

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

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

Plaintiff,

v.

IAN CONNORS, *et al.*,

Defendants.

Case No. 19-cv-00415-NJR

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION TO MODIFY PRELIMINARY INJUNCTION**

Defendants respectfully submit this Response to Plaintiff's Motion for a Modified Preliminary Injunction, ECF No. 213 ("Pl.'s Mot."). As set forth in more detail below, the Court should deny Plaintiff's motion, because the record demonstrates that Defendants have been working diligently and in good faith to make all necessary arrangements for Plaintiff to obtain gender-confirmation surgery as expeditiously as possible.

In her motion, Plaintiff asks the Court for additional injunctive relief requiring Defendants to provide her with gender-confirming surgery prior to her release from BOP custody, and to do so according to a twelve-part plan proposed by Plaintiff. Additional relief of that kind is not necessary, however, given the concrete steps that Defendants have taken toward providing her surgery: (1) Defendants have now scheduled consultations for Plaintiff with two surgeons, on March 23 and April 7, 2022; (2) Defendants have also now scheduled a consultation for Plaintiff with a dermatologist to discuss permanent hair removal on March 24, 2022; and (3) Defendants have requested letters of referral from two mental health professionals recommending Plaintiff for surgery, one of which has already been received, and the second of which is expected before any of Plaintiff's scheduled

consultations. Moreover, this Court can continue to monitor and evaluate Defendants' progress through their weekly status reports, and Plaintiff's responses thereto.

There is, in addition, no legal justification for the new and far-reaching injunctive relief that Plaintiff seeks. On the present record, Plaintiff cannot establish a likelihood of showing that Defendants are now proceeding with deliberate indifference to her medical needs. The expeditious manner in which Defendants are currently making arrangements for her surgery forecloses such a finding.

Finally, many of the twelve tasks that Plaintiff contends the Bureau of Prisons ("BOP") must immediately plan for and complete – such as securing a surgery date, making pre-surgical preparations that the surgeon stipulates, and developing a plan for post-surgical recovery in consultation with the surgeon's office – cannot be accomplished until a surgeon has agreed to accept Plaintiff as a patient for gender-confirmation surgery. As to other items on Plaintiff's list, the record shows that Defendants have acted conscientiously and have already made significant progress, arranging for Plaintiff to consult with two potential surgeons, and a dermatologist, and arranging for the necessary letters of referral. There is, in short, no basis on which to grant additional injunctive relief.

DISCUSSION

Plaintiff's motion requests that the Court require "Defendants to immediately develop a detailed plan for her to receive gender-affirming surgery before her December 2022 release—and further requir[e] Defendants to in fact provide her with gender-affirming surgery prior to her release, absent any genuine medical contraindications." Pl.'s Mot. at 8. Although Plaintiff frames this request as seeking a "modified preliminary injunction," *id.*, as explained below, this requested relief would not simply build upon the prior preliminary injunction, but instead would constitute new relief that would require new findings of deliberate indifference, and a likelihood of irreparable harm, with respect to BOP's actions. Accordingly, Defendants respectfully submit that Plaintiff's motion should be

evaluated under the typical four-factor standard governing entry of preliminary injunctions, and the limitations placed on equitable relief in this context by the Prison Litigation Reform Act, 18 U.S.C. § 3626(a)(2).¹

Regardless of the precise legal standard employed, however, Plaintiff's motion does not demonstrate a need for or her entitlement to the requested injunction.

I. Plaintiff's Request for Additional Injunctive Relief Disregards Governing Legal Standards and the Record.

Plaintiff's motion seeks "additional injunctive relief" placing three new requirements on Defendants not contained in the Court's December 27, 2021 Preliminary Injunction, ECF No. 177: (i) "to develop a detailed plan to provide Ms. Iglesias [gender-confirming] surgery"; (ii) actually "to provide Ms. Iglesias with gender-affirming surgery, including all necessary pre-surgical preparation and post-surgery recovery"; and (iii) "to do so prior to the expiration of her sentence on December 22, 2022." Pl.'s Mot. at 2. Yet to justify this additional relief, Plaintiff must demonstrate (i) that absent a court order imposing these new requirements on Defendants, it is "likely," not merely possible, that she will suffer irreparable harm, *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008), (ii) a

