

Nos. 26-5360 & 26-5558

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STACY SEYB, *Plaintiff-Appellee*,

v.

RAÚL R. LABRADOR, in his official capacity as Attorney General of Idaho,
Intervenor-Appellant.

On Appeal from the U.S. District Court for the District of Idaho
Case No. 1:24-cv-00244-BLW

**APPELLANTS ATTORNEY GENERAL LABRADOR AND ADA
COUNTY PROSECUTING ATTORNEY'S REPLY IN SUPPORT
OF EMERGENCY MOTION FOR STAY PENDING APPEAL**

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INTRODUCTION

Plaintiff cites no case, statute, or other source recognizing a “legal *right*” to a therapeutic abortion. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 243 (2022). That alone means Idaho will likely succeed on the merits.

To fill the historical void, Plaintiff offers a hodgepodge of American and English doctors’ opinions on the law, a single set of 20th-century jury instructions from England, inapt common law, and an abstract discussion of rights to life and health. None of those sources—individually or together—come close to showing the type of deeply rooted right the Supreme Court requires. The proper analysis centers on “how the States regulated abortion when the Fourteenth Amendment was adopted.” *Id.* at 272. And at that time, states almost universally prohibited abortions except to save the mother’s life. The few exceptions allowing for therapeutic abortions show that the multitude of statutes protecting life are consistent with Idaho’s today.

To be clear, Idaho’s laws protect unborn *and* maternal life and health. *Contra* Opp.1. Indeed, those laws encourage a multitude of effective treatment options for physical and mental issues during pregnancy. Mot.19–20; ER-14. Idaho has narrowly tailored its laws to protect life and the medical profession. It is the district court’s broad injunctions that in *every* case condemn unborn children to death. To prevent that irreparable injury, this Court should grant the stay.

ARGUMENT

I. *De novo* review applies to the district court’s “findings” defining new fundamental rights.

Plaintiff does not dispute that “legislative facts” are “those applicable to [an] entire class of cases.” *United States v. \$124,570 U.S. Currency*, 873 F.2d 1240, 1244 (9th Cir. 1989). That definition doesn’t “graft” anything onto Federal Rule of Evidence 201 and its note. *Contra* Opp.10. It is the rule: “Legislative facts ... are those which have relevance to legal reasoning,” including “in the formulation of a legal principle or ruling by a judge or court.” Fed. R. Evid. 201 & notes of advisory committee.

Interpreting the Constitution is quintessential legal reasoning. *Nathan v. Alamo Heights Indep. Sch. Dist.*, 173 F.4th 576, 608 n.57 (5th Cir. 2026) (en banc). So the historical and medical facts the district court used to fashion a new constitutional right are legislative facts subject to *de novo* review. Mot.7; *contra* Opp.26 n.6.

Plaintiffs’ Second Amendment authorities agree. In *Bruen* and *Hemani*, the Supreme Court reviewed the historical record after motions to dismiss, *not* trials. *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 16 (2022); *United States v. Hemani*, 146 S. Ct. 1677, 1685 (2026). In both, the Court independently examined the historical record—something it couldn’t have done for adjudicative facts on a motion to dismiss. *E.g., Hemani*, 146 S. Ct. at 1688–90 (citing numerous secondary

sources). Courts can “decide a case based on the historical record compiled by the parties,” but the historical analysis requires judges to make “nuanced judgments about which evidence to consult and how to interpret it.” *Bruen*, 597 U.S. at 25 & n.6. Courts use legislative facts “to resolve *legal* questions.” *Id.* at 25 n.6. “They do so by consulting articles, books, and historical sources and bringing their own independent judgment to bear on them—not by appointing an ‘expert,’ whose ‘findings’ are insulated by clear-error review on appeal.” *Nathan*, 173 F.4th at 607–08.

Implicitly recognizing that reality, Plaintiff and the district court liberally cite secondary sources and exhibits designated *but not admitted* at trial. *E.g.*, Opp.18; ER-45. Clear error review does not apply.

II. Idaho is likely to succeed on the merits.

A. *Dobbs* established that states may prohibit abortions.

Dobbs returned “to the people” the power to “regulat[e] or prohibit[] abortion.” 597 U.S. at 237, 292. It overruled *Roe* and *Casey*, which mandated that every state pro-life law include a carveout for therapeutic abortions. Mot.8–9. And *Dobbs* did not limit its holding to “elective” abortions. *Id.*; *contra* Opp.1. Idaho’s pro-life laws properly regulate and prohibit abortion, and they are subject only to rational-basis review. Mot.21–22.

