

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHELSEA ELIZABETH MANNING)
United States Disciplinary Barracks)
1301 North Warehouse Road)
Fort Leavenworth, KS 66027-2364)

Plaintiff,)

v.)

Civil Action No. 1:14-cv-1609 (CKK)

THE HONORABLE ASHTON CARTER)
Secretary of Defense)
1000 Defense Pentagon)
Washington, DC 20301-1000)

MAJOR GENERAL)
DAVID E. QUANTOCK)
Provost Marshal General of the)
United States Army)
Department of the Army)
Army Corrections Command)
150 Army Pentagon)
Washington, DC 21310-0150)

COLONEL ERICA NELSON)
Commandant)
United States Disciplinary Barracks)
1301 North Warehouse Road)
Fort Leavenworth, KS 66027-2364)

LIEUTENANT COLONEL)
NATHAN KELLER)
Director Treatment Programs)
Military Correctional Complex)
1301 North Warehouse Road)
Fort Leavenworth, KS 66027-2364)

U.S. DEPARTMENT OF DEFENSE)
1400 Defense Pentagon)
Washington, DC 20301-1400)

Defendants.)

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff Chelsea E. Manning, a female prisoner currently incarcerated at the

United States Disciplinary Barracks at Fort Leavenworth, has been denied access to medically necessary treatment for her gender dysphoria and is treated differently than all other female military prisoners on the basis of her assigned sex at birth and her transgender status. She brings this action to compel Defendants to treat her serious medical needs and permit her to follow the hair length and hair grooming standards applicable to all other female prisoners consistent with their obligations under the Constitution.

NATURE OF THE ACTION

2. This action seeks declaratory and injunctive relief to redress Defendants' refusals to provide Plaintiff with medically necessary treatment or to treat her like all other female prisoners in military custody in violation of Plaintiff's rights under the Eighth and Fifth Amendments to the United States Constitution.

3. Defendants have violated the Constitution by denying Plaintiff medically necessary treatment for her diagnosed gender dysphoria, a serious medical condition, and by refusing to apply to Plaintiff the hair length and hair grooming rules applicable to all other female prisoners solely because she is transgender, gender non-conforming and was assigned the sex of male at birth.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, in that the Complaint arises under the United States Constitution. The request for declaratory relief is based upon 28 U.S.C. § 2201, in that an actual controversy exists between Defendants and Plaintiff over the denial of services that are guaranteed by the United States Constitution.

5. This Court has personal jurisdiction over each of the Defendants, all of whom are sued only in their official capacity.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1)(A) because at least one of the defendants in this action officially resides in this district and, pursuant to 28 U.S.C. § 1391(e)(1)(B), because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in this district.

PARTIES

7. Plaintiff Chelsea Elizabeth Manning is a Private in the United States Army and is presently incarcerated at the United States Disciplinary Barracks at Fort Leavenworth, Kansas (USDB). She has been diagnosed with a serious medical condition, gender dysphoria, for which she is currently receiving only some of the medically necessary treatment. Though female, Plaintiff is subject to hair length and hair grooming standards applicable to men only.

8. Defendant Ashton Carter is the Secretary of the United States Department of Defense. He is sued in his official capacity. Secretary Carter has authority, direction and control over the Department of Defense, 10 U.S.C. § 113(b), and is among those responsible for denying Plaintiff medically necessary treatment for gender dysphoria and subjecting her to differential treatment on the basis of her sex, gender non-conformity and transgender status.

9. Defendant Major General David E. Quantock is the Provost Marshal General of the United States Army, the commanding officer of the Army Corrections Command. He is sued in his official capacity. Maj. Gen. Quantock is among those responsible for denying Plaintiff medically necessary treatment for gender dysphoria and subjecting her to differential treatment on the basis of her sex, gender non-conformity and transgender status.

10. Defendant Colonel Erica C. Nelson is the Commandant of the United States Disciplinary Barracks at Fort Leavenworth. She is sued in her official capacity. Col. Nelson is responsible for the health and welfare of prisoners at the USDB and is among those responsible for denying Plaintiff medically necessary treatment for gender dysphoria and subjecting her to differential treatment on the basis of her sex, gender non-conformity and

transgender status.

11. Defendant Lieutenant Colonel Nathan A. Keller is the Director of Treatment Programs at the USDB. He is sued in his official capacity. Lt. Col. Keller is responsible for providing medical care to individuals confined in the USDB and is among those responsible for denying Plaintiff medically necessary treatment for gender dysphoria and subjecting her to differential treatment on the basis of her sex, gender non-conformity and transgender status.

12. Defendant Department of Defense is a Department of the Executive Branch of the United States Government. The Department of the Army is a component of the Department of Defense. The Department of Defense maintains custody of Plaintiff and is responsible for her care and treatment.

