

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CRISTINA NICHOLE IGLESIAS
(a.k.a. CRISTIAN NOEL IGLESIAS),

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, *et al.*,

Defendants.

Case No. 19-cv-00415-NJR

Judge Nancy J. Rosenstengel

**PLAINTIFF’S RESPONSE TO
DEFENDANTS’ FEBRUARY 25, 2022 STATUS REPORT**

On February 22, 2022, this Court ordered Defendants to “file weekly updates on contacts with the surgeon, the surgeon’s response, and any other items relating to Ms. Iglesias’s care” every Friday until further notice. ECF No. 200 at 2. On February 26, 2022, the Court provided that, “[a]s Defendants file weekly updates . . . every Friday, Iglesias’s counsel may file responses to the Defendants’ weekly updates every Wednesday” until further notice. ECF No. 205. Accordingly, Plaintiff submits her first such filing in response to Defendants’ February 25 Status Report, ECF No. 204 (“Feb. 25 Rep.”), and accompanying declaration from Dr. Alix McLearen, ECF No. 204-1 (“McLearen Decl.”).

Defendants’ February 25 report raises new questions about their preparations for gender-affirming surgery—and leaves many others still unanswered. There remain foreseeable (but preventable) delays as to surgery, permanent hair removal, and referral letters, as well as a considerable amount of crucial information on which Defendants are wholly silent.

I. DEFENDANTS' CURRENT PROPOSAL FOR MS. IGLESIAS'S MEDICALLY NECESSARY CARE INVITES YET MORE DELAYS.

A. DEFENDANTS' PROPOSED STEPS TO FIND A SURGEON WILL LEAVE MS. IGLESIAS IN LIMBO FOR SEVERAL MORE MONTHS, AT BEST.

In her declaration, Dr. McLearen reports that on February 25, she “ask[ed] [her] staff to inform the contractor (to inform the surgeon)” of certain facts and requests from the Bureau of Prisons (“BOP”). McLearen Decl. at ¶ 6. Specifically, she “noted that BOP is asking the surgeon to schedule a consultation, after which the surgeon could request additional information if needed, and determine whether they are willing to accept the patient.” *Id.* She also “noted that BOP’s contractor has held an appointment with the surgeon, and inquired if the surgeon is willing to meet with Ms. Iglesias on that date.”¹ *Id.*

BOP’s current best-case scenario thus appears to involve Ms. Iglesias having an initial consultation with the surgeon in early April 2022, *see* Feb. 22 Hearing Transcript (“Hearing Tr.”) at 84; the surgeon then requesting additional information, *see* McLearen Decl. at ¶ 6; BOP producing that additional information to the surgeon; BOP providing two referral letters to the surgeon, *id.*; the surgeon reviewing the letters and additional information; and only then making a decision on whether “they are willing to accept” Ms. Iglesias as a patient for surgery, *id.*² On this timeframe, Plaintiff will not know if the surgeon BOP has identified has even accepted her as a

¹ If the contractor has actually “held an appointment with the surgeon” on a certain date in April 2022, it is unclear why BOP must further “inquire[] if the surgeon is willing to meet with Ms. Iglesias on that date.” McLearen Decl. at ¶ 6. The fact that BOP is making these inquiries suggests that there is no initial consultation currently scheduled—and that there may not even be a hold on a date, such that Ms. Iglesias’s first consult will be yet further delayed.

² If the surgeon is unable to determine whether to accept Ms. Iglesias as a patient until after an in-person consultation, it is striking that Defendants either did not know or did not share this fact until last Friday, after repeatedly claiming to be waiting for an answer from the surgeon on accepting Ms. Iglesias’s case. *Compare* McLearen Decl. at ¶ 5-6 (representing that the surgeon will “determine whether they are willing to accept the patient” *after* a consultation appointment) *with* ECF No. 197-1 (Feb. 18 McLearen Declaration) (representing that “the surgeon’s decision on accepting Iglesias” will happen *before* a consultation appointment on April 4 or 7, 2022) *and* Hearing Tr. at 88 (“Q. And, do you know when the surgeon will decide whether or not to accept Ms. Iglesias as a patient? A. I do not know. We had hoped it was going to be last week.”).

patient (much less scheduled a surgery) *until mid-April, at the earliest*—nearly three months after BOP approved her for that medically necessary care.

