UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ASHLEY DIAMOND,

Plaintiff,

v.

TIMOTHY WARD, *et al.*,

Defendants.

No. 5:20-cv-00453-MTT

PLAINTIFF'S CONSOLIDATED REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND MOTION FOR PROTECTIVE ORDER

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INTRODUCTION

Defendants' Consolidated Response in Opposition, ECF 84, to Plaintiff Ashley Diamond's Motion for Preliminary Injunction, ECF 50, and Motion for Protective Order, ECF 51, is light on legal argument and heavy on mischaracterizations. Defendants do not dispute the legal standards governing their constitutional duties to Ms. Diamond or that courts have the inherent authority to order a party not to take actions that impact the litigation or their opponent's ability to receive a fair trial. Rather, they deny that Ms. Diamond has been a victim of retaliation and ask that she remain housed in the male prison environments where she has experienced a horrific spate of sexual abuse, healthcare denials, and harassment while this litigation winds its way through the legal process. ECF 84 at 2.

Defendants' arguments in opposition to Ms. Diamond's failure-to-protect claims distort the facts and applicable law. First, Defendants argue that, because Ms. Diamond, after requesting a female-facility placement during her intake, also stated that she would accept a placement at a medium-security men's prison if a female-facility placement were not possible, they are entitled to ignore all of her and her medical providers' subsequent pleas for safekeeping. In so doing, they conveniently overlook the fact that Ms. Diamond, a medium-security offender, was initially held for months on end at a close-security prison where she repeatedly suffered abuse and attacks. Second, Defendants argue they are absolved of any legal duty to protect Ms. Diamond because Georgia Department of Corrections (GDC) officials refused to investigate or "substantiate" her PREA complaints after she requested her attorneys be present for interviews because she feared retaliation and did "not feel safe enough." ECF 78-5 at 434–35, 460–61. Neither argument excuses their constitutional violations.

Defendants' arguments opposing Ms. Diamond's medical indifference claims fail because the Constitution affords no protection to prison officials who pursue treatment that is shown to be

ineffective and inadequate, which is the most that Defendants can claim because a patient receiving adequate gender dysphoria care would not have, as Ms. Diamond has, persistent and crippling dysphoria symptoms such as a recurrent urge to castrate themselves. ECF 58 ¶¶ 23–24, 39, 83–85, 90, 114, 126–127, 131.

Ultimately, because Defendants have shown themselves unwilling and unable to protect Ms. Diamond from sexual assault in men's prisons or provide her constitutionally adequate treatment for her gender dysphoria—opting instead to initiate a retaliation campaign against her to provide themselves a purported "safety" justification for denying the relief she seeks—Ms. Diamond's Motions for Preliminary Injunction and Protective Order should each be granted.

ARGUMENT

I. The Court Should Grant Ms. Diamond's Motion for Preliminary Injunction.

Ms. Diamond has satisfied the requirements for the issuance of injunctive relief to prevent irreparable harm. *See generally* PI Mem., ECF 50-1. Defendants' implication that some heightened standard should apply to Ms. Diamond's request for relief as a "mandatory injunction" is misplaced. *See* ECF 84 at 5-6. Yet, the cases they cite are inapposite or distinguishable, seeking to *undo* some action already performed or that otherwise posed unusual hardships on the enjoining party. *See, e.g.*, *Dantzler, Inc. v. Hubert Moore Lumber Co.*, No. 7:13-cv-56, 2013 WL 2452697, at *1 (M.D. Ga. June 5, 2013) (seeking preliminary injunction to unwind property sale that had already taken place). Ms. Diamond, by contrast, merely asks Defendants to protect her from harm, in conformity with the Constitution and GDC's own written policies that purport to authorize facility placements based on gender identity, ECF 57-19 ¶ IV(C), and gender dysphoria care that comports with "current, accepted standards." ECF 57-20 ¶ IV. Because the evidence shows that Defendants cannot keep Ms. Diamond safe in men's close- *or* medium-security prisons, or to adequately treat her gender dysphoria with hormones and counseling alone, she requests a transfer

to a female facility where she will be both safe and able to express her female gender as her healthcare providers have requested. There is nothing extraordinary about such a request.

Regardless, Ms. Diamond easily satisfies the heightened standard proposed by Defendants because both the facts and law are clearly in her favor. *See* ECF 84 at 6. As described below, Ms. Diamond has demonstrated a substantial likelihood of success on the merits of each of her claims and will continue to suffer severe physical and psychological harm, likely irreparable, absent her requested relief. ECF 52 ¶¶ 3, 13–14, 16, 20–22, 34–36, 44–48, 58–59, 66, 91, 104-118; ECF 58, ¶¶ 23–24, 39, 49–50, 82–85, 89–90, 91–131; ECF 55, ¶¶ 43–45, 49–51, *see also* Threatening Letters and Brenden Perry Declaration, filed herewith. Any harm to Defendants should an injunction issue, by contrast, would be minimal. *White v. Baker*, 696 F. Supp. 2d 1289, 1313 (N.D. Ga. 2010) (where "a constitutional right is at issue, the entry of an injunction would not be adverse to the public interest but would in fact *advance it*.") (emphasis added).

