

Case No. 19-35917

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ADREE EDMO, AKA MASON EDMO,  
*Plaintiff-Appellee,*

v.

CORIZON, INC., et al.,  
*Defendants-Appellants*

and

IDAHO DEPARTMENT OF CORRECTIONS, et al.,  
*Defendants-Appellants*

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On Appeal from Orders of the United States District Court  
For the District of Idaho  
(No. 1:17-cv-00151-BLW)

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**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3**

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## CIRCUIT RULE 27-3(a) CERTIFICATION

On October 24, 2019, the district court issued an order modifying an injunction it had originally issued on December 13, 2018 (hereinafter “Modified Injunction”).<sup>1</sup> ECF No. 225. The Modified Injunction required Defendants to provide 1) laser hair removal or electrolysis beginning on November 8, 2019, 2) a gender confirmation surgery (“GCS”) referral letter from a treating physician, and 3) payment approval for the surgery. *Id.* at 2-3. Defendants filed a notice of appeal on October 31, 2019. ECF No. 227. This case is proceeding on an expedited appeal from a preliminary injunction, pursuant to Circuit Rule 3-3. Dkt. 2.

Defendants then filed with the district court a motion to stay the Modified Injunction pending this appeal (“Motion to Stay”). Defendants argued, among other things, that the district court did not have jurisdiction to order the specific treatment, including permanent hair removal, and had denied them due process because the court modified the injunction without allowing Defendants an opportunity to be heard. On November 8, 2019, the district court denied the Motion to Stay. However, the district court vacated the November 8, 2019 deadline for starting Plaintiff Adree Edmo’s hair removal treatments. Further, the district court is now seeking to address, post-hoc, some of Defendants’ issues raised in this appeal with an evidentiary

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<sup>1</sup> For ease of reference, Defendants will refer to the district court docket with the designation “ECF No.” and the Ninth Circuit docket with the designation “Dkt.”.

hearing that is scheduled for November 21, 2019 (a little over a week away). The district court should not be allowed to substantially alter the record, which would moot some of Defendants' arguments on appeal.

Accordingly, Defendants request that this court quickly grant a stay of the district court's October 24, 2019 order and any related evidentiary hearing. The other issues raised in this motion were raised in Defendants' Motion to Stay, which was denied by the district court.

Pursuant to Circuit Rule 27-3, Defendants' counsel contacted Ms. Edmo's counsel by email on November 13, 2019 and informed Ms. Edmo's counsel that Defendants intended to file this motion. Further, Defendants' counsel called the Ninth Circuit Court Clerk's emergency motion telephone line and left a message informing the clerk that this motion was being filed.

## **I. INTRODUCTION**

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 district court lacked jurisdiction to modify the injunction, the modification of the injunction violated Defendants' due process rights, the Modified Injunction is contrary to the Eighth Amendment and the Prison Litigation Reform Act ("PLRA"), and the district court lacks jurisdiction to hold any evidentiary hearing regarding these issues while the appeals are pending. 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. Hair removal is not medically necessary for certain types of vaginoplasties. 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 in *Edmo v. Corizon*, No. 19-35017 and No. 19-35019 (*Edmo I*). And staying the Order will not result in any significant delay should the injunction be affirmed; not all vaginoplasty procedures require pre-surgical hair removal treatments.

## **II. BACKGROUND AND PROCEDURAL POSTURE**

This case is in a unique and complex procedural posture. In the operative

complaint, Ms. Edmo lists six claims for relief. (ECF No. 172 at 14-22). Each of these claims, including Ms. Edmo's Eighth Amendment claim, is primarily based on Ms. Edmo's allegation that Defendants have failed to provide necessary treatment for her gender dysphoria ("GD"). (*Id.* ¶¶ 61, 70, 83-84, 91, 99, and 102). Ms. Edmo filed a Motion for Preliminary Injunction and requested that the district court order Defendants to provide gender confirmation surgery ("GCS"). (ECF No. 62 at 10-16, 20).