FACTS

Plaintiff's gender

13. Plaintiff is a woman.

14. As a woman and as a person suffering from gender dysphoria, Plaintiff experiences significant distress when identified as male or forced to follow grooming standards imposed only on male prisoners.

15. From an early age Plaintiff felt a strong, internal sense of her female identity but did not have the ability to articulate this core identity until later in life.

16. Though Plaintiff was assigned the sex of male at birth, her identity as a woman is the same as women assigned the sex of female at birth.

17. Plaintiff has been diagnosed with and is treated for gender dysphoria and has been recognized as female by medical experts and Defendants.

18. Plaintiff is treated differently from other female prisoners in the custody of the military because of her transgender status, gender non-conformity, and the fact that she was

assigned the sex of male at birth.

19. Female prisoners confined in military correctional facilities in the United States are permitted to wear medium and long, feminine hairstyles while male prisoners are required to maintain short, masculine hairstyles.

20. Plaintiff is forced to follow the male hair length and hair grooming standards, which require that her hair be cut every two weeks to a length not to exceed two inches.

21. Defendants' refusal to permit Plaintiff to follow the hair length and hair grooming standards applied to other female prisoners undermines Plaintiff's medical treatment and singles her out for differential and discriminatory treatment on the basis of her sex, gender non-conformity and transgender status.

Gender dysphoria and the standards of care for this condition

22. Gender dysphoria (previously known as gender identity disorder (GID)) is the medical diagnosis given to individuals whose gender identity – a person's innate sense of being a particular gender, usually male or female – differs from the sex they were assigned at birth, causing clinically significant distress. This condition is included in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth ed. (2013) (DSM-V), and recognized by the other major medical and mental health professional groups, including the American Medical Association and the American Psychological Association.¹

23. In the DSM-V, the diagnostic criteria for gender dysphoria are:

- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:

¹ See American Medical Association, Resolution 122 (A-08) (2008); American Psychological Association, Transgender, Gender Identity, & Gender Expression Non-Discrimination (August, 2008).

1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

B. The condition is associated with clinically significant distress or impairment in social, occupational or other important areas of functioning.

24. There is a medical consensus that gender dysphoria is a serious condition that, without treatment, can lead to severe medical problems, including clinically significant psychological distress, dysfunction, debilitating depression, self-surgery, and suicidality.

25. Gender dysphoria intensifies over time. The longer an individual goes without treatment, the greater the risk of severe harms to the individual's physical and psychological health.

26. Incarcerated individuals, particularly male-to-female transsexuals like Plaintiff, are at a particularly high risk of engaging in self-harm including self-castration when treatment is withheld.

27. The medically recognized protocols for treating gender dysphoria are the *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* developed by the World Professional Association for Transgender Health (WPATH Standards of Care). WPATH is the leading authority on gender

dysphoria. The WPATH Standards of Care are recognized as authoritative and accepted by the American Medical Association, the Endocrine Society, and the American Psychological Association.²

28. The WPATH Standards of Care provide for the following treatments, some or all of which will be required depending on the needs of the patient:

- Changes in gender expression and role (which may involve living part time or full time in another gender role, consistent with one's gender identity);
- Hormone therapy to feminize or masculinize the body;
- Surgery to change primary and/or secondary sex characteristics (e.g. breasts/chest, external and/or internal genitalia, facial features, body contouring);
- Psychotherapy (individual, couple, family, or group) for purposes such as exploring gender identity, role, and expression; addressing the negative impact of gender dysphoria and stigma on mental health; alleviating internalized transphobia; enhancing social and peer support; improving body image; or promoting resilience.

29. Under the WPATH Standards of Care, the development of any treatment plan and all subsequent treatment must be administered by clinicians qualified in treating patients with gender dysphoria.

30. Psychotherapy or counseling can provide support and help with the many issues that arise in tandem with gender dysphoria. Counseling alone, however, is not a substitute for medical intervention or social role transition where such interventions are needed nor is it a precondition for such interventions.

31. Treatment for gender dysphoria through changes in gender expression and role, often referred to as the "Real Life Experience" or "social role transition," involves dressing, grooming, including through hair length and style, and otherwise outwardly

² See American Medical Association, Resolution 122 (A-08) (2008); Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline (2009); American Psychological Association Policy Statement on Transgender, Gender Identity and Gender Expression Nondiscrimination (2009).

expressing oneself consistently with one's gender.

32. The National Commission on Correctional Healthcare (NCCHC) recommends that the medical management of prisoners with gender dysphoria "should follow accepted standards developed by professionals with expertise in transgender health," citing the WPATH Standards of Care.³ The NCCHC also explains that "Policies that make treatments available only to those who received them prior to incarceration or that limit transition and/or maintenance are inappropriate and out of step with medical standards and should be avoided."⁴

33. The Federal Bureau of Prisons and many state and local corrections agencies administer hormone therapy to prisoners with gender dysphoria in their custody and house feminine appearing prisoners in both men's and women's facilities.

