UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

JANE DOE,

Plaintiff,

v.

GEORGIA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

Civ. No.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Jane Doe is a transgender woman in the custody of the Georgia Department of Corrections ("GDC"). In violation of the Eighth Amendment, the Americans with Disabilities Act ("ADA"), and the Rehabilitation Act, Defendants GDC, Wellpath, LLC ("Wellpath"), MHM Correctional Services, Inc. ("MHM"), Centurion Health, and their personnel and agents (collectively, "Defendants") refuse to provide Ms. Doe with medically necessary care to treat her gender dysphoria. They also continue to house Ms. Doe in a men's prison, where she suffers relentless violence, harassment, and discriminatory treatment on a regular basis, despite her requests to transfer to a women's prison, further exacerbating her gender-dysphoria distress. Given the ongoing and continuous nature of these violations, Ms. Doe seeks a preliminary injunction (1) requiring Defendants to provide her with individualized,

medically necessary treatment for gender dysphoria—including an evaluation for gender-affirming surgery, the provision of recommended surgeries, adequate hormone-replacement therapy ("HRT"), and gender-affirming commissary items—and (2) requiring GDC to transfer her to a women's prison for her safety and wellbeing.

STATEMENT OF FACTS

Plaintiff Jane Doe has been serving a life sentence in GDC custody since 1992. Exhibit 2, Affidavit of Jane Doe ("Doe Aff.") ¶¶ 1, 5. She is currently incarcerated at Phillips State Prison. *Id.* ¶¶ 8, 29–33.

I. THE WPATH STANDARDS OF CARE ESTABLISH ACCEPTED STANDARDS OF CARE FOR TREATING GENDER DYSPHORIA.

In 2015, GDC medical staff diagnosed Ms. Doe with gender dysphoria. Doe Aff. ¶ 15. A person diagnosed with gender dysphoria experiences clinically significant distress when their gender identity, or internal sense of their own gender, differs from their sex assigned at birth. Exhibit 3, Dr. Isabell Lowell Declaration ("Lowell Decl."), ¶ 17. People with gender dysphoria can experience severe depression, self-mutilation, self-castration, and suicidality in the absence of proper treatment. *Id.* ¶¶ 21–22 (collecting studies); Exhibit 5, Dr. Jens Berli Declaration ("Berli Decl."), ¶ 12 & n.5 (same).

Since February 2022, GDC policy has required that people diagnosed with gender dysphoria in GDC custody "receive a current individualized assessment and

evaluation" and that "[i]f a referral from Mental Health is made to Medical, a treatment plan will be developed" using the "accepted standards of care." Exhibit 6, GDC Standard Operating Procedure ("SOP") 507.04.68(IV)(C). The World Professional Association for Transgender Health ("WPATH") Standards of Care establish such accepted standards of care for treating patients with gender dysphoria, as recognized by the American Psychiatric Association and the American Medical Association, as well as the Fourth and Ninth Circuits. *See Edmo v. Corizon, Inc.*, 935 F.3d 757, 788 n.16 (9th Cir. 2019) (calling WPATH guidelines "the gold standard on this issue"); *De'Lonta v. Johnson*, 708 F.3d 520, 522–23 (4th Cir. 2013).

According to the WPATH Standards of Care, gender dysphoria may require "medically necessary" treatment, including, *inter alia*, HRT, gender-affirming surgery, and social transition.[1] These Standards of Care "apply equally to people living in institutions" and specifically recommend that incarcerated transgender individuals be able to receive "gender-affirming surgical treatments," items necessary for social transition, and "housing preference."[2] The National Commission on Correctional Healthcare ("NCCHC") recommends that prison healthcare systems "follow accepted standards developed by professionals with

[1] E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 Int'l J. of Transgender Health S1, S110, S128, S107 (Sept. 15, 2022), https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644 [hereinafter "Standards of Care"].
[2] *Id.* at S104, S106.

expertise in transgender health . . . on an individualized case-by-case basis" when treating people with gender dysphoria, citing the WPATH Standards of Care.[3]

The course of medically necessary treatment depends on the severity and nature of the patient's symptoms, as well as their overall health. Berli Decl. ¶ 17. For transgender women such as Ms. Doe, "medically necessary hormone therapy typically consists of the prescription of estrogen taken in combination with a testosterone blocker." Lowell Decl. ¶ 29. "[F]or many transgender people surgery is essential and medically necessary to alleviate their gender dysphoria because relief from gender dysphoria cannot be achieved without modification of their primary and/or secondary sex characteristics to establish greater congruence with their gender identity." Berli Decl. ¶ 17 (quotations and citation omitted). Ms. Doe's medical history "is consistent with a marked and sustained gender incongruence" that "requires a multi-modal therapeutic approach including hormones and surgery." *Id.* ¶ 19. "Changes in gender expression and role, also known as the 'real life experience' or 'social transition' are an important part of medical treatment as well." Lowell Decl. ¶ 31. Elements of social transition include dressing, grooming, and presenting oneself in a manner consistent with one's gender identity. *Id.* ¶ 33.

[3] *See* NCCHC Position Statement, Transgender and Gender Diverse Health Care in Correctional Settings (Oct. 18, 2009; reaffirmed with revision Apr. 12, 2015, and Nov. 1, 2020), https://www.ncchc.org/transgender-and-gender-diverse-health-care.

II. DEFENDANTS FAIL TO PROVIDE MS. DOE WITH ADEQUATE CARE, CAUSING MS. DOE NEEDLESS AND AVOIDABLE HARM.

Defendants fail to meet the aforementioned Standards of Care. Ms. Doe has expressed that she feels "persistent discomfort about being assigned the male sex and want[s] to change [her] body parts to align them with [her] strongly felt identity as a woman." Doe Aff. ¶ 11. Ms. Doe feels "downtrodden, suicidal, and anxious" with an "all-consuming" depression because her requests for care have been denied. *Id.* ¶ 109. As detailed below, Defendants' refusal to provide Ms. Doe with necessary gender-affirming care has led Ms. Doe to attempt suicide and self-castration multiple times. *Id.* ¶¶ 10, 13, 28, 33, 38, 61.

