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IN THE 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 for the State of Idaho,

Defendant.

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

MEMORANDUM IN OPPOSITION TO DEFENDANT ATTORNEY GENERAL LABRADOR'S MOTION FOR SUMMARY JUDGMENT [DKT 137]

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INTRODUCTION

Idaho Code § 18-623 criminalizes helping a minor obtain lawful abortion care by targeting the speech, advocacy, and assistance of adults who make that out-of-state travel possible. The Attorney General attempts to reframe this sweeping prohibition as a narrow regulation of "pure conduct" and to relitigate standing despite the Ninth Circuit's prior ruling and the developed record. The summary judgment evidence shows Plaintiffs' speech and support activities are covered by the statute, have been chilled, and remain subject to a credible threat of enforcement. Plaintiffs Lourdes Matsumoto, the Northwest Abortion Access Fund ("NWAAF"), and the Indigenous Idaho Alliance ("IIA") seek to honor the dignity and autonomy of minors navigating reproductive decisions. In furtherance of that shared goal, Plaintiffs speak openly about abortion and share information about how Idaho minors can obtain lawful abortion care. Plaintiffs IIA and NWAAF provide funding, coordinate travel and logistics, and sometimes accompany those who must leave Idaho to obtain care. Plaintiffs have provided information, support, and community to young Idahoans and intend to continue doing so. Idaho has chosen to criminalize that support by making it a crime to "recruit," "harbor," or "transport" minors seeking abortion care with the "intent to conceal." Idaho Code § 18-623(1). Section 18-623 reaches core protected speech and association. It burdens the First Amendment, infringes on the constitutional right to interstate travel by targeting the very assistance that makes lawful travel possible, and is unconstitutionally vague. Defendant cannot avoid the statute's unconstitutional defects.

Defendant's motion fails because it rests on legal errors and factual distortions that cannot withstand the governing law or the undisputed record. He asks this Court to disregard binding Ninth Circuit rulings, treat reserved issues as decided, and adopt narrowing constructions the appellate court has already rejected. He also ignores the summary judgment record, showing that

Plaintiffs' intended speech, advocacy, and assistance are covered by the statute, have already been chilled, and remain subject to a credible threat of prosecution. Proper application of the law-of-the-case doctrine, the correct pre-enforcement standing standard, and the First Amendment and right-to-travel principles defeat Defendant's position. Defendant cannot relitigate settled legal questions, foreclose preserved Ninth Circuit claims, or overcome the ongoing constitutional injury. Therefore, his motion for summary judgment must be denied.

LEGAL STANDARD

Summary judgment may only be granted when the movant shows there is no genuine dispute of material fact and is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A dispute is "genuine" if a reasonable jury could rule for the nonmoving party. *Ochoa v. City of Mesa*, 26 F.4th 1050, 1055–56 (9th Cir. 2022) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). A fact is "material" if it must be proven under the governing law. *Id*. "On cross motions for summary judgment, courts evaluate each motion independently, giving the nonmovant in each instance the benefit of all reasonable inferences." *Amaya v. Sentry Credit, Inc.*, 798 F. Supp. 3d 1263, 1269 (W.D. Wash. 2025).

ARGUMENT

I. Plaintiffs Have Standing to Assert Each Cause of Action.

Each Plaintiff has standing to bring their First Amendment, right-to-travel, and vagueness claims. Article III standing requires an injury in fact that is fairly traceable to Defendant's conduct and likely to be redressed by a favorable ruling. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). In pre-enforcement challenges, injury exists where (1) the plaintiff has alleged "an intention to engage in a course of conduct arguably affected with a constitutional interest"; (2) the conduct is arguably "proscribed by a statute"; and (3) "there exists a credible threat of prosecution." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159–63 (2014) (citation omitted).

A. Defendant Misstates the Standard for Pre-Enforcement Standing.

Defendant's standing argument distorts both the governing legal standard and the record. It applies an improperly heightened pre-enforcement standing test, essentially requiring Plaintiffs to demonstrate past violations of the law. The Supreme Court and Ninth Circuit have repeatedly rejected this requirement. Defendant selectively reads deposition testimony to argue that Plaintiffs fall outside the statute, while ignoring the statute's broad scope and record evidence that Plaintiffs' intended activities are at least arguably covered and have been chilled. Critically, Defendant seeks to undo what has already been decided: the Ninth Circuit has held that Plaintiffs have standing to bring their First Amendment and vagueness claims, and nothing in the developed record undermines that conclusion. Because Defendant's argument is premised on legal error, selective use of the record, and an improper attempt to relitigate settled issues, it cannot support summary judgment.

B. Standing Is Satisfied if Any One Plaintiff Establishes It for Each Claim, and the Undisputed Record Establishes Standing for All Plaintiffs.

Standing exists if at least one plaintiff has standing for each claim. *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006). Defendant's plaintiff-by-plaintiff attack therefore fails as a matter of law. Nonetheless, the record shows that each Plaintiff has independently satisfied standing. NWAAF, IIA, and Matsumoto each have concrete plans to engage in conduct arguably criminalized by § 18-623, face a credible threat of enforcement, and would have their injuries redressed by an injunction.

1. NWAAF Has Standing.

NWAAF intends to engage in a course of conduct affected with a constitutional interest that is proscribed by § 18-623 because it wishes to engage in speech, expressive activities, and travel that are covered by the statute. It is chilled from doing so for fear of prosecution. The statute

criminalizes assisting a minor to travel out of state for abortion care by "recruiting, harboring, or transporting" that minor. NWAAF provides counseling, information, and assistance to minors seeking lawful abortion care, and wishes to continue to do so for Idaho minors. SOF ¶¶ 11, 27, 32–34; SDF ¶¶ 19–22, 24–26.[1] This desired speech, according to the Ninth Circuit, falls within the "recruiting" prong of § 18-623, because "information—especially information trying to persuade a girl to have an abortion or regarding the provider, time, place, or cost of an available abortion—could satisfy the plain meaning of 'recruit.'" *Matsumoto v. Labrador*, 122 F.4th 787, 809 (9th Cir. 2024). NWAAF also wishes to fund abortions for Idaho minors. SOF ¶¶ 12, 27, 29, 50. "'[R]ecruiting' may also include subsidizing or fully funding an abortion—whether through donations or discounted services—by making the abortion more attractive (persuading) or more feasible (inducing)." *Matsumoto*, 122 F.4th at 809. NWAAF wishes to provide places for young people to stay on the way to their abortion appointments or places to recover afterward. SOF ¶¶ 27, 29, 41. This desired activity arguably falls within the "harboring" provision of the statute. *See Matsumoto*, 122 F.4th at 807 ("Dictionaries define 'harbor' as giving 'shelter' or 'refuge' to someone, including those who might be evading law enforcement or who need protection."). NWAAF also wishes to provide staff and volunteers to travel with young people from Idaho to places where abortion is lawful. SOF ¶¶ 42–45; SDF ¶¶ 22–24. This travel and assistance arguably fall within the "transporting" or "harboring" provisions of § 18-623. *See Matsumoto*, 122 F.4th at 807 ("'[T]ransport' denotes carrying or conveyance of something or someone from one place to another."). NWAAF has also helped Idaho minors seeking abortion care in the past, sometimes in

[1] SOF references are to Plaintiffs' Statement of Undisputed Material Facts, Docket ("Dkt.") 136-1. SDF references are to Plaintiffs' Statement of Facts in Opposition to Defendant Attorney General Labrador's Motion for Summary Judgment, filed herewith.

situations where a parent may not have been aware of the pregnancy or abortion. SOF ¶ 15; SDF ¶ 25. If NWAAF were to do so in the future, these actions could arguably fall under the "intent to conceal" portion of the statute, depending on how a prosecutor interprets it. NWAAF's desired activities—sharing information about abortion, funding abortion care, and supporting travel and lodging—fall squarely within the statute's prohibitions and provide it with standing on its First Amendment and interstate travel claims. NWAAF also lacks a clear understanding of key terms in § 18-623, which puts its staff and volunteers at risk of prosecution if they were to wrongly interpret its provisions, SOF ¶¶ 70, 72; SDF ¶ 28, establishing an injury for purposes of its vagueness claim.

Defendant mischaracterizes NWAAF's testimony to claim that NWAAF "simply disclaimed acting with respect to nearly every element of the statute." Dkt. 137-1 at 10. NWAAF testified it would like to engage in speech, conduct, and travel to assist young Idahoans in obtaining lawful abortion care but has refrained due to a reasonable fear of prosecution under § 18-623. SOF ¶¶ 11, 41–45, 50–51, 67; SDF ¶¶ 23, 27. The scaling back of involvement and curtailing of activity are exactly the kinds of injury recognized in pre-enforcement cases. *See Driehaus*, 573 U.S. at 158–61. The relevant question is whether NWAAF would engage in its protected activities but for the statute, not whether it has already risked criminal penalties to do so. *Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 488 (9th Cir. 2024) (explaining that courts ask whether plaintiffs would engage in conduct "were it not proscribed").

