

J. Kevin West (ISB No. 3337)
KWest@parsonsbehle.com
Dylan A. Eaton (ISB No. 7686)
DEaton@parsonsbehle.com
Bryce Jensen, ISB #10324
bjensen@parsonsbehle.com
Parsons, Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901
(Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery)

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Brady J. Hall (ISB No. 7873)
Special Deputy Attorney General
brady@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031
(Counsel for Defendants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Al Ramirez, Howard Keith Yordy, Richard Craig, and Rona Siegert)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

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

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**DEFENDANTS' EXPEDITED MOTION
TO STAY ORDER REQUIRING
DEFENDANTS PROVIDE ALL PRE-
SURGICAL TREATMENTS AND
RELATED COROLLARY
APPOINTMENTS OR
CONSULTATIONS NECESSARY FOR
GENDER CONFIRMATION SURGERY
[DKT. 225] PENDING APPEAL**

Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery, by and through their counsel of record, Parsons Behle & Latimer, and the Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Al Ramirez, Howard Keith Yordy, Richard Craig, and Rona Siegert, by and through their counsel of record, Moore Elia Kraft & Hall, LLP, hereby move this Court, pursuant to Federal Rule of Civil Procedure 62(d), and the authority and argument cited in the supporting memorandum, to issue an order staying this Court's order, issued on October 24, 2019 (Dkt. 225).

This Motion is supported by the record before the court, a Memorandum, and the Declaration of April Dawson, M.D. in support filed contemporaneously herewith.

DATED this 31st day of October, 2019.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

DATED this 31st day of October, 2019.

MOORE ELIA KRAFT & HALL, LLP

By: /s/ Brady J. Hall

Brady J. Hall
Counsel for Defendants Idaho Department of
Correction, Henry Atencio, Jeff Zmuda, Al
Ramirez, Howard Keith Yordy, Richard Craig,
and Rona Siegert

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of October, 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:

Craig H. Durham
Deborah A. Ferguson
FERGUSON DURHAM, PLLC
chd@fergusondurham.com
daf@fergusondurham.com
(Counsel for Plaintiff)

Amy Whelan
Julie Wilensky
Alexander Chen
National Center for Lesbian Rights
awhelan@nclrights.org
jwilensky@nclrights.org
ACHen@nclrights.org
(Counsel for Plaintiff)

Brady J. Hall
MOORE ELIA KRAFT & HALL, LLP
brady@melawfirm.net
(Counsel for Defendants Idaho Department
of Correction, Henry Atencio, Jeff Zmuda,
Howard Keith Yordy, Al Ramirez, Richard
Craig, and Rona Siegert)

Dan Stormer
Shaleen Shanbhag
HADSSELL STORMER & RENICK, LLP
lrifkin@hadsellstormer.com
dstormer@hadsellstormer.com
sshanbhag@hadsellstormer.com
(Counsel for Plaintiff)

Lori E. Rifkin
RIFKIN LAW OFFICE
lrifkin@rifkinlawoffice.com
(Counsel for Plaintiff)

By: /s/ Dylan A. Eaton
Dylan A. Eaton

J. Kevin West (ISB No. 3337)
KWest@parsonsbehle.com
Dylan A. Eaton (ISB No. 7686)
DEaton@parsonsbehle.com
Bryce Jensen, ISB #10324
bjensen@parsonsbehle.com
Parsons, Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901
(Counsel for Defendants Corizon Inc., Scott
Eliaison, Murray Young, and Catherine
Whinnery)

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

Brady J. Hall (ISB No. 7873)
Special Deputy Attorney General
brady@melawfirm.net
Moore Elia Kraft & Hall, LLP
Post Office Box 6756
Boise, Idaho 83707
Telephone: (208) 336-6900
Facsimile: (208) 336-7031
(Counsel for Defendants Idaho Department of
Correction, Henry Atencio, , Jeff Zmuda, Al
Ramirez, Howard Keith Yordy, Richard
Craig, and Rona Siegert)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; AL RAMIREZ, 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.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' EXPEDITED MOTION
TO STAY ORDER REQUIRING
DEFENDANTS PROVIDE ALL PRE-
SURGICAL TREATMENTS AND
RELATED COROLLARY
APPOINTMENTS OR
CONSULTATIONS NECESSARY FOR
GENDER CONFIRMATION SURGERY
[DKT. 225] PENDING APPEAL**

MEMORANDUM IN SUPPORT OF DEFENDANTS' EXPEDITED MOTION TO STAY ORDER REQUIRING
DEFENDANTS PROVIDE ALL PRE-SURGICAL TREATMENTS AND RELATED COROLLARY
APPOINTMENTS OR CONSULTATIONS NECESSARY FOR GENDER CONFIRMATION SURGERY [DKT.
225] PENDING APPEAL - 1

4817-6008-9259v3

COME NOW, Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery, by and through their counsel of record, Parsons Behle & Latimer, and the Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Al Ramirez, Howard Keith Yordy, Richard Craig, and Rona Siegert, by and through their counsel of record, Moore Elia Kraft & Hall, LLP (collectively referred to as “Defendants”), and file this Memorandum in Support of their Motion to Stay Order Requiring Defendants Provide All Pre-Surgical Treatments and Related Corollary Appointments or Consultations Necessary for Gender Confirmation Surgery [Dkt. 225] Pending Appeal.

