

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH
CAROLINA CHARLESTON DIVISION

SOFIA CANO

Plaintiff,

Civ. No. 9:22-CV-4247-DCC-MHC

v.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS;

COMPLAINT

(Jury Trial Demanded)

BRYAN P. STIRLING, DR. CHRIS KUN-
KLE, ESTHER LABRADOR, and DR. AN-
DREW W. HEDGEPATH, in their individual
and official capacities;

DR. JOHN TAYLOR, WILLIAM LANG-
DON, MCKENDLEY NEWTON, TERRIE
WALLACE, SALLEY ELLIOTT, KEN-
NETH L. JAMES, NETRA ADAMS, PAM-
ELA DERRICK, DR. ROBERT ELLIS, DR.
JENNIFER BLOCK, TIMOTHY GREEN,
CHELSEA JOHNSON, YVONNE WIL-
KINS-SMITH, SHAWANDA WASHING-
TON, and DOES 1-5, in their individual ca-
pacities;

Defendants.

PRELIMINARY STATEMENT

1. Plaintiff Sofia Cano (“Plaintiff” or “Ms. Cano”) is a 20-year-old transgender woman¹ diagnosed with gender dysphoria who has been in the custody of the South Carolina Department of Corrections (“SCDC”) since the age of 17; prior to entering SCDC’s custody, Ms.

¹ This complaint uses feminine pronouns to refer to Ms. Cano, consistent with her gender identity, her preference, modern judicial and common practice, and the advice of mental health professionals who work with transgender individuals.

Cano was in the custody of the Juvenile and Adult Detention Centers in Greenville County since she was 13 years old. Ms. Cano was assigned male at birth but identifies as a woman. Due to Ms. Cano's gender dysphoria, she suffers from severe psychological distress, including depression and urges to harm herself. Defendants are individuals who, during Ms. Cano's incarceration, have held authority and responsibility for her treatment, safety, and care.

2. Defendants held knowledge at all relevant times that gender dysphoria is a serious medical condition requiring individualized evaluation and treatment.

3. Defendants knew of the severe distress caused by Ms. Cano's condition yet refused to provide Ms. Cano with the medical care necessary to treat her gender dysphoria, *i.e.*, to provide gender-affirming hormone therapy; to allow her to dress and groom in accordance with her gender identity; to utilize her legal, female name; and to approve access to adequate hair removal products.

4. Despite Ms. Cano's gender dysphoria diagnosis from an SCDC psychologist and letter of support from a clinical psychologist, SCDC personnel responsible for Ms. Cano's care still refuse to provide the medical care necessary to treat her condition.

5. Defendants responded to Ms. Cano's numerous requests for medically necessary hormone therapy by stating she was categorically ineligible because she was not undergoing hormone therapy when she entered SCDC custody.

6. SCDC refuses to provide hormone therapy treatment to inmates with gender dysphoria unless the inmate was undergoing hormone therapy at the time they entered SCDC custody or the inmate pays all costs associated with the treatment including, but not limited to, monitoring, periodic testing, laboratory services, physician services, escort fees, and transportation costs.

7. Because of this policy, Defendants have refused to provide an individualized evaluation to determine the medical necessity of hormone therapy for Ms. Cano.

8. Instead, SCDC officials informed Ms. Cano she could not receive hormone therapy unless she paid all costs and fees associated with the treatment including, but not limited to, monitoring, periodic testing, laboratory services, physician services, escort fees, and transportation costs.

9. Even though Defendants have acknowledged that Ms. Cano's gender dysphoria is causing her serious harm and requires treatment, Defendants continue to apply an unconstitutional policy that bars a particular treatment regardless of medical necessity.

10. Because Defendants persist in denying Ms. Cano's medically necessary care, she continues to suffer from gender dysphoria, as well as from the resultant depression, emotional distress of foregone treatment, and ideation of self-harm.

11. Ms. Cano brings this action pursuant to 42 U.S.C. § 1983 (1996).

12. Ms. Cano has fully and to the extent otherwise possible exhausted her available administrative remedies.

13. Ms. Cano now seeks relief from Defendants' deliberate indifference to her serious medical diagnosis and to vindicate her Eighth Amendment constitutional right against cruel and unusual punishment, her Fourteenth Amendment right to equal protection, and her statutorily defined rights under the Americans with Disabilities Act ("ADA"), Rehabilitation Act, and Affordable Care Act.

14. Specifically, Ms. Cano seeks injunctive relief enjoining Defendants' continued refusal to provide her medically necessary hormone treatment; to allow her to dress and groom in accordance with her gender identity; to call her by her legal, female name; to house her in a single cell or with a cellmate she knows and trusts; and to provide appropriate, safe hair removal products.

15. Ms. Cano also seeks compensatory and punitive damages against each Defendant for the serious harms caused by their refusals to treat her serious medical condition in violation of her rights secured under the laws and Constitution of the United States, *see* 42 U.S.C. § 1983 (1996), and attorneys' fees and costs as provided for in 42 U.S.C. § 1988 (2000).

JURISDICTION AND VENUE

16. This action arises under 42 U.S.C. § 1983; the Eighth and Fourteenth Amendments to the U.S. Constitution; the ADA, 42 U.S.C. § 12101 (2009) *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2016); and Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116 (2010).

17. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) (2002), which grant original jurisdiction to federal district courts in suits seeking to redress the deprivation of rights secured by the Constitution and laws of the United States.

18. This Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 (2002) and Rules 57 and 65 of the Federal Rules of Civil Procedure.

19. This Court has personal jurisdiction over Defendant SCDC as it is a department of the government of the State of South Carolina and is headquartered in Columbia, South Carolina.

20. This Court has personal jurisdiction over all individually named Defendants as they are each residents of South Carolina, employed in South Carolina, and acted under the color of South Carolina state law during all relevant times.

21. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) (2002) because one or more of the Defendants reside in this judicial district, and a substantial number of the events giving rise to Ms. Cano's claims occurred in this District. The case is properly filed in the Columbia division

because that is where several of the defendants reside and where a substantial portion of the events giving rise to the claims occurred. Local Civ. Rule 3.01 (D.S.C.).²

PARTIES

22. Plaintiff Sofia Cano is a transgender woman diagnosed with gender dysphoria. Ms. Cano was 13 years old when she was arrested. After a collective four years at the Juvenile and Adult Detention Centers in Greenville County, she entered a guilty plea for voluntary manslaughter. On or around October 16, 2019, Ms. Cano was admitted to SCDC custody. While in SCDC custody, Ms. Cano has resided at different SCDC facilities, including Kirkland Correctional Institution and Allendale Correctional Institution. She is now 20 years old.

23. Defendant Bryan P. Stirling was at all relevant times the Agency Director of SCDC. Defendant Stirling exercised final policy and decision-making authority over SCDC and control over its personnel. Defendant Stirling had a duty to ensure the provision of adequate medical care for inmates, including implementation of policies, training, and supervision of SCDC staff. Defendant Stirling is individually responsible for denying Ms. Cano medically necessary care and is charged in his individual and official capacities.

24. Defendant Dr. Chris Kunkle was at all relevant times the Deputy Director of Behavioral Health at SCDC. Defendant Kunkle exercised final policy and decision-making authority to approve medical care for transgender inmates and inmates with gender dysphoria; and held control over SCDC's mental healthcare personnel. Defendant Kunkle is responsible for denying Ms. Cano medically necessary care and is charged in his individual and official capacities.

² As discussed below, Ms. Cano was denied medical care at both Kirkland Correctional Institution, which is in the Columbia division, and at Allendale Correctional Institution, which is in the Aiken division. But because Ms. Cano's injuries were caused by SCDC policies that were first invoked by Defendants while she was incarcerated at Kirkland, this case is more properly docketed in the Columbia division. *See infra* ¶¶ 75-102.

25. Defendant Esther Labrador was at all relevant times the Director of Mental Health Services (Males) at SCDC. Defendant Labrador had authority to make decisions regarding SCDC's care and treatment of transgender inmates. Defendant Labrador had a duty to ensure the provision of adequate medical care for inmates. Defendant Labrador is responsible for denying Ms. Cano medically necessary care and is charged in her individual and official capacities.

26. Defendant Dr. Andrew W. Hedgepath was at all relevant times Chief of Psychiatry at SCDC. Defendant Hedgepath had authority to make decisions regarding SCDC's care and treatment of transgender inmates. Defendant Hedgepath had a duty to ensure provision of adequate medical care for inmates. Defendant Hedgepath is responsible for denying Ms. Cano medically necessary care and is charged in his individual and official capacities.

27. Defendant Dr. John Taylor was Chief Psychologist at SCDC. Defendant Taylor had decision-making authority over SCDC's treatment of transgender inmates. Defendant Taylor had a duty to ensure provision of adequate medical care for inmates. Defendant Taylor is responsible for denying Ms. Cano medically necessary care and is charged in his individual and official capacities.