Moreover, as it stands, Plaintiff’s first opportunity to learn the name of the surgeon and begin assessing the adequacy of their qualifications will arise only *after* these steps have taken place. *See* Hearing Tr. at 73 (“THE COURT: . . . But, certainly if that surgeon, once the review of the records is completed and a consult is accepted, I do think, of course, then, it would be appropriate for Plaintiff to know the name and the qualifications of that person.”). If the surgeon chosen by Defendants is revealed to be inadequate at that point, the search for a surgeon may need to begin all over again, with the result that three months—February, March, and April—will have been largely wasted. In the interest of efficiency and to avoid precisely this scenario, Plaintiff again requests to know the surgeon(s) to whom Defendants have reached out, *see id.* at 72-74, as the Court’s preliminary injunction originally anticipated, ECF No. 177 at 2.³

Defendants’ status report captures the deep uncertainty of the current situation: “In short, the surgeon has not yet made a decision about whether she would accept Ms. Iglesias as a patient for surgery, but the surgeon *appears to be open to potentially* accepting Ms. Iglesias as a patient *if* certain requirements are satisfied.” Feb. 25 Rep. at 1 (emphases added). There is no guarantee this surgeon will agree to take Ms. Iglesias on; no guarantee that any requirements can or will be satisfied; no guarantee that this surgeon is appropriately qualified; and no guarantee that the surgeon will have open surgery dates whenever Ms. Iglesias finishes permanent hair removal.

³ Defendants have had ample opportunity to discuss identifying the surgeon to Plaintiff with the surgeon and to register whether the surgeon in fact has any concerns. Yet Defendants do not appear to have even *asked* the surgeon if they are willing to have their name shared with Plaintiff, including under seal, and are opposing disclosure based on pure conjecture. *See* Hearing Tr. at 30 (testimony of Dr. McLearen) (“I am not sure that they would want their name mentioned in a Court proceeding . . . I didn’t ask”); ECF No. 197-1 (Feb. 18 McLearen Declaration) at 2 n.1 (noting only that the surgeon has not proactively “given any indication they approve of being identified here”). To the extent that Defendants’ concern is about the surgeon being named publicly, *see* Hearing Tr. at 72, Plaintiff invites Defendants to produce that information confidentially and subject to this case’s Protective Order, ECF No. 141.

Defendants have now wasted a full month since January 24 and have no surgeon confirmed, much less a surgery date scheduled—all with fewer than ten months remaining in Ms. Iglesias’s sentence.⁴

In the meantime, Plaintiff has identified a qualified surgeon able and willing to perform gender-affirming surgery for Ms. Iglesias, with sufficient calendar availability to fit her in when she finishes permanent hair removal. *See* ECF No. 186-3 at ¶ 14 (Santoro Declaration). Plaintiff provided this surgeon’s name and contact information to BOP on February 24, 2022, and would happily provide it to the Court as well. Defendants’ Report does not address whether BOP has asked its contractor to reach out to this surgeon. *See* Feb. 25 Rep. Plaintiff respectfully asks that Defendants’ future weekly reports update the Court about whether it has done so.

B. DEFENDANTS’ CONTINUED INACTION ON PERMANENT PRE-SURGERY HAIR REMOVAL WILL FURTHER DELAY ANY POSSIBLE SURGERY DATE.

Defendants continue to tether the start of permanent pre-surgery hair removal for Plaintiff to the not-yet-scheduled consultation with a surgeon, even though that consultation will not happen until April 2022 at the earliest—and even though all parties acknowledge that pre-surgery hair removal is both necessary and can take *up to 6 to 12 months*. *See* Hearing Tr. at 99-104. Despite agreeing that some transgender people receive permanent pre-surgery hair removal and gender-affirming surgery from two totally separate providers, *id.* at 103, Dr. McLearen still reports that “BOP believes it makes sense for the removal of hair at the surgical site to be part of the

⁴ Plaintiff welcomes Defendants’ update last week that BOP finally “took steps to broaden its search beyond the above-referenced surgeon” and determined with agency lawyers that Defendants can reach out to additional surgeons. McLearen Decl. at ¶ 7. Given that Defendants were able to determine that contacting multiple surgeons is permissible in a matter of days, it is unclear why this process could not have begun in January 2022, rather than pinning all of Ms. Iglesias’s hopes on a single surgeon who will not see her until April and may yet not accept her. *Compare* Hearing Tr. at 88 (“Q. Okay. Do you know if the rules would prevent outreach to multiple possible surgeons at the same time? A. That’s what I am not clear on.”) *with* Feb. 25 Rep. at 2 (“BOP determined that it was appropriate to ask the contractor to reach out to another surgeon (and potentially a third surgeon) while awaiting a decision from the first surgeon, and BOP so notified the contractor on February 24, 2022.”).

consultation with the surgeon” who will not decide whether to even accept Ms. Iglesias as a patient until April at the earliest. McLearen Decl. at ¶ 8.