I. INTRODUCTION

On October 10, 2019, the Ninth Circuit issued an order partially lifting the stay of an injunction issued by this Court that required Defendants to provide Plaintiff Adree Edmo (“Ms. Edmo”) with gender confirmation surgery (“GCS”). (ECF No. 220). The Ninth Circuit partially lifted the stay so that Ms. Edmo “may receive all presurgical treatments and related corollary appointments or consultations necessary for gender confirmation surgery.” (*Id.* at 2). Based on a unilateral filing by Ms. Edmo, the Court ordered Defendants to provide 1) laser hair removal or electrolysis, 2) a GCS referral letter from a treating physician, and 3) payment approval for the surgery (the “Modified Injunction¹”). (*See* ECF Nos. 224 and 225). Defendants have appealed that Order.

The Court should stay the Modified Injunction pending appeal. First, Defendants have a strong likelihood of success on appeal. The Modified Injunction is procedurally and legally improper. The Court lacked jurisdiction modify the injunction, the modification of the injunction

¹ By labeling this a Modified Injunctions, Defendants do not waive arguments that this injunction could be construed as something else, such as a separate and new injunction.

violated Defendants’ due process rights, and the Modified Injunction is contrary to the Eighth Amendment and the Prison Litigation Reform Act (“PLRA”). Second, Defendants will suffer irreparable injury if the Court does not grant a stay because Defendants’ appeal will likely become moot. Third, a stay will not substantially injure Ms. Edmo. It is not established that Ms. Edmo must receive hair removal treatment prior to undergoing gender confirming surgery. There is no evidence on the record to suggest that staying hair removal while the order to provide the ultimate surgery remains stayed will result in suffering or an increased likelihood that Ms. Edmo commits self-harm.² Ms. Edmo is committed to not re-attempting self-castration. Fourth, the public interest favors a stay. The Court would permanently deprive Defendants of their due process rights if it does not stay the Modified Injunction. On the other hand, the ultimate relief Ms. Edmo seeks—GCS—remains stayed pending appeal. And staying the Order will not result in any significant delay should the injunction be affirmed; it is not established on the record that Ms. Edmo must undergo hair removal prior to receiving any medically-necessary gender confirming surgery.

II. ARGUMENT

The Court may grant a stay of an injunction pending appeal. Fed. R. Civ. P 62(d). When considering whether to issue a stay pending appeal, a court considers four factors:

(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 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.

Nken v. Holder, 556 U.S. 418, 426 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The Court must “balance the relative equities of the[se] factors.” *Leiva-Perez v. Holder*,

² There is also concern that starting the pre-surgical steps could adversely affect Ms. Edmo’s mental health if the appellate courts ultimately determine that the surgery is not constitutionally required.

640 F.3d 962, 965 (9th Cir. 2011) (per curiam). However, “[t]he first two factors of th[is] standard are the most critical.” *Nken*, 556 U.S. at 426.

This standard is more lenient than the standard for granting an injunction. The standard is less demanding because “stays are typically less coercive and less disruptive than are injunctions.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). “[I]nstead of directing the conduct of a particular actor, a stay operates upon the judicial proceeding itself.” *Nken*, 556 U.S. at 428. “A stay ‘simply suspend[s] judicial alteration of the status quo,’ while injunctive relief ‘grants judicial intervention’” *Id.* at 429 (alteration in original) (quoting *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Comm’n*, 479 U.S. 1312, 1312 (1986) (Scalia, J., in chambers)). Thus, although the factors are similar, the Court should grant a stay even though the Court previously determined Ms. Edmo is entitled to injunctive relief. Each of these factors are addressed in turn.

A. Defendants have a Strong Likelihood of Success on Appeal.

Defendants do not need to show that “it is more likely than not that they will win on the merits.” *Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012) (quoting *Leiva-Perez*, 640 F.3d at 966). Rather, a party can satisfy the first *Nken* factor if “serious legal questions are raised.” *Leiva-Perez*, 640 F.3d at 968; *see also Lair*, 697 F.3d at 1204. In this case, Defendants’ appeal presents serious legal questions. In addition, it is likely that the Ninth Circuit will resolve these serious legal questions in Defendants’ favor.

First, the Court lacked jurisdiction to modify the injunction because the modification materially altered the status of Defendants’ initial appeal. “Once a notice of appeal is filed, the district court is divested of jurisdiction over the matters being appealed.” *Nat. Res. Def. Council*,

Inc. v. Sw. Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001). “The principle of exclusive appellate jurisdiction is not, however, absolute.” *Id.* “Rule 62(c) of the Federal Rules of Civil Procedure . . . allows a district court to ‘suspend, modify, restore, or grant an injunction during the pendency of the appeal’” *Id.* However, “any action taken pursuant to Rule 62(c) may not materially alter the status of the case on appeal.” *Id.* (quotation marks and citation omitted). Any modification of an injunction must leave “unchanged the core questions” on appeal. *Id.* at 1167.