Defendant is wrong that NWAAF has no plans to transport Idaho minors in the future. *See, e.g.*, SOF ¶¶ 41–45 (describing NWAAF's desire to travel with young people in Idaho across state lines). Defendant's reliance on *Bain v. California Teachers Association*, 891 F.3d 1206 (9th Cir. 2018) is therefore misplaced. In *Bain*, which involved teachers challenging a teachers' union

requirement, one plaintiff lacked standing because she had no intention of returning to teaching, making any future injury speculative. *Id*. at 1214.

Here, NWAAF stands ready to provide support, referrals, funding, housing, and transportation but for § 18-623 and has halted assistance due to the statute. SOF ¶¶ 27, 44, 45, 50, 67. Unlike *Bain*, this is not a "some day intention;" NWAAF intends to resume these activities if the law is enjoined. SOF ¶¶ 27–29, 41–45, 50. The ongoing chill and diversion of existing activities constitutes a concrete injury. *See Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 391–93 (1988); *Flaxman v. Ferguson*, 151 F.4th 1178, 1186–87 (9th Cir. 2025).

NWAAF has not "testified itself out of" the statute, Dkt. 137-1 at 10, but has shown that § 18-623 has deterred its work and forced changes in conduct. SOF ¶¶ 44–45, 67. This chilling effect is a cognizable injury caused by the statute and redressable by injunctive relief. *Driehaus*, 573 U.S. at 158–61. NWAAF therefore has standing on its First Amendment, interstate travel, and vagueness claims.

2. IIA Has Standing.

IIA likewise has Article III standing on each of its claims. It intends to engage in a course of conduct arguably proscribed by § 18-623 but is chilled from doing so for fear of prosecution. IIA provides information, advice, and assistance to individuals, including minors, about accessing abortion and other medical care. SOF ¶ 16. This speech and support arguably fall within the "recruiting" portion of the statute. *See Matsumoto*, 122 F.4th at 809. IIA wishes to travel with young people from Idaho to help them obtain lawful abortion care. SOF ¶¶ 42–43, 46–47, SDF ¶ 14. This arguably falls within the "harboring" or "transporting" prongs of § 18-623. *See Matsumoto*, 122 F.4th at 807. In some instances, IIA has understood that a parent was unaware of the minor's abortion that IIA funded, SOF ¶ 18, which is arguably proscribed by the "intent to

conceal" prong of § 18-623. IIA's intended speech and conduct fall within the scope of the statute's prohibitions because it assists and facilitates minors' travel for abortion care, establishing standing on its First Amendment and right to travel claims. IIA is also harmed by the lack of clarity in the law's key terms, increasing its uncertainty over which speech or conduct could subject it to criminal prosecution, SOF ¶¶ 70, 73, which shows IIA is suffering an injury from the law's vagueness.

Defendant also takes IIA's deposition out of context. From the start of this action, IIA has explained that its mission includes providing financial and practical support to help individuals, including minors, to access medical care, including abortion care, and that it would like to continue to do so but for the challenged law. SDF ¶ 9; Dkt. 12-8 at ¶¶ 37–43, 58–61. The discovery reinforces that IIA's intended work falls within the statute's broad reach. IIA explained that it often provides support through trusted community members who work directly with minors. SOF ¶¶ 17, 37–38; SDF ¶ 10. IIA does this in furtherance of its desire to serve people "through trust-based mutual care and aid, led by those who need the care and those in the community already providing other care, which includes ensuring access to abortions, including access for minors." SOF ¶ 36; SDF ¶ 8. This is a practical response to the confidential and time-sensitive nature of this assistance, not a disavowal of it as Defendant suggests. 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. SDF ¶ 13. The statute is written broadly enough to encompass the exact kind of financial and logistical support that IIA provides, including assistance provided indirectly to minors. SOF ¶¶ 50, 52. IIA's testimony that it has reason to believe its aid has supported minors seeking abortion care only underscores how its desired speech and actions arguably fall within the prohibitions of § 18-623. SOF ¶ 18; SDF ¶ 11.

Standing does not require IIA to admit past violations of the law or to track the ultimate use of its funds with precise certainty. The injury is that the statute forces IIA to choose between continuing its work and risking prosecution, SOF ¶¶ 52, 65–66, 68, or ceasing its work in violation of its values and threatening the community caregiving networks through which young people access medical care, including abortion, SOF ¶ 68. Because a correct reading of the record illustrates that IIA's ongoing activities are chilled by the statute, *see, e.g.*, SDF ¶¶ 15–16, summary judgment on standing should be denied.

3. Matsumoto Has Standing.

Plaintiff Matsumoto likewise satisfies Article III standing for all her claims. She seeks to engage in conduct arguably protected by the Constitution but fears prosecution under § 18-623. Matsumoto is an attorney, advocate, and resource who has long worked with young people ages 11 to 24 affected by domestic violence, sexual assault, and related harms. SOF ¶ 19. When Idaho's abortion laws changed, Matsumoto began taking concrete steps toward assisting pregnant minor Idahoans, including drafting materials to distribute to the community, because she knew she would need to address these laws with young people and advocates. SOF ¶ 20. Matsumoto stopped her efforts to begin providing this assistance when Idaho passed § 18-623. SOF ¶ 22. Matsumoto wants to serve as a trusted adult for young people in her community and anticipates advising individuals on legal reproductive options in her legal practice. SOF ¶ 23; SDF ¶ 3. All these efforts are arguably within the "recruiting" prong of the statute. *See Matsumoto*, 122 F.4th at 810.

Matsumoto also started planning to provide transportation and support in her free time to people seeking abortion care. SOF ¶¶ 21, 48; SDF ¶ 5. Matsumoto stopped her efforts to begin providing this assistance when Idaho passed § 18-623. SOF ¶¶ 22, 49. Matsumoto likewise seeks to express support for vulnerable young people through acts of accompaniment and care, such as

driving them to medical appointments or providing a safe place to recover. SOF ¶¶ 39, 48–49. If Matsumoto were to act on these plans, her actions would arguably fall into the "harboring" or "transporting" prongs of the statute. *See Matsumoto*, 122 F.4th at 807.

The law also chills her ability to communicate with advocates and trusted adults for fear she may learn a parent is unaware or a minor does not want to disclose abortion plans, SOF ¶ 69; SDF ¶ 6, which could fall within the "intent to conceal" part of the statute. Matsumoto testified that uncertainty about § 18-623's scope deters her from expanding services to vulnerable youth due to potential criminal liability, SOF ¶ 71; SDF ¶ 4, and therefore she too is harmed by the law's vagueness.

Defendant's argument asks the Court to disregard both its prior ruling and the governing summary judgment standard. This Court and the Ninth Circuit have already ruled that Matsumoto has standing because her work as an attorney and her advocacy places her squarely within the statute's reach. Dkt. 40 at 21. Plaintiff Matsumoto may not know whether her assistance directly resulted in a minor obtaining an abortion, but given the nature of her work, it is entirely possible that it did. *See* SOF ¶ 23. Indeed, she testified in her deposition that in her role at the Coalition Against Sexual and Domestic Violence, she spoke to advocates who posed hypotheticals to her, without identifying information, involving minors who were potentially human trafficked or sex trafficked, became pregnant, and wanted to seek abortion resources. SDF ¶¶ 1–2. In this and other ways, she has supported pregnant minors through other trusted adults, such as service providers, by sharing information on abortion to help the service provider direct pregnant minors to lawful care. SOF ¶¶ 19, 20, 23. Moreover, Plaintiff Matsumoto explained that she stopped what she was working on because of the chill from the law. SOF ¶¶ 21–22. She has explained what she wants to

do and why she cannot. SOF ¶¶ 21–26, 39–41, 48–49, 50, 69–71. Matsumoto's desired conduct is sufficiently within the ambit of the statute to bring a pre-enforcement challenge.

Defendant heavily relies on selective deposition testimony to argue that Plaintiff Matsumoto has "never worked with pregnant minors," but that mischaracterizes her testimony and the law. Dkt. 137-1 at 6. Matsumoto explained she has worked extensively with young people who have experienced domestic violence, sexual assault, and related harms. SOF ¶ 19.[2] Matsumoto further explained that "while she has not *directly* counseled minor pregnant survivors on abortion-related rights, she has counseled individuals of *unknown* pregnancy status and trusted adults assisting survivors accessing abortion care." SOF ¶ 23 (emphasis added); SDF ¶¶ 1–2 (demonstrating the support she has provided pregnant minors through helping other advocates).

Matsumoto testified that she took the concrete steps of "drafting materials to distribute to the community" when Idaho banned abortion because she knew her scope of practice and expertise would undoubtably encompass the "need to address these laws with young people advocates," SOF ¶ 20, but she stopped her efforts when Idaho passed § 18-623, SOF ¶ 22. She intends to continue expanding that work to support pregnant minors who need legal and practical assistance. SOF ¶¶ 23, 48–49, 71. In the pre-enforcement context, this is exactly the type of intended course of conduct that supports standing. Matsumoto does not have to wait until a minor, who she is *certain* is pregnant, walks through her door to counsel, because her desire to communicate with and otherwise support pregnant minors has already been chilled. SOF ¶ 69.

