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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION; HENRY ATENCIO, in his official capacity; JEFF ZMUDA, in his official capacity; HOWARD KEITH YORDY, in his official and individual capacities; CORIZON, INC.; SCOTT ELIASON; MURRAY YOUNG; RICHARD CRAIG; RONA SIEGERT; CATHERINE WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

PLAINTIFF'S RESPONSE TO DEFENDANTS' JOINT MOTION TO STAY ORDER [DKT. 149] PENDING APPEAL [DKT. 156]

Complaint Filed:	April 6, 2017
Discovery Cut-Off:	None Set
Motion Cut-Off:	None Set
Trial Date:	None Set

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INTRODUCTION

On December 13, 2018, this Court issued a preliminary injunction ordering Defendants Idaho Department of Correction ("IDOC") and Corizon, Inc. to provide Plaintiff Adree Edmo "with adequate medical care, including gender confirmation surgery" to treat her severe gender dysphoria. ECF No. 149 at 45, ¶ 1. The Court directed Defendants to "take all actions reasonably necessary to provide Ms. Edmo gender confirmation surgery as promptly as possible and no later than six months from the date of this order." *Id.* In granting injunctive relief, the Court determined that: (1) Ms. Edmo was likely to succeed on the merits of her Eighth Amendment claim, (2) without surgery, Ms. Edmo is at serious risk of life-threatening harm, (3) the balance of equities tipped in Ms. Edmo's favor because Defendants made no showing that providing Ms. Edmo surgery would cause them injury, and (4) injunctive relief is in the public's interest. *Id.* at 41-43.

Defendants' motion for a stay mischaracterizes the bases for this Court's ruling and attempts to re-litigate this Court's extensive factual findings under the guise of raising questions of law. The fact that this case involves the medical condition of gender dysphoria does not transform this Court's application of settled Eighth Amendment law into a case raising novel legal issues. This Court's Order applied the same standard applied to other Eighth Amendment claims regarding the denial of medically necessary care, based upon a full factual record, including a three-day evidentiary hearing, during which the Court considered and rejected many of the arguments advanced by Defendants in support of their motion for a stay. While the standard for a stay is similar to the standard for a preliminary injunction, the burden is now on Defendants. For the same reasons underlying its Order, and because Defendants cannot meet their burden to show that a stay is warranted here, the Court should deny Defendants' motion.

RELEVANT BACKGROUND

On June 1, 2018, Ms. Edmo filed a motion for preliminary injunction seeking an order that Defendants provide her necessary medical treatment to address her grave and ongoing risk of serious harm from gender dysphoria, including gender confirmation surgery, and to stop

disciplining her for presenting as feminine consistent with her gender identity. ECF No. 62.

Pursuant to Defendants' request, this Court permitted the parties to engage in extensive fact and expert discovery focused on the specific preliminary injunction motion issues for a period of four months. The Court then held an evidentiary hearing, which spanned a full three days in October 2018, and included testimony from multiple fact and expert witnesses, and submission of extensive evidence. In addition, the Court allowed Defendants to submit declarations from witnesses previously identified but not called during trial, and considered evidence submitted in the pre-trial briefing.

In granting Plaintiff injunctive relief on her Eighth Amendment claim, this Court's 45-page Order carefully weighed the evidence and applied well-established legal principles to conclude that "Defendants have been deliberately indifferent to Ms. Edmo's medical needs by failing to provide her with available treatment that is generally accepted in the field as safe and effective, despite her actual harm and ongoing risk of future harm, including self-castration attempts, cutting, and suicidal ideation." ECF No. 149 at 40, ¶ 36. Defendants filed a notice of appeal before the Ninth Circuit, and their appellate brief is due on February 6, 2019.[1]

LEGAL STANDARD

A stay pending appeal "is an intrusion into the ordinary processes of administration and judicial review," and is not "a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal quotation marks and citations omitted). "It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case." *Id.* at 433 (internal quotation marks omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433-34.