A. Ms. Doe's early partial care for her gender dysphoria.

Ms. Doe began HRT shortly after she was diagnosed in 2015. *See id.* ¶ 19. Her dosages gradually increased to 10mg of transdermal estradiol, administered every other week, and 200mg of spironolactone taken daily. *Id.* With HRT, she experienced partial relief from her distress. *Id.* ¶¶ 17, 19. But she also needed gender-affirming surgery to alleviate her remaining gender-dysphoria distress. Berli Decl. ¶ 19. Despite two recommendations from Defendants' mental health professionals, Doe Aff. ¶¶ 26–27, Ms. Doe's early requests for surgery were denied, as was her grievance contesting those denials, *id.* ¶¶ 25, 28. The intense distress Ms. Doe felt after GDC denied her grievance led her to attempt suicide by asphyxiation in February 2017. *Id.*

In June 2019, citing concerns of elevated blood pressure, Defendants' doctors suddenly took Ms. Doe off HRT in a manner inconsistent with medical protocol[4] and harmful to Ms. Doe's health. Doe Aff. ¶¶ 19, 29, 39; Exhibit 4, Dr. Sonya Haw ("Haw Decl."), ¶¶ 33–34. This sudden cessation of HRT reversed the partial relief Ms. Doe had experienced and resulted in the re-masculinization of her body, exacerbating her gender-dysphoria distress. Doe Aff. ¶¶ 31–33. As a result, Ms. Doe again attempted suicide by asphyxiation in December 2019. *Id.* ¶ 33.

B. Defendants refused to evaluate Ms. Doe for gender-affirming surgery or restart HRT, causing Ms. Doe to attempt self-castration.

Despite this history of severe gender-dysphoria distress and suicide attempts, and even after several efforts to communicate her thoughts of self-castration to mental health professionals in May 2020 and February and March 2022, Defendants refused to restart HRT or evaluate Ms. Doe for gender-affirming surgery. *Id.* ¶¶ 36–38, 44, 47–48 (describing Ms. Doe's efforts to ask for support from her primary care physician, psychiatrist Dr. Cleary, and mental health unit manager Jeremy Lane). Defendants Ausborn, Lane, Cleary, and Moore held a treatment team meeting on March 30, 2022, after which Dr. Cleary informed Ms. Doe that MHM forbade Dr. Cleary from conducting a clinical assessment or surgery referral for gender-affirming surgery. *See id.* ¶ 49. This denial led Ms. Doe to self-harm due to her

[4] *See* Standards of Care, *supra* note 1, at S106.

gender-dysphoric distress, including by slamming her head against her cell wall. *Id.* ¶¶ 44, 46–48.

On April 11, 2022, Ms. Doe was transferred to Phillips State Prison, where she was admitted to the medical crisis stabilization unit and placed on long-term suicide prevention status. *Id.* ¶ 52. Through communications, appointments, and formal grievances between April and July 2022, Ms. Doe explained her severe gender dysphoria, thoughts of self-castration, and her need for gender-affirming surgery to Defendants Teale, Moore, Bowling, Skibinski, Ward, Lewis, and Centurion Health, to no avail; several of these Defendants told her GDC was unwilling to permit gender-affirming surgeries and therefore they refused to evaluate her. *Id.* ¶¶ 53–60; Exhibit 8, Jane Doe Partial Grievance Files, at 2–6; 7–11; Exhibit 9, Letter to Centurion Health. Dr. Bowling told Ms. Doe that if she were "to attempt self-castration again, maybe while at the hospital, they'll just go ahead and cut your gonads out."[5] Out of extreme suffering and desperation, Ms. Doe again attempted self-castration on July 17, 2022, less than one month after Dr. Bowling's callous suggestion. Doe Aff. ¶¶ 61–62. Although she eventually sought emergency medical care, *see id.* ¶¶ 63–65, Ms. Doe suffered excruciating pain for two weeks, followed by sensitivity and bouts of crippling pain that continue to this day and prevent her

[5] Ms. Doe first attempted self-castration in 1992 in an effort to complete her transition. Doe Aff. ¶ 10.

from sitting down for long periods. *Id.* ¶ 65. She filed another grievance attributing her lack of medical care and her self-castration attempt to GDC's "unwritten freeze frame blanket custom or policy." *Id.* ¶ 58; Exhibit 9, Letter to Centurion Health, at 2–3, 6–7.

C. GDC's Blanket Ban caused Defendants to reject psychiatrists' recommendations for a surgical evaluation.

After her self-castration attempt, Ms. Doe met with two MHM psychiatrists, Drs. Frady and Howard, who assessed her need for gender-affirming surgery. Doe Aff. ¶ 68. Dr. Howard determined that Ms. Doe met the "criteria for gender dysphoria" and that "affording her basic accommodations impacting her gender appearance may translate to a significant reduction in self-injurious behavior and minimize [her] notable distress related to her gender identity." *Id.* ¶¶ 68–70. Dr. Howard concluded that Ms. Doe had the "capacity" to pursue "gender affirming treatment" and that "affording [Ms. Doe] her basic accommodations impacting her gender appearance" may help "minimize [her] notable distress related to her gender identity." *Id.* ¶ 69; *see also* Exhibit 12, Jane Doe Excerpted Medical Records ("Medical Records"), at 10. On January 3, 2023, Dr. Frady read his evaluation to Ms. Doe, recommending that Ms. Doe receive gender-affirming surgery and items necessary for social transition. Doe Aff. ¶¶ 73–74.

That same day, Ms. Doe spoke with Defendants Jones, Skibinski, Billings, and Clarke. *Id.* ¶ 75. Dr. Skibinski noted the recommendations for gender-affirming

surgery from Drs. Howard and Frady. *Id.* ¶ 76. Nevertheless, Warden Jones said that the group had decided that GDC policy did not allow Ms. Doe to have surgery. Warden Jones said the decision to provide gender-affirming surgery was "above his pay grade" and "over his head" and that GDC administration would not provide these clinically indicated surgeries because GDC "does not do surgeries." *Id.*

Other trans people in GDC custody have experienced similar roadblocks to accessing gender-affirming surgery. Aries Hinson, a transgender woman, has made repeated requests over the past two years for an evaluation for gender-affirming surgery. Exhibit 10, Declaration of Aries Hinson ("Hinson Decl.") ¶¶ 50–52. Ms. Hinson eventually received a psychiatric evaluation in June 2023, but she has yet to receive the results. *Id.* ¶¶ 55–56. Similarly, Ronnie Fuller, a transgender man, has requested an evaluation for gender-affirming surgery since at least 2017. Exhibit 11, Declaration of Ronnie Fuller ("Fuller Decl.") ¶ 10. Numerous GDC staff told Mr. Fuller that GDC would never give him gender-affirming surgery. *See id.* ¶¶ 11, 12, 15. In October 2022, a psychiatrist approved Mr. Fuller as a candidate for gender-affirming surgery. *Id.* ¶ 17. But Mr. Fuller has yet to receive approval for a surgical evaluation. *Id.* ¶ 25. This delay starkly contrasts with timelines for other surgeries Mr. Fuller has received in GDC custody. For example, for thyroid removal surgery, Mr. Fuller made a medical request, was given a consultation referral, and quickly saw a surgeon. *Id.* ¶ 21. Ms. Hinson and Mr. Fuller's experiences mirror

Ms. Doe's and bolster the existence of GDC's blanket ban against gender-affirming surgery (the "Blanket Ban").