A. Defendants' Post Hoc Rationalizations for Discrimination Are Contrary to the Evidence and Fail Heightened Scrutiny.

Defendants cannot, and do not dispute that discrimination based on transgender status is sex discrimination to which heightened scrutiny applies under the Equal Protection Clause. *See* ECF 84 at 11–12; *see also Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1298 (11th Cir. 2020). Defendants' sole contention is that Ms. Diamond is not "similarly situated" to cisgender women based on "whether Diamond's presence in a women's facility may create security risks to her or to other offenders and whether, in connection with that risk, Diamond has demonstrated a willingness to ignore prison rules." ECF 84 at 13. But, in addition to being wholly pretextual, this rationale is both legally and factually flawed.

Defendants' own records demonstrate that GDC officials determined that a female facility was an appropriate placement for Ms. Diamond but that this determination was overruled solely

due to her transgender status. Defendants' production of Classification Committee Referral Forms indicates that two GDC officials—including the Georgia Diagnostic and Classification State Prison's (GDCP) Deputy Warden of *Security*—signed off on Ms. Diamond's request for a female facility on November 25, 2019, while Defendant Atchison refrained from giving an initial opinion. *See* ECF 78-1 at 2, 11. Yet, the sole dissenters, Warden Ford and the SCC Committee Chairperson, carried the day and Ms. Diamond was placed in male prisons, even though the only reason they gave was that "the offender['s] lower body parts/testicles are still in place." *Id.* at 3.[1]

Nor do any of the Defendants involved in transgender housing placements—including Atchison, Lewis, Holt, or Toole—explain why Ms. Diamond's request for a female facility placement led to a months-long stay at a close-security prison, or why her repeated, affirmative requests for a "[t]ransfer to a female facility that can accommodate health and safety needs," ECF 78-6 at 2, made following her placements at GDCP and Coastal State Prison were ignored, along with companion requests from GDC providers and Ms. Diamond's counsel. Coupled with statements to Ms. Diamond indicating that her transgender status disqualified her from placement in a female facility, the only inference that can be drawn is that the earlier, prohibited rationale continued to determine her placement. *See Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011).

Defendants' entire argument to justify their differential treatment rests on allegations that Ms. Diamond "is sexually active" and "ignores basic security rules," ECF 84 at 13, even though this was never mentioned in GDC records concerning their classification decision, *see* ECF 78-1, and could not possibly have served as the basis for housing Ms. Diamond exclusively in men's

[1] Although Defendant Atchison instructed Thornton to "re-do Diamond's SCC classification form," given her understanding that GDC "cannot make housing decision [sic] based on genital status" by GDC policy or law, ECF 78-1 at 10, neither a corrected form nor a superseding rationale appears in her classification committee file.

prisons because the disciplinary reports Ms. Diamond has received post-date her placements at both GDCP and Coastal (the former by almost a year).[2] The "eyewitness" alleging that she caught Ms. Diamond engaging in sexual activity with Mr. Doe ***has fully recanted*** her statement that she "observed" Ms. Diamond's "penis . . . inside of Offender [Doe]'s anus" following the Court's warning concerning perjury. *See, e.g.*, ECF 77-4 ¶ 12 (admitting, contrary to her prior sworn statements, ***"I cannot say that I saw offender Diamond's penis inside the other offender's anus***" (emphasis added)); *infra* Part II (discussing other charges).[3] Defendants' "security risk" rationale is the epitome of a post hoc rationalization invented in response to litigation. Such excuses cannot satisfy the heightened scrutiny required by the Equal Protection Clause. *United States v. Virginia*, 518 U.S. 515, 533 (1996).

More fundamentally, even assuming Defendants' allegations regarding Ms. Diamond's sexual activity and prison rule-breaking are factual rather than fabricated for the sake of retaliation and litigation, those characteristics would not distinguish her from her cisgender women peers. Defendants cannot possibly claim that no cisgender woman has ever broken a prison rule or engaged in sexual activity with another person while in GDC custody. Yet, GDC has never responded to such rule-breaking or sexual activity by housing the offending cisgender woman in

[2] For a full summation of these disciplinary charges, see ECF 53 ¶¶ 79, 81; ECF 57-33 through ECF 57-37; ECF 67; ECF 67-4 through ECF 67-7; ECF 78-7 at 37, 40; ECF 78-8 at 36; and the Declaration of Timothy Thomas, filed herewith.