Courts evaluating a request for a stay consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be

[1] On January 29, 2019, Defendants filed a motion to extend their filing deadline by thirty days, to March 6, 2019. *Edmo v. Idaho Dep't of Corr.*, No. 19-35017, ECF No. 9 (9th Cir. Jan. 29, 2019).

irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *E. Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1246 (9th Cir. 2018) (citing *Nken*, 556 U.S. at 433-34). "'The first two factors . . . are the most critical,' and the 'mere possibility' of success or irreparable injury is insufficient to satisfy them." *Id*. (quoting *Nken*, 556 U.S. at 434). The court "consider[s] the final two factors '[o]nce an applicant satisfies the first two.'" *Id.* (quoting *Nken*, 556 U.S. at 435).

Defendants incorrectly assert that the standard for a stay pending appeal is "more lenient" and "less demanding" than the standard for a preliminary injunction, citing to *Leiva-Perez v. Holder*, 640 F.3d 962 (9th Cir. 2011) (per curiam). ECF No. 156-1 at 4. However, *Leiva-Perez* does not contain this language and did not create a new, lower standard for a stay.[2] Rather, *Leiva-Perez* clarified if the party seeking a stay cannot show a strong likelihood of success on the merits, it may make a lesser showing that its appeal "raises serious legal questions, or has a reasonable probability of success," which it noted was another way of articulating a "substantial case on the merits." 640 F.3d 962 at 971, 967-68. But this alone is not sufficient: a party meeting this lower threshold must then also show that the "balance of hardships *tips sharply* in the petitioner's favor." *Id.* at 970 (emphasis added).

Defendants have not established they are likely to succeed on the merits of their appeal, nor have they made even the "minimum" showing of "a substantial case for relief on the merits." *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012). This Court should deny the stay on that basis alone. Further, Defendants have not made any showing, nor can they, that the balance of hardships tilts sharply in their favor.

[2] The sentence Defendants appear to refer to and mischaracterize from *Leiva-Perez* reads: "In other words, although a stay pending appeal certainly has some functional overlap with an injunction, stays are typically less coercive and less disruptive than are injunctions." 640 F.3d at 966 (internal quotation marks and citations omitted). Contrary to Defendants' assertion, the Court of Appeals did not hold that a stay is subject to a lesser standard than a preliminary injunction. *Id.*; *see also Nken*, 556 U.S. at 434 (noting the overlap between the tests for a stay and preliminary injunctions given similar considerations underlying both types of actions).

ARGUMENT

I. Defendants Have Not Shown a Strong Likelihood of Success on the Merits, or Even Serious Legal Questions Showing a Substantial Case for Relief on the Merits.

Defendants concede they cannot show a strong likelihood of success on the merits, arguing instead that a stay is warranted because their appeal presents "serious legal questions." ECF No. 156-1 at 4. However, "requesting a review of the district court's decision does not automatically mean [Defendants] have raised a 'serious legal question' on appeal." *Guifu Li v. A Perfect Franchise, Inc.*, No. 5:10-cv-1189, 2011 WL 2293221, at *3 (N.D. Cal. June 8, 2011) (citing *Arthurs v. U.S. INS*, 959 F.2d 142, 143 (9th Cir. 1992)); *U.S. v. Quigley*, 5 F.3d 543 (9th Cir. 1993) (unpublished mem.)). Moreover, even use of the lower "serious legal questions" threshold for the first *Nken* factor still requires that a petitioner must, "at a minimum," show there is a "substantial case for relief on the merits." *Lair*, 697 F.3d at 1204. Defendants have not met and cannot meet this burden.

First, contrary to Defendants' assertions, this Court's Order did not "establish[] a legal principle that defendants are likely deliberately indifferent to an inmate's gender dysphoria if the inmate satisfies the six WPATH medical necessity criteria and the defendants do not provide the inmate with [gender confirmation surgery]." ECF No. 156-1 at 4. After an extensive evidentiary hearing, this Court found an Eighth Amendment violation based on evidence of the specific harms and deprivations to Ms. Edmo flowing from Defendants' refusal to provide her treatment, and did not prescribe a blanket medical treatment in all circumstances as a matter of law. ECF No. 149 at 4 (stating the decision is "based upon, and limited to, the unique facts and circumstances presented by Ms. Edmo's case" and "is not intended, and should not be construed, as a general finding that all inmates suffering from gender dysphoria are entitled to gender confirmation surgery"). Far from raising a "serious legal issue," the Court's Order thus applies the well-established legal standard that the Eighth Amendment "includes the right to adequate medical care in prison, and prison officials or prison medical providers can be held liable if their 'acts or omissions [were] sufficiently harmful to evidence deliberate indifference to serious

medical needs.'" *Id.* at 32, ¶ 10 (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