[2] Defendant has made Plaintiffs aware that Plaintiffs' Complaint stated that Matsumoto's work "includes representing victims of sexual violence resulting in pregnancy" and referenced "in her work with minors who become pregnant." Dkt. 1 ¶ 1. It would have been more accurate to say that her work "includes providing legal information to support victims of sexual violence resulting in pregnancy. In her work with minors and advocates . . ." This distinction is immaterial for the purposes of her standing because her work clearly places her potentially within the ambit of the statute.

The statute is broadly written to reach those who aid minors seeking abortion care. Matsumoto's undisputed testimony confirms that she wants to continue providing that type of support and would do so but for the threat of prosecution and the statute's vagueness. The statute requires Matsumoto to assume a real risk of prosecution if she were to engage in her desired speech and conduct. SOF ¶¶ 24, 49–51, 69, 71. The factual record is sufficient to establish injury in fact under Ninth Circuit precedent. Just like NWAAF and IIA, Matsumoto's self-censorship is directly attributable to the statute and redressable by injunctive relief.

4. All Plaintiffs Face a Credible Threat of Enforcement.

The third prong in the pre-enforcement standing inquiry asks whether Plaintiffs face a credible threat of enforcement under the law. To determine whether there is a credible threat of enforcement, courts consider how long a statute has been on the books and whether those tasked with enforcing the statute have failed to disavow doing so. *See Matsumoto*, 122 F.4th at 298 ("In challenging a new law whose history of enforcement is negligible or nonexistent, either a 'general warning of enforcement' or a 'failure to *disavow* enforcement' is sufficient to establish a credible threat of prosecution in pre-enforcement challenges on First Amendment grounds." (citation omitted)). All Plaintiffs clearly face a credible threat of prosecution under § 18-623 were they to engage in the speech, expressive activities, and travel that they wish to engage in. Given that § 18-623 is a relatively new statute, and much of it has been enjoined during the pendency of this lawsuit, "the government's failure to disavow enforcement of the law" is sufficient to establish a credible threat. *Tingley v. Ferguson*, 47 F.4th 1055, 1068 (9th Cir. 2022), *abrogated on other grounds by Chiles v. Salazar*, 146 S. Ct. 1010 (2026). The Attorney General has not disavowed enforcement and instead is "vigorously defending the constitutionality of the statute and its broad coverage." *Matsumoto*, 122 F.4th at 798. He affirmed that the statute authorizes "the Attorney

General … to prosecute violations of Idaho Code § [18-622 or] 18-623 'if the [local] prosecuting attorney … refuses to." Op. Att'y Gen. 23-1 at 2–3 (Idaho Apr. 27, 2023) (citation omitted). "The Government has not argued to this Court that plaintiffs will not be prosecuted if they do what they say they wish to do." *Holder v. Humanitarian L. Project*, 561 U.S. 1, 16 (2010). The record clearly establishes that Plaintiffs face a credible threat of prosecution and have pre-enforcement standing to press their claims.

II. The Law-of-the-Case Doctrine Forecloses Defendant's Selective Relitigation of Issues the Ninth Circuit Decided and Does Not Bar Issues the Ninth Circuit Left Open.

The law-of-the-case doctrine provides that courts generally decline to revisit issues previously decided by the same or a higher court in the same case. *Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1090 (9th Cir. 2013). But it is equally well-settled that appellate decisions rendered at the preliminary injunction stage ordinarily do not constitute law of the case, particularly where they are based on an incomplete record. *S. Or. Barter Fair v. Jackson Cnty.*, 372 F.3d 1128, 1136 (9th Cir. 2004); *City of Anaheim v. Duncan*, 658 F.2d 1326, 1328 n.2 (9th Cir. 1981). Because preliminary injunction decisions "must often be made hastily and on less than a full record," their conclusions generally do not bind subsequent merits determinations. *S. Or. Barter Fair*, 372 F.3d at 1136. To be sure, a "fully considered appellate ruling on an issue of law" may, in some circumstances, become law of the case. *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agric.* ("*Cattlemen*"), 499 F.3d 1108, 1114 (9th Cir. 2007) (citation omitted). But the doctrine applies only to issues that were actually decided, not to issues that were assumed, mentioned in passing, or could have been—but were not—resolved. *Jeffries v. Wood*, 114 F.3d 1484, 1488–89 (9th Cir. 1997) (en banc), *overruled on other grounds by Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012). And even where a prior ruling addresses a

legal question, the district court must still apply that legal rule to the facts as they are developed on remand. *Cattlemen*, 499 F.3d at 1114.

Defendant repeatedly invokes *Cattlemen* to minimize the force of the Ninth Circuit's prior decision, while simultaneously treating that same decision as binding where it suits him. That selective use of *Cattlemen* is internally inconsistent and legally unsound. For example, he relies on it to argue that Plaintiffs' vagueness challenge fails, that "harbor" and "transport" regulate conduct rather than speech, and that Plaintiffs cannot bring an association claim. Dkt. 137-1 at 13–14. Yet when it comes to "recruiting," Defendant pivots, invoking *Cattlemen* to suggest that the Ninth Circuit's analysis is nonbinding and open to reconsideration. Dkt. 137-1 at 21–24.

Cattlemen does not support that one-way use of the doctrine. It draws a straightforward distinction: preliminary assessments tied to an undeveloped record generally do not bind later merits proceedings, but fully considered appellate rulings on pure questions of law do. Defendant's motion reverses that rule. He asks this Court to treat fact-dependent or expressly reserved portions of the Ninth Circuit's preliminary injunction decision as dispositive against Plaintiffs, while treating the Ninth Circuit's purely legal construction of "recruiting" as merely provisional.

Properly applied, the law-of-the-case doctrine resolves much of Defendant's motion at the outset. The Ninth Circuit's decision in this case contains both binding legal determinations and expressly limited or reserved issues. As to overbreadth, the Court issued a binding legal determination: the "recruiting" prong is facially overbroad, while "harboring" and "transporting" are not. In their motion for summary judgment, Plaintiffs have respected that ruling and do not seek to relitigate it. But the Ninth Circuit expressly reserved Plaintiffs' as-applied challenges to the "harboring" and "transporting" provisions, *see Matsumoto*, 122 F.4th at 808 n.17, leaving those claims for resolution based on evidence—evidence now in the record. The same is true of

Plaintiffs' associational claim, which was not foreclosed as a matter of law and is supported here by a developed record demonstrating coordinated, expressive activity not addressed by the panel. The Ninth Circuit interpreted certain statutory terms in rejecting a vagueness challenge on a limited record but did not decide whether the statute is vague in operation. For example, the court did not consider application of the law's operative verbs and *mens rea* ("intent to conceal"), or how the law applies to real-world assistance networks.

Plaintiffs have presented unrebutted evidence showing that the statute's application is unpredictable and invites arbitrary enforcement. In short, the Ninth Circuit decided the overbreadth issue as to "recruiting," but left Plaintiffs' as-applied, associational, and full-record vagueness challenges open. Defendant's motion fails because it attempts to relitigate what has been decided while foreclosing what has not.

III. Defendant Is Not Entitled to Summary Judgment on the First Amendment Claims.

A. Plaintiffs Are Entitled to Overbreadth Relief for the Statute's "Recruiting" Prong as a Matter of Law.

Defendant is not entitled to summary judgment on Plaintiffs' First Amendment claim because Ninth Circuit precedent forecloses the argument that § 18-623's "recruiting" prong can be narrowed to avoid covering protected speech. The statute reaches substantial protected expression and is therefore facially overbroad.

Defendant effectively conceded this point. In a footnote, Defendant acknowledges that the Ninth Circuit's decision "binds this Court" on the overbreadth of "recruiting." Dkt. 137-1 at 14 n.6. As a result of this concession and the Ninth Circuit's controlling analysis, this Court should hold as a matter of law that the recruiting prong is facially overbroad.

1. The Ninth Circuit's Construction of "Recruiting" Controls and Establishes Overbreadth as a Matter of Law.

Defendant's motion depends on construing "recruiting" as conduct, but the Ninth Circuit has already rejected that interpretation and held that "recruiting" means to "persuade, enlist, or induce … to engage in a particular activity." *Matsumoto*, 122 F.4th at 808. On that construction, the Ninth Circuit explained that the statute reaches "a large swath of expressive activities," including encouragement, counseling, and advocacy regarding lawful abortion care. *Id.* at 814-15. The Court identified paradigmatic examples of protected speech covered by the statute, such as statements encouraging a minor to obtain a lawful abortion in another state or expressing support for abortion access. *Id.* at 808–09. The Ninth Circuit made binding legal determinations about the statute's meaning and constitutional implications. *See id.*; *c.f. Cattlemen*, 499 F.3d at 1114. The Ninth Circuit's binding construction forecloses Defendant's narrower interpretation and bars summary judgment.

2. "Recruiting," as Construed, Regulates Core Protected Speech.

