

May 13, 2014

Brian Owens, Commissioner
Robert E. Jones, General Counsel
Georgia Department of Corrections
Department Headquarters
300 Patrol Road Forsyth, GA 31029

VIA FIRST CLASS MAIL

Re: Discriminatory Treatment of Inmate Ashley Diamond, GDC No. 1000290565

Dear Commissioner Owens and Mr. Jones,

It has come to our attention that the Georgia Department of Corrections (“GDC”) refuses to provide Ashley Diamond, currently incarcerated at Valdosta State Prison, constitutionally-required medical treatment in the form of hormones to treat Ms. Diamond’s Gender Identity Disorder (“GID”). Ms. Diamond is a transgender woman who has received hormone therapy since the age of seventeen. Despite GDC’s internal policy mandating “maintenance” of a transgender person’s hormone status while in custody, GDC abruptly halted Ms. Diamond’s hormone therapy when she came into GDC care in March of 2012. GDC not only denies necessary medical care but targets Ms. Diamond because of her transgender status, including placing Ms. Diamond in solitary confinement for over a week in December of 2013 for “pretending to be a woman.”

GDC’s continued refusal to provide necessary medical treatment violates the Eighth Amendment’s ban on cruel and unusual punishment, widely accepted protocol on health care standards in correctional settings, the Rules and Regulations of the State of Georgia, and *GDC’s own internal policies* concerning the treatment of transgender people. I write to inform you that unless you promptly provide Ms. Diamond with appropriate medical and mental health care relating to her transgender status by **May 30**, including taking steps to protect Ms. Diamond from the retaliation she has experienced as a result of attempting to secure appropriate care, SPLC will commence legal action to remedy this constitutional violation.

GDC Refuses To Treat Ms. Diamond’s Serious Medical Need

Ms. Diamond began her transition at the age of 15 while growing up in Rome, Georgia and began hormone therapy just two years later. At the age of thirty four, she was taken into GDC custody and her hormone treatment was immediately terminated. Ms. Diamond’s body changed dramatically after GDC abruptly withdrew her medication. Her voice has deepened, her facial hair has begun to grow in, and her body fat has redistributed — all changes that she previously avoided by beginning hormone treatments while in adolescence. Ms. Diamond experienced and continues to experience significant physical illness and depression, including suicidal ideation and other manifestations of self-harm, because of GDC’s refusal to provide adequate care. GDC health specialists are on notice that withholding treatment would cause severe and life-threatening harm, as they have previously provided hormone therapy

to other transgender inmates and are thus aware of the necessary nature of the treatment.¹ Yet, GDC continues to deny Ms. Diamond hormone treatment for unknown reasons.

Despite GDC's own Policy VH47-0006 requiring that a transgender inmate undergo evaluation during diagnostic processing, Ms. Diamond did not receive a mental health evaluation until October 17 of 2012, over six months after she was taken into custody. At that time, GDC professionals diagnosed her as having GID. The evaluation recognized that "prisoner is transgender" and that Ms. Diamond had "lived as [a woman] since [s]he was 15 years of age." Yet no medication was provided, and instead of the "maintenance" required by GDC's own policy, the form describes that Ms. Diamond was told to "learn the appropriate skills to adapt," rather than be proscribed the hormones she previously received for over half her life.

The United States Constitution, Nationally Recognized Standards of Care in Correctional Facilities, and GDC's Own Internal Policies All Require that GDC Provide Ms. Diamond with Hormone Treatment

GDC's refusal to provide Ms. Diamond with hormone treatment despite her medical diagnosis constitutes deliberate indifference in violation of the Eighth Amendment's ban on cruel and unusual punishment. In *Kothmann v. Rosario*, the Eleventh Circuit explained that even in 2010, two years before Ms. Diamond entered GDC care, "the state of the law was sufficiently clear to put [Florida Department of Corrections' Chief Health Officer] on notice that refusing to provide [a transgender inmate] with what she knew to be medically necessary hormone treatments was a violation of the Eighth Amendment."² On May 2nd of this year a federal judge in Ohio ordered the Ohio Department of Rehabilitation and Correction to permanently provide hormone treatment to a transgender woman who had received hormones since the age of 18 after the Department abruptly halted her care in 2012.³