The Court’s modification of the injunction materially altered a core question already on appeal. In their appeal from the Court’s December 13, 2018 Order [Dkt. 149], Defendants argued that the injunction is overbroad under the PLRA because it required Defendants to provide Ms. Edmo with gender confirmation surgery and “adequate medical care” but failed to define those phrases. Nor did the Court’s prior injunction ever set forth what type of GCS it determined was medically necessary or necessary to reverse a constitutional violation. *See* Opening Brief at 58 (Dkt. 13-1), *Edmo v. Corizon*, No. 19-35019. The Court’s modification of the injunction now seeks to substantively modify the phrase Gender Confirmation Surgery, apparently to mean penile-inversion vaginoplasty and the phrase “adequate medical care” to mean electrolysis. Thus, the Modified Injunction undercuts one of Defendants primary arguments on appeal—that the injunction is overbroad under the PLRA. Thus, this Court lacked jurisdiction to make those significant and substantive modifications.³ Likewise, the Court’s Modified Injunction changes a critical issue on appeal regarding whether the Court’s injunction was premature, overbroad, and intrusive given the lack of any evidence that Ms. Edmo had the requisite letters of referral, including from two mental health providers.

³ Defendants reserve and do not waive any and all arguments currently on appeal. The Court does not have jurisdiction to modify the injunction already on appeal to the detriment of Defendants’ arguments in those appeals. MEMORANDUM IN SUPPORT OF DEFENDANTS’ EXPEDITED MOTION TO STAY ORDER REQUIRING DEFENDANTS PROVIDE ALL PRE-SURGICAL TREATMENTS AND RELATED COROLLARY APPOINTMENTS OR CONSULTATIONS NECESSARY FOR GENDER CONFIRMATION SURGERY [DKT. 225] PENDING APPEAL - 5
4817-6008-9259v3

Second, the Court's modification violated Defendants' due process rights.⁴ "The base requirement of the Due Process Clause is that a person deprived of property be given an opportunity to be heard at a meaningful time and in a meaningful manner." *Buckingham v. Sec'y of U.S. Dep't of Agr.*, 603 F.3d 1073, 1082 (9th Cir. 2010) (quotation marks and citation omitted). The Court invited only Ms. Edmo to submit evidence to the Court regarding the required pre-operative procedures. Then, when Ms. Edmo submitted her evidence to the Court, the Court did not give Defendants an opportunity to respond. Instead, the Court quickly issued an order that modified the injunction and/or entered new injunctive relief without any input from Defendants. Thus, the Court's modification of the injunction deprived Defendants of due process.

Third, the Modified Injunction is overbroad under the PLRA and is contrary to Eighth Amendment precedent. Under the PLRA, "[t]he court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A). "Further, the Eighth Amendment does not provide a right to a specific treatment." *Pena v. Lossman*, No. 1:11-CV-00366-BLW, 2016 WL 901573, at *4 (D. Idaho Mar. 9, 2016). Rather, "[u]nder the Eighth Amendment, [a prisoner] is not entitled to demand specific care. She is not entitled to the best care possible. She is entitled to reasonable measures to meet a substantial risk of serious harm to her." *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir. 1997).

⁴ Relatedly, Defendants continue to contend that issuing a permanent injunction without providing clear and unambiguous notice of converting the injunction hearing to a trial on the merits violated their rights to a jury trial including under the Seventh Amendment of the U.S. Constitution and Rule 65(a)(2).

Like the original injunction, the Modified Injunction refers to gender confirmation surgery, but that term is not defined. (*See* ECF No. 225.) However, as the World Professional Association for Transgender Health (“WPATH”) Standards of Care recognize, gender confirmation surgery is a very broad term that includes numerous types of surgical procedures. WPATH Standards of Care defines Sex Reassignment Surgery (a.k.a. Gender Confirmation Surgery or Gender Affirmation Surgery) as “Surgery to change primary and/or secondary sex characteristics to affirm a person’s gender identity.” (*See* JT Ex. 15-103, a Joint Exhibit for the October 2018 hearing.) Further, WPATH explains that “genital surgery” in this context can consist of several different types of surgical procedures, including penectomy, orchiectomy, vaginoplasty, clitoroplasty, and vulvoplasty. (*See* JT Ex. 15-63.) Neither the original injunction nor the Modified Injunction addresses which type of GCS is medical necessary for Ms. Edmo and necessary to remedy a constitutional violation.

Although it was not specified in the original injunction, the Court recently indicated in a status conference that the original injunction intended for Defendants to provide Ms. Edmo broadly with “full” gender confirmation surgery and/or a vaginoplasty. However, there are at least three different types of options: 1) penile-inversion vaginoplasty, 2) colo-vaginoplasty, and 3) a zero-depth procedure where male genitalia are removed, but a vagina is not created.⁵ These are very different and distinct surgeries, and there is simply no evidence in the record to establish which surgery is medically necessary or required to reverse a constitutional violation. In his declaration, Dr. Stiller notes that the penile-inversion vaginoplasty is the most popular type of vaginoplasty, ECF No. 224-1 at 2, but he did not state that a penile-inversion vaginoplasty is the

⁵ Obtaining a payment authorization is somewhat difficult at present because there are three possible surgical procedures.

only medically acceptable surgical treatment for Ms. Edmo. In fact, the surgeon has left it up to Ms. Edmo to choose whether she wants the penile inversion procedure or a colovaginoplasty and apparently Ms. Edmo has not yet decided. (Dawson Decl., paragraphs 9, 10 and Exhibit A) Ms. Edmo may not select which type of surgery she receives based on mere personal preference. To leave the decision purely with Ms. Edmo violates the PLRA, far exceeds the requirements under the Eighth Amendment, and fails to impose the least intrusive means necessary to correct the alleged constitutional violation. Rather, in the absence of evidence that only one type of vaginoplasty is medically acceptable, that decision must be left up to the medical discretion of Ms. Edmo's prison mental health providers. Importantly, a colo-vaginoplasty does not require hair removal.⁶ (Dawson Decl. ¶ 12). Thus, the Court's modification of the injunction to require Defendants to provide Ms. Edmo with hair removal treatment is overbroad in violation of the PLRA.