On January 24, 2022, Defendants approved Ms. Iglesias for gender-affirming surgery but made no mention of permanent hair removal at that approval meeting, Hearing Tr. at 101-02, nor in their filings recounting that decision, ECF No. 183; ECF No. 183-1. One month later, on February 24, BOP finally began to explore other hair-removal options besides the surgeon (who has not agreed to take Ms. Iglesias on as a patient and who no one has confirmed actually employs someone to perform hair removal). McLearen Decl. at ¶ 8. According to Dr. McLearen, “BOP is requesting the contractor identify other options for hair removal at the surgical site” and “[t]he contractor was informed on February 24, 2022.” *Id.*

Defendants have thus written off the *45 days* between their January 24 decision to approve surgery and Ms. Iglesias’s March 10 transfer to a residential reentry center, during which BOP has made no effort to begin permanent hair removal by contracting with an outside vendor in Texas. BOP offers no justification for this inaction, but now notes, having not searched for any alternative provider, that “there are no BOP staff or *currently* contracted providers at FMC Carswell who can provide hair removal at the surgical site.” Feb. 25 Rep. at 2 (emphasis added).

As a result, Ms. Iglesias will move to the residential reentry center on March 10 with *no* progress made on permanent hair removal. Many questions remain. Why is there not a local hair-removal specialist already scheduled for an appointment in March? Why do Defendants still intend to delay the start of the lengthy hair-removal process an additional month (or more) until after Ms. Iglesias’s (potential) consult with the surgeon in April? This lack of preparation for permanent hair removal constitutes a foreseeable yet avoidable delay that—until resolved—will preclude Ms. Iglesias from being ready for surgery, even as the clock continues to run out. Defendants claim

that “[t]he surgeon indicated that the surgery could feasibly be completed by December 2022.” Feb. 25 Rep. at 1. But if permanent hair removal does not start until April 2022 and can take 6 to 12 months, Hearing Tr. at 99-104, that prediction may be sorely wrong.

C. DEFENDANTS CONTINUE TO DELAY ASSEMBLING REFERRAL LETTERS BY IGNORING WPATH GUIDELINES.

As Defendants have acknowledged since at least November 2021, any qualified surgeon will require two referral letters before performing Ms. Iglesias’s gender-affirming surgery. Nov. 22 Hearing Tr. at 106 (cross-examination of Dr. Ettner) (“Q. Now, the current WPATH standards of care requires two referrals for surgery, correct? A. From mental health professionals, yes.”). To excuse their delay in assembling such letters, Defendants now suggest that there is some question about whether letters are required after all. *See* Hearing Tr. at 32 (testimony of Dr. McLearen) (“We have asked through the contractor will these two letters be required. You know, we can -- we can make a supposition that they might be, but we don’t know for certain. We have not received an answer, and so we don't know what the contents would be specifically and exactly who they would need to come from.”). But the WPATH Standards of Care (“SOC”) are clear that two letters are required, that they must come from “qualified mental health professionals who have independently assessed the patient,” and that they should contain six specific pieces of content.⁵ *See* WPATH SOC at 27-28.

Defendants’ current plan that “the letters will be provided [to the surgeon] after the initial consultation” (with no indication of when they will be written or whether additional evaluations

⁵ Specifically, referral letters should contain (i) “[t]he client’s general identifying characteristics;” (ii) “[r]esults of the client’s psychosocial assessment, including any diagnoses;” (iii) “[t]he duration of the mental health professional’s relationship with the client, including the type of evaluation and therapy or counseling to date;” (iv) “[a]n explanation that the criteria for surgery have been met, and a brief description of the clinical rationale for supporting the patient’s request for surgery;” (v) “[a] statement about the fact that informed consent has been obtained from the patient;” and (vi) “[a] statement that the mental health professional is available for coordination of care and welcomes a phone call to establish this.” WPATH SOC at 27-28.

will be performed before Ms. Iglesias leaves their care at FMC Carswell next week) will only induce further delay. The WPATH Standards of Care clearly lay out the “recommended content of the referral letters for surgery,” *id.* at 27; *see supra* note 5, and Defendants are free to seek further guidance from other resources, including a wealth of online templates and guidelines.⁶ Assembling surgery-referral letters is a predictable and standardized part of preparations for gender-affirming surgery and there is no need to delay this step until April in order to craft bespoke letters for a particular surgeon. *Contra* McLearen Decl. at ¶ 6 (“[W]e need some detail as to what specific information the surgeon requires.”).

