

respectfully move this Court for an Order extending the time to respond to Plaintiff's *Motion for Preliminary Injunction* (Dkt. 62).

The grounds upon which this motion is based are set forth in the *Memorandum of Support of the IDOC Defendants' Motion for Extension of Time and Declaration of Counsel Brady J. Hall*.

IDOC Defendants further request that this Court set an immediate status conference to schedule briefing deadlines for the Plaintiff's *Motion*, along with litigation and discovery plans, since no discovery has been undertaken in this case thus far.

DATED this 4th day of June, 2018.

Moore Elia Kraft & Hall, LLP

/s/Brady J. Hall

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2018, 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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support containing all of the reasons and points and authorities in support of the *IDOC Defendants' Motion for Extension of Time*.

BACKGROUND AND FACTS

Ms. Edmo commenced this lawsuit on April 6, 2017, by filing a *Civil Rights Complaint* with the United States District Court in and for the District of Idaho. (Dkt. 3, p. 1). Also on April 6, 2017, Ms. Edmo filed a *Motion for Temporary Restraining Order and Preliminary Injunction Order* (Dkt. 7-1), seeking “an individualized medical examination, and a plan of treatment by a qualified, prudent, specialist with substantial experience and/or expertise in treating individuals with gender dysphoria, and to a [sic] preliminary injunction requiring the Defendants to carry out that plan of treatment by such specialist.” (Dkt. 7-1, pp. 3-4).

On April 14, 2017, the Hon. Ronald E. Bush, U.S. Magistrate Judge, entered an *Initial Review Order*, allowing Ms. Edmo to proceed on her Eighth Amendment medical treatment claims, her related negligence and medical malpractice claims, and her equal protection claims against the Corizon and IDOC Defendants. (Dkt. 12, p. 22). Judge Bush also granted Ms. Edmo’s *Motion for Appointment of Counsel*. (*Id.*, p. 23).

On June 8, 2017, Ms. Edmo filed an *Amended Complaint* and on June 19, 2017, counsel appeared for her in this lawsuit. (Dkt. 25, Dkt. 26, Dkt. 27). On June 22, 2017, Ms. Edmo withdrew her first *Motion for Temporary Restraining Order and Preliminary Injunction Order*. (Dkt. 29). She filed her *Second Amended Complaint* on September 1, 2017, which included a number of new claims not previously asserted in Ms. Edmo’s two prior Complaints. (Dkt. 36).

On September 22, 2017, the parties filed a *Joint Motion and Stipulation Re: Defendants' Answers/Responsive Pleadings*, wherein the parties agreed to reset the case management deadlines to allow Defendants to extend the deadline to file their responsive pleadings to Ms.

Edmo's *Second Amended Complaint* until November 1, 2017. (Dkt. 37). On that date, the IDOC Defendants filed their *First Motion for Dispositive Relief*, seeking dismissal of a number of Ms. Edmo's claims on the grounds that they had not been properly exhausted, or were not filed within the applicable statute of limitations. (Dkt. 39). These Defendants further moved for dismissal of Ms. Edmo's state negligence claims, along with her claims under the Americans with Disabilities Act and the Affordable Care Act. (*Id.*). Oral argument on the Defendants' *First Motion for Dispositive Relief* was heard on April 4, 2018, and the Court took the issue under advisement.

Less than two months later, on June 1, 2018, Ms. Edmo filed *Plaintiff's Notice of Motion and Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support Thereof*. (Dkt. 62). In the *Motion*, Ms. Edmo moved the Court for the issuance of a preliminary injunction:

1) ordering Defendants to provide her immediate access to necessary medical treatment, including (a) sex-reassignment surgery; (b) reinstatement of spironolactone, or an equivalent type of care; (c) access to gender-appropriate underwear, clothing, and commissary items; (d) any other treatment a medical professional qualified to assess and treat gender dysphoria determines to be medically urgent; and 2) prohibiting Defendants from (a) implementing their policy and/or practice of blanket denial of access to such treatment for transgender persons incarcerated in the Idaho Department of Corrections; and (b) disciplining or retaliating against Plaintiff for expressing her gender identity, including wearing gender-appropriate underwear and clothing, and adhering to female grooming standards with regards to makeup and hair styling.

(Dkt. 62, p. 2). These issues are very similar to the injunctive relief sought by Ms. Edmo in her *Second Amended Complaint*. (Dkt. 36, p. 24). The Docket text for the Plaintiff's *Motion* stated that the Defendants' responses are due within 21 days, by June 22, 2018. The parties have not yet been permitted to engage in discovery on any of Ms. Edmo's claims.

