circuit are blatantly false. *See Silva v. Baptist Health S. Fla., Inc.*, 838 Fed. Appx. 376, 382–83 (11th Cir. 2020).

*Driehaus*, 573 U.S. 149, 162 (2014).

**A. Matsumoto disclaimed standing.**

Plaintiff Matsumoto misrepresented her standing from the start of the case and obtained relief thereby. Matsumoto has never knowingly worked with pregnant minors despite falsely claiming she did in her Complaint. Plaintiffs' attempt to correct this misrepresentation in a footnote, Dkt. 139 at 18 n.2, and attempt to dismiss the misrepresentation as "immaterial" is unavailing—to show that her conduct is "arguably proscribed" by the statute, it needs to involve a pregnant minor and needs to include an intent to conceal the procurement of an abortion from her parents.[2] Matsumoto testified that she had never before worked with a pregnant minor, much less harbored or transported them, SOF ¶¶ 1–2,[3] and the "concrete steps" alleged by the response are nothing more than revising legal material in light of *Dobbs* (Dkt. 137-1 at 42:2-8)—which, of course, is not regulated under Idaho law. The rest is reliance on mere someday intentions, lacking detail sufficient for standing. *Lujan*, 504 U.S. at 564; *Lopez v. Candaele*, 630 F.3d 775, 787–88 (9th Cir. 2010).

**B. IIA disclaimed standing**

Like Matsumoto, IIA testified itself out of standing. IIA does not intend to conceal abortions, does not give direct assistance to minors, and has not previously known in advance that it was assisting an abortion. SOF ¶¶ 8–13. IIA does not drive Idaho minors to obtain abortions, and despite falsely representing in its disputed facts, Dkt. 139-1 ¶ 15, that it would "resume" doing so if Idaho Code § 18-623 were enjoined, the cited record does not support the premise that IIA *ever*

[2] In footnote 8, tucked into the end of their response, Plaintiffs argue that they "could have been more precise" in their "early-stage pleadings." Dkt. 139 at 45 n.8. It was not merely "*less accurate*," *Id.* at 18 n.2, or "*less precise*," *Id.* at 45 n.8, to say that Matsumoto had "work[ed] with minors who become pregnant," Dkt. 1 ¶ 1, or that she "support[s] and aid[s] pregnant minors," *Id.* ¶ 57, it was straightforwardly *false*.

[3] Throughout this Reply, citations to a statement of facts are to the Attorney General's Statement of Facts at Dkt. 137-2 unless otherwise noted.

*has*. In fact, the record makes clear that this premise is another falsehood. SOF ¶ 16 (citing Dep. of IIA at 56:2-4). Excuses about the "time sensitive nature" of requests aside, Plaintiffs do not explain how IIA is injured by a statute that prohibits procurement of an abortion for a pregnant minor *with the intention to conceal it* from the girls' parents, when IIA *doesn't know* if the aid it is providing goes to an abortion. If IIA's conduct does not involve pregnant minor girls, then it does not have standing, nor can it have standing without an intention to conceal abortions from parents.

### C. NWAAF disclaimed standing.

NWAAF wrongly says that it has established an intent to engage in conduct "but has refrained due to a reasonable fear of prosecution under Idaho Code § 18-623." Dkt. 139 at 13. This is false. NWAAF disclaimed any intent to conceal an abortion from the pregnant girls' parents. SOF ¶¶ 20–21. NWAAF last arguably transported an Idaho minor in 2020—three years before Idaho Code § 18-623 was enacted. SOF ¶ 25. NWAAF disclaimed ever harboring a minor. SOF ¶ 24. NWAAF understands the plain meaning of the words in the statute, notwithstanding incredible answers on redirect that, in any event, lack relevance to a vagueness claim. *See* Dkt. 141 at 12–15. Asserting hypothetical, "some day" intentions to violate the statute is just another way to assert an "unqualified right to pre-enforcement review of constitutional claims in federal court." *Whole Women's Health v. Jackson*, 595 U.S. 30, 49 (2021).

## II. Plaintiffs lack clean hands.[4]

Plaintiffs IIA and Matsumoto made false or misleading statements in the Complaint.

