

No. 18-7907

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IN THE  
**Supreme Court of the United States**

—————  
TAYLOR JOHNSON,  
DIRECTOR OF CITY OF EMORY  
DEPARTMENT OF CORRECTIONS  
*Petitioner,*

v.

CASEY WILSON  
*Respondent.*

—————  
ON WRIT OF CERTIORARI FOR THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRTEENTH CIRCUIT

—————  
**TRANSCRIPT OF THE RECORD**  
2018 Civil Rights and Civil Liberties Moot Court Competition

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Emory University School of Law  
12<sup>th</sup> Annual Civil Rights and Civil Liberties  
Moot Court Competition  
October 19, 2018 – October 21, 2018  
Atlanta, Georgia

## Instructions

1. Do not cite to any case that was decided after the date in which certiorari was granted in this case (August 13, 2018).
2. Assume, unless otherwise noted in the Record, that all motions, defenses, and appeals were timely filed in accordance with the Federal Rules of Civil Procedure and that both issues may be litigated together in the same case.
3. Assume, for the purposes of your brief, that Petitioner, Taylor Johnson, has standing to bring its claim before the Court, and that Casey Wilson is an appropriate Respondent.
4. Assume that the facts discussed in the “Factual Background” section of the majority opinion are drawn from the record of the lower court, and are thus accurate.
5. Assume that the offense committed by Respondent is not an issue and is not contested. Assume that neither the Petitioner nor the Respondent have ongoing criminal charges pending against them.
6. Assume that there are no procedural issues in the case or the decisions below.
7. Assume there is no current Qualified Immunity analysis under 42 U.S.C. § 1983 for purposes of this competition.
8. Assume throughout your brief-writing and argument that Casey Wilson’s pronouns are she/her/hers.
9. Questions or clarifications should be directed to the Director of the Civil Rights and Civil Liberties Moot Court Competition. All such inquiries should be emailed re: “Attn: 2018 CRAL Director” at [emorymootcourt@gmail.com](mailto:emorymootcourt@gmail.com).

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRTEENTH CIRCUIT**

CASEY WILSON,	)	
	)	
Plaintiff - Appellant,	)	
	)	
v.	)	C.A. No. 18-7907
	)	
TAYLOR JOHNSON,	)	
Director of City of Emory	)	
Department of Corrections,	)	
	)	
Defendant - Appellee,	)	

**OPINION AND ORDER**

JEPSEN, Circuit Judge, delivered the opinion of the court, joined by Circuit Judge PETRAS. MONTRESE, Circuit Judge, filed a dissenting opinion.

**I. INTRODUCTION**

This case involves an action initially brought by Casey Wilson against Taylor Johnson, Director of City of Emory Department of Corrections in her official capacity as a claim under 42 U.S.C. § 1983 for a violation of her 8th Amendment rights. Ms. Wilson sought both injunctive relief and nominal damages. Following Ms. Johnson’s concession that exhaustion of administrative remedies was not contested, both Ms. Wilson and Ms. Johnson filed cross Motions for Summary Judgment.

The District Court found there was no genuine issue of material fact. The Court held there was no violation of Ms. Wilson’s Eighth Amendment rights. Ms. Wilson timely appealed. After Ms. Wilson’s Notice of Appeal was filed, she completed her sentence and was released. The Court must now consider whether nominal damages are sufficient to save this case from mootness and whether the District Court erred in finding no violation of Ms. Wilson’s Eighth Amendment rights.

On review of the record from the court below, this Court now reverses the District Court's grant of summary judgment on the issue of violation of the Eighth Amendment and further holds that the case is not moot as Ms. Wilson pursues nominal damages. For the reasons set forth below, this Court grants summary judgment in favor of Appellant, Ms. Wilson, and remands to the District Court to consider the question of qualified immunity.

