No. 25-6813

In the United States Court of Appeals for the Ninth Circuit

EMALEE WAGONER,

Plaintiff-Appellee,

v.

JENNIFER WINKELMAN,

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Alaska, No. 3:18-cv-00211
Before the Honorable Matthew M. Scoble

BRIEF OF AMICI CURIAE PROFESSORS OF LAW IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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RULE 29 STATEMENTS

Pursuant to Federal Rules of Appellate Procedure 29(a)(2), amici curiae certify that all parties in this proceeding have consented to the filing of this amicus brief.

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(E), amici curiae state that no party's counsel authored this brief in whole or in part, and no party or party's counsel made a monetary contribution intended to fund preparing or submitting this brief. No person other than amici or their counsel made a monetary contribution to the preparation or submission of this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29, amici curiae Margo Schlanger, Alexander A. Reinert, Andrea Armstrong, Erwin Chemerinsky, D Dangaran, Aaron Littman, and Laura Rovner are individuals, and no corporate disclosure statement pursuant to Federal Rule of Appellate Procedure 26.1 is required.

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STATEMENT OF AMICI INTEREST

Amici curiae are professors who research and teach constitutional law at seven law schools across the country. They have particular expertise in the Eighth Amendment, the Prison Litigation Reform Act, and constitutional law and civil rights as they apply to prisoners. Collectively, they have published dozens of articles on these topics and have over 150 years of experience researching and teaching them.

Amici curiae's expertise on the issues implicated in this case is relevant to the Court's understanding of the Eighth Amendment, constitutional claims brought by prisoners, the Prison Litigation Reform Act, and regulation of medical care in the carceral context. Amici professors listed here submit this brief in their individual capacities (with academic affiliations included below solely for identification purposes):

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INTRODUCTION AND SUMMARY OF ARGUMENT

Fifty years ago, the Supreme Court held that the Eighth Amendment protects prisoners from officials' "deliberate indifference" to serious medical needs. *Estelle v. Gamble*, 429 U.S. 97 (1976). This Court has elaborated the substance of this protection over time, including in the specific context of gender-affirming care for prisoners. *See Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019) (per curiam). *Edmo* controls as the law of this Circuit, and establishes four blackletter principles that govern this appeal:

First, individualized medical assessments are required under the Eighth Amendment, including in treating gender dysphoria. *See Edmo*, 935 F.3d at 797 ("[M]edical care [must] be individualized based on a particular prisoner's serious medical needs." (citations and quotation marks omitted)).

Second, in evaluating those individualized assessments, courts need not defer to the opinions of non-specialists—even prison physicians or administrators—over treating specialists. *See Edmo*, 935 F.3d at 786 ("In deciding whether there has been deliberate indifference to an inmate's serious medical needs, we need not defer to the judgment of prison doctors or administrators." (citation omitted)).

Third, categorical bans on necessary care violate the Eighth Amendment, including blanket bans on gender-affirming surgery. *See Edmo*, 935 F.3d at 796-797 ("Eighth Amendment precedent requir[es] a case-by-case determination of the

medical necessity of a particular treatment." (citation omitted)); *Rosati v. Igbinoso*, 791 F.3d 1037, 1039-1040 (9th Cir. 2015) (per curiam); *Stanard v. Dy*, 88 F.4th 811, 817-818 (9th Cir. 2023). This includes both explicit bans and "de facto" bans on gender-affirming surgery. *See Edmo*, 935 F.3d at 797.

Fourth, insufficient or inadequate care for gender dysphoria can still constitute deliberate indifference. *See Edmo*, 935 F.3d at 793-794 ("The provision of some medical treatment, even extensive treatment over a period of years, does not immunize officials from the Eighth Amendment's requirements." (citation omitted)).

The Alaska Department of Corrections ("ADOC") has failed to treat Emalee Wagoner's gender dysphoria in a manner consistent with these principles. When Ms. Wagoner's treating physician, who is experienced in gender-affirming care, concluded that she needed a referral to determine whether gender-affirming surgery is necessary, ADOC rejected this professional medical judgment without the individualized medical consideration required by the Eighth Amendment. Rather, ADOC withheld such treatment for pretextual and non-medical reasons.