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[4] Plaintiffs misrepresent the Attorney General's unclean hands argument. The motion does not say that he is raising an unclean hands defense as a standing argument, Dkt. 139 at 44, he raises his unclean hands argument *as an argument in the alternative* to the standing arguments he raises earlier in the motion. As he says in the first sentence of the section on unclean hands "*If the Court goes so far as to find Plaintiffs have stated an injury*, they lack clean hands for two reasons." Dkt. 137-1 at 17. Plaintiffs' false statements to the Court, which this Court relied upon to grant a preliminary injunction, are inequitable *even if*, in the absence of those statements, they would have standing to sue. The alternative nature of the argument is restated in the second half of the unclean

Matsumoto said she had worked with pregnant minors, but this was a lie. SOF ¶ 1. Plaintiff IIA said it has "provided direct assistance or financial assistance for pregnant minors seeking abortion care," Dkt. 1 ¶ 55, but it has not known that such assistance would go to an abortion. SOF ¶¶ 11–12. Plaintiffs obtained relief from the Court based on these misrepresentations, and Plaintiffs have nothing to say except that Plaintiffs "could have been more precise," Dkt. 139 at 45 n.8, in seeking relief from an Article III court to vitiate the popular sovereignty of Idaho. Plaintiffs argue that these misrepresentations were made in good faith. *Id.* at 45, or that the misrepresentations were "immaterial." *Id.* at 18 n.2. But both this Court and the Ninth Circuit relied on these statements to find standing and grant a preliminary injunction. Dkt. 40 at 18, 21, 30, 40; *Matsumoto v. Labrador*, 122 F.4th 787, 796 (9th Cir. 2024). And of all the things that are peculiarly within the knowledge of Plaintiffs and their counsel at the start of a case, the conduct of Plaintiffs themselves is at the core.

The Supreme Court has made clear that "[t]he equitable powers of this court can never be exerted in behalf of one who has acted fraudulently, or who by deceit or any unfair means has gained an advantage. To aid a party in such a case would make this court the abetter of iniquity." *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933) (citation omitted). Maintaining their falsehoods in front of this Court and the Ninth Circuit until depositions were taken of the Plaintiffs is inexcusable, and Plaintiffs should not obtain equitable relief having furnished this Court and the Ninth Circuit with false factual assertions.

Separately, if Plaintiffs really do have sufficient evidence that they plan to traffic minors, and thereby commit kidnapping or custodial interference, Idaho Code §§ 18-4501, -4506, then that

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hands argument—the Attorney General is arguing that Plaintiffs lack an injury-in-fact because Plaintiffs lack an intention to engage in conduct prohibited by the statute. But if Plaintiffs' stated intentions *are sufficient* for standing, those intentions would be an inequitable basis for relief.

intention is itself inequitable. To maintain standing, Plaintiffs need to show an intention to conceal from the parents the intended result, i.e. the abortion, of an unlawful interference in the rights of the care, custody, and control that a parent holds over a child, and which the State has an interest in protecting. The inequitable nature of the sought relief in this case speaks for itself: acting with an intent to conceal a procedure as consequential as an abortion from the pregnant girl's parents—the "primary protectors of children's best interests." *Mirabelli v. Bonta*, 146 S. Ct. 797, 802 (2026). Interfering in the parent-child relationship is deceptive and inequitable with respect to the rights that parents have over their children—rights that state governments may protect. *Stanley v. Illinois*, 405 U.S. 645, 651–52 (1972); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968). The proper use of the unclean hands defense "not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public." *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 815 (1945). The Plaintiffs' conduct in this case, and their desired result, would be injurious to the public, and the Court should decline to reward their unclean hands.

**III. Plaintiffs' claims fail on the merits.**

**A. Plaintiffs' vagueness challenge is barred by law of the case and fails on the merits.**

As stated in the motion for summary judgment, the Attorney General is entitled to summary judgment because the Ninth Circuit's finding that Idaho Code § 18-623 is not vague is the law of the case and law of the circuit. *Matsumoto*, 122 F.4th at 805–06; *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agriculture*, 499 F.3d 1108, 1114 (9th Cir. 2007). Whether a statute is vague is an issue of pure law–there are no facts that can be developed that will change a law's text. *United States v. Ninety-Five Firearms*, 28 F.3d 940, 941 (9th Cir. 1994).