28. Defendant William Langdon was at all relevant times the Warden at Allendale Correctional Institute, and exercised authority over policy and personnel. Defendant Langdon had a duty to ensure provision of adequate medical care for inmates. Defendant Langdon is responsible for denying Ms. Cano medically necessary care and is charged in his individual and official capacities.

29. Defendant McKendley Newton was at all relevant times the former Warden at Allendale Correctional Institute, and exercised authority over policy and personnel. Defendant Newton had a duty to ensure provision of adequate medical care for inmates. Defendant Newton is

responsible for denying Ms. Cano medically necessary care and is charged in his individual and official capacities.

30. Defendant Terrie Wallace was at all relevant times the Warden at Kirkland Correctional institute and exercised authority over policy and personnel. Defendant Wallace had a duty to ensure provision of adequate medical care for inmates. Defendant Wallace is responsible for denying Ms. Cano medically necessary care and is charged in his individual and official capacities.

31. Defendant Salley Elliott was at all relevant times Deputy Director of Legal and Compliance and exercised decision-making authority regarding SCDC's treatment of transgender inmates. Defendant Elliot had a duty to ensure provision of adequate medical care for inmates. Defendant Elliot is responsible for denying Ms. Cano medically necessary care and is charged in her individual and official capacities.

32. Defendant Kenneth L. James was at all relevant times Agency Prison Rape Elimination Act ("PREA") Coordinator and exercised decision-making authority regarding SCDC's treatment of transgender inmates, including implementing accommodation plans. Defendant James had a duty to ensure provision of adequate medical care for inmates. Defendant James is responsible for denying Ms. Cano medically necessary care and is charged in his individual and official capacities.

33. Defendant Netra Adams was at all relevant times Agency PREA Assistant Coordinator and exercised decision-making authority regarding SCDC's treatment of transgender inmates, including implementing accommodation plans. Defendant Adams had a duty to ensure provision of adequate medical care for inmates. Defendant Adams is responsible for denying Ms. Cano medically necessary care and is charged in her individual and official capacities.

34. Defendant Pamela Derrick was at all relevant times employed or retained by SCDC to provide treatment and care to inmates at Allendale Correctional Institute and was acting under the color of state law. Defendant Derrick is responsible for denying Ms. Cano medically necessary care and is charged in her individual and official capacities.

35. Defendant Dr. Robert Ellis was at all relevant times employed or retained by SCDC to provide treatment and care to inmates at Kirkland Correctional Institute and was acting under the color of state law. Defendant Ellis is responsible for denying Ms. Cano medically necessary care and is sued in his individual and official capacities.

36. Defendant Dr. Jennifer Block was at all relevant times employed or retained by SCDC to provide treatment and care to inmates at Kirkland Correctional Institute and was acting under the color of state law. Defendant Block is responsible for denying Ms. Cano medically necessary care and is sued in her individual and official capacities.

37. Defendant Timothy Green, Qualified Mental Health Professional, was at all relevant times employed or retained by SCDC to provide treatment and care to inmates at Kirkland Correctional Institute and was acting under the color of state law. Defendant Green is responsible for denying Ms. Cano medically necessary care and is sued in his individual and official capacities.

38. Defendant Chelsea Johnson was at all relevant times Director of Intermediate Care Services at Kirkland Correctional Institute and was acting under the color of state law. Defendant Johnson is responsible for denying Ms. Cano medically necessary care and is sued in her individual and official capacities.

39. Defendant SCDC is the State agency responsible for incarceration of individuals sentenced by the courts. SCDC operates correctional facilities in South Carolina, including Kirkland Correctional Institution and Allendale Correctional Institution, where Ms. Cano is or has

previously been housed. SCDC retains a nondelegable duty under the Constitution and laws of the United States and the State of South Carolina to ensure the medical care provided to incarcerated individuals housed in its correctional facilities meets the applicable constitutional minimum standards. Defendant SCDC is a state government agency and, therefore, a public entity within the meaning of the ADA. Upon information and belief, Defendant SCDC was at all relevant times a recipient of federal financial assistance and, therefore, subject to the Rehabilitation Act. Upon information and belief, Defendant SCDC has health programs or activities that receive federal financial assistance and therefore is subject to the Affordable Care Act's nondiscrimination protections.

40. Does 1-5 are additional medical providers and staff who, at all times relevant to the actions and omissions described herein, were engaged to provide medical services at SCDC and who were responsible for ensuring provision of appropriate medical care to Plaintiff and/or participated in the denial of adequate and necessary medical treatment to Plaintiff for gender dysphoria. At the present time, the identities of the Doe defendants are unknown to Plaintiff without discovery. Plaintiff will substitute the true names of the Doe defendants when Plaintiff is able to ascertain their identities through discovery.

41. As of the time of this filing, the above-named Defendants are at all relevant times responsible for denying Ms. Cano access to medically necessary care. However, as Ms. Cano's denial of care is ongoing, she reserves the right to amend this complaint to appropriately reflect additional Defendants as they become known to her.

42. At all times relevant herein, each individual Defendant was acting in the course and scope of his or her employment and under color of state law.

STATEMENT OF FACTS

Background on Gender Dysphoria

43. Gender dysphoria is a serious medical condition and refers to clinically significant distress or discomfort when an individual's gender identity does not reflect the sex assigned at birth. Individuals with gender dysphoria may identify as transgender,³ but not all transgender individuals experience the distress or discomfort necessary for a gender dysphoria diagnosis.

44. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM-5") describes gender dysphoria as "a marked incongruence between one's experienced/expressed gender and their assigned gender, lasting at least 6 months, as manifested by at least two" of a variety of symptoms. A diagnosis of gender dysphoria requires the condition "be associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning."⁴

45. The World Professional Association for Transgender Health ("WPATH") is the premier organization for transgender health. It publishes the widely respected Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People ("Standards of Care").⁵ Primarily guidance for health professionals, the Standards of Care outline treatment

³ In accordance with modern usage and with Plaintiff's preference, this Complaint uses "transgender" or the modifier "trans" when describing characteristics of identity, and it uses "gender dysphoria" to describe a medical condition or diagnosis.

⁴ *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition, Text Revision (DSM-5-TR), American Psychiatric Association (2022). The American Psychiatric Association publishes the DSM-5; it is the proprietary, standard classification of mental conditions used by mental health professionals in the United States. Available at <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

⁵ E. Coleman, A. E. Radix, W. P. Bouman *et al.*, *Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8, *International Journal of Transgender Health*, Vol. 23, S1-S259 (Sept. 15, 2022), available at <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>.

considerations aimed at assisting trans people “in accessing safe and effective pathways to achieving lasting personal comfort with their gendered selves with the aim of optimizing their overall physical health, psychological well-being, and self-fulfillment.”⁶ The American Psychiatric Association, American Medical Association, members of the medical and mental healthcare communities, as well as the Fourth Circuit, have recognized the Standards of Care as authoritative with respect to accepted treatment for gender dysphoria. *Cf. De’lonta v. Johnson*, 708 F.3d 520, 526 (4th Cir. 2013) (holding that trans inmate stated sufficiently plausible claim that prison officials had “been deliberately indifferent to her serious medical need by refusing to evaluate her for surgery, consistent with the Standards of Care.”).

46. The Standards of Care apply to all trans patients regardless of incarceration status. The National Commission on Correctional Healthcare and the U.S. Department of Justice National Institute of Corrections have endorsed the Standards of Care as the medically accepted standard for the treatment of inmates with gender dysphoria. Included in Chapter 11, “Institutional Environments,” the Standards of Care explain, “[Transgender and Gender Diverse People] who are deemed appropriate for de novo gender-affirming hormone therapy [in accordance with the Standards of Care] should be started on such therapy just as they would be outside of an institution,” noting that a “‘freeze frame’ approach is inappropriate and dangerous.”⁷ It further warns, “[t]he consequences of [...] lack of initiation of hormone therapy when medically necessary include a significant likelihood of negative outcomes[,], such as surgical self-treatment by autocastration,

⁶ *Id.* at S3.

⁷ Standards of Care, at S106. WPATH describes a “freeze frame” approach as an “outmoded practice of denying hormones to people who are not already on them or keeping [transgender and gender diverse] persons on the same dose of hormones throughout their institutionalization that they were receiving upon admission, even if that dose was an initiation (low) dose.”

depressed mood, increased gender dysphoria, and/or suicidality.”⁸ The Standards of Care make clear (1) gender dysphoria refers to the *discomfort* or *distress* that arises from the discrepancy between a person’s gender identity and that person’s sex as assigned at birth; (2) treatment exists to address such distress; (3) treatment requires individualized assessment and calibration; and (4) treatment includes (i) changes in gender expression, (ii) hormone therapy, (iii) surgery, and/or (iv) psychotherapy. Because treatment requires individualization, some or all these treatments may be medically necessary. The Standards of Care note gender expression and hormone therapy are medically necessary and effective for many individuals with gender dysphoria. Indeed, while access to gender-affirming hormone therapy during adolescence and early adulthood correlates with lower odds of suicidal ideation and severe psychological distress later in life, desire for and denial of such treatment risks negative mental health outcomes.⁹

47. WPATH’s overview of therapeutic approaches for gender dysphoria further notes how changes in gender expression and social support may help alleviate gender dysphoria. For example, “hair removal from the face, body, and genital areas for gender-affirmation” through techniques such as “electrolysis hair removal [...] and laser hair removal,” as well as “legal name and sex or gender change on identity documents,” represent treatment options that healthcare providers and patients with gender dysphoria should consider.¹⁰ In line with the Standards of Care’s purpose, social transition and the ability to express one’s gender identity support an

⁸ *Id.* (citations omitted).