[3] Any arguments regarding prospective security threats based on Ms. Diamond's sexual capabilities are disproven by the record. *See, e.g.*, ECF 78-1 at 7 (GDC showing that Ms. Diamond's genitalia was not functioning at intake); ECF 58 ¶¶ 66-70 (explaining that Ms. Diamond is chemically castrated/hormonally reassigned female); ECF 78-18 (corresponding lab reports); ECF 59-17 (showing Ms. Diamond has repeatedly engaged in castration attempts). In addition, Ms. Diamond offers a supplemental declaration from Dr. Ettner confirming that Ms. Diamond is incapable of penetrative sex based on a review of her hormone levels over the past year. *See* Second Declaration of Dr. Randi Ettner, filed herewith.

one of its facilities for men—nor could GDC do so consistent with its constitutional responsibilities. *See De Veloz v. Miami-Dade Cnty.*, 756 F. App'x 869, 877 (11th Cir. 2018), *cert. denied sub nom. Rodriguez-Garcia v. De Veloz*, 140 S. Ct. 127 (Mem.) (2019). Here again, the only basis for treating Ms. Diamond differently from her female peers is her transgender status.[4]

B. Defendants Cannot Rely on One Comment in Ms. Diamond's Intake Interview and Request for an Advocate During PREA Interviews to Support They Were Not Deliberately Indifferent.

As with Ms. Diamond's equal protection claims, Defendants neither dispute the legal standard governing her Eighth Amendment failure-to-protect claims nor deny that they have a constitutional duty to protect her from a substantial likelihood of sexual assault. *See* ECF 84 at 6-9. Defendants' claims that they have fulfilled that duty are disproved by the record.

For instance, Defendants claim that their facility placement decisions were driven by Ms. Diamond's statement that she was open to being housed at either a female facility or a medium-security men's facility like Rutledge or Central—even stating erroneously that Ms. Diamond has *only* been housed at one facility, Coastal, during her current period of incarceration. *Id.* at 11. *But see* ECF 41, ¶ 70 (admitting that "the only GDC facilities in which Plaintiff has been incarcerated are GDCP and Coastal, both of which house male offenders"). They conveniently sidestep the fact that Ms. Diamond, a medium-security offender, spent *seven months* at GDCP, a close-security men's facility that houses Georgia's death row inmates, despite reporting abuse and attacks and having GDC officials recommend that she be considered for a

[4] Defendants' reliance on Ms. Diamond's alleged sexual activity with a *man* to claim that she would be an increased security risk to *women* in a women's facility is somewhat baffling. Ms. Diamond has always maintained, and Defendants' official records reflect, that she is attracted exclusively to men. *See* ECF 78-1 at 7. If Defendants' goal is to limit an alleged sexual aggressor's access to her preferred victims, therefore, that goal would best be served by housing Ms. Diamond in a *women's* facility.

female facility placement, *see* ECF 78-1 at 2, and receive an "expedite[d]" "[f]acility [t]ransfer" in November 2019 and March 2020. ECF 78-5 at 622-23. That Defendants allowed Ms. Diamond to remain housed in a close-security facility where she repeatedly faced abuse and assault for as long as they did supports a finding of deliberate indifference in and of itself. *Diamond v. Owens* (*Diamond I*), 131 F. Supp. 3d 1346, 1376-79 (M.D. Ga. 2015); ECF 84 ¶ 7 (acknowledging that close security facilities were a known risk factor).

Defendants' self-serving claim that Coastal is the safest placement for Ms. Diamond cannot end the inquiry, where Ms. Diamond relayed a preference for a female facility for health and safety reasons, repeatedly requested transfers to one away from Coastal where she has experienced sexual assault, abuse, and harassment since arrival. *See* ECF 84-7 ¶ 6 (admitting Ms. Diamond "initially indicated a preference for a placement in a female facility"); ECF 78-1 at 11 ("She advised the SCC committee that she prefers a female facility.").[5] DOJ Stmt. of Interest, ECF 65 at 1-9.

Defendants' reliance on a single statement by Ms. Diamond that a medium-security men's facility might be adequate is deeply disingenuous considering Ms. Diamond's and GDC officials' repeated requests that she be transferred to a female facility or at least away from GDCP and Coastal to ensure her safety. *See, e.g.*, ECF 78-1 at 2; ECF 57-6 to 57-7 & 57-9 to 57-12; ECF 78-4 at 9; ECF 78-5 at 474; ECF 78-6 (showing repeat requests for a female facility placement or safety transfer away from GDCP and Coastal). Here, they also ignore Ms. Diamond's June 15, 2020 grievance seeking a "[t]ransfer to a female facility that can accommodate [my] health and

[5] Ms. Diamond referenced placement in a medium security prison like Rutledge or Coastal as an alternative if a female facility placement was unavailable. DEF 1437, 11:49-12:10 (audiotape filed conventionally). She also did so because of her firsthand knowledge that GDC's reluctance to house transgender women by their gender identity might result in her being housed in close security facilities once again. *See* ECF 52 ¶ 15; *Diamond I*, 131 F. Supp. 3d at 1355-58 (documenting pattern in 2012-2015).

safety needs," which states:

> I am a transgender woman who has faced repeated sexual & physical assaults in GDC custody as well as a lack of constitutionally-required medical care. I have filed PREAS & vocally requested to be transferred to a female facility under GDC SOP 220.09 [Classification and Management of Transgender and Intersex Offenders] IV.C.3b. and have had no response.

ECF 78-6 at 2.