B. The district court failed to carefully define the rights.

Plaintiff offers no defense for the district court’s failure to carefully define the rights it discovered. Without a careful and historically rooted definition, the unenumerated rights analysis allows unelected judges to constitutionalize their “policy preferences.” *Reach Cmty. Dev. v. U.S. Dep’t of Homeland Sec.*, 174 F.4th 1143, 1147 (9th Cir. 2026) (citation modified).

Plaintiff acknowledges that the district court failed to define an “exhaustive” list of indications for abortion. Opp.30 n.7. And Plaintiff doesn’t disclaim that the risk of a commonly performed C-section could justify abortion under the district court’s injunction. Mot.10. Nor does Plaintiff dispute that abortionists often disagree on indications for abortion or that one professional group says *all* abortions are medically indicated. *Id.* Defining an unenumerated fundamental right requires a much more careful description than writing a statute regulating the medical profession. *See Reach Cmty.*, 174 F.4th at 1147; *contra* Opp.30 n.7. That’s because an ill-defined unenumerated right “usurp[s] authority that the Constitution entrusts to the people[].” *Dobbs*, 597 U.S. at 239–40.

Nor does Plaintiff deny that the injunction does not require a professional mental-health diagnosis, proof that other treatments have failed, or a second doctor’s opinion. Mot.11. Given this, Plaintiff’s attempted distinction between women suffering mental illness and those

who are “sane” yet threaten suicide, Opp.27–28, has no relevance to the nearly unbounded right the district court invented.

Data from other jurisdictions highlight the lack of careful description *and* the practical consequences of the district court’s ruling. Mot. 11; *contra* Opp.29. The UK’s “Ground C” requires “risk ... of injury” to the mother’s “mental health” as determined by two doctors. *Abortion statistics, England and Wales: 2022*, GOV.UK (Jan. 15, 2026), <https://tinyurl.com/ytv5pyhk>. California’s old law required a “substantial risk”—as determined by at least three doctors—that continued pregnancy “would gravely impair the ... mental health of the mother.” *People v. Belous*, 458 P.2d 194, 197 n.2 (Cal. 1969). Those types of laws license abortion on demand. Mot.11. Yet the district court’s injunction doesn’t even mandate a second opinion or professional diagnosis. It merely requires an abortionist to subjectively opine that there is a “non-negligible risk” of asserted death from “self-harm”—despite abortion not being a treatment for *any* underlying mental health issues. ER-80.

C. No deeply rooted right to “therapeutic” abortion exists.

(1) Repeating the district court’s error, Plaintiff cites no ratification-era case or source identifying a fundamental right to a therapeutic or mental-health abortion. Not one. That alone dooms his fundamental-rights claim, (2) as does the historical understanding of doctors.

(3) The sources Plaintiff does cite show that “life” did not mean “health.” And *mens rea* requirements didn’t generally permit “therapeutic” abortions. (4) Moreover, Plaintiff’s discussion of doctors’ subjective beliefs and English sources is irrelevant to the fundamental-rights analysis and supports Idaho anyway. (5) That’s equally true of the asserted right to abortion for mental-health issues.

(6) Plaintiff also devotes much space to discussing general rights to life and health—while twisting himself into a pretzel to avoid giving unborn children the same rights. But argument by analogy cannot create a fundamental right.

1. No ratification-era statute or case establishes a fundamental right.

Plaintiff does not dispute that there is no ratification-era case holding or secondary source saying that a fundamental right to “therapeutic” abortion exists. Mot.12. That alone bars Plaintiff’s claim. *Dobbs*, 597 U.S. at 243, 245.