Under the Ninth Circuit's interpretation, liability attaches to speech that persuades or encourages a minor to obtain lawful medical care. Contrary to Defendant's assertions, that is speech, not conduct. As the Ninth Circuit explained: "Encouragement, counseling, and emotional support are plainly protected speech under Supreme Court precedent, including when offered in the difficult context of deciding whether to have an abortion." *Matsumoto*, 122 F.4th at 811. The Court also relied on longstanding precedent recognizing protection for abortion-related counseling and advocacy. *Id.* at 811–12. Further, it emphasized that speech encouraging lawful conduct remains protected, even when it induces action, so long as the action is lawful. *Id.* at 812 (citing *United States v. Hansen*, 599 U.S. 762, 782–83 (2023)).

Unless covered by a specific First Amendment exception, speech is protected. *See, e.g.*, *United States v. Stevens*, 559 U.S. 460, 468 (2010) (listing the well-established excepted categories of "obscenity, defamation, fraud, incitement, and speech integral to criminal conduct" as never having raised a constitutional problem (internal citations omitted)).[3] The First Amendment has no "categorical" "exception" for speech encouraging lawful activity. *Stevens*, 559 U.S. at 468; 470. Nor does it permit the government to criminalize counseling, advocacy, or the dissemination of information about lawful services. *See Bigelow v. Virginia*, 421 U.S. 809, 822 (1975) (protecting speech that "communicat[es] information" about abortion services); *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 766 (2018) (rejecting regulation of abortion-related counseling); *McCullen v. Coakley*, 573 U.S. 464, 488 (2014) (recognizing sidewalk counseling as protected speech).

Defendant's attempt to reframe "recruiting" as conduct fails because the statute imposes liability based on the content of what is said—i.e., speech encouraging abortion. That is the hallmark of a speech restriction subject to strict scrutiny. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015). Further, Defendant's attempt to classify this as unprotected speech incidental to criminal conduct fails. Dkt. 137-1 at 15. The speech here falls outside of the *Giboney* criminal-conduct exception because Plaintiffs commit no underlying crime—§ 18-623 makes the speech itself the crime. *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502–03 (1949). If the Constitution permitted such a workaround whenever a state disagreed with the lawful speech of its citizens, the First Amendment's protections would be meaningless.

[3] The same rule applies to expressive conduct, when the conduct manifests "an intent to convey a particularized message" and "in the surrounding circumstances the likelihood was great that the message would be understood by those who viewed it." *Spence v. Washington*, 418 U.S. 405, 410–11 (1974).

3. Defendant's Reliance on *Hansen* Does Not Save § 18-623.

Defendant relies on *United States v. Hansen* to argue that "recruiting" can be narrowly construed to reach only unprotected solicitation. But *Hansen* permits narrowing constructions only where a statute is readily susceptible to such a reading. *Hansen*, 599 U.S. at 774–76; *see also Stevens*, 559 U.S. at 481 ("[T]his Court may impose a limiting construction on a statute only if it is 'readily susceptible' to such a construction." (citation omitted)). Here, the Ninth Circuit has already performed the relevant statutory analysis and concluded that "recruiting" bears ordinary meaning. *Matsumoto*, 122 F.4th at 808–11. It also considered *Hansen* when it concluded "there is no specialized meaning of 'recruit' to which we could give a 'fair shake.'" *Id.* at 808 (citing *Hansen*, 599 U.S. at 774–75.) Because this statute is not susceptible to Defendant's proposed narrowing construction, *Hansen* provides no basis for summary judgment in Defendant's favor.

4. The "Intent to Conceal" Requirement Does Not Cure Overbreadth.

Defendant contends that the statute's *mens rea* requirement, the "intent to conceal" an abortion from a parent, narrows its scope. It does not. Adding a specific intent requirement does not eliminate the statute's burden on protected expression; it exacerbates the chilling effect by forcing speakers to guess whether their speech might later be deemed to have the prohibited purpose. Moreover, the Supreme Court has expressed doubt that "punishing third parties for conveying protected speech to children *just in case* their parents disapprove of that speech is a proper governmental means of aiding parental authority." *Brown v. Ent. Merch. Ass'n*, 564 U.S. 786, 802 (2011). The intent requirement does not eliminate the statute's sweeping burden on protected speech.

5. Certification Cannot Be Used to Avoid the Binding Ninth Circuit Construction of "Recruiting."

Finally, Defendant suggests that this Court should certify the meaning of "recruiting" to the Idaho Supreme Court.[4] That request underscores why their motion fails. Certification is inappropriate where the relevant statutory meaning has already been authoritatively construed for purposes of the federal constitutional analysis. The Ninth Circuit has already interpreted § 18-623 and assessed its First Amendment implications. *Matsumoto*, 122 F.4th at 808–11.

Defendant asserts that "recruiting" should not be held facially overbroad because its plain meaning is clear. Dkt 137-1 at 14. The Ninth Circuit already rejected that premise after conducting a detailed statutory-interpretation analysis under Idaho law and concluded that "recruiting" had no specialized meaning in the statute. *Matsumoto*, 122 F.4th at 808–811. The Ninth Circuit did not interpret "recruiting" in isolation. It examined the term in statutory context, including its relationship to "procuring an abortion" that is lawful in another state, to assess the conduct the provision reaches. But the Ninth Circuit did not undertake a full analysis of how the statute's *mens rea* operates in practice or interacts with the statute's operative verbs on a developed record. Even so, the court's contextual approach confirmed that "recruiting," as used in § 18-623, sweeps in a broad range of First Amendment activity. That analysis led the Ninth Circuit to consider the various types of activities that fall within that sweep, which is exactly the kind of "composite whole" analysis Defendant wrongly claims was missing. Dkt. 137-1 at 21.

As the Ninth Circuit has already definitively decided this issue, Defendant's motion must fail. Further, Plaintiffs have sought and demonstrated they are entitled to summary judgment on this claim. Dkt. 136-2 at 22–24.

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[4] Plaintiffs are separately responding to Defendant's Motion for Certification and address it here only in response to Defendant's overbreadth argument.

B. Plaintiffs Are Entitled to As-Applied Relief for Violations of Their Speech, Expressive Conduct, and Associational Rights.

1. The Ninth Circuit Expressly Preserved Plaintiffs' As-Applied Challenges.

Defendant's cursory argument regarding the statute's "harboring" and "transporting" provisions and Plaintiffs' First Amendment claims rests on a fundamental misreading of the Ninth Circuit's decision. In a single paragraph, Defendant asserts that these claims are foreclosed because the Ninth Circuit "concluded that neither of these words criminalizes First Amendment protected speech," and that such conclusions constitute law of the case. Dkt. 137-1 at 14 (citing *Matsumoto*, 122 F.4th at 806–08; *Cattlemen*, 499 F.3d at 1114).

That is incorrect. The Ninth Circuit did not foreclose Plaintiffs' claims. To the contrary, it expressly declined to decide whether the statute's "harbor" and "transport" provisions are unconstitutional as applied to Plaintiffs' conduct. The Court stated unambiguously: "We offer no opinion on whether Challengers could succeed on an as-applied challenge to these provisions." *Matsumoto*, 122 F.4th at 808 n.17 (citing *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1032 (9th Cir. 2006)). That statement is dispositive. The law of the case applies only to issues actually decided, not to questions the court explicitly left open. *See Cattlemen*, 499 F.3d at 1114. By its own terms, the Ninth Circuit's decision leaves open precisely the as-applied claims Plaintiffs advance here. Defendant relied almost entirely on this mistaken law-of-the-case theory and offered no developed argument that the "harboring" and "transporting" provisions are constitutional as applied to Plaintiffs' conduct. That failure alone is sufficient to deny his motion. *See* Fed. R. Civ. P. 56(a). In any event, the undisputed record establishes that application of the "harbor" and "transport" provisions to Plaintiffs' activities burdens protected expression and association, entitling Plaintiffs to judgment as a matter of law. Dkt. 136-2 at 15–21.

2. The Ninth Circuit Rejected Defendant's Speech Incident to Criminal Conduct Arguments.

Defendant's attempt to characterize the "recruiting" provision as regulating only unprotected speech "incident to criminal conduct" is foreclosed by the Ninth Circuit's decision in *Matsumoto*. The court expressly considered and rejected the premise underlying Defendant's argument: that speech related to assisting a minor in obtaining an abortion may be treated as unprotected because it is tied to unlawful conduct. The Ninth Circuit reaffirmed the narrow scope of the speech integral to criminal conduct exception, explaining that such speech is unprotected only where it is "done in furtherance of the commission of an underlying criminal offense." *Matsumoto*, 122 F.4th at 813–14. Critically, the court then made clear that this doctrine does not apply here because there is no underlying criminal conduct to which the speech could be integral: "Legal abortion . . . is not a criminal offense and so cannot serve as the 'underlying offense' to render otherwise protected speech unprotected" by the First Amendment." *Id.* at 814. That holding directly defeats Defendant's theory. Defendant cannot bootstrap speech into unprotected status by labeling it "recruiting" tied to "procurement," where the underlying activity—obtaining a lawful abortion—is itself not criminal. The Ninth Circuit reinforced this point by emphasizing that speech encouraging or facilitating lawful abortion remains protected even if it influences conduct: "Even if speech induces a particular course of action, the speech is protected [by the First Amendment] as long as that action is not illegal." *Id.* at 812. And it specifically identified the kinds of speech swept in by the statute as constitutionally protected: "Encouragement, counseling, and emotional support are plainly protected speech" under the First Amendment, as is "information related to the availability of abortions, education on reproductive health care options, and instruction as to how to access an abortion legally." *Id.* at 811-12.