Even if Defendants somehow believed Coastal to be an appropriately safe placement for Ms. Diamond, the continuing pattern of assaults she alleges at her current dormitory at Coastal—***ten*** in the past year, ECF 59-1 ¶ 22—and GDC provider recommendations repeatedly calling for a safety transfer triggered an obligation under the Constitution and PREA to reassess her housing placements for safety. *See* 28 C.F.R. § 115.41(g) (requiring prison officials to reassess safety of placement following receipt of information regarding sexual abuse); § 115.42(d) (requiring prison officials to reassess safety of transgender people's housing placement at least twice per year, even absent allegations of assault); DOJ Stmt. of Interest, ECF 65 at 9 (explaining that PREA regulations reflect common standards of decency for purposes of deliberate-indifference inquiry). Yet, from Defendants' sworn statement and their own discovery, there is no indication that GDC officials have ***ever*** reassessed the safety of Ms. Diamond's placement at Coastal following her arrival on June 4, 2020, despite the urgent and repeated facility transfer requests by Ms. Diamond, her counsel, and GDC healthcare providers. *See* ECF 78-1 (providing what purports to be a complete set of classification files); ECF 84-1 (containing no mention of any subsequent evaluations); ECF 84-7 ¶ 8 (same).

Nor have Defendants proffered evidence showing that Ms. Diamond's numerous allegations of sexual assault, abuse, and harassment are false, despite their decision to mischaracterize them as "disputed." ECF 84 at 9. Rather, Defendants' records confirm that Ms. Diamond's claims were repeatedly marked "unsubstantiated"—without notice to

Ms. Diamond or her attorneys—simply because Defendants decided that Ms. Diamond's requests for a safety accommodation were grounds to halt her investigations entirely. *Compare* ECF 78-5 at 434-35, 460-61, *with* ECF 84 at 9 ("Diamond on the advice of her counsel has refused to participate, to be interviewed, and to provide information."). Moreover, whether or not Ms. Diamond's PREA claims were "substantiated" by GDC is ultimately irrelevant because "deliberate indifference does not require a prisoner seeking 'a remedy for unsafe conditions to await a tragic event such as an actual assault before obtaining relief." *Farmer v. Brennan*, 511 U.S. 825, 845 (1994) (cleaned up) (quoting *Helling v. McKinney*, 509 U.S. 25, 33 (1993)).

Yet still, Defendants rely heavily on Ms. Diamond's request for an advocate to be present during PREA investigations to support lack of deliberate indifference, even though Defendants' own documents show that Ms. Diamond freely participated in Defendants' investigatory process until she *no longer felt safe doing so.* Even then, Ms. Diamond only requested that her attorneys—who drafted the PREA notices on her behalf and sent them to GDC counsel, the Attorney General's office, and GDC PREA administrators pursuant to GDC's express authorization for third-party reporting, ECF 78-11 at 24—be present at any interviews about her allegations as a health and safety measure. *Compare* ECF 78-5 at 14 (notes from March 2020 interview with Ms. Diamond without counsel), *with id.* at 188, 208-09 (September 2020 PREA witness reports noting Ms. Diamond's statement that she does "not feel safe enough to conduct PREA interviews without counsel present"); *see also id.* at 190 (September 2020 PREA memo to Warden Benton finding allegation unfounded due to "victim's refusal to conduct interviews without the counsel of his [sic] attorneys").

Defendants never advised Ms. Diamond one way or another whether her safety request would be accommodated or that they intended to summarily dismiss her PREA complaints as a consequence. *Id.* at 520. Indeed, Ms. Diamond explained in a formal witness statement on October

8, 2020, "I would like to pursue my PREA investigations ***but can't get a response to the request for counsel to be present.*** Because of the sensitive nature of the allegations and fear of retaliation, along with privacy concerns, make it very difficult to navigate this process." *Id.* (emphasis added).

Ms. Diamond's reluctance to divulge sensitive information about past assaults to GDC officials—including information about her exploitation by gang members—in the absence of her attorneys does not show Defendants were not deliberately indifferent because Ms. Diamond's entitlement to prospective relief does not turn on whether prisoners have "substantiated" PREA complaints as Defendants suggest. *Farmer*, 511 U.S. at 827 ("[O]ne does not have to await the consummation of threatened injury to obtain preventive relief." (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)). Nor are prisoners required to specifically identify their perpetrators for the duty to protect to be triggered. *Id.* at 843. Indeed, GDC policy does not even require prisoners who experience sexual assault to file PREA complaints themselves or to go through the grievance process, and does not set a statute of limitations for reporting claims. ECF 57-22 at 24, IV(E)(2-3).

Ms. Diamond's request that her attorneys accompany her to interviews was also reasonable and merited a response from GDC—not just the perfunctory dismissal of her PREA complaints without notice or warning—given Defendants' inept handling of previous investigations and their failure to protect her from retaliation at the hands of their own employees. For example, the investigation into the incident in which a nurse sexually assaulted Ms. Diamond began on March 12, 2020, and was marked as high priority with a due date of April 26, 2020, ECF 78-5 at 4, yet the investigator did not request security camera video of the incident until more than two weeks later, *see id.* at 16; did not interview the witness to the assault until *two months* later, *see id.* at 20; did not interview the alleged perpetrator until *five months* later, on August 31, 2020, *see id.* at 38; and did not conclude the investigation until October 28, 2020, more than *seven months* after the

incident, *id.* at 8. In the interim, Ms. Diamond was approached by several GDC staffers upset that she had told anyone about the incident, and she credibly feared retaliation. *See id.* at 14.

