No. 19-1280

IN THE
Supreme Court of the United States

THE IDAHO DEPARTMENT OF CORRECTION, ET AL.,
Petitioners,

v.

ADREE EDMO,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed the district court's fact-intensive and individualized ruling that Petitioners were deliberately indifferent to Respondent Adree Edmo's serious medical needs in violation of her rights under the Eighth Amendment.

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INTRODUCTION

After extensive discovery and a three-day evidentiary hearing, the district court in this case concluded that Petitioners violated the Eighth Amendment rights of Respondent Adree Edmo, an incarcerated transgender woman who suffers from gender dysphoria. Specifically, the court concluded that Petitioners acted with deliberate indifference to Ms. Edmo's serious medical needs by refusing to provide her with medically necessary treatment for gender dysphoria, including gender confirmation surgery ("GCS"), despite knowing of her "severe, ongoing psychological distress and the high risk of self-castration and suicide she faces absent surgery." Pet. App. 132. The court issued detailed factual "findings individual to Edmo's medical condition," *id.* at 62, and entered a permanent injunction ordering Petitioners to provide Ms. Edmo with "adequate medical care, including gender confirmation surgery," *id.* at 201. The court of appeals unanimously affirmed that factbound decision, explaining that its analysis was "individual to Ms. Edmo," "rests on the record in this case," and "emphatically do[es] not speak to other cases." *Id.* at 63, 145.

Petitioners provide no basis for this Court to disturb that case-specific ruling. Their assertion of a circuit split mischaracterizes the court of appeals' opinion, which did not establish any bright-line rules about providing GCS to incarcerated individuals with gender dysphoria. Petitioners also erroneously assert that the court applied the World Professional Association of Transgender Health Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People ("WPATH Standards") as "constitutional minima for the treatment of gender

dysphoria." Pet. 2. The court did no such thing. The court upheld the district court's decision to use "the WPATH Standards of Care" as "a useful starting point" for analyzing Ms. Edmo's Eighth Amendment claim, noting that Petitioners had acknowledged the standards as "the best guidance" and "the best standards out there." Pet. App. 67, 107–08, 111–12 n.16. But the court of appeals made clear that a "simple deviation from those standards does not alone establish an Eighth Amendment claim." *Id.* at 114.

The court's affirmance of the district court's decision turned not on the WPATH Standards, but on deference to "the district court's extensive factual findings" regarding necessary medical treatment for Ms. Edmo, including credibility determinations about the parties' experts. *Id.* at 107. In short, the district court and court of appeals evaluated this case in the same way as other circuit courts addressing similar Eighth Amendment claims of inadequate medical care: on the specific facts.

Petitioners fare no better with their argument that the court of appeals misapplied settled Eighth Amendment precedent. While Petitioners claim (Pet. 24–30) that the court of appeals applied a "mere negligence" standard contrary to *Estelle v. Gamble*, 429 U.S. 97 (1976), the court in fact acknowledged and applied the principle that "[a]n inadvertent or negligent failure to provide adequate medical care is insufficient to establish a claim under the Eighth Amendment," Pet. App. 105 (citing *Estelle*). Similarly, while Petitioners contend (Pet. 30–33) that the court of appeals did not follow the decision in *Farmer v. Brennan*, 511 U.S. 825 (1994), which requires a

showing that "the official kn[ew] of and disregard[ed] an excessive risk to inmate health or safety," *id.* at 837, the court in fact cited this standard and found it satisfied, concluding based on the extensive evidentiary record that Petitioners "knew of and disregarded the substantial risk of severe harm to Edmo," Pet. App. 122 (citing *Farmer*).

Petitioners provide no compelling reason for this Court to review the factbound decision that prison officials were deliberately indifferent to Ms. Edmo's serious medical needs in violation of the Eighth Amendment. Moreover, Ms. Edmo has now received GCS, further diminishing any salience of the question presented. The Petition should be denied.

STATEMENT

A. Facts

1. Ms. Edmo is a transgender woman who "has consistently presented as female" since she first entered the custody of Petitioner Idaho Department of Correction ("IDOC") in 2012. Pet. App. 74. Shortly thereafter, Petitioners diagnosed her with gender dysphoria, "a serious but treatable medical condition" that results when a person's gender identity conflicts with the sex they were assigned at birth to such a severe and persistent degree that they experience clinically significant distress impairing their ability to function. *Id.* at 61, 64–66. "Left untreated," gender dysphoria "can lead to debilitating distress, depression, impairment of function, substance use, self-surgery to alter one's genitals or secondary sex characteristics, self-injurious behaviors, and even suicide." *Id.* at 66. Petitioners "do[] not dispute that

Edmo's gender dysphoria" is a "serious medical need" that "trigger[s] [their] obligations under the Eighth Amendment." *Id.* at 104.

Medical treatment for gender dysphoria varies based on an individual assessment of the specific patient and can include one or more of the following, depending on the severity of the condition: (1) changes in gender expression and role; (2) psychotherapy; (3) hormone therapy; and (4) surgery to change the body's sex characteristics. *Id.* at 68–69. As the court of appeals summarized, "the broad medical consensus in the area of transgender health care requires providers to individually diagnose, assess, and treat individuals' gender dysphoria, including for those individuals in institutionalized environments." *Id.* at 72. The "[f]ailure to follow an appropriate treatment plan can expose transgender individuals to a serious risk of psychological and physical harm," and "[t]reatment can and should include GCS when medically necessary." *Id.* at 72–73. While some people's gender dysphoria is fully treated without the need for surgical intervention, for others "surgery is essential and medically necessary to alleviate their gender dysphoria." *Id.* at 69 (internal quotation marks omitted). For this latter group, "'[n]egative outcomes such as genital self-harm, including autocastration and/or autopenectomy, can arise when gender-affirming surgeries are delayed or denied.'" *Id.* (citation omitted). "The weight of opinion in the medical and mental health communities agrees that GCS is safe, effective, and medically necessary in appropriate circumstances." *Id.* at 70.

The WPATH Standards, which are "internationally recognized guidelines for the treatment of individuals with gender dysphoria," *id.* at 66 (internal quotation marks omitted), contain six criteria to assist medical providers in determining whether GCS is necessary for transgender patients, *id.* at 70–71. All major medical and mental health organizations "recognize the WPATH Standards of Care as representing the consensus of the medical and mental health communities regarding the appropriate treatment for transgender and gender dysphoric individuals." *Id.* at 67.[1] The National Commission on Correctional Health Care—"a leading professional organization in health care delivery in the correctional context" that Petitioners' expert relied on for "guidance when treating inmates with gender dysphoria," *id.* at 72, 89 n.10—likewise "endorses the WPATH Standards of Care as the accepted standards for the treatment of transgender prisoners," *id.* at 72.