Plaintiffs argue that the Ninth Circuit left open vagueness challenges because it did not dissect the statute looking for vagueness in every corner. Dkt. 139 at 31–32. That's not what the Ninth Circuit said, and that's not how vagueness challenges work. The Ninth Circuit found that

Idaho Code § 18-623 "does not fall afoul of the vagueness line. Certain conduct is either clearly proscribed by the statute, such as providing transportation and shelter to minors seeking abortions in other states; clearly not proscribed by the statute, such as soliciting donations to organizations that support pregnant minors seeking abortions; or, in the case of conduct that might be understood as 'recruiting,' is subject to an 'imprecise but comprehensible normative standard.'" *Matsumoto*, 122 F.4th at 805 (quoting *Valle del Sol, Inc. v. Whiting*, 732 F.3d 1006, 1020 (9th Cir. 2013)). The authority-lacking analysis by Plaintiffs that vagueness is "context-dependent" or may "turn on evidence" just whistles past the obvious graveyard containing Plaintiffs' vagueness claim. The Ninth Circuit's holding that Idaho Code § 18-623 is not vague is the law of the case.

Even the best authority that Plaintiffs come up with to resurrect their claim falls short. They urge the Court to consider a vacated panel decision, *Humanitarian Law Project v. U.S. Dep't of Justice*, 352 F.3d 382, 404–05 (9th Cir. 2003), claiming that it shows the Ninth Circuit has authorized revisiting a vagueness claim on a more expanded record. Dkt. 139 at 32. But the panel in that case didn't *reconsider* anything—Plaintiffs confuse addressing an argument made in a brief with reconsideration of a prior result. The panel in *Humanitarian Law Project* heard *and rejected* an argument that statutory terms, previously found vague, were salvageable based on new "evidence" in the form of an update to the U.S. Attorney's Manual, i.e., a change in the government's position on the meaning of statutory language. 352 F.3d at 404. But this change was *irrelevant* because the only issue in a vagueness challenge is the meaning of the words in a statute. *Id.* (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). Unsurprisingly, as vagueness is a question of pure law, the panel reached an identical conclusion. *Id*. A developed record ultimately means nothing for vagueness purposes because the meaning of a statute is not determined in discovery. *See Cal. Tchrs. Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1147 (9th Cir.

2001) (citing *Grayned*, 408 U.S. at 109–10 for rule that courts look to "the words of the statute itself as well as state court interpretations of . . . same or similar statutes" to ascertain vagueness).

Even if the Court could look at the record, the Court should reject this vestigial claim. The mere fact that close questions can arise under a statute does not make it vague. *E.g.*, *United States v. Hogue*, 752 F.2d 1503, 1504 (9th Cir. 1985). And here the record is even less persuasive: bad faith arguments about what "procuring" an abortion means, *see* Dkt. 141 at 14–15, and Plaintiffs' bare assertions that they cannot understand a statute written in plain English are not good enough. *See Arnett v. Kennedy*, 416 U.S. 134, 159–60 (1974) (plurality op.)[5] (collecting cases commending the use of "common sense" as the standard for statutory interpretation on vagueness). The claim that the specific intent *mens rea* somehow makes the statute *more* vague fails as a matter of law. *McFadden v. United States*, 576 U.S. 186, 197 (2015). Judgment against this claim is proper.

**B. Plaintiffs' First Amendment challenges are barred and fail.**

The Ninth Circuit conclusively determined Plaintiffs' facial challenges fail as a matter of law, except with respect to facial overbreadth on the recruiting prong.[6] *Matsumoto*, 122 F.4th at 805–06. This is the law of the case. *Ranchers Cattlemen*, 499 F.3d at 1114. While the Ninth Circuit left open the possibility that Plaintiffs *could* raise an as-applied challenge, *Matsumoto*, 122 F.4th at 808 n.17, Plaintiffs never amended their complaint to assert one after disclaiming such a challenge

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[5] Three justices concurred with the plurality on the vagueness grounds at issue, meaning the views of the full court were expressed in the cited section. *See Arnett*, 416 U.S. at 164, 177.