The Modified Injunction is also overbroad under the PLRA because it requires Defendants to "doctor shop" for a physician who will provide a GCS recommendation letter for Ms. Edmo. Under the Eighth Amendment, Ms. Edmo is not entitled to choose her provider or her particular course of treatment. If prison medical staff are not competent to treat a certain medical condition, they must "refer prisoners to others who can." *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). However, the Eighth Amendment does not require prison officials to keep referring a prisoner to other medical providers until the prisoner receives the treatment he or she desires. *See id.* As long as the prisoner is referred to a competent medical provider for treatment, there is no Eighth

⁶ Defendants have not confirmed whether a zero-depth vaginoplasty would require hair removal, but it seems unlikely and Ms. Edmo has not presented any evidence that hair removal would be medically necessary before undergoing a zero-depth procedure.

Amendment violation. *See id.* Dr. Marvin Alviso has been managing Ms. Edmo's hormone therapy. Dr. Alviso is an independent physician who provides consultations and manages hormone therapy for some inmates with Gender Dysphoria. Importantly, there has been no evidence presented that Dr. Alviso is not qualified to manage Ms. Edmo's hormone therapy. Defendants should not be required to refer Ms. Edmo to a different doctor if Dr. Alviso determines that he will not provide a GCS referral letter for Ms. Edmo. Thus, the Modified Injunction is overbroad because it requires Defendants to keep shopping for a doctor until Ms. Edmo gets the result she wants—a referral for GCS.

Moreover, the Court impermissibly accepted as having been established on the record that Ms. Edmo has received two mental health referrals as required by Dr. Stiller and the WPATH Standards of Care. However, Ms. Edmo bore that burden at the evidentiary hearing to establish the prerequisites for surgery and failed to do so. Defendants have raised Ms. Edmo's failures on appeal and the lack of critical evidence and factual findings that rendered the Court's injunction premature and in violation of the PLRA. (DktEntry: 13-1, pp. 68-71 and 74, pp. 36-40) To now allow Ms. Edmo an opportunity to meet her burden and cure the defects raised on appeal is improper and done without jurisdiction.

B. Defendants will be Irreparably Injured Absent a Stay.

A party is irreparably injured if the party's appeal becomes moot. *See Agency v. John Doe Corp.*, 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers). Consequently, an injunction should generally be stayed if it "would become moot before receiving full appellate consideration." Order Granting Stay (Dkt. 25), *Norsworthy v. Beard*, No. 15-15712 (9th Cir. May 21, 2015). Here, Defendants' appeal of the Court's Order will become partially or totally

moot absent a stay. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 398 (1981) (“[T]he question whether a preliminary injunction should have been issued here is moot, because the terms of the injunction, as modified by the Court of Appeals, have been fully and irrevocably carried out.”). Once Defendants fully comply with the Modified Injunction by providing hair removal treatments, a GCS referral letter, and payment authorization, the court of appeals will be unable to grant any form of relief. The terms of the Modified Injunction will have been “fully and irrevocably carried out.” *Id.* Thus, Defendants have demonstrated that they will suffer irreparable harm.

C. Ms. Edmo will not Suffer Substantial Harm.

Ms. Edmo does not need to receive months of hair removal treatment before undergoing a colovaginoplasty (if that is even a medically necessary procedure) and Ms. Edmo has failed to present any evidence that hair removal is necessary before undergoing a zero-depth procedure. Thus, there is no evidence establishing that hair removal is a necessary surgical prerequisite to gender confirmation surgery, in part because the Court never identified what surgery is necessary to correct the alleged constitutional violation. Moreover, Ms. Edmo cannot establish any measureable harm if she is not immediately provided with hair removal, especially since the injunction to provide such yet unidentified surgical procedure remains stayed. There is little to no risk of self-castration in the intervening time period primarily because Ms. Edmo is committed to preserving her male anatomy for use in a future surgery. (Transcript, October 11, 2018, Volume 2, pp. 199-200, 218, ll. 2-14) Similarly, obtaining a referral letter and payment authorization would not require any extensive waiting period. Consequently, Ms. Edmo will not be harmed by a temporary stay of the Modified Injunction.

D. The Public Interest Favors a Stay.

The public interest favors a stay to allow for full appellate review. The purpose of a stay is to give the reviewing court the time to act responsibly and consider carefully its decision. *Leiva-Perez*, 640 F.3d at 967 (quoting *Nken*, 556 U.S. at 427). “The ability to grant interim relief is accordingly not simply an historic procedure for preserving rights during the pendency of an appeal, but also a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.” *Nken*, 556 U.S. at 427 (internal citations and quotations omitted). Defendants have not been allowed to challenge Ms. Edmo’s factual assertions that underly the Court’s modification of the injunction, and Defendants appeal will likely become moot if the Court does not issue a stay. Without a stay, Defendants will be permanently deprived of their Due Process. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quotation marks and citation omitted). Accordingly, the public interest favors a stay.