Petitioners have acknowledged "that in certain circumstances, [GCS] can be a medically necessary treatment for gender dysphoria" and that IDOC's policy does not categorically prohibit GCS for

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[1] These organizations include "the American Medical Association, the American Medical Student Association, the American Psychiatric Association, the American Psychological Association, the American Family Practice Association, the Endocrine Society, the National Association of Social Workers, the American Academy of Plastic Surgeons, the American College of Surgeons, Health Professionals Advancing LGBTQ Equality, the HIV Medicine Association, the Lesbian, Bisexual, Gay and Transgender Physician Assistant Caucus, and Mental Health America." Pet. App. 67.

transgender prisoners. *Id.* at 61–62, 76–77. Petitioners further averred that they will provide GCS to gender dysphoric prisoners if it is "medically necessary." *Id.* at 76–77. With respect to assessing treatment options for gender dysphoria, Petitioners characterized the WPATH Standards as "the best guidance" and "the best standards out there" and have agreed that there are "no other competing, evidence-based standards that are accepted by any nationally or internationally recognized medical professional groups." *Id.* at 67–68, 107–08, 111–12 n.16, 118.

2. Ms. Edmo's gender dysphoria, caused by the incongruence of her body (particularly her male genitalia) with her gender identity, has resulted in severe psychological and physical harm. Pet. App. 74–79 (observing Ms. Edmo's gender dysphoria caused her "to feel 'depressed,' 'disgusting,' 'tormented,' and 'hopeless'" and noting instances of physical harm caused by her condition). Ms. Edmo has received hormone therapy since 2012, which resulted in her having "hormones and secondary sex characteristics . . . of an adult female," but did "not completely alleviate[] [her] gender dysphoria." *Id.* at 74–75. After "gain[ing] the maximum physical changes associated with hormone treatment," she continued to experience enormous emotional and psychological suffering and repeatedly requested GCS from prison officials because of her ongoing torment. *Id.* at 75.

Ms. Edmo experienced such "significant distress" from gender dysphoria that, even while receiving hormone therapy, she twice attempted to self-castrate while in IDOC's custody. *Id.* at 75–76, 79. Her first attempt occurred in September 2015. *Id.* at 75. After

that attempt, "she continued to report thoughts of self-castration in the following months." *Id.* Seven months later, on April 20, 2016, Ms. Edmo received her one and only evaluation for GCS by Petitioner Scott Eliason, a psychiatrist employed by IDOC's private health care provider. *Id.* at 61 n.1, 76. Dr. Eliason's notes from the evaluation indicate that he was aware of Ms. Edmo's effort to "mutilate her genitalia." *Id.* at 76. Ms. Edmo told Dr. Eliason that she "needed more" than hormone therapy and "remained frustrated with her male anatomy." *Id.* Dr. Eliason concluded at that evaluation that her gender dysphoria "had risen to another level." *Id.* at 76–77.

Nevertheless, Dr. Eliason decided that Ms. Edmo did not qualify for GCS. His notes from the evaluation set forth three "criteria" that he "apparently invented" to determine when GCS is medically necessary: "congenital malformations or ambiguous genitalia," "some type of medical problem in which endogenous sexual hormones were causing severe physiological damage," or "severe and devastating dysphoria that is primarily due to genitals." *Id.* at 78, 119. Dr. Eliason's notes provided no explanation for why Ms. Edmo—who was experiencing severe dysphoria focused on her genitals—did not qualify under the criteria that he had set forth. His notes stated only that, because Ms. Edmo "does not meet any of those . . . criteria," he would not refer her for GCS but would "continue to monitor and assess" her. *Id.* at 77. Dr. Eliason did not provide Ms. Edmo any new treatment to address her worsening gender dysphoria. *Id.* at 77, 122.

Later that year, in December 2016, Ms. Edmo again tried to self-castrate. *Id.* at 79. This time "[s]he

was able to open her testicle sac with a razor blade and remove one testicle" before "abandon[ing] her attempt . . . when there was too much blood to continue." *Id.* A contemporaneous medical note stated that she "no longer wanted her testicles" and reported her actions "as a method to stop/cease testosterone production in [her] body." *Id.* She expressed regret that she had been unsuccessful and "continue[d] to actively think about self-castration." *Id.* She also began to "'self-medicat[e]' by cutting her arms with a razor" to inflict "physical pain" and thereby "ease the 'emotional torment' and mental anguish her gender dysphoria causes her." *Id.*

Dr. Eliason was aware of Ms. Edmo's worsening condition, ongoing distress, and serious physical harm. *Id.* at 122. Neither he nor any other prison official ever evaluated her for GCS again or otherwise "recommend[ed] a change to [her] treatment plan." *Id.*

B. Procedural History

1. In 2017, Ms. Edmo sued Petitioners, alleging, among other claims, that they had violated her Eighth Amendment rights. Pet. App. 80. Ms. Edmo sought a preliminary injunction requiring Petitioners to provide adequate medical care, including "a referral to a qualified surgeon and access to GCS." *Id.* at 80–81. The district "court permitted the parties to undertake four months of extensive fact and expert discovery in preparation for the [evidentiary] hearing" on the preliminary injunction motion. *Id.* at 81. That hearing lasted three days and featured seven live witnesses—three percipient and four experts (two for each side)—as well as supplemental testimony submitted by declaration, thousands of pages of

documentary evidence, medical records, expert reports, and exhaustive pre- and post-hearing briefing. *Id.* at 81–82.

At the hearing, both Petitioners' and Ms. Edmo's experts relied on the WPATH Standards to evaluate Ms. Edmo's medical need for GCS; indeed, neither Petitioners nor their experts offered any other medical standards for evaluating treatment for transgender people. *Id.* at 67–68, 82–92; *see also* Exh. A to Respondent's Opposition to Stay Application ("Stay Opp.") at 8 (Counsel for Petitioners: "This is not a case where [Petitioners] have denied or refused to recognize the WPATH, which we have referred to as standards."). Petitioners agreed that Ms. Edmo met four of the six WPATH criteria for GCS and disputed whether she satisfied the remaining two criteria. Pet. App. 71. Dr. Eliason also claimed that "he considered the WPATH Standards of Care when determining [Ms. Edmo's] treatment." *Id.* at 78.

