

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Reiyn Keohane,

Plaintiff,

v.

Case No. 4:16-cv-511-MW-CAS

Julie Jones,

in her official capacity as

Secretary of the Florida Department of Corrections,

Trung Van Le,

in his official capacity as

Chief Health Officer of the Desoto Annex,

Teresita Dieguez,

in her official capacity as

Medical Director of Everglades Correctional Institution,

Francisco Acosta,

in his official capacity as

Warden of Everglades Correctional Institution,

Defendants.

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
AND INCORPORATED MEMORANDUM OF LAW

INTRODUCTION

This action concerns the serious injury inflicted by the Florida Department of Corrections and its agents, including the named defendants (collectively, “the DOC”), on Plaintiff Reilyn Keohane in denying her medically necessary care. Plaintiff is a prisoner at Everglades Correctional Institution (“Everglades CI”) in Miami, Florida who has Gender Dysphoria, a serious medical condition that, if left untreated, can lead to serious medical problems. For more than two years, the DOC has refused to provide Plaintiff with medically necessary treatment for this condition. Specifically, she is being denied hormone therapy that was prescribed for her and that she was receiving prior to her incarceration, and she is prohibited from expressing her female gender by wearing clothing approved by the DOC for women, growing her hair, and otherwise following grooming standards approved by the DOC for women. The DOC’s refusal to provide this treatment to Plaintiff is not based on medical judgment regarding her medical needs; rather, it is based on a blanket policy that limits treatments for Gender Dysphoria regardless of the individual’s medical needs. Plaintiff experiences constant, significant distress as a result of her lack of medical care and is at serious risk of severe and imminent harm. She has already attempted self-surgery (auto-castration) and suicide as a result of this medically necessary treatment being withheld. Plaintiff moves for a preliminary injunction requiring the DOC to provide her with hormone therapy and

to permit her to wear clothing approved by the DOC for women, growing her hair to a length allowed for female inmates, and otherwise following grooming standards approved by the DOC for women.

MATERIAL FACTS

A. Introduction

Plaintiff is a 22-year-old transgender woman serving a 15-year sentence in the custody of the DOC. Declaration of Reilyn Keohane (“Keohane Decl.”) ¶ 2, attached as **Exhibit 1**. She is currently incarcerated at Everglades CI in Miami, Florida. *Id.* At age 16, Plaintiff was diagnosed with Gender Identity Disorder (now known as Gender Dysphoria). *Id.* ¶ 5; March 2010 Progress Notes, Dr. Rieche (“Rieche Notes”), attached as **Exhibit 2**. At age 19, Plaintiff began hormone therapy under the care of an endocrinologist. Keohane Decl. ¶ 7. Despite being aware of this prior treatment, the continued need for such treatment, and the significant harm suffered by Plaintiff as a result of the denial of such treatment (both access to hormone therapy and to female clothing and grooming standards), the DOC refuses to provide Plaintiff with this urgently needed and medically necessary care for her Gender Dysphoria.

B. Gender Dysphoria

Gender Dysphoria is a condition in which a person’s gender identity—a person’s internal sense of their own gender—differs from the sex the person was assigned at birth, causing clinically significant distress. Declaration of Dr. David Baker-Hargrove (“Baker-Hargrove Decl.”) ¶¶ 10, 14, attached as **Exhibit 3**. This condition is included in the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*, Fifth ed. (2013) (“DSM-5”). *Id.* ¶ 14.

The medical protocols for treating Gender Dysphoria are well established. The World Professional Association for Transgender Health (“WPATH”) is the leading medical authority on Gender Dysphoria and has developed the Standards of Care for the treatment of the condition. *Id.* ¶ 19. These standards are recognized as authoritative by the leading medical and mental-health association and provide for the following treatments:

- Living in a gender role consistent with one’s gender identity;
- Hormone therapy to feminize or masculinize the body;
- Surgery to change primary and/or secondary sex characteristics (e.g., breasts/chest, external and/or internal genitalia, facial features, body contouring); and
- Psychotherapy for exploring gender identity, role, and expression; addressing the negative impact of Gender Dysphoria and stigma on

mental health; alleviating internalized transphobia; enhancing social and peer support; improving body image; or promoting resilience.

Id. ¶ 20.

For many individuals with Gender Dysphoria, dressing, grooming, and presenting oneself in a manner consistent with one’s gender identity (often termed the “real life experience”) is an important part of treatment for the condition. *Id.* ¶ 23. Hormone therapy is often also an essential, medically indicated, and effective treatment to alleviate the distress of the condition. *Id.* ¶ 24.

Without treatment, individuals with Gender Dysphoria may experience clinically significant psychological distress and anxiety, debilitating depression, and suicidality. *Id.* ¶ 16. Many individuals with Gender Dysphoria who lack access to treatment, particularly those who are imprisoned, are in such distress that they attempt to self-castrate or attempt suicide. *Id.* ¶ 17. The National Commission on Correctional Healthcare recommends that the medical management of prisoners with Gender Dysphoria “should follow accepted standards developed by professionals with expertise in transgender health,” citing the WPATH Standards of Care. *See* NCCHC Policy Statement, Transgender Health Care in Correctional Settings (October 18, 2009; reaffirmed with revision April 2015), <http://www.ncchc.org/transgender-health-care-in-correctional-settings> (visited Aug. 15, 2016) (footnote omitted).