These holdings are incompatible with Defendant's assertion that the statute regulates only conduct or that any speech it reaches is merely incidental and therefore unprotected. To the contrary, the Ninth Circuit treated "recruiting" as a regulation of speech itself—and held that it sweeps in a "large swath of expressive activities" protected by the First Amendment. *Id.* at 814. Under the law-of-the-case doctrine, those determinations are binding. *Cattlemen*, 499 F.3d at 1114. Here, the Ninth Circuit's rejection of the "speech integral to criminal conduct" theory was essential to its First Amendment analysis. The court could not have held that "recruiting" sweeps in protected speech without first concluding that such speech is not stripped of protection merely because it relates to abortion access. That conclusion forecloses Defendant's attempt to relitigate the issue under a different label. Defendant's argument thus fails as a matter of law.

This conclusion is also independently compelled by the Supreme Court's recent clarification of the "speech integral to criminal conduct" exception. In *Hansen*, the Court emphasized that the exception is "narrow" and historically limited to speech that is itself part of a specific, independently unlawful course of conduct—such as solicitation or aiding and abetting a crime. 599 U.S. at 781–83. That limitation reinforces what the Ninth Circuit held here: absent an underlying criminal offense, speech cannot be stripped of First Amendment protection merely because it relates to or encourages conduct. Where, as here, the conduct being discussed—obtaining a lawful abortion—is not itself illegal, speech about that conduct remains protected. Accordingly, Defendant's argument must fail. The statute, by its terms, targets core protected expression—including counseling, information-sharing, and advocacy—without any valid basis for treating that speech as integral to criminal conduct. Because the Ninth Circuit has already foreclosed Defendant's contrary theory, and because binding Supreme Court precedent confirms

the narrowness of the exception Defendant invokes, there is no genuine dispute of material fact and Plaintiffs prevail as a matter of law.

3. The Ninth Circuit Did Not Foreclose an Association Claim.

Again, Defendant overreads the Ninth Circuit opinion in *Matsumoto*. Defendant limits his arguments on association to two sentences, stating: "Plaintiff's Count IV must be dismissed insofar as it alleges a freedom of association claim." Dkt. 137-1 at 13. The Ninth Circuit has already held § 18-623 does not *facially* burden associational rights. *Matsumoto*, 122 F.4th at 806. This point is law of the case. *Cattlemen*, 499 F.3d at 1114. Dkt. 137-1 at 13.

However, the Ninth Circuit did not hold that § 18-623 cannot ever, as a matter of law, burden associational rights. Rather, it rejected a facial associational challenge on the limited record before it, concluding only that the statute did not impose the types of burdens traditionally recognized in associational cases—such as compelled disclosure, restrictions on membership, or limitations on general advocacy. *Matsumoto*, 122 F.4th at 806–07. As the Court explained, the statute does not "limit [plaintiffs'] ability to solicit donations, require them to unmask their anonymous members, impinge on the anonymity of their donors, or inhibit their general advocacy of the right to abortion," nor does it "forc[e] anyone to refrain from supporting or joining these organizations." *Id.* Those observations define the limited scope of the holding, and they do not resolve whether § 18-623 burdens other forms of protected association.

Under the law-of-the-case doctrine, only issues decided explicitly or by necessary implication are binding. *See Cattlemen*, 499 F.3d at 1114. The Ninth Circuit did not address, let alone decide, whether § 18-623 burdens Plaintiffs' coordinated expressive activity, including their ability to work together to provide guidance, support, funding, and logistical assistance to pregnant

minors seeking lawful abortion care. That question was not necessary to the Court's narrow rejection of a facial associational claim.

Plaintiffs' associational claim does not rest on compelled disclosure or formal membership restrictions. It arises from the statute's interference with collaborative activity—the ability of individuals and organizations to associate with one another to engage in protected expression and to carry out shared expressive objectives. The record reflects that Plaintiffs operate through networks that provide counseling, information, financial assistance, and logistical support. SOF ¶¶ 25, 26, 64, 66–69. Criminalizing that coordinated activity fractures those networks and deters individuals from associating for these purposes.

The Ninth Circuit recognized that Plaintiffs engage in "guidance and material support" to assist minors in accessing lawful abortion care, yet it did not analyze whether the statute's application to that coordinated activity burdens the right of association. Because that issue was not decided, it remains open. Defendant's invocation of *Matsumoto* therefore fails. It cannot transform the Ninth Circuit's limited rejection of a facial associational challenge into a categorical bar on Plaintiffs' as-applied claim. Moreover, Plaintiffs have established their entitlement to summary judgment on the association claim. *See* Dkt. 136-2 at 21–22.

IV. The Ninth Circuit's Preliminary Injunction Ruling Does Not Preclude Plaintiffs' Vagueness Claim Under the Law-of-the-Case Doctrine.

Defendant asserts that the Ninth Circuit conclusively resolved Plaintiffs' void-for-vagueness claim as a matter of law and that this Court is therefore bound to grant summary judgment in his favor. That contention misstates both the scope of the Ninth Circuit's decision and the governing law-of-the-case doctrine.

Here, the Ninth Circuit's preliminary injunction decision did not resolve Plaintiffs' vagueness claim in its entirety. The Court's analysis was expressly limited to whether the discrete

terms "recruiting," "harboring," and "transporting" were impermissibly vague on the limited record before it. *Matsumoto*, 122 F.4th at 805–06. The panel did *not* address whether the statute's *mens rea* requirement—"intent to conceal"—is unconstitutionally vague, nor did it analyze whether the statute becomes vague when the operative verbs are considered together with the *mens rea* element and the phrase "procure an abortion." Those questions were not decided and therefore are not governed by the law-of-the-case doctrine. Nor does the doctrine bar reconsideration where, as here, the record at summary judgment is substantially more developed than the record before the appellate court at the preliminary injunction stage. A vagueness analysis is context-dependent and may turn on evidence showing lack of fair notice or a risk of arbitrary enforcement. Accordingly, the Ninth Circuit has recognized that vagueness determinations may be revisited on a fuller evidentiary record. *Humanitarian L. Project v. U.S. Dep't of Just.*, 352 F.3d 382, 392–93 (9th Cir. 2003) (reconsidering vagueness claim on expanded record), *vacated on other grounds*, 393 F.3d 902 (9th Cir. 2004).

A criminal statute is unconstitutionally vague if it "fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015) (citing *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983)). Here, the fuller evidentiary record shows that § 18-623 is unconstitutionally vague. Dkt. 136-2 at 22–24. The uncontroverted evidence shows that "intent to conceal" provides no objective benchmark for speakers, helpers, prosecutors, or courts. At times, Defendant has suggested that "intent to conceal" should be assessed under the "totality of the circumstances," (Preliminary Injunction Hearing Tr. 32:10-21, 33:16-14), but that leaves the determination of whether the "totality of the circumstances" constitute an intent to conceal solely in the discretion of Defendant or any other prosecutor. In other words, it invites arbitrary enforcement.

In addition, the sponsors of the legislation, and the Governor when he signed it, repeatedly referred to the statute as one that requires a parent's permission, knowledge, or consent.[5] That is different from "intent to conceal" and further supports a finding that the statute's *mens rea* requirement is vague. Does a person violate the statute simply by failing to obtain a parent's permission or consent? Or must there be some affirmative act of concealment? Which interpretation will law enforcement select? Again, the statute invites arbitrary enforcement.

Plaintiffs are confused about how this provision will be interpreted. Iris Alatorre from NWAAF stated that the phrase "intent to conceal" is confusing to her. SDF ¶ 28. She stated that NWAAF believes:

> [T]hat a pregnant person has full control over who to tell or not to tell. We are vocal about this. We don't think that is an intent to conceal, but in some cases we know that, but for our assistance, a minor may need to tell a parent, and that doing so may not be safe. Is our providing assistance with this knowledge sufficient to show an intent to conceal?

SDF ¶ 28.

Second, the use of the phrase "procure an abortion" paired with recruiting, harboring, and transporting, renders the statute vague. The uncontested evidence is that Plaintiffs do not understand these terms and that Defendant understands these terms differently from how Plaintiffs understand them. Plaintiffs all testified that they do not have a shared or clear understanding of key terms in § 18-623. SOF ¶ 70. IIA's organizer testified that she understood procure to mean directly participating in a transaction, and that procuring by recruiting, harboring, and transporting

[5] *Committee Consideration of H.B. 242: Hearing Before the Idaho S. State Affs. Comm.,* at 00:01:44 (Idaho Mar. 27, 2023) (statement of Rep. Barbara Ehardt); *Id.* at 00:34:17 (exchange between Sen. James Ruchti and Sen. Todd Lakey); Letter from Governor Brad Little to Speaker of the House Mike Moyle (Apr. 5, 2023) (transmitting signed bill)), https://gov.idaho.gov/wp-content/uploads/2023/04/transmittal_h-242aaS_2023.pdf.

doesn't make sense. SDF ¶ 12. Matsumoto stated that she does not understand what conduct might be considered procuring. SDF ¶ 4. And NWAAF testified repeatedly that it did not understand what procure means in the statute and that it is concerned that it has a different understanding of the meaning of procure than does the Attorney General. SDF ¶ 28. Nor do they understand at what point ordinary assistance becomes the legal cause of the abortion rather than support for a decision the minor has already made. SOF ¶ 70. The statute does not say, and Plaintiffs have offered unrebutted testimony that they fear prosecution because they do not understand when their legal support turns into criminal conduct. SOF ¶¶ 70–72. Thus, looking at Plaintiffs vagueness claim on a complete record demonstrates that the statute is so vague that it "fails to give ordinary people fair notice of the conduct it punishes," and is "so standardless that it invites arbitrary enforcement." *Johnson*, 576 U.S. at 595.