2. On December 13, 2018, the district court issued "a carefully considered, 45-page opinion" making "extensive factual findings" and concluding that Petitioners had been deliberately indifferent to Ms. Edmo's serious medical needs by denying her adequate treatment for her gender dysphoria, including GCS. Pet. App. 92–93. The court explained that "its decision [wa]s based upon, and limited to, the unique facts and circumstances presented by Ms. Edmo's case" and the decision was "not intended, and should not be construed, as a general finding that all inmates suffering from gender dysphoria are entitled to gender confirmation surgery." *Id.* at 156.

Along with its comprehensive findings of fact, the district court set out the well-established law governing Eighth Amendment claims of inadequate medical care in prison. *Id.* at 186–91. The court explained that such claims must satisfy both an objective standard ("serious medical need") and a subjective one ("deliberate indifference"). *Id.* at 187. The court recognized that "[m]ere indifference, medical malpractice, or negligence will not support a cause of action under the Eighth Amendment." *Id.* at 190. Instead, "a prison official or prison medical provider acts with deliberate indifference . . . only if the [prison official] knows of and disregards an excessive risk to inmate health and safety." *Id.* at 188 (internal quotation marks omitted).

The district court then applied that law to the facts. For "serious medical need," the court found that "[t]here is no dispute that Ms. Edmo suffers from gender dysphoria," which is a "serious medical condition." *Id.* at 191. For "deliberate indifference," the court relied on the full evidentiary record to conclude that "the decision not to address [Ms. Edmo's] persistent symptoms was medically unacceptable under the circumstances." *Id.* at 197. The court explained that Petitioners "have been deliberately indifferent to Ms. Edmo's medical needs by failing to provide her with available treatment that is generally accepted in the field as safe and effective, despite her actual harm and ongoing risk of future harm including self-castration attempts, cutting, and suicidal ideation." *Id.* at 195–96.

The court "specifically found 'credible the testimony of [Ms. Edmo's] experts . . . who have

extensive personal experience treating individuals with gender dysphoria both before and after receiving gender confirmation surgery,' and who opined that GCS was medically necessary." *Id.* at 93 (quoting *id.* at 191). In contrast, the court "rejected the contrary opinions of [Petitioners'] experts" because they lacked "meaningful 'experience treating patients with gender dysphoria'" or "assessing patients for the medical necessity" of GCS. *Id.* at 93 (quoting *id.* at 191–92). The court also explained that, although Petitioners' experts had purported to apply the WPATH Standards, they had misstated and misapplied those standards, leading the court to give "virtually no weight to [the experts'] opinions" that Ms. Edmo did not qualify for GCS. *Id.* at 191–95.

Reviewing the extensive facts and evidence presented by the parties, the court concluded that "[t]he weight of the evidence demonstrates that for [Ms. Edmo], the only adequate medical treatment for her gender dysphoria is" GCS. *Id.* at 197 (internal quotation marks omitted). It thus ordered Petitioners "to provide [Ms. Edmo] with adequate medical care, including gender confirmation surgery." *Id.* at 201.[2]

3. Petitioners filed an interlocutory appeal from the injunction order and the court of appeals unanimously affirmed. Pet. App. 145. Like the district court, the court of appeals "emphasize[d] that the analysis here is individual to Edmo and rests on the record in this case." *Id.* at 63. That record

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[2] While the December 13, 2018 order is styled a "Preliminary Injunction," the district court "also granted permanent injunctive relief." Pet. App. 151, 201.

included "extensive evidence and testimony," "findings individual to Edmo's medical condition," and credibility determinations about the expert testimony in the case. *Id.* at 62. Based on the fact-intensive nature of the inquiry, the court of appeals did "not endeavor to project whether individuals in other cases will meet the threshold to establish an Eighth Amendment violation" and emphasized its decision "do[es] not speak to other cases." *Id.* at 63, 145.

The court of appeals first set forth the controlling Eighth Amendment standard for prison medical care claims. *Id.* at 104–06. The court articulated both the "serious medical need" and "deliberate indifference" requirements, explaining that the latter requires "the plaintiff [to] show that the course of treatment the [prison official] chose was medically unacceptable under the circumstances and that the [official] chose this course in conscious disregard of an excessive risk to the plaintiff's health." *Id.* at 105–06 (internal quotation marks omitted). Citing to *Estelle* and *Farmer*, the court emphasized that "[a]n inadvertent or negligent failure to provide adequate medical care is insufficient to establish a claim under the Eighth Amendment." *Id.* at 105.

Applying those standards, the court of appeals upheld the fact-specific determination that Petitioners had violated the Eighth Amendment by denying GCS to Ms. Edmo. The court explained that Petitioners did "not dispute that Edmo's gender dysphoria is a sufficiently serious medical need to trigger the State's obligations under the Eighth Amendment." *Id.* at 104. The court further observed that "[t]he district court carefully examined the voluminous record, extensive

testimony, and conflicting expert opinions in this case and set forth clear reasons, supported by the record, for relying on the testimony of Edmo's experts" that GCS was medically necessary in this case, and thus that the failure to provide it was deliberate indifference, not merely the product of a reasonable dispute among physicians. *Id.* at 108, 116.

The court of appeals found that the "district court did not err in crediting the testimony of Edmo's experts and discounting the testimony of the State's experts." *Id.* at 109,114–15 (finding that "aspects of [Petitioners' experts'] opinions were illogical and unpersuasive," while Ms. Edmo's experts "cogently and persuasively explained why GCS is medically necessary for Edmo"). While Ms. Edmo's experts had "substantial experience treating individuals with gender dysphoria" and "evaluating whether GCS is medically necessary for patients," Petitioners' experts "lack[ed] meaningful experience directly treating people with gender dysphoria" and had never previously "evaluated someone in person to determine the medical necessity of GCS." *Id.* at 109–10. The court of appeals found that this disparity in relevant expertise and qualifications "alone" justified the district court's decision to "credit[] the opinions of Edmo's experts over" Petitioner's experts. *Id.* at 110.

The court of appeals also observed that, while Petitioners' experts had "purported to apply" the WPATH Standards, their conclusions reflected "unsupported and unexplained deviations" from those standards, which further demonstrated that "the district court did not clearly err in discounting the[ir] testimony." *Id.* at 111, 114. The court of appeals noted

that "the WPATH Standards of Care are flexible, and a simple deviation from those standards does not alone establish an Eighth Amendment Claim." *Id.* at 114. But because Petitioners had agreed that the WPATH Standards provide appropriate guidance for evaluating the necessity of GCS and "[e]ach expert in this case relied on the WPATH Standards of Care in rendering an opinion" and "used [them] as a starting point," the court concluded that it was appropriate for the district court to have also "used them as a starting point to gauge the credibility of each expert's testimony." *Id.* at 67, 111 n.16.