D. Defendants continue to provide Ms. Doe with medically substandard HRT care.

GDC restarted Ms. Doe's HRT on April 28, 2023, at significantly lower doses than she received in 2019. Doe Aff. ¶¶ 81–83. Her treatment has not been individualized, and the dosages are not sufficient to see changes in her secondary sex characteristics or to alleviate her gender dysphoria. *Id.* ¶ 80–85. When Ms. Doe asked Dr. Mulloy for higher dosages, Dr. Mulloy told her that he does not "go above 20 mgs" of estradiol and that he gives the same dosage to all transgender patients in GDC. *Id.* Moreover, Dr. James suddenly stopped Ms. Doe's HRT in August, causing Ms. Doe's mental health to spiral. Doe Aff. ¶ 85. Dr. Mulloy restarted her HRT about three weeks later, but further reduced her estradiol dosage on November 1, 2023. *Id.*

Currently, Ms. Doe receives 6 mg of estradiol injections every other week and 100 mg of oral spironolactone daily. *Id.* These doses fall well below clinical levels. Lowell Decl. ¶¶ 38–41. Since her estradiol was reduced, Ms. Doe struggles daily with thoughts of self-castration and suicide. Doe Aff. ¶ 85. She describes her daily life and her fight for medically necessary care as an ongoing nightmare from which she can never wake. *Id.* She feels as though she cannot get her stress, anxiety, and racing thoughts under control, and she is constantly reminded of her gender

dysphoria during activities of daily living, particularly when she showers. *Id.* As Ms. Doe's symptoms demonstrate, Defendants' provision of medical care has been, at best, useless and, much more likely, life-threatening to Ms. Doe.

III. DEFENDANTS EXPOSE MS. DOE TO VIOLENT LIVING CONDITIONS BY HOUSING HER IN MEN'S PRISONS.

For over thirty years, GDC has housed Ms. Doe in violent, unsafe spaces. From 2010 to 2012, Ms. Doe was repeatedly raped and physically assaulted by a GDC guard at another male facility. *See* Doe Aff. ¶ 86. Ms. Doe filed a *pro se* lawsuit against the guard and won in a trial by jury, but the state refused to pay the award because the guard acted outside of his statutory authority. *Id.* Ms. Doe was raped at knifepoint in April 2018 by an incarcerated person at Valdosta State Prison, sexually assaulted in August 2018, and further assaulted in 2019. *Id.* ¶¶ 90, 92.

Ms. Doe's current facility, Phillips State Prison, is widely known as a dangerous institution that is overrun with gang violence.[6] Prison guards are alleged to participate in the gang activity, including by unbolting cell doors and moving incarcerated people to different units where they are exposed to gang retaliation.[7] These conditions—combined with the persistent, targeted, and violent harassment Ms. Doe receives as a transgender woman in a men's facility—leave Ms. Doe scared

[6] *See, e.g.*, Danny Robbins & Jennifer Peebles, "*Deadly Gang Attack Set in Motion by Guards at Phillips State Prison*," Atlanta Journal-Constitution, Mar. 2, 2023.
[7] *Id.*

for her physical safety every day. Doe Aff. ¶ 95.

In July 2019—over four years ago—GDC officials first placed Ms. Doe in "administrative segregation," *i.e.*, solitary confinement. *Id.* ¶ 108. Ms. Doe has consistently remained in solitary confinement since this initial placement, without the proper hearings to determine her need to continue in solitary confinement. *Id.*

Solitary confinement is neither necessary nor sufficient to protect her from harm from prison guards and other incarcerated people. One officer in particular, Sgt. Jamal Kinte Roberts ("Kinte"), makes frequent threatening and demeaning remarks and even removed a padlock from Ms. Doe's door that was installed after another transgender woman was assaulted. *Id.* ¶¶ 99–100. Further, while in solitary confinement, Ms. Doe has been robbed by an incarcerated person with a knife and has had at least four men enter her cell to proposition her for sex. *Id.* ¶¶ 94, 96. On another occasion, Ms. Doe had to bang on her cell door for ten to fifteen minutes to get a breakfast tray. *Id.* A GDC official finally brought a tray, saying, "Here's your tray, you fucking faggot." *Id.* He then spat in it and threw it on the floor outside of Ms. Doe's reach. *Id.* The dehumanizing and truly dangerous treatment that Ms. Doe receives because of her status as a trans person in solitary confinement leaves her feeling "like [she] live[s] every day in torture." *Id.* ¶ 115.

Ms. Doe has requested a transfer to a women's facility from Defendants, including Dr. Skibinski and Warden Jones, numerous times since 2021. Doe

Aff. ¶ 104. Living in a women's facility would remove much of the daily harm Ms. Doe experiences living among men.

ARGUMENT

A court should grant preliminary injunctive relief when the movant establishes: (1) "a substantial likelihood of success on the merits," (2) a substantial threat that the plaintiff "will suffer an irreparable injury unless the injunction is granted," (3) "the harm from the threatened injury outweighs the harm the injunction would cause the opposing party," and (4) "the injunction would not be adverse to the public interest." *Dream Defs. v. Governor of Fla.*, 57 F.4th 879, 889 (11th Cir. 2023) (citation and quotation marks omitted).

Ms. Doe meets these factors. Ms. Doe's claims that Defendants are violating her rights under the Eighth Amendment, the ADA, and the Rehabilitation Act will likely succeed on the merits. She will suffer irreparable harm if Defendants are permitted to continue withholding medically necessary care and subjecting her to dangerous living conditions. The balance of equities favors granting Ms. Doe immediate relief because Ms. Doe is wholly reliant on Defendants for her medical care and for a safe place to live, the provision of which is neither extraordinary nor burdensome to administer. Finally, the public interest strongly favors upholding the law and preventing avoidable suffering and injury to incarcerated individuals.

I. MS. DOE IS SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS.

A. Ms. Doe likely will prevail on the merits of her Eighth Amendment claim related to her serious medical needs.

Prisons that withhold adequate medical care are "incompatible with the concept of human dignity and ha[ve] no place in civilized society." *Brown v. Plata*, 563 U.S. 493, 511 (2011). Prison guards violate the Eighth Amendment's protection against cruel and unusual punishment by showing deliberate indifference to serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). To support a claim that prison staff provided constitutionally inadequate medical treatment, a plaintiff "must establish 'an objectively serious [medical] need, an objectively insufficient response to that need, subjective awareness of facts signaling the need, and an actual inference of required action from those facts.'" *Kuhne v. Fla. Dep't of Corr.*, 745 F.3d 1091, 1094 (11th Cir. 2014) (quoting *Taylor v. Adams*, 221 F.3d 1254, 1258 (11th Cir. 2000)).