The investigation into Defendant Arneika Smith's assault of Ms. Diamond followed a similar dilatory pattern that exposed Ms. Diamond to retaliation and staff coercion for her participation. *See* ECF 78-5 at 41 (PREA investigation opened on May 28, 2020, designated high priority, and assigned a due date of July 12, 2020); *id.* at 79 (showing *first* witness interviewed more than a month later); *id.* at 83 (interview with alleged perpetrator *five months* after incident); *id.* at 86 (failure to request security camera video until nearly *seven months* later); *id.* at 45 (concluding incident report on March 2, 2021—nearly *ten months* after incident). In the interim, Defendant Smith approached Ms. Diamond and pressured her to sign a written statement. *Id.* at 50. Ms. Diamond was also retaliated against by being partially removed from her work detail as an orderly, ransacking of her cell, and confiscation of her property after participating in the PREA investigation. ECF 57-8.

Investigations into other allegations resulted in similar acts of retaliation against Ms. Diamond. Defendant Rodney Jackson publicly called Ms. Diamond a "snitch" and threatened her in front of her entire dormitory after she reported his harassment of her. *See* ECF 59-1 ¶ 21. On other occasions, Ms. Diamond was approached by the very perpetrators of her assault after cooperating with Defendants' investigations. *See* ECF 78-5 at 335, 368. Only once Defendants' pattern of languid investigation and open retaliation became clear did Ms. Diamond begin requesting that her counsel be present for PREA interviews—a request made even more reasonable given GDC's own simultaneous campaign of retaliation against her. *See supra* Part II. Defendants' failure to respond to, much less grant, Ms. Diamond's request for counsel at these interviews only further confirms their deliberate indifference to her safety. *See* ECF 57 ¶ 21.

In short, Defendants' mischaracterizations, misrepresentations, and victim blaming cannot obscure two basic truths clear from the record. The first is that Ms. Diamond has been the victim of near-constant harassment and assault since her reincarceration in men's facilities in October 2019. The second is that, despite having direct knowledge of Ms. Diamond's substantial risk of harm as a transgender woman in GDC, her ***sixteen*** allegations of sexual abuse, including ten at Coastal, and her recurrent pleas for help and safekeeping, Defendants stubbornly refused, contrary to provider recommendations, to so much as consider her for a safety transfer.

C. Defendants Have Failed to Provide Ms. Diamond Minimally Adequate Gender Dysphoria Care Because Her Symptoms Continue to Escalate and Treatment Recommendations from Her Medical Providers Have Been Blocked.

Defendants do not contest that they have a constitutional duty to provide Ms. Diamond adequate treatment for her serious medical needs associated with her gender dysphoria. *See* ECF 84 at 15. Instead, Defendants assert that they have fulfilled this duty, notwithstanding Ms. Diamond's persistent and well-documented suicidality and repeated auto-castration attempts. As in *Diamond I*, Defendants' argument boils down to a contention that, because they provided Ms. Diamond with *some* treatment for her gender dysphoria, they cannot be deliberately indifferent regardless of the outcome of that treatment. *See id.* The Eighth Amendment requires more. Specifically, prison officials are deliberately indifferent when they continue to apply an obviously ineffective treatment plan in the face of persistent or worsening symptoms, as this Court, the Eleventh Circuit (and others), the U.S. Department of Justice, and others have repeatedly noted. *See, e.g.*, *Diamond I*, 131 F. Supp. 3d at 1373-74 & n.25 (collecting cases); ECF 65, at 9-15; *Keohane v. Fla. Dep't. of Corr. Sec'y*, 952 F.3d 1257, 1266-67 (11th Cir. 2020) ("[R]esponding to an inmate's acknowledged medical need with what amounts to a shoulder-shrugging refusal even to consider whether a particular course of treatment is appropriate is the very definition of 'deliberate indifference'[.]"); *Edmo v. Corizon, Inc.*, 935 F.3d 757, 793 (9th Cir. 2019), *cert.*

denied, 141 S. Ct. 610 (2020) ("The provision of some medical treatment, even extensive treatment over a period of years, does not immunize officials from the Eighth Amendment's requirements."); *De'lonta v. Johnson*, 708 F.3d 520, 526 (4th Cir. 2013) (holding that "*some* treatment consistent with the GID Standards of Care" does not equal "*constitutionally adequate* treatment") (emphasis in original).

