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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

KATIE ROBINSON, et al.,
Plaintiffs,
v.
RAÚL LABRADOR, et al.,
Defendants.

Case No. 1:24-cv-00306-DCN
PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR THIRD PRELIMINARY INJUNCTION

Plaintiffs request this court issue a new preliminary injunction prior to March 3, 2025—the 90-day expiration date of the court's prior preliminary injunction under the Prison Litigation Reform Act

("PLRA"). 18 U.S.C. § 3626(a)(2) ("Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.").

None of the material facts established prior to the court's orders granting preliminary injunctions on September 3, 2024 and December 3, 2024 have changed. The challenged state law prohibiting gender-affirming hormone therapy with public funding or in public facilities remains on the books and, absent an injunction from this Court, would be enforced to discontinue such treatment for individuals with gender dysphoria in IDOC custody. With the preliminary injunction in place, IDOC's contracted medical provider continues to prescribe hormone therapy to individuals with gender dysphoria for whom it is medically necessary. And class members continue to rely on this care for their health and well-being. Along with this motion, Plaintiffs submit expert evaluations of the class representatives discussing the medical necessity of continuing the hormone therapy they have been prescribed and the expected serious harm to their health should the treatment be withdrawn. *See* Ex. B, Mills Eval.; Ex. C, Heredia Eval. The properly circumscribed relief provided by the court remains as necessary today as when it was issued.

BACKGROUND

The court granted Plaintiffs' initial request for preliminary injunction and class certification on September 3, 2024. Dkt. 58. To prevent the potential Constitutional violation, the court did not order any particular procedures, but rather enjoined enforcement of the Act as applied to the hormone therapy treatment of the certified class during the pendency of the lawsuit. *Id.*at 28. The court's order contemplated "continued compliance" with IDOC's own policies that had been in effect prior to enactment of the Act. *Id.* at 11.

Plaintiffs moved this court to issue a second preliminary injunction prior to the expiration of the first. This court did so on December 3, 2024, finding that Plaintiffs continued to meet the standards for

issuing a preliminary injunction, and that that injunction met the PLRA's Needs-Narrowness-Intrusiveness requirements. Dkt. 96.

The second preliminary injunction is set to expire on March 3, 2025. *See* 18 U.S.C. § 3626(a)(2).

ARGUMENT

I. The Court Is Empowered to Issue a Third Preliminary Injunction Prior to the Expiration of the Second Preliminary Injunction.

The PLRA establishes that "[p]reliminary injunctive relief shall automatically expire on the date that is 90 days after its entry," unless the court makes the injunction final, *id.* at § 3626(a)(2), or issues a new preliminary injunction, *see Mayweathers v. Newland*, 258 F.3d 930, 936 (9th Cir. 2001); *see also Gammett v. Idaho State Bd. of Corr.*, No. CV05-257-S-MHW, 2007 WL 2684750, at *4 (D. Idaho Sept. 7, 2007) ("The Ninth Circuit Court of Appeals has held that a district court may enter a second preliminary injunction upon the expiration of the first without violating the terms of the statute."). The Ninth Circuit permits district courts to reissue preliminary relief under the PLRA so long as that relief remains necessary. *See Mayweathers*, 258 F.3d at 936 ("Nothing in the statute limits the number of times a court may enter preliminary relief. If anything, the provision simply imposes a burden on plaintiffs to continue to prove that preliminary relief is warranted."); *see also* Dkt. 96 at 4, 7.

II. Plaintiffs Meet the Criteria for a Preliminary Injunction

To be granted a preliminary injunction, plaintiffs must show "(1) [they are] likely to prevail on the merits of [their] substantive claims, (2) [they are] likely to suffer imminent, irreparable harm absent an injunction, (3) the balance of equities favors an injunction, and (4) an injunction is in the public interest." *All. for the Wild Rockies v. Petrick*, 68 F.4th 475, 490 (9th Cir. 2023) (citing *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20, 22–23 (2008). In issuing its first preliminary injunction, the court found that the parties raised "serious questions" going to the merits of the case and that the balance of hardships

tipped sharply in favor of the plaintiffs. Neither the relevant policies nor the facts on the ground have changed since the court issued its first and second preliminary injunctions.

a. Serious Questions

The Ninth Circuit permits issuance of a preliminary injunction where plaintiffs demonstrate "serious questions going to the merits." *All. for the Wild Rockies*, 68 F.4th at 490–91. The serious questions standard is satisfied where a plaintiff raises questions "that cannot be resolved one way or the other at the hearing on the injunction because they require more deliberative investigation." *Id*. at 497 (cleaned up).

