

**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’ MARCH 4, 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 second such filing in response to Defendants’ March 4, 2022 Status Report, ECF No. 212 (“Mar. 4 Rep.”), and accompanying declaration from Jenna Epplin, ECF No. 212-1 (“Epplin Decl.”).

I. DEFENDANTS MUST IMMEDIATELY BEGIN PERMANENT PRE-SURGERY HAIR REMOVAL—BUT STILL HAVE NO PLAN TO DO SO.

Despite Ms. Iglesias’s repeatedly stated concerns about the effects of delaying permanent hair removal at the surgical site, Defendants’ most recent status report reflects a total lack of progress in securing hair removal—and even adds new barriers to starting this necessary and lengthy process. The record is clear that Defendants made no effort to arrange for permanent hair removal at the surgical site until after the Show Cause Hearing in February, *see* McLearn Decl., ECF 204-1 at ¶ 8, opting instead to tether hair removal to Ms. Iglesias’s consultation with a surgeon

in April and assume without foundation that the surgeon would handle removal, Feb. 22, 2022 Hearing Transcript (“Hearing Tr.”) at 100-01. Now, in March, Defendants have revealed that proposed Surgeon 1 in fact does not conduct permanent pre-surgery hair removal nor recommends any particular hair-removal provider. Mar. 2 Rep. at 2. As of today—only one day before Ms. Iglesias is set to move to Miami—Defendants still have not identified *any options* in Florida to conduct the months-long process of permanent pre-surgery hair removal.

Moreover, Defendants now state with respect to “hair removal” that Ms. Iglesias “must be seen for evaluation before anything else is ordered.” Epplin Decl. at ¶ 6 (quotation marks omitted). This appears to be yet another new procedural barrier to Ms. Iglesias getting her medically necessary care, as this is the first time Defendants have mentioned that additional evaluation is needed before Ms. Iglesias can start permanent hair removal. Defendants’ Transgender Executive Council approved Ms. Iglesias for gender-affirming surgery in January 2022. Hearing Tr. at 60:13-14. All parties agree that permanent hair removal at the surgical site is necessary for the gender-affirming surgery to take place and may take up to twelve months. *See* Hearing Tr. at 100-02; Pl’s Response at 3-4; Ettner Decl. at ¶ 20. Further evaluation is not necessary to start this process. Once again, Ms. Iglesias requests that Defendants *immediately* identify a provider and set up a first appointment.

II. DEFENDANTS STILL HAVE YET TO SECURE A SURGEON.

In response to the February 22, 2022 Show Cause Hearing, Defendants began contacting additional surgeons beyond the sole surgeon they had previously identified that month. McLearn Decl., ECF 204-1 at ¶ 7. Defendants’ March 4 Status Report explains that they identified two additional potential surgeons. Mar. 4 Rep. at 2. But the second surgeon (“Practice 2”) declined to accept Ms. Iglesias as a patient based in part on concerns about her lack of support while in a

residential reentry center,¹ while the third surgeon (“Practice 3”) declined without explanation. Mar. 4 Rep. at ¶¶ 7-9. Counsel for Defendants have since informed Plaintiff’s counsel that they have identified another surgeon, who is available for a consultation with Ms. Iglesias on March 23.

Given the significance of this surgery to Ms. Iglesias’s physical and mental health, the selection of an appropriate and qualified surgeon is of utmost importance. Ms. Iglesias asks that Defendants communicate what criteria they are relying on to identify and evaluate potential surgeons. Defendants’ counsel has communicated in another case that appropriate criteria include high patient satisfaction, low complication rates, and a commitment to meeting the patient’s surgical needs. Feb. 22, 2022 Hearing, Ex. 2 (January 14, 2022 Letter 1-14). Ms. Iglesias asks if these are also criteria for her prospective surgeons, and what other criteria Defendants are utilizing.

