IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEON HAMPTON (M15934),	)	
	)	
Plaintiff,	)	
	)	Case No. 18-cv-550
v.	)	
	)	
ILLINOIS DEPARTMENT OF CORRECTIONS DIRECTOR JOHN BALDWIN, *et al.*,	)	
	)	
Defendants.	)	

PLAINTIFF'S MOTION AND MEMORANDUM IN SUPPORT OF
A PRELIMINARY INJUNCTION

Plaintiff is a transgender woman currently housed in segregation in Lawrence Correctional Center, a medium security men's prison. Plaintiff has identified as a female since the young age of five. In 2012, she was diagnosed with Gender Dysphoria by an IDOC psychiatrist and began receiving cross-sex hormone treatment while in IDOC custody in July 2016—as a result of the treatment, her testosterone level is virtually nil and she is chemically castrated. Despite being a transgender woman, Plaintiff has exclusively been placed in men's prisons since entering IDOC custody. Prior to being housed in Lawrence, Plaintiff was at Menard Correctional Center and Pinckneyville Correctional Center; she was constantly sexually and physically abused by officers and other prisoners at both institutions. When she reported this abuse, the officers at both institutions retaliated by beating her and filing false disciplinary charges against her that resulted in a prolonged sentence in segregation—Plaintiff has been in segregation for over nine months and is not expected to be released from segregation until July 2018. Plaintiff was transferred to Lawrence from Menard as a result of a settlement reached in litigation she filed regarding the harassment and abuse she experienced at Menard.

At Lawrence, Plaintiff is housed in segregation, where she is denied access to adequate mental health services and treatment. Despite being designated as Seriously Mentally Ill ("SMI"), Plaintiff is not receiving adequate mental health care in segregation. Nor is Plaintiff receiving any psychosocial supports to treat her Gender Dysphoria. As a result of her isolation and lack of adequate mental health treatment, Plaintiff's mental health has substantially deteriorated to the point where she attempted suicide four times. After each attempt, IDOC staff placed her on crisis watch, but she did not receive any counseling or other mental health interventions, and was then returned to segregation, where the cycle repeated itself.

Additionally, Plaintiff has not escaped sexual harassment and physical abuse at Lawrence. Since arriving there, officers, mental health staff, and other prisoners have subjected her to constant sexual harassment, including the use of derogatory names, as well as other verbal abuse and threats to her physical safety. The Defendants have made it clear that they will not protect Plaintiff from other prisoners or prison staff who wish to harm her due to her gender identity. On one occasion, the Defendants failed to protect Plaintiff from a prisoner on the yard who exposed his genitals to Plaintiff and threatened to rape her. Plaintiff has also been beaten by Defendant Officer Burley while three other Officer Defendants stood by and watched. Plaintiff fears for her life at Lawrence. She has already faced serious physical and emotional injury since arriving at Lawrence and will continue to face a grave risk of serious injury if she remains there.

For this reason, and pursuant to Federal Rule of Civil Procedure 65, Plaintiff seeks a preliminary injunction ordering Defendants Director John Baldwin and Warden Kevin Kink in their official capacities to: 1) transfer Plaintiff to Logan Correctional Center, a women's prison; 2) move her out of segregation; and 3) provide her with adequate mental health treatment and services.

Preliminary injunctions are granted in extraordinary situations where there is a clear showing of need. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997); *Cooper v. Salazar*, 196 F.3d 809 (7th Cir. 1999). The need here could not be more obvious or more immediate. Plaintiff's situation satisfies each requirement for a preliminary injunction: (1) she will succeed on the merits because Defendants have so clearly violated (i) her rights under the Equal Protection Clause of the Fourteenth Amendment by housing her in a men's prison, and (ii) her rights under the Eighth Amendment by failing to protect her from physical and sexual assault, failing to provide her adequate mental health treatment, and subjecting her to cruel and unusual punishment; (2) in the absence of intervention by this Court, Plaintiff will suffer irreparable harm—namely substantial likelihood that she will continue to be subjected to serious threats to her physical safety and emotional well-being, she will continue to decompensate in segregation, and she will continue to be denied adequate care for her Gender Dysphoria and Bipolar Disorder; (3) there is no adequate remedy at law—only an injunction will ensure that Plaintiff is transferred to a women's prison, removed from segregation, and provided with mental health treatment; and (4) ensuring that Defendants appropriately house Plaintiff in general population of a women's facility, protect her from harm, and provide her with adequate mental health treatment will further the public interest and will not harm Defendants in any way. *See AM Gen. Corp. v. DaimlerChrysler Corp.*, 311 F.3d 796, 803-804 (7th Cir. 2002). Thus, this Court must act in order to ensure that Plaintiff's constitutional rights are not continually violated and that she is appropriately housed and treated.[1]

[1] Prior to filing the complaint and this motion, undersigned counsel attempted to negotiate a resolution of Plaintiff's claims with counsel for IDOC and Lawrence Correctional Center. Undersigned counsel first initiated contact with counsel for IDOC and Lawrence on January 12, 2018. Since that time, efforts to resolve Plaintiff's claims have been unsuccessful, thus necessitating the request for emergency relief. *See* Ex. 1, Email Correspondence.

