No. 23-726 and 23-727

In The Supreme Court of the United States

MIKE MOYLE, SPEAKER OF THE IDAHO HOUSE OF REPRESENTATIVES, ET AL.

v.

UNITED STATES OF AMERICA

STATE OF IDAHO

v.

UNITED STATES OF AMERICA

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF OF *AMICI CURIAE* AMNESTY INTERNATIONAL, GLOBAL JUSTICE CENTER, HUMAN RIGHTS WATCH, AND THE IPAS IMPACT NETWORK IN SUPPORT OF RESPONDENT

ELISE KEPPLER
GLOBAL JUSTICE CENTER
11 Hanover Square, 6th Floor
New York, NY 10005

MACARENA SÁEZ
AISLING REIDY
HUMAN RIGHTS WATCH
350 5th Ave., 34th Floor
New York, NY 10118

MANDIVAVARIRA MUDARIKWA
AMNESTY INTERNATIONAL,
INTERNATIONAL SECRETARIAT
Peter Beneson House
1 Easton St.
London, UK WC1X 0DW

BETHANY VAN KAMPEN SARAVIA
IPAS IMPACT NETWORK
4711 Hope Valley Rd 4F-720
Durham NC 27707-5651

CHRISTINA G. HIOUREAS
Counsel of Record
FOLEY HOAG LLP
1301 Avenue of the Americas
New York, NY 10019
chioureas@foleyhoag.com
(212) 812-0307

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treaties

Other Authorities

INTEREST OF AMICI CURIAE[1]

Global Justice Center is a non-partisan, non-profit organization dedicated to promoting the enforcement of international law in a progressive, non-discriminatory manner. Global Justice Center works for peace, justice, and security by enforcing international laws that protect human rights and promote gender equality. The organization seeks to promote gender equality by focusing on and advocating for change in two primary areas: fighting for sexual and reproductive rights and demanding justice for sexual and gender-based violence.

Human Rights Watch is a non-profit, non-partisan organization that investigates and reports on violations of fundamental human rights in over 100 countries to secure the respect of these rights for all persons. It is the largest international human rights organization based in the United States. By exposing and calling attention to human rights abuses committed by state and non-state actors, Human Rights Watch seeks to bring international public opinion to bear upon offending actors to end abusive practices.

Amnesty International is a non-governmental, non-profit organization representing the largest

---

[1] Pursuant to Supreme Court Rule 37(6), amici state that no counsel for any party authored this brief in whole or in part, and that no entity or person other than amici and their counsel made any monetary contribution toward the preparation and submission of this brief. The parties have filed blanket consents to the filing of amicus briefs in support of either or no party.

grassroots human rights movement in the world with more than ten million members and supporters. Its mission is to advocate for global compliance with international human rights law, the development of human rights norms, and the effective enjoyment of human rights by all persons. It engages in advocacy, litigation, and education to prevent and end human rights violations and to seek accountability. Amnesty International has researched, documented, and campaigned on the human rights impact and rights violations due to restrictive abortion laws.

The Ipas Impact Network works globally to advance reproductive justice. Ipas believe that all people have the right to make fundamental decisions about their own bodies and health. It works with partners across Africa, Asia and the Americas to ensure that reproductive health services, including abortion and contraception, are available and accessible to all.

Together, amici share a commitment to ensuring that the United States complies with its obligations under international human rights law.

SUMMARY OF ARGUMENT

Idaho's near-total abortion ban restricts access to necessary emergency reproductive healthcare, exacerbating preventable maternal mortality and morbidity and otherwise negatively impacting people capable of pregnancy in Idaho. The law's narrow exception for life-saving care will not prevent or mitigate these harms in practice, and will leave patients in Idaho without access to emergency reproductive healthcare.

The United States has ratified several human rights treaties—including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention Against Torture (CAT)—which require it to guarantee access to safe and legal abortion services, in particular in emergencies or acute medical crises governed by the Emergency Medical Treatment and Active Labor Act (EMTALA). In accordance with the United States' obligations under these treaties, the federal government—and therefore each state—is required to respect, protect and fulfil individuals' international human rights to life; health; privacy; non-discrimination; and to be free from torture, cruel, inhuman and degrading treatment. These rights are directly jeopardized by Idaho's draconian abortion law.

ARGUMENT

A. Idaho's near-total abortion ban jeopardizes the life, health and well-being of pregnant people,[2] and restricts their access to essential reproductive healthcare

Idaho's near-total abortion ban places pregnant people at significant risk of preventable maternal mortality and morbidity, and is likely to cause other grave harms. Evidence from other U.S. states and foreign countries with similar abortion restrictions demonstrates the devastating toll of denying access to emergency reproductive healthcare. The effects will be felt most acutely by marginalized groups that already face barriers to reproductive health and disproportionate rates of preventable maternal mortality and morbidity.[3]

---

[2] *Amici* refer to pregnant people or pregnant individuals in this brief, recognizing that while the majority of personal experiences with abortion relate to cisgender women and girls (that is, women and girls whose sense of personal identity and gender corresponds with the sex they are assigned at birth), intersex people, transgender men and boys, and people with other gender identities may have the reproductive capacity to become pregnant and may need and have abortions. Where statistics or quotes refer specifically to women or girls, this language has been retained for accuracy, but is not meant to exclude other pregnant individuals.

[3] E. Howell, "Reducing Disparities in Severe Maternal Morbidity and Mortality," 61 CLIN OBSTET GYNECOL 2 (2018) (noting disproportionate rates of maternal mortality and morbidity for Black, American Indian/Alaska Native, and certain Hispanic populations).

1. Near-total abortion bans jeopardize the lives, health and wellbeing of pregnant individuals seeking care in emergency circumstances protected by EMTALA

Idaho's near-total abortion ban will exacerbate preventable maternal mortality and morbidity by restricting access to life-saving and health-preserving care.

Although Idaho's near-total abortion ban contains an exception to save a pregnant woman's life,[4] in practice, the right to life-saving treatment is undermined by the threat of criminal punishment and the uncertainty, complexity, and speed associated with urgent medical decisions. This results in healthcare providers and institutions delaying or denying abortion care and other necessary reproductive healthcare.[5]

---

[4] Idaho Code §18-622(2)(a)(i) (2020) (providing that an abortion shall not be a felony if a physician "determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman").