The district court correctly crafted an injunction hewing to the principles outlined in *Edmo* and *Estelle*. ADOC's appeal points to inapposite out-of-circuit case law to evade *Edmo* and *Estelle*, but the district court properly applied their controlling holdings here. The district court correctly held that ADOC's failure to

comply with the specialists' recommendations constituted deliberate indifference in violation of Ms. Wagoner's Eighth Amendment rights. The Court accordingly issued an injunction designed to address Ms. Wagoner's medical needs and preclude state officials from additional attempts to use department policy to deny Ms. Wagoner medically necessary treatments.

Amici share expertise in, among other legal issues, the Prison Litigation Reform Act and the Eighth Amendment's application to prisoners. Amici offer no views on the medical standards regarding gender-affirming surgery. Nor do they opine on the weight that the district court gave to the parties' experts. Rather, amici's argument is that Supreme Court and Ninth Circuit case law require that the district court's decision be affirmed on the ground that ADOC's "refusal to substantively consider Dr. Samuelson's recommendation that Ms. Wagoner be referred for surgery amounted to deliberate indifference" under the Eighth Amendment. 1-ER-0047.

ARGUMENT

I. THE EIGHTH AMENDMENT REQUIRES INDIVIDUALIZED MEDICAL ASSESSMENTS TO ADDRESS MEDICAL NEEDS

Supreme Court and Ninth Circuit precedent make clear that the Eighth Amendment requires prisons to provide constitutionally adequate medical care based on professional medical judgment. Failure to consider and comply with professional medical judgment—in the absence of countervailing medical judgment

from a qualified provider—constitutes deliberate indifference under the Eighth Amendment.

ADOC's reliance on cases questioning whether a referral for gender-affirming surgery could ever be considered a sound medical opinion (Appellant Br. 37-38) is misplaced, as those decisions do nothing to undermine the constitutional principle emphasized in *Estelle* and *Edmo*: that failure to make individualized assessments of a prisoner's medical needs constitutes deliberate indifference.

A. Supreme Court and Ninth Circuit Precedent Require Individualized Medical Assessments

In 1976, the Supreme Court held that the Eighth Amendment imposes an "obligation to provide medical care for those whom it is punishing by incarceration." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). This obligation prohibits state officials from exhibiting "deliberate indifference" to a serious medical need. *Id.* at 104. "[W]hether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed[,]" the Eighth Amendment preserves prisoners' right to receive medical care. *Id.* at 104-105 (footnotes omitted).

In *Estelle*, a prisoner sued Texas officials for what he alleged was constitutionally inadequate medical care in the aftermath of an injury. 429 U.S. at 99-101. In evaluating whether Texas officials' conduct violated the Eighth

Amendment, the Supreme Court devised a two-step inquiry: (1) whether the inmate had an objectively serious medical need, and (2) whether officials were deliberately indifferent to that need. *Id.* at 104-105. The Court took great care in distinguishing between "inadvertent failure[s] to provide adequate medical care"—such as a physician's negligence in misdiagnosing a patient, which *did not* rise to the level of a constitutional violation—from deliberate indifference to medical needs, which *did* amount to a violation. *Id.* at 105-106.

At step two—whether officials were deliberately indifferent to a medical need—this Court has explained that deliberate indifference encompasses many different types of failures: where prison officials "'deny, delay or intentionally interfere' with needed medical treatment," including an evaluation by a physician, *Sandoval v. County of San Diego*, 985 F.3d 657, 679-680 (9th Cir. 2021); precluding an individual from seeing a specialist when medically required, *Jett v. Penner*, 439 F.3d 1091, 1096-1097 (9th Cir. 2006); unreasonably denying a specialist's recommendation based on "non-specialized conclusions," *Snow v. McDaniel*, 681 F.3d 978, 986 (9th Cir.2012), *overruled on other grounds by Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014); imposing bans on certain medical procedures for purely administrative reasons, *Colwell v. Bannister*, 763 F.3d 1060, 1063 (9th Cir. 2014); and providing "some treatment" that does not adequately respond to the serious medical need, *Singleton v. Lopez*, 577 F. App'x 733, 735 (9th Cir. 2014) (citing *Jett*,