⁹ Jack L. Turban, Dana King, Julia Kobe, Sari L. Reisner, Alex S. Keuroghlian, *Access to gender-affirming hormones during adolescence and mental health outcomes among transgender adults*, PLoS ONE (Jan. 12, 2022), available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0261039>.

¹⁰ Standards of Care, at S18, S154.

individual's overall health, psychological well-being, and self-fulfillment, while also mitigating against the risk of negative—and possibly disastrous—mental health outcomes.

48. Misgendering is the act of describing or addressing a person in a manner inconsistent with their gender identity, for example, by using the wrong pronouns to refer to them or addressing them using a former name that the person ceased to use because it did not accord with their gender identity.

49. Misgendering a transgender person can significantly injure their mental health, exacerbating symptoms of gender dysphoria and increasing risk of self-harm and suicide.

50. Publicly misgendering a transgender prisoner also reveals and emphasizes their transgender status to other inmates, thereby putting the person at risk of violence, discrimination, and harassment.

GA-06.09, Care and Custody of Transgender Inmates and Inmates with Gender Dysphoria

51. Under SCDC policy, all inmates are entitled to receive “medically necessary care” when “an existing pathological process threatens the well-being of the inmate over a period of time.” HS-18.15¹¹. Pursuant to that policy, medical care will meet “generally accepted medical standards of the community and will be the most reasonable level of service available for the diagnosis, symptoms, and treatment of the [prisoner's] medical condition.” *Id.*

52. SCDC's GA-06.09 (“Trans Inmate Care Policy”)¹² purports to establish guidelines for medically necessary treatment of transgender inmates and inmates diagnosed with gender dysphoria. The Trans Inmate Care Policy states SCDC's commitment to providing medically

¹¹ SCDC Policy/Procedure, HS-18.15, “Levels of Care,” (Nov. 1, 2007), *available at* <https://www.doc.sc.gov/policy/HS-18-15.htm.pdf>.

¹² SCDC Policy, GA-06.09, “Care and Custody of Transgender Inmates and Inmates Diagnosed with Gender Dysphoria,” (Sept. 12, 2017), *available at* <https://www.doc.sc.gov/policy/GA-06-09.htm.pdf>.

necessary care throughout incarceration, including services in line with generally accepted medical standards.

53. The Trans Inmate Care Policy incorporates the definition of gender dysphoria as reflected in the DSM-5.

54. The Trans Inmate Care Policy establishes a procedure for when prison officials become knowledgeable of an inmate's trans identity or gender dysphoria diagnosis. When SCDC learns of an inmate's trans identity or gender dysphoria diagnosis, this policy requires SCDC refer the inmate to: (1) the Behavioral and Mental Health Director and the Prison Rape Elimination Act ("PREA") Coordinator, and for medical and mental health staff to conduct an initial evaluation; and (2) the Multidisciplinary Management and Treatment Team ("MMTT"), which creates an inmate's individualized accommodation plan ("IAP").

55. The MMTT includes the Behavioral and Mental Health Director, Assistant Deputy Director of Nursing, Chief Medical Doctor, and the PREA Coordinator.¹³ The Trans Inmate Care Policy requires the IAP provide for all medically necessary treatment.

56. The SCDC's Office of Legal and Compliance is responsible for maintaining and implementing the Trans Inmate Care Policy set forth in GA-06.09. Specifically, the Chief Legal and Compliance Officer assists the PREA Coordinator to oversee compliance with an inmate's IAP.

¹³ The MMTT may also be made up of the following officials if their roles have not been otherwise designated: Deputy Director of Health Services, Chief Psychiatrist, Deputy Director of Operations, Deputy Director of Chief Legal and Compliance Officer, and Division Director of Classification and Inmate Records. Where appropriate, primary care clinician(s) assigned to work with the trans inmate may also sit on the MMTT.

57. SCDC’s Deputy Director of Legal and Compliance is Salley Elliot.¹⁴ Kenneth L. James is SCDC’s PREA Coordinator. Dr. Chris Kunkle is the Deputy Director of Behavioral Health. Esther Labrador is Director of Mental Health Services – Males. Wanda Sermons is the Acting Division Director of Nursing. Dr. Andrew Hedgepath is the Chief Psychiatrist.

South Carolina State Legislature’s History of Proposed Anti-Trans Legislation

58. Throughout the last decade, South Carolina legislators have repeatedly attempted to pass legislation targeting transgender people and expressing animus toward the transgender community.

59. In 2012, South Carolina then-Senators Lee Bright, Kevin Bryant, Daniel Verdin, Phillip Shoopman, and Mike Rose introduced a bill to prohibit SCDC from using state funds or resources to provide prisoners with sexual reassignment surgery or hormone therapy. This bill failed.

60. In 2015, then-Senator Bright introduced a bill to prohibit SCDC from using state funds or resources to provide prisoners with sexual reassignment surgery or hormone therapy. This bill failed.

61. In April 2016, then-Senators Bright, Bryant, Larry Martin, Michael Fair, and Thomas Corbin introduced a “bathroom bill” to prohibit local governments from passing ordinances that would require businesses, public buildings, or schools to allow persons to use restrooms or changing facilities that differ from their sex assigned at birth. This bill failed.

¹⁴ The SCDC organization chart fails to identify the Chief Legal and Compliance Officer and omits several of the officials who are meant to make up the MMTT. Specifically, it lists neither a Behavioral and Mental Health Director, a Chief Medical Doctor, nor an Assistant Deputy Director of Nursing. Nor does the organization chart include those officials whose responsibilities on the MMTT may be otherwise designated, including Deputy Director of Health Services. *Available at* <https://www.doc.sc.gov/InternetOrgChart.pdf>.

62. In May 2016, then-Senator Bright introduced a budget proviso that withheld funds from local governments who passed ordinances or regulations that would require businesses, public buildings, or schools to allow persons to use restrooms or changing facilities that differ from their sex assigned at birth. This attempt failed.

63. Thereafter, House Representative Steven Long introduced the same “bathroom bill” in the House in December 2016. This bill failed.

64. In 2020, Representatives Stewart Jones, G.R. Smith, Mandy Kimmons, and Sylleste Davis introduced the Youth Gender Reassignment Prevention Act to prohibit healthcare professionals from medically intervening with persons under 18 years of age to (1) suppress development of endogenous secondary sex characteristics; (2) align a patient’s appearance or physical body with the patient’s gender identity; or (3) alleviate symptoms of clinically significant distress resulting from gender dysphoria. This bill failed.

65. In 2021, 29 House of Representatives members introduced the Vulnerable Child Compassion and Protection Act to prohibit medical procedures or prescription of medications intended to alter the appearance of a minor’s gender or delay puberty. This bill failed.

66. In 2021, 58 House of Representatives members sponsored and introduced the Save Women’s Sports Act requiring middle school and high school-level athletic teams that are part of, or compete with, public schools to designate teams based on sex assigned at birth and to prohibit students who were assigned male at birth to participate in any team or sport designated for “females,” “women,” or “girls.” This bill failed initially but was reintroduced in 2022 and enacted into law on May 17, 2022.

South Carolina State Legislature’s Budget Proviso 65.28

67. In 2013, amid failed attempts to pass legislation targeting transgender people, Senator Bright introduced an anti-trans amendment to the South Carolina budget to prohibit SCDC from using state funds or resources to provide inmates sexual reassignment surgery. The amendment passed and the budget proviso remains in South Carolina’s appropriations.

68. Budget Proviso 65.28 reads:

(CORR: Prohibition on Funding Certain Surgery) (A) The Department of Corrections is prohibited from using state funds or state resources to provide a prisoner in the state prison system sexual reassignment surgery; however, if a person is taking hormonal therapy at the time the person is committed to the Department of Corrections, the department shall continue to provide this therapy to the person as long as medically necessary for the health of the person.

(B) As used in this provision:

(1) ‘Hormonal therapy’ means the use of hormones to stimulate the development or alteration of a person’s sexual characteristics in order to alter the person’s physical appearance so that the person appears more like the opposite gender;

(2) ‘Sexual reassignment surgery’ means a surgical procedure to alter a person’s physical appearance so that the person appears more like the opposite gender.

69. In SCDC’s Fiscal Year 2020-21 Accountability Report, the note corresponding with Budget Proviso 65.28 states, “Provide hormonal therapy to inmates as long as medically necessary for the health of the inmate[.]”¹⁵ This report was signed by SCDC Agency Director, Bryan Stirling.