The court recognized that serious questions arise from the disagreement between the parties "over whether the denial of hormone therapy for inmates with Gender Dysphoria is medically unacceptable and creates an excessive risk to the health of such inmates." Dkt. 58 at 6. The Eighth Amendment protects incarcerated individuals from policies which create a substantial risk of serious harm. *See Farmer v. Brennan*, 511 U.S. 825, 834, (1994) ("For a claim . . . based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm."). There is no dispute that gender dysphoria is a serious medical need. Dkt. 58 at 6. The plaintiffs have set forth evidence of the risk of denying hormone therapy to individuals for whom a doctor has determined it is medically necessary. *See* Dkt. 2-5, Ettner Decl., at ¶¶ 42, 55-62; Dkt. 40-9, Alviso Decl., at ¶¶ 15, 21, 27, 36-39, 42; *see also* Dkt. 71 at ¶ 12 ("Centurion admits only that hormone replacement therapy is a recognized medical treatment that may be prescribed under certain circumstances, and that Centurion provided appropriate, medically indicated care and treatment to incarcerated individuals in accordance with the relevant standards of care."). As requested by the court, Dkt. 96 at 10, the plaintiffs have also set forth expert evidence of the risk of denying hormone therapy to the class representatives in this case. *See* Mills Eval. at 3 ("The withdrawal of HRT is likely to result in significant harm to Rose, as many of its effects are long-lasting or permanent."); Heredia Eval. at 3 ("The withdrawal of HRT is likely to result in significant harm to Katie."). This evidence establishes, at minimum, that there are serious questions as to whether the prohibition on any evaluation for or provision of a recognized medical treatment constitutes a substantial

risk of serious harm to prisoners in Idaho. This court has found as much previously. Dkt. 58 at 9; Dkt. 96 at 9.

As the court recognized and noted in its first preliminary injunction, this case presents questions which "are unlikely to be resolved at any preliminary hearing [and] . . . will almost certainly require deliberative investigation." Dkt. 58 at 5; *see also* Dkt. 96 at 8. The parties are engaged in discovery and will put the issue before the court more fully in dispositive motions or at trial. *See* Dkt. 79, Scheduling Order. As such, Plaintiffs request this court reissue its preliminary injunction.

b. Irreparable Harm

Plaintiffs are at risk of irreparable harm in the form of "severe, ongoing psychological distress and [redacted]." *See Edmo v. Corizon, Inc.*, 935 F.3d 757, 797–98 (9th Cir. 2019) (collecting cases to conclude that distress and risk of self-harm constitute irreparable harm). In *Edmo*, the Ninth Circuit affirmed the district court's finding of irreparable harm where the lack of gender-affirming treatment caused plaintiff "'clinically significant distress,' meaning 'the distress impair[ed] or severely limit[ed] [her] ability to function in a meaningful way.'" *Id.* Both named plaintiffs have previously offered testimony about how hormone therapy alleviated the severe depression and suicidality they experienced due to their gender dysphoria and their fears about the impact on their mental health of having that care withdrawn. *See* Dkt. 80-2 at ¶¶ 9-10; Dkt. 80-3 at ¶¶ 9; Dkt. 2-2, at 5; Dkt. 2-4, at 4.

In its December 3, 2024, opinion, the court requested "testimony from a medical expert who had evaluated [the named plaintiffs] individually." Dkt. 96 at 10. Plaintiffs' counsel retained Dr. Misty Wall, PhD, MSSW, LCSW, to conduct evaluations of Plaintiffs. Dr. Wall is a clinical social worker based in Meridian, Idaho who has extensive experience evaluating and treating individuals with gender dysphoria. Ex. A, Wall CV at 1-2; Mills Eval. at 1; Heredia Eval. at 1.

Dr. Wall was provided with and reviewed the IDOC medical records of both named plaintiffs. Mills Eval. at 1; Heredia Eval. at 1. On February 3, 2025, Dr. Wall met individually with Ms. Mills and

Ms. Heredia for approximately two hours each to assess each woman's medical need for the hormone therapy they are currently being prescribed and the expected impact on their health of withdrawing that care. Mills Eval. at 1; Heredia Eval. at 1.

Dr. Wall's evaluations reported that each woman's history reflects "consistent and persistent identification with a gender different from that assigned at birth." Mills Eval. at 2; Heredia Eval. at 2. Prior to receiving hormone therapy, they each suffered profound symptoms from gender dysphoria [redacted] Mills Eval. at 2; Heredia Eval. at 2.

[redacted] *See* Mills Eval. at 2; Heredia Eval. at 2. [redacted]

The reports further noted that socially transitioning, which both women had done for some time prior to starting hormone therapy, did not alleviate the symptoms of gender dysphoria as hormone therapy has. *See* Mills Eval. at 2-3; Heredia Eval. at 2-3.

Dr. Wall concluded that withdrawing hormone therapy from Plaintiffs would cause each woman severe harm. *See* Mills Eval. at 3-4; Heredia Eval. at 3-4. [redacted]

In Ms. Heredia's case, Dr. Wall noted that, "[a] review of Katie's history confirms that use of HRT has been pivotal to reducing gender dysphoria to manageable levels." Heredia Eval. at 3. [redacted]

Dr. Wall also noted that withdrawing care by titration, or gradually lowering hormone levels until withdrawal, does not change the expected negative impact on plaintiffs' health of withdrawing the care. Mills Eval. at 4; Heredia Eval. at 4.