34. The Federal Bureau of Prisons and many state and local corrections agencies permit male and female prisoners housed in men's prisons to maintain long hairstyles.

35. Female prisoners confined in military correctional facilities in the United States are permitted to maintain long hairstyles but male prisoners are not permitted to maintain such hairstyles.

36. The medical providers who have evaluated and diagnosed Plaintiff with gender dysphoria, including the medical providers at the United States Disciplinary Barracks (USDB) employed by Defendants, recognize that treatment protocols for gender dysphoria should follow the WPATH Standards of Care.

37. The military's own medical providers have recommended and initiated

³ NCCHC Policy Statement, Transgender Health Care in Correctional Settings (adopted October 18, 2009 and reaffirmed with revision, April 2015), <http://www.ncchc.org/transgender-transsexual-and-gender-nonconforming-health-care>.

⁴ *Id.*

treatment for Plaintiff's gender dysphoria, and recognize that she is female.

38. The medical providers who have evaluated Plaintiff, including the military's medical providers, agree that maintaining a feminine hairstyle is a medically necessary part of Plaintiff's treatment.

Plaintiff's gender dysphoria

39. Plaintiff's assigned sex at birth was male, but from a young age she experienced the persistent sense that she was "different." In school she was teased and called names such as "girly-boy," "faggy," and "queer," because she did not conform to expectations of how a boy should look and act.

40. Throughout childhood, adolescence and young adulthood, Plaintiff wore feminine clothing in private, but this caused her to be overcome with feelings of guilt, leading her to try to repress her femininity and conform to expectations of how males should look and behave.

41. In 2009, Plaintiff came to terms with the fact that she is a transgender woman and could no longer suppress her female identity.

42. In May of 2010, Captain Michael Worsley, a clinical psychologist, first diagnosed Plaintiff with gender identity disorder while she was stationed in Iraq.

43. After her arrest on May 27, 2010 for unlawful disclosure of classified information, Plaintiff was transferred from Iraq to Camp Arifjan, Kuwait, where she was held in pretrial confinement until July of 2010. At Camp Arifjan, Plaintiff was again diagnosed with gender identity disorder by Dr. Jonathan Richardson, a Navy psychiatrist, and Dr. Eve Weber, a Navy psychologist, but she was not provided with any treatment.

44. While in confinement in Kuwait, Plaintiff became overcome with anxiety and distress at the realization that she might not receive treatment for gender dysphoria and

contemplated self-surgery to relieve her pain. She also made plans to commit suicide but her plans were discovered and she was placed on suicide watch.

45. On April 22, 2011, Plaintiff was again diagnosed with gender identity disorder during her Rule 706 Board, the body convened under the Rules for Court-Martial to assess her mental fitness to stand trial. The Rule 706 Board also documented Plaintiff's request for treatment for gender identity disorder, including permission to grow her hair and otherwise be permitted to follow grooming standards for female detainees and to begin hormone therapy.

46. On August 21, 2013, Plaintiff was sentenced to serve thirty-five years in prison. The next day – August 22, 2013 – Plaintiff was transferred to the USDB, where she remains. That day Plaintiff made a public statement through counsel announcing her female gender and stating that she would be requesting treatment for gender dysphoria while incarcerated. She announced, through a statement provided by her counsel to NBC's *The Today Show*, "I am Chelsea Manning. I am a female. [...] Given the way that I feel, and have felt since childhood, I want to begin hormone therapy as soon as possible."⁵ On January 27, 2014, Plaintiff petitioned for a legal name change in the District Court of Leavenworth County, Kansas. This petition was granted and Plaintiff's name was legally changed to Chelsea Elizabeth Manning on April 23, 2014. Her prison records have been updated to reflect the court ordered name change. On March 4, 2015, the United States Army Court of Criminal Appeals ordered that all reference to Plaintiff in her criminal appeal use either gender-neutral language or feminine pronouns.

47. In response to Plaintiff's public statement about her gender identity and

⁵ Jonel Aleccia, *Beginning gender change in prison is a long shot* (NBCnews Online Aug. 22, 2013), <http://www.nbcnews.com/health/health-news/beginning-gender-change-prison-long-shot-f6C10974050>.

requested treatment, Kimberly Lewis, a spokesperson for the USDB, told NBC news that “The Army does not provide hormone therapy or sex-reassignment surgery for gender identity disorder.”⁶

Requests for treatment made to the Directorate of Treatment Programs

48. Upon her arrival at the USDB on August 22, 2013, Plaintiff submitted a memorandum to the Directorate of Treatment Programs (DTP) requesting an evaluation and treatment for gender dysphoria in accordance with the WPATH Standards of Care.