¹⁵ Bryan P. Stirling, SCDC Fiscal Year 2020-2021 Accountability Report, 38, <http://www.doc.sc.gov/research/AccountabilityReportFY2021.pdf>.

Ms. Cano's Gender Dysphoria and Treatment History

70. Ms. Cano is a 20-year-old trans woman with gender dysphoria.

71. Ms. Cano began wearing women's clothes when she was 11 years old and at the age of 12 stayed up late to secretly dress in feminine clothing.

72. When Ms. Cano was arrested in 2015, at age 13, she was already experimenting with her gender and had sensed the misalignment between her sex assigned at birth and her gender identity—but, out of a fear of possible rejection, had not told anyone about her desire to be a woman. Therefore, Ms. Cano was not undergoing gender-affirming medical care at that time.

73. By the time she was 16 years old, Ms. Cano felt certain she is a woman and the male sex she was assigned at birth was incorrect.

74. When Ms. Cano was 18 years old, she began telling people about her female gender identity.

75. In or around July 2020, Ms. Cano discussed her trans identity and history of dressing as a woman at young ages with Ms. Koren Cooper. Ms. Cooper is a Qualified Mental Healthcare Professional employed at SCDC's Kirkland Correctional Institution, where Ms. Cano previously resided and was enrolled in SCDC's Intermediate Care Services ("ICS"). During the same conversation, Ms. Cano relayed her experience having "debilitating, inexplicable depression," seemingly suffering from "not being able to be himself [sic]."

76. Coming out of that July 2020 session, Ms. Cooper recorded, "Based on [Ms. Cano's] report of [her] presenting symptoms, and after careful research and review of peer-reviewed literature and the DSM-5 criteria of gender dysphoria 302.6 (F64.2), I believe [Ms. Cano] has gender dysphoria. Further assessment is needed and has been requested."

77. On or around July 21, 2020, Ms. Cano submitted a written Inmate Request to Staff Member (“RTSM”) to PREA Coordinator Kenneth James and Director of Mental Health Services Esther Labrador. This RTSM communicated Ms. Cano’s desire to transition and to receive an IAP pursuant to the Trans Inmate Care Policy.

78. Two days later, on or around July 23, 2020, Dr. Jennifer Block and Dr. Brittany Soto—both clinical psychologists with Doctor of Psychology degrees—met with Ms. Cano to make an assessment following referral for transgender and/or gender dysphoria services. Under “Intervention(s)/Method(s) Provided,” Dr. Block recorded, “Continue per policy.”

79. On or around August 1, 2020, Dr. Robert Ellis, a psychiatrist at SCDC who regularly met with Ms. Cano, noted Dr. Block’s assessment, and indicated he would communicate with Dr. Block and ICS Director Chelsea Johnson about a treatment plan regarding Ms. Cano’s transition.

80. Having not formally heard back regarding the July 21, 2020 RTSM, Ms. Cano followed up with Defendant James on or around August 10, 2020, by submitting another RTSM, stating, “Please be aware that every day that I have to wait I am in distress, especially with respect to [...] taking hormones.”

81. In connection with Ms. Cano’s gender expression, she submitted further RTSMs on August 19, 2020, to Ms. Johnson and Warden Terrie Wallace, explaining the only available hair removal product—a depilatory cream called Magic Razorless Shave Cream—caused painful open sores and was ineffective in removing hair.¹⁶

¹⁶ Because Ms. Cano was enrolled in ICS during August 2020, and because ICS has a blanket prohibition against allowing inmates to access razors, Ms. Cano had no alternative means of hair removal.

82. The MMTT reviewed Ms. Cano's case on or around August 19, 2020, and determined Ms. Cano did not meet the criteria for gender dysphoria. Upon information and belief, this determination was because Ms. Cano had formally notified SCDC staff she was transgender less than six months prior. The MMTT recommended Ms. Cano be reassessed six months later.

83. On or around August 28, 2020, Defendant James wrote to Ms. Cano stating the MMTT would communicate its decision to her upon completion of its review. The same day, even though the Trans Inmate Care Policy provides that an inmate's self-identification as transgender suffices to trigger the creation of an IAP for that inmate, Lieutenant Cunningham and Ms. Johnson told Ms. Cano she needed to wait until she had a *diagnosis* of gender dysphoria to receive any accommodation related to her gender identity. Ms. Cano was told that the MMTT would not authorize her transition or the provision of medically necessary care unless she had a diagnosis of gender dysphoria by the time the MMTT revisited her case in six months despite the fact that the Trans Inmate Care Policy does not mandate a diagnosis to receive treatment.

84. On or around August 29, 2020, Ms. Cano submitted a grievance to notify staff of her "severe distress" because of not having access to hormone therapy and hair removal products. Ms. Cano again asked the MMTT to create an IAP to address her urgent needs.

85. A month later, on or around September 23, 2020, Warden Wallace responded to Ms. Cano's grievance, noting Ms. Cano was evaluated by Dr. Block and reported suffering distress but still refused to overturn the MMTT's denial of treatment.

86. On or around October 1, 2020, Ms. Cano appealed Warden Wallace's response by submitting a Step 2 Grievance.

87. On or around November 9, 2020, an unidentifiable (and to Ms. Cano, unknown) official responded to the grievance, noting Ms. Cano had expressed “distress due to not being able [to] take hormones” but still refused to provide Ms. Cano with the necessary treatment.

88. From July to December of 2020, Ms. Cano made numerous efforts to notify SCDC medical personnel of her urgent need for gender dysphoria treatment, including hair removal, use of a female name, and hormone therapy. Dr. Ellis, Qualified Mental Health Professional Timothy Green, Ms. Cooper, and Nurse Practitioner Cathy Grimes each noted Ms. Cano’s distress and request for care, including hormone therapy. For example, on or around November 30, 2020, Mr. Green noted that Ms. Cano “described in detail her plan to cut off her testicles and stated that she had tried a few months earlier but [that a] can lid was not sharp enough.” Mr. Green noted Ms. Cano’s hope to receive hormone therapy to feminize her body in accordance with her gender and her feeling of failure after she did not successfully self-castrate.

89. Shortly thereafter, on or around December 4, 2020, Dr. Block reevaluated and diagnosed Ms. Cano with gender dysphoria. During the assessment, Dr. Block noted she would write an addendum to add to Ms. Cano’s gender dysphoria assessment and told Ms. Cano she would be included in the MMTT caseload. In response to Ms. Cano’s request for the MMTT to create an IAP which included hormone therapy, Dr. Block agreed to find information about hormone therapy for Ms. Cano. On information and belief, Drs. Ellis, Block, and Soto also discussed the SCDC’s policy about gender dysphoria.

90. On or around December 16, 2020, Ms. Cano submitted an RTSM to Defendant James reiterating her “urgent need” for hormones and the “great distress” she is in without them. Ms. Cano also noted “shaving is a problem due to the ban on razors within the ICS program, which forced [her] to purchase a \$31 electric shaver and spend more money on a depilatory cream[.]”

which burns [her] skin and causes intense pain.” The electric shaver proved ineffective against Ms. Cano’s body hair.

91. On December 18, 2020, Defendant James responded, “SCDC does not provide hormone therapy unless inmate can prove that he/she was taking them prior to incarceration.” In addressing Ms. Cano’s distress arising from the available hair removal products, Defendant James told Ms. Cano that she “must abide by the rules of the ICS as it is for your safety.”

92. Defendant James’ response that “SCDC does not provide hormone therapy unless inmate can prove that he/she was taking them prior to incarceration” was one of several instances when Defendants cited SCDC’s apparent “freeze-frame” policy that provides hormone therapy treatment for gender dysphoria only to those inmates who already were on hormone therapy when they entered SCDC custody and refuses it to all others, regardless of medical necessity.

93. On or around December 21, 2020, Ms. Cano filed another grievance. In this grievance, Ms. Cano reiterated the distress she faces from not being able to access treatment for her gender dysphoria. Ms. Cano wrote, “I am in great distress from not being able to start hormone therapy, which has led to depression and suicidal ideation. My ICS counselor is trying to help, but what I need are hormones. Shaving is an issue because staff claims the ICS program does not allow the purchasing of razors. I am forced to use a depilatory cream which burns my skin and creates intense pain, or otherwise be crippled by gender dysphoria.”

94. On January 5, 2021, Ms. Cano also submitted a written RTSM addressed to the Deputy Director of Legal and Compliance requesting “any information [regarding Ms. Cano’s] receiving medically necessary hormone therapy.”

95. On January 7, 2021, SCDC employee [C.O. 63785] responded “because [Ms. Cano was] not prescribed hormones before SCDC, [she would] not receive them while in SCDC.”

96. On January 25, 2021, Mr. Green noted Ms. Cano's distress from not being able to access hormone therapy to facilitate her transition. Mr. Green observed Ms. Cano "appears personally ready to begin hormone therapy." Despite Ms. Cano's fitness to begin hormone therapy, neither Dr. Ellis, Dr. Block, nor Mr. Green recommended hormone therapy for her.