In addition, the public interest favors a stay because the Modified Injunction is being applied against a state government. In cases involving governmental action, “the public interest is a factor to be strongly considered.” *Lopez v. Heckler*, 713 F.2d 1432, 1435-36 (9th Cir. 1983). Because the political branches are representatives of the people, Courts generally defer to a state’s political branches in identifying and protecting the public interest. *See United States v. Marine Shale Processors*, 81 F.3d 1329, 1359 (5th Cir. 1996). In a broad sense, “the government’s interest is the same as the public interest.” *Lopez*, 713 F.2d at 1437. Here, the public and government both have a significant interest in not providing an inmate with hair removal when the ultimate surgery is stayed pending appeal and there is no evidence that hair

removal is actually a medically necessary prerequisite to a necessary gender confirmation surgery or is necessary to remedy a constitutional violation.

Additionally, the public has an interest in not providing an inmate with a permanent procedure that is not medically necessary. Here, the hair removal is permanent once the course of about 6 separate treatments of laser therapy are provided over the course of 6-9 weeks. (Dawson Decl., paragraph 11.) Moreover, the hair removal is a part of the penile inversion vaginoplasty (if that is even the appropriate procedure for Ms. Edmo). So, it is in the public interest to not provide this first part of this permanent surgery, especially when the surgery itself is currently stayed by the courts. Consequently, the public interest favors a stay.

In contrast, Ms. Edmo cannot show that the public interest is in her favor. The public has no interest in providing Ms. Edmo hair removal for a yet undefined surgical procedure that is currently stayed and for which there is a strong reason to believe will be reversed on appeal. Ms. Edmo will not suffer any harm from a stay of the Modified Injunction. It is not established that Ms. Edmo must undergo weeks or months of hair removal treatment before receiving a vaginoplasty. Further, obtaining a referral letter and a payment authorization should not take a significant amount of time. Thus, a stay of the modified injunction should not substantially delay Ms. Edmo's surgery should the original injunction be affirmed on appeal.

DATED this 31st day of October, 2019.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

DATED this 31st day of October, 2019.

MOORE ELIA KRAFT & HALL, LLP

By: /s/ Brady J. Hall

Brady J. Hall

Counsel for Defendants Idaho Department of
Correction, Henry Atencio, Jeff Zmuda, Al
Ramirez, Howard Keith Yordy, Richard Craig,
and Rona Siegert

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of October, 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:

Craig H. Durham
Deborah A. Ferguson
FERGUSON DURHAM, PLLC
chd@fergusondurham.com
daf@fergusondurham.com
(*Counsel for Plaintiff*)

Amy Whelan
Julie Wilensky
Alexander Chen
National Center for Lesbian Rights
awhelan@nclrights.org
jwilensky@nclrights.org
AChen@nclrights.org
(*Counsel for Plaintiff*)

Brady J. Hall
MOORE ELIA KRAFT & HALL, LLP
brady@melawfirm.net
(*Counsel for Defendants Idaho Department
of Correction, Henry Atencio, Jeff Zmuda,
Howard Keith Yordy, Richard Craig, and
Rona Siegert*)

Dan Stormer
Shaleen Shanbhag
HADSSELL STORMER & RENICK, LLP
lrifkin@hadsellstormer.com
dstormer@hadsellstormer.com
sshanbhag@hadsellstormer.com
(*Counsel for Plaintiff*)

Lori E. Rifkin
RIFKIN LAW OFFICE
lrifkin@rifkinlawoffice.com
(*Counsel for Plaintiff*)

By: /s/ Dylan A. Eaton
Dylan A. Eaton

J. Kevin West (ISB No. 3337)
KWest@parsonsbehle.com
Dylan A. Eaton (ISB No. 7686)
DEaton@parsonsbehle.com
Bryce Jensen, ISB #10324
bjensen@parsonsbehle.com
Parsons, Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901
(Counsel for Defendants Corizon Inc., Scott
Eliason, Murray Young, and Catherine
Whinnery)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; AL RAMIREZ, 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.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**DECLARATION OF APRIL DAWSON,
M.D. IN SUPPORT OF DEFENDANTS'
EXPEDITED MOTION TO STAY
ORDER REQUIRING DEFENDANTS
PROVIDE ALL PRE-SURGICAL
TREATMENTS AND RELATED
COROLLARY APPOINTMENTS OR
CONSULTATIONS NECESSARY FOR
GENDER CONFIRMATION SURGERY
[DKT. 225] PENDING APPEAL**

DECLARATION OF APRIL DAWSON, M.D. IN SUPPORT OF DEFENDANTS' EXPEDITED MOTION TO
STAY ORDER REQUIRING DEFENDANTS PROVIDE ALL PRE-SURGICAL TREATMENTS AND
RELATED COROLLARY APPOINTMENTS OR CONSULTATIONS NECESSARY FOR GENDER
CONFIRMATION SURGERY [DKT. 225] PENDING APPEAL - 1

4844-3823-0442v3

I, April Dawson, declare as follows:

1. I am more than eighteen years of age and I am legally competent to make this declaration. I have personal knowledge of the facts set forth herein and can testify as to the truth of the statements contained herein if called upon as a witness at the trial of this action.