[6] The Attorney General notes his arguments with respect to facial overbreadth of the recruiting prong are made for issue preservation and to demonstrate why, for purposes of certification, the Idaho Supreme Court will likely take a different view. Dkt. 137-1 at 21 n.6. While the Attorney General believes that the Ninth Circuit's decision on the recruiting prong is in error, the Attorney General acknowledges that it is binding on this Court absent a binding interpretation of the scope of the recruiting prong from the Idaho Supreme Court, review by the Ninth Circuit en banc or the U.S. Supreme Court. Thus, this brief will not address Plaintiffs' arguments on facial overbreadth relating to the recruiting prong, Dkt. 139 at 23–25. Certification is addressed in a separate brief.

in this Court. As previously briefed, such claims would fail anyway. *See* Dkt. 141-1 at 28-31.

***1. Plaintiffs disclaimed an as-applied challenge, and so the Attorney General did not need to move for summary judgment on a non-existent claim.***

At the very first hearing in this case, Plaintiffs disclaimed bringing an as-applied challenge and *have never once* mentioned bringing an as-applied challenge even after the Ninth Circuit's ruling. A defendant does not need to move for summary judgment on a claim that plaintiffs did not bring. At oral argument on the motion for preliminary injunction and motion to dismiss, Plaintiffs' counsel represented their challenge was facial, and specifically disclaimed an as applied challenge:

> Ms. Olson: Thank you, Your Honor. And at the outset, I will apologize because it dawns on me there was one of your questions that you posed at the outset that I didn't answer and that was whether we were opposing the facial or as-applied challenge. And Your Honor, *I think it's pretty clear ours is a facial challenge to the statute.* We're alleging that the terms are vague and that it infringes on First Amendment rights. *And there's no particular as-applied because there's not a specific circumstance yet where the statute has sought to be enforced.* And it may be because the conduct is so chilled by the statute that no one has -- that it has not been identified publicly yet, Your Honor.[7]

Tr. of Oral Argument, September 14, 2023, (Dkt. 36) at 55:1-12 (emphases added).

*Not once*, that counsel has been able to determine, since that oral argument, have Plaintiffs described their challenge as an as-applied challenge. Not on appeal, not in discovery, not in motion practice, *nowhere*—until Plaintiffs' motion for summary judgment in this case. The Attorney General did not need to read the minds of Plaintiffs—who never mentioned an as-applied challenge and did not amend their complaint to assert an as-applied challenge after the Ninth Circuit's ruling, and by all appearances persisted in their position that theirs was solely a facial challenge—before moving for summary judgment on the claims Plaintiffs actually brought. As in *Wal-Mart Stores v. City of Turlock*, 483 F. Supp. 2d 987, 997–98 (E.D. Cal. 2006)—which dismissed a late-raised as-

[7] It remains the case that the statute has not been enforced. Indeed, it remains unenforceable by the Attorney General because no county prosecutor has disclaimed enforcement. Idaho Code § 18-623(4). Thus, under counsel's formulation, there is still no basis for an as-applied challenge.

applied constitutional challenge—and as Plaintiffs conceded in the above quoted transcript, "[Plaintiffs'] complaint alleges constitutional deprivations only in the enactment, not application, of [Idaho Code § 18-623]. No as-applied claim could be asserted when the complaint was filed." While Plaintiffs might have been able to amend their Complaint previously in the litigation, they haven't done so, and so no as-applied claim is at issue. *Id.* at 998; *see also Does 1-134 v. Wasden*, No. 1:16-cv-00429-DCN, 2018 WL 2275220 at *5 (D. Idaho May 17, 2018) (finding amendment was necessary to state as-applied challenges). As Plaintiffs brought no as-applied claim, the Attorney General did not need to move for summary judgment on such a claim.

#### *2. Even if Plaintiffs brought an as-applied challenge, it fails on the merits.*

For the reasons stated in the response to Plaintiffs' motion for summary judgment, and incorporated by reference here, Plaintiffs' untimely as-applied challenge fails, and the Attorney General is entitled to summary judgment. To briefly summarize: Plaintiffs' expressive conduct claim fails because the transportation of people is not expressive conduct per se, *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1205 (9th Cir. 2022), and the purported message of Plaintiffs' conduct hasn't drawn the legal remedy—the unlawful interference in the parent-child relationship did. *B & L Prods., Inc. v. Newsom*, 104 F.4th 108, 114 (9th Cir. 2024). Plaintiffs' associational claim fails because such a claim requires either an intimate association, which as ad hoc "helpers" Plaintiffs have not attempted to show, *IDK, Inc. v. Clark County*, 836 F.2d 1185, 1194 (9th Cir. 1988); or the communication of an identifiable message through membership in a group. *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1188 (9th Cir. 1995). None of these facts are present here. *See generally* Dkt. 141 at 16–21. Even if they were, the statute survives strict scrutiny. *Id.* at 21–28.