49. On the day she arrived at the USDB, John Lesniak, Chief, Assessment Division of the DTP, conducted a risk and needs assessment of Plaintiff. Mr. Lesniak designated Plaintiff as high risk for sexual victimization due to, among other things, her transgender status and slight build. Plaintiff was again designated as high risk to be sexually victimized due to her effeminate mannerisms and transgender status during a Prison Rape Elimination Act (PREA) assessment conducted by Dr. Ellen Galloway on May 30, 2014.

50. During Mr. Lesniak’s risk and needs assessment, Plaintiff inquired about treatment options for gender dysphoria and Mr. Lesniak informed her that Army policy limits treatment for gender dysphoria to psychotherapy and anti-depressant and anti-anxiety medication.

51. On August 28, 2013, Plaintiff requested a mental health evaluation and treatment for gender dysphoria by submitting a Department of Defense (DD) Form 510 to Defendant Lt. Col. Nathan Keller, the Director of Treatment Programs.

52. In September 2013, Plaintiff was evaluated by Dr. Ellen Galloway, Chief of the Mental Health Division at the USDB.

53. On September 30, 2013, Dr. Galloway diagnosed Plaintiff with gender

⁶ *Id.*

dysphoria. That diagnosis was reviewed by Dr. Patrick Armistead-Jehle, another Army psychologist, who concurred with Dr. Galloway's diagnosis in a memorandum dated October 1, 2013.

54. On October 15, 2013, Lt. Col. Keller sent a memorandum to Steve Lynch, former Deputy Director of the Army Corrections Command, regarding available treatment for Plaintiff at the USDB. In that memorandum, Keller wrote, "I see no way the USDB can provide a full course of therapy for Mr Manning's Gender Dysphoria ... because the USDB cannot house a female or highly feminized inmate. Permitting Mr Manning to live as female, much less begin to feminize his body, will create operational challenges as the inmate population respond to these changes."

55. On October 16, 2013, Dr. Galloway sent a memorandum to Steve Lynch regarding treatment available at the USDB for Plaintiff. In that memorandum she advised that the ethical principles of psychologists mandate that psychologists only provide services within the scope of their competence and that she does "not have the expertise to develop a treatment plan or provide treatment for individuals with [gender dysphoria]."

56. On November 25, 2013, a treatment plan for Plaintiff's gender dysphoria was completed by Dr. Galloway based on the recommendations of Army psychiatrist, Dr. Ricky Malone, and sent to the Army Corrections Command. Only a redacted version of that treatment plan has been disclosed to Plaintiff.

57. After approximately six weeks passed without treatment being initiated, on January 5, 2014, Plaintiff submitted another DD Form 510 to the Directorate of Treatment Programs requesting a status update on her care.

58. On April 2, 2014, Plaintiff submitted a request to the DTP for permission to: follow female grooming standards, including standards related to hair length and hair

grooming; have female-specific issued clothing; and, be given additional female health and grooming items.

59. On July 23, 2014, having received no response to her April 2, 2014 request for permission to follow female grooming standards, including standards related to hair length and hair grooming, for female-specific issued clothing, and for additional female health and grooming items, Plaintiff renewed that request.

60. On August 21, 2014, Plaintiff submitted a request for exception to Policy to Army Regulation 670-1 to the Deputy Chief of Staff, G-1, Department of the Army, to permit her, “a male assigned at birth, to use the female hair grooming, cosmetic, and nail grooming standards in Chapter 1-8 of AR 670-1 for implementing a medically supervised ‘Real-Life Experience (RLE)’ for [her] diagnosis of Gender Dysphoria under DSM-5.” At the time of filing the original complaint in this matter, Plaintiff had received no response to that request.

61. To date Plaintiff’s request to follow female hair length and hair grooming standards has been denied.

62. Though female prisoners confined in military correctional facilities in the United States are permitted to wear their hair in long and feminine hairstyles, Plaintiff is not. Instead, she is forced to follow male hair length and hair grooming standards that require her to maintain hair that cannot exceed two inches, cut in a masculine fashion.

63. With respect to hair length and hair grooming, Plaintiff is singled out and discriminated against because of her sex, gender non-conformity and transgender status.

Requests for treatment to the Commandant and through the chain of command

64. On January 21, 2014, having received no response to her DD Form 510 request for a status update, Plaintiff submitted a request for redress to Col. Ledwith, the Commandant at the USDB, and Cpt. Byrd, her commander at the Personnel Control

Facility, under Army Regulation (AR) 27-10 and Article 138, Uniform Code of Military Justice (UCMJ). Col. Ledwith has since left her post as Commandant. Col. Erica Nelson has assumed the command of the USDB as Commandant. Plaintiff alleged in this request that the actions of Col. Ledwith and Cpt. Byrd in refusing to implement a treatment plan for her gender dysphoria were arbitrary and unreasonable. As redress she requested that a treatment plan consistent with the WPATH Standards of Care be implemented.