C. Plaintiff's Gender Dysphoria

Although her birth-assigned sex was male, Plaintiff has known that she has a female gender identity since age 12. *See* Keohane Decl. ¶ 3. At age 13 (around November 27, 2007), Plaintiff began seeing a psychiatrist, Omar Rieche, along with a therapist in Dr. Rieche's practice. *Id.* ¶ 4; New Patient Information Form, attached as **Exhibit 4**. From age 14 on, with the support of these professionals, Plaintiff always wore female-typical cosmetics, clothing, and hairstyles. Keohane Decl. ¶ 4. At age 16 (around March 2010), Plaintiff was diagnosed with Gender Identity Disorder (now known as Gender Dysphoria). *Id.* ¶ 5; Rieche Notes; Baker-Hargrove Decl. ¶ 31. At age 17 (around June 2011), Plaintiff legally changed her name from a traditionally male name to her current name. Keohane Decl. ¶ 6. Even before her legal name change, she went by "Reiyn" among all of her friends. *Id.*

Dr. Rieche referred Plaintiff to a pediatric endocrinologist, Dr. Cayce T. Jehaimi. *Id.* ¶ 7; Records of Dr. Cayce T. Jehaimi, M.D., provided to the Florida Department of Corrections ("Jehaimi Records") at 1, attached as **Exhibit 5**. In early August 2013, at age 19, Plaintiff began hormone therapy—Estrace (estradiol) and Aldactone (spironolactone)—under the care of Dr. Jehaimi. Keohane Decl. ¶ 7; Jehaimi Records at 3-4. This treatment included estrogen and suppressed her production of testosterone. Baker-Hargrove Decl. ¶ 31.

D. Plaintiff's Incarceration and Denial of Medically Necessary Care

Plaintiff was charged with a crime and taken into the custody of the Lee County Jail on or about September 22, 2013. Keohane Decl. ¶ 8. In July 2014, after accepting a plea deal, she was transferred to DOC custody. *Id.* Since her arrival into DOC custody more than two years ago, Plaintiff has repeatedly requested the DOC to provide her with comprehensive and adequate treatment for her Gender Dysphoria, including hormone therapy and access to female clothing and grooming standards, yet she remains untreated. *Id.* ¶ 10.

Plaintiff's first written request—an informal grievance—was filed on August 11, 2014, soon after she was admitted to the South Florida Reception Center. Keohane Decl. ¶ 11; Selected Combined Grievances, Responses, and Appeals of Reilyn Keohane (“Combined Grievances”) at 1, attached as **Exhibit 6**. In this first request, as in subsequent requests, Plaintiff made clear that she had a prescription for and was in fact receiving hormone therapy prior to her incarceration, that it is extremely important for her health to receive it, and that she considered “self-harm and suicide every single day” without it. Keohane Decl. ¶ 11; Combined Grievances at 1. Plaintiff signed the relevant release form, and the medical records documenting this diagnosis and treatment were sent to the DOC on August 22, 2014. 8/21/14 Florida Department of Corrections Consent and Authorization for Use an Disclosure Inspection and Release (“8/21/14 Release

Form”) at 1, attached as **Exhibit 7**; Jehaimi Records at 3. Still, Plaintiff did not receive treatment. *See* Keohane Decl. ¶ 13.

After being transferred to Desoto CI, Plaintiff filed another informal grievance on September 1, 2014, to be placed back on hormone therapy. *Id.*; Combined Grievances at 2. This was denied the next day on the grounds that Plaintiff allegedly canceled an appointment with Dr. Jehaimi the previous year. Keohane Decl. ¶ 13; Combined Grievances at 2. In another informal grievance filed September 12, 2014, Plaintiff explained that she did not show up for the appointment because she was in jail at the time; she did not cancel the appointment. Keohane Decl. ¶ 14; Combined Grievances at 3. Despite her pleas, she was told that she would “not be placed back on treatment” because she was not “on treatment” when she arrived in DOC custody, and that she was “[i]nstructed to seek mental health services as needed.” Healthcare Note dated 9/8/14, attached as **Exhibit 8**; *accord* Combined Grievances at 2 (“You will not be placed on hormone[e] therapy while incarcerated in the Florida State Dept. of Corrections. If you are having mental health concerns, please write a request to our Mental Health Dept. for an appointment to be seen.”); Combined Grievances at 3 (same). Despite the obvious explanation for Plaintiff’s failure to attend a follow-up appointment with Dr. Jehaimi—she was incarcerated—a subsequent healthcare note signed by Defendant Dr. Trung Van Le acknowledged Plaintiff’s prescription of hormone

therapy but stated that Plaintiff “refused” the follow-up appointment. Healthcare Note dated 8/28/14 (emphasis in original), attached as **Exhibit 9**.

Plaintiff continued her pleas for assistance. On October 6, 2014, she filed an appeal (No. 14-6-33110) of the denials of her informal grievances filed on September 1 and 14, 2014, explaining again her prior treatment and that she was unable to attend the appointment with Dr. Jehaimi because she was in jail. Keohane Decl. ¶ 16; Combined Grievances at 4. Around October 14-17, 2014, while in administrative confinement, Plaintiff attempted to hang herself because of the DOC’s refusal to provide her with transition-related care. Keohane Decl. ¶ 17; Discharge Summary for Inpatient Mental Health Care (“Discharge Summary”), attached as **Exhibit 10**. In the discharge summary concerning Reiyne’s administrative confinement, Gender Identity Disorder is listed as a discharge diagnosis. Discharge Summary. The signatories to this discharge summary, including the diagnosis of Gender Identity Disorder, included Stuart Stuthers, a Mental Health Specialist; Defendant Le; and Dr. Judy Sicilia, a psychologist performing duties at both Desoto CI and Charlotte CI. *Id.*¹

¹ Mr. Stuthers personally told Plaintiff that if he had to diagnose her, he would agree with the diagnosis of Gender Identity Disorder. Keohane Decl. ¶ 18. Dr. Sicilia also told Plaintiff, both at Desoto CI and Charlotte CI, that she agreed with the diagnosis of Gender Identity Disorder. *Id.*

On October 31, 2014, Plaintiff filed a formal grievance with the warden at the Desoto Annex, once again noting her prior treatment and explaining that to deny her hormone therapy

is to cause depression and suicidal tendencies, which I must face on a daily basis. . . . This treatment is literally necessary for me to have a future – there is no possible chance that I could endure the absolute agony of waking up every day to my own body forcing me to hate myself, to the point where I struggle not to hurt or kill myself every day, getting by only on the hope that it will not always be like this. To take my medication from me is to force this misery upon me – hormone therapy is necessary for me to live on a daily basis