2. By way of background, I graduated from the Loma Linda University School of Medicine, Loma Linda, California, in 1987. In 1988, I completed an internship in preliminary medicine at the Medical Center of Delaware, Newark, Delaware. I also completed a residency in general preventative medicine and public health at Loma Linda University in 1993. I am board certified in general preventive medicine and public health by the American College of Preventive Medicine. I obtained my Idaho medical license in August 2005.

3. On August 15, 2005, I commenced employment with Correctional Medical Services, Inc. (“CMS”), which provided medical services to inmates in the custody of the Idaho Department of Corrections (“IDOC”). From August 15, 2005, through April 12, 2009, I was employed as the Regional Medical Director (“RMD”) for CMS for the State of Idaho. From April 12, 2009 to December 31, 2012, I continued in my role as an independent contract physician for CMS at certain IDOC facilities. It is my understanding that CMS then merged with another company to form Corizon entities. Corizon, LLC, is now the private corporation that provides certain medical services to inmates in the custody of IDOC. From January 1, 2013 to June 30, 2017, I was directly employed as a physician by Corizon. As of May 13, 2019, I have been employed by Corizon as the RMD. Therefore, my work providing medical care in Idaho prisons generally goes back about 14 years.

4. I have been employed by Corizon as the RMD since May 2019.

5. As the RMD, I am familiar with Plaintiff Ms. Edmo's medical chart at the prison and her treatment and care.

6. On Monday, October 21, 2019, I spoke on the phone directly with Geoffrey D. Stiller, M.D. ("Dr. Stiller"), who is a surgeon and provides gender confirmation surgery to patients.

7. On April 12, 2019, Ms. Edmo had an initial consultation with Dr. Stiller regarding options for gender confirmation surgery.

8. Prior to speaking with Dr. Stiller on October 21, 2019, I reviewed Dr. Stiller's consult note from his initial consultation with Ms. Edmo in April 2019. Attached as **Exhibit A** hereto is a true and correct copy of Dr. Stiller's note regarding his initial consult with Ms. Edmo, which is in Ms. Edmo's prison medical chart. I am familiar with the manner medical records are kept for inmates incarcerated by the Idaho Department of Corrections ("IDOC"). The prison medical records are made at or near the time reflected in the records and are made by persons with knowledge of the matters recorded. The medical records, including consult notes with offsite providers, such as the April 12, 2019 note by Dr. Stiller, are kept in the ordinary course of the regularly conducted activities of the medical providers caring for inmates incarcerated by the IDOC, and it is the regular practice of medical providers at the prison site to review such records. I and other medical experts in my field of medicine regularly rely on such medical records and the facts, opinions, and data contained therein in helping to determine care and treatment of inmates, such as Ms. Edmo.

9. Upon reviewing Dr. Stiller's April 2019 consult note, I noticed that he did not make any determinations as to if any surgeries were medically necessary for Ms. Edmo. I further noticed that Dr. Stiller's note indicated he spoke with Ms. Edmo about at least two separate surgery

options: (1) penile inversion, and (2) colovaginoplasty. Both of these surgeries are considered vaginoplasties where the surgeon creates a vagina for Ms. Edmo. I also noticed that Dr. Stiller's note stated Ms. Edmo was "unsure if she desires a penile inversion with scrotal grafts or colovaginoplasty."

10. When I spoke with Dr. Stiller on October 21, he confirmed that two options for vaginoplasty were discussed with Ms. Edmo, the penile inversion and the colovaginoplasty. (Dr. Stiller acknowledged there is another surgical option, where the male genitalia is removed, but no vagina is created. This surgical option would be for a patient that did not desire intercourse. It is my understanding this option was not discussed with Ms. Edmo.) Dr. Stiller told me that the penile inversion is much a more popular vaginoplasty, but the colovaginoplasty is also an option. He confirmed he is leaving it up to Ms. Edmo to choose which surgery she wants. Dr. Stiller told me that Ms. Edmo seemed to be leaning toward choosing the penile inversion surgery at the initial consult, but was not entirely sure which option she wanted.

11. With respect to the penile inversion surgery, Dr. Stiller confirmed with me during our October 21 telephone call that hair removal (either by laser or by electrolysis) in the genital area is a part of such surgery. This hair removal process is expected to take 6 to 9 months with regular treatments approximately every month. In talking with Dr. Stiller and based on my own medical understanding, the hair can grow back after the first few appointments. However, once all the treatment sessions are complete over the 6 to 9 months, the hair removal in the treated area is permanent.

12. It is my understanding in talking with Dr. Stiller that hair removal in the genital area is not medical necessary as a part of the colovaginoplasty surgery option. After talking with

Dr. Stiller and based on my own review of medical resources, this is a more complex surgery and can involve two separate surgeries. Colovaginoplasty is a surgical procedure that involves using a section of the end of the large intestine (the sigmoid colon) to create a new vagina. The depth of the vagina with a colovaginoplasty (approximately 7 inches in depth) is more than with a penile inversion (approximately 5 inches in depth).