As recently as May 7th of this year, a US District Court for the Middle District of Georgia, Valdosta Division, held that a transgender inmate housed at the exact same GDC facility as Ms. Diamond had a viable Eighth Amendment claim as a result of GDC's refusal to treat her GID.⁴ In his written denial of the inmate's medical request, the warden refused treatment for the inmate's "transgender situation" and even went so far as to assert, wrongly, that "lack of [hormones] would not cause the illnesses that you state you are in fear of." The court, in recognizing the woman's claims against GDC, was clear that such treatment could violate Eighth Amendment even when the inmate was not formally diagnosed with GID at the time she entered GDC custody. If there exists a viable Eighth Amendment claim for this transgender woman, who was not diagnosed at the time she entered custody but later developed GID, one certainly exists when GDC itself diagnosed Ms. Diamond as having GID years ago yet continues to refuse to treat her despite notification of her need.

It is well-recognized nationally that transgender inmates who received hormone therapy prior to incarceration should continue the therapy while in custody. The National Commission on Correctional

1. *Howard v. Green*, 5:10-CV-207, 2011 WL 4969599 (M.D. Ga. Sept. 9, 2011) *report and recommendation adopted*, 5:10-CV-207 MTT, 2011 WL 4975852 (M.D. Ga. Oct. 19, 2011).

2. *Kothmann v. Rosario*, 13-13166, 2014 WL 889638 (11th Cir. Mar. 7, 2014). *See also Fields v. Smith*, 653 F.3d 550, 559 (7th Cir. 2011) (holding that a Wisconsin state statute banning hormone therapy for incarcerated transgender people violates the Eighth Amendment); *Phillips v. Mich. Dept. of Corr.*, 731 F.Supp. 792, 792 at n. 1. (W.D.Mich.1990) (order granting preliminary injunction to transgender prisoner when Department of Corrections denied hormone treatment for GID); *aff'd*, 932 F.2d 969 (1991).

3. Andrew Welsh-Huggins, *Judge Orders Treatment for Ohio Transgender Inmate*, ABCNEWS.COM (May 2, 2014), available at: <http://abcnews.go.com/Health/wireStory/judge-orders-treatment-ohio-transgender-inmate-23570520>.

4. *Lynch v. Lewis*, 7:14-CV-24 HL, 2014 WL 1813725 (M.D. Ga. May 7, 2014).

Health Care explains that “[d]iagnosed transgender patients who received hormone therapy prior to incarceration should have that therapy continued without interruption pending evaluation by a specialist, absent urgent medical reasons to the contrary.”⁵ The National Institute of Corrections concurs that “medical care an LGBTI inmate or resident receives prior to arriving at the facility, such as hormone treatments, should be continued upon arrival at the facility after consultation with the appropriate medical providers.”⁶ Federal Bureau of Prison standards require that inmates in Ms. Diamond’s situation receive hormone treatment and access to mental health providers familiar with transgender care.⁷ The American Psychological Association “supports access to appropriate treatment in institutional settings ... including access to appropriate health care services including gender transition therapies.”⁸

GDC’s own internal policies mandate that Ms. Diamond receive hormone treatment. GDC *Standard Operating Procedures* Policy VH47-0006, “Management of Transsexuals,” effective *over ten years ago*, explains that “inmates/probationers who, during intake health screening, are identified as transsexual will be evaluated ... The general policy will provide ‘maintenance’ of the inmate’s/probationer’s transgender status.”⁹ GDC policy effective a decade prior to Ms. Diamond’s entrance into custody requires a level of care well above what Ms. Diamond has actually received, including hormones to ensure maintenance of the body she has lived with since she began hormones. Finally, the Rules and Regulations of the State of Georgia, Policy 125-4-4-.04 (2) require that “[e]ach inmate who has a remediable physical or mental condition shall be offered suitable treatment at the institution or through extension, at other facilities accessible to the State Board of Corrections.”¹⁰