To fill the gap, Plaintiff conflates “life” with “health.” Opp.23. But as the district court acknowledged—and Plaintiff does not contest—no “nineteenth- or early twentieth-century decisions explicitly” hold that “life” includes “health.” Mot.15 (quoting ER-52). As Plaintiff identifies, while a few ratification-era statutes allowed for therapeutic abortions, most only allowed life-preserving abortions, like Idaho’s. Opp.21–22; *see also* Opp.25–26 (noting Prof. Dellapenna’s observation that state statutes

acted to preserve “life *or* health”) (citation modified). Similarly, Plaintiff identifies Massachusetts’s *mens rea* requirement as permitting therapeutic abortions (as Idaho recognized), but he doesn’t square that with two other state supreme court decisions interpreting *mens rea* requirements to allow only life-preserving abortions. Mot.14–15. Those distinctions show that the 19th-century populace could—and did—conceptually distinguish life-saving and therapeutic procedures.

Plaintiff’s interpretation of the statutory term “necessary” to preserve life also fails. *See* Opp.23–24. All he cites is a “controversial” decision interpreting the Necessary and Proper Clause. Steven G. Calabresi et al., *What McCulloch v. Maryland Got Wrong*, 75 Baylor L. Rev. 1, 33 (2023). “Necessary” can have multiple meanings. *Id.* at 42–60 (conducting corpus linguistics and dictionary definition analysis); *see Ayestas v. Davis*, 584 U.S. 28, 44 (2018). Plaintiff cites no case holding that “necessary” in a life-preserving abortion statute also permitted “therapeutic” abortions.

Nor does Plaintiff’s argument explain the statutes that explicitly allowed therapeutic abortions. Or the states that replaced their therapeutic abortion provision with a life-preserving one. Mot.14. Or the states that had a *mens rea* requirement *and* a life-preserving exemption. *Id.* at 15.

2. American doctors almost universally recognized that state law prohibited therapeutic abortions.

Simply because a few doctors thought some abortions were lawful or because those abortions were not successfully prosecuted in some cases does not create a fundamental right to abortion. *See Dobbs*, 597 U.S. at 243, 253. Discussions by doctors and a lack of prosecutions don’t “shed light on the meaning of the Constitution.” *Id.* at 273.

Even so, 19th-century American doctors recognized that only a threat to the mother’s life authorized the taking of unborn life. FER-234–54. One doctor cited by Plaintiff, Dr. Thomas, exhorted medical students to “[r]emember ... that a human life”—the child’s—“depends upon your decision.” FER-110.

The evidence cited by Plaintiff and the district court is similar. Mot.16–17. Over 30 years after the Fourteenth Amendment’s ratification, Dr. Thomas gave medical students examples of taking unborn life to preserve maternal life in cases like incessant vomiting or fatal kidney disease. 3-SER-363; FER-111–15. Conversely, he taught that cancer did not justify taking unborn life because the doctor had “two lives to consider” and cancer wasn’t inevitably fatal. FER-113.

Dr. Storer wrote that a doctor would be “expelled from all professional associations” for “producing abortion, except absolutely to save the woman’s life.” FER-21. Dr. Storer’s language that Plaintiff cites came later in his book and charges doctors to “never” induce abortion without

a second opinion. 3-SER-358–59. It doesn’t change his “absolute[]” rule, nor does it purport to describe the law in place at the time. FER-21. Dr. Storer’s treatment of amenorrhea (blocked menses) also does not support an abortion right because he didn’t intend to take unborn life; he just understood that the treatment had the possibility of “unintentionally” and “innocently, committing malpractice” by inducing a miscarriage. 3-SER-391. Finally, Plaintiff does not provide an answer for the 1911 medical exam question he cites about justifiable abortion. 3-SER-385; FER-235.

Plaintiff’s citation to the opinions of 20th-century American doctors has even less relevance. Still, those two doctors defined therapeutic abortion as when “the pregnancy would endanger the life of the mother.”¹ They even thought that advances in medicine made life-preserving abortions unjustifiable. *Id.*

Any lack of prosecutions is due to 19th-century doctors following the law and abortion being “crude, painful, ... dangerous,” and rare. FER-160–61, 232–33. But the historical record also shows that states did prosecute criminal abortions. FER-171–84. As Plaintiff tacitly concedes, doctors were prosecuted for “therapeutic” abortions, Opp.25, and no court dismissed the prosecution based on a fundamental right, *e.g.*, *Hatchard v. State*, 48 N.W. 380, 382 (Wis. 1891); ER-95.

¹ R.J. Heffernan & W.A. Lynch, *Is Therapeutic Abortion Scientifically Justified?*, 19 *Linacre Q.* 11, 11 (1952).