Keohane Decl. ¶ 20; Combined Grievances at 6 (emphasis in original). This formal grievance (Grievance No. 1411-564-003) was denied on November 20, 2014, by Defendant Le, who stated:

UPON REVIEW OF YOUR MEDICAL RECORDS RECEIVED FROM DR. CAYCE JEHAIMI, YOU HAD CANCELLED YOUR LAST APPOINTMENT IN NOVEMBER OF 2013 WITH NO FURTHER SCHEDULED APPOINTMENTS. DR. JEHAIMI THEN NOTED THAT YOUR PRESCRIPTION FOR THE HORMONE REPLACEMENT THERAPY WOULD BE SUSPENDED AS IT WOULD BE DANGEROUS TO CONTINUE WITHOUT ANY CLOSE ENDOCRINE SUPERVISION. AT THIS TIME THERE IS NO CONSIDERATION TO RESTART YOUR HORMONE REPLACEMENT THERAPY. YOU ARE CURRENTLY BEING SEEN BY OUR MENTAL HEALTH STAFF WITH AN INDIVIDUALIZED SERVICE PLAN IN PLACE IN ORDER TO PROVIDE YOU A MEANS TO DISCUSS YOUR PROBLEMS WITH A MENTAL HEALTH PROFESSIONAL. ...

Keohane Decl. ¶ 21; Combined Grievances at 7. In her appeal of the denial of Grievance No. 1411-564-003 to the DOC Secretary (appeal labeled as Grievance

No. 14-6-39574) dated December 3, 2014, Plaintiff—once again—explained her prior treatment, explained that DOC had the relevant medical records documenting it, explained why she missed her appointment with Dr. Jehaimi, explained her “very serious medical and psychological condition that cannot be treated with counseling alone,” and explained that “the fact that it requires close supervision is neither here nor there; the burden of care falls to the DoC.” Keohane Decl. ¶ 22; Combined Grievances at 8 (emphasis in original). This appeal was denied on January 23, 2015 (although Plaintiff did not receive it until March 2015), with no reason given other than an affirmation of the response from Defendant Le on November 20, 2014. Keohane Decl. ¶ 26; Combined Grievances at 10.

While the appeal was pending, Plaintiff attempted self-castration by cutting her scrotum with a razor, creating a three-centimeter laceration. Keohane Decl. ¶ 24; Emergency Room Record, attached as **Exhibit 11**. Plaintiff specifically told medical officials that the reason she attempted self-castration was because of the DOC’s failure to provide Plaintiff with treatment for her Gender Dysphoria. Keohane Decl. ¶ 24.

Plaintiff was then transferred to Charlotte CI. Keohane Decl. ¶ 25; Overall Inmate Record at 4, attached as **Exhibit 12**. She was later transferred to Dade CI, then to the Charlotte County Jail for over eight months until she was tried and

acquitted on outside charges, then back to Dade CI. Keohane Decl. ¶ 28; Overall Inmate Record at 4.

On December 29, 2015, Plaintiff filed a formal grievance directed to the “chief medical officer” at Dade CI (Grievance No. 1601-463-009), stating:

I suffer from Gender Dysphoria, a recognized neurological condition in which a person’s gender identity is not consistent with the biologically assigned sex. The standard treatment is as follows: 1) the patient must be able to live and dress as the gender with which they identify[,] 2) hormone therapy, 3) gender confirmation surgeries [and] procedures[.] ... This is a serious medical need that has been properly diagnosed and brought to the attention of medical staff numerous times. To continue the refusal of any and all treatment is unacceptable and unconscionable, with no excuse – my symptoms include severe depression, anxiety, fatigue, and eating disorders. Additionally, other symptoms that can occur are self-injury, rage, addiction, and suicide, in the most severe instances. Furthermore, I suffer from an extremely low testosterone count, which compounds my symptoms and would also be remedied by the hormone therapy part of treatment.

Keohane Decl. ¶ 29; Combined Grievances at 11. On January 19, 2016, this grievance was denied by Dr. Carmelo Berrios, medical director of Dade CI, who said that Plaintiff needed to sign a medical release so that medical records from Plaintiff’s endocrinologist could be obtained. Keohane Decl. ¶ 32; Combined Grievances at 13. On February 11, 2016, however, Plaintiff was transferred to the South Florida Reception Center, and on February 18, 2016, she was transferred to Everglades CI, where she remains today. Keohane Decl. ¶ 13; Overall Inmate Record at 4.

Around February 29, 2016, Plaintiff met with the medical director of Everglades CI, Defendant Dr. Teresita Dieguez. Keohane Decl. ¶ 34. Plaintiff had at the time, and continues to have, a copy of all of her medical records documenting her Gender Dysphoria. *Id.* When Dr. Dieguez told Plaintiff that she needed Plaintiff's medical records documenting her Gender Dysphoria, Plaintiff had them with her and offered to provide them immediately. *Id.* Dr. Dieguez refused to review the documents offered by Plaintiff. *Id.* Plaintiff also informed Dr. Dieguez that records documenting her Gender Dysphoria were already in her green medical file, which itself was also in the room. *Id.* Dr. Diegeuz refused to look at those records as well. *Id.* Dr. Dieguez refused to discuss Plaintiff's transgender status with her. *Id.* Instead, Dr. Dieguez told Plaintiff, "you are only here so I can determine the state of your genitals." *Id.*

Before the meeting with Dr. Dieguez, Plaintiff had been housed alone at Everglades CI. *Id.* ¶ 35. After the meeting with Dr. Dieguez, Plaintiff was assigned a roommate. *Id.* The housing sergeant told Plaintiff that this was because "medical" said that she is not transgender. *Id.*