LEGAL STANDARDS

Federal Rule of Civil Procedure 6(b)(1) provides the procedure for a party seeking an extension of time for responding to motion:

(b) Extending Time.

- (1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:
 - (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
 - (B) on motion made after the time has expired if the party failed to act because of excusable neglect.
- (2) Exceptions. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

Fed. R. Civ. P. 6. Similarly, Dist. Local Rule Civ. 6.1 states that a request for time extension will be granted only upon a showing of good cause.

Federal Rule of Civil Procedure 6 “[is] to be liberally construed to effectuate the general purpose of seeing that cases are tried on the merits.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258–59 (9th Cir. 2010) (quoting *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir.1983)). Furthermore, pursuant to Rule 1 of the Federal Rules of Civil Procedure, all Federal Rules should be “construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.” As a result, requests for extensions of time made before the expiration of the applicable deadline should “normally ... be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.” 4B Fed. Prac. & Proc. Civ. § 1165 (4th ed. 2008). “Good cause” is a non-rigorous standard that has been construed broadly across procedural and statutory contexts. *Ahanchian*, 624 F.3d at 1259.

ANALYSIS

Good cause exists to grant the IDOC Defendants' *Motion for Extension of Time* for several reasons. First, the issues in this case are a matter of first impression in Idaho. Ms. Edmo raises a number of issues in her *Motion for Preliminary Injunction* which is supported by detailed testimony from two retained experts, along with testimony by Ms. Edmo herself. The issues presented in Ms. Edmo's *Motion* are important and complicated. Accordingly, Ms. Edmo's *Motion* is owed a complete response by the IDOC Defendants, in order to allow for the just determination of this action on the merits.

Second, this Court has yet to issue its decision on these Defendants' *First Motion for Dispositive Relief* (Dkt. 39-43). In their *First Motion for Dispositive Relief*, the IDOC Defendants sought the dismissal of a number of claims for which Plaintiff seeks relief in her *Motion for Preliminary Injunction*. For example, IDOC Defendants sought dismissal of Plaintiff's claims under 42 U.S.C. § 1983 challenging IDOC's policies prohibiting her from possessing or wearing women's makeup. (Dkt. 43, pp. 5-8). In addition, IDOC Defendants sought dismissal of Plaintiff's claims under the Affordable Care Act, 42 U.S.C. § 18116, another claim upon which Plaintiff has based her *Motion for Preliminary Injunction*.

Furthermore, at this early juncture, the parties have not engaged in any discovery. No scheduling conference has been ordered in this case, nor have the parties to this matter participated in the Rule 26(f) conference or exchanged initial disclosures. Presumably, a scheduling conference will not be set until this Court narrows the issues for trial and issues its decision on the IDOC Defendants' *First Motion for Dispositive Relief*. The Plaintiff's *Motion for Preliminary Injunction* provides testimony from Ms. Edmo and two of her retained experts in this case. Because discovery has not yet begun, the Declarations in support of Ms. Edmo's

Motion represent the first time that these Defendants have received any testimony regarding Ms. Edmo's condition, her need for sex re-assignment surgery, or the alleged inadequacies of the medical care provided to date. IDOC Defendants have not yet been afforded the opportunity to conduct any discovery, including the taking of depositions, to evaluate and assess such testimony. Such discovery is essential to the IDOC Defendants' response to Ms. Edmo's *Motion*.

In addition, IDOC Defendants need significant time to review the testimony of Ms. Edmo and the supporting Declarations of Dr. Ettner and Dr. Gorton. Again, because no discovery has been conducted in this case, the first time that these Defendants received these opinions was at the time of the filing of Plaintiff's *Motion for a Preliminary Injunction*. Accordingly, these Defendants need additional time to evaluate the testimony, identify the appropriate experts and witnesses to address and respond to such testimony, and provide the relevant evidence, testimony, and medical records to any defense experts for their review and analysis. Similarly, the IDOC Defendants need additional time to interview Ms. Edmo's treatment providers regarding the allegations set forth in Ms. Edmo's *Declaration*, the *Declaration* of her counsel, and the *Declarations* of her retained experts, Dr. Ettner and Dr. Gorton. As this Court is aware, IDOC contracts with Corizon to provide medical care for the inmates housed at its facilities. Corizon is a named Defendant in this lawsuit and the IDOC Defendants need to arrange any interviews regarding Ms. Edmo's care through counsel.