Dr. Wall concluded that, for each woman, hormone therapy is the medically necessary care to treat their gender dysphoria and "essential to safeguarding [their] physical and mental health and preventing further harm." Mills Eval at 3-4; Heredia Eval. at 4.

Dr. Wall's recommendation that their care be continued is in agreement with the recommendations of the treating physicians at IDOC and of the IDOC-contracted physician managing their hormone therapy *See, e.g.*, Dkt. 40-5 at 3, 5 (IDOC policy providing that inmates will be evaluated for gender dysphoria by a qualified evaluator and that inmates will only "be eligible to receive hormone replacement therapy if medically necessary and as identified in their treatment plan"); Dkt. 40-7 at 8, 10 ([redacted]); Dkt. 40-6 at 5-6 ([redacted]).

The psychological harms, [redacted], and denial of plaintiffs' constitutional rights all constitute irreparable harm. *See Nelson v. NASA*, 530 F.3d 865, 882 (9th Cir. 2008) ("[C]onstitutional

violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm."), *rev'd and remanded on other grounds*, 562 U.S. 134 (2011).

c. Public Interest and Balance of the Equities

Where the state is a party, the balance of hardships and public interest prongs merge. Plaintiffs' evidence of irreparable harm shows the hardships they will face if they are denied their hormone therapy. On the other hand, Defendants have not presented any evidence that they will be unduly burdened by complying with their own policies as in effect prior to July 1, 2024. *See* Dkt. 58 at 10-11. Additionally, the public interest in preventing constitutional violations favors plaintiffs. *See Porretti*, 11 F.4th at 1050-51. Therefore, the balance of hardships tips sharply in favor of the plaintiffs.

III. The Preliminary Injunction Complies with the PLRA's Needs-Narrowness-Intrusiveness Requirements

The court's preliminary injunction should be reissued prior to its expiration as it extends relief which 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). "[W]hat the PLRA requires, is a finding that the set of reforms being ordered—the 'relief'—corrects the violations of prisoners' rights with the minimal impact possible on defendants' discretion over their policies and procedures." *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1071 (9th Cir. 2010).

The need for the court's injunction has not changed since it was initially issued in September or reissued in December. The challenged act continues to be part of Idaho Code, I.C. § 18-8901, the Defendants remain committed to enforcing and/or complying with the Act, and class members continue to have a need for hormone therapy. *See* Mills Eval. at 3; Heredia Eval. at 3. The relief provided by the court remains as necessary today as when it was issued.

The court's order is narrowly drawn—limited to a certified class and a particular treatment, hormone therapy. It makes no decisions as to any individual class member's medical care; and it allows

the state to design the procedure for ensuring compliance. *See* Dkt. 58 at 24 ("Plaintiffs are seeking to enjoin only a portion of the Act—the hormone provision—as to only a small portion of population—the proposed class. The class will remain subject to the rest of the Act, and the rest of Idaho will remain subject to the entirety of the act."); Dkt. 96 at 12 ("The scope of the preliminary injunction Plaintiffs requested only enjoins the enforcement of the Act as it applies to class members receiving hormone therapy. And that is the scope of the Court's prior order.").

The preliminary injunction also does not require a finding that gender-affirming hormone therapy is required for any particular class member. It only prohibits the blanket ban on evaluation and treatment set forth in the Act. It is within IDOC's authority to establish procedures for diagnosing and prescribing the care at issue. The court is not required to evaluate or second-guess the findings of IDOC's own contracted medical providers. Thus, the court's order extends no further than necessary to correct the violation.

Indeed, the relief is unintrusive as it allows defendants to return to its own pre-July 1st policy on how to provide gender affirming hormone therapy. *Schwarzenegger*, 622 F.3d at 1071 (holding relief was unintrusive where "the district court left to defendants' discretion as many of the particulars regarding how to deliver the relief as it deemed possible") (citing *Lewis v. Casey*, 518 U.S. 343, 362–63 (1996)). The court's order does not dictate any policies or procedures for ensuring compliance. It merely prevents the enforcement of the constitutionally suspect Act. *See Armstrong v. Brown*, 768 F.3d 975, 985 (9th Cir. 2014) ("The Modified Injunction says nothing about how the State should implement compliance . . . ; it provides no mandates for how the prison should run its facilities, house prisoners, or conduct its daily administration."). The relief is thus "the least intrusive means necessary to correct the violation of the Federal right." *See* 18 U.S.C. § 3626(a)(1)(A).

CONCLUSION

The court's December 3, 2024 preliminary injunction "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). Because none of the predicates for that decision have changed, Plaintiffs respectfully request that the court issue a third preliminary injunction prior to the expiration of the current preliminary injunction on March 3, 2025.

Dated: February 7, 2025

Respectfully submitted,

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