13. Dr. Stiller told me that hormone therapy will need to be stopped about three weeks prior to the surgery regardless of whether the surgery is the penile inversion or the colovaginoplasty. Although it varies from one patient to another, it is my understanding that symptoms (after the hormone therapy is stopped) can range from sharp mood swings, dizziness and nausea to the appearance of clearly masculine traits (facial hair, involuntary erections, etc.).

14. The Idaho Corizon Regional Office, where I work, has contacted Boise Electrolysis (who provides genital hair removal) and they have declined to accept Ms. Edmo as a patient. However, Edmo has been scheduled for laser hair removal at another facility.

15. It is my understanding that Dr. Stiller needs referral letters from a treating doctor (i.e., the doctor provided hormones) and two mental health providers or clinicians for the surgery. I am not aware of any Corizon employees that can provide these recommendations at this time based on their medical or mental health judgements. Dr. Alviso is the offsite physician who has agreed to provide hormone therapy treatment recommendations to inmates, including Ms. Edmo. Dr. Alviso is not a Corizon employee. It is my understanding that Dr. Alviso is not in a position to recommend gender confirmation surgery (i.e., a penile inversion or colovaginoplasty) for Ms. Edmo at this time.

I, April Dawson, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 30TH day of October, 2019.



April Dawson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of October, 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:

Craig H. Durham
Deborah A. Ferguson
FERGUSON DURHAM, PLLC
chd@fergusondurham.com
daf@fergusondurham.com
(Counsel for Plaintiff)

Amy Whelan
Julie Wilensky
Alexander Chen
National Center for Lesbian Rights
awhelan@nclrights.org
jwilensky@nclrights.org
AChen@nclrights.org
(Counsel for Plaintiff)

Brady J. Hall
MOORE ELIA KRAFT & HALL, LLP
brady@melawfirm.net
(Counsel for Defendants Idaho Department
of Correction, Henry Atencio, Jeff Zmuda,
Howard Keith Yordy, Richard Craig, and
Rona Siegert)

Dan Stormer
Shaleen Shanbhag
HADSELL STORMER & RENICK, LLP
lrifkin@hadsellstormer.com
dstormer@hadsellstormer.com
sshanbhag@hadsellstormer.com
(Counsel for Plaintiff)

Lori E. Rifkin
RIFKIN LAW OFFICE
lrifkin@rifkinlawoffice.com
(Counsel for Plaintiff)

By: /s/ Dylan A. Eaton
Dylan A. Eaton

EXHIBIT A

04/26/2019 08:43 2084764407

CORIZON OROFINO

PAGE 02/05

Apr. 24, 2019 11:39AM

PALOUSE SURGEONS MOSCOW

No. 8582 P. 6



2400 West A Street Suite 101 Moscow, ID 83843-4902
(208) 882-1700 Fax: (208) 882-1778

April 24, 2019

Page 1

Office Visit

Mason Dean Meeks Edmo

Male DOB: [REDACTED]

35429

Ins: Corizon Health Inc.

04/12/2019 - Office Visit: MTF GRS Consult**Provider: Geoffrey D Stiller****Location of Care: Palouse Surgeons****Joseph Starrs, PA-C***Reviewed all**9/24/19***Visit Type: Follow-up****Primary Provider: Geoffrey D Stiller****History of Present Illness:**

PCP: Dr. Albiso

Endocrinologist: same

Counselor: multiple

Support: unknown

Pt presents to discuss options for GRS.

Pt is a transgender female whose preferred pronouns are "she, her, hers." She resides at Idaho State Correctional Facility. She has sued to allow transitioning both medically and surgically. She has been granted this by the court. She is here to discuss surgical options.

Pt has known of her transgender status since she was a young teenager. Pt has been on hormones since 08/2012. After 6 months she began to find clarity. Pt has been suffering from gender dysphoria for over 10 years. She has also felt different, but was raised on a reservation and had to hide it. Has always felt like her brain is female but her body is not. Puberty was very difficult for her when her body began masculinizing. Diagnosed with depression at age 18 and began treatment. She began to get into drag shows at age 21. She has been in the prison system since age 22. She was presenting in her gender since then, although she was oppressed for many years in prison. She has seen about 8 different mental health providers since beginning her court process. They have all been supportive per the patient. She is expecting to be moved to a female correctional center after surgery. She is hoping for the correct female anatomy.

She has had suicide attempts before transitioning. While incarcerated she did attempt to self castrate requiring operative repair.

Past Medical History:

Reviewed and updated today:

Gender Identity Disorder

Depression

Hepatitis C

Past Surgical History:

Reviewed and updated today:

Laparoscopic Cholecystectomy

Scrotal exploration and closure

Family History

04/26/2019 08:43 2084764407

CORIZON OROFINO

PAGE 03/05

Apr. 24, 2019 11:40AM

PALOUSE SURGEONS MOSCOW

No. 8582 P. 7



2400 West A Street Suite 101 Moscow, ID 83843-4802
(208) 882-1700 Fax: (208) 882-1778

April 24, 2019

Page 2

Office Visit

Mason Dean Meeks Edmo

Male DOB: [REDACTED]

35429

Ins: Corizon Health Inc.