Here, the record shows that Defendants Lewis, Jackson, and Sauls have restricted Ms. Diamond to patently ineffective treatment in the face of her persistent, worsening gender dysphoria symptoms. ECF 78-4 at 46; *Edmo*, 935 F.3d at 793; *De'lonta*, 708 F.3d at 526 (analogizing to prescribing painkillers to inmate who requires surgery). Defendants are aware that Ms. Diamond has continually engaged in auto-castration attempts, which this Court and others have recognized as a clear symptom of inadequately treated gender dysphoria. *See Diamond I*, 131 F. Supp. 3d at 1373; *see also Edmo*, 935 F.3d at 793. An email to Defendant Lewis from a nurse practitioner on July 9, 2020 informed Defendant Lewis that Ms. Diamond was experiencing issues from "attempted self-castration with rubber bands." ECF 78-3 at 53. Notes from multiple medical visits over at least the next six months, through December 2020, reference continued problems and pain caused by Ms. Diamond's ongoing auto-castration attempts. *See id.* at 29-30, 58-69; *see also* ECF 78-4 at 148 (doctor note from February 2020 stating that Ms. Diamond is thinking of auto-castration again and that her "*gender dysphoria is worsening*") (emphasis added). Ms. Diamond also became visibly suicidal during this period, causing Defendants to place her on suicide precautions repeatedly, and to refer her to GDC's Acute Care Unit for suicide monitoring three times between September 2020 and January 2021. *See* ECF 78-3 at 8, 48; ECF 78-4 at 31.

As Ms. Diamond's mental health deteriorated during this period, both she and her counsel repeatedly requested that Defendants modify her treatment plan to address her gender dysphoria adequately, without response. *See* ECF 59-1 ¶ 63; ECF 78-5; ECF 57 ¶ 12. Ms. Diamond's doctors

and counselors, including those employed by Defendants, recommended and even approved additional treatments. Despite Defendants' assertion to the contrary, *see* ECF 84 at 17, Ms. Diamond's doctors and counselors repeatedly recommended a facility transfer as a means of improving her mental health. *See* ECF 78-4 at 9, 50-52, 101; *see also id.* at 175 (note from mental health counselor recommending "placement in safe housing"). These doctors also recognized that Ms. Diamond's mental health was significantly decompensating, including as a direct result of her inability to express her gender identity adequately. *See id.* at 148 (noting that Ms. Diamond's "*gender dysphoria is worsening* given her not being allowed expression of gender"); *id.* at 123, 211 (repeatedly recommending that Ms. Diamond's mental health classification be *raised* from Level II to Level III). They therefore recommended that she be provided with access to feminine items such as bras, panties, and makeup as a means of alleviating her dysphoria. *See id.* at 111.

Defendants' response to these recommendations, as well as to Ms. Diamond's glaring distress and pleas for help, was to ignore them. Indeed, Defendant Lewis even personally blocked Ms. Diamond's attempt to obtain medicated cream to slow down the growth of facial hair to alleviate her dysphoria just one week after receiving notice that Ms. Diamond was engaging in auto-castration attempts. *See* ECF 59-18 at 3 ("Your request was *officially denied* by Dr. Lewis."); ECF 78-3 at 53. In fact, Defendant Lewis even denied Ms. Diamond's request for more frequent access to a razor for shaving her facial hair, which in and of itself exacerbates gender dysphoria. ECF 58 ¶ 74. Despite Defendants' claims to the contrary, *see* ECF 84 at 17-18, Ms. Diamond's mental health file does not contain a "comprehensive treatment plan" to address her gender dysphoria as required under GDC policy. ECF 57-20.

Even assuming Defendants' administration of Ms. Diamond's hormone therapy and psychological counseling were adequate, Ms. Diamond's rapidly deteriorating mental health condition over the past year in Defendants' custody facially indicates the inadequacy of her gender

dysphoria treatment. ECF 58 ¶¶ 24, 39, 83, 111-131. Defendants' refusal to provide Ms. Diamond any further treatment, despite her obvious need, is therefore deliberate indifference—tantamount to the "shoulder-shrugging" the Eleventh Circuit has condemned, *Keohane*, 952 F.3d at 1266-67—and shows that injunctive relief is necessary to ensure Ms. Diamond does not suffer further harm.

D. Ms. Diamond Will Suffer Irreparable Harm in the Absence of Relief.

Defendants' contention that the gender dysphoria treatment Ms. Diamond presently seeks—hair removal products, regular monitoring of her hormone therapy, and outward gender expression (through hairstyles, grooming, and commissary access)—is "cutting-edge," ECF 84 at 15, is not tethered to reality or the facts of this case because Ms. Diamond's GDC healthcare providers have repeatedly made recommendations along these lines as recently as 2021 and as far back as 2015. *See, e.g.*, ECF 59-12; ECF 78-4 at 46. It is beyond dispute that prison officials violate the Constitution if they provide "*some* medical treatment for a serious medical condition if that treatment is 'grossly inadequate as well as by a decision to take an easier but less efficacious course of treatment.'" DOJ Stmt. of Interest, ECF 65 at 11 (quoting *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999)) (emphasis added)); ECF 50-1 at 25-26 (collecting cases). Yet, in an attempt to dodge liability, Defendants advance the incredulous argument that Ms. Diamond has not *yet* suffered harm related to her gender dysphoria, even though this claim is thoroughly debunked by Defendants' own evidence, revealing the distorted lens through which Defendants view Ms. Diamond's case. *See* ECF 84 at 21-22.