On December 13, 2018, the district court granted Ms. Edmo's request for an injunction. (ECF No. 149 at 45). The court ordered Defendants "to provide Plaintiff with adequate medical care, including gender confirmation surgery," but did not further specify what care Ms. Edmo should receive or what type of GCS the Court intended for Ms. Edmo to undergo. (*Id.* at 45). Defendants appealed the district court's order, and the Ninth Circuit stayed the injunction. Among other issues raised on appeal, Defendants argued that the injunction was overbroad under the PLRA because it required Defendants to provide Ms. Edmo with gender confirmation surgery and "adequate medical care" but failed to provide any guidance regarding what type of surgery or medical care would be "adequate." *See Edmo I*, Dkt. 13-1 at 58. On appeal, a three-judge panel of the Ninth Circuit affirmed in part and vacated in part the injunction. The panel held that 1) the district court had properly converted the hearing to a final trial on the merits, 2) the district court did not err in determining

that Ms. Edmo had succeeded on the merits of her Eighth Amendment claim against Dr. Eliason, and 3) that the injunction did not violate the PLRA. *Edmo v. Corizon, Inc.*, No. 19-35017, 2019 WL 3978329, at \*20-30 (9th Cir. Aug. 23, 2019).

On September 6, 2019, Defendants filed a Petition for Rehearing En Banc. *Edmo I*, Dkt. 99. Defendants' Petition is pending before the Ninth Circuit. The injunction remains stayed while the Petition is pending. However, Ms. Edmo filed a motion to partially lift the injunction to require Defendants to provide "all presurgical treatments and any related corollary appointments or consultations necessary for gender confirmation surgery." *Edmo I*, Dkt. 101-1 at 17-18. The Ninth Circuit granted Ms. Edmo's motion. *Edmo I*, Dkt. 104.

At a subsequent status conference, the district court requested that Ms. Edmo prepare a filing, supported by a declaration from the GCS surgeon, detailing any required presurgical treatments and requirements. The district court then indicated it would order whatever Plaintiff requested based on that filing. The district court did not allow Defendants to file any response or present any evidence. Instead, based on Ms. Edmo's one-sided filing, the district 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. (*See* ECF Nos. 224 and 225).

Defendants have appealed the Modified Injunction. Among other issues, Defendants intend to argue on appeal that the Modified Injunction substantively

altered the original injunction because it requires Defendants to provide a certain type of GCS—a penile-inversion vaginoplasty. However, there is no evidence in the record to support a finding that a penile-inversion vaginoplasty is medically necessary for Ms. Edmo or that it is the only type of GCS that could adequately treat Ms. Edmo’s GD. Also, there was no finding as to whether the permanent hair removal procedure was medical necessary for Ms. Edmo. Further, the district court violated Defendants’ due process rights when it issued the Modified Injunction without allowing Defendants an opportunity to respond to Ms. Edmo’s filing.

Defendants requested that the district court stay the Modified Injunction pending appeal. (ECF No. 228.) The district court denied the motion to stay. (ECF No. 244.) However, the district court recognized that Ms. Edmo had not presented evidence that a penile-inversion vaginoplasty was the only type of GCS that could treat Ms. Edmo’s GD. Consequently, the district court ordered that the parties participate in a limited evidentiary hearing to determine what types of GCS would be medically appropriate treatment for Ms. Edmo and the required presurgical treatments for those surgeries. (ECF No. 244, pp. 17-18.) Defendants now move this court for an order staying the Modified Injunction and prohibiting the district court from conducting any post-hoc evidentiary hearing while the Modified Injunction is pending on appeal.

### III. 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*, 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)). Each of the *Nken* 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 court will resolve these serious legal questions in Defendants’ favor.

First, the district court lacked jurisdiction to modify the injunction because the modification materially altered the status of Defendants’ appeal in *Edmo I*. “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) (emphasis added). Any modification of an injunction must leave “unchanged the core questions” on appeal. *Id.* at 1167.

The Modified Injunction materially altered a core question already on appeal. In *Edmo I*, Defendants argued that the injunction is overbroad under the PLRA because the relief ordered was not narrowly tailored to correct the alleged constitutional violation. *See Edmo I*, Dkt. 13-1 at 58. The court’s modification of the injunction now seeks to substantively modify the injunction by narrowing the relief to a penile-inversion vaginoplasty, including electrolysis. In other words, the Modified Injunction at issue in this appeal undercuts one of Defendants’ primary arguments in *Edmo I*—that the injunction is overbroad under the PLRA. Thus, the district court lacked jurisdiction to make the significant and substantive modifications in the Modified Injunction.