65. On March 4, 2014, having received no response to her request for redress, Plaintiff submitted a complaint of wrong against Col. Ledwith and Cpt. Byrd under Article 138, UCMJ, for failure to provide appropriate medical care to treat her gender dysphoria and again requested the implementation of a treatment plan in accordance with the WPATH Standards of Care.

66. On May 7, 2014, Plaintiff learned through counsel that her Article 138 complaint of wrong had been deemed deficient on March 19, 2014, on the grounds that (1) Col. Ledwith was not Plaintiff's commanding officer; and (2) Cpt. Byrd lacked the authority to approve the treatment plan.

67. On May 29, 2014, Plaintiff filed a request for an exception to the AR 27-10 requirement that complaints be made to a person's chain of command. Because Plaintiff's chain of command, Cpt. Byrd, was the only proper person against whom to bring an Article 138 complaint of wrong but he had no authority to approve her requested treatment, Plaintiff sought permission to file her complaint against the Commandant of the USDB. On July 3, 2014, Plaintiff's request for an exception to AR 27-10 was denied.

Action Request to the Army's Office of the Inspector General

68. On January 21, 2014, at the same time she submitted a request for redress to Col. Ledwith and Cpt. Byrd, Plaintiff also submitted an Inspector General Action Request to the Office of the Inspector General, United States Army Combined Armed

Center, Fort Leavenworth, Kansas. In this request, she alleged that the Directorate of Treatment Programs at the USDB had failed to provide her with medically necessary treatment and she requested treatment in accordance with medical protocols.

69. On February 21, 2014, Plaintiff was informed by the Office of the Inspector General that her action request had been forwarded to the Western Regional Medical Command (WRMC) Inspector General (IG) at the Joint Base Lewis-McChord.

70. On April 4, 2014, the WRMC IG informed Plaintiff that her action request had been passed on to the Office of the Surgeon General for the United States Army and that the WRMC IG would be taking no further action on it.

71. To date, Plaintiff has received no response from the Army Office of the Surgeon General to the action request.

The involvement of the Secretary of Defense

72. Since September 2013 Plaintiff has met regularly with Dr. Galloway as part of her general mental health treatment. During these sessions Plaintiff has repeatedly discussed the anxiety and depression caused by Defendants' failure to adequately treat her gender dysphoria. As reflected in her medical records, on multiple occasions Dr. Galloway informed Plaintiff that decisions regarding her treatment would be made by the Office of the Secretary of Defense.

73. On May 14, 2014, the Associated Press reported that then-Secretary of Defense Hagel had approved plans to transfer Plaintiff into the custody of the Federal Bureau of Prisons so she could receive treatment for gender dysphoria. In those reports, Pentagon press secretary Rear Admiral John Kirby said "No decision to transfer Private Manning to a civilian detention facility has been made, and any such decision will, of course, properly

balance the soldier's medical needs with our obligation to ensure she remains behind bars.”⁷

74. On July 17, 2014, the Associated Press reported that the Army's requested transfer of Plaintiff to the Federal Bureau of Prisons had been rejected and that then-Secretary Hagel had approved an Army recommendation to initiate a “rudimentary level of gender treatment.”⁸

Defendants' Response to Plaintiff's Demand Letter

75. On July 2, 2014, Plaintiff, through counsel, advised Defendants in writing that she was being represented by counsel with respect to her requests for medical treatment for gender dysphoria.

76. On August 11, 2014, Plaintiff, through counsel, sent a letter to Defendants demanding that she receive medical treatment for gender dysphoria in accordance with the WPATH Standards of Care, including hormone therapy and permission to follow the female hair and grooming standards applied to other female prisoners in order to express her female gender.

77. On August 20, 2014, Plaintiff was informed by memorandum that she would be provided with female underwear and sports bras.

78. On September 2, 2014, Col. Nelson responded to Plaintiff's August 11, 2014 letter on behalf of all recipients. She stated that Plaintiff's treatment needs were being met because she was receiving psychotherapy that had been expanded sometime after July 18, 2014 “to include therapy for gender dysphoria” and was “permitted to begin the

⁷ Associated Press, *Chelsea Manning may be transferred to civilian prison for gender treatment* (May 14, 2014), <http://www.theguardian.com/world/2014/may/14/chelsea-manning-civilian-prison-gender-treatment>.

⁸ Associated Press, *Chelsea Manning to begin gender treatment in US military custody* (July 17, 2014), <http://www.theguardian.com/world/2014/jul/17/chelsea-manning-gender-treatment-military-custody>.

‘real-life-experience’ treatment by being issued female undergarments, specifically female underwear and sports bras.”

79. Prior to the filing of the original complaint in this action, the only psychotherapy that Plaintiff received was from Dr. Galloway, who stated at the time that she lacked the qualifications to treat gender dysphoria.

80. Plaintiff continues to be denied treatment in the form of the Real Life Experience in that she is denied permission to outwardly express her female gender through female hair length and hair grooming standards.