Around March 15, 2016, Plaintiff met again with Dr. Dieguez. *Id.* ¶ 36. Dr. Dieguez told Plaintiff that she could not assist with Plaintiff's request for treatment for her Gender Dysphoria, that all she could do is refer Plaintiff to the mental-

health department. *Id.* Dr. Dieguez also told Plaintiff that she would refer Plaintiff to the regional medical director. *Id.*

Around March 21, 2016, Plaintiff met Andre Rivero-Guevara, a physician assistant in the mental-health department of Everglades CI. *Id.* ¶ 37. Mr. Rivero-Guevara told Plaintiff that he agreed with the diagnosis of Gender Dysphoria and recommended hormone therapy, but he said that Plaintiff's symptoms could only be treated by the medical department. *Id.* He thus referred the matter back to the medical department. *Id.* The following day, Plaintiff met with her mental-health counselor, Sonele Baute, Mental Health Specialist, who agreed with the diagnosis and the appropriateness of hormone therapy for Plaintiff. *Id.* Ms. Baute told Plaintiff that a meeting between the medical and mental-health departments would take place on March 24, 2016, to discuss the issue. *Id.* That same week, a psychologist at Everglades CI, Dr. Arnice Johnson, also told Plaintiff that she agreed with the diagnosis and the appropriateness of hormone therapy for Plaintiff. *Id.*

On May 4, 2016, Plaintiff filed a formal grievance (Grievance No. 1605-401-009) directed to the "chief medical officer" at Everglades CI, stating:

I am transgender, with a formal diagnosis of Gender Identity Disorder by Dr[.] Omar Rieche, and was prescribed Hormone Replacement therapy through him and one Dr[.] Cayce Jehaimi for this condition. Specifically, I was prescribed Estradiol [and] Spironolactone, and rec[ei]ved both prior to my incarceration. While incarcerated, I have not rec[ei]ved this treatment, or any treatment whatsoever for my

Gender Identity Disorder, despite the fact that it has been clearly established in my medical records and confirmed as my diagnosis by psychiatric doctors Arnise Johnson [and] Andre Rivera at this institution. ... I experience severe depression, fatigue, anxiety, body-image disorders, fear, eating disorders, persecution, a constant state of unease, and self-harming behaviors, including a history of genital mutilation, as a result of this lack of treatment. The standard treatment, which I require, is as follows; 1) the ability to live as the gender I identify as (female) in all aspects of life[;] 2) Hormone therapy (aforementioned)[;] 3) Gender-confirmation Surgery[.] Continued failure to provide all of the above constitutes a willful indifference to the constant, daily suffering I experience, and is a clear violation of my 8th amendment right to receive medical care.

Id. ¶ 38; Combined Grievances at 14. On May 18, 2016, Defendant Dieguez denied this grievance (Grievance No. 1605-401-009), stating:

Your request for administrative review has been received, reviewed and evaluated. In order to be diagnosed for Gender Dysphoria treatment evaluations of your pre-incarceration treatment records including but not limited to: a. hormone therapy; b. completed or in-process surgical procedures; c. life experiences consistent with the inmate's gender identity; and d. mental health history. [*sic*] Please submit a request to medical records to sign an authorization ("Consent and Authorization for Use and Disclosure Inspection and Release of Confidential Information," DC4-711B) for the release of information for all pertinent outside medical and mental health records related to your Gender Dysphoria. Based on the above information, your grievance is DENIED.

Keohane Decl. ¶ 39; Combined Grievances at 15. Plaintiff had previously signed the referenced release form for the DOC at least twice. Keohane Decl. ¶ 40; 8/21/14 Release Form at 1; 1/7/16 Release Form, attached as **Exhibit 13**.

On May 24, 2016, Plaintiff filed an appeal of the denial of Grievance No. 1605-401-009 to the DOC Secretary (appeal labeled as Grievance No. 16-6-23873), stating:

I am transgender and face serious, needless suffering on a daily basis. The reason given for denial of medical treatment (that I must submit my medical records) is blatant and false. All of my relevant medical history has already been submitted to the staff of ECI, and I have also previously signed this release of medical records. My records show that I was formally diagnosed with Gender Identity Disorder, and as the result of that I had begun hormone therapy. This diagnosis has also been confirmed by the mental health staff at this facility. Considering that I have this diagnosis as well as very clear records that show I was prescribed hormone therapy and had lived as female for the majority of my life, this denial is based on no actual issue, and therefore is a case of willful indifference to my serious medical need for treatment. The treatment I require is as follows: 1. The ability to live as the gender I identify as (female);] 2. Hormone therapy[;] 3. Gender-confirmation Surgery. By not providing the necessary treatment, I am subjected to extreme discomfort, fear, depressions, fatigue, body image issues. ...

Keohane Decl. ¶ 41; Combined Grievances at 16. Plaintiff's appeal was "returned without action" on July 1, 2016:

Appeal Returned without Action: Your administrative appeal has been received and found to be in non-compliance with Rule 33-103, Inmate Grievance Procedure. This grievance presents the same issue as grievance log #14-6-39574 [i.e., an appeal filed from the Desoto Annex that was denied on January 23, 2015, *see* Combined Grievances at 10]. Per Rule 33-103.014(1)(q), grievances may be returned to the inmate without further processing if the inmate has filed more than one appeal of a grievance. Records reviewed indicate that you are still being followed by mental health. ...

Keohane Decl. ¶ 42; Combined Grievances at 17.