Second, the court’s modification violated Defendants’ due process rights. “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 district court improperly invited only Ms. Edmo to submit evidence regarding the required pre-operative procedures. Then, when Ms. Edmo submitted her evidence, the district court did not give Defendants an opportunity to respond or object. Instead, the district court quickly issued an order that modified the injunction without any input from Defendants. Thus, the district court’s modification of the injunction completely

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). Under the Eighth Amendment, inmates do not have a right to choose a particular course of treatment. Rather, “to prevail on a claim involving choices between alternative courses of treatment, a prisoner must show that the chosen course of treatment was medically unacceptable under the circumstances, and was chosen in conscious disregard of an excessive risk to the prisoner’s health.” *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004) (quotation marks and alteration omitted). The district court violated these legal principles when it granted the Modified Injunction. The Modified Injunction effectively allowed Ms. Edmo to select between alternative courses of treatment based on Ms. Edmo’s preference, rather than medical necessity, in violation of Eighth Amendment and PLRA precedent.

Even if Ms. Edmo presented evidence that GCS is medically necessary, she failed to present evidence that a penile-inversion vaginoplasty is the only medically acceptable type of GCS to treat her GD. There are at least three different types of

vaginoplasties: 1) penile-inversion vaginoplasty, 2) colo-vaginoplasty, and 3) zero-depth vaginoplasty.<sup>2</sup> ECF No. 228-2 at 3-4 & 250-1. These are very different and distinct surgeries. In her recent filing with the district court, Ms. Edmo presented evidence establishing that a penile-inversion vaginoplasty is the most popular type of vaginoplasty, ECF No. 224-1 at 2, but not that a penile-inversion vaginoplasty is the only medically acceptable surgical treatment option for Ms. Edmo. Indeed, Ms. Edmo’s physician, Dr. Stiller, discussed all three surgical options with Ms. Edmo at her presurgical consultation on April 12, 2019, and has testified that all three options are medically-acceptable vaginoplasties. (ECF No. 250-1.)

Again, Ms. Edmo may not select which type of surgery she receives based on mere personal preference. *Toguchi*, 391 F.3d at 1058. Defendants’ obligation under the Eighth Amendment extends no further than providing Ms. Edmo a medically acceptable course of treatment. Ms. Edmo may not invoke the Eighth Amendment’s protections against proposed medical care unless she can demonstrate that the proposed care would be medically unacceptable. Case law is clear on this point: where a defendant has based their actions on a medical judgment that either of two alternative courses of treatment would be medically acceptable under the

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<sup>2</sup> As recognized by the World Professional Association for Transgender Health (“WPATH”) Standards of Care, GCS also includes various types of surgical procedures such as penectomies, orchiectomies, clitoroplasties, and vulvoplasties. (*Edmo I*, ER 2994, 3034.)

circumstances, plaintiff has failed to show deliberate indifference as a matter of law. *Toguchi*, 391 F.3d at 1058.

The question of whether any surgical procedures are, in fact, medically necessary is the subject of an active appeal with this Court and no determination has yet been made. In the event that a court ultimately and finally determines that Ms. Edmo is entitled to a vaginoplasty, Defendants – not Ms. Edmo – decide which type of vaginoplasty is medically necessary and sufficient to remedy the alleged constitutional violation. The different types of vaginoplasties are referred to in the WPATH standards, and Ms. Edmo’s consulting surgeon discussed these options with her at a pre-surgical consultation (ECF No. 250-1). Yet the district court continues to move the ball forward with the goal of providing Ms. Edmo permanent medical procedures in pursuance of a penile inversion surgery, the vaginoplasty that Ms. Edmo may prefer. Importantly, Ms. Edmo has not provided any evidence that a colo-vaginoplasty or zero-depth vaginoplasty would require hair removal.<sup>3</sup> ECF No. 228-2 ¶ 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 and the Eighth Amendment, and it materially alters the issues currently on

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<sup>3</sup> Defendants confirmed with the GCS surgeon, Dr. Stiller, that a colo-vaginoplasty and zero-depth vaginoplasty do not require hair removal. ECF No. 250-1. Moreover, the Corizon Regional Medical Director confirmed in her conversation with the surgeon that a colo-vaginoplasty does not require hair removal. ECF No. 228-2 at 4.

appeal.