The extensive factual, as opposed to legal, nature of the Court's findings is apparent from the Order itself. For instance, the Court's determination that Defendants were deliberately indifferent to Ms. Edmo's medical needs is based on a *factual* finding that they failed to provide her with gender confirmation surgery "despite her actual harm and ongoing risk of future harm including self-castration attempts, cutting, and suicidal ideation," and because Defendants "have a *de facto* policy or practice of refusing this treatment for gender dysphoria to prisoners." *Id.* at 40, ¶¶ 36-37. The Court then concluded "[t]he weight of the evidence demonstrates that for [Ms. Edmo], the only adequate medical treatment for her gender dysphoria is [gender confirmation surgery], that the decision not to address her persistent symptoms was medically unacceptable under the circumstances, and that [Defendants] denied her the necessary treatment for reasons unrelated to her medical need.'" *Id.* at 41, ¶ 41 (citation omitted). The Court similarly made intensive, fact-based determinations regarding the credibility of Plaintiff's experts in light of their extensive experience with assessment and treatment of gender dysphoria, while determining that Defendant's experts had "very little experience" and that their opinions were therefore entitled to "virtually no weight." *Id.* at 36, ¶¶ 23-24, 39, ¶ 32. The Court also carefully evaluated Defendants' further proffered evidence and determined that it was "unconvincing and suggests a decided bias against approving gender confirmation surgery." *Id.* at 37, ¶ 27. These factual findings are just that—factual—and they resulted from the same type of evidentiary and factual determinations made every day by district courts considering prisoners' Eighth Amendment claims.

Further, this Court's reliance on expert testimony and other evidence about the WPATH Standards of Care does not establish that Defendants are likely to prevail on the merits, or even that they have raised a substantial legal question. A district court's weighing of evidence and factual determinations supporting issuance of preliminary injunction are afforded substantial deference and are not reviewed *de novo* by the Ninth Circuit. *See, e.g.*, *Hawaii v. Trump*, 871 F.3d 646, 654 (9th Cir. 2017) (district court's factual findings in ordering a preliminary

injunction are reviewed for an abuse of discretion). Indeed, at the evidentiary hearing, Defendants did not identify any other established medical standard of care for treatment of gender dysphoria than the WPATH Standards of Care. Rather, they agreed that those standards apply and took issue only with whether Ms. Edmo meets the surgery criteria. ECF No. 145 at 4, 10 (IDOC Defendants' Closing Statement) (noting that Defendants have "long recognized, embraced, and provided the various treatment options…set forth in the flexible guidelines provided by the WPATH Standards of care" but arguing "that serious doubt remains as to whether Ms. Edmo currently meets all of the criteria for surgery as set forth by" WPATH); ECF No. 148 at 9-10 (Corizon Defendants' Closing Statement). Defendants' contention, based on their unqualified experts' testimony, that Ms. Edmo herself does not meet the relevant criteria is not a question of law, but a question of fact.

The out-of-Circuit cases Defendants cite also fail to support their contention that this Court's decision established a new legal standard; rather, the courts in those cases reached different outcomes based on their own weighing of the evidence specific to the facts before them. *See, e.g.*, *Druley v. Patton*, 601 F. App'x 632, 635 (10th Cir. 2015) (denying preliminary injunction motion where pro se plaintiff "presented no evidence that the ODOC defendants failed to consider the WPATH's flexible guidelines, failed to make an informed judgment as to the hormone treatment level appropriate for her, or otherwise deliberately ignored her serious medical needs."); *Lamb v. Norwood*, 262 F. Supp. 3d 1151, 1157-58 (D. Kan. 2017) (granting summary judgment against pro se plaintiff with gender dysphoria who appears to have relied only on her own sworn affidavit and no other evidence)). In *Kosilek v. Spencer*, unlike in this case, the court concluded that the defendants were not deliberately indifferent to a transgender prisoner's medical needs based on that court's determination that they chose between "two alternative courses of medical treatment" that "both alleviate negative effects within the boundaries of modern medicine." 774 F.3d 63, 90 (1st Cir. 2014). In this case, the evidence before this Court established that for Ms. Edmo, hormone therapy is insufficient, and "gender confirmation surgery is the only effective treatment and is medically necessary." ECF No. 149 at

9, ¶ 13.