The court of appeals separately rejected Petitioners' argument that Dr. Eliason "reasonably concluded that GCS is inappropriate for Edmo," instead affirming the conclusion that Dr. Eliason's "decision was medically unacceptable under the circumstances." *Id.* at 117 (internal quotation marks omitted). Before the district court, Petitioners offered two explanations for Dr. Eliason's decision to deny GCS for Ms. Edmo: that she did not satisfy the criteria in the WPATH Standards, and that she did not meet the "criteria" that Dr. Eliason had listed in his notes evaluating her. *Id.* at 117–21. Considering either source, the court of appeals upheld the district court's finding that Dr. Eliason "did not follow accepted standards of care in the area of transgender health care." *Id.* at 117.

First, the district court appropriately rejected the argument that Dr. Eliason applied the WPATH Standards because he acknowledged at his deposition that he did not use those standards and his contemporaneous evaluation notes did not refer to

them. Pet. App. 118. Second, Dr. Eliason's own criteria were "apparently invented out of whole cloth" and did not represent a "reasonabl[e] deviat[ion] from the accepted standards of care." *Id.* at 119, 120. Petitioners never "offered any explanation or support for" those criteria, and two of the three factors that he had relied on "are inapplicable to the care of transgender individuals." *Id.* at 119. Moreover, Dr. Eliason admitted that Ms. Edmo did "primarily meet" the third criterion—"suffering 'severe and devastating gender dysphoria that is primarily due to genitals'"—and thus "[she] should have been provided GCS" even under the criteria that he purported to apply. *Id.* at 120. "Given the credited expert testimony that GCS is necessary to treat Edmo's gender dysphoria," the court upheld the finding that "Dr. Eliason's contrary determination was medically unacceptable under the circumstances" for the purposes of establishing deliberate indifference. *Id.* at 120–21 (internal quotation marks omitted).

Finally, with respect to the "conscious disregard" required for "deliberate indifference," the court of appeals concluded that the record supported the district court's finding that Petitioners denied Ms. Edmo GCS "with full awareness of [her] suffering." *Id.* at 145. Specifically, Dr. Eliason "knew of and disregarded the substantial risk of severe harm to Edmo." *Id.* at 122. As of April 2016, he was aware of Ms. Edmo's escalating distress, her first attempt to self-castrate, and that her gender dysphoria "had risen to another level," but he "nonetheless continued with Edmo's ineffective treatment plan." *Id.* at 121–22. Dr. Eliason learned of Ms. Edmo's second, nearly

successful effort to self-castrate in December 2016, "but [he] did not reevaluate or recommend a change to [her] treatment plan, despite indicating in his April 2016 evaluation that he would continue to monitor and assess [her] condition." *Id.* at 122.

The court of appeals rejected Petitioners' argument that they were not deliberately indifferent because they did not act "with malice, intent to inflict pain, or knowledge that [the] recommended course of treatment was medically inappropriate." *Id.* at 122 (internal quotation marks omitted). As the court explained, "the [prison] officials need not have intended any harm to befall the inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of harm." *Id.* (internal quotation marks omitted).

In addition to affirming the district court's Eighth Amendment analysis, the court of appeals also affirmed the injunction requiring that Petitioners provide adequate medical care to Ms. Edmo, including GCS. *Id.* at 145. The court determined that an injunction was warranted due to the irreparable harm of Ms. Edmo's "severe, ongoing psychological distress and high risk of self-castration and suicide she faces absent surgery." *Id.* at 132–34, 145.

4. Petitioners sought rehearing *en banc*, which the court of appeals denied. Pet. App. 5. Judge O'Scannlain issued an opinion respecting the denial of rehearing *en banc*, and Judges Collins and Bumatay issued opinions dissenting from the denial of rehearing *en banc*. *Id.* at 5–52.

5. On May 6, 2020, Petitioners applied to this Court for an emergency stay of the injunction. On May 21, 2020, the Court denied the stay request. --- S. Ct. ----, 2020 WL 2569747 (Mem.).

6. On July 10, 2020, Ms. Edmo received GCS.

REASONS FOR DENYING THE PETITION

Petitioners do not raise any issue warranting this Court's intervention. Petitioners' suggestion that a circuit split exists rests on a misinterpretation of the court of appeals' factbound decision, which did not constitutionalize the WPATH Standards or require GCS in all cases of gender dysphoria in prison. Instead, the court conducted a fact-intensive review of the record to affirm the district court's interlocutory determination that GCS was a medically necessary treatment in this particular case based on an assessment of Ms. Edmo's specific medical needs and Petitioners' specific knowledge and response.

Petitioners' claim that the courts below acted in "direct defiance" of this Court's Eighth Amendment precedent, Pet. 24, is also demonstrably false. The court of appeals, like the district court, correctly articulated the legal standard, including the relevant language from *Estelle* and *Farmer*. Applying that controlling law, the lower courts appropriately concluded that deliberate indifference was established on the specific facts of this case. This Court routinely denies review of such factbound medical deliberate indifference claims under the Eighth Amendment,

and it should do so again here.[3] Indeed, the court of appeals' interlocutory order—which governs only Ms. Edmo's case—is of diminished practical significance now that Petitioners have provided Ms. Edmo with GCS following this Court's denial of a stay. No further review of the individualized Eighth Amendment issue in this case is warranted.