[5] *See* Sens. Elizabeth Warren *et al.*, *Post-Roe Abortion Bans Threaten Women's Lives: Health Care Providers Speak Out on the Devastating Harm Posed by Abortion Bans and Restrictions* (Oct. 2022), https://www.warren.senate.gov/imo/media/doc/Abortion%20Care%20Oversight%20Report1.pdf. *See also* T. Weinberg, *Missouri doctors fear vague emergency exception to abortion ban puts patients at risk,* Missouri Independent (July 2, 2022), https://missouriindependent.com/2022/07/02/missouri-doctors-fear-vague-emergency-exception-to-abortion-ban-puts-patients-at-risk/.

As the American College of Obstetricians and Gynecologists (ACOG) recognizes, "it is critical for clinicians to be able to use and rely upon their expertise and medical judgment to determine the treatments indicated for each clinical situation and level of care."[6] It may not become clear until too late that an abortion was necessary "to prevent the death of the pregnant women," because as ACOG explains, "[n]o single patient's condition progresses at the same pace," and "[a] patient may experience a combination of medical conditions or symptoms that, together, become life-threatening."[7] Physicians may therefore realize too late that the life of the patient was at stake, or may believe that an abortion is necessary to save the life of the pregnant person, but nevertheless decline to provide the treatment given the risk of felony charges on the basis of that judgment.

The risks to the health of pregnant individuals in Idaho in emergency situations have already been documented, with women reporting "suffer[ing] unimaginable tragedy and health risks due to Idaho's abortion bans."[8] In one case, a physician described having to send a pregnant patient home while she was miscarrying because, without absolute certainty regarding the pregnancy outcome, the physician

---

[6] American College of Obstetricians and Gynecologists, *Understanding and Navigating Medical Emergency Exceptions in Abortion Bans and Restrictions* (Aug. 14, 2022), https://www.acog.org/news/news-articles/2022/08/understanding-medical-emergency-exceptions-in-abortion-bans-restrictions.

[7] *Id.*

[8] *Adkins et al. v. State of Idaho*, Case no. CV01-23-14744, Complaint (4th Dist. Idaho 2023), ¶ 10.

feared that Idaho's near-total abortion ban prevented them from providing immediate care to manage the miscarriage.[9]

Evidence from other jurisdictions with restrictive abortion laws like Idaho's demonstrates that purported exceptions to "save the life of the mother" or for "medical emergencies only" are ineffective and dangerous. For example, in the Dominican Republic, where abortion is criminalized, "[m]edical providers said that criminal penalties for abortion made it difficult for them to exercise their best judgment and provide the best standard of care when their pregnant patients faced serious health risks."[10] Similarly, in Poland, where abortion is almost completely outlawed, pregnant persons with cancer have been prevented from obtaining an abortion or accessing chemotherapy due to the potential harm to the fetus, placing more importance on the fetus than the pregnant person.[11] Finally, in

---

[9] *Id.* At 67–68.

[10] Human Rights Watch, *'It's Your Decision, It's Your Life': The Total Criminalization of Abortion in the Dominican Republic* (Nov. 19, 2018), https://www.hrw.org/report/2018/11/19/its-your-decision-its-your-life/total-criminalization-abortion-dominican-republic.

[11] *See* K. Bennhold & M. Pronczuk, *Poland Shows the Risks for Women When Abortion is Banned*, The New York Times (June 12, 2022), https://www.nytimes.com/2022/06/12/world/europe/poland-abortion-ban.html. *See also* Human Rights Watch, *Regression on Abortion Harms Women in Poland* (Jan. 26, 2022), https://www.hrw.org/news/2022/01/26/regression-abortion-harms-women-poland; Amnesty International, *Poland: A Year On, Abortion Ruling Harms Women* (Oct. 19, 2021),

Ireland, where until 2018 abortion was criminalized under a law similar to Idaho's, doctors were in practice constrained from providing life-saving abortions. For example, in 2012 in Ireland, a patient died in a hospital after being repeatedly refused an abortion to save her life because a fetal heartbeat could be detected.[12]

Examples of these challenges in U.S. jurisdictions with strict abortion regimes also abound. In 2022, hospital staff in Wisconsin would not remove fetal tissue from a patient with an incomplete miscarriage for fear that it would violate that state's abortion ban.[13] While the patient ultimately survived, it was only after she was left to bleed at home for weeks. Delayed miscarriage care—now common in states with strict abortion laws—can have fatal consequences, including through organ failure, hemorrhaging, and sepsis.[14]

---

https://www.amnesty.org/en/latest/news/2021/10/poland-a-year-on-abortion-ruling-harms-women/.

[12] *See* K. Holland & P. Cullen, *Woman 'denied a termination' dies in hospital*, The Irish Times (Nov. 14, 2012), https://www.irishtimes.com/news/woman-denied-a-termination-dies-in-hospital-1.551412. *See also* Human Rights Watch, *A State of Isolation: Access to Abortion for Women in Ireland* (Jan. 28, 2010), https://www.hrw.org/report/2010/01/28/state-isolation/access-abortion-women-ireland.

[13] F. Sellers & F. Nirappil, *Confusion post-Roe spurs delays, denials for some lifesaving pregnancy care*, The Washington Post (July 16, 2022), https://www.washingtonpost.com/health/2022/07/16/abortion-miscarriage-ectopic-pregnancy-care.

[14] *See generally* A. Redinger & H. Nguyen, *Incomplete Abortions*, National Library of Medicine (June 27, 2022),

Healthcare providers in Louisiana, a state with an abortion law comparable to Idaho's,[15] have confirmed the chilling effect of criminalizing abortion, stating that they have "increased the use of medical procedures and treatments that do not meet the standard of care—heightening risk to patients—and which could have been avoided if they had been able to provide abortion care."[16]

These avoidable medical emergencies can be prevented by EMTALA, which guarantees access to stabilizing emergency medical care, including abortions, for patients seeking care in the emergency departments of hospitals that receive Medicare funds.[17] EMTALA recognizes the complexity of medical decision-making during reproductive emergencies and provides doctors with appropriate latitude to make the best possible decisions for their patients.

---

https://www.ncbi.nlm.nih.gov/books/NBK559071/ (describing "complications that can arise after the management of incomplete abortion including death, uterine rupture, uterine perforation, subsequent hysterectomy, multisystem organ failure, pelvic infection, cervical damage, vomiting, diarrhea, infertility, and/or psychological effects. Patients can present with different forms of shock, including hemorrhagic, septic, and cervical.").

