No. 23-3787

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LOURDES MATSUMOTO, et al.,

Plaintiffs-Appellees,

v.

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

Defendant-Appellant,

On Appeal from the United States District Court
for the District of Idaho

No. 1:23-cv-00323-DKG
The Honorable Debora K. Grasham

RULE 27-3 EMERGENCY MOTION FOR STAY PENDING APPEAL (RELIEF REQUESTED BY FEBRUARY 2, 2024)

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CIRCUIT RULE 27-3 CERTIFICATE

The undersigned certifies that the following is the information required by Circuit Rule 27-3:

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(ii) Facts showing the existence and nature of the emergency.

On May 5, 2023, an Idaho law that criminalizes abortion trafficking took effect. Plaintiffs did not sue until July 5, 2023, seeking to enjoin the law. On November 8, 2023, the district court enjoined enforcement of Idaho's abortion trafficking statute. Idaho's law protects minors from being trafficked by third parties and it further safeguards the parent-child relationship. The injunction wrongly declares Idaho's valid and important law unconstitutional, and that injunction will impede enforcement of the law. Already, horrible criminal acts likely constituting abortion trafficking have occurred in the State of Idaho. *See* Complaint*, State v. Rachael Marie Swainston,* CR03-23-11290, Bannock Cnty., Idaho, and Complaint*, State v. Kadyn Leo Swainston,* CR03-23-11293, Bannock Cnty., Idaho. The Court should stay the injunction so that the law will remain enforceable without any color of unconstitutionality pending appeal.

(iii) Earlier filing.

This motion is being filed just 15 days following the district court's denial of a motion to stay the injunction pending appeal.

(iv) Notice to counsel.

Counsel confirmed by e-mail on January 19, 2024, that Plaintiffs oppose the relief requested in this motion. Counsel will serve the motion on opposing counsel via the Court's electronic filing system.

(v) Submission to the district court.

The Attorney General sought relief in the district court, which the court denied on January 4, 2024.

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INTRODUCTION

The Attorney General seeks an emergency stay pending appeal of the district court's injunction against Idaho Code § 18-623. That law, which Idaho enacted on May 5, 2023, criminalizes abortion trafficking in the State. It prevents an adult from recruiting, harboring, or transporting a minor within the State to obtain an abortion without consent from the minor's parent and with the specific intent to conceal the abortion from the minor's parents. Nothing in the U.S. Constitution prevents Idaho from enforcing its eminently reasonable anti-trafficking statute. The law protects fundamental State interests, including the parent-child relationship, and it narrowly prohibits conduct that is well within Idaho's police power to regulate.

Despite literally dozens of state and federal laws employing identical language to prohibit various types of human trafficking, the district court enjoined Idaho's law pursuant to the First and Fourteenth Amendments. But the district court was wrong each step of the way. The law does not criminalize speech. Conduct is the law's target, not speech. It prohibits recruiting, harboring, or transporting minors to procure an abortion or abortifacient. Those unlawful actions are not immune from criminalization simply because a person may use words while committing the crime. Nor is the law unconstitutionally vague. Plaintiffs understand what the law prohibits just fine—so much so that they have asserted a pre-enforcement theory. Their First Amendment claim cannot coexist with their Fourteenth Amendment claim. But Plaintiffs are no better off even if the Court considers the substance of Idaho's law. The law provides

fair notice of what it proscribes. And Plaintiffs' straining to introduce vagueness is simply not credible given the plain meaning of the language used, the commonality of the language in similar statutes, and the lack of any caselaw treating such language as unconstitutionally vague.

The district court's decision has no basis in the law, and Idahoans should not be deprived of the protection of their law while this case proceeds on appeal. The remaining stay factors all weigh in favor of granting a stay here. Idaho has a legitimate and significant sovereign interest in being able to enforce its law. Plaintiffs, however, lack any interest to engage in the conduct the law prohibits. Their speech and advocacy around the issue of abortion is not implicated by this statute. And while it is clear that Plaintiffs' disagree with the law's policy objectives, the people of Idaho and not Plaintiffs get to decide what the State's criminal policy will be. The district court should have given more regard to that determination.

The Court should stay the district court's preliminary injunction pending appeal.

