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Plaintiff, Ashley Diamond, a Black transgender woman in the custody of the Georgia Department of Corrections (“GDC”), files this petition for emergency relief to avert the imminent risk of harm she faces due to the GDC Defendants’ recurrent failure to provide her reasonable protection from sexual assault and medically necessary gender dysphoria care—failures made even more egregious because Ms. Diamond sued GDC officials for similar constitutional violations before.

Even though Ms. Diamond is similarly situated to cisgender women in terms of the risk of sexual assault she faces in men’s prisons, Defendants Ward, Lewis, J. Jackson, Holt, Toole, Ford, Benton, and Atchison have denied Ms. Diamond a placement in a women’s facility pursuant to a “De Facto Placement Ban” that disregards the safety needs of transgender people and assigns them to facilities based on their birth-assigned sex, regardless of whether such placements are safe and appropriate. As a result, Defendants have placed Ms. Diamond in a series of men’s prisons where she once again faces unrelenting sexual abuse and attacks, contrary to the recommendations of GDC’s own medical providers. Ms. Diamond also faces severe healthcare deprivations—including denials of medically-necessary forms of hormone therapy, hair removal products, and accommodations for her gender expression—that have wreaked havoc on her physically and psychologically and led to depression, anxiety, and repeated suicide and self-castration attempts.

Defendants’ continued refusal to provide Ms. Diamond adequate medical care or protection from assault—the very refusals which formed the basis of her prior lawsuit—have pushed Ms. Diamond to her breaking point and stripped her of the will to live. Although Ms. Diamond contacted Defendants, through counsel, to request that they begin voluntarily complying with their constitutional obligations, they have doubled down on their refusal while also taking actions to block her early release, leaving this emergency motion as her only remaining recourse.

Accordingly, Ms. Diamond files this Motion for Preliminary Injunction because, “having stripped [Ms. Diamond] of virtually every means of self-protection and foreclosed [her] access to outside aid, the government and its officials are not free to let the state of nature take its course.” *Farmer v. Brennan*, 511 U.S. 825, 833 (1994).

Ms. Diamond is a woman. She is also transgender. Decl. of Ashley Diamond (“Diamond Decl.”) ¶ 1. She was diagnosed with gender dysphoria at age 15. *Id.* Because gender identity is



Ms. Diamond sued GDC officials, including Defendant Sharon Lewis, in 2015 after they placed her in a series of men's prisons where she was sexually assaulted almost a dozen times, and diagnosed with PTSD. *Diamond v. Owens* (“*Diamond I*”), 131 F. Supp. 3d 1346 (M.D. Ga. 2015) (Treadwell, J). Defendant Lewis also denied Ms. Diamond medically necessary gender dysphoria care which devastated Ms. Diamond physically and emotionally and led her to repeated suicide and self-castration attempts. Diamond Decl. ¶¶ 4-5. Ms. Diamond's lawsuit concluded after she was released from custody and compensated for her injuries. *Id.* ¶¶ 6, 9.

Ms. Diamond reentered GDC custody on October 29, 2019 in connection with a technical parole violation. During her October 2019 intake, Ms. Diamond completed GDC Prison Rape Elimination Act (“PREA”) classification paperwork that confirmed her status as a transgender PREA victim with an exclusively non-violent criminal record and a history of being assaulted in GDC custody. Diamond Decl. ¶ 12; *see also* Ezie Ex. 4. During intake, Ms. Diamond spoke with Defendants Ford and Toole to discuss her history of sexual abuse in male GDC facilities and her ongoing risk of sexual assault. Diamond Decl. ¶11; GDC Defs.’ Answer to Pl.’s Am. Compl. ECF No. 41 (“GDC Answer”) ¶ 231. During intake, Ms. Diamond also met with Statewide PREA Coordinator Defendant Grace Atchison to discuss her housing needs and requested a female facility placement for safety reasons. *Id.* ¶ 232 (same); Diamond Decl. ¶ 11.

GDC's formal written policies allow transgender women to be placed in female facilities as a safety measure. *See* Ezie Ex. 19; Ezie Ex. 22. Ms. Diamond is eligible for a female facility placement under the criteria set forth in these policies. *See* Decl. of James Aiken (“Aiken Decl.”) ¶¶ 33-43, 50-64, 85. GDC officials are also required by law to give “serious consideration” to Ms. Diamond's own views regarding housing placements and safety, and to reevaluate her placements

as safety issues arise. 28 C.F.R. § 115.42(e); *see also* Aiken Decl. ¶¶ 31, 34, 42, 59, 86; Ezie Ex. 22. However, despite receiving detailed information about Ms. Diamond’s outsized risk of abuse and attacks in male prisons, Defendants Timothy Ward, Sharon Lewis, Javel Jackson, Robert Toole, Grace Atchison, Ahmed Holt, and Brooks Benton (collectively the “Housing Defendants”), who are the relevant decisionmakers with respect to Ms. Diamond’s housing placements, denied Ms. Diamond’s safety requests pursuant to an unwritten policy that denies transgender women housing placements in female facilities on a blanket basis, regardless of safety considerations, application of the criteria set out in GDC’s policy, or any other consideration (“De Facto Placement Ban”). Ezie Decl. ¶¶ 5, 9, 10, 11; Diamond Decl. ¶ 15. The De Facto Placement Ban has superseded all other of GDC’s written policies. Ezie Decl. ¶¶ 5, 9, 10, 11; Diamond Decl. ¶ 15; Aiken Decl. ¶¶ 60-64.