[15] La. R.S. 40:1061(F) (2015), in fact providing a wider scope of exceptions than Idaho's law.

[16] Physicians for Human Rights, *Criminalized Care: How Louisiana's Abortion Bans Endanger Patients and Clinicians* at 22 (Mar. 19, 2024), https://phr.org/wp-content/uploads/2024/03/PHR-Report-Criminalized-Care-March-2024.pdf.

[17] 42 U.S.C. § 1395dd.

Conversely, Idaho's near-total abortion ban provides an extremely narrow exception to the criminal law prohibiting abortion services. This restrictive law forces doctors to make complex medical decisions in the shadow of potential incarceration. EMTALA's protections are not, by contrast, limited to life-threatening conditions. Rather, the law applies to any condition "manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in … (i) placing *the health of the individual* (or, with respect to a pregnant woman, [or] the health of the woman …) in serious jeopardy, (ii) *serious impairment to bodily functions*, or (iii) *serious dysfunction of any bodily organ or part*."[18] This nuanced approach, reflecting the complex reality of medical decision-making and the importance of emergency treatment, is absent in Idaho's near-total abortion ban.

2. Idaho's near-total abortion ban harms the lives, health and well-being of pregnant people

Restricting access to reproductive healthcare harms the physical and mental health and wellbeing of pregnant people, with lasting effects. Indeed, being denied access to reproductive healthcare can lead to a broad range of long-lasting harms, including higher rates of eclampsia, postpartum hemorrhage, chronic headaches or migraines, and gestational hypertension compared to those who had an abortion.[19] A 2013 U.S.

---

[18] *Id.*, § 1395dd(e)(1) (emphasis added).

[19] ANSIRH, *The Harms of Denying a Woman a Wanted Abortion: Findings from the Turnaway Study*, https://www.ansirh.org/sites/default/files/publications/files/the_

study that compared similarly-situated pregnant women seeking abortions found that those who were denied abortions were more likely to suffer hypertension and chronic pelvic pain, to fall below the poverty line, and to become unemployed.[20]

In the mere two years it has been in place, Idaho's near-total abortion ban has had devastating consequences. Reproductive healthcare providers are leaving the state, driven away by the risk of facing felony charges for their work.[21] The law is turning Idaho into a reproductive healthcare desert.

For pregnant people left to seek treatment from Idaho's remaining reproductive healthcare providers, accessing necessary medical services is increasingly difficult. One abortion provider in Idaho reported treating a patient who had been forced to visit three hospitals and travel hundreds of miles because she was repeatedly denied care, resulting in an invasive surgery, blood transfusion, and multi-day hospital stay.[22] Pregnant people across the United States

---

harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf.

[20] *Id.*; J. Lang, *What Happens to Women Who are Denied Abortions*, New York Times Magazine (June 12, 2013), https://www.nytimes.com/2013/06/16/magazine/study-women-denied-abortions.html?_r=0.

[21] R. Kaye & S. Samaniego, *Idaho's murky abortion law is driving doctors out of the state,* CNN (May 13, 2023), https://www.cnn.com/2023/05/13/us/idaho-abortion-doctors-drain/index.html/.

[22] Global Justice Center *et al.*, *Submission to the Human Rights Committee* at 17 (2023), https://www.globaljusticecenter.net/wp-content/uploads/2023/10/Final-ICCPR-Report.pdf.

living under similar near-total abortion bans have faced serious complications after being denied abortions, including fertility loss and sepsis, as well as psychological and emotional harms.[23]

The risk to women's mental health from lack of access to abortion care has been well documented. The Turnaway Study, for instance, found that individuals who were denied abortions reported more symptoms of anxiety and stress, lower self-esteem, and lower life satisfaction than those who received abortions.[24]

There are also economic consequences to abortion restrictions. As the UN Special Rapporteur on extreme poverty and human rights has stated, the "lack of access to abortion services traps many women in cycles of poverty."[25] Pregnant people denied care are at increased risk of poverty, physical health impairments, and intimate partner violence.[26]

---

[23] *Id.* at 16.

[24] M.A. Biggs *et al.*, *Women's Mental Health and Well-being 5 Years After Receiving or Being Denied an Abortion: A Prospective, Longitudinal Cohort Study*, 74 JAMA PSYCHIATRY 2 (2017).

[25] UN Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America* (May 4, 2018), U.N. Doc. A/HRC/38/33/Add.1, ¶ 56.

[26] J. Lang, *What Happens to Women Who Are Denied Abortions?* New York Times Magazine (June 12, 2013), https://www.nytimes.com/2013/06/16/magazine/study-women-denied-abortions.html?_r=0; ANSIRH, *Turnaway Study: Long-Term Study Shows That Restriction Abortion Harms Women*, https://www.ansirh.org/sites/default/files/publications/files/turnaway_study_brief_web.pdf.

3. The harms of abortion restrictions fall disproportionately on marginalized groups

Idaho's near-total abortion ban will not affect all residents equally. Abortion restrictions have a disproportionate impact on low-income and other marginalized populations, such as racial and ethnic minorities and rural residents. In a state that incarcerates Black residents at a rate 5.2 times higher than white residents,[27] the communities that are already surveilled and arrested at higher rates are more vulnerable to criminal charges under the near-total abortion ban. Some of these individuals and groups already lack access to maternal and prenatal care, and suffer the highest rates of preventable maternal mortality and morbidity across the country.

Restrictions on reproductive healthcare like Idaho's near-total abortion ban affect Black, indigenous, and other people of color (BIPOC) at higher rates. "In 2019, the abortion rate was 23.8 per 1,000 Black women, 11.7 per 1,000 Hispanic women, 13 per 1,000 Asian American, Native American, and other women—and just 6.6 per 1,000 white women, according to data reported to the Centers for Disease Control and Prevention (CDC)."[28]

---

[27] Prison Policy Initiative, *Idaho profile*, https://www.prisonpolicy.org/profiles/ID.html.

[28] Z. Abrams, "Abortion bans cause outsized harm for people of color," 54 MONITOR ON PSYCH. 4 (2023), https://www.apa.org/monitor/2023/06/abortion-bans-harm-people-of-color (citing K. Kortsmitt *et al.*, "Abortion Surveillance - United States 2019," 70 CTRS FOR DISEASE CONTROL AND PREVENTION: SURVEILLANCE SUMMARIES 9 (2021).