BACKGROUND

Most abortions in Idaho are illegal. But neighboring states permit abortions, and certain abortion advocates, like Plaintiffs, have not been shy about their interest in helping minors obtain abortions without parental knowledge or consent. 4-ER-446-452 ¶¶ 26-31, 47. Plaintiffs admit that they "do[] not seek or obtain parental consent"—and are often "aware[] that the pregnant minor's parents do not know about the minor's intent to seek abortion care"—"[w]hen transporting or facilitating transportation for

minors" to receive out-of-state abortions. 4-ER-452 ¶ 47. Plaintiffs believe that "requiring parental involvement for abortion care can increase the risk of harm or abuse, delay care, and lead minors to seek out dangerous alternatives." 4-ER-447 ¶ 31.

The people of Idaho have a very different view of the parent-child relationship and the role strange adults can assume for a minor, particularly in cases involving serious medical decisions. So during the 2023 legislative session, the Idaho legislature passed Idaho Code § 18-623 to protect children and parents from being trafficked within the State of Idaho. The law very simply makes it illegal for an adult "with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor" to "procure[] an abortion . . . or obtain[] an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within" the State of Idaho. Idaho Code § 18-623(1). The law does *not* criminalize merely counselling, fundraising, associating, or talking about abortion with anybody, including a pregnant minor.

Although Plaintiffs claim that Idaho Code § 18-623 violates their First Amendment rights and is unconstitutionally vague, the law employs the same language and the same scheme as countless federal and state anti-trafficking statutes. For example, 18 U.S.C. § 1590(a) uses the same verbs ("recruits," "harbors," "transports") to criminalize human labor trafficking. So does Washington State, Wash. Rev. Code 9A.40.100(1), Nevada, Nev. Rev. Stat. § 201.300(2)(a)(1), Ohio, Ohio Rev. Code Ann.

§ 2905.32(A), and numerous other jurisdictions.[1] These parallel statutes demonstrate that the law's application to trafficking conduct and its language are not the issue—it is rather Plaintiffs' disagreement with the policy reasons undergirding the law.

Sadly, recent events in Idaho have confirmed the need for Idaho Code § 18-623. Shortly after the law was enacted, two people trafficked a pregnant 15-year-old girl expressly for the purpose of hiding an abortion from her parents. *See* Complaint, *State v. Rachael Marie Swainston*, CR03-23-11290, Bannock Cnty., Idaho, and Complaint, *State v. Kadyn Leo Swainston*, CR03-23-11293, Bannock Cnty., Idaho. As noted in the probable cause affidavits in those cases, which charged each of the defendants with kidnaping, the people who trafficked the victim were the man who raped the victim, and his mother, who together recruited the victim into aborting her child. *See also* Nicole Blanchard, *Idaho girl went out of state for an abortion. Why her boyfriend faces a criminal charge*, The Seattle Times, (Nov. 22, 2023) http://tinyurl.com/4y6b9vtj. The traffickers dissuaded the girl from telling her parents about the pregnancy at all. *See id.* They transported the girl to Bend, Oregon, and harbored her over the three-day journey. *Id.* The traffickers admitted that they chose Bend, because the Planned Parenthood clinic

[1] *See, e.g.,* Ala. Code § 13A-6-152; Ark. Code § 5-18-103; Colo. Rev. Stat. § 18-3-504; Ga. Code Ann. § 16-5-46; 720 Ill. Comp. Stat. § 5/10-9; Ind. Code §§ 35-42-3.5-1-1.4; Ky. Rev. Stat. § 529.110; La. Stat. Ann. § 14:46.2; Mass. Gen. L. Ann. 265 § 50; Mich. Comp. L. Ann. § 750.462d; Miss. Code Ann. § 97-3-54.1; N.C. Gen. Stat. § 14-43.11; Neb. Rev. Stat. § 28-830; Nev. Rev. Stat. § 201.300; N.Y. Penal § 135.35; Tenn. Code Ann. § 39-13-308; Tex. Penal § 20A.01; Utah Code Ann. § 76-5-308; Wash. Rev. Code § 9A.40.100; Wis. Stat § 948.051.

there did not require parental notification to obtain an abortion. *See also* Morgan Owen, *Idaho man charged with kidnapping after taking girlfriend to Bend for abortion*, The Bend Bulletin (Nov. 1, 2023) http://tinyurl.com/3s4jsk3m. The girl was given a medication abortion by Planned Parenthood to kill the unborn child, before being returned to Idaho. *Id.*

The facts of the Swainston cases are harrowing and heartbreaking. Idaho's abortion trafficking statute exists to criminalize those types of horrible actions that harm pregnant minors. And such criminal conduct does *not* involve First Amendment speech. Idaho is well within its rights to criminalize that conduct.