¹ In connection with motions to *lift* preliminary injunctions, in whole or in part, the Seventh Circuit in the past has remarked "that a district judge has discretion to revise a preliminary remedy if persuaded that change had benefits for the parties and the public interest[.]" *Commodity Futures Trading Comm'n v. Battoo*, 790 F.3d 748, 751 (7th Cir. 2015), and also inquired whether the movant "has demonstrated that changed circumstances make the continuation of the injunction inequitable." *Winterland Concessions Co. v. Trela*, 735 F.2d 257, 260 (7th Cir. 1984). Here, where Plaintiff does not ask the Court to lift the terms of an existing injunction, but in effect to enter a new injunction imposing wholly new, more intrusive, and far-reaching requirements on Defendants, we submit that Plaintiff must satisfy the usual four-factor test for preliminary injunctive relief. Indeed, given that Plaintiff's motion is essentially seeking to obtain the final relief requested in this lawsuit at this preliminary stage, *see* 2d Am. Compl., ECF No. 106, at 25, Prayer for Relief ¶ b, she should be required to meet an even "higher burden" in order to prevail. *See Boucher v. Sch. Bd. of Sch. Dist. of Greenfield*, 134 F.3d 821, 826 n.6 (7th Cir. 1998); *see also Harlem Algonquin LLC v. Canadian Funding Corp.*, 742 F. Supp. 2d 957, 962 (N.D. Ill. 2010) (quoting *W.A. Mack, Inc. v. Gen. Motors Corp.*, 260 F.2d 886, 890 (7th Cir. 1958)) ("As the Seventh Circuit has noted, preliminary injunctive relief is not appropriate if it gives to a plaintiff 'the actual advantage which would be obtained in a final decree.'). And given the context of this case, any relief accorded to Plaintiff must conform to the limits on preliminary injunctive set by the Prison Litigation Reform Act, 18 U.S.C. § 3626(a)(2). *See Brown v. Plata*, 563 U.S. 493, 530 (2011).

likelihood that Defendants are now acting with deliberate indifference to her medical needs, *id.* at 20; *Gray v. Hardy*, 826 F.3d 1000, 1005 (7th Cir. 2016) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)), and (iii) that the relief sought is “narrowly drawn, extend[s] no further than necessary to correct the harm . . . and [is] the least intrusive means necessary[.]” 18 U.S.C. § 3626(a)(2).

Plaintiff’s motion does not meet these standards. First, as discussed in greater detail below, Defendants continue to make serious and sustained efforts to arrange for gender-confirmation surgery for Plaintiff. They have scheduled consultations for Plaintiff with two Miami-area surgeons, scheduled a consultation with a dermatologist for surgical-site hair removal, and soon will have secured letters of referral from two mental health professionals recommending Plaintiff for surgery. One of these letters has already been completed. Under current circumstances, it cannot accurately be said that Defendants are acting with ongoing deliberate indifference to Plaintiff’s medical needs, or that further injunctive relief – such as developing plans for Plaintiff to receive gender-confirmation surgery – is either necessary to protect Plaintiff from irreparable harm, or the least intrusive means of doing so. Defendants already have a plan for providing gender-confirmation surgery to Ms. Iglesias, and they are in the process of executing it.

Plaintiff attempts to justify her request for additional injunctive relief on “repeated, unjustified delays” by Defendants since the Court issued its earlier injunction. Pl.’s Mot. at 4. But, as also discussed in more detail below, she identifies no such “unjustified” delays. Disagreements over the steps BOP is now taking to arrange for her gender-affirming surgery do not establish that Defendants are being deliberately indifferent to Plaintiffs’ medical needs; far more than a difference of opinion about the appropriate course of her medical care is required to establish that BOP is acting in willful disregard of those needs. *See Estelle v. Gamble*, 429 U.S. 97, 107 (1976). Nor can Plaintiff make out a case of deliberate indifference based on allegations about Defendants’ past conduct when their present course of action exhibits appropriate concern for Plaintiff’s medical needs. *See Farmer*, 511 U.S. at 845

(“[D]eliberate indifference . . . should be determined in light of the prison authorities’ current attitudes and conduct[.]”) (quotation omitted).