97. On January 26, 2021, Ms. Cano was forced to refile the December 21 grievance after it was returned unprocessed.¹⁷ In the January 26 iteration of the grievance, Ms. Cano noted Drs. Ellis, Block, and Green could "attest" to the urgency with which she needed gender-affirming care including hormone therapy, because they recognized her mental health was deteriorating without appropriate treatment.

98. On or around January 28, 2021, the MMTT finally approved an IAP for Ms. Cano. The IAP granted Ms. Cano certain accommodations, including authorization to maintain female grooming standards, access female canteen and commissary items, and be housed individually. The IAP, however, failed to make provisions for hormone therapy or for access to effective, safe hair removal tools, even as it allowed her to grow her hair out in line with female grooming standards.

99. On February 11, 2021, Dr. Kate Kleinfelter, a psychologist who has worked with Ms. Cano and who has known her for many years, provided a recommendation letter that (1) acknowledges Ms. Cano has presented with gender dysphoria since she was a pre-teen, (2) attests Ms. Cano's ability to make a fully informed decision regarding her treatment, and (3) attests Ms. Cano is a "fit candidate for hormone therapy and that this treatment is medically necessary to

¹⁷ An Inmate Grievance Coordinator, [last name Hickson], returned this grievance unprocessed because "the kiosk number [was] incorrect"; Ms. Cano received this response on or around January 26, 2021.

improve her well-being.” Ms. Cano presented this letter to the MMTT on March 19, 2021, and was told she would be informed when a determination was made.

100. The IAP, which the MMTT approved in or around January 2021, was not fully implemented until March 2021.

101. On or around March 26, 2021, Ms. Cano submitted an RTSM to inquire about MMTT’s deliberations regarding hormone treatment and why the IAP failed to address Ms. Cano’s access to hormone therapy.

102. On or around May 19, 2021, Defendant James responded to Ms. Cano’s request, directing her to “make [her] request to Medical.” Ms. Cano followed these directions, and, on the same day, contacted medical (via RTSM) asking to begin hormone treatment. A medical technician responded to the request that they do “not do cosmetic surgery.”

103. In or around June 2021, Ms. Cano was transferred to Allendale Correctional Institution. After this transfer, on June 17, 2021, Ms. Cano filed another RTSM to seek an audience with a medical provider about beginning hormone therapy treatment. In this RTSM, Ms. Cano referenced Dr. Kleinfelter’s letter endorsing medically necessary hormone therapy in Ms. Cano’s case and asked to present the letter to someone within medical, as per Defendant James’ instructions.

104. On or around June 18, 2021, Defendant Derrick, a nurse at Allendale responded, “SCDC will continue the hormone treatment if started prior to coming in. We do not start it.”

105. Thereafter, on or around June 22, 2021, Ms. Cano filed another grievance seeking medically necessary gender-affirming care for her gender dysphoria. Defendant Warden Newton responded by telling Ms. Cano to “seek an audience with the MMTT so that [her] concerns can be

fully addressed,” but did not indicate appropriate treatment would be provided. Ms. Cano then appealed the warden’s response on or around June 28, 2021.

106. On or around June 29, 2021, Defendant James wrote Ms. Cano regarding hormone therapy and directed her to obtain two medical forms from the institutional medical practitioner: (1) Form M-42, “Elective Outside Health Care Request Form”; and (2) Form M-244, “Hormone Treatment Waiver And Release.” Ms. Derrick provided these forms to Ms. Cano on July 14, 2021.

107. Form M-244, the “Hormone Treatment Waiver and Release,” provides that a prisoner in SCDC custody may receive gender-affirming hormone treatment if the prisoner pays “all fees and costs associated with hormone treatment, including, but not limited to monitoring, periodic testing, laboratory services, physician services, escort fees, and transportation costs.” Such costs “must be paid for in advance.” The form further notes “inability to pay the fees and costs associated with periodic testing, laboratory services, prescriptions, escort fees, transportation costs, physician treatment, or consultation services will result in the discontinuation of hormonal therapy” and notes that such termination of treatment “could cause adverse side effects, including: mood disturbances, psychosis, [and] suicidality[.]”

108. To execute Form M-244 and receive gender-affirming medical care at her own expense, SCDC requires Ms. Cano to execute a comprehensive waiver of liability that releases SCDC “agents, employees and assigns from all liability, claims, losses, damages, or any other consequences caused or alleged to have been caused in whole or in part by [SCDC], its agents or assigns for the purposes or receiving hormone treatment.”

109. Ms. Cano cannot afford to pay “all fees and costs associated with hormone treatment, including, but not limited to: monitoring, periodic testing, laboratory services, physician services, escort fees, and transportation costs.”

110. Upon information and belief, SCDC does not require inmates with any condition other than gender dysphoria to pay “all fees and costs associated” with medically necessary care.

111. It was not until March 4, 2022, that Ms. Cano received a response to her June 28, 2021, appeal from Defendant Warden Newton’s disposition of her grievance. That response stated that SCDC’s policy is to provide inmates with all medically necessary care but SCDC does “not at this time provide extensive hormone therapy for the treatment of gender dysphoria.” *But cf. supra* ¶¶ 43-46 (explaining that the leading medical, professional guidance on treatment of gender dysphoria, the WPATH Standards of Care, clearly states that gender-affirming hormone therapy may be medically necessary to treat gender dysphoria).

112. On or around August 22, 2022, Assistant PREA Coordinator Defendant Adams also told Ms. Cano that SCDC policy is to provide medically necessary care but that the agency does not provide hormone therapy for gender dysphoria.

113. It was not until August 26, 2022, or thereabout, that Ms. Cano received a response to her January 2021 grievance regarding her urgent need for gender-affirming care, including hormone therapy, which had noted that several SCDC employees could attest to her need for medical care because they recognized her mental health was deteriorating without appropriate treatment. *Cf. supra* ¶¶ 88, 99. In response to the year-and-a-half-old grievance, Defendant Wallace recited SCDC’s *de facto* freeze-frame policy, explaining that Ms. Cano could not receive hormone therapy unless she had received it when she entered custody or otherwise paid for it herself. He further noted that prisoners cannot receive razors while in lockdown, effectively stating that Ms. Cano

would have to suffer unmitigated male-pattern hair growth whenever she was quarantined or, for example, enrolled in ICS as she was when she began seeking treatment for her gender dysphoria.¹⁸

114. On October 14, 2022, SCDC officials summoned Ms. Cano to meet and to “address her concerns,” as well as to “clarify the role of the MMTT.” Present at the meeting were Defendant Langdon, Defendant James, Defendant Adams, Defendant Wilkins-Smith, and six additional SCDC employees. Ms. Cano was the only prisoner present at this meeting. Assembled *en masse*, the SCDC staff informed Ms. Cano that they had not changed their position on access to hormone therapy and that they would not be providing her hormone treatment.

115. Ms. Cano filed a RTSM regarding SCDC’s failure to provide medically necessary gender-affirming medical care in violation of the ADA. On November 1, 2022, C.O. 53450 responded:

Inmate Cano, it is my understanding that Mr. Kenneth James, Agency PREA Coordinator, recently met with several inmates at Allendale in order to clarify the role of the MMTT. Prior to this meeting, inmates were sending correspondence regarding all types of different issues to the MMTT. That is not how issues should be addressed. During the meeting Mr. James explained that inmates should instead address concerns to the responsible area and, if they are not satisfied with the result, should file a grievance. Based on the information I received from Mr. James's office, I believe you need to address your concerns regarding hormone replacement therapy with medical by submitting a paper RTSM to the medical staff or sign up for sick call at your institution. If you are not satisfied with the response, you may file a grievance.

116. This response came notwithstanding the fact that the MMTT creates the IAP, which must provide for all medically necessary treatment relating to an inmate’s gender dysphoria; the MMTT is the decision-making body authorized to facilitate provision of hormone therapy. Second,

¹⁸ In or around the same week that Defendant Wallace issued his response, Defendant Adams communicated to Ms. Cano that she would take up the issue of appropriate hair removal products at the next MMTT meeting, though it is unclear when that will be or whether it has already transpired. In either event, the threat of Ms. Cano suffering from the inability to maintain female grooming standards remains ever-present, even as her IAP authorizes such an accommodation.

Ms. Cano followed substantively similar instructions during May and June 2021—only to be directed back to the MMTT by Defendant Newton.

117. To date, Ms. Cano has yet to receive a fair, individualized evaluation by a medical practitioner at SCDC regarding her need for gender-affirming hormone treatment.

118. Ms. Cano knows of at least one other prisoner who has received gender-affirming hormone treatment in SCDC custody. She is also aware of other prisoners who desire to be considered for hormone therapy but who have not been able to begin that process.

119. Ms. Cano has physically suffered the ongoing masculinization of her body caused by Defendants' continued and unlawful denial of medically necessary hormone therapy treatment. Ms. Cano has experienced thicker and coarser body hair, reduced breast size, a lower pitched voice, and more masculine physical characteristics, such as slimmer hips, a heavier brow and jaw line, and increased muscle mass than she would have developed had she been able to initiate gender-affirming hormone therapy to suppress androgens and feminize her body. This constitutes a physical injury for an individual with gender dysphoria.