More than two years after her first request—two years of repeatedly explaining her prior Gender Dysphoria diagnosis, the fact that she lived as female prior to incarceration, and her prescription for hormones (and signing releases to provide records documenting this) and informing the DOC of the significant harm she is experiencing as a result of this treatment being withheld—the DOC has done nothing to provide Plaintiff with her medically necessary care of hormone therapy and access to female dressing and grooming standards. Keohane Decl. ¶ 43. This, despite the fact that the DOC knows of her prior treatment and current symptoms (including attempts to self-castrate and take her own life), and despite the fact that several of the DOC’s own mental-health officials have agreed with the Gender Dysphoria diagnosis and prior prescribed treatment. Keohane Decl. ¶¶ 18, 37. Indeed, the numerous DOC psychiatrists, psychologists, mental-health specialists, and other medical and mental-health officials that have recognized Plaintiff’s diagnosis include Dr. Jose Bermudez, psychologist; Dr. Arnice Johnson, psychologist; Dr. C. Perez (Christina Perez-Santana), psychologist; Dr. Judy Sicilia, psychologist; Dr. Michael McClure, psychiatrist; Dr. Lissette Selem, psychiatrist; Dr. Mohammed Yousuf, psychiatrist; Sonele Baute, mental-health specialist; Dr. R. Gonzalez, mental-health specialist; Stuart Stuthers, mental-health specialist; A. Therrien, mental-health specialist; Duane Cunningham, Psych. ARNP (Psychiatric Advanced Registered Nurse Practitioner); and Andre Rivero-

Guevara, physician assistant. Composite Additional Medical Records at 2, 4, 6, 8, 10, 12, 14, attached as **Exhibit 14**. Even Defendant Le acknowledged the proper diagnosis. Discharge Summary. The harmful effects of Gender Dysphoria frequently intensify with time, such that the longer an individual with Gender Dysphoria remains untreated, the more significant the risk of severe harm to that person's health. Baker-Hargrove Decl. ¶ 18. Every day that goes by without appropriate treatment, Plaintiff experiences significant distress. Keohane Decl. ¶ 44. She cannot imagine surviving without hormone therapy and the ability to live consistent with her female gender by being permitted access to female-typical clothing and grooming standards. *Id.* ¶ 45; *see also* Combined Grievances at 9, 12 (describing need for access to female clothing and grooming standards); Combined Grievances at 14, 16 (describing need to live as female). Gender dysphoric individuals with a history of attempted self-castration or suicide are at particularly high risk of serious harm if appropriate treatment is withheld. Baker-Hargrove Decl. ¶ 32.

E. The DOC's Policy Concerning Treatment of Gender Dysphoria

Pursuant to the DOC's Procedure Number 602.053, Specific Procedure (2)(a)5. (the "Freeze-Frame Policy"), "[i]nmates who have undergone treatment for GD will be maintained only at the level of change that existed at the time they were received by the Department." Freeze-Frame Policy at 6, attached as **Exhibit**

15. Under the Freeze-Frame Policy, the medical care of inmates with Gender Dysphoria is determined not by their current medical needs but rather by specific treatment they received or did not receive in the past. Some inmates are thus denied certain treatments despite the medical need for them. In accordance with this policy, DOC officials told Plaintiff that she would not be provided with hormone therapy because she was not receiving such therapy at the time she came into DOC custody. Healthcare Note dated 9/8/14; *see also* Combined Grievances at 2 (“You will not be placed on hormone[e] therapy while incarcerated in the Florida State Dept. of Corrections. If you are having mental health concerns, please write a request to our Mental Health Dept. for an appointment to be seen.”); Combined Grievances at 3 (same).

LEGAL ARGUMENT

A district court should grant preliminary injunctive relief when the movant establishes four factors: “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest.” *Siebert v. Allen*, 506 F.3d 1047, 1049 (11th Cir. 2007); *see also Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (“[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a

trial on the merits. A party thus is not required to prove his case in full at a preliminary-injunction hearing.”).

As fully set forth below, Plaintiff meets all of the factors supporting a preliminary injunction and the request relief should be granted because: (i) Plaintiff’s claim that the DOC is withholding necessary medical care in violation of the Eighth Amendment is strong on the merits, (ii) Plaintiff will suffer irreparable harm if the DOC is permitted to continue to withhold medically necessary care, (iii) the relief requested poses no harm to the DOC, and (iv) the public interest strongly favors upholding the Constitution and preventing avoidable injury to individuals held in government custody.

I. PLAINTIFF HAS ESTABLISHED A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

“A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.” *Brown v. Plata*, 563 U.S. 493, 511 (2011). Corrections officials inflict cruel and unusual treatment on a prisoner, in violation of the Eighth Amendment, when they are deliberately indifferent to a prisoner’s serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). The Eighth Amendment standard requires that the alleged deprivation be “objectively, sufficiently serious,” and requires, subjectively, that the official acted with “deliberate indifference to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal

quotation marks omitted). “In our circuit, a serious medical need is considered one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003) (internal quotation marks omitted). Plaintiff suffers from an objectively serious medical condition—Gender Dysphoria—that DOC officials, acting with deliberate indifference, have failed to treat.

A. Plaintiff’s Gender Dysphoria constitutes a serious medical need for purposes of the Eighth Amendment.

To meet the objective requirement of the Eighth Amendment standard, a prisoner must demonstrate the existence of a serious medical need. *See Estelle*, 429 U.S. at 104, *Farmer*, 511 U.S. at 834, 835. Plaintiff’s serious medical need is her untreated Gender Dysphoria.

Courts have routinely held that Gender Dysphoria (also referred to as transsexualism and, as previously noted, Gender Identity Disorder) is a serious medical need. *See, e.g., Meriwether v. Faulkner*, 821 F.2d 408, 411-13 (7th Cir. 1987) (recognizing transsexualism as a serious medical need that should not be treated differently than any other psychiatric disorder); *Fields v. Smith*, 712 F. Supp. 2d 830, 862 (E.D. Wis. 2010) (based on evidence presented, “GID or transsexualism” is “‘a serious medical need’ for purposes of the Eighth

Amendment), *aff'd* 653 F.3d 550 (7th Cir. 2011); *Battista v. Clarke*, 645 F.3d 449, 452 (1st Cir. 2011) (affirming district-court decision recognizing GID as a serious medical need for purposes of the Eighth Amendment); *Phillips v. Mich. Dep't of Corr.*, 731 F. Supp. 792, 800 (W.D. Mich. 1990) (evidence showed that GID and transsexualism are serious medical needs). There is no question that Plaintiff has Gender Dysphoria that requires treatment, and she therefore meets the requirement that her medical need is objectively sufficiently serious. *See, e.g.*, Keohane Decl. ¶¶ 5, 7, 10, 17, 24, 44-45; Jehaimi Records at 3.