1. Gender dysphoria is an objectively serious medical need.

It is beyond dispute that Ms. Doe's gender dysphoria is a serious medical need. *See, e.g., Edmo v. Corizon, Inc.*, 935 F.3d 757, 785 (9th Cir. 2019) (per curiam) ("The State does not dispute that Edmo's gender dysphoria is a sufficiently serious medical need to trigger the State's obligations under the Eighth Amendment. Nor could it."); *Keohane v. Fla. Dep't of Corrs. Sec'y*, 952 F.3d 1257, 1266–67 (11th Cir. 2020) (accepting parties agreement that "gender dysphoria constitutes a 'serious

medical need' for deliberate-indifference purposes"); *Mitchell v. Kallas*, 895 F.3d 492, 499 (7th Cir. 2018); *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003); *Monroe v. Jeffreys*, No. 3:18-CV-00156-NJR, 2021 WL 391229, at *1 (S.D. Ill. Feb. 4, 2021); *Huskins v. Fox*, No. 5:17-cv-58-FDW, 2018 WL 3660203, at *2 (W.D.N.C. Aug. 2, 2018) (collecting cases).

Here, numerous GDC clinicians, as well as expert witnesses Dr. Isabel Lowell and Dr. Sonya Haw, have independently diagnosed Ms. Doe with gender dysphoria. Doe Aff. ¶¶ 15, 68–70, 73–74; Lowell Decl. ¶ 50; Haw Decl. ¶ 40. The seriousness of that diagnosis is undisputable given GDC's own policies.[8] Similarly, the necessity of individualized medical intervention is not reasonably in dispute.[9]

Multiple experts have also independently concluded that gender-affirming care is medically necessary for Ms. Doe. First and foremost, four of GDC's own mental health professionals have evaluated Ms. Doe for gender-affirming surgery and other gender-affirming care; each of them has supported providing her this care. *See* Doe Aff. ¶¶ 26–27, 68–70, 73–74. Medical experts have also concluded that Ms. Doe requires a wide array of gender-affirming care, including gender-affirming surgery. Haw Decl. ¶ 33; Lowell Decl. ¶ 50; Berli Decl. ¶ 48. Notably, surgeon and WPATH author Dr. Jens Berli concluded: "it is my professional opinion that gender-

[8] *See* GDC SOP 507.04.68.
[9] *See id.*; Standards of Care, *supra* note 1; NCCHC Policy Statement, *supra* note 3.

affirming surgery is medically necessary and there is no legitime medical basis to prevent the plaintiff from accessing this medically necessary care." Berli Decl. ¶ 48.

Ms. Doe has gender dysphoria that requires individualized and immediate treatment. Ms. Doe is experiencing so much distress from her gender dysphoria that she has repeatedly self-harmed, attempted self-castration, and attempted suicide. Doe Aff. ¶ 28; *see* Exhibit 12, Medical Records, at 11–12, 13–14, 15–16. Even with partial relief from HRT, Ms. Doe still self-harmed while on that treatment, demonstrating the urgent need for gender-affirming surgery in addition to medically necessary HRT. Therefore, she meets her burden to show that her medical need is objectively serious.

2. Defendants respond to Ms. Doe's serious medical needs with deliberate indifference.

A defendant exhibits deliberate indifference if he "(1) had subjective knowledge of a risk of serious harm; (2) disregarded that risk; and (3) acted with more than gross negligence." *Hoffer v. Sec'y, Fla. Dep't of Corr.*, 973 F.3d 1263, 1270 (11th Cir. 2020).[10] Deliberate indifference can manifest in the provision of

[10] Relevant Eleventh Circuit caselaw has sometimes applied a less-stringent "more than *mere* negligence" standard for determining deliberate indifference. *See, e.g.*, *Swain v. Junior*, 961 F.3d 1276, 1285 (11th Cir. 2020) (emphasis added) (citation omitted). Ms. Doe will demonstrate likelihood of success on the merits under the more-stringent "more than *gross* negligence" standard. *See Hoffer*, 973 F.3d at 1270 (emphasis added). The Eleventh Circuit is currently reviewing which standard is appropriate for Eighth Amendment claims, and Ms. Doe encourages this Court to apply the *Swain* standard to the present Eighth Amendment violation. *See Wade v.*

inadequate care or in the denial or delay of proper medical care. *Estelle*, 429 U.S. at 105–06. This prong does not require that the official intend to cause harm or have knowledge that harm will result. *Farmer*, 511 U.S. at 835.

In evaluating prison officials' failure to provide medically necessary care, the court's inquiry turns on whether the incarcerated person received "constitutionally adequate" care. *Estelle*, 429 U.S. at 103–06. Where a prisoner has been diagnosed with a specific condition, the prison officials' conduct is constitutionally inadequate if it fails to provide care that is medically necessary; simply providing some treatment is not enough. *See Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985); *see also De'Lonta*, 708 F.3d at 526 (explaining that just because prison officials provide a prisoner "with *some* treatment consistent" with relevant standards of care, "it does not follow that they have necessarily provided her with *constitutionally adequate* treatment.") (emphases added); *Jones v. Muskegon County*, 625 F.3d 935, 944–45 (6th Cir. 2010) (holding that prison officials cannot avoid liability "simply by providing some measure of treatment") (internal citation omitted). The Eleventh Circuit recently issued helpful guidance on the deliberate indifference standard. "Responding to an inmate's acknowledged medical need with what amounts to a shoulder-shrugging refusal even to consider whether a particular

McDade, 67 F.4th 1363, 1371 (11th Cir.), *reh'g en banc granted and opinion vacated sub nom. Wade v. Ga. Corr. Health, LLC*, 83 F.4th 1332 (11th Cir. 2023).

course of treatment is appropriate is the very definition of 'deliberate indifference'—anti-medicine, if you will." *Keohane*, 952 F.3d at 1266–67. Further, "[e]ven where medical care is ultimately provided, a prison official may nonetheless act with deliberate indifference by delaying the treatment of serious medical needs, even for a period of hours." *McElligot v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999).

Here, Defendants have the requisite subjective knowledge of a risk of serious harm to Ms. Doe, but they repeatedly disregard that risk, act with deliberate indifference to Ms. Doe's serious medical needs, and, in doing so, act with more than gross negligence. *See Hoffer*, 973 F.3d at 1270. As early as 2016, Ms. Doe informed several GDC doctors that she was thinking of cutting off her penis and needed vaginoplasty. Doe Aff. ¶ 27. She made suicide attempts when her requests for gender-affirming care were denied in 2017 and 2019. *Id.* ¶¶ 28, 32–33. She informed Defendants directly of her escalating gender dysphoria and her thoughts of self-castration before attempting self-castration in July 2022. *Id.* ¶¶ 53–62. Defendants thus had actual knowledge of Ms. Doe's diagnosed gender dysphoria, her escalating distress at having her treatment withheld, and her ideations of self-harm. *See, e.g.*, *id.* ¶¶ 50–51, 53, 57-60, 75, 79, 83. Despite that knowledge, Defendants repeatedly denied, and continue to deny, Ms. Doe medically necessary individualized treatment, including gender-affirming surgery and adequate HRT.

