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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA;
XIUHTEZCATL TONATIUH M., through his
Guardian Tamara Roske-Martinez; et al.,

Plaintiffs,

v.

The UNITED STATES OF AMERICA; et al.,

Defendants.

Case No.: 6:15-cv-01517-AA

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY**
Barke v. Banks, --- F.4th ---- (2022)

Plaintiffs hereby provide notice of supplemental authority of a new opinion from the Ninth Circuit Court of Appeals issued on February 7, 2022, *Barke v. Banks*, --- F.4th ---- (2022), 2022 WL 351239, attached to this notice, which supports Plaintiffs' Motion for Leave to File Amended Complaint. Doc. 462.

Barke v. Banks is precedential to this Court's decision on Plaintiffs' motion for leave to amend. First, *Barke* makes it indisputable that "dismissals for lack of Article III jurisdiction *must be entered without prejudice.*" *Id.* at *6 (emphasis added). Defendants are wrong to argue the Ninth Circuit's dismissal for lack of Article III standing was *with prejudice*. *See* Doc. 468 at 6-7. Even were this Court to enter the order of dismissal, it would need to be without prejudice and Plaintiffs could then refile their proposed amended complaint as a new action, which is a waste of judicial resources.

Second, *Barke* also makes clear that when a case is dismissed without prejudice, plaintiffs should be given an opportunity to amend as long as amendment is not futile. "It is black-letter law that a district court must give plaintiffs at least one chance to amend a deficient complaint." *Id.* at *6 (quoting *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015)). Just as the *Barke* plaintiffs were given the opportunity to attempt amendment, which they declined to do, Plaintiffs here deserve the chance to amend their complaint to correct any perceived deficiencies to their complaint the Ninth Circuit ordered dismissed without prejudice. Unlike the *Barke* plaintiffs, these 21 youth plaintiffs do seek to amend and thereafter prove to the courts that declaratory relief will meaningfully redress some of their injuries.

This Court should grant Plaintiffs' Motion forthwith and Defendants should finally submit to trial and stop petitioning the appellate courts for a writ of mandamus and extraordinary measures on the shadow docket that thwart these youths' ability to finally have their evidence heard by the

district court.

DATED this 17th day of February, 2022.

Respectfully submitted,

/s/ Julia A. Olson

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