### C. Plaintiffs' interstate travel claim fails.

The Attorney General is entitled to summary judgment on the interstate travel claims whether framed under the correct *Saenz v. Roe*, 526 U.S. 489, 500 (1999) formulation of that right,

or under Plaintiffs' bad motive theory. Whatever the theory, Plaintiffs don't have the right to assist in the travel of others, i.e., minors, who themselves lack the right to interstate travel, let alone when this "assistance" would violate unchallenged Idaho law. The undisputed legislative history does not reveal any evidence of an intent to hinder the rights of those who actually have a right to travel.

***1. Minors don't have a right to interstate travel.***

While Plaintiffs claim that they "are not asserting the right to travel on behalf of the minors they serve," but are instead "asserting a right to travel for trusted adults who wish to engage in lawful conduct in other states and wish to help others engage in lawful conduct in other states," Dkt. 139 at 43 n.7, the "others" they wish to help are minors. Thus, their right to travel claim, resting upon a stated desire "to help others," i.e. pregnant minors, travel to another state to "engage in lawful conduct in other states" rests entirely upon whether those minors have a right to travel. Plaintiffs' attempt to dismiss this fact in a footnote belies the absence of their claimed right.

Minors do not have the right to travel because they are "always in some form of custody" and "assumed to be subject to the control of their parents." *Schall v. Martin*, 467 U.S. 253, 265 (1984). Put differently, minors lack the right of travel because they "lack some of the most fundamental rights of self-determination—including . . . the right of liberty in its narrow sense, i.e., the right to come and go at will." *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654 (1995). Plaintiffs' arguments that "individuals" have the right to come and go for lawful activity merely elides, without addressing, the key distinguishing factor between this case and *every single one* of their cited right to travel cases—unlike their cases, this is a case about *minors*. Dkt. 139 at 39; *Edwards v. California*, 314 U.S. 160, 177 (1941); *Crandall v. Nevada*, 73 U.S. 35 (1867). Every other case they cite concerns the rights of adults whose rights "had not been qualified in any way." *Jones v. Helms*, 452 U.S. 412, 420–21 (1981). Just as the adult in *Jones*, 452 U.S. at 421, whose right to travel was lawfully qualified because of his criminal conduct, minors have no right to

travel at all. Thus, for the same reason the Court in *Jones* held that *Edwards* and *Crandall* did not apply in that case, cases concerning the right of adults to travel do not apply here.

As Plaintiffs necessarily concede, the right to travel is implicated here, at most, in the manner it was implicated in *Edwards*: the right to assist the travel of another person. Dkt. 139 at 36–37. Idaho Code § 18-623 does not criminalize the travel of adults or emancipated minors, it only forbids procuring an abortion for a pregnant minor by transporting that minor with the mens rea to conceal the abortion from the parents or guardian of that minor. Because minors themselves have no right to travel, Plaintiffs have no right to assist minors in such travel. Similarly, Plaintiffs argue that because the act of abortion in another state is lawful, that the statute is targeted at conduct that "may have been lawful where it occurred." Dkt. 139 at 37–38. Again, Plaintiffs cite cases concerning the rights *of adults* to travel freely to other states and *as adults*, take advantage of other state laws. *Id.* Plaintiffs cite no authority to the effect that states may not assist parents in maintaining—against busybodies and strangers—their rights to make custodial and medical decisions for their children, including custodial and medical decisions that a child disagrees with. *Parham v. J.R.*, 442 U.S. 584, 603–04 (1979).