Defendants put forth a nonparty, Dr. Weinstein, who has ***never met*** with or provided treatment to Ms. Diamond, to say she "generally denies experiencing suicidal ideation," *id.*, despite medical records showing that Ms. Diamond has been transferred or referred to GDC's Acute Care Unit for suicide prevention and monitoring ***three times*** in the past year. *See* ECF 78-3 at 8, 48; ECF 78-4 at 31. Defendant Lewis's attempt to minimize or downplay Ms. Diamond's

suicide risk against this backdrop is tantamount to stating that the Eighth Amendment is only triggered if Ms. Diamond succeeds in taking her own life. Nothing could be further from the truth. *See, e.g.*, *Belcher v. City of Foley*, 30 F.3d 1390, 1396 (11th Cir. 1994) ("Under the Eighth Amendment, prisoners have . . . a right to be protected from self-inflicted injuries, including suicide.") (citations omitted); *Helling*, 509 U.S. at 33 ("[A] remedy for unsafe conditions need not await a tragic event.").

Defendants' second contention makes much of the gap between the filing of Ms. Diamond's complaint and her motion for injunctive relief, *see* ECF 84, at 23, but ignores key details regarding the development of this case. When Ms. Diamond filed her initial complaint in this case on November 23, 2020, ECF 1, her counsel understood that she was scheduled to be released as early as November 30, 2020. ECF 57 ¶ 27. This understanding mooted Ms. Diamond's plan to bring a motion for injunctive relief along with her complaint. *Id.* ¶ 28. When Ms. Diamond filed her Amended Complaint, ECF 36, on February 16, 2021, she had a tentative release date of March 1, 2021. ECF 57 ¶ 29. On March 8, 2021, counsel learned that Ms. Diamond's release date had been pushed back to April 2022. *Id.* ¶ 27. By that date, counsel had begun to prepare this Motion for injunctive relief. *Id.* ¶ 30. Because Defendants did not permit counsel to have a legal call with Ms. Diamond for a twenty-seven-day period—from March 12 to April 7, 2021—this Motion was not filed until April 9, 2021. *Id.* Moreover, Ms. Diamond's mental health has steadily declined in the ensuing months because of Defendants' retaliatory actions and failures to protect her or provide her with adequate medical care now requiring judicial intervention to avoid irreparable harm. *See* ECF 52 ¶¶ 3, 13-14, 16, 20-22, 34-36, 44-48, 58, 59-60, 66, 91, 104-107, 109, 112-118; ECF 55 ¶¶ 43-45, 49-51; ECF 58 ¶¶ 91-131. Ms. Diamond has also experienced ongoing sexual assault and abuse at Coastal, making her need for injunctive remedies *more* urgent with the passing of time, not less.

Legal argument aside, the simple truth is that Ms. Diamond remains housed in Coastal, a men's facility, in the very dormitory in which she has already experienced ten assaults in less than a year and nonstop harassment, notwithstanding its "Faith and Character" designation. ECF 52 ¶¶ 3-6, 16-48; ECF 53 ¶¶ 2-11; ECF 55 ¶¶ 2-33, 41-42. Defendants either cannot or will not protect her there. Defendants' response indicates that Ms. Diamond's situation will not improve absent relief from this Court.

E. The Public Interest and Balance of Harms Sharply Favor Ms. Diamond.

Given the particularized and severe harm that Ms. Diamond has suffered and will continue to suffer due to their violations of her constitutional rights, the balance of harms and the public interest sharply favor the issuance of injunctive relief to protect her constitutional rights, as compared to Defendants' request for generalized deference to the prison officials who are violating them. *See Laube v. Haley*, 234 F. Supp. 2d 1227, 1252 (M.D. Ala. 2002) ("The public interest is in no way served by . . . incarcerating inmates in dangerous conditions."); ECF 50-1 at 28-29 (citing additional cases).

II. Defendants' Summary Denial Is Insufficient to Overcome Ms. Diamond's Need for a Protective Order.

The Court should also grant Ms. Diamond's Motion for Protective Order pursuant to its inherent equitable power. *See* ECF 51-1 at 10-12 (citing cases); *see also id.* at 12-13 (alternatively arguing for protective order under Rule 26); *id.* at 14-18 (alternatively arguing for writ under All Writs Act). Defendants' avalanche of disciplinary charges since litigation became imminent, derogatory changes to Ms. Diamond's security classification, and witness intimidation—coupled with their reliance on those actions as a legal justification for denying Ms. Diamond the safety transfers sought—show that a protective order is warranted if Ms. Diamond is to have any chance at a fair and untainted trial. ECF 51-1.