Finally, Plaintiff suggests that additional injunctive relief is needed because Defendants (in her view) have “flout[ed]” the Court’s earlier injunction. Pl.’s Mot. at 3. Defendants have shown to the contrary, however, that they have complied with the requirements of the Court’s December 27 Preliminary Injunction; at the very least, they acted in good faith to abide by the terms of the injunction as they understood them. Defs.’ Suppl. Resp. to the Court’s Feb. 21, 2022 Notice and Order, at 9-13, ECF No. 214 (and declarations submitted therewith); Defs.’ Resp. to the Court’s Feb. 10, 2022 Order to Show Cause, at 10-12, ECF No. 191 (same); *see also* Tr. of Proceedings Before Hon’ Nancy J. Rosenstengel at February 22, 2022, Show Cause Hearing (“Hearing Tr.”), at 26:4-26:6, 133:4-133:17 (testimony of Drs. McLearen and Leukefeld that they believed January 24, 2022 Transgender Executive Council (“TEC”) decision complied with Court’s Preliminary Injunction); *see also id.* at 165:9-172:21 (discussion by counsel of Defendants’ understanding of Preliminary Injunction and belief that TEC decision was in compliance with the Preliminary Injunction). “BOP remains committed to providing [Ms.] Iglesias appropriate care and continues working diligently” to make arrangements for her surgery. McLearen Decl., ECF No. 204-1, ¶ 10; Epplin Decl., ECF No. 212-1, ¶ 11. Additional injunctive relief is therefore unnecessary, and unwarranted.

II. Plaintiff’s Request for Additional Injunctive Relief Is Not Justified Because BOP Continues to Work Diligently to Make the Necessary Arrangements for Plaintiff’s Gender-Confirmation Surgery

A. Defendants’ Continued Progress in Arranging for Plaintiff’s Surgery Eliminates Plaintiff’s Proffered Justifications for Additional Relief.

Plaintiff’s motion for additional relief does not take into account the many steps BOP has already taken and is continuing to take to make appropriate arrangements for Plaintiff’s gender-confirmation surgery (some of which Plaintiff was not aware of when she filed her motion). The record of Defendants’ progress since the Court entered its initial injunction demonstrates that the

additional relief Plaintiff seeks is not necessary to ensure that arrangements are made expeditiously for her surgery, and, accordingly, that relief is not justified.

First, as discussed in the Declaration of Jenna Epplin, National Policy and Program Coordinator (Transgender Inmates) for the BOP's Women and Special Populations Branch of the Reentry Services Division, attached to Defendants' March 11, 2022 Status Report, BOP has made an appointment for Plaintiff to consult with another surgeon, on March 23, 2022, less than two weeks following her arrival at the Miami Residential Reentry Center (RRC). Epplin Decl. (3/11/2022) ¶ 6. Second, upon learning that the first surgeon with whom Plaintiff scheduled an appointment (on April 7) does not use a particular dermatologist for permanent hair removal, BOP (through its contractor, NaphCare, Inc.) located a Miami-area dermatologist who performs permanent surgical-site hair removal for gender-confirmation surgery, and has scheduled a consultation for Plaintiff on March 24, 2022, also within two weeks of Plaintiffs' arrival at the Miami RRC. *Id.* ¶ 8. Third, BOP has requested two of its staff psychologists who are familiar with Plaintiff and her case to prepare letters of referral recommending her for gender-confirmation surgery. *Id.* ¶ 9. One of the letters was completed on March 10, 2022, and BOP expects that the second letter will be completed in advance of Plaintiff's consultations. *Id.*

Given these developments, the record before the Court does not demonstrate deliberate indifference, or imminent irreparable harm, that would support the award of additional injunctive relief.