Counsel for Ms. Iglesias has also asked Defendants to provide information for each potential surgeon that BOP is considering, and renews that request in this Response, including:

- CV, including any background and specialized training in vaginoplasty;
- The particular surgical technique(s) the surgeon uses for vaginoplasty;
- Number of past vaginoplasties performed (broken down by technique, if they use different techniques);
- Complication rates from (i) all vaginoplasties performed (broken down by technique, if they use different techniques) and (ii) all total surgeries performed;
- Any history of malpractice, discipline, ethics, or licensure issues (including Board inquiries, litigation, resignations or terminations);
- Information on past patient satisfaction;
- Information on hospital privileges;
- Information on their liability/malpractice insurance; and
- Their policies/protocols for vaginoplasty patients (including typical length of stay; aftercare; and follow-up visits).

¹ Practice 2’s concern about Ms. Iglesias’s support for the surgery while living at the residential reentry center is significant, Mar. 4 Rep. at ¶8, and Ms. Iglesias yet again requests more detailed information about Defendants’ plan for her post-operative care and support.

Ms. Iglesias has disturbingly little information about any of the surgeons Defendants have identified to potentially perform this very significant surgery on her. Before Defendants ultimately contracts with any particular surgeon (and ideally sooner, to prevent any further delays if red flags arise), Ms. Iglesias seeks the ability—as discussed at the February 22 hearing—to review their qualifications to assess whether they will be able to provide adequate care. *See* Hearing Tr. at 72-73. In addition, Ms. Iglesias has specific concerns about the most recent surgeon that Defendants have identified based on publicly available information, and further details are critical to her ability to evaluate their qualifications and competency.

Finally, in her March 4 declaration, Jenna Epplin states that the Bureau of Prisons was “advised that Surgeon 1 refers patients out to other providers for vaginoplasty.” Epplin Decl. ¶ 6. Ms. Iglesias seeks clarification whether Surgeon 1—the surgeon with whom Ms. Iglesias has a consultation scheduled for April 7, 2022—is capable of performing vaginoplasty and would perform the procedure for Ms. Iglesias if contracted as the surgeon, or whether this is a typographical error meant to refer to a different procedure.

III. DEFENDANTS CONTINUE TO DELAY ASSEMBLING REFERRAL LETTERS.

Ms. Iglesias has repeatedly raised concerns around the need for Defendants to assemble two mental-health referral letters as soon as possible for her gender-affirming surgery. Defendants have acknowledged that any qualified surgeon will require two referral letters in advance of accepting Plaintiff for gender-affirming surgery since at least November 2021, but have still not secured the letters. *See* Nov. 22 Hearing Tr. at 106 (cross-examination of Dr. Ettner).

The immediate need for these letters—and the consequences of Defendants’ delay—is readily apparent in Practice 2’s statement that “they would need the mental health referral letters in order to schedule” an initial consultation with Ms. Iglesias. Mar. 4 Rep. at ¶ 8. Defendants’

continued insistence 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 will be performed) is unworkable and will only induce yet further delay. McLearen Decl., ECF 204-1, at ¶ 6; *see also* Mar. 4 Rep. (providing no update on letters). As Ms. Iglesias stated in her response to Defendants’ February 25, 2022 Status Report, 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. ECF No. 209 at 7. Defendants have already identified the expected letter writers and there is no justification to delay assembling the letters themselves.

CONCLUSION

Defendants, upon threat of sanctions, have now taken a select few steps toward securing Ms. Iglesias’s medically necessary care. But there remain a range of critical and time-sensitive steps that must be taken immediately to move this process forward. With fewer than ten months remaining in Ms. Iglesias’s sentence, Defendants *still* do not have any plan or timeline for providing her medically necessary care—and their continued insistence on ever-changing delays may ultimately result in her not receiving this care at all.

Dated: March 9, 2022

Respectfully submitted,

/s/ Frank Battaglia

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CERTIFICATE OF SERVICE

I certify that on March 9, 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 9, 2022

/s/ Frank Battaglia
Frank Battaglia