Because of the Placement Ban, Defendants placed Ms. Diamond in a series of men’s prisons where she has endured sixteen sexual assaults since her October 29, 2019 return to custody—assaults that have involved groping, genital contact, sexual abuse by staff, and forced anal and oral penetration, among other violations. Diamond Decl. ¶¶ 16-18; Ezie Exs. 6-12; GDC Answer ¶¶ 83, 236. Ten of these assaults occurred at *Ms. Diamond’s current facility*—Coastal State Prison (“Coastal”)—where Warden Benton and other officials stoked hostility toward Ms. Diamond upon her arrival by announcing that she was a “freak” and a “snitch” and leaking Ms. Diamond’s confidential PREA reports. Diamond Decl. ¶¶ 21, 41, 47; Decl. of John Doe (“Doe Decl.”) ¶¶ 4-5; Decl. of Blake Duckworth (“Duckworth Decl.”) ¶¶ 3-4; Ezie Ex. 8-12. The remaining assaults occurred while she was inexplicably incarcerated at the Georgia Diagn ( G)2o4 Tw (car)-



Diamond be housed with men in the same dormitory at Coastal where she has suffered abuse and attacks means that she still faces an endless torrent of sexual harassment, sexual abuse and sexual coercion; she is strip-searched by men, viewed naked by men, and forced to shower among men. Diamond Decl. ¶¶ 33-34, 45. Her survival ultimately depends on whether the men in her surroundings feel like raping or attacking her on a given day. *Id.* ¶¶ 44, 48; Doe Decl. ¶¶ 5-10; Duckworth Decl. ¶¶ 8-10, 13-14, 23-27, 30; Aiken Decl. ¶¶ 19-20, 22-24, 31, 35, 50-51, 54, 58.

5:15-cv-00050-MTT, ECF No. 3, ¶¶ 31-32, 39-42, 73-76, 79-80, 112, 163; Diamond Decl. ¶¶ 51-53; Ettner Decl. ¶¶ 28-33, 34-39, 64, 71-74, 80-82, 86-87, 88-90; Ezie Ex. 23 (GDC provider confirming Ms. Diamond's need for hormone therapy and accommodations for gender expression). Ms. Diamond also requires medicated hair removal treatments to address facial and

77, 88-90. Despite repeated requests, the last time Defendants conducted bloodwork to monitor Ms. Diamond's hormone levels to ensure her hormone therapy is working to treat and alleviate her gender dysphoria symptoms was November 2019, when she first entered GDC custody. Diamond Decl. ¶ 57; Ettner Decl. ¶ 89; Ezie Ex. 25. The Healthcare Defendants who have blocked Ms. Diamond's requests for medically necessary treatments have never conducted any individualized assessment of Ms. Diamond or her healthcare needs. GDC Answer ¶ 196. Instead, they've denied her requests on a blanket basis, without any medical judgment whatsoever contrary to the Standards of Care. *Id.*; Diamond Decl. ¶ 49; Ettner Decl. ¶¶ 75-79. When providers like Dr. Fass and Dr. Roth who have actually treated Ms. Diamond have tried to get Ms. Diamond approved for care, they have been summarily overruled by the Healthcare Defendants, *i.e.* "GDC's Central Office." Diamond Decl. ¶ 53.

Because of Defendants' failure to provide her adequate gender dysphoria care, Ms. Diamond's mental health has significantly deteriorated. She struggles with depression, anxiety, hopelessness, and suicidality, resulting in several attempts to end her life. Diamond Decl. ¶ 66; Ezie Ex. 24. She has also repeatedly attempted to castrate herself to stop her pain and damaged her organs in the process—causing severe infection, difficulty urinating, and putting her at risk of kidney failure and death. Diamond Decl. ¶¶ 61, 105; Ezie Ex. 28. Ms. Diamond's dysphoria symptoms—and in particular, her impulse to attempt suicide and self-castration—worsen each day she is denied treatment. Diamond Decl. ¶ 59-60; Ettner Decl. ¶ 24 (explaining that auto-castration is a form of self-surgery in dysphoric individuals). If the Healthcare Defendants' treatment denials continue, the consequences will be predictable and dire: putting Ms. Diamond at an imminent risk of psychological decompensation, physical injury, or death. Ettner Decl. ¶¶ 105, 111-131.

Prior to filing her Complaint and again prior to filing an Amended Complaint, Ms.