B. Plaintiffs' Allegations of Continued Delay by Defendants Lack Foundation.

Plaintiff bases her assertion that additional injunctive relief is necessary on a series of allegations about "unwarranted delays," following the Court's December 27 injunction, for which she argues Defendants are responsible. Pl.'s Mot. at 4-5; *see also id.* at 1-2. But these claims of delay lack support in the record.

First, Plaintiff maintains that in January, Defendants “proposed delaying a surgeon referral for 2.5 months until mid-April 2022[.]” *Id.* at 1-2. Defendants, however, have explained the reasons why the TEC made this recommendation. The TEC’s decision to refer Plaintiff for surgery after her transfer to a residential re-entry center had the benefit of potentially *expediting* Plaintiff’s referral, because it would not involve the step of acquiring approval from the BOP Medical Director. McLearen Decl., ECF No. 183-1, ¶ 11; McLearen Decl., ECF No. 191-2, ¶ 17; Hearing Tr. at 24:16-25:6. The proposed approach also provided for continuity of care, given Plaintiff’s then-imminent transfer to the Miami RRC, and, as discussed below, ensured that Ms. Iglesias could complete an approximate twelve-month period of “social adjustment” prior to moving forward with gender-confirmation surgery. *Id.* at 23:20-24:15, 25:7-11; *see also* McLearen Decl., ECF No. 183-1, ¶¶ 7-10; McLearen Decl., ECF No. 191-2, ¶¶ 16, 18.)

Second, Plaintiff asserts that BOP “[i]nexplicably . . . added a one-month delay” to Plaintiff’s referral following her mid-March transfer to the RRC. Pl.’s Mot. at 5. But Defendants have explained the reason for that decision. As Dr. McLearen explained in her January 31 declaration, the TEC’s decision to schedule Plaintiff for a consultation in mid-April was based in part on the fact that Plaintiff would have been housed in female facilities for approximately eleven months by that point, roughly fulfilling the requirement of twelve months’ residence in gender-affirming facilities prior to consideration for gender-affirming surgery. McLearen Decl., ECF No. 183-1 ¶¶ 6-7; *see also* McLearen Decl., ECF No. 183-1 at 15 (provision of BOP Transgender Offender Manual that sets forth general requirement that person spend twelve months in a gender-affirming facility prior to undergoing gender confirmation surgery). That general requirement “is intended to allow time for an inmate to adjust, socially transition, and consolidate one’s gender identity in relationship to peers[.]” and “is consistent with the WPATH[’s] . . . emphasis on the importance of social adjustment before performing

irreversible anatomic surgery.”² *Id.* ¶ 8. In addition, the TEC concluded that it was important to allow time to monitor Plaintiff’s adjustment following her transfer to the RRC, given the difficulties she had previously experienced in adjusting to life in a female correctional facility. *Id.* ¶ 12. *See also* Hearing Tr. at 22:7-21, 25:7-11. This was a reasonable decision made out of concern that Plaintiff receive appropriate medical treatment, and does not demonstrate intentional delay.

In addition, following the TEC’s decision BOP continued to exhibit flexibility in executing that decision, so as to facilitate arrangements for Plaintiff’s initial surgical consultation. BOP, through its contractor NaphCare, began its effort to locate a surgeon for Plaintiff, and scheduled an initial consultation for April 7, well before her scheduled transfer. Hearing Tr. at 28:7-17; Epplin Decl., ECF No. 212-1, ¶ 5. Thereafter BOP continued to identify and contact other surgeons who could potentially perform Plaintiff’s gender-confirmation surgery, and has scheduled a consult with another surgeon on March 23, and a consult with a dermatologist, for hair removal, on March 24. Epplin Decl. (3/11/2022) ¶¶ 5, 8. Thus, BOP is already moving more quickly than the “mid-April” timeline for Plaintiff’s first consultation envisioned by the TEC on January 24. McLearen Decl., ECF No. 183-1 ¶ 6.

