

ASHLEY DIAMOND,

Plaintiff,

v.

TIMOTHY WARD, *et al.*,

Defendants.

No. 5:20-cv-00453-MTT

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Cir. 2007) (quoting *Cottone v. Jenne*

<https://www.nbcnews.com/news/us-news/22-million-settlement-family-transgender-woman-died-georgia-mens-priso-rcna7867>.

Defendants do not dispute that they have failed to take a *single action* to address Ms. Diamond's safety concerns at CSP since the May 2021 hearing. Indeed, as the record shows:

- Defendants continue to house Ms. Diamond in an all-male dormitory alongside numerous gang members and sex offenders. ECF 121 ¶ 4; Mancil Decl. ¶¶ 4, 8, 13; Horne Decl. ¶ 9.
- Defendants closed *and refused to reopen* investigations that Ms. Diamond believed were merely "pending" until interviews with her counsel present could be arranged, even though Defendant Holt testified that PREA allegations have "no expiration date" and that Defendants could "look into" her prior claims. Hr'g Tr. 567:19-24 (Holt); ECF 122 at 24 (acknowledging right to counsel and outside advocates); Pl.'s Ex. 259 at DEF005318 (confirming representations about interview status and Ms. Diamond's reliance); Cantera Dep. Tr. 47:2-5 (same).
- Defendants abruptly terminated the security escorts Ms. Diamond relied on for safety after the hearing. ECF 122 at 32.
- Defendants continue to deny Ms. Diamond the ability to shower apart from male prisoners as required by PREA regulation, resulting in increased sexual harassment. 28 C.F.R. § 115.42(f); ECF 52 ¶¶ 33-34, 113.
- Defendants jeopardized Ms. Diamond's safety by ignoring her request to discretely report a PREA violation, deepening the perception that she is a snitch. Pl.'s Ex. 280 at 1-3.

These actions, coupled with those outlined in earlier submissions, ECF 122 at 22-23, and described below, show that Defendants acted in an objectively unreasonable manner by disregarding "alternative means that would have brought [Ms. Diamond's assault] risk to within constitutional norms." *LaMarca v. Turner*

surveilled by “upgraded” cameras, ECF 77-2 ¶ 7; Hr’g Tr. 565:24-566:1, and fault her for offering

suffer irreparable harm without Court intervention. ECF 122 at 5, 13-14, 18 (collecting citations showing past and ongoing assaults, abuse, and harassment). An injury is irreparable “if it cannot be undone through monetary remedies.” *Ferrero v. Associated Materials Inc.*, 923 F.2d 1441, 1449 (11th Cir. 1991) (quoting *Cate v. Oldham*, 707 F.2d 1176, 1189 (11th Cir. 1983)). Sexual abuse resulting in suicidality, emotional distress, and worsening PTSD meets this definition. *See Tay*, 457 F. Supp. 3d at 687 (holding transgender plaintiff “forced to endure constant sexual abuse and harassment at various men’s facilities” satisfied irreparable harm requirement); *Hampton v. Baldwin*, No. 3:18-cv-550, 2018 WL 5830730, at *15 (S.D. Ill. Nov. 7, 2018) (same); *Edmo v. Corizon, Inc.*, 935 F.3d 757, 797-98 (9th Cir. 2019) (holding emotional distress, suicidality, and a self-harm risk constituted irreparable harm), *cert. denied sub nom. Idaho Dep’t of Corr. v. Edmo*, 141 S. Ct. 610 (2020). Defendants’ post-hearing conduct also makes clear that Defendants will not take affirmative steps to

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4:21cv191, 2021 WL 4099437, at *30 (N.D. Fla. Sept. 9, 2021) (citations omitted), *appeal filed sub nom. Dream Defs. v. Governor of Fla.*, No. 21-13489 (11th Cir. Oct. 13, 2021). Moreover, “delay is less probative in the context of continuing injuries—especially constitutional injuries.” *Id.* (citation omitted). The procedural history of this case also has no bearing on the questions central to *Farmer*, which approved of injunctions to prevent ongoing “disregard [of inmate safety needs] during the remainder of the litigation and into the future.” 511 U.S. at 846.