439 F.3d 1091). *Estelle* itself provided several examples of deliberate indifference, including citing, with approval, a Second Circuit case in which a prison's doctor failed to follow a specialist's orders regarding post-operative treatment. *See Estelle*, 429 U.S. at 104 n.10 (citing *Martinez v. Mancusi*, 443 F.2d 921 (2d Cir. 1970)). Most pertinent here, in the context of gender-affirming care, this Court has made clear that the Eighth Amendment prohibits a prison from denying gender-affirming surgery to treat gender dysphoria based on a prison's blanket policy prohibiting the treatment. *Rosati v. Igbinoso*, 791 F.3d 1037, 1039-1040 (9th Cir. 2015).

The Court's decision in *Edmo v. Corizon, Inc.*, 935 F.3d 757, 785 (9th Cir. 2019) (per curiam), synthesized these principles and, as the parties agree (Appellant Br. 27), is the Court's controlling precedent on Eighth Amendment claims, including the treatment of gender dysphoria. There, the Court acknowledged that gender dysphoria constituted a "serious medical condition" under existing precedent and affirmed the district court's conclusion that the plaintiff required gender confirmation surgery. *Edmo*, 935 F.3d at 780-781, 785, 800. The plaintiff in *Edmo* received some gender-affirming treatment while incarcerated in Idaho, including hormone therapy. After her symptoms worsened, external specialists recommended that she undergo gender-affirming surgery. Idaho's psychiatrist, however, did not believe that gender-affirming surgery was necessary to treat Edmo's dysphoria despite her prior suicide attempts. *See id.* at 774. The district court disagreed,

finding that surgery was medically necessary to treat Edmo's gender dysphoria given the credibility of Edmo's experts who had "extensive personal experience treating individuals with gender dysphoria both before and after receiving gender confirmation surgery," and who opined that surgery was medically necessary. *Id.* at 780-781.

This Court affirmed, holding that the refusal to provide surgery amounted to deliberate indifference because the state's proposed treatment "was medically unacceptable under the circumstances." *Edmo*, 935 F.3d at 786 (quotation marks omitted). Specifically, this Court noted that the district court correctly credited Edmo's experts over Idaho's physician and experts in part because Edmo's experts were significantly more qualified to render opinions on the need for gender-affirming surgery. *Id*. at 787. Although Idaho attempted to frame the issue as a "case of dueling experts," this Court disagreed, because only one side's experts—Edmo's—had the requisite subject-matter expertise to conduct an individualized assessment of Edmo and to opine on whether gender-affirming surgery was necessary for her. *Id.* Idaho's treating psychiatrist, on the other hand, refused to refer Edmo for gender-affirming surgery or otherwise change her treatment despite knowing that Edmo suffered from gender dysphoria, that Edmo suffered debilitating levels of stress, and that Edmo had attempted to castrate herself on two separate occasions. *See id.* at 793. The Court analogized Idaho's treatment of Edmo to the

prescription of a pain killer for a fall that requires surgery. *See id.* *Edmo* thus reflects the blackletter principle that the Eighth Amendment requires that prison officials rely on individualized medical judgments—as opposed to non-medical or medically invalid judgments—in providing treatment for serious medical conditions.

B. Out-of-Circuit Authority is Distinguishable

In an effort to bypass *Edmo*, ADOC argues that the medical understanding regarding gender-affirming surgery has dramatically shifted since this Court's decisions. Appellant Br. 27, 37-39. Specifically, they cite *United States v. Skrmetti*, 605 U.S. 495 (2025), *Clark v. Valletta*, 157 F.4th 201 (2d Cir. 2025), and *Gibson v. Collier*, 920 F.3d 212 (5th Cir. 2019), as reflecting this alleged paradigm shift. None of these cases, however, undermines *Edmo*.