Defendants have outright denied Ms. Doe's request for a surgical evaluation

because of GDC's Blanket Ban on gender-affirming surgery. Courts have found an Eighth Amendment violation where a similar de facto ban was in effect. *See Kothmann v. Rosario*, 558 F. App'x 907, 911–12 (11th Cir. 2014) (per curiam) (denying qualified immunity when a prison health official intentionally refused to provide accepted, medically necessary treatment for gender identity disorder); *see also Rosati v. Igbinoso*, 791 F.3d 1037, 1039–40 (9th Cir. 2015) (per curiam) (holding transgender plaintiff alleged deliberate indifference where prison denied gender-affirming surgery because of a blanket policy); *Colwell v. Bannister*, 763 F.3d 1060, 1063 (9th Cir. 2014) (holding that a "blanket, categorical denial of medically indicated surgery solely on the basis of an administrative policy . . . is the paradigm of deliberate indifference"); *Fields v. Smith*, 653 F.3d 550, 554–59 (7th Cir. 2011) (affirming permanent injunction enjoining statute that banned HRT and gender-affirming surgery). "[W]here, as here, the record shows that the medically necessary treatment for a prisoner's gender dysphoria is gender confirmation surgery, and responsible prison officials deny such treatment with full awareness of the prisoner's suffering, those officials violate the Eighth Amendment's prohibition on cruel and unusual punishment." *Edmo*, 935 F.3d at 803.

Denial of an incarcerated person's repeated requests for HRT to treat gender dysphoria is also a sufficient basis to find a violation of the Eighth Amendment. Defendants removed Ms. Doe from HRT in 2019 and prevented her from restarting

until 2023, after she again attempted self-castration. Doe Aff. ¶¶ 19, 29, 39, 61–62, 81–83. GDC delayed her access to care for four painful years, which amounts to a constitutional violation. *See Harris v. Coweta County*, 21 F.3d 388, 394 (11th Cir. 1994) ("Under the clearly established legal norms, a reasonable sheriff would have known that delaying prescribed treatment for a serious medical need for several weeks for a nonmedical reason may violate an inmate's constitutional rights.").

Not only have Defendants left Ms. Doe's condition completely untreated—or, at best, grossly under-treated—Defendants have declined to provide Ms. Doe with the items she needs to socially transition, such as a wig, brassieres, underwear, and makeup, all of which were recommended by Dr. Frady as part of her medically necessary treatment under the WPATH Standards of Care. Doe Aff. ¶¶ 73–74.

For all these reasons, Ms. Doe is likely to succeed on the merits of her claim for denial of medical care under the Eighth Amendment.

B. Ms. Doe is likely to succeed on the merits of her claim for failure to protect under the Eighth Amendment.

The Eighth Amendment "imposes [a] dut[y] on [prison] officials" to "take reasonable measures to guarantee the safety of" incarcerated people and to "protect [them] from violence at the hands of other[s]." *Farmer*, 511 U.S. at 832–33 (citations omitted). A prison official violates the Eighth Amendment "when a substantial risk of serious harm, of which the official is subjectively aware, exists and the official does not 'respond[] reasonably to the risk.'" *Carter v. Galloway*,

352 F.3d 1346, 1349 (11th Cir. 2003) (per curiam) (alteration in original, citation omitted). To prove failure to protect under the Eighth Amendment, a plaintiff must show that "(1) a substantial risk of harm existed; (2) the defendants were deliberately indifferent to that risk, *i.e.*, they both subjectively knew of the risk and also disregarded it by failing to respond in an objectively reasonable manner; and (3) there was a causal connection between the defendants' conduct and the Eighth Amendment violation." *Bowen v. Warden, Baldwin State Prison*, 826 F.3d 1312, 1320 (11th Cir. 2016); *see also Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1099 (11th Cir. 2014). The conditions to which Ms. Doe has been exposed while in GDC's charge put her at a substantial risk of serious harm (and, in several instances, did cause her serious harm) at the hands of GDC staff and other incarcerated people. Defendants are aware of this substantial risk and nonetheless fail or refuse to take steps to address it, which causes significant harm to Ms. Doe.

1. Ms. Doe is routinely exposed to a substantial risk of serious harm in GDC custody.

"[I]t is well settled that a prison inmate has a constitutional right to be protected . . . from physical assault by other inmates." *Zatler v. Wainwright*, 802 F.2d 397, 400 (11th Cir. 1986). The plaintiff's "failure . . . to give advance notice [of a risk of harm] is not dispositive" because subjective knowledge may be established "by reliance on any relevant evidence." *Farmer*, 511 U.S. at 848; *see also Hale v. Tallapoosa County*, 50 F.3d 1579, 1583 (11th Cir. 1995). The plaintiff

"must show that [s]he is incarcerated under conditions posing a substantial risk of serious harm." *Farmer*, 511 U.S. at 834.

Ms. Doe is repeatedly exposed to a substantial risk of serious harm, is targeted as a transgender woman, and has frequently experienced serious harm. These living conditions are condoned by GDC officials in clear violation of the Eighth Amendment. Phillips State Prison is widely known as a dangerous, violent facility with a significant gang presence involving prison guards who unbolt cell doors and move people to different units where they are at risk of gang retaliation.[11] Ms. Doe's solitary confinement cell at Phillips has often been without a functioning lock. *See* Doe Aff. ¶ 93. In fact, Sgt. Kinte—a GDC official who often taunts and harasses Ms. Doe—removed a padlock from Ms. Doe's door that was installed after another transgender woman was assaulted. *Id.* ¶ 100. Ms. Doe has been robbed by an incarcerated person with a knife and has fought off advances from at least four men who entered her unlocked cell and propositioned her for sex. *Id.* ¶¶ 94, 96. Ms. Doe lives in constant fear that someone will attack, rape, or kill her. *Id.* ¶ 95. She is not even able to shower without being subjected to transgender slurs and fears that someone will threaten, taunt, or harm her. *Id.* ¶ 103. Phillips' guards, including Sgt. Kinte, misgender her and target her with hurtful, humiliating comments. *Id.* ¶ 87. Ms. Hinson, another transgender woman in GDC custody, suffered similar physical

[11] *See, e.g.*, *Robbins and Peebles, supra* note 6.

and sexual assaults, as well as harassment from guards and other incarcerated people, while detained in Phillips. Hinson Decl. ¶¶ 25–28.