## **II. DISCUSSION**

### **A. Facts**

The undisputed facts of the case are as follows. Casey Wilson was diagnosed with Gender Dysphoria ("GD") under the Diagnostic and Statistical Manual of Mental Disorders ("DSM-5") and has been receiving hormone therapy treatment in the form of estrogen, anti-androgens, progestagens (collectively, "hormone therapy treatment") since 2013. In 2015, Ms. Wilson was incidentally arrested during a drug bust for possession of marijuana and was charged under State of Emory § 420. As a result of three previous drug-related charges, Ms. Wilson was convicted to three years in the City of Emory Department of Corrections. Ms. Johnson had knowledge of Ms. Wilson's previous diagnosis and ongoing treatment while serving as Director of the City of Emory Department of Corrections. However, following an examination, the medical staff at the City of Emory Department of Corrections determined Ms. Wilson was not a threat to herself or others and, pursuant to the City of Emory Department of Corrections' policy, instituted and approved by Ms. Johnson, did not provide Ms. Wilson with her hormone therapy treatments, and instead provided her with psychotherapy and antidepressants. Ms. Johnson in her role as the Director of the City of Emory Department of Corrections is the final decision maker and authority for the City of Emory Department of Corrections. The City of Emory Department of Corrections, as the City of Emory is small, often holds inmates for multiple years leading to the institution of many medical-related policies similar to the one relied upon by Ms. Johnson in this case.

Ms. Wilson has been resistant to psychotherapy but has taken antidepressants as prescribed. Ms. Wilson filed a grievance for the refusal of her hormone therapy treatments, which was denied. The denial of the grievance was approved by Ms. Johnson. Ms. Johnson has conceded exhaustion of administrative remedies as an issue. Ms. Wilson's sentence has since elapsed after Ms. Wilson was released after two years for good behavior, and she has resumed hormone therapy.

### **B. Summary Judgment Standard**

Pursuant to Rule 56 (a) of the Federal Rules of Civil Procedure, a court must grant a movant's Motion for Summary Judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.

56 (a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A dispute qualifies as “genuine” when the issue could be resolved in favor of either party. *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). A fact constitutes a “material” fact if it might reasonably affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The facts in the case must be viewed in the light most favorable to the non-moving party. Fed. R. Civ. P. 56 (a). As such, the moving party must satisfy its burden. *Id.* Once the moving party has done so, it is entitled to summary judgment if the non-moving party fails to designate, by affidavits, depositions, answers to interrogatories, or admissions on file, “specific facts showing that there is a genuine issue for trial.” *Celotex Corp.*, 477 U.S. at 324. Therefore, a party who does not have the burden of proof at trial must show the lack of a genuine issue of fact. *Id.* Based on this standard, and because Ms. Wilson failed to meet her burden, summary judgment is granted to the Ms. Johnson.

### **C. Denial of Hormone Therapy Treatments Constitutes a Violation of Ms. Wilson’s Eighth Amendment Rights**

The standard set forth by the Supreme Court in *Estelle v. Gamble*, 429 U.S. 97 (1976) defines the parameters of the Eighth Amendment. *Estelle* examined whether the denial of further medical treatment to a prisoner for complaints about his back violated the Eighth Amendment. *See id.* Under *Estelle*, “to prove an Eighth Amendment violation, a prisoner must satisfy both of two prongs: (1) an objective prong that requires proof of a serious medical need, and (2) a subjective prong that mandates a showing of prison administrators’ deliberate indifference to that need.” *Kosilek v. Spencer*, 774 F.3d 63, 82 (1st Cir. 2014). Though the District Court cites *Kosilek*, it ignores that the First Circuit in that case found a violation of the transgender inmate’s Eighth Amendment rights.

We agree that there can be no denial that GD is a serious medical need that deserves treatment. “Courts have repeatedly held that treatment of a psychiatric or psychological condition may present a ‘serious medical need’ under the *Estelle* formulation. . . . There is no reason to treat transsexualism differently than any other psychiatric disorder. Thus . . . [GD is] a ‘serious medical need.’” *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987). The Cty of Emory Department of Corrections and Ms. Johnson have recognized Ms. Wilson’s need. The only question is whether denial of hormone therapy treatment constitutes deliberate indifference.

We hold such denial does violate the deliberate indifference standard formulated under *Estelle*. To determine whether deliberate indifference is present, we ask whether the actions presented offend “evolving standards of decency.” *Estelle* at 106 (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)). Science is closer now than ever before in understanding the psychology and treatment of GD. As a result, individuals with GD are more widely respected and understood. To deny an individual treatment to what is generally recognized as necessary for transgender individuals flies in the face of modern standards of decency.

In *Farmer v. Brennan*, the Supreme Court mandated that in order to establish deliberate indifference, a prison official must: (1) know the underlying facts that give rise to an inference of a substantial risk of serious harm and must actually draw that inference; and (2) must subsequently disregard the risk. *See* 511 U.S. 825 (1994). At the time of her incarceration, Ms. Wilson had been successfully receiving hormone treatments for around three years. Prison officials were subjectively aware of this when they refused to continue those treatments. Ms. Wilson began suffering the effects of reversal as a result of removal of the hormone therapy treatments and filed a grievance, making officials subjectively aware of the substantial risk of serious harm, in the form of reversal of the effects of Ms. Wilson's previous hormone therapy treatment, and of the risk of worsening Ms. Wilson's GD as a result. Ms. Wilson stated in her grievance that the lack of hormone therapy treatment was causing her much more distress, often manifesting in the form of panic attacks. Ms. Johnson still disregarded Ms. Wilson's need for hormone therapy treatment and approved the denial of her grievances.