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. *Toguchi*, 391 F.3d at 1058; *see also Roberts v. Spalding*, 783 F.2d 867, 870 (9th Cir. 1986) (“A prison inmate has no independent constitutional right to outside medical care additional and supplemental to the medical care provided by the prison staff within the institution.”). 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 Amendment violation. *See id.*

Dr. Marvin Alviso has been managing Ms. Edmo’s hormone therapy. ECF No. 228-2 at 5. Dr. Alviso is an independent physician who provides consultations and manages hormone therapy for some inmates with Gender Dysphoria. *Id.* 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.

Fourth, the district court does not have jurisdiction to hold an evidentiary hearing. Defendants have appealed the Modified Injunction. “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 . . . .’” *Nat. Res. Def. Council, Inc.*, 242 F.3d at 1166. 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). Some of the key issues on this appeal are 1) whether the district court violated Defendants’ due process rights by modifying the injunction without allowing Defendants an opportunity to respond to Ms. Edmo’s filing and 2) whether the Modified Injunction violates the PLRA. The district court must leave these “core questions” unchanged. *Id.* at 1167.

The district court has scheduled an evidentiary hearing that would substantially impact these issues. According to the district court’s order denying a stay, the hearing is meant to address four issues:

1. Whether colovaginoplasty would treat Ms. Edmo’s serious medical need for gender confirmation surgery.
2. Whether hair removal treatment, or any other pre-surgical

treatment is necessary for a medically successful outcome of a colovaginoplasty surgery.

3. Whether a zero-depth genital removal procedure would treat Ms. Edmo's serious medical need for gender confirmation surgery.
4. Whether hair removal treatment, or any other pre-surgical treatment is necessary for a medically successful outcome of the zero-depth procedure.

ECF No. 244 at 18. In many respects, the district court's acknowledgment that another evidentiary hearing is necessary is an acknowledgement that Ms. Edmo has never presented sufficient proof that a penile-inversion vaginoplasty is the only acceptable surgical treatment for Ms. Edmo's GD. Additionally, the district court apparently realized that it should have allowed Defendants an opportunity to respond to Ms. Edmo's filing and that the Modified Injunction may violate the PLRA. Consequently, it appears that the district court is attempting to cure its errors by performing a post-hoc evidentiary hearing. By doing so, the district court would fundamentally alter the "core questions" on appeal. Thus, this court should issue a stay.

**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 Modified Injunction 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 permanent hair removal, a GCS referral letter, and payment authorization (it is still not established what type of GCS procedure Defendants are required to pay for), this court 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 colo-vaginoplasty or zero-depth vaginoplasty. If the stay is lifted and there is a serious concern that delaying surgery will cause harm to Ms. Edmo, then one of those surgeries can be provided in a reasonable amount of time, without the hair removal process, rather than a penile-inversion vaginoplasty. Ms. Edmo has failed to present any evidence that a colo-vaginoplasty or zero-depth vaginoplasty would be “medically unacceptable under the circumstances.” *See Toguchi*, 391 F.3d at 1058. Similarly, obtaining a referral letter and payment authorization (for a

surgery that is still currently stayed) would not require any extensive waiting period. Consequently, Ms. Edmo will not be harmed by a stay of the Modified Injunction at this time.

**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 Modified 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.<sup>4</sup> “[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

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<sup>4</sup> Even if the district court were to hold a post-hoc evidentiary hearing, that would not cure Defendants’ due process violation because the district court lacks jurisdiction to hold the hearing.

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. Consequently, the public interest favors a stay.

In contrast, Ms. Edmo cannot show that the public interest is in her favor. Ms. Edmo will not suffer any harm from a stay of the Modified Injunction, especially since the surgery is still stayed and hair removal is not required for a colovaginoplasty or zero-depth 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 in *Edmo I*.

This 13<sup>th</sup> day of November, 2019.

s/ Dylan A. Eaton  
Dylan A. Eaton, ISB #7686

s/ Brady J. Hall  
Brady J. Hall, ISB #7873

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 13, 2019. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*s/ Dylan A. Eaton*

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J. Kevin West, ISB #3337

Dylan A. Eaton, ISB #7686

PARSONS BEHLE & LATIMER

*s/ Brady J. Hall*

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