To the extent Defendants rely on the Ninth Circuit's decision to grant a stay pending appeal in *Norsworthy v. Beard*, No. 15-15712 ECF No. 25 (9th Cir. May 21, 2015), this Court has recognized the particular time-sensitive risks to Ms. Edmo, including further attempts to self-castrate, that distinguish this case from the facts articulated by the Ninth Circuit stay decision in *Norsworthy*. *See* Order, *Norsworthy v. Beard*, No. 15-15712 ECF No. 25 (9th Cir. May 21, 2015). In addition, unlike the district court in *Norsworthy*, this Court held an evidentiary hearing and found that Ms. Edmo was entitled to relief on her Eighth Amendment claim under the standard for a permanent injunction. ECF No. 149 at 31 n.1.

Second, that "the Ninth Circuit has not addressed in detail" an Eighth Amendment claim involving denial of medically necessary care for a transgender person," ECF No. 156-1 at 5, does not create a "serious legal question," let alone one showing a "substantial case for relief on the merits." The fact that this case involves the relatively rare condition of gender dysphoria does not itself create a novel legal issue. The Eighth Amendment applies to all prisoners, including those with cancer, diabetes, gender dysphoria, or any other serious medical condition, ECF No. 149 at 1, and the Court assessed Ms. Edmo's case pursuant to decades of well-established caselaw. As other courts have found, "the lack of [precise legal] authority is not sufficient to establish the required difficult legal question that would warrant a stay pending an appeal." *MarCon Inc. v. United States*, 2010 WL 2802656, at *3 (D. Idaho July 14, 2010).

Finally, Defendants' argument that the "Ninth Circuit has not yet addressed what standard a court should apply when a preliminary injunction will grant the final relief requested by the Plaintiff," ECF No. 156-1 at 6, has no merit since this Court ruled that mandatory injunctive relief is warranted under both the standard for a preliminary injunction and the standard for a permanent injunction. *Id.* at 31, ¶ 6 n.1.

In short, Defendants have not shown a likelihood of success on the merits, or even "serious legal questions . . . raised" that would show a "substantial case for relief on the merits." *Lair*, 697 F.3d at 1204. The Court should deny the stay on this basis alone. *E. Bay Sanctuary*

Covenant, 909 F.3d at 1246 (courts "consider the final two factors '[o]nce an applicant satisfies the first two.'") (quoting *Nken*, 556 U.S. at 435). Having failed to satisfy even the first prong, Defendants have failed to meet their burden.

II. The Balance of Hardships Is Overwhelmingly in Ms. Edmo's Favor.

Even if Defendants could identify a serious legal issue leading to consideration of the additional prongs, the Supreme Court has made clear that a stay "'is not a matter of right, even if irreparable injury might otherwise result'" to the party seeking the stay. *Nken*, 556 U.S. at 418 (quoting *Virginian Ry Co. v. United States*, 272 U.S. 658, 672 (1926)). The sole injury Defendants claim they may suffer without a stay is the possible mootness of their appeal if Ms. Edmo's surgery takes place before the Ninth Circuit resolves Defendants' appeal. *See* ECF No. 156-1 at 7. But where a movant claims that the case raises "serious legal issues," as Defendants do here, they must show that the balance of hardships "tips sharply" in their favor. *Leiva-Perez*, 640 F.3d at 964 (citing *Abassi v. INS*, 143 F.3d 513, 514 (9th Cir. 1998)). Because of the irreparable harms that Ms. Edmo has already suffered and will continue to suffer in the absence of surgery, a stay is unwarranted and inappropriate in this case.