Ironically, the procedural “delay[s]” Defendants fault Ms. Diamond for are largely “delay[s]” of their own creation. These include the period when Ms. Diamond attempted to resolve her health and safety concerns without Court involvement, only to be met by Defendants’ refusal. ECF 57 ¶¶ 12-14; ECF 120 ¶¶ 2-5; ECF 120-2 to -4, 120-28 to -29, 120-50 (showing *nine* notices seeking an out of court resolution). Then, Defendants and their staff informed Ms. Diamond that her release from GDC was imminent, which mooted her plan to file a preliminary injunction motion with her complaint. ECF 57 ¶¶ 27-30. When Ms. Diamond’s release date was postponed indefinitely due in part to DRs Defendant Benton issued that were later proven false, Ms. Diamond expeditiously moved to file the instant motion. *Id.* ¶ 30.

Defendants also fail to acknowledge they delayed production of documents responsive to Ms. Diamond’s April 2020 discovery requests, which would trigger the parties’ post-hearing briefing deadlines, for nearly seven months, until the Court set a firm deadline. *See* ECF 108; Oct. 29, 2021 Status Conference Tr. 22:13-23:23, 38:9-39:13 (ordering Defendants to complete productions within 30 days). Defendants’ gamesmanship should not be used to prejudice Ms. Diamond.

The balance of equities and the public interest—factors which merge where the government is the opposing party—also support the entry of an injunction here. *Nken v. Holder*,

556 U.S. 418, 434-35 (2009) (reciting standard). The harms to Ms. Diamond are the unspeakable horror of continued sexual abuse and assault as a woman in a men’s prison and her resulting suicidal ideation and PTSD. ECF 122 at 5, 13, 33-34 (collecting record citations). Juxtaposed are purely conclusory and speculative harms that Defendants are unable to identify with any particularity. Opp’n 13; *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1271-72 (11th Cir. 2020) (ordering injunctive relief where state did not show preventing “chaos and uncertainty” would ensue if granted). Indeed, Defendants fail to identify *any*

§ 3626 based on the factual record because safety transfers are a well-established PLRA remedy and Defendants have repeatedly failed to protect Ms. Diamond at CSP. *Plata v. Brown*, 427 F. Supp. 3d 1211, 1223 (N.D. Cal. 2013) (transfers are an available PLRA remedy).

Defendants' own health care providers and PREA personnel admit that CSP is unable to meet Ms. Diamond's health and safety needs, such that a facility change is required, and

Respectfully submitted.

/s/ A. Chinyere Ezie

A. Chinyere Ezie*
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Phone/Fax: (212) 614-6467
Email: cezie@ccrjustice.org

Rafaela Uribe*
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Phone/Fax: (212) 614-6483
Email: ruribe@ccrjustice.org

Elizabeth Littrell, Ga. Bar No. 454949
Southern Poverty Law Center
P.O. Box 1287
Decatur, GA 30031
Phone: (404) 221-5876
Fax: (404) 221-5857
Email: beth.littrell@splcenter.org

Scott D. McCoy*
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302
Phone: (334) 224-4309
Email: scott.mccoy@splcenter.org

Aaron Fleisher*
Jennifer Vail*
Maya G. Rajaratnam*
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
Phone: (334) 956-8200
Fax: (334) 956-8481
Email: aaron.fleisher@splcenter.org
Email: jennifer.vail@splcenter.org
Email: maya.rajaratnam@splcenter.org

* *Admitted Pro Hac Vice*

Counsel for Plaintiff Ashley Diamond

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.

Dated: February 22, 2022

/s/ A. Chinyere Ezie

A. Chinyere Ezie

Counsel for Plaintiff Ashley Diamond