Plaintiffs filed their Complaint in the instant case on July 11, 2023—over two months after the law took effect. On July 24, 2023, Plaintiffs filed a motion for temporary restraining order and preliminary injunction in the alternative, solely on the basis that the law burdened their First Amendment rights and was void for vagueness. 4-ER-355. The Attorney General opposed the motion, 3-ER-246, and also moved to dismiss. 3-ER-198. On November 11, 2023, the court granted Plaintiffs' motion for a preliminary injunction, which the Attorney General has appealed. 4-ER-470. The Attorney General also promptly asked the district court to stay the injunction pending appeal. But on January 4, 2024, the district court denied that request. The Attorney General now seeks a stay of the district court's injunction pending resolution of the appeal.

ARGUMENT

On a motion to stay an injunction pending appeal, this Court considers whether (1) the applicant shows a strong likelihood of success on the merits, (2) the applicant shows irreparable harm absent a stay, (3) a stay will not substantially injure other parties, and (4) the public interest favors a stay. *Nken v. Holder*, 556 U.S. 418, 426 (2009). All four factors favor a stay here.

I. The Attorney General Is Likely To Succeed On Appeal.

Plaintiffs have facially challenged Idaho Code § 18-623 under the First and Fourteenth Amendments. Facial challenges are disfavored, and here, Plaintiffs cannot prevail unless they "establish that no set of circumstances exists under which" the statute would be valid. *United States v. Salerno*, 481 U.S. 739, 745 (1987). Any possibility that the law "might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid." *Id.* Plaintiffs cannot meet this demanding standard on either their First Amendment claim or their Fourteenth Amendment claim.

A. Idaho Code § 18-623 does not violate the First Amendment.

As a threshold matter, Plaintiffs' First Amendment challenge fails because facial challenges "are allowed against laws aimed at expressive conduct but disallowed against laws of general application not aimed at conduct commonly associated with expression." *Spirit of Aloha Temple v. Cnty. Of Maui*, 49 F.4th 1180, 1188 (9th Cir. 2022). This Court has been crystal clear that "a facial challenge is proper *only* if the statute by

its terms seeks to regulate spoken words or patently expressive or communicative conduct, such as picketing or handbilling, or if the statute significantly restricts opportunities for expression." *Id.* (emphasis added) (citations omitted). Idaho Code § 18-623 does not target expressive conduct, and so Plaintiffs' First Amendment facial claim necessarily fails.

In addition to failing under the facial-challenge bar, Plaintiffs' First Amendment claim also fails as a matter of substance. Idaho Code § 18-623 criminalizes the act of "abortion trafficking." And abortion trafficking occurs when "[a]n adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion, . . . or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within this state." Idaho Code § 18-623. The law criminalizes conduct, not protected speech.

Plaintiffs assume that just because their purported planned conduct may include words that it necessarily constitutes expressive conduct protected by the First Amendment. Not so. Speech that is used to commit a crime is not protected by the First Amendment. *See United States v. Mendelsohn*, 896 F.2d 1183, 1185 (9th Cir. 1990). The law has long been that "[w]here speech becomes an integral part of the crime, a First Amendment defense is foreclosed even if the prosecution rests on words alone." Plaintiffs just flat-out misunderstand the scope of the First Amendment. Contrary to

their view—and the district court's holding—"[w]ords alone may constitute a criminal offense." *United States v. Freeman*, 761 F.2d 549, 551 (9th Cir. 1985).