Ms. Johnson failed to present evidence that psychotherapy and antidepressants were comparable to hormone therapy treatment despite her contention of sufficiency. The prison officials noted a deterioration in the mental health of Ms. Wilson, yet did not act to prevent further harm. Furthermore, the City of Emory Department of Corrections' policy against the use of hormone therapy unless the inmate attempts to harm themselves or others is a blatant disregard for the individual's needs. *See, e.g., Fields v. Smith*, 653 F.3d 550, 556 (7th Cir. 2011); *De'Lonta v. Angelone*, 330 F.3d 630, 635 (4th Cir. 2003). By following policy instead of treating the needs of Ms. Wilson, Ms. Johnson acted in disregard to the risk of serious harm faced by Ms. Wilson, be it in the form of self-harm or reversal of the effects of hormone therapy treatment.

For the foregoing reasons, we hold that refusal of hormone therapy treatment to Ms. Wilson was a violation of her Eighth Amendment rights.

#### **D. Nominal Damages Save a Case from Mootness**

Circuit Judge Montrese's dissent urges us to dismiss Ms. Wilson's case for mootness. Because this would run counter to Supreme Court precedent and all but one Circuit Court which has addressed this issue, we hold today that Ms. Wilson's prayer for nominal damages is enough to save her case from being declared moot.

Two cases of the Supreme Court are on point here.

The first is *Carey v. Piphus*, 435 U.S. 247 (1978). In *Carey*, students suspended from public elementary and secondary schools brought a claim under Section 1983 for deprivation of procedural due process. *Id.* at 248. The Court reversed the 7<sup>th</sup> Circuit, which held that the deprivation of procedural due process entitled the students to recover "substantial nonpunitive damages even if their suspensions were justified, and even if they do not prove that any other

actual injury was caused by the denial of procedural due process.” *Id.* Instead, the Court held that “in the absence of proof of actual injury, the students are entitled to recover only nominal damages.” *Id.* In coming to this holding, the Court noted that common-law courts “traditionally have vindicated deprivations of certain ‘absolute’ rights that are not shown to have caused actual injury through the award of a nominal sum of money.” *Id.* at 266. The Court looks to approve of this tradition, noting that it “recognizes the importance to organized society that those rights be scrupulously observed” while also respecting “the principle that substantial damages should be awarded only to compensate actual injury.” *Id.*

The second Supreme Court case on this issue is *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299 (1986). In *Stachura*, a seventh grade life sciences teacher was suspended with pay by the school board “based largely on inaccurate rumors about the allegedly sexually explicit nature of the pictures and films” the teacher used to teach human reproduction. *Id.* at 301. The Superintendent advised the teacher not to attend the school board meeting at which he was suspended. *Id.* The teacher filed suit under Section 1983, seeking compensatory and punitive damages for deprivation of procedural due process and violation of his First Amendment right to academic freedom. *Id.* at 301-02. After filing suit, the teacher was reinstated. *Id.* at 301. Though possibly a candidate for a mootness analysis, the Court granted certiorari only to consider whether the 6<sup>th</sup> Circuit was correct in affirming an award of \$266,750 in compensatory damages and \$36,000 in punitive damages. *Id.* at 303-04. The Court reversed and remanded for a new trial limited solely to compensatory damages. *Id.* at 304.

Citing *Carey*, the Court in *Stachura* stated that “when § 1983 plaintiffs seek damages for violations of constitutional rights, the level of damages is ordinarily determined according to principles derived from the common law of torts.” *Id.* at 306. Further, *Carey* “makes clear that the abstract value of a constitutional right may not form the basis for § 1983 damages,” no matter the right. *Id.* at 308. Instead, the Court suggested that nominal damages are the appropriate remedy. *Id.* at 308 n. 11.