120. The bodily changes Ms. Cano has endured due to the denial of the necessary medical care to treat her gender dysphoria constitute a physical injury.

121. Defendants failed to provide Ms. Cano with appropriate medical treatment for her serious medical condition not because they dispute her diagnosis or her need for gender-affirming medical care, but because they have created an unconstitutional freeze frame policy that prohibits such care unless Ms. Cano receives it at her own expense or was receiving it when she entered custody.

122. Upon information and belief, SCDC does not restrict treatment for any medical condition other than gender dysphoria on the basis that a prisoner was not treated for the condition prior to placement in SCDC custody.

123. Upon information and belief, SCDC provides spironolactone, a drug used in the treatment of gender dysphoria, to prisoners suffering from medical conditions other than gender dysphoria.

124. Upon information and belief, SCDC provides estradiol, a drug used in the treatment of gender dysphoria, to prisoners suffering from medical conditions other than gender dysphoria.

SCDC's Failure to Recognize Ms. Cano's Legal Name

125. Among the options that may be considered to help alleviate gender dysphoria, the WPATH Standards of Care note, "legal name and sex or gender change on identity documents."¹⁹ In particular, the Standards of Care recommend that, for inmates, "all institutional staff address [transgender and gender diverse] individuals by their chosen names and pronouns at all times."²⁰

126. On or around June 11, 2021, the Family Court of the Fifth Judicial Circuit in Richmond County South Carolina granted Ms. Cano's petition to legally change her name to Sofia Erin Cano. On August 18, 2021, Ms. Cano submitted an RTSM and in it notified SCDC staff of her legal, female name. The following day, corrections officer [C.O. 65835] responded, "[a]ll areas have been notified of your name change and Ms. Hauptman should be getting with you [sic] about an updated ID."

127. Despite providing this confirmation, Defendants neither updated the Offender Management System ("OMS") with Ms. Cano's legal name nor issued Ms. Cano a new name tag. On

¹⁹ Standards of Care, at S18.

²⁰ *Id.* at S107.

September 21, 2021, Ms. Cano submitted an RTSM, writing, “I continue to receive paperwork addressed to a name that is not mine, my ID card and the name that shows up on my GTL²¹ account have not been changed, and my current name is not included in the list of inmates.” The following day, corrections officer [C.O. 66434] responded, “I have forwarded this request to the proper party.”

128. After nothing changed, Ms. Cano submitted a grievance requesting prison officials “correct [her] name in all SCDC databases, fix [her] ID card, and have the correct name show up on [her] GTL account.” The Inmate Grievance Coordinator returned the grievance without considering a solution because Ms. Cano grieved two issues: (1) her legal name change not being reflected in SCDC databases and (2) her legal name change not being reflected on the tablet. Because tablet issues are “non-grievable,” the response directed Ms. Cano to contact the GTL representative to have her name reflected in their system.

129. Accordingly, on November 17, 2021, Ms. Cano requested a GTL representative to correct the name on her account. On the same day, the GTL representative responded, “[t]his is a [sic] SCDC issue [sic] not GTL. Try talking with your caseworker to find out who you need to talk to.”

130. Because of the apparent confusion between GTL and SCDC, on November 17, 2021, Ms. Cano submitted another grievance, explaining that neither inmate records, her ID card, nor the tablet she uses reflect her legal name, Sofia Erin Cano. The grievance noted, “I continue to receive paperwork addressed to a name that is not me[.] [...] Nowhere within SCDC does it show that my name is Sofia Erin Cano.” She asked that all SCDC’s databases recording her name

²¹ Global Tel Link (GTL) refers to the service provider that supplies SCDC’s inmates with communications services, including tablets and software applications that enable users to communicate with friends, family, and parties not in the custody of SCDC.

be corrected, including the OMS. In response to this request for her legal name to be the name of record in SCDC's systems, however, former Warden Newton indicated that Ms. Cano's "committed" name would persist in their records under SCDC Policy OP-21.09, the policy addressing name changes.²²

131. Ms. Cano appealed Warden Newton's response on December 2, 2021, asking that the policy be reconsidered so that SCDC could update its databases to reflect her *legal* name. On January 27, 2022, she received the following response: "[a]t the time of this response, your legal name has been added to the system and a new ID card issued. You have not shown that SCDC staff have failed to perform their duties properly." In fact, Ms. Cano had not received a new ID card when she received that answer; when she read it and asked the Inmate Grievance Coordinator why she had not received the ID, the Grievance Coordinator investigated and learned that the ID had arrived but had not been delivered to Ms. Cano.

132. The new nametag—which SCDC finally issued to Ms. Cano five months after first learning of her new legal name—still has Ms. Cano's former name on it. In fact, Ms. Cano's former name appears *above* her legal name in a much larger font. Ms. Cano's legal name is illegible. Ms. Cano is required to always wear this nametag, forcing her to represent herself before peers and SCDC staff with her legal, feminine name literally subordinate to her former, male name.

²² SCDC Policy, OP-21.09, "Inmate Records Plan," (Mar. 31, 2022), *available at* <https://www.doc.sc.gov/policy/OP-21-09.htm.pdf>.

133. The image below shows Ms. Cano's SCDC nametag:



134. The practical erasure of Ms. Cano's legal name on her ID card results in confusion for prison staff and harm to Ms. Cano. When SCDC officers grant *ad hoc* passes authorizing Ms. Cano's movement through the prison, for example, they write her former name on the pass, and it is the only name displayed. Additionally, Ms. Cano's former name continues to appear on "Orders to Report,"²³ which Ms. Cano receives when she is to report to medical, to the holding cell, or for attorney meetings, among other things. Orders to Report for medical only reflect her former name. Orders to Report for educational purposes or for meetings reflect both her legal name and former name.

135. During the meeting on October 14, 2022, with Defendant Langdon, Defendant James, Defendant Adams, Defendant Wilkins-Smith, and six additional SCDC employees, Ms. Cano again asked if they could change her name in GTL's system to reflect her legal name since the system and the applications she runs on it are coded to pull data from her personal account and render ubiquitous her former name whenever she uses the tablet's interface. The SCDC contingent, including Defendants Langdon, James, Adams, and Wilkins-Smith, informed her that it was not a

²³ "Orders to Report" are slips of paper issued to inmates that order them to report to a specified location at a specified time. They include the inmate's name and are required to be signed by an officer and the inmate.

priority for them to change the GTL and tablet systems to reflect her legal name, and that no such change would be made.

136. By not expunging her former name from her ID, by subordinating her legal name, and by failing to meaningfully update SCDC's records, Defendants have subjected Ms. Cano to unnecessary pain and humiliation without any penological justification. Individuals continue to refer to Ms. Cano by her former name; when Ms. Cano logs into the prison's messaging system, her former name is the first and only name she sees; and corrections officers continue to refer to her by her former male name and to use male pronouns. Prison staff's ongoing use of Ms. Cano's *non-legal* name also causes harm when, addressing her over the prison's intercom system, prison officials announce her male name before her peers. In total, the constant reminder of her old name exacerbates Ms. Cano's gender dysphoria and intensifies her psychological distress, sabotaging her efforts to socially transition and thus also denying her medically necessary treatment at a systemic, institutional level.

SCDC's Failure to Provide Reasonable Accommodations

137. Since being transferred to Allendale Correctional Institute, Ms. Cano had repeatedly been told that she would not have a cellmate due to safety concerns. But on or around September 9, 2022, Defendants Wilkins-Smith and Washington informed Ms. Cano that she would be assigned a cellmate. Ms. Cano expressed her concern that being forced to share a cell with a cisgender male would put her at risk of sexual or physical assault.

138. It is well-documented, and Defendants are aware, that transgender individuals face far greater risk of assault in prison than other inmates. A 2007 study in California, for example, found that transgender individuals are thirteen times more likely to be assaulted than cisgender

inmates.²⁴ Accounting for this fact, the Prison Rape Elimination Act (PREA) requires housing decisions to be made on an individualized, case-by-case basis, and mandates that housing arrangements for transgender inmates be reviewed twice per year. 28 C.F.R. § 115.42 (2012). Furthermore, PREA regulations command that a transgender inmate’s “own views with respect to his or her own safety shall be given serious consideration.” 28 C.F.R. § 115.42(e).

139. On information and belief, the Allendale officials then spoke with Defendant James, who stated that there were no restrictions on Ms. Cano being assigned a cellmate.

140. Defendants Wilkins-Smith and Washington then told Ms. Cano that if she refused to share a cell with her assigned cisgender male cellmate, she would be put in solitary confinement.

141. The same day that Ms. Cano learned of the assignment, the new cellmate arrived and explained he would be residing in the cell with Ms. Cano moving forward.

142. The fear for her safety and lack of privacy that resulted from sharing her cell with a cisgender man caused Ms. Cano severe distress.

143. Ms. Cano was unable to use the toilet in her cell in her cisgender male cellmate’s presence, including throughout the night when both were locked inside, because of the humiliation such exposure would cause. The inability to relieve herself when necessary was physically painful and emotionally overwhelming.