Plaintiffs maintain, without any supporting authority, that parental rights are only enforceable against the government. *E.g.*, Dkt. 139 at 42. Nonsense. Put aside for a moment the multiple Supreme Court cases establishing not only the importance and exclusivity of parental decision making, *e.g.*, *Parham*, 442 U.S. 584; *Mirabelli*, 146 S. Ct. 797, and the duty and ability of a state to act to protect parental rights, *Stanley*, 405 U.S. 645; *Ginsberg*, 390 U.S. 629. Even in the absence of those cases, Plaintiffs' argument doesn't pass the smell test. In the same way, for instance, property rights, despite being constitutionally protected, *see* U.S. CONST. amend. V (takings), amend. IV, § 1 (due process), can be violated by both private parties and the government,

so too can other rights that create exclusive control and decision making.[8]

The State of Idaho can create criminal penalties for abortion trafficking and custodial interference as infringements on the right to the custody of a child, Idaho Code §§ 18-623, 18-4506, in the same way that it can prohibit other infringements on rights of property such as trespass or theft, Idaho Code §§ 18-2401 et seq., 18-7001 et seq., or other family rights like the right to support by one's spouse. Idaho Code § 18-401. Indeed, *Jones v. Helms* is a case directly on point: the reciprocal right to parental care, custody and control was violated by a non-government party, and his conviction on that basis was upheld against an interstate travel claim. 452 U.S. at 420; *see also Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1058 (9th Cir. 2018) (noting rights of children are reciprocal to parental rights). This "negative rights" citation-less argument is a dead-end.

Whatever theory Plaintiffs offer, the claim that they have the right to effectively emancipate someone else's children by taking them to another state is meritless. Plaintiffs have the right to travel as they please under Idaho Code § 18-623 but neither under the law nor the Constitution do they have the right to take someone else's children, any more than any other stranger would.

***2. Plaintiffs' bad motive theory fails.***

Plaintiffs argue that obiter dicta that has never been used to overturn a state statute should control the analysis here. While ultimately there is no evidence that the "primary objective" of Idaho Code § 18-623 was to impede travel, the Court should, nonetheless, use the correct framework for analyzing the right to interstate travel.

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[8] Ironically, Plaintiffs' cited case, *United States v. Guest*, 383 U.S. 745 (1966) proves the point that the government can intervene to protect ostensibly negative rights from private persons who would interfere with their exercise. *Id.* at 760 (reversing motion to dismiss indictment under law prohibiting conspiracy to interfere with exercise of constitutional rights without requirement that such interference be under color of state law); *compare* 18 U.S.C. § 241 with 18 U.S.C. § 242.

***a. The bad motive theory is not law.***

A controlling opinion, *Saenz*, 526 U.S. at 500, provides the correct framework for considering this question, rather than the plurality opinion in *Attorney General of N.Y. v. Soto-Lopez*. Plaintiffs do not attempt to show that, under the correct standard in *Saenz*, Idaho Code § 18-623 violates the right to travel. So, for the reasons discussed in the initial motion, Dkt. 137-1 at 31–33, summary judgment must be granted on this claim.

Moreover, Plaintiffs' citation, Dkt. 139 at 40, to *United States v. Guest* is unavailing. Plaintiffs' argument that in *Guest* the "Supreme Court emphasized that the right to travel is infringed if the 'predominant purpose' of the challenged act is to 'impede or prevent the exercise of the right of interstate travel, or to oppress a person because of his exercise of that right,'" Dkt. 139 at 40 (quoting *Guest*, 383 U.S. at 760), is a clear misrepresentation of the holding of that case. As Plaintiffs admit, *Guest* is a case about whether an indictment for conspiracy to violate rights was proper under 18 U.S.C. § 241. Dkt. 139 at 40. Thus, the predominant purpose discussion is focused on whether the predominant purpose of the *conspiracy* to violate someone's constitutional rights is to "impede or prevent the exercise of the right [to] interstate travel." *Guest*, 383 U.S. at 760. Plaintiffs' creative editing of their quote from the case attempts to hide the fact that the case never purports to address when a state law would violate that right. As footnote 17 to the decision makes clear, "[w]e are not concerned here with the extent to which interstate travel may be regulated or controlled by the exercise of a State's police power acting within the confines of the Fourteenth Amendment." *Id.* at 759 n.17. The reason the Supreme Court considered a "predominate purpose" in *Guest* was because 18 U.S.C. § 241 *contains a specific intent requirement* for the commission of the crime of conspiring to deprive a person of their constitutional rights. Consequently, if *a conspiracy* had as its predominate purpose the deprivation of the right to interstate travel, then it would be proper to indict the conspirators under 18 U.S.C.

§ 241. Plaintiffs' citation to *Guest* doesn't support Plaintiffs' claims.