In *Skrmetti*, the Supreme Court considered an Equal Protection Clause challenge to Tennessee's laws prohibiting providers from treating minor patients' gender dysphoria with gender-affirming surgery, puberty blockers, or hormones. *See* 605 U.S. at 500. Because these laws did not regulate sex or transgender status per se, the Court held that the statutes were not subject to heightened scrutiny. *See id.* at 510-511. As a result, the Court applied rational basis review and concluded that Tennessee's efforts to protect children from irreversible decisions constituted a rational basis for the statute. *Id.* at 525.

The Court's opinion did not address, much less undermine, the medical consensus around treatment options for severe gender dysphoria in adults. Nor did it address whether certain interventions might constitute "necessary medical care" for gender dysphoria under the Eighth Amendment. To the contrary, the Court accepted Tennessee's asserted interest in protecting *minors*—not adults—from a medical procedure that might cause irreversible harms such as sterility, on the theory that they might lack the "maturity to fully understand and appreciate the life-altering consequences of such procedures." *Skrmetti*, 605 U.S. at 523. That conclusion has no bearing on the governing Eighth Amendment rule addressed here, which compels deference to professional medical judgment in individual cases.

ADOC's reliance on *Gibson* and *Clark* is similarly misguided. To start, the Fifth Circuit issued the *Gibson* decision *before* this Court issued *Edmo*. And as a result, this Court addressed and explicitly rejected the Fifth Circuit's reasoning. *See Edmo*, 935 F.3d at 794-795.[1] Moreover, in *Gibson*, the Fifth Circuit extensively cited the First Circuit's decision in *Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014), to hold that "there is no consensus in the medical community about the necessity and

[1] The plaintiff in *Gibson* also fully litigated the district court action *pro se* and did not have the resources to hire experts or engage in any expert discovery. *See* Plaintiff's Obj. and Request for Reconsideration, *Gibson v. Livingston*, No. 6:15-cv-00190-RP (W.D. Tex. Sept. 15, 2016), ECF No. 74. In contrast, here, the district court had the benefit of several experts, a substantial record, and well-trained advocates on both sides.

efficacy of sex reassignment surgery as a treatment for gender dysphoria." 920 F.3d at 221. But as this Court explained in *Edmo*—consistent with the views of commentators and the *Gibson* dissent[2]—*Kosilek* does not support a State's categorical ban on gender-affirming surgery. *Edmo*, 935 F.3d at 795. In addition, as this Court explained, in *Kosilek*, the First Circuit largely relied on an expert who now "agrees that [gender-affirming surgery] 'can be medically necessary for some, though not all, persons with [gender dysphoria], including some prison inmates.'" *Edmo*, 935 F.3d at 796 (alterations in original). Last, unlike Ms. Wagoner, the plaintiff in *Kosilek* had already conceded that her hormonal therapy had "led to a significant stabilization in her mental state," such that a significant time passed since she had exhibited symptoms of suicide ideation. *Kosilek*, 774 F.3d at 90.

Similarly, the Second Circuit's decision in *Clark* is distinguishable because it arose in the context of a damages action qualified immunity defense and so only considered whether any alleged Eighth Amendment violation was "clearly

[2] *See, e.g.*, Parsi, *The Eighth Amendment and Medical Consensus on Gender Affirming Care: Reexamining the Dissentals in* Edmo v. Corizon, 101 Denv. L. Rev. 127, 180-181 (2023) ("[*Gibson*'s] conclusion is a misreading of *Kosilek II*. The First Circuit, as discussed, did not hold that the WPATH SOC does not reflect medical consensus. Instead, it held that the DOC and its experts aligned with the WPATH SOC but that Kosilek's medical needs were met by treatment options other than gender affirming surgery under the WPATH SOC. The Fifth Circuit's conclusion also ignores the First Circuit's demand to not treat its decision as a 'de facto ban against [gender affirming surgery] as a medical treatment for any incarcerated individual.'") (citations omitted).