Diamond was advised that her release date was imminent, mooting the need for this motion. Diamond Decl. ¶¶ 87-89; Ezie Decl. ¶¶ 28-30. Since the filing of her complaint, Ms. Diamond, through counsel, has attempted to negotiate with Defendants in an attempt to avert this motion. Ezie Decl. ¶ 23. Ms. Diamond held telephonic status conferences with Defendants on January 22, 2021, March 10, 2021, and March 24, 2021 to see if Defendants would initiate the medical treatment or safety transfers she needs for her health and physical safety. Ezie Decl. ¶¶ 23-24. Ms. Diamond notified Defendants that she would seek preliminary relief if the Parties were unable to reach a resolution, but as of March 25, 2021, the Parties remain at an impasse. *Id.* ¶¶ 24-26. During the pendency of these negotiations, Ms. Diamond learned that her release date, which had until recently been set for March 1, 2021, had been set back almost a year to April 2022—making her requests for healthcare and safekeeping even more urgent. Diamond Decl. ¶¶ 88-92; Ezie Decl. ¶¶ 27-29.<sup>1</sup> A medical assessment by an expert on gender dysphoria and trauma on March 12, 2021 revealed that Ms. Diamond’s condition is deteriorating, dire and quickly moving towards irreversible. Ettner Decl. ¶¶ 91-131. Following significant delays in communicating with her attorneys, Ms. Diamond now comes to the Court to seek the relief she so desperately needs.

Preliminary injunctions are appropriate where a party can show “(1) it has a substantial likelihood of success on the merits; (2) it will suffer an irreparable injury unless the injunction is granted; (3) the harm from the threatened injury outweighs the harm the injunction would cause

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<sup>1</sup> The changes to Ms. Diamond’s release date are the result of a campaign of retaliation that is also threatening the integrity of these proceedings. This conduct is the subject of a separate motion Ms. Diamond has filed, which seeks a Protective Order to prevent further retaliation, witness intimidation, and document destruction and tampering on the part of Defendants and GDC personnel. *See* Pl.’s Mot. for Protective Order dated April 9, 2021, filed herewith.

the opposing party; and (4) the injunction would not be adverse to the public interest.” *Gonzalez v. Governor of Georgia*, 978 F.3d 1266, 1271 (11th Cir. 2020). But where, as here, “[t]he government is the opposing party,” “[t]he third and fourth factors merge.” *Id.* (internal quotations and citations omitted); *accord Nken v. Holder*, 556 U.S. 418, 435 (2009).

Plaintiffs do not need to “prove [their] case in full” at the preliminary injunction stage, *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981), or show that the evidence “positively guarantees a final verdict in plaintiff’s favor.” *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995). Courts may also grant a preliminary injunction based on declarations, affidavits, and evidence ordinarily considered inadmissible such as hearsay, so long as it is “appropriate given the character and objectives of the injunctive proceeding.” *Id.* at 985 (quoting *Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 26 (1st Cir. 1986)).

This Court should grant Ms. Diamond’s Motion for a Preliminary Injunction because, as detailed below, she is substantially likely to prevail on the merits of her Eighth Amendment and Fourteenth Amendment Equal Protection claims.<sup>2</sup> The sexual abuse, healthcare denials, and physical and emotional injury that Ms. Diamond has suffered, and continues to suffer, are severe, irreparable, compounding and will continue unabated absent injunctive relief. The public interest and balance of harm also tip decidedly in favor of Ms. Diamond’s request that Defendants provide her constitutionally adequate healthcare and protection from sexual violence.

Prison officials have a duty to protect incarcerated people from physical and sexual

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<sup>2</sup> Ms. Diamond’s Motion seeks relief under Counts I, IV, V, VI, and VII of her Complaint, without prejudice to her ability to seek additional equitable relief following discovery or at trial.



violence pursuant to the Eighth Amendment. *See Farmer*, 511 U.S. at 833-34; *Diamond I*, 131 F. Supp. 3d at 1376. “A prison official violates the Eighth Amendment when a substantial risk of

Based on this record, Ms. Diamond can show the Housing Defendants had subjective knowledge of her substantial risk of assault in custody because the risk was “obvious,” “long-standing, pervasive, well-documented,” and Defendants were “exposed to information concerning the risk.” *Farmer*, 511 U.S. at 842-43 (noting, in a failure to protect case brought by a transgender prisoner, subjective knowledge can be inferred “from the very fact that the risk was obvious.”); *Corbett v. Kelly*, No. 97-CV-0682 E, 2000 WL 1335749, at \*4 (W.D.N.Y. Sept. 13, 2000) (“An inmate’s advance notification to prison officials of a risk of harm . . . may be a factor to show that the officials had knowledge of the risk.”). See *10 and 11* [F. Supp. 3d at 1877] finding that similar allegation “covered the waterfront with re101 (p)2 (e)-4 (c)6 (t to)2 ( s)1 (h)2 (o)2 (w)4 (in)-8 (g)12” *Tay v. Dennison*, 457 F. Supp. 3d 657, 684 (S.(Se)2. Ill (finding actual knowledge based on the “Plaintiff’s other lawsuits, her grievances and PREA complaints” and the fact that she is transgender).