These discrepancies are exacerbated by structural inequalities and intersecting discriminations on the basis of race, gender, and class.[29] As patients with greater resources travel outside Idaho's borders to access necessary reproductive care,[30] low-income BIPOC individuals burdened by the costs and other challenges of interstate travel[31] will be left without access to essential healthcare.

The UN Working Group on Discrimination Against Women and Girls has highlighted the economic inequality associated with abortion restrictions, which turn "safe termination of pregnancy" into "a privilege of the rich, while women with limited resources have little choice but to resort

---

[29] *See* L. Ross, *What is Reproductive Justice?*, REPRODUCTIVE JUSTICE BRIEFING BOOK: A PRIMER ON REPRODUCTIVE JUSTICE AND SOCIAL CHANGE at 4 (2007); *See also*, M. Murray, *Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade*, 134 HARV. L. REV. 2025, at 2093 (2021).

[30] L. Gallup and R. Sun, *Number of Idaho abortion patients traveling to Washington up 56% after Roe overturned*, Oregon Public Broadcasting (July 11, 2023), https://www.opb.org/article/2023/07/10/idaho-abortion-patients-traveling-to-washington-increases-56-percent-after-roe-overturned/.

[31] "For instance, an increase in travel distance from 0 to 100 miles increases births [that is, reduced abortions] for . . . Black women by 3.3% versus by 2.1% for white women." *Brief of* Amici Curiae *Economists in Support of Respondents* at 21, *Dobbs v. Jackson Women's Health Org.* 597 U.S. 215 (2022) (citing C. Myers, *Cooling off or Burdened? The Effects of Mandatory Waiting Periods on Abortions and Births* at n. 76 (IZA Inst. Of Lab. Econ., Discussion Paper Series No. 14434, 2021)).

to unsafe providers and practices."[32] And even as misoprostol and mifepristone make self-managed abortion safer, restrictive laws are constraining access to this medication, while legal experts worry that self-managed abortion could itself ultimately be criminalized under laws like Idaho's near-total abortion ban.[33]

These effects are part of a broader pattern in the United States. One study shows that 70% of obstetricians/gynecologists say racial and ethnic inequities in maternal health have already worsened since the decision in *Dobbs v. Jackson Women's Health Organization*,[34] which permitted laws such as

---

[32] UN Office of the High Comm'r for Human Rights (OHCHR), *Information Series on Sexual and Reproductive Health: Abortion* (2020), https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf (emphasis added).

[33] Senate Committee on the Judiciary, Testimony of Khiara M. Bridges, *A Post-Roe America: The Legal Consequences of the Dobbs Decision,* at 9 (July 12, 2022), https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Bridges%20-%202022-07-121.pdf.

[34] B. Frederiksen *et. al.*, *A National Survey of OBGYNs' Experiences After Dobbs*, Kaiser Fam. Found (June 21, 2023), https://www.kff.org/report-section/a-national-survey-of-obgyns-experiences-after-dobbs-report/; "Recent estimates suggest that a nationwide abortion ban would increase maternal mortality by 21% overall and by 33% among Black Americans." K. Backes Kozhimannil *et. al.*, *Abortion Access as a Racial Justice Issue*, 387 NEW ENG. J. MED. (2022), https://pubmed.ncbi.nlm.nih.gov/36069823/ (citing A. J. Stevenson, *The pregnancy-related mortality impact of a total abortion ban in the United States: A Research Note On Increased Deaths Due To Remaining Pregnant* 58 DEMOGRAPHY 6 (2021)).

Idaho's to proliferate. In contrast, EMTALA protects access to care for the most marginalized groups.[35]

Idaho's restrictive law will primarily endanger those with limited resources who already face barriers to accessing essential healthcare[36]—the very same groups that EMTALA is designed to protect. EMTALA's emergency protections are especially crucial for pregnant BIPOC, for whom pregnancy is already more dangerous, and particularly for Black women, who are facing a maternal mortality and morbidity crisis.[37]

B. Idaho's near-total abortion ban violates international law

By ratifying various treaties and through the application of customary international law, the United States is bound by international law. Its obligations include the requirement to protect and provide access to safe and legal abortion and other reproductive healthcare. Access to safe and legal abortion is protected by multiple complementary rights recognized under international law, including: (1) the right to life; (2) the right to health; (3) the right to privacy; (4) the right to non-discrimination; and (5)

---

[35] L. Hill *et al.*, *Health Coverage by Race and Ethnicity, 2010-2022*, Kaiser Fam. Found (Jan. 11, 2024), https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-by-race-and-ethnicity/ (noting BIPOC populations are disproportionately likely to be uninsured).

[36] *See infra* n. 3.

[37] A. Njoku *et al.*, *Listen to the Whispers before They Become Screams: Addressing Black Maternal Morbidity and Mortality in the United States*, 11 HEALTHCARE 3 (2023), https://www.mdpi.com/2227-9032/11/3/438.

the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment. Idaho's near-total abortion ban violates these human rights, putting the United States in breach of its international legal obligations.

1. The United States is obligated to respect, protect, and fulfill the rights articulated in the treaties it has ratified

The United States has ratified several foundational human rights instruments, including the ICCPR, ICERD, and the CAT. It has also signed—but not yet ratified—several other related instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Rights of the Child (CRC) and the International Convention on the Rights of Persons with Disabilities (CRPD).

Where the United States has ratified a treaty, it is bound to follow the terms stated therein.[38] Countries that have ratified a treaty are "legally obligated to uphold the principles embodied in that treaty"[39] and, in the case of certain treatiesdiscussed *infra*, must implement those obligations through their national law.[40] Similarly, although the United States

---

[38] *Flores v. Southern Peru Copper Corp.*, 414 F.3d 233, 256 (2d Cir. 2003) (citing *Haver v. Yaker*, 76 U.S. 32, 35 (1869)).

[39] *Id.*

[40] International Covenant on Civil and Political Rights (adopted Dec. 16, 1966, entered into force Mar. 23, 1976), 999 U.N.T.S. 171 (ICCPR). art. 2; United Nations Convention Against Torture and

is not formally bound by treaties it has signed but not ratified, it must, as a signatory, refrain from taking actions that "defeat the object and purpose of the treaty."[41]

2. Idahoans' rights are jeopardized by Idaho's near-total abortion ban

a. The right to life

Article 6 of the ICCPR, which the United States has ratified and is bound by, provides that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

That abortion bans violate Article 6 should be abundantly evident. The plain language—the starting point of any interpretation[42]—is clear: a law that only permits abortion care in narrow circumstances and that renders life-saving abortion care virtually inaccessible violates the right to life, particularly

---

Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted Dec. 10, 1984, entered into force June 26, 1987), 1465 U.N.T.S. 85, art. 4.