Plaintiff's evaluation by Dr. Randi Ettner

81. On August 27, 2014, Plaintiff met with Dr. Randi Ettner, an expert in the diagnosis and treatment of gender dysphoria that she retained.

82. Based on a clinical interview with Ms. Manning, psychodiagnostic assessments, and a review of her medical records, Dr. Ettner confirmed Plaintiff's diagnosis of gender dysphoria, which is persistent and well-documented, and recommended treatment in accordance with the WPATH Standards of Care.

83. Dr. Ettner specifically recommended the following immediate treatment for Plaintiff's moderate-to-severe gender dysphoria: (1) that Plaintiff be permitted to express her female gender through growing her hair and having access to other grooming standards and cosmetics that female prisoners are permitted; and (2) that Plaintiff be started on a regimen of hormone therapy to include estrogens and anti-androgens.

84. Dr. Ettner noted that Plaintiff was experiencing significant distress and was at high risk for serious medical consequences, including self-castration and suicide, if the medically necessary treatment was not promptly provided.

Action by Defendants subsequent to Plaintiff's original complaint

85. On September 23, 2014, Plaintiff filed her original complaint and motion for preliminary injunction in this action seeking clinically appropriate treatment under the *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* developed by the World Professional Association for Transgender Health, including, but not limited to, (1) providing hormone therapy for Plaintiff's gender dysphoria; (2) permitting Plaintiff to express her female gender by following female grooming standards, including those related to dress and hair length; and (3) providing Plaintiff with treatment by a clinician who is qualified to treat gender dysphoria. See ECF No. 1.

86. In advance of Defendants' deadline to file their motion to dismiss and their opposition to Plaintiff's merits argument, ECF No. 12, on October 15, 2014, Plaintiff, through counsel, was provided with an updated treatment plan dated October 8, 2014. This treatment plan developed by Dr. Galloway indicated that Plaintiff's mental status was "deteriorating" as a result of her "treatment needs not being met." ECF No. 30, ex. 1.

87. On October 8, 2014, Dr. Galloway concluded that the medical interventions provided up to that point were not meeting Plaintiff's clinical needs. Dr. Galloway explained, "The purpose of the Real Life Experience is to permit the individual in treatment to live as the gender consistent with their experienced gender as opposed to their natal gender. In practice, this manifests as individual altering their appearance and presenting themselves to the world as their experienced gender." To meet Plaintiff's clinical needs, Dr. Galloway recommended that "Inmate Manning be permitted non-faddish, feminine hairstyles"; access to enumerated cosmetics; and hormone therapy at a future date. ECF No. 30, ex. 1.

88. On October 27, 2014, Defendants sought an extension of time of the briefing schedule based on changing facts with respect to Plaintiff's treatment. ECF No. 18. That motion was granted by the Court on October 29, 2014. ECF No. 21.

89. On November 14, 2014, in advance of Defendants' filing deadline for their motion to dismiss and opposition to the merits, ECF Nos. 21, 22, Plaintiff was provided, through counsel, with an update treatment plan dated November 4, 2014, ECF No. 30, ex. 2.

90. Dr. Galloway's November 4, 2014 treatment plan indicated that the recommendations of her October 8th plan had been only "partially addressed."

91. On November 4, 2014, Dr. Galloway concluded that "Inmate Manning's treatment requires a Real Life Experience component that is as realistic as possible in her current setting. To that end I recommend Inmate Manning be authorized the identified hair products and be permitted to develop and maintain an appropriate, feminine hairstyle." ECF No. 30, ex. 2. She also concluded on November 4th that "Inmate Manning's Gender Dysphoria also requires hormone therapy." *Id.*

92. Based on the factual developments with respect to treatment outlined in the October 8, 2014 and November 4, 2014 treatment plans, the parties jointly requested an extension of the briefing schedule in this matter. ECF No. 31. That request was granted by the Court on the same day. ECF No. 32.

93. Consistent with Dr. Galloway's recommendations from her October 8, 2014 treatment plan, on December 15, 2014, Plaintiff was provided with the approved cosmetics and was permitted to wear them in all aspects of her life at the USDB.

94. On January 8, 2015, Plaintiff was provided, through counsel, with an updated treatment plan dated December 19, 2014. That plan, ECF No. 34, ex. 1, confirmed "no reported problems in the inmate population secondary" to Plaintiff's wearing of cosmetics and recommended that hormone therapy commence between four and twelve weeks following the introduction of the cosmetics on December 15, 2014. Dr. Galloway also recommended in that plan that Plaintiff be permitted access to speech therapy via telemedicine. *Id.*

95. Based on the developments outlined in the December 19, 2014 plan, the parties jointly requested an extension to the briefing schedule on January 12, 2015. ECF No. 35. That request was granted by Order of this Court on January 13, 2015. ECF No. 36.