## 2. Defendants Showed Deliberate Indifference to Ms. Dir’s Risk of Assault

Ms. Diamond can also show that the Housing Defendants engaged in deliberate indifference by responding to her substantial risk of assault “in an objectively unreasonab2 (i)4(ndi)-2 (f).

placement in a female facility as a safety alternative. Aiken Decl. ¶¶ 19-20, 22-25, 31, 33-43, 50-64, 84-86, 92, 95; Ezie Ex. 22 (same); Ezie Ex. 19 (confirming that female facility placements were authorized, and that Defendants Lewis, Jackson and Atchison were key decisionmakers). *See also* Ezie Ex. 31-32 (confirming that female facilities house cisgender women with criminal histories comparable to Ms. Diamond, along with those charged with rape and murder); Ettner Decl. ¶¶ 119-121 (noting nationwide practice of approving transgender facility placements).

In choosing to place Ms. Diamond exclusively in men's prisons where she suffered repeated abuse and attacks, the Housing Defendants applied GDC's De Facto Placement Ban to Ms. Diamond and denied her female facility placements based on a blanket policy instead of individualized considerations, in spite of the severe and obvious risks of sexual assault the policy ban exposed her to. *See* Ezie Decl. ¶¶ 5-7; Ezie Ex 19 (IV)(D)(1) (acknowledging that transgender people “*are at particularly high risk* for physical or sexual abuse or harassment.”) (emphasis added). Pursuant to GDC's De Facto Placement Ban, the Housing Defendants also refused to reassess Ms. Diamond's placements in male facilities or her eligibility for a safety transfer even when she became the victim of repeated and foreseeable attacks. These refusals constitute deliberate indifference under settled law. *See Rodriguez*, 508 F.3d at 623 (failing to authorize a safety transfer can constitute an Eighth Amendment violation); *Figueroa v. Dinitto*, 52 F. App'x 522, 524 (1st Cir. 2002) (same); *Tay*, 457 F. Supp. 3d at 685 (refusing to assess a transgender woman's eligibility for a safety transfer to a female facility likely violated the Eighth Amendment); *Hampton v. Baldwin*, No. 3:18-CV-550-NJR-RJD, 2018 WL 5830730, at \*17 (S.D. Ill. Nov. 7, 2018) (granting preliminary injunction that ordered prison officials to “consider [] all evidence for and against transferring [the transgender plaintiff] to a women's facility”).

*Second*, the Housing Defendants showed deliberate indifference to Ms. Diamond's safety risks by failing to take reasonable steps to protect her from abuse at the men's facilities where she

was placed—leaving her to fend for herself and fight off attackers and predators from all sides.

Diamond Decl. ¶¶ 13-16, 19, 22, 30-35, 38-40, 44, 47-

though based on Ms. Diamond’s “history of sexual harassment, assaults, and rapes while incarcerated in the men’s division[], keeping her there may be tantamount to confining her in a cell with a cobra.” *Tay*, 457 F. Supp. 3d at 685.

The Housing Defendants’ actions have also put Ms. Diamond at a substantial risk of severe and life-threatening harm because her PTSD, emotional suffering, and risk of death by suicide are now extreme. Diamond Decl. ¶¶ 3, 13-14, 16, 20-22, 34-36, 44-48, 58, 59, 66, 91, 104-107, 109, 112-118; Ettner Decl. ¶¶ 91-131. Consequently, Ms. Diamond can show deliberate indifference on the part of each of the Housing Defendants because they “knew of ways to reduce the harm but knowingly . . . or . . . recklessly declined to act.” *Hale v. Tallapoosa Cnty.*, 50 F.3d 1579, 1583 (11th Cir. 1995). *See also Farmer*, 511 U.S. at 842 (for purposes of liability, “it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.”).

### *3. Defendants Caused Plaintiff’s Injuries*

Ms. Diamond suffered, and continues to suffer, physical injuries and mental anguish as a result of the Housing Defendants’ actions and inactions. It is beyond dispute that the Housing Defendants had the authority to modify Ms. Diamond’s housing placements, approve her for placement in a female GDC facility, or adopt operational safeguards to protect her from ongoing risks. *See, e.g.*, Ezie Ex. 19 (authorizing GDC to place transgender women in female facilities); Ezie Ex. 22 (same); GDC Answer ¶¶ 21-23, 25, 29 (admitting that Lewis, Atchison, Toole, and Jackson sat on the GDC Committee responsible for transgender housing placements, and that Ward had final oversight authority); Aiken Decl. ¶¶ 39, 84-86, 92, 95 (discussing Defendants’ authority). However, the Housing Defendants blocked and refused Ms. Diamond’s repeated requests to be placed at a women’s facility or approved for a safety transfer following the attacks at GDCP and Coastal, despite having the express authority to do so, leaving Ms. Diamond to languish and suffer continued victimization. Diamond Decl. ¶¶ 11-16, 21-22, 38 (describing current status). *See also*

*Rodriguez*, 508 F.3d at 625 (asking “whether [the defendant] was in a position to take steps that could have averted the [harm] . . . but, through deliberate indifference, failed to do so.”) (citations omitted).