The Ninth Circuit did not decide—either explicitly or implicitly—whether § 18-623 is void for vagueness based on its *mens rea* provision or the statute's operation as a whole. And even to the extent the Ninth Circuit addressed discrete statutory terms in isolation, this Court must apply any such legal conclusions to the complete factual record now before it. Because Plaintiffs present new, unrebutted evidence demonstrating confusion among regulated parties and a substantial risk of arbitrary enforcement, the void-for-vagueness claim is not precluded by the law of the case and is properly resolved at summary judgment.

V. Defendant Is Not Entitled to Summary Judgment on Plaintiffs' Right to Travel Claim.

A. Plaintiffs Correctly Assert the Component of The Right To Travel That Protects Entering and Leaving a State.

Defendant wrongly takes a narrow, cabined view of the scope of the right to travel. Dkt. 137-1 at 24–25. It is true that right to travel precedent involves "*at least* three different components[:] . . . the right of a citizen of one State to enter and to leave another State, the right to

be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." *Saenz v. Roe*, 526 U.S. 489, 500 (1999) (emphasis added). *Saenz* outlines (at least) three components of the right to travel, and *Att'y Gen. of New York v. Soto-Lopez*, 476 U.S. 898 (1986), and *United States v. Guest*, 383 U.S. 745 (1966), provide the framework for how a violation of that right can be proven.

This case involves the first component: the right to enter and to leave another state, which has always included the right to engage in lawful conduct in the destination state. *See, e.g.*, *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180–81 (1869) (holding the Privileges and Immunities Clause protects people's right to enjoy the same freedoms as locals in other states), *overruled on other grounds by United States v. S.-E. Underwriters Ass'n*, 322 U.S. 533 (1944). Plaintiffs agree with Defendant that § 18-623 does not discriminate against out-of-state residents, nor does it treat newly arrived residents differently from other residents in Idaho, but Defendant is incorrect that the "'right to travel analysis refers to little more than a particular application of equal protection analysis' between in state and out-of-state persons." Dkt. 137-1 at 25. Although many right to travel cases involve a state discriminating against out-of-state residents, *cf. Saenz*, 526 U.S. at 501–02 (collecting recent cases), it is immaterial which state's laws are at issue: *no* state may prohibit residents of one state from enjoying the benefits legally available in another state. Idaho cannot burden the travel of its own residents who wish to leave the state to engage in lawful conduct elsewhere any more than it can burden the travel of out-of-state visitors or newly arrived residents to Idaho. The lack of precedent involving a state criminalizing the travel of its own residents across state lines to engage in lawful conduct elsewhere underscores the novelty and egregiousness of § 18-623. *See Yellowhammer Fund v. Att'y Gen. of Alabama Steve Marshall*, 733 F. Supp. 3d

1167, 1187 n.12 (M.D. Ala. 2024) ("While it is true that previous right-to-travel cases have generally concerned States that discriminated against visitors from other States, this merely reflects the unprecedented nature of the Attorney General's actions in seeking to prevent residents of his own State from engaging in lawful conduct in other States. Neither the text nor purpose of the Privileges and Immunities Clause suggests that its protections depend upon whether the State imposing travel restrictions is the State of one's origin or destination."). And just as Idaho cannot prohibit an individual from crossing state lines to obtain a legal abortion, *see Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 345-46 (2022) (Kavanaugh, J., concurring), neither can it seek to achieve the same result by passing a law that criminalizes trusted adults for assisting in that travel.

B. Section 18-623 Imposes an Unconstitutional Burden on Interstate Travel.

1. The Statute Targets Travel Itself by Criminalizing an Act Necessary to Engage in It.

Defendant argues that § 18-623 does not "prevent [anyone] from entering or leaving the state" and therefore imposes no obstacle to interstate travel. Dkt. 137-1 at 25. But the Supreme Court has long recognized that the right encompasses the practical ability to undertake interstate movement—including the transportation, logistical support, and assistance that make movement possible. *Edwards v. California*, 314 U.S. 160, 177 (1941) (invalidating law criminalizing the act of bringing indigent persons across state lines); *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 269 (1974) (holding states may not impose barriers penalizing travel to obtain medical care). A state cannot leave the border technically open while criminalizing the acts necessary to cross it. Yet § 18-623 does precisely that. It criminalizes driving a minor to a state border, accompanying her across it, or providing temporary shelter before or after a trip. These acts are essential mechanics of interstate travel. An adult who provides a minor with transportation to Utah,

accompanies a minor on their journey to Oregon, or opens their home in Boise the night before the minor travels to Nevada for lawful care is performing the acts that constitute interstate travel. Section 18-623 threatens that trusted adult with criminal prosecution.

2. The Law Operates Extraterritorially by Targeting Lawful Out-of-State Activity.

Defendant argues that § 18-623 regulates only conduct occurring within Idaho, insinuating that the law does not apply beyond the state's borders. The text of the statute refutes that argument. Section 18-623 expressly provides that it is not an affirmative defense that "the abortion provider or the abortion-inducing drug provider is located in another state." Idaho Code § 18-623(3). The statute thus projects Idaho's laws beyond its borders by saying that the assistance is still a crime even if it results in a lawful medical procedure performed in another state. The act of providing a car ride or offering lodging in Idaho becomes criminal under § 18-623 not because anything about those acts is unlawful in and of itself, but solely because they facilitate conduct that is lawful in the destination state of which Idaho disapproves. That is extraterritorial regulation by design, and it is unconstitutional.

The Supreme Court has consistently held that a state may not extend its criminal authority beyond its borders by penalizing residents for engaging in conduct that is lawful where it occurs. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408-09, 421 (2003) ("A State cannot punish a defendant for conduct that may have been lawful where it occurred."); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996) (recognizing a state may not impose its policy choices on neighboring states); *N.Y. Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914) (warning that extraterritorial state law would undermine federalism limits); *Nielsen v. Oregon*, 212 U.S. 315, 321 (1909) (holding that Oregon could not "punish a man for doing within the territorial limits of Washington an act which that state had specially authorized him to do"). As the Court recognized

in *Bigelow v. Virginia*, a state "does not acquire [regulatory authority over another State's lawful conduct] merely because . . . [its residents may] travel to that State." 421 U.S. at 824. This principle was reaffirmed by Justice Kavanaugh's concurring opinion in *Dobbs*, where he explained that a state may not "bar a resident of that State from traveling to another State to obtain an abortion" because of the constitutional right to interstate travel. 597 U.S. at 345-46.

Defendant's suggestion that the statute's burden on travel is "evenhanded" because it disrupts both local and interstate travel, Dkt. 137-1 at 26 (citing *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 277 n.7 (1993)), is disingenuous. In *Bray*, the Supreme Court held that the actions of anti-abortion protesters outside of a clinic in Washington, D.C., did not implicate the interstate right to travel because the only "'actual barriers to ... movement' that would have resulted from [the anti-abortion protesters'] proposed demonstrations would have been in the immediate vicinity of the abortion clinics, restricting movement from one portion of the Commonwealth of Virginia to another." *Bray*, 506 U.S. at 277. By contrast, Idaho bans abortion in nearly all circumstances, Idaho Code § 18-622, requiring most people seeking abortion to travel out of state for care, so Defendant should understand that the law's burden weighs more heavily on interstate travel than it does local. Plus, the unrebutted testimony shows that § 18-623 was passed with the purpose of preventing travel to other states with more favorable abortion laws. SOF ¶¶ 3–4, 1–2, 5–9.

Defendant's reliance on *Jones v. Helms*, 452 U.S. 412 (1981), is likewise misplaced. In *Jones*, a parent fled Georgia after pleading guilty to misdemeanor child abandonment. *Id.* He was then caught and convicted of felony child abandonment—an enhancement permitted by statute if a parent who had been convicted of child abandonment flees the jurisdiction of the court, thereby impacting the state's ability to order a remedy for that crime. *Id.* The Court held the parent had a

right to travel that was qualified by his *existing* criminal conviction. *Id.* at 420–21. Here, there is no underlying conduct that is otherwise punishable by the State, and the State cannot turn constitutionally protected travel into a crime. Idaho is not punishing an underlying crime; it is punishing assistance to engage in lawful conduct and doing so by explicit reference to activity occurring outside its jurisdiction entirely. The acts of driving a minor to a state border or providing her temporary shelter become criminal under § 18-623 only because of a lawful abortion occurring in another state. *Jones* does not authorize that infringement. Notably, *Jones* also spoke approvingly of *Edwards* and *Crandall*, distinguishing them both. *Id.* at 421 ("In . . . those cases, the statute at issue imposed a burden on the exercise of the right to travel by citizens whose right to travel had not been qualified in any way.").