I. The Fact-Specific Decision Below Does Not Implicate A Circuit Split.

1. The primary argument advanced by Petitioners—that the decision below conflicts with decisions of other circuits and this Court—rests on a faulty premise: that the court of appeals "elevated the WPATH Standards to constitutional canon," Pet. 17, for the purposes of analyzing inadequate medical care claims brought under the Eighth Amendment. The court did no such thing. Rather, the court expressly emphasized that a "deviation from those standards

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[3] *See Taylor v. McLennan*, --- S. Ct. ----, 2020 WL 2621835 (Mem.); *Gibson v. Collier*, 140 S. Ct. 653 (2019); *Swaney v. Lopez*, 140 S. Ct. 399 (2019); *Cowlitz Cnty. v. Crowell*, 139 S. Ct. 802 (2019); *Cnty. of Orange v. Gordon*, 139 S. Ct. 794 (2019); *Sanchez v. Young Cnty.*, 139 S. Ct. 126 (2018); *Spencer v. Abbott*, 139 S. Ct. 62 (2018); *Arrington-Bey v. City of Bedford Heights*, 138 S. Ct. 738 (2018); *Walker v. Estate of Clark*, 138 S. Ct. 1285 (2018); *Dale v. Rife*, 138 S. Ct. 364 (2017); *Phillip v. Scinto*, 138 S. Ct. 447 (2017); *Bornstein v. Monmouth Cnty. Sheriff's Off.*, 138 S. Ct. 120 (2017); *Carter v. Petties*, 137 S. Ct. 1578 (2017); *Corr. Med. Servs., Inc., v. Glisson*, 138 S. Ct. 109 (2017); *Collett v. Berlanga*, 137 S. Ct. 510 (2016); *Anderson v. Marshall Cnty.*, 137 S. Ct. 67 (2016); *Zaunbrecher v. Gaudin*, 137 S. Ct. 58 (2016); *Saylor v. Kohl*, 137 S. Ct. 161 (2016); *Herriman v. Kindl*, 136 S. Ct. 1657 (2016); *Kosilek v. O'Brien*, 135 S. Ct. 2059 (2015).

does not alone establish an Eighth Amendment claim." Pet. App. 114. The court upheld the district court's fact-intensive analysis about whether a specific treatment was necessary for a specific individual, and further explained that it "d[id] not endeavor to project whether individuals in other cases will meet the threshold to establish an Eighth Amendment violation." *Id.* at 63. The district court similarly ruled that its "decision [wa]s not intended, and should not be construed, as a general finding that all inmates suffering from gender dysphoria are entitled to gender confirmation surgery." *Id.* at 156. Petitioners' suggestion that this case involves any bright-line legal rule thus lacks merit.

Nor can Petitioners establish that the lower courts erred in using the WPATH Standards as a "starting point to gauge the credibility of each expert's testimony." *Id.* at 111 n.16. Whether GCS was medically necessary for Ms. Edmo under the WPATH Standards was the issue presented to the district court by every single one of the experts, all of whom addressed that question on the facts of this case. To assess medical necessity, the district court permitted four months of intensive discovery and held a three-day evidentiary hearing, at which the experts from both sides presented their opinions, using the criteria in the WPATH Standards as the touchstone for their analyses. Pet. App. 62, 111. Petitioners' experts did not provide the district court with any other established medical standards for assessing whether GCS was medically necessary for Ms. Edmo, nor could they identify any alternative medically-accepted standards when given the chance. *Id.* at 67–68, 111,

118 (citing *id.* at 191).[4] In addition, Dr. Eliason, who evaluated Ms. Edmo for GCS, claimed at the hearing that he, too, had applied the WPATH Standards during that evaluation. *Id.* at 78. Under these circumstances, the court of appeals correctly found that the district court did not err in using the WPATH Standards as a "useful starting point for analyzing the credibility and weight to be given to each expert's opinion and whether that opinion was consistent with established standards of care." *Id.* at 111–12 n.16.

Petitioners are also incorrect that the court of appeals "found Dr. Eliason deliberately indifferent merely because he did not adhere" to the WPATH Standards. Pet. 17. Petitioners argued on appeal that Dr. Eliason had applied both the WPATH Standards and his own criteria to "reasonably conclude[]" that Ms. Edmo did not need GCS. Pet. App. 117. The court of appeals upheld the district court's factual finding that Dr. Eliason had not actually used the WPATH Standards as he belatedly claimed. *Id.* at 118–19. The court found that the criteria Dr. Eliason applied "did not follow the accepted standards of care in the area of transgender health care," not simply because they deviated from the WPATH Standards, but because the criteria were "apparently invented out of whole cloth," included considerations that "are inapplicable to the care of transgender individuals," and were "internally

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[4] Despite their reliance on the WPATH Standards and failure to offer any alternative to them below, Petitioners now pejoratively label them as "advocacy." Pet. 9. But Petitioners do not disavow their own prior statements that the WPATH Standards "provide the best guidance" and "are the best standards out there." Pet. App. 67, 111.

contradictory" insofar as Dr. Eliason later acknowledged that "under [his] own criteria, Edmo should have been provided GCS." *Id.* at 119–20.

Petitioners identify no error in the court of appeals' careful review of the district court's case- and fact-specific analysis, which properly used the WPATH Standards as a starting point—not least because those standards were relied on by Petitioners' own experts and belatedly invoked by Dr. Eliason. The court of appeals created no bright-line constitutional rule based on those standards, instead making clear the case-specific nature of its evaluation of the WPATH Standards with respect to Ms. Edmo.

2. Nor does the factbound decision in this case implicate a conflict with any other circuit. Contrary to Petitioners' suggestion, Pet. 17–22, the First, Tenth, and Eleventh Circuits do not apply bright-line rules about the relevance of the WPATH Standards. Instead, these courts address Eighth Amendment claims of medical necessity brought by transgender prisoners in the same fact-intensive way that the court of appeals did here. As the court of appeals explained in surveying this out-of-circuit precedent, "settled Eighth Amendment jurisprudence . . . requires a fact-specific analysis of the record (as construed by the district court) in each case" and "important factual differences between cases" can "yield different outcomes" under the applicable law. Pet. App. 124–25; *see also, e.g.*, *Campbell v. Kallas*, 936 F.3d 536, 548 (7th Cir. 2019) ("Deciding whether a particular treatment plan was a 'substantial departure from accepted professional judgment, practice, or standards'" is a "fact-specific" issue that "requires a

close examination of professional standards and the specific choices made by care providers.").