Ms. Diamond also has a substantial likelihood of succeeding on the merits of her claim that Housing Defendants violated her right to equal protection by discriminating against her based on sex. *Camenisch*, 451 U.S. at 394 (noting that a “likelihood of success,” not actual “success,” is required for purposes of the standard). An imprisoned plaintiff states an equal protection claim by showing that similarly situated individuals received more favorable treatment and that the differential treatment was based on a constitutionally protected interest without the requisite countervailing governmental interest. *Smith v. Reg’l Dir. of Fla. Dep’t of Corrs.*, 368 F. App’x 9, 12 (11th Cir. 2010); *see also Washington v. Albright*, No. 2:11-cv

classifications based on sex or gender); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (noting that sex or gender “generally provide[ ] no sensible ground for differential treatment”).

n 1. *Ms. Diamond is similarly situated to other women because she is equally vulnerable to sexual assault and victimization by cisgender men in men’s prisons.*

Ms. Diamond, despite having been assigned male at birth, now shares many of the same characteristics as other women who were assigned female at birth (*i.e.*, cisgender women). For example, as is the case with most women, she has female breasts, feminine mannerisms, and a female gender identity. Ettner Decl. ¶¶ 68-70. Ms. Diamond is similar in build, muscle mass and bone density to an average non-transgender, or cisgender, woman that is her height and weight,

birth, or her external anatomy, despite the fact that science has shown that a person's sex is comprised of several components, including hormones, chromosomes, external genitalia, internal reproductive organs, gender identity, and sexual differentiation in brain development and structure, and that gender identity is ultimately determinative, many of which Ms. Diamond shares in common with similarly situated cisgender women. Ettner Decl. ¶¶ 21-22, 61 (explaining that



database reveals that numerous cisgender women who have committed far more serious offenses—including murder, sex offenses, and even sexual assaults against others in custody, are currently incarcerated in GDC’s facilities for women. *See* *Ezie* Ex. 32 (showing profiles of women convicted of rape, murder, assault in custody, and aggravated sodomy). There can be no serious doubt that if Ms. Diamond were a cisgender woman with the exact same characteristics, including crime, sentence, and criminal history, the Housing Defendants would have housed her in a women’s facility. *See De Veloz*, 756 F. App’x at 880 (stating “the unlawfulness of placing a female detainee within the male population [i]s readily apparent”); *Hampton*, 2018 WL 5830730, at \*12 (“female inmates can be equally aggressive and violent, perhaps more so than [plaintiff]. Yet, no one would suggest those women should be housed in the men’s division.”).

By applying the De Facto Placement Ban to Ms. Diamond and blocking her requests for a safety transfer, the Housing Defendants discriminated against Ms. Diamond despite her similarity to incarcerated cisgender women by housing her exclusively in men’s prison(s)-10 (g)10 r

to Ms. Diamond while protecting similarly situated women by placing them in women's facilities where they do not face a constant threat of abuse from cisgender male predators. Defendants' differential tr

Diamond differently than her cisgender counterparts must be “genuine, not hypothesized,” *Adams ex rel. Kasper*, 968 F.3d at 1299 (quoting *VMI*, 518 U.S. at 533), meaning that it must be based in “demonstrable reality.” *Id.* (quoting *Nguyen v. Immigration & Naturalization Serv.*, 533 U.S. 53, 77 (2001) (O’Connor, J., dissenting)). The Housing Defendants must therefore provide solid evidence that Ms. Diamond, as a transgender woman, is inherently more threatening to prison discipline and security if housed in a women’s facility than a cisgender women. Not only is a security justification for their housing decisions unsupportable; it is contrary to proper prison order and discipline. Aiken Decl. ¶¶ 26-28, 33-43, 50-64, 85-86, 92, 95. Indeed, the risk of adverse outcomes in transferring a transgender woman like Ms. Diamond to a predominantly female facility “is minimal, if not nonexistent” so long as “basic security measures are operating at a basic and validated manner.” Aiken Decl. ¶ 40.