The First Amendment has never immunized persons from committing criminal acts so long as they do so with the assistance of words. "Many long established criminal proscriptions . . . criminalize speech (commercial or not) that is intended to induce or commence illegal activities." *United States v. Williams*, 553 U.S. 285, 298 (2008). Speech is not protected when it is "the vehicle through which" criminal activity takes place. *See United States v. Dhingra*, 371 F.3d 557, 561-62 (9th Cir. 2004). That was true in *Dhingra*, where this Court held that 18 U.S.C. § 2422(b)'s prohibition on "persuad[ing], induc[ing], entic[ing], or coerc[ing]" did not violate the First Amendment even though it proscribed conduct composed almost entirely of words. *Id.* at 561-62. And it is no less true of Idaho Code § 18-623.

To the extent that Idaho Code § 18-623 encompasses speech, it is only speech that is made in trafficking a minor, with the specific intent to conceal that trafficking from the minor's parents. This is "[s]peech integral to criminal conduct" lacking any First Amendment protection, and properly proscribed. *United States v. White*, 610 F.3d 956, 960 (7th Cir. 2010). Physically moving a minor throughout the State—or taking steps that materially assist in such conduct—with the intent to conceal that movement from the minor's parents is materially different than First Amendment speech. The law has no difficulty distinguishing between that unlawful conduct and protected speech.

Nor, just because a person claims their conduct is done for expressive reasons, is such conduct considered expressive under the First Amendment. *See City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000) ("state of nudity" not expressive); *see also Marquez-Reyes v. Garland*, 36 F.4th 1195, 1207 (9th Cir. 2022) (rejecting facial First Amendment challenge to immigration statute that makes it illegal to "encourage" illegal entry); *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1032 (9th Cir. 2006) (rejecting claim "food distribution" is expressive conduct on facial challenge). The Second Circuit's reasoning in *United States v. Thompson,* 896 F.3d 155 (2d Cir. 2018), is especially instructive. There, the court addressed a First Amendment challenge to a minor victim trafficking statute and explained that "[t]o the extent that the minor victim trafficking provision restricts the activities of charitable or religious groups, it places limits on the non-expressive conduct in which they may engage, rather than on their right to associate for the purpose of expressing their views." *Id.* at 165. The court further explained that "[w]hether [the statute] restricts the universe of activities [charitable] organizations may pursue—and whether [the statute] might incidentally curb their ability to help minors involved in the sex trade to find food and shelter—they have no *First Amendment* right to engage in much of the conduct Thompson references." *Id.*

The district court did not grapple with these established legal principles, nor did it attempt to square its holding with the many laws in the United States Code and the codes of Idaho and nearly every other state that criminalize similar conduct using identical terminology. The district court and Plaintiffs wrongly assume that because

speech may be used in commission of the crime of abortion trafficking, then Idaho cannot constitutionally criminalize the act of abortion trafficking. That is simply incorrect. As the Supreme Court has recognized, "it is possible to find some kernel of expression in almost every activity a person undertakes," but "such a kernel is not sufficient to bring the activity within the protection of the First Amendment." *Nat'l Ass'n for Advancement of Psychoanalysis v. Cal. Bd. of Psychology*, 228 F.3d 1043, 1054 (2000).

B. Idaho Code § 18-623 is not unconstitutionally vague.

The Attorney General is also likely to prevail on Plaintiffs' void-for-vagueness claim. The district court held that the words "recruit," "harbor," and "transport" are unconstitutionally vague. But the words are not vague at all. They provide fair notice of the prohibited conduct. Indeed, they are the very same words used in nearly every trafficking statute across state and federal jurisdictions. And as far as the Attorney General could find, no similar statute has been held unconstitutionally vague.

Although Plaintiffs claim that Idaho Code § 18-623 is unconstitutionally vague, their First Amendment claim and supporting allegations contradict that assertion. In other words, Plaintiffs cannot on the one hand say that the law is muzzling them and preventing them from engaging in protected activity under the First Amendment—which they must allege in order to have standing on a pre-enforcement challenge, *see Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000)—but then allege on the other hand that the law is so vague they lack fair notice of what it proscribes. If Plaintiffs' intended conduct "is clearly covered by a statute[, they] cannot

complain of the vagueness of the law as applied to the conduct of others." *Marquez-Reyes*, 36 F.4th at 1207 (cleaned up) (quoting *Ledezma-Cosino v. Sessions*, 857 F.3d 1042, 1047 (9th Cir. 2017) and *Holder v. Humanitarian Law Project*, 561 U.S. 1, 19 (2010)). These two claims are therefore logically inconsistent. Even where "a heightened vagueness standard applies," plaintiffs "whose speech is clearly proscribed" are not permitted to raise a successful vagueness challenge for lack of notice, especially on a facial challenge. *Holder*, 561 U.S. at 20.