More broadly, Dr. McLearen disclosed at the February 2022 hearing that BOP expects “Dr. Munneke and Dr. Quick” to write the necessary referral letters for Ms. Iglesias. Hearing Tr. at 98. It is unclear whether the selection of these two individuals complies with the Standards of Care’s provision that, “[i]f the first referral is from the patient’s psychotherapist, the second referral should be from a person who has only had an evaluative role with the patient.” WPATH SOC at 27. Dr. Ettner, who has had only an evaluative role with respect to Ms. Iglesias, remains willing and able to write a surgery-referral letter, as she has done many times before. *See* Nov. 22 Hearing Tr. at 123-24; ECF No. 186-1 at ¶ 18 (Ettner Declaration).

II. DEFENDANTS’ REPORT LACKS IMPORTANT INFORMATION THIS COURT PREVIOUSLY REQUESTED CONCERNING THE SURGERY PROCESS.

In December 2021, this Court issued a preliminary injunction requiring Defendants to provide certain information if they approved Ms. Iglesias for gender-affirming surgery. ECF No. 176 at 60; ECF No. 177 at 2-3. Now that Defendants have approved Ms. Iglesias for surgery and the Court has again ordered Defendants to provide reports on their process for providing that care,

⁶ As just two examples among many, see online resources from the University of Wisconsin (<https://perma.cc/JPW3-3YJF>) and Mount Sinai Hospital (<https://perma.cc/N5QC-P6BV>).

ECF No. 200; *see* Hearing Tr. at 178, Plaintiff respectfully suggests that this important information be included in such status updates. Of the information contemplated in this Court’s December 27 order, Defendants have not yet furnished:

- a list of known and/or approved gender-affirming surgeons;
- a timeline regarding preparation BOP must do to ensure both it and Ms. Iglesias are ready for surgery;
- a timeline for Ms. Iglesias’s recovery;
- a list of other time-sensitive information the Court or parties should consider;
- a list of surgeons Defendants contacted, including dates the Defendants contacted those surgeons, the method of contact, and whether the surgeons have contacted them back;⁷
- the schedules of any such surgeons; nor
- a notice addressing the implications of Ms. Iglesias receiving gender-affirming surgery while in a residential reentry center.

Indeed, when asked if BOP has internally “developed a full timeline with all the steps that need to happen before surgery can occur” on February 22—almost a month after Ms. Iglesias was approved for surgery—Dr. McLearen flatly answered, “No.” Hearing Tr. at 61.

Defendants’ lack of meaningful planning has real consequences on the steps necessary to prepare for Ms. Iglesias’s gender-affirming surgery. For example, as Dr. McLearen reported in her declaration, the potential surgeon’s impression is that Ms. Iglesias’s “social situation” in the residential reentry center will be such that “she would not have much help,” which is a “factor[] that go[es] into the[ir] decision to offer surgery” and accept her as a patient. McLearen Decl. at ¶ 5. Like the potential surgeon, Plaintiff too has significant concerns about the ability of the residential reentry center to provide safe, clean, stable, and affirming support for her with respect to her surgery.⁸ But because Defendants “don’t think [plans] need to be made now” for Ms.

⁷ Defendants have thus far provided vague representations about surgeon outreach and communications passed to and from a particular surgeon via their contractor. *See, e.g.*, Feb. 25 Rep.; McLearen Decl.; Hearing Tr. at 46-51, 85-86. These representations fall well short of the detailed information the Court requested in its December 2021 injunction, which has hampered Plaintiff’s ability to evaluate Defendants’ proposed plans for her medically necessary care.

⁸ Given that Dr. McLearen did not know whether Banyan, the residential reentry center to which Ms. Iglesias will be transferred next week, had ever had any transgender residents before, Plaintiff remains eager to learn more about the implications of her receiving gender-affirming surgery while at a residential reentry center. *See* Hearing Tr. at 56.

Iglesias's "receipt of surgery and recovery therefrom," Hearing Tr. at 55-56, it is urgent that they develop and share a full timeline and treatment plan to assure this Court and Plaintiff that she will be able to get gender-affirming surgery and recover before her sentence ends in December 2022.

Dated: March 2, 2022

Respectfully submitted,

/s/ Frank Battaglia

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CERTIFICATE OF SERVICE

I certify that on March 2, 2022, I electronically filed the foregoing document with the Clerk of this Court by using the CM/ECF system, which will accomplish service through the Notice of Electronic Filing for parties and attorneys who are Filing Users.

Dated: March 2, 2022

/s/ Frank Battaglia
Frank Battaglia