Because no evidence, merely speculation and conjecture, exists to justify the Housing Defendants’ refusal to house Ms. Diamond in an environment equally safe from cisgender male predation as is provided to similarly situated women, any justification must be purely hypothetical and therefore fails heightened scrutiny. *See, e.g., Doe v. Mass. Dep’t of Corr.*, No. 17-12255-RGS, 2018 WL 2994403, at \*10 (D. Mass. June 14, 2018) (citing

*a, l. 30 (p. 10) (d. T. J. D. Tnd. (s) ma. 1 (a) (u) he (-1) (2) (n) (a) p. 20 (s) 1 (10) (c) (3) (r) (e) Sl) 2e2. 0c) 11 g) (e) -2.3 Td (n) R) -*

at 1320 n.9 (“[G]overnmental reliance on gender-based stereotypes is dispositive in . . . equal protection analysis”). As explained by the Eleventh Circuit, “[a] person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes.” *Glenn*, 663 F.3d at 1316. The Housing Defendants labeled Ms. Diamond a man for purposes of placing her in a GDC facility based on either her sex assigned at birth or her anatomy. This labelling relies either on the stereotype that women are not assigned male at birth, or that women should possess a certain form of external genitalia, or both—either are unconstitutional. *See, e.g., Kastl v. Maricopa Cnty. Cmty. Coll. Dist.*, No. Civ. 02–1531PHX–SRB, 2004 WL 2008954, at \*2 (D. Ariz. June 3, 2004) (“[N]either a woman with male genitalia nor a man with stereotypically female anatomy, such as breasts, may be deprived of a benefit or privilege [] by reason of that nonconforming trait.”).

Moreover, the Housing Defendants placed Ms. Diamond in a men’s facility based on gender stereotyping without regard to the facts—well known to GDC officials—that Ms. Diamond identifies and lives as a woman, that she possesses the hormonal makeup and physical characteristics of a woman, including female secondary sex characteristics, and that she faces the risks of physical and sexual assault that any woman would face if housed in men’s prisons. *See Adams ex rel. Kasper*, 968 F.3d at 1302–03; *Tay*, 457 F. Supp. 3d at 681 (noting that wD ( w)2a 0 Td[(9i

2018 WL 5830730, at \*12 (same).

Ms. Diamond has a substantial likelihood of succeeding on the merits of Count VII of the Amended Complaint, ECF No. 36, which alleges that Defendants Lewis, J. Jackson, and Sauls violated the Eighth Amendment's prohibition on cruel and unusual punishment in failing to provide adequate medical care. Prison officials violate the Eighth Amendment when they act with deliberate indifference to the serious medical needs of an incarcerated person. *See Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003). An incarcerated plaintiff must show that (1) there was a serious medical need (objective inquiry), (2) the prison official was deliberately indifferent to the serious medical need (subjective inquiry), and (3) the prison official's wrongful conduct caused injury. *Diamond I*, 131 F. Supp. 3d at 1371-72. All of these criteria have been met here.

*1. Defendants Were Deliberately Indifferent to Ms. Diamond's Serious Medical Needs*

Defendants Lewis, J. Jackson, and Sauls ("Healthcare Defendants") acted with deliberate

Ms. Diamond with any gender expression accommodations, despite knowing they were a critical component of her care; denied her requests for medicated hair removal treatments; and have failed to conduct blood work or monitoring to ensure that Ms. Diamond's hormone therapy is minimally therapeutic while also allowing erratic, weeks-long interruptions. Diamond Decl. ¶ 57; Ettner Decl. ¶¶ 75, 77, 79, 81-82, 87, 88-90; Ezie Ex. 27.

Defendants' failure to ensure that Ms. Diamond's hormone therapy is timely and therapeutic, despite repeated requests, violates the Eighth Amendment because is either "grossly inadequate care" or "so cursory as to amount to no treatment at all." *Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004); accord *Monroe v. Meeks*, No. 18-CV-00156-NJR, 2020 WL 1048770, at \*3 (S.D. Ill. Mar. 4, 2020) (granting an injunction that ordered prison officials to "ensure that timely hormone therapy is provided when medically necessary, including the administration of hormone dosage adjustments, and to perform routine monitoring of hormone levels."). Courts have also recognized that "'gender-affirming' canteen items and permanent hair removal are not merely cosmetic treatments but, instead, medically necessary treatments to address a serious medical disease." *Hicklin v. Precynthe*, No. 4:16-CV-01357-NCC, 2018 WL 806764, at \*12 (E.D. Mo. Feb. 9, 2018); accord *Alexander v. Weiner*, 841 F. Supp. 2d 486, 493 (D. Mass. 2012) (transgender plaintiff who was denied laser hair removal stated Eighth Amendment claim); *Konitzer v. Frank*, 711 F. Supp. 2d 874, 909-11 (E.D. Wis. 2010) (same); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 246-48 (D. Mass. 2012) (enjoining ban on hair removal treatment as unconstitutional). Because Defendants Lewis, Jackson and Sauls are also Housing Defendants, the refusal to provide gender-affirming care or to transfer Ms. Diamond to a women's facility despite her acute symptoms highlights the inadequacy of her treatment where transfer to female facility in order for her to live in accordance with her female identity and be protected from male predation "is now medically necessary." Ettner Decl. ¶ 117.