established" by prior precedent. 157 F.4th at 210. The high standard that a plaintiff seeking damages must satisfy to overcome qualified immunity has no place in an injunctive case like this one. Indeed, the Second Circuit did not disturb the district court's award of injunctive relief to *Clark*'s plaintiff. *See* Mem. Decision 44, *Clark v. Cook*, No. 3:19-cv-00575-VAB (D. Conn. July 26, 2024), ECF No. 268-1 ("Accordingly, an injunction to ensure that appropriate health care for Ms. Clark's gender dysphoria continues without unnecessary delays is narrowly drawn and is the least intrusive means necessary to correct the violation."), *rev'd sub nom. on other grounds, Clark*, 157 F.4th at 208 ("Clark also sought injunctive relief against the Commissioner of Connecticut's Department of Corrections, which is not at issue in this interlocutory appeal."). Moreover, in *Clark*, the physicians provided *some* gender-affirming therapy treatment to the plaintiff. *See* 157 F.4th at 212. This "progression of care" rendered it difficult for the plaintiff to demonstrate that the "[d]efendants were on notice that failing to include [the plaintiff's] requested treatments in that course of care would amount to a constitutional violation." *Id.* (alterations added). Indeed, the Court acknowledged that the "absence of treatment" for gender dysphoria could in fact overcome qualified immunity. *Id.* at 213 (emphasis omitted).

Edmo, the law of this Circuit, requires affirmance of the decision below. *Skrmetti* is not fundamentally inconsistent with that circuit precedent, and so this

panel must follow *Edmo*. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (panel decision controls unless "intervening Supreme Court authority is clearly irreconcilable with … prior circuit authority"). And out-of-circuit decisions like *Gibson* and *Clark* are both unpersuasive and inapposite.

II. ADOC'S DE FACTO BAN ON GENDER CONFORMING SURGERY CONSTITUTED DELIBERATE INDIFFERENCE

The Eighth Amendment requires prison officials to base Ms. Wagoner's care on individualized medical judgment rather than a categorical, one-size-fits-all policy. In enforcing a de facto ban on gender-affirming surgery and relying on non-medical factors to reject Ms. Wagoner's request to consult with a specialist to determine what treatment is medically necessary, ADOC acted with deliberate indifference to her serious medical needs.

A. The Eighth Amendment Forbids Blanket Treatment Exclusions Untethered to Medical Judgment

As noted earlier, prison officials violate the Eighth Amendment when they refuse or override a medical professional's recommended treatment based on a blanket policy or other non-medical rationale. Deliberate indifference is established when officials, knowing an inmate faces a substantial risk of serious harm, "intentionally deny[] or delay[] access to medical care or intentionally interfere[] with the treatment once prescribed" for reasons unrelated to the inmate's health, thereby recklessly disregarding the risk. *Estelle*, 429 U.S. at 104-105. This Court

has repeatedly held that categorically withholding a medically necessary treatment—rather than making an individualized medical determination—amounts to unconstitutional deliberate indifference.

For example, in *Colwell*, Nevada DOC's policy that "one eye is good enough for prison inmates," a policy used to deny a near-blind prisoner cataract surgery, was deemed "the paradigm of deliberate indifference" because it imposed a blanket administrative rule in place of medical judgment. 763 F.3d at 1063-1064. Likewise, in *Rosati*, this Court held that a transgender prisoner stated a valid Eighth Amendment claim where officials categorically refused to even evaluate her for sex-reassignment surgery, thereby effectively imposing a non-medical ban on that treatment. 791 F.3d at 1039-1040. In short, when officials deny a medically indicated treatment solely because of policy or other non-medical factors, they violate the Eighth Amendment. *See Colwell*, 763 F.3d at 1063.

More broadly, the Supreme Court's decision in *Estelle*—repeatedly applied by this Circuit—emphasizes that treatment decisions must reflect professional medical judgment, not personal disapproval, administrative convenience, or generalized fears. *See* 429 U.S. at 104 n.10. As required by Ninth Circuit precedent, while officials need not accede to every prisoner preference, they must ensure that any course of treatment—including a decision not to provide a particular intervention—is medically acceptable under the circumstances and not the product

of neglect or non-medical considerations. *See, e.g.*, *Stewart v. Aranas*, 32 F.4th 1192, 1195 (9th Cir. 2022) (finding deliberate indifference where officials persisted "in a treatment known to be ineffective").