I. Plaintiff's claims that Defendants violated her constitutional rights under the Fourteenth Amendment and Eighth Amendment will likely succeed on the merits.

In order to demonstrate a substantial likelihood of success on the merits, a plaintiff must demonstrate "a plausible claim on the merits." *Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009). Courts should not "improperly equat[e] 'likelihood of success' with 'success.'" *Michigan v. U.S. Army Corps of Eng'rs*, 667 F.3d 765, 782 (7th Cir. 2011) (quoting *University of Texas v. Camenisch*, 451 U.S. 390, 394 (1981)). "[T]he threshold for establishing likelihood of success is low." *Id.* A plaintiff need "only to present a claim plausible enough that (if the other preliminary injunction factors cut in their favor) the entry of a preliminary injunction would be an appropriate step." *Id.* at 783. To determine whether a plaintiff's legal argument has a likelihood of succeeding, courts use whatever existing test would be employed to decide the merits of the case. *See S./Sw. Ass'n of Realtors v. Evergreen Park, IL*, 109 F.Supp.2d 926, 927 (N.D. Ill. 2000).

In this case, Plaintiff has a high chance of success on the merits of all her claims, but below will focus on the claims particularly relevant to the emergency relief she seeks—her Fourteenth Amendment Equal Protection claim, and her Eighth Amendment claims that Defendants failed to protect her from harm, failed to provide her with adequate mental health care, and housed her in conditions that constitute cruel and unusual punishment.

A. Plaintiff will prevail on her claim that Defendants violated her rights under the Equal Protection Clause by housing her in a men's facility.

The IDOC houses all non-transgender women in women's prisons, but forces the Plaintiff, a transgender woman, to be housed with men, merely because of the sex stereotypes associated with her assigned birth. This is precisely the type of "intentional and arbitrary discrimination" the Equal Protection Clause of the Fourteenth Amendment forbids. *Whitaker v.*

Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034, 1050 (7th Cir. 2017). Transgender people can allege that their right to equal protection has been violated when a government entity treats people who fail to conform "to the sex-based stereotypes associated with their assigned sex at birth, differently." *Id.* at 1051. To state an equal protection claim under Section 1983, Plaintiff must show that the Defendants "acted with a nefarious discriminatory purpose and discriminated against her based on her membership in a definable class." *D.S. v. East Porter Cty. Sch. Corp.*, 799 F.3d 793, 799 (7th Cir. 2015). Claims regarding discrimination on the basis of sex are subject to heightened scrutiny. *Whitaker*, 858 F.3d at 1050. This means that when a sex-based classification is used, the burden rests with the state to show that "the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objects." *Id.* (quoting *U.S. v. Virginia*, 518 U.S. 515, 524 (1996)). Neither the Supreme Court nor the Seventh Circuit have decided whether transgender status is per se entitled to heightened scrutiny. However, the Seventh Circuit in *Whitaker* applied heightened scrutiny to a transgender boy's equal protection claim against the School District, claiming that the plaintiff had experienced a form of sex-discrimination by being barred from using the boys' bathroom. *Id.* at 1051. In that case, the Seventh Circuit found that the plaintiff demonstrated a likelihood of success on his equal protection claim and upheld the district court's grant of a preliminary injunction enjoining the School District from denying the plaintiff access to the boys' restroom. *Id.* at 1052.

Several courts in other districts have also applied heightened scrutiny to equal protection claims involving transgender individuals. *See, e.g., Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Edu.*, 208 F. Supp. 3d 850, 873-74 (S.D. Ohio 2016) (applying the Supreme Court's four-factor test to determine whether a new classification requires heightened scrutiny

and concluding that transgender individuals are a quasi-suspect class); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015) (finding that transgender people are a quasi-suspect class and applying intermediate scrutiny to defendants' treatment of plaintiff); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015) ("the Court concludes that discrimination based on transgender status independently qualifies as a suspect classification under the Equal Protection Clause because transgender persons meet the indicia of a "suspect" or "quasi-suspect classification" identified by the Supreme Court" (citing *Schwenk v. Hartford*, 204 F.3d 1187, 1201 (9th Cir. 2000)); *Mitchell v. Price*, No. 11-cv-260-wmc, 2014 WL 6982280, at *8 (W.D. Wis. Dec. 10, 2014) ("[a]lthough the issue has yet to be settled in this circuit, the parties agree that Mitchell's Fourteenth Amendment equal protection claims based on her transgender status receive heightened scrutiny" (citing *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2012)).