C. Matsuo, Soto-Lopez*, and* Guest *Provide the Legal Framework That Should Be Applied to This Right to Travel Claim.*

1. A Right to Travel Claim Can Be Proven by Demonstrating the Law's "Primary Objective."

Defendant is incorrect that Plaintiffs cannot demonstrate a right to travel violation by proving that the primary objective of the law is to impede travel, and *Matsuo v. United States* is not to the contrary. *Matsuo* approved of and applied the *Soto-Lopez* framework, which has also been cited favorably by this Court. *Matsuo* clearly confirms that a right to travel violation can be demonstrated by showing that a law actually deters such travel, that impeding travel is a law's primary objective, or that a law uses any classification which serves to penalize the exercise of that right. *Matsuo v. United States*, 586 F.3d 1180, 1182, 1182 n.2 (9th Cir. 2009) (citing *Soto-Lopez*, 476 U.S. at 903 (plurality opinion)). Specifically, the Ninth Circuit in *Matsuo* considered whether the law at issue in that case actually deterred travel or used a classification which served to penalize the exercise of that right, while declining to consider whether the primary purpose of the law was to impede travel only because "Plaintiffs have provided no evidence that 'impeding

travel is [the Act's] primary objective.'" *Id.* at 1182 n.2 (brackets in original). That is in sharp contrast to the circumstances in this case, where Plaintiffs have presented abundant evidence that impeding travel is § 18-623's primary objective. SOF ¶¶ 1–9; Dkt. 136-2 at 30–32. *Soto-Lopez*, therefore, provides this Court with the proper framework for determining if § 18-623 violates the right to travel. This Court recognized as much when it denied Defendant's Motion to Dismiss on Plaintiffs' interstate travel claim. Dkt. 41 at 11 (citing *Soto-Lopez*, 476 U.S. at 902; *Matsuo*, 586 F.3d at 1182 n.2).

Furthermore, the Supreme Court in *United States v. Guest* also endorsed a "primary objective" or "predominant purpose" test for right to travel violations.[6] There, 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." *Guest*, 383 U.S. at 760. Whatever issue Defendant has with *Soto-Lopez* is foreclosed by the controlling precedent in *Guest*. Defendant's repeated insistence that consideration of legislative motives is disfavored is unpersuasive in the instant case, where the test specifically calls for Plaintiffs to prove the "primary objective" of the challenged law. Thus, the Court should apply the primary objective framework to Plaintiffs' right to travel claim consistent

[6] *Guest* arose from the Ku Klux Klan shooting of Lt. Col. Lemuel Penn in Athens, Georgia, and the rash of racially motivated terror inflicted on Athens around the time of the shooting. *See Myers v. United States*, 377 F.2d 412, 416 (5th Cir. 1967) (describing facts of the murder that were the basis of *Guest*). After a local jury failed to convict the suspects for the murder of Lt. Col. Penn, the federal government sought to prosecute the men for conspiring to deprive Black people of their constitutional rights, including the right to travel. *Guest*, 383 U.S. at 747 n.1. Initially, the district court dismissed the indictment. *Id.* at 748. In overturning the dismissal of the indictment, the Supreme Court reaffirmed the constitutional right to interstate travel and articulated the predominant purpose test.

with *Soto-Lopez*, *Guest*, and *Matsuo*. Plaintiffs have demonstrated a violation of the right to travel by showing that the law's primary purpose is to impede travel.

2. Plaintiffs Have Also Proven That Idaho Code § 18-623 Has Actually Deterred Their Travel.

The undisputed record establishes that not only is impeding travel § 18-623's primary objective, but that it also has in fact deterred interstate travel—which brings it squarely within the bounds of prohibition recognized in *Soto-Lopez and Matsuo*. Prior to the enactment of § 18-623, NWAAF volunteers drove Idaho patients to abortion appointments across state lines. SOF ¶¶ 33, 44. They no longer do so. SOF at ¶ 45. IIA's organizer and the community advocates it supports have similarly driven patients to abortion appointments in other states in the past but cannot resume that practice while the law remains in effect. SOF ¶¶ 46–47. Plaintiff Matsumoto had planned to volunteer to drive minors to medical appointments before § 18-623 passed. SOF ¶ 48. She has ceased those plans entirely because of the statute. SOF ¶ 49. The record establishes that § 18-623 has "actually deter[red]" interstate travel within the meaning of *Soto-Lopez*, 476 U.S. at 903.

D. Defendant's Reliance on State Interests Does Not Save the Statute.

1. Even Legitimate State Interests Cannot Justify an Infringement on the Right to Travel.

The State's purported interests in § 18-623 do not and cannot justify impeding the right to travel. Even legitimate state interests cannot save a statute that violates the right to travel. *See Crandall v. State of Nevada*, 73 U.S. 35, 49 (1867) (holding that even a tax of one dollar upon any person leaving the state of Nevada by railroad, stagecoach, or other vehicle was unconstitutional); *Edwards*, 314 U.S. at 173 (recognizing the "grave and perplexing social and economic dislocation" that the challenged law was seeking to address but explaining that a state could not "restrain[] the transportation of persons and property across its borders" to address such concerns).

2. Idaho Cannot Inhibit the Right to Travel Under the Guise of Parental Rights.

Even if State interests could justify an infringement on the right to travel, none of the ones offered by Defendant pass muster. Namely, the State's insistence that the law is justified as a parental rights measure is inapt. Defendant's parental-rights framing does not transform the law into a permissible regulation. As explained in their Memorandum in Support of Plaintiffs' Motion for Summary Judgment, Plaintiffs and other trusted adults are not capable of violating the constitutional right to parent; the right to parent is a right against the state and only the state can violate it. Dkt. 136-2 at 12–13; *Troxel v. Granville*, 530 U.S. 57, 66 (2000). Defendant cites the recent Supreme Court decision in *Mirabelli v. Bonta* in support of his position. But that case also relied on the principle that the right to parent is a negative right against the government and involved parents challenging *state* policies as violating their "rights to direct the upbringing and education of their children." *Mirabelli v. Bonta*, 146 S. Ct. 797, 803 (2026). *Mirabelli* does not support the State's position.

Nevertheless, Plaintiffs do not wish to usurp the role of the parent. They wish to hold themselves out as trusted adults to young people who cannot, for whatever reason, turn to their parent or guardian for assistance in obtaining an abortion. This Court has previously stated that "[wh]at the state cannot do is craft a statute muzzling the speech and expressive activities of a particular viewpoint with which the state disagrees under the guise of parental rights." Dkt. 40 at 57. The State likewise cannot inhibit the fundamental right to travel under the guise of parental rights.

3. Idaho Cannot Justify Undermining the Right to Travel of Helpers.

Defendant repeatedly attempts to justify the law by mischaracterizing Plaintiffs with terms like "busybodies," "interlopers," and "strangers," ignoring the evidence that shows Plaintiffs wish

to hold themselves out as helpers for young people in need, SOF ¶¶ 23, 24, 41–43, and disregarding the longstanding precedent that prohibits states from criminalizing such helpers, *Edwards*, 314 U.S. at 170–71. *Edwards* demonstrates why Plaintiffs themselves have suffered a constitutional violation of their right to travel. In that case, Fred Edwards traveled from Texas to California with his brother-in-law to help him start a new life. *Id.* His brother-in-law had $20 to his name and, because of his indigency, he believed California could offer him and his family new opportunities. *Id.* at 171. At the time, California law criminalized helpers like Mr. Edwards, specifically making it unlawful to transport indigent people into the state. *Id.* The trial court sentenced Mr. Edwards to six months in the county jail for coming to the aid of his brother-in-law. *Id.* The Supreme Court found that no single state could "isolate itself" by prohibiting indigent people from entering and held that fundamental constitutional rights were at play—rights we now call "the right to travel." *Id.* at 173. Though sympathetic to the "grave and perplexing social and economic dislocation" that led California to use its police power to restrict travel, the Court held that this interest could not overcome the countervailing importance of preserving the free movement of people across state lines. *Id.* The similarities between *Edwards* and this case are striking. Like Mr. Edwards, Plaintiffs are helpers seeking to transport people who need assistance traveling to another state. SOF ¶¶ 21–22, 33, 37, 39, 41–49. Like Mr. Edwards, Plaintiffs will be criminalized if they aid in another's travel. And as in *Edwards*, it is the helper's right to travel at stake in this case.[7] The undisputed record demonstrates that Plaintiffs' interstate travel rights are violated. Dkt. 136-2 at 24–33.