It appears that, at this time, Ms. Edmo's experts have not reviewed her complete medical history and records prior to providing their opinions regarding Ms. Edmo's need for sex-reassignment surgery, reinstatement of her spironolactone, and access to gender-appropriate clothing and other items. (*Declaration of Lori Rifkin*, Dkt. 62-1, ¶ 3). In compliance with Ms. Edmo's May 14, 2018, formal request for medical records, counsel for the Corizon Defendants

provided Ms. Edmo's counsel copies of her medical records just days before Ms. Edmo filed her *Motion for Preliminary Injunction*. As such, it is unclear whether Ms. Edmo's experts have reviewed those records or if their opinions will change after reviewing them. Certainly, this Court would benefit from complete opinions from Ms. Edmo's experts based on their review of Ms. Edmo's entire medical history.

This Court would further benefit from a complete and full response from the IDOC Defendants regarding Ms. Edmo's pre- and post-incarceration history, particularly in regards to her testimony that she was living as a woman prior to being incarcerated in 2012. Furthermore, IDOC Defendants request additional time to provide this Court with testimony and other evidentiary support regarding Ms. Edmo's behavior and treatment during her time as an inmate. The materials filed with this Court on the Plaintiff's *Motion for a Preliminary Injunction* do not show the complete picture of Ms. Edmo's history or the medical and mental health treatment she has received. As such, these Defendants request additional time to demonstrate the full context of Ms. Edmo's incarceration and treatment.

In addition, Ms. Edmo will not be prejudiced by an extension of time for these Defendants to respond to her *Motion for a Preliminary Injunction*. Ms. Edmo previously filed a *Motion for Temporary Restraining Order and Preliminary Injunction Order* on April 6, 2017 (Dkt. 7-1) and later withdrew that *Motion* on June 22, 2017, after appointment of counsel (Dkt. 29). Nearly one year later, Ms. Edmo has re-filed her *Motion*. In that time, Ms. Edmo has remained in the custody of IDOC, where she continues to receive treatment for her Gender Dysphoria and has access to mental health and medical treatment.

Regarding her current condition, during Ms. Edmo's exam with Dr. Gorton, she denied active suicidal ideations with "vague thoughts" of non-suicidal self-injury. She rated her anxiety

as a 3/10, depression 4/10, and her gender dysphoria as a 7/10. (Dkt. 62-1, p. 55). Furthermore, Dr. Gorton opines that Ms. Edmo must be referred to an “appropriate surgeon” for sex re-assignment surgery “as soon as possible but at a minimum within the next 6 months.” (Dkt. 62-1, p. 87) (emphasis added). Six months is the minimum amount of time that these Defendants require to conduct the appropriate discovery and expert review in order to adequately respond to Ms. Edmo’s request for a preliminary injunction.

Finally, twenty-one days does not provide these Defendants with adequate notice and an opportunity to be heard on the many issues raised by Ms. Edmo in her *Motion* and supporting *Declarations*. Allowing for additional time to respond to Plaintiff’s *Motion* will assist in providing these Defendants with the requisite due process they are owed on such a *Motion*. The IDOC Defendants require adequate time to evaluate the Plaintiff’s claims and to prepare a comprehensive response to Ms. Edmo’s *Motion*. Without additional time, the IDOC Defendants will not be provided an ample opportunity to be heard and this Court will not be provided with the necessary evidence and context to make a thorough decision. Accordingly, the IDOC Defendants respectfully request that this Court grant their *Motion for Extension of Time* of a minimum of six months. In addition, these Defendants request that this Court immediately set a status conference to discuss the briefing and discovery schedules in this case.

CONCLUSION

For the foregoing reasons, the IDOC Defendants respectfully request that this Court grant the *IDOC Defendants’ Motion for Extension of Time to Respond to Plaintiff’s Motion for Preliminary Injunction* and allow these Defendants a minimum of six months to conduct discovery, retain expert witnesses, and prepare a full and complete response to the Plaintiff’s *Motion*. IDOC Defendants further request that this Court set an immediate status conference to

schedule briefing deadlines for the Plaintiff's *Motion*, along with litigation and discovery plans.

DATED this 4th day of June, 2018.

Moore Elia Kraft & Hall, LLP

/s/Brady J. Hall

*Attorneys for Defendants Idaho Department of
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Keith Yordy, Richard Craig, and Rona Siegert*

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