Further, the Supreme Court has held that heightened scrutiny standard of review, rather than rational basis standard of review applied in certain prison cases, governs a prisoner's claims of discrimination under the Equal Protection Clause. *See Johnson v. California*, 543 U.S. 499, 510-11 (2005) (finding that strict scrutiny applied to prisoner's equal protection claim against corrections officials challenging the policy of racially segregating prisoners because the right not to be discriminated against "is not a right that need necessarily be compromised for the sake of proper prisoner administration").

Adopting the reasoning in the above cited cases, Plaintiff's equal protection claims should be analyzed under heightened scrutiny. Plaintiff has experienced sex discrimination analogous to the plaintiff in *Whitaker*—IDOC refuses to place Plaintiff in a women's prison despite her status as a transgender woman simply because she was assigned male at birth.

Defendants are well aware of Plaintiff's status as a transgender woman and well aware that she is on cross-hormone treatment, which she began in IDOC custody. According to Dr. George Brown, a psychiatrist who is an expert in providing transgender health care, "there is no medical justification for continuing to house her in a men's prison. To the contrary, continued housing in a men's prison will seriously compromise [Plaintiff's] mental health and prevent her from receiving adequate treatment for her gender dysphoria (GD)." Ex. 2, Dr. Brown 12/1/17 Decl. ¶ 3. Further, to the extent the Defendants rely on the fact that Plaintiff has not yet had sex reassignment surgery to justify her continued placement in a men's prison, as Dr. Brown explains, "this position conflicts with all reliable medical literature," and that given her hormone levels, Plaintiff "is functionally chemically castrated." *Id.* ¶ 4. Additionally, Dan Pacholke, a corrections expert with more than thirty-five years of experience in the field of adult corrections, opines that there is nothing in Plaintiff's record "that would indicate that she would be a security threat at a women's correctional facility" and that "[p]lacing [her] at a women's prison is appropriate." Ex. 3, Pacholke Report at 6. Accordingly, the Defendants will likely not be able to establish that Plaintiff's placement in a men's prison is substantially related to an important government interest. *See Norsworthy*, 87 F. Supp. 3d at 1120 (finding that transgender woman prisoner adequately stated equal protection claim against prison officials for denying her sex reassignment surgery); *Mitchell*, 2014 WL 6982280, at *11-12 (denying summary judgement on transgender woman prisoner's equal protection claim against officer who transferred her back to a block where she encountered taunts and threats).

B. Plaintiff will prevail on her claim that Defendants violated her rights under the Eighth Amendment by failing to protect her from sexual and physical abuse.

To succeed on a failure to protect claim, Plaintiff must show that (1) she was "incarcerated under conditions posing substantial risk of serious harm" and (2) "the defendants acted with 'deliberate indifference' to [her] health or safety." *Santiago v. Walls*, 599 F.3d 749, 756 (7th Cir. 2010) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). The sexual and physical abuse Plaintiff has suffered at Lawrence both constitute "serious harm." *See Farmer*, 511 U.S. at 833-34 (treating sexual assault as serious harm); *Brown v. Budz*, 398 F.3d 904, 910-11 (7th Cir. 2005) (finding that a "beating suffered at the hands of a fellow detainee . . . clearly constitutes serious harm").

To prove deliberate indifference, Plaintiff must establish that Defendants knew she faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it. *See Farmer*, 511 U.S. at 847. Plaintiff must show that Defendants had "*actual* knowledge of the risk." *Washington v. LaPorte Cty. Sheriff's Dep't*, 306 F.3d 515, 518 (7th Cir. 2002). This "is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." *Farmer*, 511 U.S. at 842. "If 'the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk.'" *Sanville v. McCaughtry*, 266 F.3d 724, 737 (7th Cir. 2001) (quoting *Farmer*, 511 U.S. at 842-43); *see also Washington*, 306 F.3d at 519 ("Under some circumstances, a risk might be so obvious that actual knowledge on the part of prison officials may be inferred."). Furthermore, Plaintiff "can establish exposure to a significantly serious risk of harm by showing that [s]he belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates." *Farmer*, 511 U.S. at 843 (quotation omitted).