B. *DOC officials have acted with deliberate indifference to Plaintiff's serious medical needs.*

The subjective prong of the Eighth Amendment standard concerns deliberate indifference, which “entails something more than mere negligence ... [but] is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.” *Farmer*, 511 U.S. at 835. If the DOC knew that the risk existed and either intentionally or recklessly ignored it and will continue to do so in the future, then the subjective test has been met. *See id.* at 837-40, 845-46. This indifference is impermissible “whether ... manifested by prison doctors in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.” *Estelle*, 429 U.S. at 105-06.

Here, the DOC is aware of Plaintiff's diagnosed Gender Dysphoria, the fact that she had been on a prescription for hormone therapy prior to incarceration, and her escalating distress at having treatment withheld and resulting self-harm. *See* Keohane Decl. ¶¶ 11, 14, 16-18, 20, 22-25, 29-30, 34, 37-38, 41, 43; Jehaimi Records at 3. Yet, despite being aware of these facts, DOC officials continue to deny Plaintiff this medically necessary treatment that accords with the accepted standards of care for the treatment of Gender Dysphoria. *See* Keohane Decl. ¶ 43. They do so not based on medical judgment about Plaintiff's condition but rather on a blanket policy that limits treatment for Gender Dysphoria regardless of the individual's medical needs. Freeze-Frame Policy at 6; Healthcare Note dated 9/8/14; Combined Grievances at 2 ("You will not be placed on hormon[e] therapy while incarcerated in the Florida State Dept. of Corrections. If you are having mental health concerns, please write a request to our Mental Health Dept. for an appointment to be seen."); Combined Grievances at 3.

1. *DOC officials' refusal to provide medically necessary treatment for Plaintiff's serious medical need constitutes deliberate indifference.*

Government officials act with deliberate indifference when they refuse to provide medically necessary treatment for prisoners' serious medical needs. *Estelle*, 429 U.S. at 106. The relevant inquiry is not whether any care has been provided but whether "constitutionally adequate" care has been provided. *Id.* at

103-06 (prison officials may not adopt an “easier and less efficacious treatment” that does not adequately address a prisoner’s serious medical needs); *Edwards v. Snyder*, 478 F.3d 827, 831 (7th Cir. 2007) (treatment cannot be “blatantly inappropriate”). While prisoners may not be entitled to any particular treatment of their choosing, medical care in prison cannot be “so cursory as to amount to no treatment at all.” *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985); *see also Langford v. Norris*, 614 F.3d 445, 460 (8th Cir. 2010) (“a total deprivation of care is not a necessary condition for finding a constitutional violation”); *Jones v. Muskegon Cty.*, 625 F.3d 935, 944 (6th Cir. 2010) (prison officials may not avoid liability “simply by providing some measure of treatment”); *Moore v. Duffy*, 255 F.3d 543, 545 (8th Cir. 2001) (Medical treatment may not “so deviate from the applicable standard of care as to evidence a physician’s deliberate indifference.”); *United States v. DeCologero*, 821 F.2d 39, 43 (1st Cir. 1987) (Eighth Amendment guarantees medical care “at a level reasonably commensurate with modern medical science and of a quality acceptable within prudent professional standards”).

These principles apply just as strongly in the context of treatments for Gender Dysphoria. Courts have repeatedly held that limiting treatment for Gender Dysphoria to psychotherapy, for example, where hormone therapy is medically indicated violates the Eighth Amendment. *See, e.g., Kothmann v. Rosario*, 558 F.

App'x 907, 910 (11th Cir. 2014) (in reviewing order on motion to dismiss, denying qualified immunity to prison official who allegedly knowingly failed to treat transgender prisoner with medically necessary hormone therapy); *De'lonta v. Johnson (De'lonta II)*, 708 F.3d 520, 526 (4th Cir. 2013) (“[J]ust because Appellees have provided De'lonta with *some* treatment consistent with the GID Standards of Care, it does not follow that they have necessarily provided her with constitutionally adequate treatment.”) (emphasis in original); *Fields*, 653 F.3d at 556 (“Although DOC can provide psychotherapy as well as antipsychotics and antidepressants, defendants failed to present evidence rebutting the testimony that these treatments do nothing to treat the underlying disorder.”).

Here, DOC officials are aware that Plaintiff has Gender Dysphoria requiring treatment, Keohane Decl. ¶¶ 11, 14, 16, 18, 20, 22-25, 29-30, 34, 37-38, 41, 43; Jehaimi Records at 3, but they have failed to provide treatment consistent with the accepted standards of care for this serious medical condition. For many individuals with Gender Dysphoria, hormone therapy is an essential, medically indicated, and effective treatment to alleviate the distress of the condition. Baker-Hargrove Decl. at ¶ 24; WPATH Standards of Care at 186 (PDF p.22), attached as **Exhibit 16**; *see also Fields*, 653 F.3d at 556 (affirming district-court finding that “for certain patients with GID, hormone therapy is the only treatment that reduces dysphoria and can prevent the severe emotional and physical harms associated with it”). That

she was previously prescribed and undergoing hormone therapy only makes the violation plainer. *See Brown v. District of Columbia*, 514 F.3d 1279, 1283 (D.C. Cir. 2008) (government officials act with deliberate indifference when delaying or denying access to medical care once prescribed).