144. Ms. Cano made several informal requests as well as formal grievances to Allendale officials regarding the danger posed by the assignment of a cisgender male cellmate.

²⁴ Valerie Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, UC Irvine Center for Evidence-Based Corrections, The Bulletin, Vol. 2, Issue 2 (June 2007), available at <https://cpb-us-e2.wpmucdn.com/sites.uci.edu/dist/0/1149/files/2013/06/BulletinVol2Issue2.pdf>.

145. Ms. Cano sought relocation to a single cell or, alternatively, to a cell with a roommate whom she knows and trusts. Although SCDC eventually placed Ms. Cano with a more suitable cellmate, the responses were broadly inadequate, including by instructing Ms. Cano that roommate assignments are non-grievable.

146. During the meeting on October 14, 2022, with Defendant Langdon, Defendant James, Defendant Adams, Defendant Wilkins-Smith, and six additional SCDC employees, the SCDC officials told Ms. Cano that they can assign her any cellmate they deem appropriate. They also stated that, because Ms. Cano has not yet been victimized at SCDC, she is not at risk of sexual victimization—a flawed logic at best—and that, as long as she matches up in their system with a potential cellmate, they can assign her that cellmate without warning.

147. While Ms. Cano has now been reassigned a transgender cellmate, temporarily resolving the issue, she remains terrified that Defendants could assign her a cisgender male cellmate at any time, as was done previously, causing her significant distress and continued concern for her safety. While the IAP that Ms. Cano received in January 2021 authorized her to be housed individually, the MMTT approved a revised IAP in September 2021, which recommended Ms. Cano’s “current housing assignment”—without a cellmate—be maintained yet also denied her request “to have a single cell accommodation.” On information and belief, Ms. Cano *had* to accept the MMTT’s decision to deny her single cell accommodation request, lest she forfeit her IAP (and the small accommodations it permitted) altogether.

148. The ability to live in a single-occupancy cell or, alternatively, with a cellmate she knows and trusts, is essential to Ms. Cano’s physical safety and mental wellbeing.

149. Ms. Cano has also had recurring issues accessing female products from the canteen, even though they are part of her IAP. During the meeting on October 14, with Defendant Langdon,

Defendant James, Defendant Adams, Defendant Wilkins-Smith, and six additional SCDC employees, the SCDC officials informed Ms. Cano that Defendant Langdon was no longer permitting the purchase of nail polish, makeup, or other beauty equipment such as hair dryers, flat irons, or curling irons.

150. Ms. Cano was told that she may use whatever female products she presently has in her possession until she has exhausted them, but after that, she will no longer be able to purchase such products.

151. Ms. Cano was also told in this meeting that Defendant Langdon makes decisions for the entire facility, meaning he is allowed to bar access to female canteen products even if a prisoner's IAP indicates she is authorized to obtain them.

152. Access to female grooming products, such as nail polish and makeup that affirm Ms. Cano's gender identity and alleviate her gender dysphoria, is a crucial accommodation for Ms. Cano's mental health, safety, and well-being.

CLAIMS FOR RELIEF

Claim I:

Deliberate Indifference

(Violation of the Eighth Amendment to the U.S. Constitution and 42 U.S.C. § 1983)

Against all Individual Defendants

153. Ms. Cano incorporates paragraphs 1 through 152 as fully set forth herein.

154. At all relevant times, Defendants knew gender dysphoria is a serious medical condition that jeopardizes an individual's physical health and mental well-being when inadequately treated. Defendants also knew the medically accepted standards for the treatment of gender dysphoria are the Standards of Care, including the understanding that hormone therapy and female gender expression may be medically necessary.

155. Despite this knowledge and Ms. Cano's numerous, repeated requests for care—including exclamations of distress—Defendants refused to provide the individualized medical treatment gender dysphoria requires. Defendants deliberately disregarded Ms. Cano's serious medical need in violation of the Eighth Amendment's prohibition against cruel and unusual punishment.

156. In apparent reliance on SCDC's freeze-frame policy, Defendants made the arbitrary decision to withhold consideration of hormone therapy in Ms. Cano's case without assessing her individual need for care. Defendants' actions preclude administration of constitutionally required medical care, effecting wanton infliction of pain absent a penological purpose.

157. Each individually named Defendant directly participated in the constitutional deprivations alleged.

158. Defendants Labrador, Newton, Elliot, James, and Derrick showed deliberate indifference to Ms. Cano's serious medical needs by, *inter alia*, refusing to provide her with an individualized medical evaluation to determine necessity of hormone therapy after becoming aware of the distress arising from her inability to access it.

159. Defendant James showed deliberate indifference to Ms. Cano's medical needs by, *inter alia*, responding to the requests for hormone therapy that SCDC's policy disallows provision of hormone therapy to inmates not previously receiving it; then, that Ms. Cano should make her request to Medical; and, finally, that Ms. Cano should execute previously unavailable forms indemnifying SCDC against any liability arising from her efforts to procure hormone therapy.

160. Defendant Derrick showed deliberate indifference to Ms. Cano's serious medical needs by, *inter alia*, responding to her request for an opportunity to be evaluated for hormone therapy and to present Dr. Kleinfelter's letter of support with a statement that SCDC does not

“start” hormone therapy without considering whether such treatment is medically necessary in Ms. Cano’s case.

161. Defendant Newton showed deliberate indifference to Ms. Cano’s serious medical needs by, *inter alia*, responding to her request for hormone therapy with instructions for her to seek an audience with the MMTT—which failed to provide her with medically necessary individualized care in an IAP when Defendant James directed her to Medical but Medical responded that SCDC does not do “cosmetic surgery” and Defendant Derrick responded that SCDC does not “start” hormones—and, thus, failing to ensure that she would receive medically necessary individualized care.

162. Defendants Ellis, Block, Green, and Johnson showed deliberate indifference to Ms. Cano’s serious medical needs by, *inter alia*, refusing to authorize gender dysphoria treatment in accordance with the Standards of Care, failing to exercise individualized medical judgment, and instead, reciting SCDC’s anti-trans policy regarding hormone therapy.

163. Defendants James and Johnson showed deliberate indifference to Ms. Cano’s serious medical needs by, *inter alia*, refusing to authorize gender dysphoria treatment in the form of alternate hair removal products that would not burn Ms. Cano’s skin and cause open sores, despite knowing the physical injury and emotional distress available options had caused.

164. Defendants Stirling, Kunkle, Labrador, Hedgepath, Taylor, and Elliot showed deliberate indifference to Ms. Cano’s serious medical needs by, *inter alia*, creating, implementing, and enforcing SCDC’s *de facto* freeze-frame policy, which categorically denies certain inmates—including Ms. Cano—medically necessary gender dysphoria treatment on an irrational and arbitrary basis.

165. Defendants Stirling, Kunkle, Labrador, Hedgepath, Taylor, and Elliot showed deliberate indifference to Ms. Cano's serious medical needs by, *inter alia*, ratifying or condoning unconstitutional actions of subordinates, and failing to prevent the continued disregard for Ms. Cano's medically necessary treatment.

166. Defendants Stirling, Kunkle, Labrador, Hedgepath, Taylor, and Elliot showed deliberate indifference to Ms. Cano's serious medical needs by, *inter alia*, instructing SCDC healthcare personnel—including Drs. Block and Ellis—to not initiate or refer inmates for gender dysphoria treatment and to ignore their professional medical judgment regarding whether treatment was required under the Standards of Care.

167. Each of the Defendants implemented and enforced a policy or custom, having the force of law, that refused to initiate gender dysphoria treatment, irrespective of an inmate's individual medical need, exposing Ms. Cano to the risk of mental and physical deterioration.

168. Defendants Stirling and Elliot are final policy and decision makers for SCDC with respect to the Trans Inmate Care Policy and have enforced an unconstitutional policy that removes treatment decisions from healthcare professionals and prevents the initiation of care deemed medically necessary for patients with gender dysphoria. Indeed, under this freeze-frame policy, Defendants Stirling, Elliot, and all persons acting in concert under color of state law, in their official capacities, denied Ms. Cano medically required treatment for her gender dysphoria, in violation of the Eighth Amendment of the U.S. Constitution.

169. As a direct and proximate result of Defendants' actions, Ms. Cano has experienced grave physical, emotional, and psychological harm, and will continue to suffer that harm without relief from this Court.

Claim II:

**Equal Protection
(42 U.S.C. § 1983 Deprivation of the Fourteenth Amendment)**

Against all Individual Defendants

170. Ms. Cano repeats and re-alleges each of the allegations in paragraphs 1 through 152 as if fully set forth and restated herein.

171. The Equal Protection Clause of the Fourteenth Amendment requires that state actors treat similarly situated persons similarly. *Wilcox v. Lyons*, 970 F.3d 452, 458 (4th Cir. 2020). In two unique ways, Individual Defendants have violated this rule and harmed Ms. Cano.