Further, at least four of our fellow Circuits have held that nominal damages are enough to save a case from being mooted. *See Bernhardt v. County of Los Angeles*, 279 F.3d 862, 872 (9th Cir. 2002); *Utah Animal Rights Coalition v. Salt Lake City Corp.*, 371 F.3d 1248, 1257 (10th Cir. 2004); *Morgan v. Plano Independent School Dist.*, 589 F.3d 740, 748 (5th Cir. 2009); *Advantage Media, L.L.C. v. City of Eden Prairie*, 456 F.3d 793, 803 (8th Cir. 2006).

Even if there were merit in the 11th Circuit’s holding in *Flanigan’s Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia*, 868 F.3d 1248, 1270 (11th Cir. 2017) (en banc), Ms. Wilson’s case is factually dissimilar. There, the City of Sandy Springs, Georgia unambiguously repealed an ordinance which had banned the sale of sexual devices. *Id.* at 1254. Here, it is not out of the question to suggest that Ms. Wilson would still be deprived of hormone therapy treatment if she had been sentenced to more time in prison. This is far from a case in which a city repeals a statute. Ms. Wilson is a civil rights plaintiff. The ways in which federal courts are called to vindicate her rights “cannot be valued solely in monetary terms.” *Bernhardt*, 279 F.3d at 872 quoting *City of Riverside v. Rivera*, 477 U.S. 561 (1986). Because granting nominal damages is

the least that can be done to vindicate Ms. Wilson for the very real harm to her rights under the Eighth Amendment, we find that her prayer is enough to save her case from mootness.

For the aforementioned reasons, the Court finds that this case is not moot and may proceed on a prayer for nominal damages alone.

### CONCLUSION

We, therefore, reverse the District Court's grant of summary judgment in favor of Ms. Johnson on the Eighth Amendment claim. Despite our holding, the court is mindful of the fact that the issues presented in this case are still evolving, and remands to the District Court to consider the question of qualified immunity.

*So ordered.*

MONTRESE, Circuit Judge, dissenting.

While I would concur in today's opinion as it related to Ms. Wilson's Eighth Amendment claim, I must ultimately dissent as I do not find nominal damages sufficient to continue this case and give this Court license to address this constitutional matter.

Although the majority dealt with mootness almost offhandedly, close analysis of this threshold issue is "essential if federal courts are to function within their constitutional sphere of authority." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). The Supreme Court has long held that it cannot offer advisory opinions, and likewise that "federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them." *Id.* Further, "[e]ven in cases arising in the state courts, the question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction." *Id.*

Ms. Wilson's only remaining prayer before this Court is for nominal damages. A prayer for nominal damages cannot save an otherwise moot case. *Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia*, 868 F.3d 1248, 1270 (11th Cir. 2017) (en banc). I would dismiss this case for want of jurisdiction and vacate the holding of the District Court.

In *Flanigan's*, the City of Sandy Springs prohibited the sale of sexual devices by ordinance. *Id.* at 1253. After an adult bookstore which sold sexual devices sued the city to strike down the ordinance, two residents, Ms. Davenport and Mr. Henry, intervened. *Id.* Davenport and Henry sought to have the statute struck down, though they also requested nominal damages. *Id.* at 1254. The 11th Circuit, en banc, first held that Sandy Springs' repeal of the ordinance



“unambiguously and unanimously” without a “reasonable expectation that the City will return to its previous Ordinance” was enough to render claims for declaratory and injunctive relief moot. *Id.* at 1264. Therefore, the only claims left before the en banc panel were Davenport and Henry’s claims for nominal damages.

So too, here, Ms. Wilson’s claim for injunctive relief are moot. She has been released from custody and there is no “real or immediate threat that [she] will be wronged again.” *See City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). Her only remaining claim is for nominal damages.

The 11th Circuit, in *Flanigan’s*, determined that the remaining prayer for nominal damages was not enough to “save the case from dismissal.” 868 F.3d at 1264. This is because, in that case, the appellants “already won. Their victory, while perhaps not expedient, is comprehensive.” *Id.* There was “nothing of any practical effect left” for the 11th Circuit to grant Davenport and Henry; to grant any relief would have the effect of rendering an advisory opinion on the propriety of a repealed statute. *Id.*

Likewise, Ms. Wilson is no longer subject to the prison policy over the course of her incarceration. In effect, it has been “repealed” for her. What more is to be done for Ms. Wilson? For this Court to weigh in on a policy she is not injured by would be impermissible ground for the American judiciary.