Although DOC officials have known for more than two years that Plaintiff suffers from Gender Dysphoria, that she was previously receiving hormone therapy, and that she is suffering significant harm due to the denial of hormone therapy, no action has been taken to provide her with medical care that they know she needs. Keohane Decl. ¶ 43; Jehaimi Records at 3-4; Discharge Summary.

2. *DOC officials' refusal to provide medically necessary treatment based not on medical judgment about Plaintiff's needs but rather a blanket policy constitutes deliberate indifference to her serious medical needs.*

The Eighth Amendment requires that prisoners be provided with adequate medical care “based on an individualized assessment of an inmate’s medical needs in light of relevant medical considerations.” *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 242 (D. Mass. 2012). Given this need for individualized assessment, blanket bans on certain forms of medical treatment regardless of medical need violate the Eighth Amendment. *See Johnson v. Wright*, 412 F.3d 398, 406 (2d Cir. 2005) (denial of hepatitis C treatment to a prisoner based on a policy that a particular drug could not be administered to inmates with recent history of substance abuse could constitute deliberate indifference if relied upon without consideration of

individual medical need); *Mahan v. Plymouth Cty. House of Corr.*, 64 F.3d 14, 18 & n.6 (1st Cir. 1995) (suggesting that “inflexible” application of prescription policy may violate Eighth Amendment); *Jorden v. Farrier*, 788 F.2d 1347, 1348-49 (8th Cir. 1986) (citing with approval case holding that application of prison medication policies must be instituted in manner that allows individualized assessments of need).

This principle encompasses treatment for Gender Dysphoria: prison policies that automatically exclude certain forms of treatment for Gender Dysphoria violate the Eighth Amendment. *See Fields v. Smith*, 653 F.3d 550, 559 (7th Cir. 2011) (state law that barred hormone therapy and gender-confirming surgery as possible treatments for prisoners with gender identity disorder facially violated the Eighth Amendment); *De'lonta v. Angelone*, 330 F.3d 630, 634-35 (4th Cir. 2003) (*De'lonta I*) (prisoner with gender identity disorder stated a claim for deliberate indifference where the Department of Corrections withheld hormone therapy pursuant to a categorical policy against providing such treatment rather than based on individualized medical judgment); *see also Allard v. Gomez*, 9 F. App'x 793, 795 (9th Cir. 2001) (“[T]here are at least triable issues as to whether hormone therapy was denied Allard on the basis of an individualized medical evaluation or as a result of a blanket rule, the application of which constituted deliberate indifference to Allard’s medical needs.”); *Soneeya*, 851 F. Supp. 2d at 249, 253

(holding that a prison policy that “removes the decision of whether sex reassignment surgery is medically indicated for any individual inmate from the considered judgment of that inmate’s medical providers” violated Eighth Amendment); *Houston v. Trella*, No. 04-1393, 2006 WL 2772748, at *8 (D.N.J. Sept. 22, 2006) (claim that prison doctor’s decision not to provide hormone therapy to prisoner with gender identity disorder based not on medical reason but policy restricting provision of hormones stated viable Eighth Amendment claim); *Barrett v. Coplan*, 292 F. Supp. 2d 281, 286 (D.N.H. 2003) (“A blanket policy that prohibits a prison’s medical staff from making a medical determination of an individual inmate’s medical needs [for treatment related to gender identity disorder] and prescribing and providing adequate care to treat those needs violates the Eighth Amendment.”); *Brooks v. Berg*, 270 F. Supp. 2d 302, 312 (N.D.N.Y. 2003) (prison officials cannot deny inmates medical treatment for gender identity disorder based on a policy of limiting such treatments to inmates who were diagnosed prior to incarceration), *vacated in part on other grounds*, 289 F. Supp. 2d 286 (N.D.N.Y. 2003).

Instead of DOC officials exercising any informed medical judgment regarding Plaintiff’s medical need for hormone therapy, Plaintiff has repeatedly been told that she will not be provided hormone therapy because she was not on treatment when she came into custody. Healthcare Note dated 9/8/14; Combined

Grievances at 2 (“You will not be placed on hormone[e] therapy while incarcerated in the Florida State Dept. of Corrections. If you are having mental health concerns, please write a request to our Mental Health Dept. for an appointment to be seen.”); Combined Grievances at 3 (same). These statements reflect adherence the Freeze-Frame Policy, which provides that “[i]nmates who have undergone treatment for GD will be maintained only at the level of change that existed at the time they were received by the Department.” Freeze-Frame Policy at 6. This policy ensures that Plaintiff will never be evaluated for or permitted to undergo hormone therapy regardless of the medical need for that treatment or the severity of her symptoms. DOC officials’ denial of medically necessary treatment based on a policy that leaves no room for medical judgment “is the very definition of deliberate indifference.” *Colwell v. Bannister*, 763 F.3d 1060, 1068 (9th Cir. 2014) (prison policy of barring cataract surgery where one eye would retain functionality without room for medical determination constituted deliberate indifference to plaintiff’s serious medical need).

II. PLAINTIFF WILL SUFFER IRREPARABLE INJURY ABSENT AN INJUNCTION.

To obtain a preliminary injunction, Plaintiff need not demonstrate that irreparable injury is inevitable, but only that it “is *likely* in the absence of an injunction.” *Winter v. Nat’l Res. Def. Council*, 555 U.S. 7, 22 (2008) (emphasis in

original). Plaintiff has already suffered serious distress and has self-mutilated and attempted suicide due to the lack of receiving proper medical care in prison. Keohane Decl. ¶¶ 17, 24, 44. The harmful effects of Gender Dysphoria frequently intensify with time, such that the longer an individual with Gender Dysphoria remains untreated, the more significant the risk of severe harm to that person's health. Baker-Hargrove Decl. ¶ 18. Plaintiff can thus be expected to repeat her attempts at suicide and auto-castration if treatment continues to be withheld. *See id.* ¶ 32 (“Gender dysphoric individuals with a history of attempted self-castration or suicide are at particularly high risk of serious harm if appropriate treatment is withheld.”). Absent an injunction, DOC officials' actions in withholding medically necessary care are likely to result in serious medical and psychological pain and suffering to Plaintiff, including possibly permanent injury or death. *See id.*; Keohane Decl. ¶ 45; *see also generally* George R. Brown, *Autocastration and Autopenectomy as Surgical Self-Treatment in Incarcerated Persons with Gender Identity Disorder*, 12 Int'l J. of Transgenderism 31 (2010).

