



**STATE OF IDAHO**  
OFFICE OF THE ATTORNEY GENERAL  
**RAÚL R. LABRADOR**

July 25, 2024

**Via Electronic Filing**

Molly C. Dwyer, Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

RE: *Matsumoto, et al. v. Labrador*, Case No. 23-3787  
Notice of Supplemental Authority Pursuant to Fed. R. App. P. 28(j) & Circuit R. 28-6.

Dear Ms. Dwyer:

In *Murthy v. Missouri*, the Supreme Court said three things about First Amendment standing relevant to this case.

First, federal courts cannot redress an “injury that results from the independent action of some third party not before the court.” *Murthy v. Missouri*, 144 S.Ct. 1972, 1986 (2024). Requiring redressability means injuries cannot depend on “how independent decisionmakers will exercise their judgment.” *Id.* But that is exactly how Plaintiffs’ standing theory works. The district court ignored *Clapper v. Amnesty International USA*, 568 U.S. 398, 413 (2013), and relied on “guesswork” about how county prosecutors may exercise their discretion. Plaintiffs have not shown that any county prosecutor “will likely react in predictable ways” to the Attorney General’s conduct, so they lack a redressable injury. *Murthy*, 144 S.Ct. at 1986.

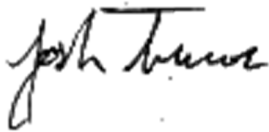
Second, a plaintiff seeking forward-looking relief lacks standing unless facing “a real and immediate threat of repeated injury.” *Id.* Speculating about how a third party responds to a defendant’s conduct and how that response may injure the plaintiff is an “overly broad assertion” that fails Article III requirements. *Id.* at 1987. And here, that is all Plaintiffs have done. They have not shown they face an imminent threat based on “the actions of at least one Government defendant.” *Id.* at 1986.

And third, mere allegations aren't enough. To show standing at the preliminary injunction stage, Plaintiffs "must instead point to factual evidence." *Id.* They further "must make a 'clear showing' that [they're] 'likely' to establish each element of standing." *Id.* The district court did not hold Plaintiffs to that mandatory "clear showing" and "factual evidence" standard. And they cannot meet it.

For nearly a year, Plaintiffs have engaged in conduct they said was prosecutable under Idaho Code § 18-623. And yet, no county prosecutor has brought charges against them. That is so even though no county prosecutor has been enjoined from enforcing the law—only the Attorney General has been. Based on the above legal principles, and this factual reality, Plaintiffs cannot bear their "burden of establishing standing as of the time [they] brought th[e] lawsuit and maintaining it thereafter." *Id.*

*The body of this letter contains 348 words.*

Respectfully submitting,

A handwritten signature in black ink, appearing to read "Josh Turner". The signature is written in a cursive, slightly slanted style.

Joshua N. Turner  
Chief of Constitutional Litigation and Policy  
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*Counsel for Appellant Rail Labrador*