Ms. Doe's incredibly dangerous living circumstances have been consistent across several years. From 2010 through 2012, Ms. Doe was repeatedly raped and physically assaulted by a GDC guard. Doe Aff. ¶ 86. To protect herself when GDC failed to do so, Ms. Doe filed a *pro se* lawsuit, which she won in a trial by jury. *See* Exhibit 13, Sealed Prior Case. In 2018, while in Valdosta State Prison, Ms. Doe was raped at knifepoint by an incarcerated person. Doe Aff. ¶ 90. In 2019, in Georgia State Prison, Ms. Doe was assaulted by another incarcerated person who grabbed her neck, pushed her against the wall, and attempted to pull her pants down. *Id.* ¶ 92. Ms. Doe fought back and escaped, but she was injured in doing so. *Id.*

All Ms. Doe's experiences in men's prison facilities have been characterized by pervasive violence and targeted abuse because she is transgender. GDC officials' failures to protect Ms. Doe violate the Eighth Amendment. *See LaMarca v. Turner*, 995 F.2d 1526, 1536–38 (11th Cir. 1993); *Hale*, 50 F.3d at 1581, 1584. Ms. Doe's ongoing experience of harsh discrimination and violent treatment amounts to exactly the type of circumstances against which the Eighth Amendment protects.

2. Defendants are deliberately indifferent to the known, obvious risks faced by Ms. Doe.

Defendants have long had subjective knowledge of the substantial risk of harm to Ms. Doe. GDC was objectively aware of the history of physical abuse

directed at Ms. Doe at least as early as October 2010, given the *pro se* lawsuit filed against Officer Hall and the state's admission that Officer Hall's conduct was outside the bounds of acceptable risk to Ms. Doe. *See* Doe Aff. ¶ 86. GDC medical staff's assessments following violent incidents against Ms. Doe make clear that she was, and continues to be, at substantial risk of harm and that Defendants are aware of that harm. *Id.* ¶¶ 90–91.

Although Defendants have been repeatedly made aware of the risks to Ms. Doe, they have consistently and actively disregarded these risks and acted with more than gross negligence, and they continue to do so. Ms. Doe repeatedly made Phillips State Prison officials aware when her cell was without a functioning lock, including through a formal grievance and an appeal. *Id.* ¶ 93. She tried to file a Prison Rape Elimination Act (PREA) complaint in response to Sgt. Kinte's behavior, but GDC officials did not allow her to complete it. *Id.* ¶ 98. She also complained to GDC staff that there are no locks or curtains on the showers, and, without this protection, she has been subjected to sexually harassing comments, unwanted touching, and other lewd and unwanted behavior. *Id.* ¶ 103. Defendants have done nothing in response. This conduct amounts to more than gross negligence and is in clear breach of the Eighth Amendment.

3. Defendants' failure to protect Ms. Doe caused her injuries.

A plaintiff making an Eighth Amendment claim for failure to protect must

demonstrate two causal links: (1) between the prison official's deliberately indifferent acts and omissions and the excessive risk of violence; and (2) between the excessive risk of violence and the plaintiff's injuries. *See Hale*, 50 F.3d at 1584.

Here, both causal links are present. First, there is a link between Defendants' deliberate indifference to Ms. Doe's health and safety and her risk of violence at the hands of GDC personnel and other incarcerated people. Since April 2022, and until very recently, Ms. Doe has often been forced to reside in a cell without a functioning lock, which leaves her extremely vulnerable. Doe Aff. ¶ 93. Ms. Doe's unaddressed complaints regarding unlocked, curtainless showers have allowed unwanted comments and behavior from other incarcerated people to continue. *Id.* ¶ 103.

Second, there is a clear link between this excessive risk of violence and Ms. Doe's injuries. Ms. Doe has been repeatedly sexually, physically, and verbally assaulted in GDC's custody. *Id.* ¶¶ 86, 90, 92. These dangerous, untenable circumstances cause Ms. Doe constant fear for her own safety. *Id.* ¶ 95. GDC's deliberate indifference to Ms. Doe's health and safety has caused her significant physical and mental anguish and is constitutionally impermissible.

C. Ms. Doe will likely prevail on the merits of her Americans with Disabilities Act and Rehabilitation Act claims.

Defendants' refusal to adequately treat Ms. Doe's gender dysphoria violates

Titles II and III of the ADA and Section 504 of the Rehabilitation Act.[12] Title II of the ADA "unambiguously extends to state prison inmates." *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 213 (1998). Under Title II, public entities are prohibited from discriminating against a "qualified individual with a disability," 42 U.S.C. § 12132; from denying them the benefits of "services, programs, or activities," *id.*; and from refusing "reasonable modifications in policies, practices, or procedures" to prevent discrimination based on disability, 28 C.F.R. § 35.130(b)(7). A "public entity" includes "any state or local government" and their departments. 42 U.S.C. § 12131.

To prevail on a discrimination claim under Title II of the ADA, a plaintiff must show: "(1) that [s]he is a qualified individual with a disability; (2) that [s]he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (3) that the exclusion, denial of benefit, or discrimination was by reason of the plaintiff's disability." *Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1083 (11th Cir. 2007). Ms. Doe easily satisfies each element. As a department of

[12] The Rehabilitation Act does not require a separate analysis from the ADA "because the two statutes provide identical protection . . . ." *Williams v. Kincaid*, 45 F.4th 759, 765 n.1 (4th Cir. 2022). Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, prohibits discrimination on the basis of disability in any program or activity receiving federal assistance. Section 504 also requires covered parties to provide reasonable accommodations to individuals with disabilities so they can fully participate in the benefits administered by those covered parties. 35 C.F.R. § 104.12(a).

the Georgia state government, GDC has violated the ADA's prohibition against discrimination on the basis of disability by applying an irrational and nonmedical barrier—the discriminatory Blanket Ban—to Ms. Doe's access to medical services and reasonable accommodations for her gender dysphoria, including adequate, individualized HRT, access to women's commissary items, gender-affirming surgery, and a transfer to a women's prison.

Title III of the ADA provides: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a); *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1299 (11th Cir. 2005) (listing elements of Title III claim). MHM and Wellpath operate medical services in GDC, including in Phillips State Prison. Thus, Ms. Doe can maintain a Title III ADA claim (whose elements mirror those of a Title II claim) against MHM and Wellpath because they offer services as a public accommodation under Title III of the ADA. *See id.* § 12181(7)(K) (listing "social service center establishment[s]" as a public accommodation); *Hernandez v. County of Monterey*, 70 F. Supp. 3d 963, 978 (N.D. Cal. 2014) (holding Title III covers private healthcare operations in jails as type of "public accommodation").