3. The common law did not allow “therapeutic” abortions.

The early English common law didn’t distinguish between therapeutic and elective abortions and has little relevance to Plaintiff’s fundamental-right claim. Mot.19. Doctors at that time could not preserve health alone, and abortions were extremely dangerous. ER-98. Thus, Hale—writing in the 17th century—couldn’t have exempted “therapeutic” abortions from liability. *Contra* Opp.18; see FER-229. He merely concluded—after a discussion of doctors acting with intent to help their patients—that a doctor who “gives ... a potion to destroy the child” doesn’t act “to cure” the mother “of a disease.” FER-196–97. Hale doesn’t support Plaintiff’s jump to the conclusion that an abortifacient given to preserve the mother’s health (if that were even possible) was lawful—let alone a fundamental right. *See Dobbs*, 597 U.S. at 245 (discussing how Hale treated abortionists worse than other doctors).

4. Plaintiff’s discussion of English abortion law has no relevance and doesn’t support a fundamental right.

An unenumerated fundamental right requires deep roots in “our Nation’s scheme of ordered liberty”—not England’s. *Dobbs*, 597 U.S. at 238 (citation modified). Post-Independence developments in English law can’t create a fundamental right. *See id.* at 272.

Even on its own terms, Plaintiff’s English history doesn’t establish a legal right. Lord Ellenborough’s Act and its 1861 successor had the

mens rea requirement of “unlawfully” with no explicit therapeutic exception—even to preserve the mother’s life. FER-202–03; FER-218–19. As Plaintiff’s source Dr. Keown explains, English judicial authorities before 1938 interpreted these laws to allow for abortions only when necessary to preserve maternal life, consistent with the two state court decisions discussed above. 2-SER-146–47. Dr. Keown concluded that through the “end” of the 19th century, “the sole object” of abortion “was the preservation of the mother’s life.” 2-SER-153. Full stop.

Plaintiff also gets the 1938 English court jury instructions in *Rex v. Bourne* wrong. As the district court recognized, this “foreign” source issued “seventy years after the Fourteenth Amendment’s ratification” has “obviously” “limited utility.” ER-55. Idaho didn’t “misrepresent[]” what *Dobbs* says about *Bourne*. *Contra* Opp.21. *Roe* didn’t “explain” how *Bourne* “shed light on the meaning of the Constitution,” and neither does Plaintiff. *Dobbs*, 597 U.S. at 273; *see* Mot.14. The jury instructions interpret the *mens rea* requirement of an English statute seven decades after ratification. They have nothing to do with the Constitution.

Nor did Dr. Keown say that *Bourne* “confirmed what the law had always been” stretching back to 1803 or 1861. *Contra* Opp.21. He discussed how medical indications for abortion in England “gradually expanded” with the first stage requiring “abortion to save life.” 2-SER-159. Not until the 20th century did indications expand—under Keown’s reading—for therapeutic abortions. 2-SER-154. Still, even pre-*Bourne*,

20th-century legal sources required a threat to the mother's life. 2-SER-146. And some 20th-century English doctors maintained that abortion was justified only to save maternal life. 2-SER-154–55. At best, the historical record shows a division in legal and medical opinion in a country and century removed from the Fourteenth Amendment's ratification. It does not establish a fundamental American right.

5. No deeply rooted right to a mental-health abortion exists.

Plaintiff's sparse sources don't establish a fundamental right to a mental-health abortion. He cites *no* ratification-era case or even secondary source claiming a legal right to mental-health abortions; neither did the district court. Mot.12.

Tellingly, Plaintiff cites nothing to support that Idaho harbors prejudice against mental illness or indifference to those struggles. *See* Opp.27. To the contrary, the record shows that Idaho cares deeply about mother *and* child. Idaho has consistently identified numerous treatments pregnant women can access while preserving their babies' lives, such as medication changes, therapy, counseling, and hospitalization. ER-243–45, 256–62, 285–88. And abortion does not treat the underlying mental-health issue. ER-111–12. Plaintiff—not Idaho—has the “inconsistent set of interests,” advocating selective rights to life and health by “demonstrating indifference” to unborn children's right to life. Opp.27.