- 1) Uncle - Alcoholism - Entered on 4/16/2019
 - 2) Aunt - Alcoholism - Entered on 4/16/2019
 - 3) Sister - Alcoholism - Entered on 4/16/2019
 - 4) Brother - Alcoholism - Entered on 4/16/2019
 - 5) Father - Alcoholism - Entered on 4/16/2019
 - 6) Mother - Hypertension - Entered on 4/16/2019
 - 7) Mother - Alcoholism - Entered on 4/16/2019
- resident of Idaho Correctional Facility

Medications prior to today's visit:

SPIRONOLACTONE TABLET (SPIRONOLACTONE TABS)
DOCUSATE SODIUM TABLET (DOCUSATE SODIUM TABS)
VENLAFAXINE HCL TABLET (VENLAFAXINE HCL TABS)
ESTRADIOL TABLET (ESTRADIOL TABS)
FINASTERIDE TABLET (FINASTERIDE TABS)

Review of Systems

General

Denies fever, anorexia and weight loss.

GI

Denies abdominal pain, nausea, vomiting, diarrhea, constipation, change in bowel habits, melena, hematochezia, jaundice, gas/bloating, indigestion/heartburn, dysphagia and odynophagia.

Breast

Denies left breast lump, right breast lump, nipple discharge, bloody discharge from nipple, breast pain, abnormal mammogram and breast enlargement.

CV

Denies chest pains, palpitations, syncope and peripheral edema.

Resp

Denies cough, shortness of breath, hemoptysis, wheezing and pleuritic chest pain.

Vascular

Denies varicose veins, leg swelling, leg redness, leg coolness, pain in legs with walking, resting leg pain, pain at night in legs and blue toe(s).

GU

Denies dysuria, hematuria, discharge, urinary frequency, urinary hesitancy, nocturia, incontinence and erectile dysfunction.

04/26/2019 08:43 2084764407

CORIZON OROFINO

PAGE 04/05

Apr. 24. 2019 11:40AM

PALOUSE SURGEONS MOSCOW

No. 8582 P. 8



2400 West A Street Suite 101 Moscow, ID 83843-4902
(208) 862-1700 Fax: (208) 882-1778

April 24, 2019
Page 3
Office Visit

Mason Dean Meeks Edmo

Male DOB: [REDACTED]

35429

Ins: Corizon Health Inc.

Derm

Denies suspicious lesions, new skin lesions, changing mole(s), rash, itching and history of skin cancer.

Neuro

Denies paralysis, paresthesias, seizures and frequent headaches.

Psych

Denies depression, anxiety, memory loss, suicidal ideation, hallucinations, paranoia, phobia and confusion.

Endo

Denies cold intolerance, heat intolerance, polydipsia, polyphagia, polyuria and unusual weight change.

Heme

Denies abnormal bruising, bleeding and enlarged lymph nodes.

MS

Denies back pain, sciatica and arthritis.

Physical Exam**General:**

well developed, well nourished, in no acute distress

Head:

normocephalic and atraumatic

Eyes:

PERRL/EOM intact; conjunctiva and sclera clear

Neck:

no masses, thyromegaly, or abnormal cervical nodes

Lungs:

clear bilaterally to A & P

Heart:

regular rate and rhythm, S1, S2 without murmurs, rubs, gallops, or clicks

Genitalia:

normal male, testes descended bilaterally without masses, no hernias noted, uncircumcised, 3 inch flaccid penis

Extremities:

no clubbing, cyanosis, edema, or deformity noted

Neurologic:

no focal deficits, CN II-XII grossly intact

Cervical Nodes:

no significant adenopathy

Psych:

04/26/2019 08:43 2084764407

CORIZON OROFINO

PAGE 05/05

Apr. 24. 2019 11:40AM

PALOUSE SURGEONS MOSCOW

No. 8582 P. 9



2400 West A Street Suite 101 Moscow, ID 83843-4902
(208) 882-1700 Fax: (208) 882-1778

April 24, 2019
Page 4
Office Visit

Mason Dean Meeks Edmo

Male DOB: [REDACTED]

35429

Ins: Corizon Health Inc.

alert and cooperative; normal mood and affect; normal attention span and concentration

Assessment

New Problems:

Gender identity disorder (ICD-302.6) (ICD10-F64.9)

Transgender Female

GRS- pt unsure if she desires a penile inversion with scrotal grafts or colovaginoplasty

Plan

Discussed pros and cons of penile inversion technique. Discussed pros and cons of colovaginoplasty.

Discussed use of dilators and other maintenance inside correctional facility.

Discussed average depth of about 5 inches, use of scrotal skin grafts if desired. Hair removal needed if desires penile inversion with scrotal skin grafts- would take 9 mo to 1 yr

Discussed stimulation of clitoris and prostate post operatively.

Discussed procedure in detail, hospital stay, length of surgery etc.

Discussed risks of complications; wounds, loss of grafts, etc.

Recommended hair removal of scrotum for grafts.

If pt desires colovaginoplasty, the first stage can be completed with hair removal then 6 mo later would proceed with a colonic interposition.

We did not receive any recent mental health records. Will need a letter of support from 2 separate mental health providers showing the patient meets WPATH criteria. Will also need a letter of support from her prescribing physician.

New Orders:

99204 New office out pt services Comp, Mod MDM 45min [CPT-99204]

]

Electronically signed by Geoffrey D Stiller on 04/16/2019 at 3:35 PM