Far from showing that the balance of hardships tips sharply in their favor, *see Leiva-Perez*, 640 F.3d at 970, Defendants omit this analysis entirely, arguing erroneously that their burden is simply to show that a stay will not "substantially increase the risk of irreparable injury" to Ms. Edmo. ECF No. 156-1 at 7.

This Court has already recognized the grave harm that Ms. Edmo faces without access to the surgery she desperately needs. Specifically, the Court found Ms. Edmo demonstrated "that she will suffer serious psychological harm and will be at high risk of self-castration and suicide in the absence of gender confirmation surgery," and "without surgery, Ms. Edmo is at serious risk of life-threatening self-harm." ECF No. 149 at 42, ¶¶ 49-50. The Court further recognized that Ms. Edmo "has presented extensive evidence that, despite years of hormone therapy, she continues to experience gender dysphoria so significant that she cuts herself to relieve emotional pain. She also continues to experience thoughts of self-castration and is at serious risk of acting

on that impulse." *Id.* at 4. The Court should deny Defendants' request for a stay based on this evidence alone. *See, e.g.*, *Flack v. Wis. Dep't of Health Servs.*, 328 F. Supp. 3d 931, 955 (W.D. Wis. 2018) (refusing to stay enforcement of preliminary injunction "given the plaintiffs' already-long wait to receive medically necessary surgery for gender dysphoria."); *Norsworthy v. Beard, No. 14-cv-00695-JST, 2015 WL 1907518, at *4 (N.D. Cal. Apr. 27, 2015)* (denying motion to stay pending appeal because "the Court's order granting an injunction was explicitly based on the finding that Norsworthy . . . is suffering from irreparable injury as a result of the deprivation of her Eighth Amendment rights.").

Defendants' alarming statement that whether "[Ms.] Edmo will suffer irreparable injury during the stay is not a critical factor," ECF No. 156-1 at 8, not only ignores Defendants' burden to show that the balance of hardships tips sharply in their favor, but also highlights the precise reasons why a stay is not warranted in this case. *See Leiva-Perez*, 640 F.3d at 964. That Defendants have for years ignored Ms. Edmo's serious risk resulting from their denial of treatment does not render her ongoing suffering any less acute or harmful. Indeed, the law makes clear that Ms. Edmo has established irreparable harm by virtue of the fact that her gender dysphoria has not been "properly treated over a period of years." *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1193 (N.D. Cal. 2015); *see also McNearney v. Wash. Dep't of Corr.*, No. 11-5930, 2012 WL 3545267, at *14 (W.D. Wash. June 15, 2012) (finding irreparable injury where plaintiff "continues to suffer unnecessary pain despite [current treatment]" even though condition was not new, went untreated for years prior to incarceration, and had not worsened).

Moreover, Defendants' statement that Ms. Edmo has not attempted self-surgery or suicide during this litigation "possibly because her current treatment has been effective," ECF No. 156-1 at 8 n.2, contradicts the evidence before this Court that led it to reach the exact opposite conclusion. This includes evidence that Ms. Edmo was receiving hormone therapy both times she attempted to self-castrate and that she achieved the maximum effects of hormone treatment years ago. ECF No. 149 at 20, ¶ 41; *id.* at 21, ¶ 46; *id.* at 42, ¶ 46. Indeed, at the evidentiary hearing, this Court observed that the hope Ms. Edmo has gained from filing this

lawsuit may be what has enabled her to keep from taking further life-threatening actions. Tr. 695:5-12. Defendants also ignore Ms. Edmo's recent history of cutting, which Plaintiffs' experts explained as her attempt to relieve tension resulting from gender dysphoria and avoid self-castration. ECF No. 149 at 26, ¶ 63. That Ms. Edmo has not yet attempted self-surgery a third time, or attempted suicide, since the Court's order granting her relief does not remotely establish that she is not at risk of serious harm.