Defendants do not dispute that this Court has the inherent authority to "protect the integrity of its judicial proceedings," *In re Se. Banking Corp. Sec. & Loan Loss Reserves Litig.*, No. 95-2602-CIV DAVIS, 1996 WL 34491908, at *10 (S.D. Fla. July 8, 1996), "to ensure a fair administration of justice," *id.*, and to "enjoin almost any conduct which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion," *Klay v. United HealthGroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004) (internal quotations omitted). Instead, their Opposition comprises a single footnote in which they assert in conclusory fashion that "there is no retaliation in this case," and mischaracterize Ms. Diamond's Motion for a Protective Order as a subset of her Preliminary Injunction Motion that "do[es] not satisfy the specificity requirements of Fed. R. Civ. P. 65," is "incapable of enforcement," and "exceeds the relief sought in the amended complaint," ECF 84 at 4 n.1.

Defendants have erected and attacked a straw man. Ms. Diamond does not request an injunction under Rule 65 but rather a protective order under the Court's inherent equitable powers, or in the alternative under Rule 26 or the All Writs Act, to prevent Defendants from engaging in further coercion or tampering with witnesses and manipulating evidence for litigation justifications or advantage. *See* ECF 51 at 1; *accord Disability Rights N.J., Inc. v. Velez*, Civ. No. 10-03950, 2011 WL 2937355, at *4 (D.N.J. July 19, 2011) ("While some forms of witness intimidation or document destruction doubtlessly necessitate injunctive relief under Rule 65, protective orders are also an appropriate vehicle to prevent interference with potential witnesses."); *Rissman, Hendricks & Oliverio, LLP v. MIV Therapeutics, Inc.*, Civ. Action No. 11-10791, 2011 WL 5025206, at *5 (D. Mass. Oct. 20, 2011) (same). Therefore, Ms. Diamond does not have to "satisfy the specificity requirements" of Rule 65 or stay within "the relief sought in the amended complaint" as Defendants suggest. ECF 84 at 4 n.1. And while Defendants state in a conclusory fashion that "there is no retaliation in this case," *id.*, their brief does not cite any evidence to rebut

Ms. Diamond's detailed, supported allegations of retaliation. In contrast, new record evidence since Ms. Diamond filed her Motion for Protective Order supports her allegations of retaliation even more persuasively and shows that Defendants have piled a total of *twenty* disciplinary violations on her since October 2020, when litigation became imminent—reports that Defendants' own documentation proves are ***utterly baseless.*** *See supra* note **Error! Bookmark not defined.**. A few examples suffice to show the need for a protective order.

Confronted with the prospect of perjuring herself in federal court, GDC Officer Courtney Brown—whose statement was the ***only*** evidence supporting the charges—has ***fully recanted*** the statement repeated time and again that Defendant conveniently used as a post-hoc justification for Defendants' refusal to transfer Ms. Diamond to a female facility.[6] *Compare* ECF 84-4 ¶ 12 *with id.* at 5. Furthermore, the charge at best alleges consensual sex, not that Ms. Diamond is a PREA Aggressor who "[p]reys on other inmates." ECF 78-13 at 4; ECF 78-14; ECF 56 at 18-19; ECF 56 ¶ 72-74. Likewise, although Defendants accuse Ms. Diamond of disabling her door lock, their own evidence shows that Ms. Diamond's cell lock was reported broken in the days ***before*** and ***after*** the charge, including by a GDC medical provider and prison maintenance worker who confirmed that the lock was not simply "blocked" by a rag, which incidentally no one saw Ms. Diamond place, but was "broken" and had to be fixed. ECF 78-7 at 9-13 (noting issues on October 26, 2020, and November 5, 2020).

The retaliation Ms. Diamond alleges also continues to this day, as Ms. Diamond has spent the weeks leading up to this hearing in a rodent-infested solitary confinement cell for allegedly

[6] Brown's admittedly false statement is further refuted by medical records that show Ms. Diamond's genitals were bound so tightly in connection with a castration attempt that she required emergency medical treatment on the date of the incident. *See* ECF 78-7 at 100.

"brushing" up against an officer—an account that Ms. Diamond believes is disproven by video evidence, but which has been labeled "assault of staff" for maximum effect. Defendants' decision to uphold the charge despite evidence to the contrary supports the need for the protective order, particularly because Defendants will surely rely on this "assault" charge for housing decisions going forward. That Defendants pursued this course of action in the days leading up to the May 12 hearing despite its utter lack of justification and chose a punishment reserved only for "when it is clearly obvious that maximum control is essential," Disciplinary Isolation, GDC SOP 209.03, filed herewith, against the advice of Ms. Diamond's mental health providers, who noted the deleterious effect solitary confinement was certain to have on her mental health, ECF 78-7 at 44, further evinces why Ms. Diamond's Motion for a Protective Order is warranted. Importantly, Ms. Diamond does not seek to unduly tie the hands of those charged with security of the prisons in which she is housed; the malfeasance illustrated here just simply cannot continue unabated. The Court should order Defendants to cease retaliatory discipline charges without adequate factual bases or face sanctions so it may fairly consider Ms. Diamond's claims without manufactured facts inserted into the record.

CONCLUSION

Ms. Diamond respectfully requests that the Court grant her Motion for a Preliminary Injunction and Motion for a Protective Order.

Dated: May 10, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document and all attachments were served on all counsel of record through the Court's CM/ECF system.

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