In other words, providing *some* treatment does not immunize officials if they consciously withhold another critical, medically necessary component of care. *Lopez v. Smith*, 203 F.3d 1122, 1132 (9th Cir. 2000) (en banc) (holding that to establish deliberate indifference under the Eighth Amendment, "[a] prisoner need not prove that he was completely denied medical care"), *overruled on other grounds by Singleton v. Gates*, 2026 WL 1494029 (9th Cir. 2026); *Hunt v. Dental Dep't*, 865 F.2d 198, 200-201 (9th Cir. 1989) (holding that a months-long failure to treat a prisoner's severe dental pain due to providing inadequate care was sufficient to support the prisoner's Eighth Amendment claim). Nor can officials escape liability by mischaracterizing a prisoner's plea for essential care as a mere "difference of opinion." *See Colwell*, 763 F.3d at 1068-1069 (rejecting argument that prisoner and prison doctors had a "difference of opinion" regarding appropriate medical care, where care was denied "not because of conflicting medical opinions about the proper course of treatment, but because officials enforced the [blanket] policy").

So while the Eighth Amendment does not mean that an incarcerated person can demand her preferred treatment, it does require officials to satisfy their constitutional obligation by providing medically necessary care rather than

substituting non-medical decisions for medical judgment. If a prisoner shows that officials chose a course of action "that was medically unacceptable under the circumstances" and did so "in conscious disregard of an excessive risk" to the prisoner's health, the deliberate-indifference standard is met. *Snow*, 681 F.3d at 988.

For these reasons, ADOC's attempt to cast this case as a "'mere difference of medical opinion'" (Appellant Br. 2) is misplaced. No qualified provider was ever permitted to render an informed contrary medical opinion for Ms. Wagoner, leaving no legitimate "disagreement" at all. This legal framework is well-settled and fully applicable to the context of gender dysphoria treatment: prison officials cannot avoid constitutional responsibility by pointing to some care provided (such as hormone therapy or counseling) if they simultaneously bar access to a treatment that qualified medical professionals affirm is necessary to prevent serious harm. *See De'lonta v. Johnson*, 708 F.3d 520, 525-526 (4th Cir. 2013) (finding that providing merely "*some* treatment" for gender dysphoria may violate the Eighth Amendment where officials categorically refuse to evaluate a prisoner for further medically indicated care); *Mitchell v. Kallas*, 895 F.3d 492, 499-501 (7th Cir. 2018) (finding that the mere provision of therapy or counseling is "not automatically a substitute for other medical treatments" for gender dysphoria).

B. ADOC's Denial of Individualized Medical Evaluation for Ms. Wagoner's Treatment Violates the Eighth Amendment

ADOC never permitted a bona fide medical determination of whether gender-affirming surgery was medically necessary for Ms. Wagoner. Instead, ADOC followed a de facto no-surgery policy for transgender inmates, effectively halting Ms. Wagoner's care at hormones and counseling without regard for her individual condition. This is exactly the kind of categorical approach that the Eighth Amendment forbids. *See Colwell*, 763 F.3d at 1068.

The evidence established that Ms. Wagoner's treating physician and independent medical experts agreed she met accepted criteria for gender-affirming surgery and continued to suffer severe, unremitting gender dysphoria and self-harm despite years of hormone therapy. 1-ER-0026–0027, 1-ER-0037. Yet ADOC's decision-makers—none of whom was a qualified surgeon or had ever treated Ms. Wagoner directly—rejected the clinical recommendation of her treating physician, who is experienced in treating gender dysphoria, effectively deciding in advance that surgery would not occur no matter what a specialist might recommend. Indeed, the district court found that ADOC applied "criteria not supported by medical standards of care" in declining to pursue surgery, relying instead on non-medical concerns and subjective skepticism. 1-ER-0047.