96. On January 20, 2015, Dr. Galloway updated Plaintiff's treatment plan, and again reported "no adverse impact" of Plaintiff's Real Life Experience on the inmate population. In that plan she also recommended that cross-sex hormone therapy [or "CSHT"] begin immediately because Plaintiff's "current situation is interfering with her ability to derive substantial benefit from her Real Life Experience and there [sic] no meaningful clinical benefit to be gained by delaying the implementation of CSHT." ECF No. 37, ex. 1.

97. On February 5, 2015, Plaintiff was informed through counsel that: "The USDB completed its assessment of any security risks related to hormone therapy and hair length on February 3, 2015. The recommendations in that risk assessment were (1) to approve initiation of cross-sex hormone therapy, and (2) to reassess risk and risk mitigation measures associated with an exception to the hair grooming standards within seven months of initiation of cross-sex hormone therapy, because granting an exception to the hair grooming standards is not supported by the risk assessment and potential risk mitigation measures at this time. That seven-month timeline was chosen based on when visible physical changes are expected to result from initiation of cross-sex hormone therapy. The USDB Commandant, who has final authority whether to approve adding either of these elements into Manning's treatment plan, has officially approved both of these recommendations. Accordingly, the USDB intends to initiate cross-sex hormone therapy no later than Tuesday, February 17, 2015."

98. On February 11, 2015, Plaintiff began hormone therapy, nearly five years after she was first diagnosed with gender dysphoria by military medical providers.

99. On March 4, 2015 in response to a February 18, 2015 Order of the Court and based on the commencement of hormone therapy and postponement of a decision with respect

to Plaintiff's request to follow the hair length and hair grooming standards for female prisoners, the parties filed a joint status report and motion to stay proceedings for seven months. ECF No. 37. That motion was granted on March 10, 2015.

100. On September 18, 2015, after the seven-month waiting period proposed by Defendants and after Plaintiff's physical changes from cosmetics and hormone therapy were manifest, Defendants informed Plaintiff that she would not be permitted to follow the female hair length and hair grooming standards. According to Defendants, "[p]ermitting Inmate Manning to wear a feminine hairstyle is not supported by the risk assessment and potential risk mitigation measures at this time."

Plaintiff continues to suffer from the denial of medically necessary treatment and Defendants' refusal to treat Plaintiff like other women in military prison

101. At the time Plaintiff filed her original complaint, it had been more than four years since she was first diagnosed with gender dysphoria by military medical personnel and more than a year since that diagnosis was confirmed at the USDB.

102. Prior to the filing of this case, Defendants maintained that Plaintiff was being adequately treated for gender dysphoria "by being issued female undergarments, specifically female underwear and sports bras."

103. Since that time, Plaintiff's treating clinician has recognized that meaningful Real Life Experience, including access to female grooming standards for cosmetics and hair, speech therapy, and hormone therapy, are all medically necessary to adequately treat Plaintiff's gender dysphoria.

104. Though Plaintiff has now been provided with hormone therapy, cosmetics and speech therapy, her Real Life Experience continues to be undermined by Defendants' refusal to permit her to grow her hair in a feminine manner consistent with the female hair length and hair grooming standards applied to all other female prisoners with whom she is similarly

situated.

105. Plaintiff remains without medically necessary treatment for gender dysphoria.

106. Every day that goes by without appropriate treatment, Plaintiff experiences anxiety, distress, and depression.

107. Defendants' enforcement of male hair length and hair grooming standards against Plaintiff causes her to feel hurt and sick.

108. The effectiveness of the treatment that Plaintiff has been provided is undermined by Defendants' enforcement of male hair length and hair grooming standards against her in contravention of the WPATH Standards of Care and the recommendations of the Defendants' own medical providers. She is forced to cut her hair in a masculine manner undermining her ability to be affirmed in her female gender.

109. According to Plaintiff's expert, Dr. Ettner, the refusal to permit Plaintiff to consolidate her female gender through the outward expression of her femininity causes her to suffer extreme pain, depression, and anxiety.

110. Plaintiff feels like a freak and a weirdo – not because having short hair makes a person a less of a woman – but because for her, it undermines specifically recommended treatment and sends the message to everyone that she is not a “real” woman.

111. Plaintiff fears that if her treatment regimen continues to be undermined due to Defendants' refusal to allow her to follow female hair and grooming standards, her anguish will only escalate and she will not be able to survive the 35 years of her sentence, let alone the next few years.

CLAIMS FOR RELIEF

**CLAIM I: Violation of the Eighth Amendment to the United States
Constitution (Asserted by Plaintiff Against all Defendants)**

112. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

113. Since 2010, Plaintiff has repeatedly been diagnosed with gender dysphoria, a serious medical condition, by military medical providers and outside clinicians.

114. Defendants and their agents recognize that the WPATH Standards of Care are the appropriate medical standards governing the treatment of gender dysphoria.