First, Defendants have knowledge that Plaintiff faces a substantial risk of serious harm from both other prisoners and staff. Defendants know that Plaintiff is a transgender woman and is therefore particularly vulnerable in a men's facility. *See Perkins v. Martin*, No. 3:14-cv-00191-SMY-PMF, 2016 WL 3670564, at *3 (S.D. Ill. Jul. 11, 2016) (citing *Farmer* and listing "transgender prisoner with feminine characteristics in male prison" as a "situation where the prisoner plaintiff exhibits characteristics that make them more likely to be victimized"); *Doe v. District of Columbia*, 215 F. Supp. 3d 62, 77 (D.D.C. 2016) (finding that a jury could infer that prison officials "knew Doe faced a substantial risk of rape because of her status as a transgender woman."); *Zollicoffer v. Livingston*, 169 F. Supp. 3d 687, 691 (S.D. Texas 2016) (citing 2011 data from the Bureau of Justice Statistics, which "reported that 34.6% of transgender inmates reported being the victim of sexual assault," approximately 9 times the rate of other prisoners, and stating that "[t]he vulnerability of transgender prisoners to sexual abuse is no secret."). Additionally, Defendants know that Plaintiff has already been sexually and physically abused at other prisons and was transferred to Lawrence from Menard after filing a lawsuit based on the abuse she suffered at Menard.

Second, Defendants disregarded the risk by failing to take reasonable measures to protect Plaintiff from abuse at the hands of other prisoners and staff. On January 23, 2018, the Defendants failed to protect Plaintiff from another prisoner on the yard who exposed his genitals to her and threatened to rape her. *See Farmer*, 511 U.S. at 845 ("one does not have to await the consummation of threatened injury to obtain preventive relief" (citation omitted)). Prison officials refused to punish this prisoner for sexually abusing Plaintiff and continue to house him in a cell near Plaintiff. Additionally, the Defendants failed to protect Plaintiff from staff abuse. On February 18, 2018, Plaintiff was physically assaulted by Defendant Officer Burley while

three other Defendant Officers watched. Plaintiff suffered serious injuries from this assault that required medical treatment. *See Hoskins v. Dilday*, No. 16-CR-334-MJR-SCW, 2017 WL 951410, at *6 (S.D. Ill. Mar. 10, 2017) (finding a strong likelihood that Plaintiff will succeed on the merits of his Eighth Amendment claim where he alleged that he had been physically attacked by several defendants while other defendants did nothing to help him and that he had been threatened with future physical harm); *Mitchell v. Baker*, No. 13-cv-0860-MJR-SCW, 2015 WL 278852, at *5 (S.D. Ill. Jan. 21, 2015) (finding that Plaintiff has a substantial probability of success of the merits of his Eighth Amendment claim where he alleged that officers victimized him via frequent threats and physical abuse); *Zollicoffer*, 169 F. Supp. 3d at 696 (finding that "Plaintiff sufficiently alleged facts to show that Defendant knew of, and was deliberately indifferent to, the high risk of sexual assault of gay and transgender inmates at the TDCJ facilities").

C. Plaintiff will prevail on her claim that Defendants violated her rights under the Eighth Amendment by failing to provide adequate mental health care.

"[T]he Eighth Amendment safeguards the prisoner against a lack of medical care that 'may result in pain and suffering which no one suggests would serve any penological purpose.'" *Petties v. Carter*, 836 F.3d 722, 727 (7th Cir. 2016) (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). To succeed on a failure to provide adequate medical care claim, Plaintiff must show that she (1) "suffered from an objectively serious medical condition" and (2) that Defendants were "deliberately indifferent to that condition." *Id.* at 728. An objectively serious medical condition is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity of a doctor's attention." *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7th Cir. 1997) (citation omitted). A condition that

significantly affects an individual's daily activities or causes chronic and substantial pain also satisfies the objective requirement. *Id.*

First, Plaintiff has objectively serious medical conditions that require treatment. IDOC has designated Plaintiff as Seriously Mentally Ill. She was diagnosed with Gender Dysphoria and Bipolar Disorder by an IDOC psychiatrist who ordered that she receive treatment for these conditions. Courts have long recognized that Gender Dysphoria and mental illnesses qualify as serious medical needs under the Eighth Amendment. *See Tate v. Wexford Health Source Inc.*, No. 3:16-cv-00092-NJR, 2016 WL 687618 at *2 (S.D. Ill. Feb. 19, 2016) ("Gender dysphoria is a serious medical need." (*citing Meriwether v. Faulkner*, 821 F.2d 408, 411-13 (7th Cir. 1987))); *Sanville v. McCaughtry*, 266 F.3d 724, 734 (7th Cir. 2001) ("The need for a mental illness to be treated could certainly be considered a serious medical need.").