While Plaintiff may disagree with BOP’s twelve-month residence policy, or its applicability to her case, the facts in the record show that substantial compliance with that policy, not purposeful delay, was one of the principal reasons why the TEC decided that Plaintiff should see a surgeon approximately one month after her transfer to an RRC. And the record demonstrates that, far from intentionally delaying a consult between Plaintiff and a surgeon, BOP and NaphCare have been working persistently since shortly after the TEC’s decision to arrange a consultation as soon as possible

² The TEC decided to arrange the consult with the surgeon before Plaintiff had spent 12 months in a gender-affirming facility, as BOP generally requires, in an effort to expeditiously move Plaintiff along in the process of consideration for gender-confirmation surgery. *See* Hearing Tr. at 85:5-85:20.

after her transfer, and have been flexible about the timing of Plaintiff's initial consultations, in order to expedite her consideration for surgery.

Third, Plaintiff also alleges that BOP is delaying Plaintiff's surgery by "refus[ing] to begin the months-long process of hair removal until April 2022 at the earliest[.]" Pl.'s Mot. at 2. But, as explained above, Defendants have now arranged an initial consultation for Plaintiff with a dermatologist who performs permanent hair removal, to take place on March 24. Epplin Decl. (3/11/2022) ¶ 8.

Additionally, as Dr. McLearn testified, the reason the TEC did not recommend that Plaintiff immediately begin permanent hair removal on January 24 is that the TEC understood hair removal to be an integral part of the surgery process, and that Plaintiff's surgeon would have to be consulted about the hair-removal procedure before it could be performed. *See* Hearing Tr. at 105:25-106:7 ("[T]here are so many available possible options, and we really need to hear the surgeon weigh in before we can start going in a direction that may not be the appropriate direction."); *see also id.* at 105:17-25. Accordingly, BOP communicated to NaphCare that hair removal would need to be arranged and performed as part of the overall surgery process. *See id.* 32:24-33:6; 101:8-101:11; 104:1-104:8. Notably, Plaintiff's expert, Dr. Ettner, has acknowledged that the exact extent of permanent hair removal required in preparation for gender-confirmation surgery may vary depending on the surgeon, stating that "[m]ost surgeons require that at least 80% of the hair at the surgical site be permanently removed prior to a vaginoplasty." Ettner Decl., ECF No. 186-1 ¶ 20 (emphasis added). Thus, BOP could not know, prior to communication with a surgeon, the extent and method of hair removal (*e.g.*, laser beam, intense pulsed light, electrolysis, etc.) that surgeon requires, or recommends specifically for Plaintiff. Under these circumstances, it was reasonable of BOP to wait a short period of time in order to consult with a surgeon before beginning hair removal. Even assuming Plaintiff is correct that she could begin permanent hair removal without a surgeon's input, BOP's understanding

that a surgeon should be consulted prior to beginning such a process is at worst a belief born out of good-faith caution, not any intent to delay.

Moreover, BOP is in fact now moving forward, even before any consultation with a surgeon, to make the arrangements for Plaintiff to consult with a dermatologist about permanent hair removal. There was no one on BOP staff qualified to perform the permanent hair-removal procedure while Plaintiff remained at FMC Carswell. McLearen Decl., ECF No. 204-1, ¶ 9. But on February 24, 2022, in the interest of time, BOP requested that NaphCare identify other options. *Id.* ¶ 8. NaphCare contacted the surgeon who is scheduled for the April 7 consult to see which dermatologist they use for permanent hair removal, and was advised that the surgeon does not use a particular dermatologist for that purpose. Epplin Decl., ECF No. 212-1 ¶ 9. In light of that information, NaphCare promptly identified a dermatologist who performs permanent surgical site hair removal for gender-confirmation surgery, and, on March 8, 2022 scheduled a consultation with that dermatologist for Plaintiff on March 24. Epplin Decl. (3/11/2022) ¶ 9. Although the actual hair-removal procedure may not begin until after Plaintiff consults with a surgeon, by proceeding on dual tracks BOP intends for Plaintiff's hair removal to begin promptly once the surgeon's preferences for the procedure are known.