Unlike in *Keohane v. Florida Department of Corrections Secretary*, where “medical professionals were—and remain—divided over whether social transitioning is medically necessary to [the plaintiff’s] gender-dysphoria treatment,” this case does not involve a purported battle of the experts. 952 F.3d 1257, 1274 (11th Cir. 2020), *reh’g denied*, 981 F.3d 994 (Mem.) (11th Cir. 2020). Defendants Lewis, J. Jackson, and Sauls have simply overridden the treatment recommendations of GDC healthcare providers without conducting any individualized assessment of Ms. Diamond’s medical needs—the very same blanket denials this Court recognized as unconstitutional in Ms. Diamond’s first case. *Diamond I*, 131 F. Supp. 3d 1346. *See also* *Kosilek v. Spencer*, 774 F.3d 63, 91 (1st Cir. 2014); *Roe v. Elyea*, 631 F.3d 843, 862-63 (7th Cir. 2011); *Colwell v. Bannister*, 763 F.3d 1060, 1068 (9th Cir. 2014); *Soneeya*, 851 F. Supp. 2d at 247; *Brooks v. Berg*, 270 F. Supp. 2d 302, 310 (N.D.N.Y. 2003), *vacated in part on other grounds*, 289 F. Supp. 2d 286 (N.D.N.Y. 2003).

Individually and taken together, these failures constitute deliberate indifference to Ms. Diamond’s serious medical needs arising from her gender dysphoria. *See, e.g., Monroe v. Baldwin*, 424 F. Supp. 3d 526, 546 (S.D. Ill. 2020), *aff’d on reconsideration sub nom. Monroe v. Meeks*, No. 18-CV-00156-NJR, 2020 WL 1048770 (S.D. Ill. Mar. 4, 2020) (ordering officials to “cease the policy and practice of depriving gender dysphoric prisoners of medically necessary social transition”); *Braggs v. Dunn*

Supp. 2d at 908 (treatment is “arguably inadequate” where an inmate “keeps exhibiting the behavior seen in [gender dysphoria] sufferers, repeated self-castration attempts”); *De’lonta v. Johnson*, 708 F.3d 520, 526 (4th Cir. 2013) (“[J]ust because [the defendants] have provided [the plaintiff] with some treatment consistent with the [WPATH] Standards of Care, it does not follow that they have necessarily provided her with constitutionally adequate treatment.”); *Greeno v. Daley*, 414 F.3d 645, 655 (7th Cir. 2005) (prison officials show deliberate indifference when they “doggedly persist[] in a course of treatment known to be ineffective.”). *See also Cassady v. Dozier*, No. 5:17-CV-495 (MTT), 2018 WL 1370602, at \*6 (M.D. Ga. Mar. 16, 2018) (Treadwell, J.) (acknowledging that plaintiff who sought surgery because her gender dysphoria did not improve simply with hormone therapy stated an Eighth Amendment claim at the PLRA screening stage).

## 2. *Defendants Caused Plaintiff’s Injuries*

Ms. Diamond can also demonstrate causation because Defendants Lewis, J. Jackson, and Sauls are the GDC officials ultimately responsible for approving healthcare and treatment plans for transgender people in GDC custody. *See* Ezie Ex. 20 (“Each treatment plan or denial of treatment must be approved by the Statewide Medical Director and Statewide Mental Health Director”); GDC Answer ¶ 28 (admitting that Sauls also has a role in healthcare provision). Accordingly, Defendants Lewis, J. Jackson, and Sauls’s decision to overrule the recommendations of Ms. Diamond’s medical providers and block her urgent requests for treatment are the only reason that Ms. Diamond has gone without medically necessary care to this day. *See LaMarca*, 995 F.2d 1526, 1538 (11th Cir. 1993)



result of Defendants’ sex discrimination, failure to protect her, and failure to provide her adequate medical care, Ms. Diamond has suffered and will continue to suffer severe physical and emotional injury, including sexual abuse, sexual assaults, depression, anxiety, suicidal ideation, worsening PTSD, and suicide and self-castration attempts. Diamond Decl. ¶¶ 108-118; Ettner Decl. ¶¶ 91-131. *See, e.g., Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010) (citations and quotation marks omitted) (“An injury is irreparable if it cannot be undone through monetary remedies.”); *Tay*, 457 F. Supp. 3d at 687–88 (transgender plaintiff established irreparable harm in Eighth Amendment failure to protect case because “money will not make Plaintiff whole or protect her from physical and emotional abuse”); *Hicklin*, 2018 WL 806764, at \*9 (“depression, anxiety, and intrusive thoughts of self-castration” caused by treatment denials are irreparable injuries).