For American sources on mental-health abortions, Plaintiff offers only individual doctors' opinions, which cannot establish a fundamental right. *See* Opp.26. Dr. Parish wrote that one mother's threats of becoming "insane" corroborated by her husband didn't indicate an abortion. 3-SER-370–71. Another physician's decision to abort that baby "merge[d] into criminality." FER-50. Dr. Eve said "*some* cases of pregnancy complicated with insanity" may indicate abortion without defining the contours of that category. FER-32 (emphasis added). And even then, Dr. Eve emphasized "abortion" to preserve the child's life, which today would be called induced labor. FER-32–33.

Similarly, the 1914 journal article (long postdating ratification) generally discusses the "mentally unfit who might become deranged" without explaining what that means. FER-118. What isolated doctors may have thought indicated, or even justified, abortion under statutory law does not establish a fundamental right to that abortion.

Things get worse for Plaintiff, as his cites to English doctors and law actually support Idaho. Dr. Keown concluded that "[e]ven a threat of suicide was regarded as insufficient" to justify abortion at the end of the 1800s. 2-SER-153. The "mother's threat to do wrong" did not justify the doctor "to do wrong; were it otherwise, the law against abortion would be a dead letter." 2-SER-153. Nor did mental illness indicate abortion because, even at that time, other treatments like "observation or restraint" existed. 2-SER-153.

Plaintiff cannot escape the historic unlawfulness of suicide or the state cases holding that threats of suicide don't justify abortion. Mot.20. As Dr. Keown observed, two wrongs don't make a right—and certainly don't make a fundamental right. Plaintiff discusses insanity, which may have provided a legal defense to the crime of suicide, but no historical sources hold that that defense establishes a right to abortion. Further, the district court's invented right doesn't require a legal finding of insanity—or even a professional mental-health diagnosis. Mot.11. So Plaintiff's criticism of court decisions for not discussing a mental health diagnosis also fails. *See* Opp.28.

Finally, consistent with the long historical condemnation of suicide, statutory attempts to add mental-health grounds for abortions show that statutes did not allow for them. Mot.21; *contra* Opp.28.

6. General high-level rights can't establish a fundamental right to abortion.

Plaintiff's lengthy discussion of rights to life, health, or bodily integrity doesn't support an abortion right. *Contra* Opp.11–18. “One cannot simply pluck a ‘right’ as general and abstract as ‘bodily integrity,’” life, or health “from the caselaw, and then carefully describe that right on one's own terms without regard to whether that right is in fact grounded in history.” *Reach Cmty.*, 174 F.4th at 1148. Otherwise, *Glucksberg* would have come out the other way. That's why *Dobbs* rejected “attempts to justify abortion through appeals to a broader right

to autonomy”—that “high level of generality” in rights “could license fundamental rights to illicit drug use, prostitution, and the like.” 597 U.S. at 257. Plaintiff’s 30,000-foot view of these general rights lacks any connection to “the specific right at issue”—terminating an unborn child. *Reach Cmty.*, 174 F.4th at 1147.

Even so, Plaintiff’s analogies fail on their own terms. Blackstone made no explicit connection between self-defense and abortion. ER-100. Neither does Plaintiff cite *any* historical source linking self-defense to an abortion right. Self-defense required—and still requires—use of “unlawful” force. Mot.18 (discussing Blackstone); *United States v. Biggs*, 441 F.3d 1069, 1071 (9th Cir. 2006). Plaintiff’s discussion of two sailors struggling for a plank raises the necessity defense, which doesn’t apply to “therapeutic” abortions because necessity requires choosing the lesser evil and historically had undefined contours. ER-101–02; *Regina v. Dudley & Stephens*, 14 Q.B.D. 273, 285 (1884) (rejecting the necessity defense and discussing how Lord Bacon considered the plank example not “se defendendo” *i.e.*, not in self-defense).

Even farther afield, Plaintiff’s argument that the Cruel and Unusual Punishment Clause “implies” an abortion right is nonsensical. Opp.14. Courts can’t discover unenumerated rights by implication. *Reach Cmty.*, 174 F.4th at 1147. The Eighth Amendment and similar protections for detained people say nothing about abortion, and nothing Plaintiff cites links the two. Not even *Roe* divined an abortion right from

the Eighth Amendment. *Roe v. Wade*, 410 U.S. 113, 152 (1973) (citing First, Fourth, Fifth, Ninth, and Fourteenth Amendments).