Second, the Defendants have demonstrated deliberate indifference by persisting in a deficient course of treatment for Plaintiff's serious mental health conditions. Courts have long held that the "receipt of *some* medical care does not automatically defeat a claim of deliberate indifference." *Edwards v. Snyder*, 478 F.3d 827, 831 (7th Cir. 2007). Plaintiff need not show that her medical needs were completely ignored. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). "Deliberate indifference may occur where a prison official, having knowledge of significant risk to inmate health or safety, administers 'blatantly inappropriate' medical treatment." *Perez v. Fenoglio*, 792 F.3d 768, 777 (7th Cir. 2015) (citation omitted); *see also Greeno v. Daley*, 413 F.3d 645, 655 (7th Cir. 2005) (persistence "in a course of treatment known to be ineffective" clearly violates the Eighth Amendment).

Despite being designated as SMI and diagnosed with Bipolar Disorder, IDOC medical staff failed to update Plaintiff's mental health treatment plan for months while she was in

segregation, and her current treatment plan falls short in a number of respects—it does not identify her medications, does not specify her diagnosis, and does not evaluate the effectiveness (or lack thereof) of previous treatment plans. Medical staff has prescribed Plaintiff Lithium to treat her Bipolar Disorder; however, according to Dr. Brown, the dosage prescribed is so low that is has virtually no therapeutic effect. Ex. 2, Dr. Brown 3/7/18 Decl. ¶ 5. Further, IDOC staff prevented Plaintiff from going to mental health group counseling sessions for about a month, and when was allowed to go to group, she was reprimanded and verballed abused by the counselors. Additionally, the only treatment Plaintiff is receiving for her Gender Dysphoria is hormone treatment. According to Dr. Brown, "medication alone is insufficient to treat GD." Ex. 2, Dr. Brown 12/1/17 Decl. ¶ 12. Plaintiff also requires psychosocial supports to treat her Gender Dysphora, like the Transgender Support Group, which she is being denied access to while in segregation. *Id.* ¶ 11.

As a result of this deficient course of treatment, Plaintiff's mental health has substantially deteriorated and she has attempted suicide four times. After each suicide attempt, IDOC staff placed Plaintiff on crisis watch for one day but provided her no counseling or any other mental health interventions; she was allowed to return to segregation where the cycle repeated itself. Thus, Plaintiff has clearly demonstrated that the Defendants were and continue to be deliberately indifferent to her serious medical conditions.

D. Plaintiff will prevail on her claim that Defendants violated her rights under the Eighth Amendment by housing her in conditions that constitute cruel and unusual punishment.

The Eighth Amendment prohibits punishments which "involve the unnecessary and wanton infliction of pain" that are "totally without penological justification." *Rhodes v. Chapman*, 452 U.S. 337, 345 (1981). To prevail on an Eighth Amendment claim based on the

conditions of confinement, Plaintiff must show that (1) the conditions were "'sufficiently serious' so that 'a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities'" and (2) the Defendants acted with deliberate indifference to the conditions in question. *Townsend v. Fuchs*, 522 F.3d 765, 773 (7th Cir. 2008) (quoting *Farmer*, 511 U.S. at 834). The objective prong the Eighth Amendment claim is "contextual and responsive to 'contemporary standards of decency.'" *Hudson v. McMillian*, 503 U.S. 1, 8 (1992) (citation omitted); *see also Whitley v. Albers*, 475 U.S. 312, 327 (1986) (explaining that the Eighth Amendment prohibits punishments that are "inconsistent with contemporary standards of decency" and "repugnant to the conscience of mankind").

Here, Plaintiff has been subjected to segregation for over nine months. Plaintiff is isolated in her cell for nearly 24 hours a day—she is occasionally let out to shower. She has been denied access to the yard since February 18, 2018. The conditions in segregation are worsening her mental illness and causing her extreme emotional pain and suffering. The pain and suffering have escalated to the point where Plaintiff attempted suicide four times.

A number of courts have recognized that segregation can have drastic adverse effects on a prisoner's mental state, even for prisoners without mental illness. *See, e.g.*, *Williams v. Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 567-68 (3d Cir. 2017) (noting that both "psychological damage" and "[p]hysical harm" can result from solitary confinement, including "high rates of suicide and self-mutilation" as well as "more general physical deterioration"); *Incumaa v. Stirling*, 791 F.3d 517, 534 (4th Cir. 2015) ("Prolonged solitary confinement exacts a heavy psychological toll that often continues to plague an inmate's mind even after he is resocialized."); *Westefer v. Snyder*, 725 F. Supp. 2d 735, 769 (S.D. Ill. 2010) ("Tamms imposes drastic limitations on human contact, so much so as to inflict lasting psychological and emotional