Fourth, Plaintiff also notes that “[a]s of this filing, Defendants have *still* not obtained surgical referral letters[.]” Pl.’s Mot. at 2 (emphasis in original). As noted, however, BOP has requested two psychologists on its staff who are familiar with Plaintiff and her mental-health history to prepare letters of referral recommending Plaintiff for gender-confirmation surgery. Epplin Decl. (3/11/2022) ¶ 9. One of those letters has now been completed, and BOP anticipates that the other letter will be completed prior to Plaintiff's consultations. *Id.*

Moreover, although WPATH standards of care include general recommendations for the content of these surgical referral letters, *see* WPATH Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming Individuals, Version 7, 27-28 (2012), <https://www.wpath.org/>

wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?t=1613669341,

Dr. McLearn was clear in her February 22 testimony that before consulting with Plaintiff's surgeon, BOP could not be sure "what the contents would be specifically and exactly who they would need to come from." Hearing Tr. at 32:10-32:12. Nevertheless, even then BOP had already identified two psychologists who had worked directly with Plaintiff, *id.* at 97:24-98:24, who have agreed to write letters on her behalf recommending in favor of Plaintiff receiving gender-confirmation surgery, *id.* at 99:20-99:23, and who both represented that they believed such letters could be provided quickly once formally requested, *id.* at 32:16-32:23. In short, there was never any reason to believe that obtaining these letters would be the cause of any delay. There is therefore nothing in the record that would indicate that BOP has been less than conscientious in preparing to secure and provide these letters when they are needed, or that a failure to obtain the letters would be the cause of any delay in Plaintiff obtaining gender-confirmation surgery.

Finally, Plaintiff emphasizes the importance of the twelve tasks she has identified as necessary before surgery can occur, and asks this Court to expressly incorporate this list into its modified preliminary injunction, Pl.'s Mot. at 2; *see also* ECF No. 186 at 3 (setting forth the twelve tasks) (citing Ettner Decl. ¶¶ 12-13, 16-20). However, a review of this list shows that seven of the twelve tasks (6-12) are dependent upon a surgeon first agreeing to perform gender-confirmation surgery on Plaintiff, which has not yet occurred. As to the remaining five items (1-5) that are at least partially within BOP's control at this time, BOP has made significant progress on each, and awarding additional injunctive relief as requested by Plaintiff would be ordering BOP to do what it is already doing.

For example, items 1, 4, and 5 on Plaintiff's list³ provide that before she can undergo gender-confirmation surgery, BOP must identify a surgeon who is qualified to perform the surgery, refer

³ Tasks two and three, referral letters and hair removal, are discussed above.

Plaintiff to such a surgeon for an initial consultation (including providing the surgeon with Plaintiff's medical records), and schedule and complete a consultation between Plaintiff and a surgeon, respectively. ECF No. 186 at 3. As Plaintiff has acknowledged, identifying a qualified surgeon is no simple or routine task because “[t]here are only a small number of adequately skilled providers who perform the gender-confirmation surgery Ms. Iglesias requires, a highly specialized procedure, across the country.” ECF No. 186 at 4. Nevertheless, since the January 24 TEC meeting, BOP has acted diligently and made significant progress toward identifying a surgeon. In February, BOP, through NaphCare, identified a qualified surgeon (“Surgeon 1”), contacted Surgeon 1 to inquire about the earliest available date for a consultation with Plaintiff, and provided Surgeon 1 with Plaintiff's electronic medical records.⁴ Hearing Tr. at 28:2-28:17. That consultation is scheduled for April 7, Epplin Decl., ECF No. 212-1 ¶ 5, and the surgeon indicated that they believe that completion of surgery by December 2022 is feasible, McLearn Decl, ECF No. 204-1, ¶ 5. Since that consultation was scheduled, BOP and NaphCare have continued to work to identify other qualified surgeons in Florida who may be willing to consult with Plaintiff about providing her gender-confirmation surgery. Epplin Decl., ECF No. 212-1 ¶ 7. Two additional surgeons identified by NaphCare declined to have a consultation with Plaintiff, *id.* ¶¶ 8-9, but NaphCare recently has identified another surgeon (“Surgeon 4”) who is willing to have a consultation with Plaintiff, and that consultation has been scheduled for March 23, 2022.⁵ Epplin Decl. (3/11/2022) ¶ 5. Defendants have notified Plaintiff of

⁴ While the identity of and identifying information about Surgeon 1 has been designated as confidential, Defendants have provided Surgeon 1's identity to this Court, ECF No. 203, and to Plaintiff, ECF No. 212 at 1.