1. Ms. Doe is a qualified individual with a disability.

Ms. Doe meets the first element of her discrimination claims because she is a qualified individual with a disability: namely, gender dysphoria. This condition is "associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning." Exhibit 14, Excerpt from Am. Psych. Ass'n, *Diagnostic & Statistical Manual of Mental Disorders* 452–53 (5th ed. 2013) ("DSM-5"). Gender dysphoria has been recognized as a disability under the ADA. *Williams v. Kincaid*, 45 F.4th 759, 766 (4th Cir. 2022), *cert. denied by* 143 S. Ct. 2414 (2023); *see also* 42 U.S.C. § 12131(2).

The ADA removes the category of gender identity disorders not resulting from physical impairments from the definition of disability. 42 U.S.C. § 12211(b)(1). But gender dysphoria is not excluded from the ADA's coverage for two reasons.

First, gender dysphoria is not a gender identity disorder. "Gender identity disorder" was removed from the DSM-5, under which Ms. Doe was diagnosed with gender dysphoria, and is no longer a diagnosable condition. "Gender identity disorder" in earlier iterations of the DSM focused on the incongruence between sex and gender identity, while gender dysphoria focuses on "the *distress that may accompany* [that] incongruence." Exhibit 14, Excerpt from DSM-5, at 451 (emphasis added). The ADA recognizes gender dysphoria as a protected disability because gender dysphoria is not the same as the excluded diagnosis of gender

identity disorder. *Williams*, 45 F.4th at 766–69 (holding that gender dysphoria is a "disability" under the ADA and is not excluded from coverage under 42 U.S.C. § 12211(b)).

Second, even if this Court determines that gender dysphoria is a gender identity disorder, there are at least two reasons why Ms. Doe's gender dysphoria "result[s] from physical impairments" and therefore falls under an exception to the exclusion. *See* 42 U.S.C. § 12211(b)(1). First, gender dysphoria is a physiological, physical, and mental impairment. Ms. Doe's gender dysphoria stems from the amount of testosterone and estrogen her body produces without HRT, as indicated by her targeted focus on her testicles and several attempts to self-castrate, most recently in 2022. *See* Haw Decl. ¶ 34 ("Ms. Doe's gender dysphoria stems from an excess of testosterone and a relative lack of estrogen in her body, physical conditions which hormone therapy and gonadectomy can help alleviate."). Ms. Doe's original HRT dosage caused a partial feminization of her body and partially alleviated the distress she experienced. When Defendants stopped her HRT, Ms. Doe experienced significant emotional, psychological, and physical distress as her body reverted to a more masculine form. *Id.* ¶¶ 31–33. Her disability thus has a physical basis. *See Williams*, 45 F.4th at 770–71; Haw Decl. ¶ 34.

Second, gender dysphoria generally results from physical impairments. *See Williams*, 45 F.4th at 771–72. As early as 1987, the American Psychological

Association described how physical disorders may accompany various mental disorders, including gender-based disorders, noting that etiological bases (*i.e.*, the cause or origin) of a mental disorder could include "soft neurologic signs." *See* Am. Psych. Ass'n, *Diagnostic & Statistical Manual of Mental Disorders* 18, 74 (3d ed., rev. 1987). Recent medical research demonstrates that gender dysphoria "diagnoses have a physical etiology, namely, hormonal and genetic drivers contributing to the in utero development of dysphoria." *Doe v. Mass. Dep't of Corr.*, No. 17-12255-RGS, 2018 WL 2994403, at *6 (D. Mass. June 14, 2018) (citation omitted).

Research also points towards a neurological basis for gender identity. *See* Kevin M. Barry & Jennifer L. Levi, *The Future of Disability Rights Protections for Transgender People*, 35 Touro L. Rev. 25, 45 (2019) ("[T]he diagnosis of gender dysphoria in the DSM-5 rests upon a growing body of scientific research showing that gender dysphoria has a physical cause related to the interaction of the developing brain and sex hormones."). "There is now a scientific consensus that biological factors—most notably sexual differentiation in the brain—have a role in gender identity development and that a person's gender identity is hardwired and impervious to change." Jennifer Levi & Kevin Barry, *Made to Feel Broken: Ending Conversion Practices and Saving Transgender Lives*, 136 Harv. L. Rev. 1112, 1117 (2023); *see also id.* 1117 n.35 (collecting studies describing the biological etiology for transgender identity). Gender dysphoria fits squarely within the physical

impairment exception and, therefore, within the protections of the ADA and the Rehabilitation Act.

2. Ms. Doe is denied the benefits of healthcare services at GDC.

Per GDC's written policy, trans people who have been diagnosed with gender dysphoria should receive "a current individualized assessment and evaluation" and "a treatment plan . . . that promotes the physical and mental health of the patient" and that "is not solely dependent on services provided or the offender's life experiences prior to incarceration. . . . Current, accepted standards of care will be used as a reference for developing the treatment plan." Exhibit 6, GDC SOP 507.04.68(IV)(C). Further, GDC policy states that trans people in GDC custody "will receive the full range of treatment services necessary to meet contemporary standards in the community." Exhibit 7, GDC SOP 507.04.07(I).

Under these policies, Ms. Doe is entitled to the full range of medical services for her gender dysphoria: consistent and medically appropriate HRT; gender-affirming surgery; social transition items (women's commissary items and gender-affirming accommodations such as a wig, breast and buttock padding, brassieres, underwear, hair removal cream, and makeup); and a transfer to a women's facility. The denial of these services "can expose [Ms. Doe] to a serious risk of psychological and physical harm." *Williams,* 45 F.4th at 768 (quoting *Edmo*, 935 F.3d at 771); *see* Lowell Decl. ¶ 50; Berli Decl. ¶ 48. Despite GDC's SOPs, however, Defendants

have outright denied Ms. Doe's requests for these services and accommodations. Thus, she meets the second element of her ADA and Rehabilitation Act claims.

3. Ms. Doe's exclusion from medical services and accommodations necessary to alleviate her symptoms is based on her disability.

A plaintiff's disability need only be one "motivating factor," that is, a factor that "*made a difference in the outcome*," for Defendants' actions to constitute discrimination under the ADA and the Rehabilitation Act. *Farley v. Nationwide Mut. Ins. Co.*, 197 F.3d 1322, 1333–34 (11th Cir. 1999) (emphasis in original, citation omitted). Here, as evidenced by statements made to Ms. Doe by Defendants, Doe Aff. ¶¶ 49, 76, as well as statements made to Mr. Fuller, Fuller Decl. ¶¶ 11, 12, 15, the fact that Ms. Doe seeks services and accommodations for gender dysphoria, as opposed to another condition, appears to be the *primary reason* GDC has denied her necessary individualized treatment. This far exceeds the "motivating factor" standard. Indeed, Ms. Doe was subject to an "outright intentional exclusion" based on her disability, which is a clear violation of the ADA and Rehabilitation Act. *See PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001); Doe Aff. ¶ 76.