harm on inmates confined there for long periods."); *Morris v. Travisono*, 499 F. Supp. 149, 160 (D.R.I. 1980) ("Even if a person is confined to an air conditioned suite at the Waldorf Astoria, denial of meaningful human contact for such an extended period may very well cause severe psychological injury."); *see also Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) ("the penal system has a solitary confinement regime that will bring you to the edge of madness, perhaps to madness itself"); *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting) ("it is well documented that . . . prolonged solitary confinement produces numerous deleterious harms" (citing Craig Haney, *Mental Health Issues in Long- Term Solitary and "Supermax" Confinement*, 49 Crime & Delinquency 124, 130 (2003); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Policy 325, 331 (2006))). The overwhelming weight of scientific literature backs these conclusions. Several articles have recognized that "[n]early every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies." Kenneth Appelbaum, *American Psychiatry Should Join the Call to Abolish Solitary Confinement*, 43 J. Am. Acad. Psychiatry & L. 406, 410 (2015) (quoting David H. Cloud, et al., *Public Health and Solitary Confinement in the United States*, 105(1) Am. J. Pub. Health 18, 18-26 (2015)).

Courts have further held that the serious damage wrought by segregation is particularly pronounced for prisoners with mental illness. *See, e.g.*, *Scarver v. Litscher*, 434 F.3d 972, 975 (7th Cir. 2006) (conditions of solitary confinement "aggravated the symptoms of [a prisoner's] mental illness and by doing so inflicted severe physical and especially mental suffering"); *Braggs v. Dunn*, No. 2:14CV601-MHT(WO), 2017 WL 2773833, at *51 (M.D. Ala. June 27,

2017) (finding prison's segregation practices "placed prisoners with serious mental-health needs at a substantial risk of continued pain and suffering, decompensation, self-injurious behavior, and even death"); *Latson v. Clarke*, No. 1:16CV00039, 2017 WL 1407570, at *3 (W.D. Va. Apr. 20, 2017) ("the impacts of solitary confinement can be similar to those of torture and can include a variety of negative physiological and psychological reactions," effects that "are amplified in individuals with mental illness."); *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1095 (E.D. Cal. 2014) (finding that "placement of seriously mentally ill inmates in [segregation] can and does cause serious psychological harm, including decompensation, exacerbation of mental illness, inducement of psychosis, and increased risk of suicide"); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995) (placing a mentally ill prisoner in solitary confinement "is the mental equivalent of putting an asthmatic in a place with little air to breathe"). Thus Plaintiff has established that conditions she has had to endure in segregation are sufficiently serious to satisfy the objective prong.

Plaintiff also satisfies the subjective prong of this Eighth Amendment claim—she has established that Defendants were and continue to be deliberately indifferent to the harm she is suffering as a result of segregation. On two separate occasions IDOC mental health staff have concluded that placement in segregation would negatively impact Plaintiff's mental health, yet their opinions were ignored by security staff who continued to prolong her segregation time. Plaintiff has repeatedly told security and medical staff at Lawrence that she is in emotional distress because of her placement in segregation, and she has attempted suicide four times. Yet, they continue to house her in segregation without providing adequate mental health treatment. Further, Plaintiff has demonstrated that there is no penological justification for housing her in segregation as her discipline is retaliatory.

II. Plaintiff will suffer irreparable harm in the absence of a preliminary injunction.

A preliminary injunction is necessary to avert three forms of irreparable harm to Plaintiff: 1) the ongoing violation of her constitutional rights, which in itself constitutes irreparable harm; 2) the continued, serious threats to her physical safety; and 3) the continued, serious threats to her mental health, resulting from her placement in segregation and the denial of adequate treatment.

First, the Defendant's continual deprivation of Plaintiff's Eighth and Fourteenth Amendment rights, as previously described, is an irreparable harm sufficient to warrant a preliminary injunction. *See Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy certainly would serve the public interest.") (affirming grant of preliminary injunction in prison conditions case); *Planned Parenthood of Ind. and Ky., Inc. v. Commissioner*, 194 F. Supp. 3d. 818, 835 (S.D. Ind. 2016) (finding that the "presumption of irreparable harm also applies to equal protection violations").