[7] Plaintiffs are not asserting the right to travel on behalf of the minors they serve. Plaintiffs are 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. Whether or not minors have a right to interstate travel is immaterial to the disposition of this claim. In any event, the case Defendant cites for the notion that minors have no right to travel was not about, nor did it expressly rule on, the contours of a minor's interstate travel rights. *Vernonia School District 47J*

VI. Defendant's Unclean Hands Affirmative Defense Cannot Support Summary Judgment.

The unclean hands doctrine is a narrow, equitable principle that only "closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." *Jarrow Formulas, Inc. v. Nutrition Now, Inc.,* 304 F.3d 829, 841 (9th Cir. 2002) (citation omitted). "To prevail on a defense of unclean hands, a defendant must demonstrate by clear and convincing evidence (1) 'that the plaintiff's conduct is inequitable;' and (2) 'that the conduct relates to the subject matter of [the plaintiff's] claims.'" *KST Data, Inc. v. Northrop Grumman Sys. Corp.*, No. CV175125MWFPJWX, 2020 WL 3072993, 14 (C.D. Cal. June 10, 2020) (brackets in original, citations omitted). Application of the doctrine is within the discretion of the court. *Metal Jeans, Inc. v. Metal Sport, Inc.,* 843 F. App'x 898, 899 (9th Cir. 2021); *Ellenburg v. Brockway, Inc.,* 763 F.2d 1091, 1097 (9th Cir. 1985).

Despite this clear standard, the Defendant advances two theories, neither of which satisfies the doctrine's requirements. First, he attempts to widen the doctrine to address what he terms "misrepresentations" by two of the plaintiffs regarding "their connection" with pregnant Idaho minors. Dkt. 137-1 at 11. This argument is not an allegation of the unclean hands affirmative defense. In fact, the Defendant admits that he is making a standing argument when he alleges that two of the Plaintiffs made unsupported allegations. *See* Dkt. 137-1 at 11 (where the Defendant ends this argument by stating, "*Second*, in the event the Court finds that Plaintiffs somehow have

v. Acton was about whether random drug testing of student athletes constituted an unreasonable search. 515 U.S. 646, 648 (1995). Regardless, there is no law stopping a young person in Idaho from traveling to another state, nor is there anything prohibiting a minor from helping another minor travel to another state. This reality further underscores that § 18-623 is aimed squarely at the travel of trusted adults like Plaintiffs.

standing[.]"). Standing and the unclean hands defense are different legal propositions. And, as shown in Section I, *infra,* Plaintiffs had and continue to have standing.[8]

Unclean hands is a defense to address instances of planned bad faith or misconduct that are directly related to the controversy before the court. It is not a vehicle to air disagreements over the precision of good-faith pre-discovery allegations. *See Wells Fargo & Co. v. Stagecoach Props., Inc.*, 685 F.2d 302, 308 (9th Cir. 1982) (noting that "bad intent" is the essence of unclean hands); *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co*., 324 U.S. 806, 814-15 (1945) ("[E]quity does not demand that its suitors shall have led blameless lives … it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue." (citation modified)). Nor is unclean hands the proper legal vehicle for the Defendant to express his disagreement with the Plaintiffs' sincerely held beliefs regarding reproductive autonomy. *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress,* 402 F. Supp. 3d 615, 714 (N.D. Cal. 2019), *aff'd sub nom. Planned Parenthood Fed'n of Am., Inc. v. Newman*, No. 20-16068, 2022 WL 13613963 (9th Cir. Oct. 21, 2022) (noting that the defendants were improperly trying to use the doctrine of unclean hands to "try the general morals of the parties" (citation omitted)). As this Court reminded the parties during discovery, "[t]he core of this litigation is Idaho Code Section 18-623." Dkt. 95. That guiding principle remains the same, as do the deficiencies in the Defendant's reworked argument for this defense.[9]

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[8] Even if the Defendant can point to isolated sentences in Plaintiffs early-stage pleadings that could have been more precise, those immaterial instances were fleshed out in discovery. To the extent the Defendant did not fully get the answers he expected during the discovery process, that is a function of the deficiency of the questions asked.

[9] On July 2, 2025, the Defendant served written discovery on plaintiffs, some of which were an improper fishing expedition suggesting that plaintiffs' conduct violated other Idaho criminal statutes. Although the parties met and conferred with one another, and met with the Court,

The principles limiting unclean hands are especially significant in cases addressing areas of public import. In fact, when plaintiffs are asserting a violation of their constitutional rights--and those constitutional rights are held by the public at large--courts have long been wary of allowing government actors to escape scrutiny based on assertions of plaintiffs' other behavior. *Owen v. City of Independence*, 445 U.S. 622 (1980) (public officials cannot escape liability for constitutional violations through equitable defenses); *PharmacyChecker.com LLC v. LegitScript LLC*, 137 F.4th 1031, 1034 (9th Cir. 2025) (noting, in a Clayton Act case, in order to forward public policy, the wrongs of both litigants do not cancel one another out); *Northbay Wellness Grp., Inc. v. Beyries*, 789 F.3d 956, 961 (9th Cir. 2015) (even though litigant was involved in illegal marijuana sales the doctrine of unclean hands should not bar their recovering monies misappropriated by their lawyer, because, "[a]llowing [an attorney] to avoid through bankruptcy his responsibility for misappropriating his client's money would undermine the public interest in holding attorneys to high ethical standards."); *Idaho Org. of Res. Councils v. Labrador*, 780 F. Supp. 3d 1013, 1039 (D. Idaho 2025) (finding that unclean hands did not bar the claims and noting the public interest in the resolution).

In support of his argument that alleged misrepresentations by the Plaintiffs support his affirmative defense of unclean hands, the Defendant inappropriately relies on a single patent case, *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933). In *Keystone Driller,* the plaintiff, through planned and carefully executed misconduct, architected a patent lawsuit. In contrast, here the Defendant has failed to furnish anything even remotely similar. He points to no

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Defendant refused to withdraw these questions, and Plaintiffs were forced to file for a protective order. Memorandum in Support of Plaintiffs' Motion for a Protective Order. Dkt. 79-2. This Court issued a Protective Order. Dkt. 95.

specific inequitable act, no evidence of bad intent, and no showing that any conduct by any Plaintiff relates to the specific constitutional claims before this Court. Plaintiffs did not encourage the Idaho legislature to pass an unconstitutional statute. Nothing the Defendant has alleged, and nothing in the record, constitutes unclean hands. And to allow the State to avoid judicial review of unconstitutional laws by attacking the precision of plaintiffs' pre-discovery allegations would effectively convert routine factual disputes into a categorical bar to relief.

The Defendant also attempts to prop up his allegation of unclean hands by alleging that the Plaintiffs are themselves seeking to engage in inequitable conduct that offends the "public interest," and undermines the parent-child relationship. Dkt. 137-1 at 12. The conduct the Defendant relies on to advance his theory is the very conduct § 18-623 seeks to criminalize: helping minors access legal abortion care. To the extent that the Defendant is alleging that the Plaintiffs' desired behaviors violate "Idaho law, per se," and that this behavior also offends the public interest, he is mistaken. Dkt. 137-1 at 12. First, it is axiomatic that every criminal violation offends the public interest; adding those words to a previously rejected argument does not change the inquiry. *Cf. Republic Molding Corp. v. B. W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963) (noting injury to the public when discussing unclean hands). Further, the public interest in this case tilts sharply in Plaintiffs' favor. Courts apply the unclean hands doctrine with caution, and the doctrine "should not be strictly enforced when to do so would frustrate a substantial public interest." *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 753 (9th Cir. 1991).

To the extent that the Defendant is alleging that the Plaintiffs desire to engage in the activities that the statute at issue addresses prove that they are themselves engaging in inequitable behavior and should be barred from pursuing their claims, that is an unsupportable catch-22. As noted above, the center of this litigation is the constitutionality of § 18-623. The Defendant cannot

leap over the litigation, assume the statute is constitutional, and then invoke the unclean hands doctrine to prevent the Plaintiffs from pursuing their rights. *Matsumoto*, 122 F.4th at 814 (observing that the State cannot label protected speech criminal to render speech prosecutable under § 18-623). That illogic does not provide the causal chain that the unclean hands defense requires. *Pom Wonderful LLC v. Welch Foods, Inc.*, 737 F. Supp. 2d 1105, 1110 (C.D. Cal. 2010).

Overall, the Defendant's unclean hands argument asks this Court to deny review of a criminal statute based on alleged inconsistencies in Plaintiffs' descriptions of their work and on Defendant's view that Plaintiffs' intended conduct is already wrongful. That is not what the doctrine permits. This Court should reject it. It certainly doesn't support a grant of summary judgment in Defendant's favor.

CONCLUSION

Defendant's motion fails as a matter of law because it rests on legal theories the Ninth Circuit has already rejected and ignores a developed record showing that § 18-623 burdens protected speech, chills Plaintiffs' activities, and targets the very assistance that makes interstate travel for lawful care possible. The statute's sweeping reach, coupled with its indeterminate terms and "intent to conceal" requirement, creates precisely the uncertainty and risk of arbitrary enforcement that the vagueness doctrine forbids. Because there is no genuine dispute of material fact and the law compels judgment in Plaintiffs' favor on their First Amendment, right-to-travel, and vagueness claims, Defendant's motion for summary judgment must be denied.

DATED: May 7, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 7, 2026, I electronically filed the foregoing 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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