

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JANE DOE,

Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF
CORRECTION; THOMAS A. TURCO III;
SEAN MEDEIROS; JAMES M. O’GARA JR.;
and STEPHANIE COLLINS,

Defendants.

Civil Action No. 1:17-CV-12255-RGS

**PLAINTIFF JANE DOE’S OPPOSITION TO THE UNITED STATES
OF AMERICA’S MOTION FOR EXTENSION OF TIME TO INTERVENE**

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Plaintiff Jane Doe opposes the United States' motion requesting an additional 60 days to intervene under Federal Rule of Civil Procedure 5.1. As discussed below, Plaintiff Jane Doe would be prejudiced by any extension and the request by the United States is unreasonable as they have already intervened and submitted briefing on the legal questions at issue in this case in other matters.

On February 2, 2018, Ms. Doe filed a notice, alerting the United States to the constitutional questions raised in Ms. Doe's Opposition to Defendants' Motion to Dismiss and Motion for Preliminary Injunction. *See* Dkt. No. 36. Then on February 28, 2018, this Court certified the constitutional question to the Attorney General pursuant to Fed. R. Civ. P. 5.1(b) and 28 U.S.C. § 2403. Dkt. No. 57. The United States now seeks to extend its deadline to intervene to June 29, 2018. The requested 60 day extension will severely prejudice Ms. Doe, as she continues to suffer harm from Defendants' practices and policies.

Ms. Doe is a transgender woman currently housed at MCI-Norfolk, a men's correctional facility. As set forth in Ms. Doe's Opposition to Defendants' Motion to Dismiss (Dkt. No. 33), Motion for Preliminary Injunction (Dkt. No. 35), and her affidavits (Dkt. Nos. 35-3 & 48), Ms. Doe experiences trauma and serious harm as a result of her placement in a men's facility and Defendants' failure to treat her in accordance with her gender identity. Ms. Doe specifically challenged Defendants' policies and practices regarding showering and strip searches, as her inability to shower outside of the presence of men and be strip searched by female corrections officers is psychologically damaging and undermines her medical treatment plan.

While this Court granted partial injunctive relief to alleviate some of the harm that Ms. Doe experiences, Ms. Doe's claims cannot be fully addressed until the deadline for the United States to intervene has passed. Dkt. No. 59. Furthermore, Defendants' policies and practices

continue to exacerbate the trauma and harm that led Ms. Doe to initiate this case. For example, following this Court's March 5 order, Defendants proposed that instead of assigning female corrections officers to conduct strip searches of Ms. Doe, that they assign female officers to search Ms. Doe from the waist up and assign male officers to search Ms. Doe from the waist down. In her Motion for Reconsideration, Ms. Doe explained that such a "humiliat[ing] [and] denigrat[ing]" proposal violates the standards set forth in the Prison Rape Elimination Act and "undermine[s] her medical treatment plan." Dkt. No. 66 at 4. The Court, however, denied Ms. Doe's motion, stating that "[t]he plaintiff's present arguments on the subject of strip searches are best made when the court moves to an adjudication on the merits, following the closing of the window of the Attorney General's right to intervene." Dkt. No. 67. Ms. Doe, therefore, continues to suffer harm while this Court reserves its ruling on the motion to dismiss.

Moreover, an expectation that the United States would intervene within the time allotted by law is especially reasonable in this case. The relevant authorities and considerations have been available through the parties' briefing. The United States has already analyzed this same legal question and taken positions on the issues including declining to file in one case, *see* Notice of Decision Not to Intervene, *Edmo v. Corizon Inc.*, No. 1:17-cv-00151-BLW (D. Idaho Mar. 23, 2018), Dkt. No. 57, and filing extensive briefs in another. *See* Second Statement of Interest of the United States of America, *Blatt v. Cabela's Retail, Inc.*, No. 5:14-cv-4822-JFL (E.D. Pa. Nov. 16, 2015)¹.

Plaintiff respectfully asks this Court to deny the United States' request for an extension of time to intervene.

¹ In *Blatt*, the United States submitted briefs that support Ms. Doe's position and legal arguments in the present case.

/s/ J. Anthony Downs
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Dated: April 13, 2018

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, filed with the Clerk via the CM/ECF system, will be sent electronically to registered participants as indicated on the Notice of Electronic Filing (NEF), and paper copies will be sent to non-registered participants this 13th day of April, 2018.

/s/ J. Anthony Downs