[41] Vienna Convention on the Law of Treaties (adopted May 23, 1969, entered into force Jan. 27, 1980), 1155 U.N.T.S. 331 (VCLT), art. 18(a). Although the United States is not a party to the VCLT, the treaty's provisions are considered customary international law. *Avero Belgium Ins. v. American Airlines, Inc.*, 423 F.3d 73, 79 n.8 (2d Cir. 2005).

[42] VCLT, art. 31(1); *Medellin v. Texas*, 552 U.S. 491, 506 (2008) ("The interpretation of a treaty, like the interpretation of a statute, begins with its text.").

where medical decisions have to be made in uncertain, complex, and fast-evolving circumstances.

Even if the plain text of the Idaho law was in any way ambiguous, authoritative international guidance both contemplates *and* prohibits such abortion bans. The UN Human Rights Committee (HRC)[43] has recognized the centrality of sexual and reproductive healthcare to women's right to life and health, and explicitly noted the link between reducing maternal mortality and morbidity and ensuring that women have access to reproductive health services, including safe abortion.[44] The HRC has thus urged

---

[43] The HRC is "the body charged under the ICCPR with monitoring its implementation." *United States v. Duarte-Acero*, 208 F.3d 1282, 1287 (11th Cir. 2000). Among its other responsibilities, the HRC makes recommendations in individual cases, "stud[ies] . . . reports submitted by" participating countries, and issues "general comments" that provide guidance on the treaty. ICCPR, art. 40.

[44] Human Rights Committee, *Concluding Observations: Cameroon*, U.N. Doc. CCPR/C/CMR/CO/4 (Aug. 4, 2010), ¶ 13 (urging the State to "step up its efforts to reduce maternal mortality, including by ensuring that women have access to reproductive health services."). *See also* Human Rights Committee, *Concluding Observations: Chile*, U.N. Doc. CCPR/C/CHL/CO/6 (Aug. 13, 2014), ¶ 15; Human Rights Committee, *Concluding Observations: Costa Rica*, U.N. Doc. CCPR/C/CRI/CO/6 (Apr. 21, 2016), ¶ 17; Human Rights Committee, *Concluding Observations: Malawi*, U.N. Doc. CCPR/C/MWI/CO/1/Add.1 (Aug. 19, 2014), ¶ 9; Human Rights Committee, *Concluding Observations: Sierra Leone*, U.N. Doc. CCPR/C/SLE/CO/1 (Apr. 17, 2014), ¶ 14; Human Rights Committee, *Concluding Observations: Malta*, U.N. Doc. CCPR/C/MLT/CO/2 (Nov. 21, 2014), ¶ 13; Human Rights Committee, *Concluding Observations: Sri Lanka*, U.N. Doc. CCPR/C/LKA/CO/5 (Nov. 21, 2014), ¶ 10; Human Rights

States to ensure access to reproductive health services, in particular abortion care, for all women and adolescents.[45]

In its General Comment 36 on the right to life, the HRC has confirmed that, while states can regulate abortion, "those measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant."[46] More specifically, States "should not introduce new barriers" to abortion and "should remove existing barriers to effective access by women and girls to safe and legal abortion."[47]

To carry out these two goals, the HRC has called on States to ensure that "restrictions on the ability of women or girls to seek abortion [do] not . . . jeopardize their lives, subject them to physical or mental pain or suffering . . ., discriminate against

---

Committee, *Concluding Observations: Paraguay*, U.N. Doc. CCPR/C/PRY/CO/3 (Apr. 29, 2013), ¶ 13; Human Rights Committee, *Concluding Observations: Peru*, U.N. Doc. CCPR/C/PER/CO/5 (Apr. 29, 2013), ¶ 14; Human Rights Committee, *Concluding Observations: Guatemala*, U.N. Doc. CCPR/C/GTM/CO/3 (Apr. 19, 2012), ¶ 20; Human Rights Committee, *Concluding Observations: Jamaica*, U.N Doc. CCPR/C/JAM/CO/3 (Nov. 17, 2011), ¶ 14; Human Rights Committee, *Concluding Observations: Dominican Republic*, UN Doc. CCPR/C/DOM/CO/5 (Apr. 19, 2012), ¶ 15. *See also* Human Rights Committee, *Concluding Observations: Mali*, UN Doc. CCPR/CO/77/MLI (Apr. 16, 2003), ¶ 14 (on emergency obstetrics care).

[45] *Id.*

[46] Human Rights Committee*, General Comment 36 (Article 6: Right to Life)*, UN Doc. CCPR/C/GC/36 (Sept. 3, 2019), ¶ 8.

[47] *Id.*

them or arbitrarily interfere with their privacy."[48] States "must provide safe, legal and effective access to abortion . . . where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably[, *inter alia*,] where the pregnancy … is not viable."[49]

Idaho's near-total abortion ban directly jeopardizes the life and well-being of pregnant people, violating their right to life under the ICCPR. As in other jurisdictions, the law's narrow carve-out permitting abortion services only to save a patient's life will not prevent an increase in maternal mortality and morbidity. In the shadow of Idaho's law, pregnant Idahoans facing acute medical crises have not received adequate medical care. One patient was sent home while miscarrying due to physicians' fear that providing services might place them in violation of the law.[50] Pregnant Idahoans are now facing a reproductive health desert, with reproductive healthcare providers seeking to avoid criminal liability by fleeing the state or simply declining to provide care.

Idaho's restrictive abortion law violates the rights of pregnant people under Article 6 of the ICCPR, including because it places the lives of pregnant people at risk, despite its narrow exception. The restrictive law as written is contrary to the HRC's clear guidance that countries should refrain from restricting abortion in a manner that threatens a

---

[48] *Id.*

[49] *Id.*

[50] *Supra* n. 9.

patient's life, subjects them to physical or mental pain or suffering, or discriminates against them.

b. The right to health

Idaho's near-total abortion ban endangers the physical and mental health of persons seeking abortions and people in need of emergency reproductive healthcare. The restrictive law violates Idahoans' human rights and contravenes the United States' obligation to respect the right to health,[51] in particular the obligation to not act in a manner that defeats the object and purpose of the treaties it has signed.