⁵ Defendants have also designated the identity of and identifying information about Surgeon 4 as confidential, but have provided Surgeon 4's identity, and related information, to Plaintiff's counsel. Defendants are providing that information to the Court as well, in a sealed filing submitted concurrently herewith. Plaintiff's March 23, 2022 appointment for a consultation with Surgeon 4 will have no impact on the previously scheduled April 7, 2022 consultation appointment with Surgeon 1, which is still set to go forward as planned. Epplin Decl. (3/11/2022) ¶ 7.

the identity of Surgeon 4, and Plaintiff is aware of the March 23, 2022 consultation appointment. ECF No. 219 at 3.

As to the final seven tasks on Plaintiff's list, all of them require a surgeon to accept Plaintiff as a patient before BOP can complete them.⁶ As Dr. McLearen testified, BOP and NaphCare are "working on the contractual vehicle, the costs, all of those things," Hearing Tr. at 33:11-33:13, but as to the exact timing of the other items "the ball is in the surgeon's court," *id.* at 62:2. While Plaintiff requests that this Court issue additional injunctive relief to provide a "clear mandate and timeline" to BOP for accomplishing all items on her proposed list, Pl.'s Mot. at 7, she offers no explanation of the basis on which this Court, or Defendants, could unilaterally set deadlines to accomplish tasks that are dependent upon a non-party surgeon's availability, and medical judgment, especially when no surgeon has yet accepted Plaintiff as a patient for gender-confirmation surgery. The Court should not impose rigid requirements or timetables upon the performance of a complicated medical procedure, without allowing for the judgment of a surgeon as to the proper steps to be completed, and their timing, or making allowances for any new developments, or new information, that may impact the medically appropriate course for ensuring that Plaintiff receives proper care.

⁶ The only task among items 6-12 on Plaintiff's list that is not explicitly tied to the involvement of a surgeon is item 12 – "develop a plan for transport, lodging, food, finances, and other basic necessities for the periods preceding and following the surgery, including personal support to assist with day-to-day activities for the period immediately following surgery." ECF No. 186 at 3. However, as Dr. McLearen testified, BOP's understanding is that it cannot move forward with detailed preparation for those tasks until a surgeon is in place. Hearing Tr. at 33:15-33:17 ("And then, of course, the rest of them starting at number nine, they all tie to the surgeon saying yes and meeting with the patient and being able to meet."). This is a reasonable understanding, as BOP cannot reasonably be expected to, for example, provide a detailed plan for Plaintiff's transportation to and from a surgical procedure until it knows who will be providing that procedure, and where and when it will take place. Similarly, exactly what constitutes "basic necessities" and "personal support" immediately preceding and following surgery are issues on which a surgeon is likely to want input.

III. There Is No Need to Consider the Issue of Post-Custodial Surgery at This Time, as Plaintiff Is Not Presently Seeking Such Relief

Plaintiff concludes her motion by stating that “[s]hould Defendants fail to provide Ms. Iglesias with gender-affirming surgery prior to her release,” Plaintiff “plans” to seek an order requiring BOP to provide her with the surgery after her release, as a “sanction.” Pl.’s Mot. at 7-8. To be clear, Defendants disagree that such an order would be appropriate as a “sanction,” or otherwise, for all the reasons stated herein and in prior filings. *See* ECF Nos. 191, 199, 214. Nevertheless, there is no need for the Court to consider this issue at this time, which, as Plaintiff acknowledges, is premature because “Plaintiff is not yet seeking” this additional relief. Pl.’s Mot. at 8.

CONCLUSION

For the foregoing reasons, the United States respectfully submits that Plaintiff’s request for additional preliminary injunctive relief is not warranted, and Plaintiff’s motion should be denied.

Dated: March 11, 2022

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