For example, the First Circuit in *Kosilek v. Spencer*, 774 F.3d 63 (2014), *cert. denied*, 135 S. Ct. 2059 (2015), held that GCS was not medically necessary under the "unique circumstances" of that case, where "[c]ertain facts in th[e] particular record . . . were important factors impacting the decision." 774 F.3d at 91. But the court in *Kosilek* "expressly cautioned that the opinion should not be read to 'create a de facto ban against [GCS] as a medical treatment for any incarcerated individual,' as 'any such policy would conflict with the requirement that medical care be individualized based on a particular prisoner's serious medical needs.'" Pet. App. 131 (quoting 774 F.3d at 91). The court of appeals in this case correctly observed that its analytical "approach mirrors the First Circuit's" in *Kosilek*, with the divergent outcomes explained by "important factual differences" in the cases. *Id.* at 125 (noting, for example, "the security concerns in *Kosilek*, which the First Circuit afforded 'wide-ranging deference,' are completely absent here" (quoting 774 F.3d at 92)).[5]

Similarly, the Eleventh Circuit in *Keohane v. Florida Department of Corrections Secretary*, 952 F.3d 1257 (2020), applied a case-specific analysis in determining whether an incarcerated transgender person had established an Eighth Amendment claim. Petitioners assert that *Keohane* "implicitly

[5] The plaintiff in *Kosilek* is now scheduled for GCS because the individualized factors that the First Circuit cited in denying her requested relief have been resolved. Stay Opp. Exh. C at 1.

conclud[ed]" that "failure to adhere to the WPATH Standards" is not an Eighth Amendment violation, Pet. 22, but the Eleventh Circuit never addressed or even mentioned those standards. Instead, the *Keohane* court specifically examined the sufficiency of "[Keohane's] current [treatment] regimen" for her gender dysphoria and reviewed the "disagreement among the testifying professionals about the medical necessity of social transitioning to Keohane's treatment," and thus based the denial of her claim on facts specific to her. 952 F.3d at 1277; *compare also id.* (providing the same "wide-ranging deference" to "security concerns" as in *Kosilek*), *with* Pet. App. 125 (finding "security concerns" like those in *Kosilek* "are completely absent" in Ms. Edmo's case).

The Tenth Circuit cases that Petitioners cite likewise employed a fact-focused analysis, denying prisoner requests for GCS based on the "sparseness of the . . . record," *Lamb v. Norwood*, 899 F.3d 1159, 1163 (2018), and the "absence of any medical evidence" at the summary judgment stage, *Druley v. Patton*, 601 F. App'x 632, 635 (2015). While Petitioners contend that the Tenth Circuit "implicitly" declined to "enshrine the WPATH Standards as constitutional minima," Pet. 21, the Tenth Circuit in *Lamb* specifically amended the opinion to delete language suggesting that there is no medical consensus on how to treat gender dysphoria and that scientific advances in understanding gender dysphoria need not be considered. *Compare* 895 F.3d 756, 759–60 (2018), *with* 899 F.3d at 1162, *cert. denied*, 140 S. Ct. 252 (2019). Moreover, whereas the *pro se* plaintiffs in those cases merely submitted the WPATH Standards with no accompanying expert

opinions about their meaning and application, all four experts in this case "relied on the WPATH Standards of Care in rendering an opinion," requiring the district court to consider the standards when evaluating the experts' opinions. Pet. App. 67.

Finally, Petitioners are wrong to rely on the Fifth Circuit's decision in *Gibson v. Collier*, 920 F.3d 212 (2019), *cert. denied*, 140 S. Ct. 653 (2019), because that decision addressed a different question: whether a prison's ban on GCS violated the Eighth Amendment. 920 F.3d at 218 (explaining the prison's applicable "Policy does not designate sex reassignment surgery as part of the treatment for Gender Identity Disorder" (internal quotation marks and alterations omitted)). The Fifth Circuit upheld the ban in that case brought by a *pro se* plaintiff on an admittedly "'sparse record'" that included "no witness testimony or expert testimony or evidence from professionals in the field." Pet. App. 125–26 (quoting 920 F.3d at 220). Considering the prison's policy on that barebones record, the Fifth Circuit concluded that "there is no consensus in the medical community about the necessity and efficacy of [GCS] as a treatment for gender dysphoria." 920 F.3d at 221.

In contrast to *Gibson*, Petitioners in this case have never argued that GCS should be wholly unavailable or that it would be constitutional to enact such a ban. Instead, Petitioners agree that "in certain circumstances, [GCS] . . . can be a medically necessary treatment for gender dysphoria." Pet. App. 61–62. Petitioner IDOC's policy provides for GCS when it is "determined medically necessary." *Id.* at 76; *see, e.g.*, Stay Opp. Exh. A at 6 (Counsel for Petitioners: "I also

wanted to mention that, you know, [IDOC] do[esn't] have a blanket policy prohibiting [GCS]. And, in fact, witnesses from both sides testified that they allow all treatment options and even [GCS] if it's medically necessary. And so a lot of the cases that are being cited by plaintiff's counsel are cases where there was a blanket prohibition against one of these treatment options, hormones, or sex reassignment surgery. That's not this case."). Thus, as the court of appeals explained, this case did not involve the "broad" question of whether the court should preemptively "reject every conceivable Eighth Amendment claim based on the denial of GCS," Pet. App. 127–28; the case instead involved only a factual dispute about "whether GCS is medically necessary for Edmo" specifically, *id.* at 62.

Because Petitioners do not seek a categorical rule that GCS can never be an appropriate treatment for prisoners with gender dysphoria, this case provides no opportunity for this Court to consider such a claim. For that reason, any "tension" between this case and *Gibson*, *id.* at 125, is not implicated by Petitioners' argument, which seeks only a reversal of the lower courts' factual determinations that GCS was medically necessary for Ms. Edmo rather than any bright-line rule prohibiting that treatment.

Petitioners' reliance on *Gibson* is further undermined by the "sparse record" in that case, which was litigated by a *pro se* prisoner plaintiff and resolved by the district court in pre-discovery proceedings without any expert evidence about the medical standard of care for gender dysphoria or evidence about the plaintiff's individual medical

condition or need for GCS. 920 F.3d at 220–21, 223–24, 230.[6] In contrast, in this case, the court of appeals upheld the district court's comprehensive findings of fact regarding the medical standard of care and Ms. Edmo's individual need for treatment following a three-day evidentiary hearing and submission of other evidence. The well-developed factual record here—including extensive record evidence and testimony concerning Ms. Edmo's specific medical needs and Petitioners' failure to provide necessary medical care—stands in stark contrast to the circumstances the Fifth Circuit considered in *Gibson*.

3. Given the absence of any bright-line rule or "constitutional canon," Pet. 17, created by the court of appeals' ruling, Petitioners' request for review ultimately amounts to a request for error correction with no actual showing of error. Because this Court "do[es] not grant . . . certiorari to review evidence and discuss specific facts," *United States v. Johnston*, 268 U.S. 220, 227 (1925), the Petition should be denied.