The right to health is protected under Article 12 of the ICESCR, which the United States has

---

[51] *See* International Convention on the Elimination of All Forms of Racial Discrimination (adopted Dec. 21, 1965, entered into force Jan. 4, 1969), 660 U.N.T.S. 195 at 212 (ICERD), art. 5(e)(iv); International Covenant on Economic, Social and Cultural Rights (adopted Dec. 16, 1966, entered into force Jan. 3, 1976), 993 U.N.T.S. 3 (ICESCR), art. 12; Convention on the Elimination of All Forms of Discrimination Against Women (adopted Dec. 18, 1979, entered into force Sept. 3, 1981), 1249 U.N.T.S 13 (CEDAW), arts. 11(1)(f), 12, 14(2)(b); Convention on the Rights of Persons with Disabilities (adopted Mar. 30, 2007, entered into force May 3, 2008), 2515 U.N.T.S 3 (CRPD), art. 25; Convention on the Rights of the Child (adopted Nov. 20, 1989, entered into force Sept. 2, 1990), 1577 U.N.T.S 3 (CRC), art. 24. *See also* Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the right to sexual and reproductive health*, U.N. Doc. E/C.12/GC/22 (May 2, 2016), ¶¶ 10-11, 13-14, 45, 49; Committee on the Rights of the Child, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health*, U.N. Doc. CRC/C/GC/15 (Apr. 17, 2013), ¶ 56.

signed. As the Committee on Economic, Social, and Cultural Rights, which monitors implementation and provides guidance on treaty interpretation under the ICESCR, has confirmed, "[t]he freedoms [protected under the right to health] include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health[, and entitle all people to] full enjoyment of the right to sexual and reproductive health."[52] Idaho's near-total abortion ban, which is designed entirely to constrain "full enjoyment of the right to sexual and reproductive health," violates the right to health of pregnant Idahoans.

Restrictions on abortion also violate the right to non-discrimination in healthcare under the ICERD, which the United States has ratified. Under this treaty, State parties must prohibit and eliminate "racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law," and this obligation encompasses "[t]he right to public health, medical care, social security and social services."[53] As discussed *infra*, Idaho's near-total abortion ban deepens racial inequality with respect to enjoyment of the right to public health and medical care.

The right to health is further protected under CEDAW, the CRC, and the CRPD, which the United

---

[52] Committee on Economic, Social and Cultural Rights, *General Comment 22 on the right to sexual and reproductive health*, U.N. Doc. E/C.12/GC/22 (May 2, 2016), ¶ 5.

[53] CERD, art. 5(e)(iv).

States has signed. The CEDAW Committee, the Committee on the Rights of the Child, and the Committee on the Rights of Persons with Disabilities have unanimously and unambiguously recognized that access to abortion, and the ability to make free decisions regarding abortion, are indispensable to the fulfillment of the right to health and prevention of discrimination.[54] Through its sweeping restrictions, the Idaho law restricts the ability of pregnant people to make free decisions regarding their reproductive health and rights—in many cases leading to serious and irreparable health consequences—in violation of the rights protected under CEDAW, the CRC, and the CRPD.

c. The right to privacy

Human rights treaty bodies have consistently found that denying access to abortion or imposing

---

[54] Committee on the Rights of Persons with Disabilities and Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), *Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities* (Aug. 29, 2018), https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations; CEDAW Committee, *Views of the Committee under Article 7(3) of the Optional Protocol, Concerning Commc'n No. 22/2009*, U.N. Doc. U.N. Doc. CEDAW/C/50/D/222009 (Nov. 4, 2011) (*L.C. v Peru*), ¶ 8.15; Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022), ¶¶ 35-36; Committee on the Rights of the Child, *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/4 (July 1, 2003), ¶ 31.

barriers to such access undermines women's reproductive autonomy and violates their right to privacy.[55]

Article 17 of the ICCPR provides that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation." The HRC has concluded that restrictions on abortion infringe upon this right of privacy—including in cases where abortion is prohibited except in narrow circumstances such as under the Idaho law.

In 2005, for example, the HRC considered the case of K.L., a woman who sought an abortion in Peru.[56] Medical officials declined to perform the abortion, citing article 119 of Peru's criminal code, which—akin to Idaho's law—"permitted [therapeutic abortion][57] only when termination of the pregnancy was the only way of saving the life of the pregnant woman or avoiding serious and permanent damage to

---

[55] *See, e.g.*, Human Rights Committee, *Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Commc'n No. 1153/2003*, U.N. Doc. CCPR/C/85/D/1153/2003 (Nov. 22, 2005) (*K.L. v. Peru*), ¶ 6.4.

[56] *Id.*

[57] Abortions to protect a pregnant person's life or health are referred to as therapeutic abortions in Peru. Promsex, *World Health Organization implementation story: Closing the gaps between law and attitudes: advocation for legal and dignified abortion in Peru* (Sept. 27, 2023), https://www.who.int/publications/m/item/advocating-for-legal-and-dignified-abortion-in-peru.

her health."[58] The HRC determined that "the refusal to act in accordance with the [woman's] decision to terminate her pregnancy was not justified."[59] The Committee agreed with the woman's claim that Peruvian officials "interfered arbitrarily in her private life," and found that their actions violated article 17 of the ICCPR.[60] Similar human rights violations will occur under Idaho's law.

Further, Idaho's near-total abortion ban and others like it in the United States have decimated reproductive autonomy—the power to control all aspects of one's reproductive health—which is "at the very core of [individuals'] fundamental right[s] to equality and privacy."[61]

d. The right to non-discrimination

Treaties ratified by the United States expressly prohibit discrimination and require it to take measures to eradicate all forms of discrimination against individuals, including in the context of medical care. Under Idaho's near-total abortion ban, pregnant people are denied the right to non-discrimination.

---

[58] *K.L. v. Peru*, ¶ 2.3.

[59] *Id.*, ¶ 6.4.

[60] *Id.*

[61] UN Working Group on the issue of discrimination against women in law and in practice, *Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends* at 1 (Oct. 2017), https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf.