172. *First*, the behaviors and policies created, implemented, and enforced by Individual Defendants irrationally differentiate between cisgender inmates, who are entitled to all medically necessary healthcare, and transgender inmates, who are not. As alleged above, SCDC generally guarantees individualized medical care pursuant to prevailing standards of care. *See supra*, ¶¶ 51-52. But under SCDC’s *de facto* freeze-frame policy, transgender inmates are denied this promise of appropriate medical care and instead must satisfy an additional and unjustifiable obstacle to obtaining medically necessary treatment.

173. Because this discrimination is gender-based, it warrants heightened scrutiny—even in the prison context. *Harrison v. Kernan*, 971 F.3d 1069, 1076 (9th Cir. 2020) (“We now hold that prison regulations such as this one, which facially discriminate on the basis of gender, must receive intermediate scrutiny”); *see also Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, 141 S. Ct. 2878 (2021). Indeed, in the Fourth Circuit, “transgender people constitute at least a quasi-suspect class.” *Grimm*, 972 F.3d at 607 (quoting *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 749–50 (E.D. Va. 2018)).

174. *Second*, and just as irrationally, SCDC’s freeze-frame policy pointlessly distinguishes between similarly-situated inmates by authorizing hormone therapy for inmates who were diagnosed with gender dysphoria before their incarceration, but denying the same treatment for individuals—like Ms. Cano—who were not diagnosed until after their arrest. Because this differentiation is neither medically nor penologically justifiable, it too violates the Equal Protection Clause.

175. Defendants’ ongoing denial of medically necessary individualized care—including but not limited to gender-affirming hormone therapy; utilization of her legal, female name; and access to adequate hair removal products—is causing Ms. Cano irreparable harm. As a direct and proximate result of Defendants’ actions, Ms. Cano continues to suffer injury, including but not limited to, serious physical, psychological, and emotional harm, such as mental anguish, distress, humiliation, indignity, and urges to harm herself.

176. By refusing to provide Ms. Cano with medically necessary individualized care while she is in SCDC custody—including by denying her gender-affirming hormone therapy; refusing to use her legal, female name; and restricting her access to adequate hair removal products—Defendants ongoingly deprive Ms. Cano of her right to equal protection under the Fourteenth Amendment of the U.S. Constitution.

Claim III:

**Discrimination on the Basis of Disability
(Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*)**

Against Defendant SCDC

177. Ms. Cano repeats and re-alleges each of the allegations in paragraphs 1 through 152 as if fully set forth and restated herein.

178. Based on Ms. Cano’s gender dysphoria diagnosis, she suffers from a “disability” within the meaning and scope of 42 U.S.C. § 12102 (2009); *Williams v. Kincaid*, 45 F.4th 759, 766 (4th Cir. 2022). Thus, Ms. Cano is a member of the class of persons protected by the ADA.

179. The ADA prohibits public entities from discriminating against an individual with a disability, or denying the benefits of the services, programs, or activities of a public entity or entity receiving federal funds to a person with a disability.

180. Defendant SCDC is a state government agency and, therefore, a public entity within the meaning of the ADA.

181. Defendant SCDC, through its agents, violated Title II of the ADA by discriminating against Ms. Cano on the basis of her disability and denying her the benefits of public services, programs, and activities because of her disability. Specifically, SCDC has violated the nondiscrimination mandate of Title II by:

- a. failing to provide proper and reasonable training to staff in responding to persons with gender dysphoria;
- b. creating, implementing, and enforcing an irrational and discriminatory de facto freeze-frame policy, *see supra*, that only applies to inmates seeking treatment for gender dysphoria, a protected disability; and
- c. applying that discriminatory policy against Ms. Cano, thereby depriving her of medically necessary treatment and causing avoidable and gratuitous pain and suffering.

182. Such actions and behaviors have physically, emotionally, and psychologically harmed Ms. Cano.

183. Additionally, SCDC has failed to provide reasonable accommodations for Ms. Cano's disability by:

- a. refusing to use Ms. Cano's legal, female name;
- b. denying Ms. Cano the ability to dress and groom in accordance with her female gender identity; and
- c. failing to place her in a single-occupancy cell or, alternatively, with a cellmate whom she knows and trusts.

184. SCDC is not entitled to immunity under the Eleventh Amendment for this cause of action.

185. As a direct and legal result of Defendants' actions and omissions, Ms. Cano has suffered and continues to suffer injury, including but not limited to, serious physical, psychological, and emotional harm and mental anguish, distress, humiliation, indignity, and urges to harm herself.

Claim IV:

**Discrimination on the Basis of Disability
(Section 504 of the Rehabilitation Act, 29 U.S.C. § 794a)**

Against Defendant SCDC

186. Ms. Cano repeats and re-alleges each of the allegations in paragraphs 1 through 152 as if fully set forth and restated herein.

187. Based on Ms. Cano's diagnosis of gender dysphoria, Ms. Cano suffers from a "disability" and is a member of the class of persons protected under Section 504 of the Rehabilitation Act. The act prohibits entities receiving federal funds from discriminating against an individual with a disability, or denying the benefits of the services, programs, or activities of a public entity or entity receiving federal funds to a person with a disability.

188. SCDC receives federal financial assistance for health care services through multiple avenues, including Medicaid, which is funded by both the federal government and the state.

189. SCDC discriminated against Ms. Cano on the basis of her disability and denied her the benefits of public services, programs, and activities as a result her disability by, among other things, failing to provide adequate and necessary medical treatment, failing to provide proper and reasonable training to staff in responding to persons with gender dysphoria, and depriving Ms. Cano of the benefits of programs and activities. Such actions and behaviors have detrimentally affected Ms. Cano's health.

190. SCDC has not provided reasonable accommodations for Ms. Cano's disability as SCDC employees continually refer to Ms. Cano by her non-legal name rather than her legal, female name.

191. Defendants' acts and omissions as agents of Defendant SCDC violate Section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of physical and mental disability and protects persons like Ms. Cano from the injuries set forth herein.

192. SCDC is not entitled to immunity under the Eleventh Amendment for this cause of action.

193. As a direct and legal result of Defendants' actions and omissions, Ms. Cano has suffered and continues to suffer injury, including but not limited to, serious physical, psychological, and emotional harm and mental anguish, distress, humiliation, indignity, and urges to harm herself.

Claim V:

**Discrimination on the Basis of Sex or Disability
(Violation of Section 1557 of the Affordable Care Act 42 U.S.C. § 18116)**

Against Defendant SCDC

194. Ms. Cano repeats and re-alleges each of the allegations in paragraphs 1 through 152 as if fully set forth and restated herein.

195. Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, prohibits covered entities from discriminating against an individual on the basis of sex or disability under any health program or activity.

196. Covered entities include “any health program or activity, any part of which is receiving Federal financial assistance.” SCDC receives federal financial assistance for health care services through multiple avenues, including Medicaid, funded by the federal government.

197. As set forth in the paragraphs above, Defendants, as agents of SCDC, continue to discriminate against Ms. Cano on the basis of sex and disability by denying hormone therapy and necessary medical care because she is transgender.

198. As a direct result of Defendants’ actions and omissions, Ms. Cano continues to suffer injury, including but not limited to, serious physical, psychological, and emotional harm and mental anguish, distress, humiliation, indignity, and urges to harm herself.

PRAYER FOR RELIEF

WHEREFORE, Ms. Cano respectfully requests that this Court enter judgment in her favor and against Defendants as follows:

- a. For injunctive and declaratory relief, including but not limited to:

- i. enjoining SCDC from enforcement of their freeze-frame policy limiting hormone therapy treatment for gender dysphoria only to those inmates already receiving hormone therapy upon entering SCDC custody;
 - ii. requiring Defendants to provide Ms. Cano with adequate and necessary medical care, including but not limited to hormone therapy;
 - iii. enjoining OP-21.09 wherever it conflicts with the prevailing Standards of Care for the treatment of gender dysphoria;
 - iv. requiring Defendants to permit Ms. Cano to dress and groom in accordance with her gender identity;
 - v. requiring Defendants to call Ms. Cano by her legal, female name, and to issue a name tag displaying only Ms. Cano's legal, female name;
 - vi. requiring Defendants to provide Ms. Cano access to adequate hair removal products;
 - vii. requiring Defendants to house Ms. Cano in a single-occupancy cell or with a cell-mate she knows and trusts;
 - viii. requiring Defendants to provide proper and reasonable training to SCDC staff in responding to persons with gender dysphoria; and
 - ix. declaring unconstitutional and violative of federal law Defendants' practices in denying Plaintiff and other similarly situated inmates adequate and necessary medical treatment.
- b. For compensatory, general and special damages, in an amount to be determined at trial;
 - c. For punitive damages against individual Defendants in an amount to be proven at trial;
 - d. For reasonable costs of this suit and attorneys' fees and expenses; and

e. For such further relief as the Court may deem just, proper, and appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Sofia Cano hereby demands trial by jury on all claims asserted in the above complaint.

Respectfully submitted,

November 23, 2022

/s/Meredith McPhail

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* Motions for admission *pro hac vice* forthcoming.