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[6] The Fifth Circuit also incorrectly cited *Kosilek* in support of its ruling. *Gibson*, 920 F.3d at 216 (claiming "the majority in *Kosilek* effectively allowed a blanket ban on sex reassignment surgery"). To the contrary, the First Circuit stated that it did not "'create a de facto ban against [GCS] as a medical treatment for any incarcerated individual,'" as "'any such policy would conflict with the requirement that medical care be individualized based on a particular prisoner's serious medical needs.'" Pet. App. 131 (quoting *Kosilek*, 774 F.3d at 91); *see also Kosilek*, 774 F.3d at 91 ("[W]e are simply unconvinced that our decision on the record before us today will foreclose all litigants from successfully seeking [GCS] in the future."). Indeed, as noted above (footnote 5, *supra*), the plaintiff in *Kosilek* is now scheduled to have GCS while incarcerated.

II. The Decision Below Is Consistent With This Court's Precedent.

Petitioners further err in contending that the decision in this case conflicts with this Court's precedent. The court of appeals correctly articulated this Court's Eighth Amendment standards, and Petitioners' fact-dependent disagreement with the application of those standards does not merit review. S. Ct. R. 10 (providing that petitions claiming the "misapplication of a properly stated rule of law" are "rarely granted").

1. Petitioners wrongly assert that the decision in this case conflicts with a footnote from this Court's decision in *Bell v. Wolfish*, 441 U.S. 520 (1979). Pet. 22–23. In *Bell*, the respondents raised a Fifth Amendment challenge to a housing policy adopted by a federal jail for pre-trial detainees. 441 U.S. at 526. To support their claim, they relied in part on "correctional standards issued by various groups." *Id.* at 543 n.27. This Court concluded that such standards "may be instructive in certain cases," but declined to mandate them under the Constitution. *Id.*

The court of appeals' decision in this case is entirely consistent with *Bell*. As in *Bell*, the court here did not create a bright-line constitutional mandate, but instead considered the proffered standards as one factor in its analysis with respect to the credibility of expert opinions and the weight of the evidence. Moreover, unlike in *Bell*, Petitioners' experts themselves relied on the WPATH standards, Dr. Eliason asserted that he had applied those standards, and Petitioners pointed to the standards (and no others) as appropriate for analyzing Ms. Edmo's

Eighth Amendment claim in the district court. Pet. App. 67. Moreover, the court of appeals emphasized that "a simple deviation from [the WPATH Standards] does not alone establish an Eighth Amendment Claim." *Id.* at 114. There is no conflict between the decision here and *Bell*.

2. Petitioners likewise err in asserting that the court of appeals deviated from *Estelle v. Gamble*. Petitioners argue that under *Estelle* "'a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment.'" Pet. 25 (quoting 429 U.S. 97, 106). But that is exactly the rule the lower courts here applied: "An inadvertent or negligent failure to provide adequate medical care is insufficient to establish a claim under the Eighth Amendment." Pet. App. 105 (citing *Estelle*, 429 U.S. at 105–06); *see also id.* at 189 (quoting *Estelle*). As the court of appeals recognized, to "show deliberate indifference, the plaintiff must show that the course of treatment the [official] chose was medically unacceptable under the circumstances and that the [official] chose this course in conscious disregard of an excessive risk to the plaintiff's health." *Id.* at 105–06.

Nor can Petitioners show that the court of appeals misapplied this standard on the facts of this case. Petitioners fault the court for referring to the "reasonableness" of Dr. Eliason's treatment decisions, but the court's analysis was based on Petitioners' own argument that Dr. Eliason "reasonably concluded that GCS is inappropriate for Edmo." *Id.* at 117. In rejecting that argument, the lower courts did not

adopt a negligence standard. Instead, the district court concluded based on all the record evidence that Dr. Eliason's "decision not to address [Ms. Edmo's] persistent symptoms was medically unacceptable under the circumstances." *Id.* at 197. Likewise, the court of appeals concluded that Dr. Eliason's "evaluation was not an exercise of medically acceptable professional judgment." *Id.* at 120. Those determinations reflect Dr. Eliason's deliberate indifference, not mere negligence. Petitioners' factbound disagreement with that conclusion does not warrant this Court's review.

3. Petitioners are further wrong to assert that the court of appeals' ruling conflicts with *Farmer*, which held that "deliberate indifference cannot solely be 'premised on obviousness or constructive notice.'" Pet. 30 (quoting 511 U.S. 825, 841). Again, that is exactly the rule the lower courts here applied, concluding based on all the facts and circumstances that "Dr. Eliason knew of and disregarded the substantial risk of severe harm to Edmo." Pet. App. 122 (citing *Farmer*, 511 U.S. at 837); *see also id.* at 145 (noting the "record shows" that "responsible prison officials den[ied] such treatment with full awareness of the prisoner's suffering"); *id.* at 188 (quoting *Farmer*).

Petitioners' factbound disagreement with the application of the *Farmer* standard in this case provides no basis for review. Petitioners criticize the court of appeals for failing to "examine[] whether Dr. Eliason subjectively knew he was making a medically unacceptable choice." Pet. 31. But *Farmer* states that a prison official is liable if he "acted or failed to act despite his knowledge of a substantial risk of serious

harm," where the relevant "knowledge" is the official's awareness of the *risk* of the action or inaction, not a subjective belief that "harm actually would befall an inmate." 511 U.S. at 842.

Here, the district court found that Dr. Eliason knew of the substantial "risks of not providing [GCS] to Ms. Edmo," including "surgical self-treatment, emotional decompensation, and risk of suicide given her high degree of suicide ideation." Pet. App. 183. Specifically, Dr. Eliason recognized that Ms. Edmo's gender dysphoria was intensifying, that she was experiencing ongoing clinically significant distress and suicidal thoughts, and that she twice attempted to self-castrate. *Id.* at 121–22. While Petitioners contend that "Dr. Eliason made a considered treatment choice in a complex situation," Pet. 32, they identify no error in the factual finding—based on a three-day evidentiary hearing, thousands of pages of documents, testimony by four experts, and Dr. Eliason's own admissions—that he knew of the substantial risk of serious harm to Ms. Edmo that would result from his refusal to refer her for GCS, Pet. App. 121–24, 145; *see Farmer*, 511 U.S. at 842 ("Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence.").

This Court should reject Petitioners' request to revisit the factual findings underpinning the Eighth Amendment analysis in this case. *Johnston*, 268 U.S. at 227; *see Newell v. Norton*, 70 U.S. 257, 268 (1865) ("Parties ought not to expect this court to revise their decrees merely on a doubt raised in our minds as to

the correctness of the judgment, on the credibility of witnesses, or the weight of conflicting testimony.").