By finding a likelihood of success on *both* First Amendment and Due Process claims, the district court improperly "merged plaintiffs' vagueness challenge with their First Amendment claims." *Id.* at 19. By holding that the Abortion Trafficking Ban verbs were "undefined, *overbroad*, and vague" and therefore violated due process, 1-ER-069 (emphasis added), the court "seemed to incorporate . . . First Amendment overbreadth doctrine." *Holder*, 561 U.S. at 19. That erroneous analysis was squarely rejected in *Holder* and by this Court in *Marquez-Reyes* and *Ledezma-Cosino*.

The district court's void-for-vagueness analysis is also wrong on the merits. "A statute is unconstitutionally vague on its face if it 'fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" *United States v. Kilbride*, 584 F.3d 1240, 1257 (9th Cir. 2009) (quoting *Williams*, 553 U.S. at 304 (2008)). "[D]ue process does not require 'impossible standards' of clarity." *Kolender v. Lawson*, 461 U.S. 352, 361 (1983) (citation omitted). "[S]peculation about possible vagueness in hypothetical

situations not before the Court will not support a facial attack on a statute when it is surely valid 'in the vast majority of its intended applications.'" *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1021 (9th Cir. 2010) (quoting *Hill v. Colorado*, 530 U.S. 703, 733 (2000) (citation omitted)). And "a scienter requirement," as exists here, "may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982).

The district court did not heed the Supreme Court's direction to look to dictionaries, usage in other statutes, and to decisions of other courts to determine whether the words used in Idaho Code § 18-623 give adequate notice of prohibited conduct. *Grayned v. City of Rockford*, 408 U.S. 104, 111, n.16 (1972). Had it done so, it would have found that the words "recruit," "harbor" and "transport" have clear definitions in dictionaries and wide and accepted usage in statutes. Recruit is a transitive verb with four meanings of roughly the same import: (1) "to fill up the number of with new members", (2) "to increase or maintain the number of", (3) "to secure the services of", or (4) "to seek to enroll." *Recruit*, Merriam-Webster Online Dictionary, http://tinyurl.com/bdhwpseh. To "harbor" is to "give shelter or refuge to." *Harbor*, Merriam Webster Online Dictionary, http://tinyurl.com/2vhrumpx. And to "transport" is to "transfer or convey from one place to another." *Transport*, Merriam Webster Online Dictionary, http://tinyurl.com/3x5emvu8. These words are not "wholly subjective" like a statute that criminalizes "annoying" or "indecent" behavior.

Holder, 561 U.S. at 20-21 (citations omitted). These three verbs have common, well understood meanings, as much in this context as in any other, and are not vague. The district court should have, but did not, consider the usage of these words in similar state and federal laws. *See* 1-ER-067 to 1-ER-071.

The district court placed undue weight on the lack of a definitions section defining the operative verbs. 1-ER-051, 1-ER-065, 1-ER-069. But this Court has held that the use of a term not defined by the statute does not render it unconstitutionally vague. *See Freedom to Travel Campaign v. Newcomb*, 82 F.3d 1431, 1440 (9th Cir. 1996) ("Even undefined, this term is not unconstitutionally vague."); *see also Udechime v. Faust*, 846 Fed. App'x. 583, 584 (9th Cir. 2021) ("Simply because a term is not defined does not render the statute unconstitutional.").

The district court also found that the "intent to conceal element and affirmative defense are inconsistent and unconstitutionally vague." 1-ER-071. But the specific intent element and the affirmative defense logically coexist. The legislature has made trafficking a minor a crime where a defendant has the specific intent to conceal the trafficking from the minor's parents. But the legislature has also provided a type of "harmless" affirmative defense if the defendant proves that—unbeknownst to the defendant at the time of the trafficking—the minor's parent or guardian actually consented to the trafficking.