For example, ADOC cited speculative safety fears suggesting that a transgender woman post-surgery might face increased assault risk in custody and

even suggested that Ms. Wagoner's current social adjustment in prison—indicating that she was "'friendly'" and participated in activities—obviated the need for further treatment. 1-ER-0036. ADOC's rationale amounted to a non-medical decision dressed up as a medical one. This is a textbook Eighth Amendment violation. ADOC's de facto ban on gender-affirming surgery mirrors the blanket cataract policy in *Colwell* and the categorical SRS denial in *Rosati*, both condemned by this Court. *See Colwell*, 763 F.3d at 1063-1064 (deeming a one-eye-only cataract treatment policy "the paradigm of deliberate indifference" because it imposed a non-medical rule in place of sound care); *Rosati*, 791 F.3d at 1039-1040 (holding that officials' blanket refusal to consider necessary sex-reassignment surgery, without evaluation of the inmate's individual need, violated the Eighth Amendment). Just as a "one eye is good enough" rule could not justify denying a necessary surgery, *Colwell*, 763 F.3d at 1063, ADOC's no-surgery stance toward transgender prisoners cannot justify refusing a treatment that might alleviate Ms. Wagoner's persistent, severe condition. And just as in *Rosati*, where a flat prohibition on SRS gave rise to an inference of deliberate indifference, 791 F.3d at 1039-1040, here ADOC's rejection of the treating doctor's recommendations for Ms. Wagoner evinced deliberate disregard for her health.

The lack of genuine medical judgment in ADOC's decision-making is underscored by its own attempted defenses. ADOC's opening brief stresses Ms.

Wagoner's co-occurring mental-health diagnoses to justify its actions, suggesting those issues rendered surgery inappropriate. Appellant Br. 41-43. But such comorbid conditions must be evaluated by qualified medical experts—they cannot be invoked by non-specialists as a talisman to refuse further care. *See Estelle*, 429 U.S. 97 (establishing that determinations of medical necessity are inherently medical decisions that must be made by qualified medical professionals); *see also Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 408 (9th Cir. 1985) (same). Here, ADOC's witnesses conceded that borderline personality disorder "is not a bar" to gender-affirming surgery, and that both conditions should be treated in an integrated manner rather than one precluding the other. 1-ER-0039. Indeed, the district court found that ADOC did not actually base its denial on Ms. Wagoner's mental health at all, but instead on a generalized skepticism of surgery as a solution. 1-ER-0040. This confirms that ADOC's decision arose from a blanket aversion to providing surgery—the district court described it as a "categorical denial" (1-ER-0048)—and not from any careful medical determination that surgery was unwarranted for Ms. Wagoner personally. By ignoring Dr. Samuelson's recommendation and cutting off access to a surgical evaluation, ADOC "kn[ew] of and disregard[ed] an excessive risk to [Ms. Wagoner's] health," namely the unmitigated persistence of her severe dysphoria and self-harm if definitive care was never even considered. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

At bottom, the Eighth Amendment guarantees Ms. Wagoner the right to an informed medical decision about her undisputed serious medical condition. That process broke down here: rather than abide by the judgment of the only physician who treated and assessed Ms. Wagoner, ADOC enforced a de facto rule against surgery and refused to let a medical inquiry even take place despite her treating doctor's recommendation. This Court's precedent makes clear that substituting policy for medical care is constitutionally intolerable. *See Edmo*, 935 F.3d at 787, 792-794, 796-797 (under the "broad medical consensus," prison medical providers must "individually diagnose, assess, and treat" an inmate's gender dysphoria, and a prison doctor acted with deliberate indifference by failing to do so). The district court thus correctly held that ADOC's refusal "to substantively consider Dr. Samuelson's recommendation" for Ms. Wagoner's case amounted to deliberate indifference under *Edmo*. 1-ER-0047. Affirming that holding will simply reinforce the fundamental rule that prison officials must allow serious medical needs to be addressed through appropriate medical judgment, rather than overridden by inflexible policy or unqualified lay opinion. *See Estelle*, 429 U.S. at 104-105 (finding an Eighth Amendment violation where officials "deny[] or delay[] access to medical care or intentionally interfer[e] with the treatment once prescribed"); *Jett*, 439 F.3d at 1097-1098 (finding deliberate indifference where prison officials failed to ensure prisoner received a specialist's recommended course of care); *Hamby v.*