Death and serious bodily injury, of course, constitute irreparable injury. *See, e.g., Harris v. Bd. of Supervisors*, 366 F.3d 754, 766 (9th Cir. 2004) (“pain, infection, amputation, medical complications, and death due to delayed treatment” constitute irreparable harm); *Henderson v. Bodine Aluminum, Inc.*, 70 F.3d 958, 961 (8th Cir. 1995) (“It is hard to imagine a greater harm than losing a chance for

potentially life-saving medical treatment.”); *Qualls v. Rumsfeld*, 357 F. Supp. 2d 274, 286 (D.D.C. 2005) (finding irreparable harm where plaintiff faced a “great risk of harm and death as a result of his continuing service” on active duty in Iraq). But psychological injury and emotional distress also constitute irreparable injury. *See Chalk v. U.S. Dist. Court Cent. Dist. of California*, 840 F.2d 701, 710 (9th Cir. 1988) (in finding irreparable injury, stating: “Here, plaintiff is not claiming future monetary injury; his injury is emotional and psychological—and immediate. Such an injury cannot be adequately compensated for by a monetary award after trial.”); *Tugg v. Towey*, 864 F. Supp. 1201, 1209 (S.D. Fla. 1994) (citing cases finding irreparable injury under Section 504 of the Rehabilitation Act of 1973 based on “psychological injury or emotional distress,” and finding psychological stress sufficient on the facts of the case to constitute irreparable injury); *see also Doe v. Judicial Nominating Comm’n for Fifteenth Judicial Circuit of Fla.*, 906 F. Supp. 1534, 1545 (S.D. Fla. 1995) (citing *Spiegel v. City of Houston*, 636 F.2d 997 (5th Cir.1981), for proposition that irreparable injury is defined as one that cannot be undone through monetary damages).

Plaintiff will also suffer irreparable harm in the deprivation of her constitutional rights. ““When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”” *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (citing 11A Charles Alan Wright,

Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed. 1995)). “It has long been established that the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality)); accord *Phillips*, 731 F. Supp. at 801 (in case involving GID diagnosis, stating: “[W]hen an alleged deprivation of a constitutional right is involved, no further showing of irreparable harm is necessary.” (citing *Mitchell v. Cuomo*, 748 F.2d 804 (2d Cir.1984) (Eighth Amendment)). Here, Plaintiff has shown a strong likelihood of success on the merits of her Eighth Amendment claim. Absent an injunction, her constitutional right to be free from cruel and unusual punishment will be lost.

III. THE BALANCE OF HARMS STRONGLY FAVORS PLAINTIFF.

It has been more than two years since Plaintiff first requested treatment from the DOC for her documented, diagnosed Gender Dysphoria. Every day that goes by without receiving appropriate treatment, Plaintiff experiences significant distress, and her risk of future suicide attempts and self-harm increases. *See* Keohane Decl. ¶¶ 44-45; Baker-Hargrove Decl. ¶ 32; WPATH Standards of Care at 207 (PDF p. 43). On the other side of the scale, DOC officials will not suffer any harm—much less irreparable harm—from providing necessary medical care to Plaintiff consistent with their constitutional obligations. *See, e.g., Gammett v.*

Idaho State Bd. of Corrs., No. CV05–257, 2007 WL 2186896, at *15-16 (D. Idaho July 27, 2007) (balance of harms “sharply” favored plaintiff, who would experience extreme mental harm, including suicide attempts, without GID treatment, while defendants did not allege that they would suffer harm from providing such treatment); *Phillips*, 731 F. Supp. at 801 (in case where prisoner with GID denied hormone treatment, stating: “[T]his Court is bound by law to keep a balance between efficient prison management and keeping prisons a humane place: in this case, there is a glaring need for the latter goal.”). The government cannot suffer harm by being required to comply with the constitution. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS 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, Ga.*, No. 4:15-CV-0170-HLM, 2016 WL 361612, at *14 (N.D. Ga. Jan. 28, 2016) (rejecting defendant’s concerns that modifying its bail system would “create significant administrative and procedural problems and will result in the release of individuals who pose a risk or danger to the community,” stating: “Any difficulties that Defendant may suffer if the Court grants injunctive relief are not so significant as to outweigh the important constitutional rights at issue”).

IV. AN INJUNCTION IS IN THE PUBLIC INTEREST.

It is in the public interest to uphold constitutional protections, as the public has no interest in allowing an unconstitutional or illegal practice to continue. *See, e.g., KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) (“The public has no interest in enforcing an unconstitutional ordinance.”); *Kotz v. Lappin*, 515 F. Supp. 2d 143, 152 (D.D.C. 2007) (“The public certainly has an interest in the judiciary intervening when prisoners raise allegations of constitutional violations.” (citing *Rhodes v. Chapman*, 452 U.S. 337, 362 (1981))).

CONCLUSION

For these reasons, the Court should issue a preliminary injunction directing Defendants to provide Plaintiff with hormone therapy and access to female clothing and grooming standards.

The Court should require no bond or at most a nominal bond under Fed. R. Civ. P. 65(c). “The amount of security required is a matter for the discretion of the trial court; it may elect to require no security at all.” *Corrigan Dispatch Co. v. Case Guzman, S.A.* 569 F.2d 300, 303 (5th Cir. 1978).² Because Defendants will suffer no harm from the entry of the preliminary injunction sought by Plaintiffs, no security should be required.

² In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

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Respectfully submitted,

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