Second, Plaintiff's physical safety is at risk. The Defendants have made it clear that they will not protect Plaintiff from other prisoners or staff who wish to harm her. The Defendants already allowed one prisoner to expose his genitals to Plaintiff and threaten to rape her. Plaintiff was also physically assaulted by Defendant Officer Burley while three other Officer Defendants watched. *See Hoskins*, 2017 WL 951410, at *6 (finding that prisoner faced irreparable harm if he remained at Menard, where he "faces physical threats and is prevented from receiving needed medications and food trays at times"); *Mitchell*, 2015 WL 278852, at *5 (finding that irreparable harm was "undisputed" where plaintiff alleged that officers at Menard victimized him via frequent threats and physical abuse); *White v. Jindal*, No. 13-15073, 2014 WL 1608697, at *6

(E.D. Mich. 2014) (finding that prisoner would suffer irreparable harm absent a preliminary injunction ordering his transfer to another facility where prisoner claimed that he was beaten by other prisoners and "warned that he would be beaten further if he did not provide 'protection money'"); *Pocklington v. O'Leary*, No. 86 C 2676, 1986 WL 5748, at *1 (N.D. Ill. May 6, 1986) (granting TRO and ordering warden not to return prisoner to general population status where plaintiff had been raped by other inmates, notified prison officers, and was ignored by them).

Third, Plaintiff's mental health is at risk. The abusive and restrictive conditions under which Plaintiff is housed are causing her to decompensate. According to Dr. Brown, Plaintiff's "extended placement in segregation" has caused her to suffer "from a number of mental health crises." Ex. 2, Dr. Brown 12/1/17 Decl. ¶ 14. Dr. Brown opines that Plaintiff "has shown clear signs of psychiatric deterioration, including a significant increase in gender dysphoria, anxiety and depression." *Id.* Dr. Brown further opines that "her continued placement in segregation is exacerbating her symptoms and putting her at risk of suffering life-long adverse consequences, up to and including death by suicide or by a suicide attempt/gesture that becomes lethal." Ex. 2, Dr. Brown 3/7/18 Decl. ¶ 2; *see also Jones'El v. Berge*, 164 F. Supp. 2d 1096, 1123 (W.D. Wis. 2001) (finding that plaintiffs would suffer irreparable harm absent a preliminary injunction where the conditions at Supermax posed a grave risk of harm to seriously mentally ill inmates). Plaintiff has already attempted suicide four times and there is a serious risk that she will continue to have suicidal ideations.

Additionally, Defendants' failure to provide Plaintiff with adequate mental health treatment for Gender Dysphoria and Bipolar Disorder has contributed to Plaintiff's severe mental deterioration. Dr. Brown opines that Plaintiff "is in substantial distress from her undertreated gender dysphoria, which is compounded by the reported conditions in the segregation unit and

the abuse and trauma she has survived while in IDOC custody." Ex. 2, Dr. Brown 12/1/17 Decl. ¶ 12. Dr. Brown further opines that if Plaintiff continues to be denied medically necessary mental health services, she is "at risk of suffering lifelong consequences—including but not limited to acts of self-harm, post-traumatic stress disorder, and the consequences of undertreated gender dysphoria." Ex. 2, Dr. Brown 3/7/18 Decl. ¶ 8; *see also Whitaker*, 858 F.3d at 1045 (finding that transgender student would suffer irreparable harm absent preliminary injunction where expert opined that Ash's treatment at school, including his inability to use the boys' restroom, "significantly and negatively impacted his mental health and overall well-being"); *Flynn v. Doyle*, 630 F. Supp. 2d 987, 993 (E.D. Wis. 2009) (granting a preliminary injunction in a prison medical care case where the irreparable harm constituted continued medication errors and delays, which will result in life-threatening risks, the exacerbation of chronic and acute serious medical conditions, and unnecessary pain and suffering); *Farnam v. Walker*, 593 F. Supp. 2d 1000, 1012-13 (C.D. Ill. 2009) (finding irreparable harm where a doctor testified that "the care the plaintiff was receiving at Graham, if continued, would significantly decrease the quality as well as the quantity of the plaintiff's life").

III. Plaintiff lacks an adequate remedy at law for ongoing violations of constitutional rights and risks to safety.

Money will not make Plaintiff whole, protect her from physical and emotional abuse, or adequately treat her medical needs. Only an order from this Court will accomplish this. *See Flower Cab Co. v. Petitte*, 685 F.2d 192, 195 (7th Cir. 1982) (stating that in prison conditions cases, "the quantification of injury is difficult and damages are therefore not an adequate remedy"); *Foster v. Ghosh*, 4 F. Supp. 3d 974, 983 (N.D. Ill. 2013) (granting preliminary injunction to prisoner requiring medical attention; no adequate remedy at law exists because "the consequence of inaction at this stage would be further deteriorated vision in both eyes");

Pocklington, 1986 WL 5748, at *1 (where prisoner faces a risk of rape,"[d]amages are plainly not an adequate remedy for the kind of further indignity with which [he] is threatened").

IV. Plaintiff will suffer greater harm if a preliminary injunction is denied than Defendants will suffer if a preliminary injunction is granted and an injunction is in the public interest.