III. The Court of Appeals' Factbound Decision Implicates No Issue Of National Importance.

Contrary to Petitioners' suggestion, the individualized Eighth Amendment analysis in this case raises no issue of national importance. Indeed, this Court denied Petitioners' application to stay the injunction, confirming that there is nothing exceptional about this case. --- S. Ct. ----, 2020 WL 2569747 (Mem.).

1. Petitioners are wrong to contend that the decision in this case threatens improper judicial superintendence of medical decisions in the prison context. Pet. 34. Under this Court's precedent, courts must assess "discrete treatment decisions" in cases involving Eighth Amendment deliberate indifference claims. *Campbell*, 936 F.3d at 548; *see Farmer*, 511 U.S. at 842 (recognizing the fact-based inquiry applicable to deliberate indifference cases). The lower courts followed decades of Eighth Amendment precedent in their careful assessment of whether the evidence established Petitioners' deliberate indifference to Ms. Edmo's serious medical needs. Petitioners' assertion that this case will result in federal courts becoming too involved in "day-to-day treatment decisions of prison medical and mental health providers," Pet. 34, is belied by the decades of jurisprudence in which district and appellate courts have faithfully applied *Estelle* and *Farmer* to prison medical care cases, just as the courts did here. The fact-specific resolution of Ms. Edmo's claim under

Eighth Amendment precedent raises no issue warranting this Court's review.

2. Petitioners' claim that "medical treatment provided to . . . transgender inmates" should be of special concern to the Court, Pet. 35–36, does not create an issue of national importance. Under Eighth Amendment law, the well-established deliberate indifference standard applies to all serious medical needs. Arguing for an exception to that standard when it comes to the treatment of transgender people with serious medical needs violates the precept that this Court recently reiterated in the context of Title VII: "to refuse enforcement [of the law] just because" a group is "politically unpopular"—including "prisoners" and "transgender" people—would "tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the law's terms." *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1751 (2020). Transgender people are not excluded from the Eighth Amendment's protections and Petitioners provide no basis to conclude that a transgender prisoner's claim of deliberate indifference raises any unique considerations meriting review in a case that otherwise is not cert-worthy.

3. As Petitioners later acknowledged, their assertion that this case has prompted a "flurry of cases alleging deliberate indifference related to gender dysphoria," Pet. 36, is both unfounded and contradicted by years of claims filed by incarcerated people suffering from gender dysphoria, Petitioners' Reply in Support of Stay Application at 7 (conceding decision "may not have caused a surge in gender

dysphoria treatment claims in the lower courts"). In any event, Petitioners have not shown (nor could they) that the fact-dependent analysis in this case will control different cases involving different facts.

IV. This Case Is A Poor Vehicle For Further Review.

This case not only fails to satisfy any of this Court's criteria for granting review, but it also provides a poor vehicle for resolving the questions presented by Petitioners.

1. The lower court decisions turned on a fact-intensive dispute about whether GCS was medically necessary for Ms. Edmo based on her individual circumstances and whether Petitioners were deliberately indifferent in denying her that treatment despite their actual knowledge of her serious medical need and ongoing risk of harm. Pet. App. 145. In order to resolve those factual issues, the district court considered an extensive record, heard from live witnesses, weighed the conflicting testimony, and made credibility determinations. *Id.* at 62. The court of appeals ruled that these "detailed factual findings were amply supported by [the district court's] careful review of the extensive evidence and testimony." *Id.* Both the trial and appellate courts stressed that the "decision is based upon, and limited to, the unique facts and circumstances presented by Ms. Edmo's case" and "is individual to [her] and rests on the record in this case." *Id.* at 63, 156. This case accordingly presents no opportunity for this Court to consider any overarching legal issue without re-weighing facts, re-evaluating witness credibility determinations, and reviewing the correctness of the inferences the lower

courts drew from the record. That is not this Court's role. *Newell*, 70 U.S. at 268.

2. This case is also a poor vehicle to address any purported concerns with applying the WPATH Standards in the context of an Eighth Amendment claim. Although Petitioners now object to those standards, their own experts relied on them and Petitioners asserted in district court that they are "the best guidance" and "the best standards out there." Pet. App. 67. Even Dr. Eliason, who failed to apply the WPATH Standards when he evaluated Ms. Edmo, belatedly claimed that he did consider them in determining appropriate treatment for her gender dysphoria. *Id.* These facts run counter to Petitioners' current attack on the WPATH Standards and would complicate any effort to evaluate whether the lower courts erred in using the standards as a "starting point" for analysis. *Id.* at 67, 111 n.16; *cf. Minneapolis & St. L.R. Co. v. Winters*, 242 U.S. 353, 356 (1917) (holding appealing party "cannot complain of a course to which it assented below").

3. In addition, even if there was merit to Petitioners' objection to the WPATH Standards' application in this case (and there is not), it would not change the outcome, given that Dr. Eliason conceded that "even under [his] own criteria, Edmo should have been provided GCS." Pet. App. 120. As the court of appeals concluded, his concession independently justifies the factbound ruling on the Eighth Amendment claim in this case. *Id.* at 119–20.

4. Ms. Edmo successfully received GCS after this Court denied a stay. While Petitioners must continue to provide her with "adequate medical care" pursuant

to the terms of the district court's injunction, Pet. App. 201, the fact of Ms. Edmo's surgery reduces any salience of the question presented. And any reversal of the injunction that would deprive Ms. Edmo of necessary post-operative treatment for her gender dysphoria would be inequitable.

5. Finally, the interlocutory posture of this case "alone furnishe[s] sufficient ground for the denial" of the petition. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916). "[E]xcept in extraordinary cases," this Court does not grant review "until final decree." *Id.*; *accord Abbott v. Veasey*, 137 S. Ct. 612, 613 (2017) (Roberts, C.J., respecting the denial of *certiorari*); *Virginia Military Inst. v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of *certiorari*); Stephen M. Shapiro, et al., *Supreme Court Practice* § 4.18 (11th ed. 2019) (noting "the interlocutory nature of a federal court of appeals judgment is relevant to the Court's discretionary assessment of the appropriateness of immediately reviewing such a judgment"). Here, several issues remain for the lower courts to resolve, including Ms. Edmo's claim for damages arising from Petitioners' Eighth Amendment violation as well as several of Ms. Edmo's legal claims that were not the basis for her motion for injunctive relief. *See* Pet. App. 80 (noting Ms. Edmo's other claims). For all of the reasons above, this is not an extraordinary case meriting review before final judgment.

CONCLUSION

The Court should deny review.

Respectfully submitted,

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