In sum, Ms. Doe has a high likelihood of success on her ADA and Rehabilitation Act claims because (1) she is a qualified individual with a disability, (2) Defendants denied her the benefits of healthcare services and reasonable accommodations, and (3) she is excluded from these services and reasonable accommodations because of her disability. Because she is likely to prevail on her

ADA and Rehabilitation Act claims, preliminary injunctive relief is appropriate.

II. ABSENT AN INJUNCTION, MS. DOE LIKELY WILL SUFFER IRREPARABLE INJURY.

A plaintiff seeking preliminary injunctive relief need show only that she likely will incur irreparable injury "in the absence of an injunction." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Irreparable harm may include injury or death to the movant, *Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004), as well as the movant's immediate psychological injury and distress, *see Chalk v. U.S. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 710 (9th Cir. 1988); *Tipton v. Fed. Bureau of Prisons*, 262 F. Supp. 2d 633, 636 (D. Md. 2003).

Ms. Doe has not received medically necessary treatment in GDC custody, and each day that passes without this medically necessary care compounds Ms. Doe's distress. The medical community recognizes that people with gender dysphoria may experience psychological distress, depression, self-mutilation, self-castration, and suicidality if they do not receive proper treatment. Lowell Decl. ¶¶ 21–22 (collecting studies); Berli Decl. ¶ 12 & n.5 (same). Ms. Doe has exhibited concerning symptoms of gender-dysphoric distress for many years—namely suicidal ideation, suicide attempts, and self-castration attempts—due to GDC's denial of medically necessary care. *See, e.g.*, Doe Aff. ¶¶ 10, 13, 28, 33, 38, 61. There is a very real and persistently increasing chance that Ms. Doe will attempt self-castration or suicide again in the near future if Defendants do not provide her with the medical care that

she desperately needs. Lowell Decl. ¶ 50; Haw Decl. ¶ 38. In addition, some courts have found that the deprivation of HRT "will wreak havoc on plaintiff's physical and emotional state. Such harm is neither compensable nor speculative" and requires the imposition of a preliminary injunction. *Phillips v. Mich. Dep't of Corr.*, 731 F. Supp. 792, 800 (W.D. Mich. 1990), *aff'd per curiam*, 932 F.2d 969 (6th Cir. 1991).

Ms. Doe's constitutional right to be free from cruel and unusual punishment, her statutory rights against discrimination, and her fundamental rights to life and health remain in peril so long as GDC refuses to provide her medically necessary gender-affirming care.[13]

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST STRONGLY FAVOR GRANTING A PRELIMINARY INJUNCTION.

The harm and cost that GDC might reasonably expect to incur under a preliminary injunction are insignificant, particularly when weighed against the

[13] The deprivation of Ms. Doe's constitutional rights themselves also constitutes irreparable harm. *Mills v. Dist. of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). Courts have described the deprivation of an incarcerated person's Eighth Amendment rights due to the denial of gender-affirming care as sufficient to establish irreparable harm. *See Phillips*, 731 F. Supp. at 801 (W.D. Mich. 1990) ("[W]hen an alleged deprivation of a constitutional right is involved, no further showing of irreparable harm is necessary"); *Hicklin v. Precynthe*, No. 4:16-cv-01357-NCC, 2018 WL 806764, at *10 (E.D. Mo. Feb. 9, 2018) (same). And, in Ms. Doe's case, the risk of self-harm and suicide caused by Defendants' deprivation of her constitutional rights is a self-evident example of irreparable harm. *See, e.g., Melendez v. Sec'y, Fla. Dep't of Corr.*, No. 21-13455, 2022 WL 1124753, at *16 (11th Cir. Apr. 15, 2022).

irreparable harm to her health and life that Ms. Doe will suffer if the Court denies the relief requested herein. The deference that courts afford to prison officials with respect to prison administration is unwarranted where prison officials are not pursuing a rational objective. *Wetzel v. Edwards*, 635 F.2d 283, 288 (4th Cir. 1980). Defendants cannot show how providing gender-affirming care raises a security concern.

At the same time, Ms. Doe's gender dysphoria continues untreated and causes her significant distress that has materialized as repeated thoughts of and two attempts at self-castration, self-harm by slamming her head into walls, and multiple suicide attempts. *See* Doe Aff. ¶¶ 10, 13, 28, 33, 38, 61. The deprivation of medically necessary care is unconstitutional torture when it results in this type of agony. *See Estelle*, 429 U.S. at 103.

In contrast, GDC suffers no harm from an order requiring compliance with its constitutional obligations—and its own regulations—to provide this care. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983), *as amended* (1985) (holding that an agency "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations"); *see also Walker v. City of Calhoun*, No. 4:15-CV-0170-HLM, 2016 WL 361612, at *14 (N.D. Ga. Jan. 28, 2016) ("Any [administrative] difficulties that Defendant may suffer if the Court grants injunctive relief are not so significant as to outweigh the important

constitutional rights at issue."), *vacated per curiam on other grounds*, 682 F. App'x 721 (11th Cir. 2017). The cost of providing the surgery is not a sufficient reason to sway the balance of equities, especially since prisons have a duty to pay for medically necessary care for people in their custody. *See Ancata*, 769 F.2d at 705 ("Lack of funds . . . cannot justify an unconstitutional lack of competent medical care or treatment of inmates."); *Harris*, 21 F.3d at 394 ("[A] reasonable sheriff would have known that delaying prescribed treatment for a serious medical need for several weeks for a nonmedical reason may violate an inmate's constitutional rights."). The balance of equities strongly favors Ms. Doe.

"[U]pholding constitutional rights surely serves the public interest." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002); *see also KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). As discussed above, Ms. Doe likely will succeed on the merits of her constitutional and statutory claims, and Defendants cannot demonstrate any valid prison concern underlying their blatantly discriminatory refusal to provide medically necessary care that would warrant the deference courts sometimes afford to prisons.

Ms. Doe requests preliminary injunctive relief to end Defendants' unconstitutional discrimination and indifference to Ms. Doe's medical needs.

IV. CONCLUSION

For the foregoing reasons, this Court should grant Ms. Doe's motion for a preliminary injunction.

Respectfully submitted this 6th day of December, 2023.

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*** Motions for admission *pro hac vice* to be filed**

CERTIFICATE OF COMPLIANCE

This document complies with Local Rule 5.1 because it uses 14-point Times New Roman.

/s/ David Utter

/s/ Christopher J. Murell