Ms. Diamond Has Experienced and Continues To Experience Retaliation As a Result of Her Requests for Treatment

Ms. Diamond’s continued attempts to remedy her life-threatening situation have resulted in retaliation as opposed to concern on the part of GDC officials. Immediately upon her arrival into custody, she was targeted for harassment by guards and inmates because of her gender non-conformity. This harassment was both physical and verbal — Ms. Diamond was raped by a fellow inmate in 2012 after repeated requests for protection were ignored. Ms. Diamond continues to use the appropriate grievance procedures to ensure her safety, but her grievances have gone unanswered and her mail has been “lost.” Ms. Diamond is told by guards that she has brought the problems on herself by being transgender. For example, in December of 2013, Ms. Diamond was placed in solitary confinement for a week for “pretending to be a woman.” Ms. Diamond continues to suffer severe mental anguish as a result of the abrupt cessation of hormones and indifference to her medical needs.

5. NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE, POSITION STATEMENT ON TRANSGENDER HEALTH CARE IN CORRECTIONAL SETTINGS (October 18, 2009), *available at*: www.ncchc.org/transgender-health-care-in-correctional-settings.

6. U.S. DEPARTMENT OF JUSTICE NATIONAL INSTITUTE OF CORRECTIONS, POLICY REVIEW AND DEVELOPMENT GUIDE: LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX PERSONS IN CUSTODIAL SETTINGS (August 2013), *available at*: <https://s3.amazonaws.com/static.nicic.gov/Library/027507.pdf>.

7. U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS, MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS (May 31, 2011) and (June 15, 2010), *available at*: www.glad.org/uploads/docs/cases/adams-v-bureau-of-prisons/2011-gid-memo-final-bop-policy.pdf. (Explaining that “should a GID diagnosis be made, continued psychological counseling will be offered if warranted, and requested by the inmate ... [A]n inmate will be maintained at the level of change existing upon admission to the Bureau of Prisons. Hormone therapy will provided to maintain that level, and such therapy will continue should the inmate be transferred to another facility.”)

8. AMERICAN PSYCHOLOGICAL ASSOCIATION, RESOLUTION ON TRANSGENDER, GENDER IDENTITY, & GENDER EXPRESSION NON-DISCRIMINATION (2009), *available at*: www.apa.org/about/policy/transgender.aspx.

9. GEORGIA DEPARTMENT OF CORRECTIONS, SOP VH47-0006, MANAGEMENT OF TRANSSEXUALS (2001).

10. GA. COMP. R. & REGS. 125-4-4.004 (1986), *available at*: <http://rules.sos.state.ga.us/docs/125/4/4/04.pdf>.

In December of 2013, I met with Ms. Diamond to discuss her experience. Immediately after this meeting, Ms. Diamond was placed solitary confinement for six days and was then transferred to another facility, her movement history classifying the reason for this move as “disciplinary” despite the lack of any disciplinary incident in any of the related records. Attorneys from SPLC were unable to reach Ms. Diamond during this period. SPLC investigations, in addition to recent cases brought on behalf of transgender inmates, indicate that Ms. Diamond is not the only transgender individual in GDC custody, making GDC’s refusal to provide constitutionally-adequate care even more concerning.

Ms. Diamond Must Receive Appropriate Care By 5p.m. on Friday, May 30th

Please confirm in writing by **5 p.m., Friday, May 30th**, that you will provide Ashley Diamond, and all other transgender inmates in GDC custody, with appropriate hormone therapy and mental health care as required by the Eighth Amendment and GDC’s own policies concerning transgender people. SPLC offers to provide training on how to ensure appropriate care, free of charge, to GDC officials. Should this matter not resolve, SPLC is prepared to file a federal lawsuit to remedy the situation. If you wish to discuss how to guarantee appropriate care please contact me so that we may together ensure the safety of all transgender individuals in GDC custody.

Sincerely,



David Dinielli
Deputy Legal Director
Southern Poverty Law Center