On a facial challenge, it is Plaintiffs' burden to demonstrate the law failed to give a person of reasonable intelligence fair notice as to what conduct is prohibited or that

the law lacked standards for enforcement. Against the weight of dozens of state statutes, interpretive caselaw, and dictionary definitions, they offer their own subjective *ipse dixit*. 4-ER-452-454. That is not good enough.

C. The Plaintiffs do not have standing.

The district court also erred by exercising jurisdiction over Plaintiffs' pre-enforcement claims. No Plaintiff has an injury-in-fact, and no Plaintiff has even alleged an injury-in-fact. Because Plaintiffs have brought a pre-enforcement challenge, they must allege that they themselves face a "genuine threat of imminent prosecution." *Thomas*, 220 F.3d at 1139 (citation omitted). They have not done so here.

Plaintiffs have not alleged a concrete plan to violate Idaho Code § 18-623. *Lopez*, 630 F.3d at 787. Apart from an abstract desire, Plaintiffs have not alleged that they are likely to violate the law and face imminent prosecution unless the law is enjoined. They nowhere allege that any Plaintiff is in contact with a pregnant, unemancipated minor who wants an abortion in another state but whose parents would not consent to such an abortion. A showing that Plaintiffs have such a concrete plan must be clear on a preliminary injunction. *Id.* at 785.

Moreover, Plaintiffs' injury is not redressable by the district court's injunction. Their past conduct, as described in their court filings, and their prospective planned conduct, is separately criminalized as general intent crimes. These include the crimes of enticing children, Idaho Code § 18-1509(1), and child custody interference by taking or enticing a child from a parent, Idaho Code § 18-4506. Separately, the crime of

kidnapping, which includes leading, taking, enticing away or detaining a child under sixteen, requires only the intent to keep or conceal the child from the parent or guardian. Idaho Code § 18-4501(2). Providing shelter to a runaway child requires only knowingly and intentionally providing housing or other accommodation without the authority of a parent to anyone 17 or younger. Idaho Code § 18-1510(1). Because Plaintiffs do not challenge the constitutionality of these statutes, the district court's injunction will not redress their alleged harm.

Additionally, because Plaintiffs only sued the Attorney General, an Idaho county prosecutor may still enforce the law against Plaintiffs. Idaho Code § 31-2227(1) (primary duty of enforcement rests with prosecutors). Because the injunction does not restrain enforcement of the law against Plaintiffs generally, Plaintiffs lack an injury redressable by an injunction against the Attorney General or traceable to the Attorney General.

II. The Other Injunction Factors Favor Granting A Stay.

The remaining *Nken* factors also favor staying the injunction. Absent a stay, the district court's injunction will continue to "inflict[] irreparable harm on" Idaho by precluding enforcement of "its duly enacted" laws. *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018). This is true particularly where "there is, in addition [to the ordinary form of harm], an ongoing and concrete harm to [Idaho's] law enforcement and public safety interests." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). On the flip side, allowing Idaho to criminalize minors from being trafficked within its borders without parental consent will not injure anyone. And because it is not

"obvious" that Idaho Code § 18-623 is unconstitutional, the public interest is served by deferring to the "responsible public officials" who enacted the law. *Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1127 (9th Cir. 2008). All the factors favor a stay.

CONCLUSION

This Court should stay the preliminary injunction issued by the district court.

Date: January 19, 2024

Respectfully submitted,

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Attorney General

/s/ Joshua N. Turner
Joshua N. Turner
Acting Solicitor General

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Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

9th Circuit Case No.: 23-3787

I am the attorney representing Appellant.

This motion complies with Cir. R. 27-1(d) because it contains 20 pages, excluding parts exempted by Fed. R. App. P. 27(a)(2)(B) and 32(f). This motion complies with Fed. R. App. P. 32(a)5) and 32(a)(6) because it has been prepared in Word 365 using a proportionally spaced typeface, 14-point Garamond.

/s/ Joshua N. Turner Date: January 19, 2024
Joshua N. Turner

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024, I electronically filed this Emergency Motion For Stay Pending Appeal with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the ACMS system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

/s/ *Joshua N. Turner* Date: January 19, 2024
Joshua N. Turner