***b. Even under the bad motive theory, Plaintiffs' claim fails.***

Idaho Code § 18-623 was not passed with the primary purpose of deterring travel, nor does it actually deter Plaintiffs' travel, so even if *Soto-Lopez* applies, summary judgment is proper.

*First*, Plaintiffs do not engage with the extensive quotations from both bill sponsors and supporters that show, to the extent a "primary purpose" can ever be known, *but see Dobbs v. Jackson Women Health Org.*, 597 U.S. 215, 253–54 (2022) the primary purpose of Idaho Code § 18-623 is to protect parental rights. To restate some of the extensive legislative record that Plaintiffs have no answer to:

> "Now let me just be very clear with this that this does not prohibit a parent who wants to give consent or a parent who takes their child across the border to receive an abortion. A parent can still do that and a parent can still give permission, say to an aunt or an uncle to do that. This is only dealing with those who would traffic minors without the consent of a parent." Stmt. of Rep. Ehardt [1:03:50-1:04:22]
>
> "We're talking about the recruiting, harboring or transporting for the attempt to procure, or in the furtherance of the procurement of an abortion, which is unlawful in Idaho. But it's the activity that occurs within the state, not the transport across state lines. It says transporting the pregnant minor within the state commits the crime." Stmt. of Sen. Lakey, Sen. State Affairs Comm. (Mar. 27, 2023) [35:13-37]
>
> "This law is especially designed to protect young women who are being abused or trafficked." Stmt. of Samantha Doty, Sen. State Affairs Comm. (Mar. 27, 2023) [14:34-38]
>
> "Human trafficking as well as statutory rape victims are also left out of the abortion discussion. These women are coerced into obtaining abortions to protect their traffickers and rapists. We know that human trafficking of minors is happening in Idaho. House Bill 242 supports parental consent and protects vulnerable minors." Stmt. of Dr. Katherine Aberle, Sen. State Affairs Comm. (Mar. 27, 2023) [17:21-17:35]

Plaintiffs' claim that the "undisputed record establishes . . . impeding travel [is] § 18-623's primary objective," Dkt. 139 at 41, is demonstrably false. *See* Dkt. 137-1 at 39–41 (collecting statements).

*Second*, Plaintiffs' citations to the record do not show that their travel has been deterred.

NWAAF stopped transporting Idaho minors for abortions three years before Idaho Code § 18-623 was passed. SOF ¶ 25. IIA does not directly transport Idaho minors and has never learned in advance that aid it was providing was intended to support minors in obtaining an abortion. Dkt. 137-5 at 29:18-30:6; 31:25-32:5; SOF ¶ 13. And Plaintiff Matsumoto has never transported a minor for an abortion or knowingly worked with pregnant minors. SOF ¶¶ 1, 6. Her mere someday intentions are not enough to show she has been deterred from travelling.

More to the point, no reasonable view of the statute supports a construction that inhibits the rights of those with an unqualified right to travel. Plaintiffs falsely argue that Idaho Code § 18-623 makes "[t]he act of providing a car ride or offering lodging in Idaho . . . criminal not because anything about those [facts] is unlawful in and of itself, but solely because they facilitate conduct that is lawful in the destination state of which Idaho disapproves." Dkt. 139 at 37. This is false for at least two reasons. First, these same acts constitute custodial interference under Idaho Code § 18-4506—a violation of which becomes a felony when the child is taken out of state. Second, parents, not Plaintiffs, have the natural right to determine whether or not a child can obtain an abortion. *Parham*, 442 U.S. at 603–04; *Mirabelli*, 146 S. Ct. at 803. This is a right that the state may protect by passing legislation to assist parents in the exercise of "authority in their own household." *Ginsberg*, 390 U.S. at 639; *see also Calabretta v. Floyd*, 189 F.3d 808, 820 (9th Cir. 1999). Because Plaintiffs' argument that Idaho's abortion trafficking statute punishes lawful travel and out of state conduct is incorrect, and the statute is in fact a lawful aid to parents, Plaintiffs' argument fails.

## CONCLUSION

The Attorney General is entitled to summary judgment as to all claims. Alternatively, if the Court denies summary judgment regarding the Plaintiff's First Amendment overbreadth claim as to the recruiting prong of the statute, then this controlling question of law should be certified to the Idaho Supreme Court. *See* Dkt. 138.