The harm that Ms. Diamond has experienced and will continue to experience also relates to “unconstitutional condition[s] of confinement,” which are themselves irreparable injuries that only injunctive remedies can protect against. *Thomas v. Bryant*, 614 F.3d 1288, 1322 (11th Cir. 2010). In *Tay v. Dennison*, a court held that a transgender plaintiff satisfied the irreparable harm requirement where she had “been forced to endure constant sexual abuse and

risk of medical complications is another source of irreparable harm. *See, e.g., Edmo v. Corizon, Inc.*, 935 F.3d 757, 797 (9th Cir. 2019), *cert. denied sub nom. Idaho Dep’t of Corr. v. Edmo*, 141 S. Ct. 610 (2020) (finding irreparable harm based on transgender plaintiff’s “high risk of self-castration and suicide”); *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1192 (N.D. Cal. 2015), *appeal dismissed and remanded*, 802 F.3d 1090 (9th Cir. 2015) (finding irreparable harm based on “[e]motional distress, anxiety, depression” and “significant worsening of her gender dysphoria”); *Fields v. Smith*, 712 F. Supp. 2d 830, 869 (E.D. Wis. 2010), *aff’d*, 653 F.3d 550 (7th Cir. 2011) (gender dysphoria care denials caused irreparable harm); *Hoffer v. Jones*, 290 F. Supp. 3d 1292, 1304 (N.D. Fla. 2017) (denial of treatment “in an appropriate and timely manner” to people in custody was irreparable harm); *Planned Parenthood Se., Inc. v. Bentley*, 951 F. Supp. 2d 1280, 1289 (M.D. Ala. 2013) (injunction was warranted to prevent complications from treatment delays); *Harris v. Bd. of Supervisors*, 366 F.3d 754, 766 (9th Cir. 2004) (same).

deteriorates, and she stands an overwhelming risk of serious injury or death from assault, homicide, suicide or self-harm. *See, e.g., Gammett v. Idaho State Bd. of Corrs.*, 2007 WL 2186896, at \*15-16 (D. Idaho July 27, 2007) (balance of harms “sharply” favored plaintiff who stood a risk of psychological harm without gender dysphoria treatment); *Edmo*, 935 F.3d at 781 (equities favored transgender plaintiff denied gender dysphoria care because of “continuing emotional distress and self-castration attempts”). In contrast, Defendants cannot claim any harm at all because Ms. Diamond merely seeks to enjoin unconstitutional conduct. *Scott*, 612 F.3d at 1297. In contrast, the harm threatened to Ms. Diamond is the unspeakable horror of continued sexual abuse and assault as a woman in a men’s prison. *De Veloz*, 756 F. App’x at 877 (noting the “outrageous risk” that women in men’s prisons “will be harassed, assaulted, raped, or even murdered.”). Any alleged harm based on cost or burden would be *de minimis*. *See Hoffer*, 290 F. Supp. 3d at 1304 (“The threat of harm to the plaintiffs cannot be outweighed by the risk of financial burden or administrative inconvenience to the defendants.”) (citation omitted).

For the foregoing reasons, the Court should issue a preliminary injunction that (1) orders Defendants to transfer Ms. Diamond to a female facility for safety purposes for the remainder of her time in custody in order for her to be protected from sexual victimization by male inmates; (2) directs Defendants to allow Ms. Diamond to shower privately; (3) enjoins Defendants from using male correctional officers to conduct strip searches of Ms. Diamond, absent exigent circumstances; (4) directs Defendants to provide Ms. Diamond with medically necessary treatment for gender dysphoria, including but not limited to consistent and therapeutic doses of hormone therapy, access to permanent body hair removal, and gender-affirming care including access to female canteen items, accommodations for a female hairstyle and grooming standards, or, alternatively, a transfer to a female facility; and (5) enjoins Defendants from enforcing the De Facto Placement Ban and

any other policies, customs, or practices that have served as a moving force behind their actions denying Ms. Diamond protection from sexual assault or adequate gender dysphoria treatment.

Ms. Diamond also requests that the bond requirement be waived given her indigent status and the important constitutional rights she seeks to vindicate. *See Booher v. Marion Cnty.*, No. 5:07-cv-00282-WTH-GRJ, 2007 WL 9684182, at \*4 (M.D. Fla. Sept. 21, 2007) (“Public interest litigation [] is a recognized exception to the Rule 65(c) bond requirement.”); *Reed*, 420 F. Supp. 3d at 1381 (declining to impose bond in case seeking to enforce the constitutional rights of felons).

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Respectfully Submitted,

/s/ Elizabeth Littrell  
Elizabeth Littrell, Ga. Bar No. 454949  
Southern Poverty Law Center  
P.O. Box 1287  
Decatur, GA 30031  
Phone: (404) 221-5876  
Fax: (404) 221-5857  
Email: beth.littrell@splcenter.org

Tyler Rose Clemons\*  
Southern Poverty Law Center  
201 St. Charles Avenue, Suite 2000  
New Orleans, LA 70170  
Phone: (504) 526-1530  
Fax: (504) 486-8947  
Email: tyler.clemons@splcenter.org

Maya G. Rajaratnam\*  
Southern Poverty Law Center  
400 Washington Avenue  
Montgomery, AL 36104  
Phone: (334) 956-8307  
Fax: (334) 956-8481  
Email: maya.rajaratnam@splcenter.org

A. Chinyere Ezie\*  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012