The ICCPR sets forth a general right to be free from discrimination of any kind, including on the grounds of race, sex, or other status.[62] The HRC has issued authoritative guidance noting that interference with pregnant individuals' access to reproductive health care violates their right to non-discrimination.[63] In considering individual cases under its optional protocol, the HRC found that denials of abortion constituted a violation of the right to be free from discrimination under Article 26 of the ICCPR.[64] The HRC further confirmed that the right to non-discrimination on the basis of sex and gender "obligates States to ensure that State regulations, including with respect to access to health services, accommodate the fundamental biological differences between men and women in reproduction and do not directly or indirectly discriminate on the basis of sex."[65]

The right to non-discrimination is also protected under the CERD. The CERD Committee has

---

[62] ICCPR, art. 26.

[63] Human Rights Committee, *General Comment 28 (Article 3: the Equality of Rights Between Men and Women)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000), ¶ 20.

[64] Human Rights Committee, *Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Commc'n No. 2425/2014*, U.N. Doc. CCPR/C/119/D/2425/2014 (June 12, 2017) (*Whelan v. Ireland*), ¶ 7.12; Human Rights Committee, *Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Commc'n No. 2324/2013*, U.N. Doc. CCPR/C/116/D/2324/2013 (Nov. 17, 2017) (*Mellet v. Ireland*), ¶ 7.11.

[65] *Mellet v. Ireland*, ¶ 7 (Cleveland, S., concurring). *See also Whelan v. Ireland* (Cleveland, S., concurring).

noted its particular concern that "systemic racism, along with intersecting factors such as gender, race, ethnicity and migration status, have a profound impact on access by women and girls to the full range of sexual and reproductive health services … without discrimination," particularly in light of "the limited availability of culturally sensitive and respectful maternal health care."[66]

The right to non-discrimination on the basis of sex and gender is further enshrined in CEDAW. As confirmed by the CEDAW Committee, "[i]t is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women,"[67] and criminalization of abortion "does grave harm to women's health and human rights by stigmatizing a safe and needed medical procedure."[68]

The CEDAW Committee reaffirmed this position in the cases of *L.C. v Peru* and *Alyne da Silva*

---

[66] Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022), ¶ 35.

[67] CEDAW Committee, *General Recommendation 24 (Article 12: Women and Health)*, UN Doc. A/54/38/Rev.1 (1999), chap. 1, ¶ 11.

[68] UN Working Group on the issue of discrimination against women in law and in practice, *Women's autonomy, equality and reproductive health in international human rights: Between recognition, backlash and regressive trends* at 5 (Oct. 2017), www.ohchr.org/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf.

Pimentel v Brazil,[69] as well as in its inquiries on the Philippines[70] and on Northern Ireland,[71] all of which confirm that the provision of healthcare may not discriminate on the grounds of sex/gender and must guarantee gender equality. The UN Working Group on Discrimination Against Women and Girls has also noted that countries violate women's rights when they "neglect[] women's health needs, fail[] to make gender-sensitive health interventions, depriv[e] women of autonomous decision-making capacity and criminaliz[e] or deny[] them access to health services that only women require."[72]

Idaho's near-total abortion ban is incompatible with the rights of women to non-discrimination, given that reproductive healthcare restrictions disproportionately impact women and those assigned the female sex at birth. Healthcare providers have reported delaying or denying care on the basis of

---

[69] CEDAW Committee, *Views of the Committee under Article 7(3) of the Optional Protocol, Concerning Commc'n No. 17/*2008, U.N. Doc. CEDAW/C/49/D/17/2008 (Sept. 27, 2011) (*Alyne da Silva Pimentel Teixeira v Brazil*).

[70] CEDAW Committee, *Summary of the Inquiry concerning the Philippines under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/OP.8/PHL/1 (Apr. 22, 2015).

[71] CEDAW Committee, *Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/OP.8/GBR/1 (Mar. 6, 2018).

[72] UN Working Group on the issue of discrimination against women in law and in practice, *Report of the Working Group*, UN Doc. A/HRC/32/44 (Apr. 8, 2016), ¶ 14.

Idaho's law and similar laws in other states, putting women at risk of potentially deadly conditions such as sepsis or hemorrhage.[73] By depriving only those Idahoans with the capacity to become pregnant of access to the emergency medical services provided for under EMTALA, Idaho's policy targets one group of people, denying group members' basic human rights and jeopardizing their lives and health. Idaho's law is patently incompatible with the right to non-discrimination, as it is entirely conceived to limit the availability of emergency reproductive care for women. It further undermines the right to non-discrimination by exacerbating racial inequalities in access to health care. By contrast, EMTALA's provisions on reproductive health were designed to protect women from discriminatory abortion bans that are incompatible with the rights of women and all pregnant people to non-discrimination.

e. The right to be free from torture and other cruel, inhuman, or degrading treatment or punishment

The prohibition against torture is recognized within multiple treaties to which the United States is party. Article 7 of the ICCPR states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 16 of the CAT specifies that every Party "shall undertake to prevent in any territory under its jurisdiction . . . acts of cruel, inhuman or degrading treatment or punishment." Moreover, the prohibition against

---

[73] *Supra* n. 9, 12, 13 (documenting cases in which healthcare providers have denied care), 14 (describing conditions such as sepsis and hemorrhage that can result from delayed access to abortion).

torture is one of the most firmly rooted principles of international human rights law and has, as a threshold matter, become a well-accepted norm of customary international law.[74] This prohibition, as noted by the HRC, "relates not only to acts that cause physical pain but also to acts that cause mental suffering."[75]

The HRC, in a case in which a woman with a non-viable pregnancy was forced to leave Ireland to access abortion, held that "[b]y virtue of the existing legislative framework, the State party subjected the author to conditions of intense physical and mental suffering," and that the facts "amounted to cruel, inhuman or degrading treatment in violation of article 7 of the Covenant."[76] As a remedy, the HRC instructed that Ireland "should amend its law on the voluntary termination of pregnancy … to ensure compliance with the Covenant, ensuring effective, timely and

---

[74] *See Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 716 (9th Cir. 1992) ("There is no doubt that the prohibition against official torture is a norm of customary international law.").

[75] Human Rights Committee, *Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Commc'n No. 1608/*2007, U.N. Doc. CCPR/C/101/D/1608/2007 (Apr. 28, 2011) (*LMR v. Argentina*), ¶ 9.2. *See also* Human Rights Committee, *General comment 36 (Article 6: Right to Life)*, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019), ¶ 8 ("States parties must provide safe, legal and effective access to abortion where the life *and health* of the pregnant woman or girl is at risk, or *where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering*, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable.") (emphasis added).