DATED: May 21, 2026

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 May 21, 2026, 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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**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

**ATTORNEY GENERAL LABRADOR'S APPENDIX OF EVIDENTIARY OBJECTIONS TO PLAINTIFFS' STATEMENT OF DISPUTED MATERIAL FACTS IN OPPOSITION TO ATTORNEY GENERAL LABRADOR'S MOTION FOR SUMMARY JUDGMENT [Dkt. 139-1]**

Attorney General Labrador makes the following objections to Plaintiffs' evidence offered in Plaintiffs' Statement of Disputed Material Facts in Opposition to Attorney General Labrador's Motion for Summary Judgment, Dkt. 139-1, pursuant to Fed. R. Civ. P. 56(c)(2) and the Court's instructions on motion practice.[1] Paragraphs 7, 17, 18, and 29 contain argument, not facts, and are not appropriately included in a statement of disputed facts.

| Plaintiffs' Statement and Record Citation | Objection |
|---|---|
| 3. Ms. Matsumoto has been and wishes to continue being a trusted adult for minors who were deciding whether to have an abortion and how to access care. Since the enactment of Idaho Code § 18-623, Ms. Matsumoto has refrained from engaging in these activities due to concern that doing so would subject her to liability. Olson Decl., Ex. 1 Matsumoto Tr. 60:20-61:23; SOF ¶ 23. | Hearsay as to whether Plaintiff is a trusted adult by minors. |
| 5. But for Idaho Code § 18-623, Ms. Matsumoto had concrete plans to assist pregnant minors by providing transportation to medical appointments, including abortion appointments, and was preparing to volunteer to do so prior to the enactment of Idaho Code § 18-623. Olson Decl., Ex. 1, Matsumoto Tr. 55:12-23; Ex., 2, Matsumoto Decl., ¶¶ 23, 33; SOF ¶ 21. She views this as a means to "express support for vulnerable young people[.]" Olson Decl., Ex. 1, Matsumoto Tr. 34:9-36:8, 55:9-23, 61:8-62:2; Ex. 2, Matsumoto Decl., ¶¶ 23, 24, 33; SOF ¶ 21, 23, 41. | Speculation as to future plans. |
| 11. Some of IIA's financial assistance has been used by Idaho minors to obtain abortion care outside of Idaho. Olson Decl., Ex. 5, Simpon Decl., ¶¶ 16-18, 22. | Speculation as to obtaining abortions. |
| 13. In some instances, IIA has understood that a parent was unaware of the minor's abortion that IIA funded. Olson Decl., Ex. 3, IIA Tr. 20:25-22:10; 33:6-13, 35:24-37:3; Ex. 5, Simpson Decl., ¶¶ 11-12, 22, 24; SOF ¶ 18. IIA understands that in some circumstances it would not be safe for a parent or guardian to know about an abortion, and IIA would not be viewed as a trusted community resource if it made such disclosures. Olson Decl., Ex. 5, Simpson Decl., ¶¶ 22, 24, 31-32. | Speculation as to the understanding, and as to safety of a minor; Hearsay as to how IIA is aware of parents' unawareness and lack of safety of a minor. |
| 15. Because of Idaho Code § 18-623, IIA's organizer has not driven across state lines with a minor since the district court's injunction was lifted on transporting and harboring. Absent the statute, IIA and its organizer would resume this practice. Olson Decl., Ex. 5, Simpson Decl., ¶ 28; SOF ¶¶ 46-47. | Speculation as to future plans |

[1] https://idd.uscourts.gov/district/judges/grasham/Motion_Practice.cfm

| | |
|---|---|
| 20. NWAAF does have plans to continue to support minors in accessing abortion care if that's what the minor would like. SOF ¶ 41; Olson Decl., Ex. 6, NWAAF Tr. 29:16-19. | Speculation as to future plans; hearsay as to what a minor wants |
| 24. NWAAF and its staff members, including Iris Alatorre, wish to restart transporting pregnant minor Idahoans who ask for rides to out-of-state licensed providers of safe, legal abortion. Olson Decl., Ex. 6, NWAAF Tr. 34:24-35:3; Ex. 7, Alatorre Decl., ¶ 30; SOF ¶¶ 41-44. | Speculation as to future plans, speculation about plans of staff members; Hearsay as to plans of staff members other than Iris Alatorre |

DATED: May 21, 2026

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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

*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

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