115. Under the WPATH Standards of Care, social role transition, also known as the Real Life Experience, is a medically necessary part of treatment for gender dysphoria. Yet, Plaintiff is not being permitted to maintain the feminine hairstyles that other female prisoners can maintain, a critical part of her Real Life Experience.

116. The military's doctors recognize that the Real Life Experience is a necessary part of Plaintiff's treatment but have failed to implement such treatment by denying her permission to outwardly express her female gender by growing her hair and following the hair length and hair grooming standards applicable to female prisoners.

117. Plaintiff's treating clinician, Dr. Galloway, first acknowledged that Plaintiff's clinical needs required that she be permitted to grow her hair on October 8, 2014. Yet Defendants and their agents continue to prohibit Plaintiff from following the female hair length and hair grooming standards.

118. Denying a prisoner medically necessary treatment violates the Eighth Amendment's prohibition against cruel and unusual punishment.

119. Plaintiff went without treatment of any kind – let alone necessary and adequate treatment – for more than eight months after a treatment plan was developed recognizing that treatment was necessary.

120. Plaintiff waited five years following a diagnosis of gender dysphoria before hormone therapy was initiated.

121. Plaintiff has waited nearly one year since her treating clinician recommended that she be permitted to grow and groom her hair in a feminine manner only to be denied such treatment again.

122. Defendants have not denied that applying female hair length and hair grooming standards to Plaintiff is clinically appropriate.

123. Defendants refused to permit Plaintiff to follow the hair length and hair grooming standards at the time she initiated hormone therapy based on alleged security concerns.

124. Defendants informed Plaintiff that they would conduct another security assessment of alleged security risks posed by applying the female hair length and hair grooming standards to Plaintiff after seven months. The basis for the delay was to wait until “visible physical changes are expected to result from initiation of cross-sex hormone therapy” and assess any security risks that resulted from Plaintiff’s hormone therapy.

125. More than seven months have passed since Plaintiff initiated hormone therapy and physical changes resulting from such therapy are now manifest. There have been no security-related incidents related to Plaintiff’s hormone therapy, speech therapy or use of cosmetics. Yet, Defendants have refused to permit Plaintiff to follow the female hair length and hair grooming standards based on unspecified security risks.

126. As a direct and proximate result of Defendants’ purposeful and intentional actions, Plaintiff has suffered and continues to suffer injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

127. Plaintiff will be irreparably harmed absent injunctive relief.

**CLAIM II: Violation of the Fifth Amendment to the United States Constitution
(Asserted by Plaintiff Against all Defendants)**

128. Plaintiff incorporates by reference the allegations of the foregoing paragraphs.

129. Plaintiff is a woman and has been recognized as such by Defendants.

130. Plaintiff is similarly situated to other women incarcerated in military correctional facilities.

131. Like other women, Plaintiff maintains her female identity while incarcerated.

132. Defendants have permitted Plaintiff to present as female in some respects but Defendants refuse to permit Plaintiff to follow the hair length and hair grooming standards followed by other female prisoners because she is transgender, was assigned the sex of male at birth, and does not conform to stereotypes of what constitutes a woman.

133. By discriminating against Plaintiff because she is transgender, departs from sex stereotypes, and otherwise because of her sex, Defendants have engaged in impermissible sex discrimination in violation of the equal protection guarantees of the Fifth Amendment's Due Process Clause.

134. Under the equal protection guarantees of the Fifth Amendment, discrimination based on sex is presumptively unconstitutional and subject to heightened scrutiny.

135. As a direct and proximate result of Defendants' purposeful and intentional actions, Plaintiff has suffered and continues to suffer injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

136. Plaintiff will be irreparably harmed absent injunctive relief.

PRAYER FOR RELIEF

Plaintiff therefore respectfully requests that this Court grant the following relief:

- (a) Declare that Defendants' actions denying Plaintiff necessary medical treatment for gender dysphoria violate the Eighth Amendment to the United States Constitution;
- (b) Declare that Defendants' actions refusing to treat Plaintiff like other female prisoners by permitting her to follow the hair length and hair grooming standards for female prisoners violate equal protection guarantees of the Fifth Amendment to the United States Constitution;
- (c) Enter an injunction directing Defendants and their agents to provide Plaintiff with clinically appropriate treatment under the *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* developed by the World Professional Association for Transgender Health, including, but not limited to, (1) continuing clinically appropriate hormone therapy for Plaintiff's gender dysphoria; (2) permitting Plaintiff to express her female gender by following female hair length and hair grooming standards; and (3) providing Plaintiff with treatment by a clinician who is qualified to treat gender dysphoria.
- (d) Award Plaintiff her reasonable attorney's fees; and
- (e) Award all other relief that the Court deems just and proper.

Respectfully submitted,

/s/ Chase Strangio

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