[76] *Mellet v. Ireland*, ¶¶ 7.4, 7.6.

accessible procedures for pregnancy termination in Ireland," and "take measures to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing they will be subjected to criminal sanctions."[77]

The Committee Against Torture (CAT Committee), the body charged with monitoring implementation of the CAT, has expressed concern at the severe physical and mental anguish experienced by pregnant individuals as a result of abortion restrictions.[78] The CAT Committee has acknowledged that denial of abortion can result in "physical and mental suffering so severe in pain and intensity as to amount to torture."[79]

The CAT Committee has affirmed that narrow exceptions only to save the life of the pregnant person, but not permitting abortions to preserve their health (as is the case with the Idaho statute), are not sufficient to satisfy the requirement that State parties refrain from adopting policies amounting to torture and other cruel, inhuman, or degrading treatment or punishment.[80]

---

[77] *Id.*, ¶ 9.

[78] *See* Committee Against Torture (CAT Committee), *Concluding Observations on the Second Periodic Report of Ireland*, U.N. Doc. CAT/C/IRL/CO/2 (Aug. 31, 2017), ¶ 31; CAT Committee, *Concluding Observations on the Seventh Periodic Rep. of Ecuador*, U.N. Doc. CAT/C/ECU/CO/7 (Jan. 11, 2017), ¶ 45.

[79] *See* CAT Committee, *Concluding Observations on the Seventh Periodic Report of Poland*, U.N. Doc. CAT/C/POL/CO/7 (Aug. 29, 2019), ¶ 33(d).

[80] CAT Committee, *Concluding Observations on the Third Periodic Report of the Philippines*, U.N. Doc. CAT/C/PHL/CO/3

Denial of abortion, particularly when a pregnancy is causing severe pain or suffering, can also meet the threshold of cruel, inhuman or degrading treatment.[81] The CEDAW Committee has found that "criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, [and] forced continuation of pregnancy ... are forms of gender-based violence that ... may amount to torture or cruel, inhuman or degrading treatment."[82]

Idaho's law and the anguish that it subjects pregnant people to are incompatible with the United States' obligation to uphold the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.

Pregnant people in Idaho are being abandoned to suffer medical emergencies alone, and they and their healthcare providers must navigate their

---

(June 2, 2016), ¶ 40(b) (urging the state to "[r]eview its legislation in order to allow for legal exceptions to the prohibition of abortions in specific circumstances such as when the pregnancy endangers the life *or health* of the woman…") (emphasis added).

[81] J. Mendez *et al.*, *Denial of abortion services and the prohibition of torture and cruel, inhuman and degrading treatment* (Oct. 25, 2016), https://www.ohchr.org/Documents/Issues/Women/WG/AmicusBrazil.pdf; *K.L. v. Peru*, ¶ 6.3 (The Committee found that forcing an adolescent to carry her pregnancy to term, despite confirmation of a severe fetal impairment caused severe mental anguish, violated ICCPR art. 7).

[82] CEDAW Committee, *General Recommendation 35 on gender-based violence against women, updating general recommendation 19*, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017), ¶ 18.

medical decision-making in the shadow of criminalization.[83] As discussed *supra*, physicians in Idaho have reported having to deny emergency care to pregnant patients and send them home without essential care during miscarriages.[84] Through its cruel denial of access to reproductive healthcare, Idaho's draconian law is producing an alarming level of suffering, and violating human rights that are protected under international law.

The stories emerging from pregnant people in Idaho illustrate the mental anguish and trauma associated with the denial of basic emergency care. Not only are pregnant Idahoans left alone to navigate health emergencies, they are prevented from even seeking guidance from their religious and health advisers through an expansive interpretation of the prohibition on "aiding and abetting" abortions.[85] Idaho's near-total abortion ban subjects pregnant people to additional anxiety and stress as they attempt to navigate strict controls on their

---

[83] *Supra* n. 10.

[84] *Supra* n. 9.

[85] R. Klitzman, *Opinion: Roe's reversal doesn't just hurt women – it harms us all*, CNN (June 25, 2022), https://www.cnn.com/2022/06/25/opinions/medical-ethics-post-roe-world-klitzman/index.html; *See also* J. Tolentino, *We're Not Going Back to the Time Before Roe. We're Going Somewhere Worse*, The New Yorker (June 24, 2022), https://www.newyorker.com/magazine/2022/07/04/we-are-not-going-back-to-the-time-before-roe-we-are-going-somewhere-worse/amp.

reproductive freedom, and produces traumatic health outcomes that create lasting emotional anguish.[86]

* * * * *

Restrictive abortion laws increase preventable maternal mortality and morbidity and harm pregnant people. Idaho's near-total abortion ban makes pregnancy more dangerous and restricts access to necessary emergency reproductive healthcare. The evidence from jurisdictions with similar legislation makes clear that the devastating effects of this law will take a disproportionate toll among already marginalized populations.

Idaho's draconian abortion law gravely violates pregnant Idahoan's human rights. International human rights law protects the right to access emergency healthcare services, including safe and legal abortions, a right which is similarly guaranteed under EMTALA. By contrast, Idaho's near-total abortion ban law violates the rights to life; health; non-discrimination; privacy; and to be free from torture, cruel, inhuman and degrading treatment. To prevent further violations of pregnant Idahoans' human rights, EMTALA's protections must be guaranteed.

CONCLUSION

For the foregoing reasons, the order of the district court should be affirmed.

---

[86] *Supra* n. 24.

Respectfully submitted.

ELISE KEPPLER
GLOBAL JUSTICE CENTER
11 Hanover Square, 6th Floor
New York, NY 10005

MACARENA SÁEZ
AISLING REIDY
HUMAN RIGHTS WATCH
350 5th Ave., 34th Floor
New York, NY 10118

MANDIVAVARIRA MUDARIKWA
AMNESTY INTERNATIONAL,
INTERNATIONAL SECRETARIAT
Peter Beneson House
1 Easton St.
London, UK WC1X 0DW

BETHANY VAN KAMPEN SARAVIA
IPAS IMPACT NETWORK
4711 Hope Valley Rd 4F-720
Durham NC 27707-5651

CHRISTINA G. HIOUREAS
Counsel of Record
FOLEY HOAG LLP
1301 Avenue of the Americas
New York, NY 10019
chioureas@foleyhoag.com
(212) 812-0307

March 28, 2024