Defendants further argue, seemingly unrelated to the issues relevant to a stay, that "even [Ms.] Edmo's own experts did not claim that GCS needs to be performed immediately." ECF No. 156-1 at 8. In support of this claim, Defendants proffered a single sentence from the declaration of Plaintiff's expert Dr. Gorton, who opined that it is medically necessary for Ms. Edmo to be referred to a surgeon for gender confirmation surgery "as soon as possible, but at a minimum within the next 6 months." ECF No. 62-1, Ex. 2, ¶ 88. This Court has already rejected Defendants' argument that Ms. Edmo does not need immediate surgery within the context of the preliminary injunction. This is yet another example of Defendants' attempt to re-litigate this Court's factual findings and weighing of the evidence, essentially seeking this Court's reconsideration of its own Order. Similarly, Defendants' request that the Court "extend [the six-month] timeframe so that they can provide less invasive treatment to [Ms.] Edmo while the appeal in this case is pending," ECF No. 156-1 at 8, attempts to re-litigate the motion for preliminary injunction. After thorough consideration of the evidence, this Court already found that Defendants' proposed "less invasive treatment"—the hormone therapy and counseling she is already receiving—is constitutionally inadequate and subjects Ms. Edmo to ongoing and unnecessary suffering and grave risk of harm. *See* ECF No. 149 at 4.

In short, Defendants cannot show that the only injury they claim—potential mootness of their appeal—sharply outweighs the severe, ongoing, and irreparable harm that Ms. Edmo will experience if Defendants continue to withhold potentially life-saving and medically necessary treatment. *See Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008) ("Faced with . . . a conflict between financial concerns and preventable human

suffering, we have little difficulty concluding that the balance of hardships tips decidedly in favor of the latter."); *Francis v. Hammond*, No. C12-6023, ECF No. 32 (W.D. Wash. June 10, 2013) (denying motion to stay injunction ordering provision of medical procedure on appeal and concluding that "[i]mportantly, the potential harm to [the plaintiff] in not getting the medical procedure outweighs the potential harm to the Defendants in incurring its cost unnecessarily.").

III. The Public Interest Does Not Support a Stay

As this Court has already determined for purposes of the preliminary injunction, "'it is always in the public interest to prevent the violation of a party's constitutional rights.'" ECF No. 149 at 43, ¶ 55 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). Indeed, "'the public has a strong interest in the provision of constitutionally adequate health care to prisoners.'" *Id.* at 43, ¶ 56 (quoting *McNearney v. Wash. Dep't of Corr.*, No. 11-5930, 2012 WL 3545267, at *16 (W.D. Wash. 2012)). Defendants ignore this law entirely. Instead, Defendants simply re-hash their argument in opposition to Plaintiff's Motion for Preliminary Injunction that courts must exercise "judicial restraint" because prisons must be afforded deference in issues of administration, including determinations of medically necessary treatment. *See* ECF No. 99 at 19-20. This Court has already squarely rejected that argument. ECF No. 149 at 43, ¶ 55 ("a mandatory preliminary injunction is in the public interest).

Defendants also erroneously argue that the public interest weighs in favor of a stay because the Order was issued without proper adjudication on the merits, ECF No. 156-1 at 9, despite the fact that this Court's decision was based on a complete factual record developed through fact and expert discovery, a full evidentiary hearing, and extensive briefing prior to and after the evidentiary hearing. ECF Nos. 71, 73, 99, 100, 111, 143-48. Not once did Defendants seek extensions of the fact or expert discovery deadlines. Nor did Defendants object to the Court's advisement that it was treating the three-day evidentiary hearing as "a final trial on the merits of the plaintiff's request for permanent injunctive relief." ECF No. 149 at 31 n.1.

CONCLUSION

For the reasons stated above, Defendants have failed to show that a stay is justified under

Nken's four-factor test. Defendants concede they cannot show a strong likelihood of success on appeal, and fail to make even the "minimum" showing of "a substantial case on the merits." *Lair*, 697 F.3d at 1204. Further, Defendants have not shown and cannot show that the balance of hardships tilts sharply in their favor. *See Leiva-Perez*, 640 F.3d at 970. To the contrary, the balance of hardships weighs overwhelmingly in Ms. Edmo's favor, as a stay would prevent her from receiving potentially life-saving treatment this Court determined is medically necessary based on its extensive factual findings. Finally, Defendants also fail to establish how a stay is in the public's interest. Accordingly, this Court should deny Defendants' motion for a stay of its December 13, 2018 Order pending resolution of their Ninth Circuit appeal.

Dated: January 30, 2019

Respectfully Submitted,
NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of January, 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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