With double irony, Plaintiff tries to use the right to life to justify taking life while spending three pages discussing how unborn children *don't* have a right to life. Opp.15–17. Arguments about the legal status of an unborn child at common law can't override the fact that “[a]t common law,” abortion “was regarded as unlawful and could have very serious consequences,” regardless of whether it qualified as homicide. *Dobbs*, 597 U.S. at 241.

Concern for unborn life *did* motivate 19th-century abortion laws. *Id.* at 248 (citing J. Keown, *Abortion, Doctors and the Law* 22 (1988)); FER-230; FER-250 (19th-century American doctors were “unanimous as to the sanctity of fetal life”); *Mills v. Commonwealth*, 13 Pa. 631, 633 (1850) (abortion “obstructs the fountain of life”). And contrary to Plaintiff’s irrelevant argument about “prenatal personhood,” pre-ratification courts recognized an unborn child as *in rerum natura*. *E.g.*, *Mills*, 13 Pa. at 633; *Hall v. Hancock*, 32 Mass. 255, 258 (1834).

D. Idaho’s pro-life laws satisfy any level of scrutiny.

With no fundamental right at stake, Idaho’s laws trigger and easily satisfy rational-basis review. Mot.21–22. Plaintiff doesn’t argue that the laws fail that standard.

Nor does Plaintiff dispute that Idaho has a compelling interest under heightened scrutiny. *Id.* Idaho doesn’t have any less restrictive

means to prohibit mental-health abortions. *Id.* at 22–23. *Contra* Opp.31. Requiring doctors to “document” a psychiatric “risk” won’t protect unborn life, as shown by the hundreds of thousands of mental-health abortions in the UK annually. *Supra* Section II.B. Mandating two doctors to “concur in the diagnosis” also wouldn’t advance Idaho’s interests. Again, the UK has the same requirement. *Id.* Many doctors have expansive notions of indications for abortion, with a leading professional association claiming *all* abortions are medically indicated. Mot.10; ER-90. The only way to protect unborn life is to prohibit taking it.

III. Idaho satisfies the other stay factors.

Plaintiff’s arguments on the other stay factors piggyback his merits arguments and likewise fail. A stay allows Idaho to enforce its democratically enacted laws and to protect mothers and their babies. *See* 54 Idaho Legislators’ Br.11.

Amicus St. Luke’s self-interested arguments don’t undermine Idaho’s irreparable injury.² Because Plaintiff didn’t make those arguments, a nonparty can’t raise them. *Zango, Inc. v. Kaspersky Lab, Inc.*, 568 F.3d 1169, 1177 n.8 (9th Cir. 2009). Regardless, those arguments fail. The district court’s injunctions here sweep far more broadly than the *St. Luke’s* injunction, which applies only to abortions necessary to “stabilize” a patient in an emergency room with an

² St. Luke’s failed to disclose that, as Plaintiff’s employer, it would benefit financially from the abortions performed by Plaintiff.

“emergency medical condition.” *St. Luke’s Health Sys., Ltd. v. Labrador*, 782 F. Supp. 3d 953, 987 (D. Idaho 2025) (quoting 42 U.S.C. § 1395dd(e)(1)(A), (3)(A)). And St. Luke’s arguments contradict Plaintiff’s testimony. Plaintiff said that he’s referred patients for “therapeutic” abortions out-of-state since the Defense of Life Act became effective, notwithstanding the *St. Luke’s* injunction. FER-225–27. What’s more, Plaintiff plans to expand his practice to perform mental-health abortions, ER-33–34, which *Amicus* concedes isn’t covered by the *St. Luke’s* injunction, St. Luke’s Br.9 n.4.

Potential changes to Idaho’s laws don’t negate the ongoing injury to Idaho’s sovereign interest in enforcing its law now. “Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (citation modified).

CONCLUSION

The Court should grant a stay.

Dated: September 15, 2026

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CERTIFICATE OF COMPLIANCE

This motion complies with the word limit of Circuit Rules 27-1(1)(d) and 32-3 and the Court's September 3, 2026 order because it contains 3,888 words, excluding parts exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Word 365 using a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: September 15, 2026

s/Mathew W. Hoffmann
Mathew W. Hoffmann

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2026, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate ACMS system. I certify that all participants in the case are registered ACMS users, and that service will be accomplished by the ACMS system.

s/Mathew W. Hoffmann

Mathew W. Hoffmann