The balance of harms tips decidedly in Plaintiff's favor. The injunction sought here merely requires that the Defendants do their job: protect Plaintiff from abusive staff and prisoners, and provide adequate treatment for her serious mental health needs. Plaintiff requests transfer to Logan Correctional Center as the best way to protect her from further harm and removal from segregation. Such an injunction would will ensure Plaintiff's health and safety and end her physical and emotional suffering caused by the Defendants. Adhering to this injunction would cause the Defendants minimal harm as "transfers of inmates occur on a daily basis; movement of inmates is normal." *Jones 'EL v. Berge*, 164 F. Supp. 2d 1096, 1123 (W.D. Wis. 2001) (finding that "[t]ransferring five prisoners would not burden the department logistically or financially" and therefore the balance of harms tips in plaintiff's favor); *see also Hoskins*, 2017 WL 951410, at *6 (order transfer of inmate out of Menard to another facility because "the burden placed on Defendants by mandating Plaintiff's transfer is not greater than the risk of irreparable harm to Plaintiff").

Further, to the extent the Defendants attempt to argue that transferring Plaintiff to a women's prison would pose a harm to the other women prisoners, this position is unfounded. Dr. Brown explains that refusing to house Plaintiff in a women's prison simply because she has not yet had sex reassignment surgery "conflicts with all reliable medical literature," and that given her hormone levels, Plaintiff "is functionally chemically castrated." Ex. 2, Dr. Brown 12/1/17 Decl. ¶ 4. In addition, Mr. Pacholke, explains that there is nothing in Plaintiff's record

"that would indicate that she would be a security threat at a women's correctional facility." Ex. 4, Pacholke Report at 6; *see also Hoskins*, 2017 WL 951410, at *6 (rejecting defendants' argument that plaintiff might, in some unspecified way, endanger the public, staff, or other inmates if he is transferred because "the risk of harm to Plaintiff outweighs that speculative concern").

Additionally, removing Plaintiff from segregation and providing her with adequate mental health services pending a resolution on the merits of this case would not cause Defendants any significant harm. If the preliminary injunction is granted but Defendants ultimately prevail in the case, they can return Plaintiff to segregation and stop providing Plaintiff with such treatments. On the other hand, without provisional relief, Plaintiff will continue to deteriorate mentally and suffer from suicidal ideations.

Moreover, it is in the public interest to ensure that Plaintiff's constitutional rights are not violated by correctional officers. *See Hoskins*, 2017 WL 951410, at *7 ("In this case the public interest is best served by ensuring that corrections officers obey the law."); *Jones 'EL*, 164 F. Supp. 2d at 1125 ("Respect for law, particularly by officials responsible for the administration of the State's correctional system, is in itself a matter of the highest public interest.").

V. The Court should waive bond.

Under Federal Rule of Civil Procedure 65(c), district courts have discretion to determine the amount of the bond accompanying a preliminary injunction, and this includes the authority to set a nominal bond. In this case, the Court should waive bond because Plaintiff is indigent, the requested preliminary injunction is in the public interest, and the injunction is necessary to vindicate constitutional rights. *See Pocklington*, 1986 WL 5748, at *2 ("[B]ecause of [a prisoner's] indigent status, no bond under Rule 65(c) is required."); *Davis v. Mineta*, 302 F.3d

1104, 1126 (10th Cir. 2002) ("minimal bond amount should be considered" in public interest case); *Complete Angler, L.L.C. v. City of Clearwater*, 607 F.Supp.2d 1326, 1335 (M.D. Fla. 2009) ("Waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.").[2]

CONCLUSION

For the foregoing reasons, the Court should order an evidentiary hearing on the motion for a preliminary injunction at the earliest possible date and/or enter a preliminary injunction enjoining Defendants to: 1) transfer Plaintiff to Logan Correctional Center, a women's prison; 2) remove Plaintiff from segregation; and 3) provide her with adequate mental health treatment and services.

Respectfully submitted,

DEON "STRAWBERRY" HAMPTON

By: /s/ Vanessa del Valle
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[2] In addition to the general preliminary injunction requirements discussed above, the Prison Litigation Reform Act requires a court to make certain additional findings when granting a preliminary injunction "[i]n any civil action with respect to prison conditions." 18 U.S.C. § 3626(a)(2). Specifically, "[p]reliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." *Id.* In this case, the requested provisional remedy—transferring Plaintiff to Logan, removing her from segregation, and providing adequate mental health care—tracks the very constitutional violations that Plaintiff suffered, and therefore is narrowly tailored to remedy them.

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served the foregoing document upon all persons who have filed appearances in this case via the Court's CM/ECF system on March 8, 2018.

/s/ Vanessa del Valle