Hammond, 821 F.3d 1085, 1092 (9th Cir. 2016) (finding an Eighth Amendment violation where the chosen "course of treatment … was medically unacceptable under the circumstances" and pursued "in conscious disregard of an excessive risk to the plaintiff's health").

III. THE PERMANENT INJUNCTION IS PROCEDURALLY PROPER

ADOC argues that the scope of the district court's injunction is overbroad under the Prison Litigation Reform Act ("PLRA") and the Judiciary Act of 1789. Appellant Br. 56. Specifically, it challenges the portion of the injunction that "enjoins the enforcement of DOC July 2022 Policy #807.23 as to Section (V)(E) … insofar as it is, as applied, functions as a de facto prohibition on gender affirming surgery." *Id.* (quoting 1-ER-0003). ADOC's argument mistakes both the facts and the law.

As a preliminary matter, in contested litigation, "the PLRA 'merely codifies existing law governing injunctive relief and does not change the standards for determining whether to grant an injunction.'" *Porretti v. Dzurenda*, 11 F.4th 1037, 1051 (9th Cir. 2021) (alteration adopted) (quoting *Gomez v. Vernon*, 255 F.3d 1118, 1129 (9th Cir. 2001)). This means that courts evaluate injunctions under the PLRA and Judiciary Act of 1789 through the same framework. *See id*.

On the facts, the injunction constitutes "the least intrusive means necessary to correct the violation of the Federal right" under the PLRA because ADOC enforced

the policy to serve as a de facto ban on Ms. Wagoner's surgery. 18 U.S.C. § 3626(a)(1)(A). The district court does not mandate gender-affirming surgery for all inmates. And it does not facially invalidate the policy, 1-ER-0003. Rather, its decision makes clear that the injunction simply addresses past and future misuse of the policy "as applied." In the context of this single-plaintiff lawsuit, we understand this to mean as applied to Ms. Wagoner. *See* Appellee Br. 55-56; 1-ER-0003, 1-ER-0048.

Last, as a doctrinal matter, appellate courts routinely affirm injunctions that go beyond simply requiring treatment and often enjoin or alter existing policies. *See Porretti*, 11 F.4th at 1051-1052 (affirming injunction to provide inmate with prescriptions *and* create a treatment plan); *Armstrong v. Davis*, 275 F.3d 849, 873 (9th Cir. 2001) (affirming injunction requiring new correctional policies), *overruled on other grounds by Johnson v. California*, 543 U.S. 499 (2005); *Daniels v. Moores*, 2025 WL 883035, at *3 (2d Cir. Mar. 21, 2025) (affirming injunction to "enforce compliance with Policy 1.24A, develop a system of identifying patients in DOCCS custody with chronic pain, conduct individualized assessments for patients with a chronic pain code"). Indeed, enjoining an unlawfully *applied* policy is often the "least intrusive means necessary" under the PLRA because it does not "require[] the continuous supervision of the court, nor do[es it] require judicial interference in the running of the prison system." *Gomez*, 255 F.3d at 1130.

CONCLUSION

For the foregoing reasons, and those set forth in Appellee's brief, this Court should affirm the district court's judgment.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Ninth Circuit Rule 32-1, counsel for Amici Curiae Professors hereby certifies that this amicus brief complies with the type-volume limitation of Rule 29(a)(5) of the Federal Rules of Appellate Procedure and Ninth Circuit Rule 29-2(c) because this brief contains 4,962 words, excluding the parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure. Counsel's approximation is based on the "Word Count" function of the word-processing program used to draft the enclosed brief.

Counsel for Amici Curiae Professors certifies that this brief also complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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