The 11th Circuit even noted that there may be cases where only a prayer for nominal damages is enough, for example when a suit for nominal damages is used as a tool for a different dispute, such as a matter of defining a boundary or protecting a reputation. *Id.* at 1263 n. 12. Further, *Flanigan’s* did not purport to overrule 11th Circuit precedent that “where an alleged constitutional violation presents an otherwise *live* case or controversy” (emphasis added) and the District Court determines that no actual damages were proven, federal courts will retain jurisdiction because of the *possibility* of actual damages upon reconsideration on appeal. *See id.* at 1270 n. 23. Neither case is before the Court today. Ms. Wilson has not prayed for actual damages and is not using nominal damages as an instrumentality to a different legal end.

I recognize that, as the majority notes, some of our other sister Circuits have not come to the same conclusion as I have, but few have taken this question head on. *See, e.g., LeBlanc Sternberg v. Fletcher*, 67 F.3d 412 (2<sup>nd</sup> Cir. 1995) (mootness not at issue); *Bernhardt v. County of Los Angeles*, 279 F.3d 862 (9<sup>th</sup> Cir. 2002) (actual damages alleged in conjunction with nominal damages was sufficient, not nominal damages alone). Furthermore, the Supreme Court has never addressed these issues. Therefore, I believe that the extrapolation of other Circuit

Courts is an incorrect reading of *Carey* and *Stachura*. Because proceeding on a case like this would violate the fundamental principle of separation of powers, I must respectfully

DISSENT.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF EMORY**

CASEY WILSON	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 18-7907
	)	
TAYLOR JOHNSON,	)	
Director of City of Emory	)	
Department of Corrections,	)	
	)	
Defendant.	)	

**OPINION AND ORDER GRANTING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

Defendant, Taylor Johnson, has moved this Court for an order granting summary judgment pursuant to Fed.R.Civ.P. 12(b)(6), on the ground that there are no material facts in dispute and defendant is entitled to judgment as a matter of law. Plaintiff alleges a claim under 42 U.S.C. § 1983 pertaining to a violation of the Plaintiff’s Eighth Amendment rights. Plaintiff argues in her Statements of Facts and Authorities that the City of Emory Department of Corrections’ and Ms. Johnson’s refusal of hormone therapy treatment in the form of estrogen, anti-androgens, progestagens (collectively, “hormone therapy treatment”) and prescription of psychotherapy treatment violates her Eighth Amendment rights. Defendant argues in its Statement of Facts and Authorities that its prescription of antidepressants and psychotherapy given the Plaintiff’s current mental state is sufficient. For the following reasons, we find no Eighth Amendment violation.

This Thirteenth Circuit has not yet considered whether denial of hormone therapy treatment constitutes an Eighth Amendment violation, so we look to the Supreme Court and our sister circuit courts for guidance, specifically *Estelle v. Gamble*, which is the Supreme Court’s defining case regarding the Eighth Amendment. 429 U.S. 97 (1976). *Estelle* examined whether the denial of further medical treatment to a prisoner for complaints about his back violated the prisoner’s Eighth Amendment rights. *See id.* Under *Estelle*, “to prove an Eighth Amendment violation, a prisoner must satisfy both of two prongs: (1) an objective prong that requires proof of a serious medical need, and (2) a subjective prong that mandates a showing of prison administrators’ deliberate indifference to that need.” *Kosilek v. Spencer*, 774 F.3d 63, 82 (1st Cir. 2014). Defendant has conceded that GD is a serious medical issue.

Before this court is whether Defendant exhibited deliberate indifference. In considering deliberate indifference, safety factors may be considered. *See id.* at 83. During direct testimony, Defendant stated that City of Emory Department of Corrections policy was created with safety in mind. Defendant in her role as the Director of the City of Emory Department of Corrections' (the "Facility's") final decision maker instituted the policy in 2010 following budget cuts to the Facility and a growing need to protect inmates from internal attacks at the Facility. The Facility, as the City of Emory is small, rural, and a fair distance away from larger prisons, often holds inmates for multiple years leading to the institution of many medical-related policies similar to the one relied upon by the Defendant in this case. Defendant testified that all inmates are individually examined upon arrival and their medical records reviewed, and while policy sets the guidelines for the physicians, all decisions made are specific and personal to the inmate they examine. Defendant further testified that because of Plaintiff's small size, she perceived a greater risk to Defendant to attacks from fellow inmates.

While reversal might harm the inmate's GD, circuits have recognized that if hormone therapy were given, "a feminine appearance would endanger [the inmate]," *Battista v. Clarke*, 645 F.3d 449, 451 (1st Cir. 2011). As a result, the Defendant found it was in the interest of the inmate's safety to provide psychotherapy and antidepressants to counter any potential harm created by lack of a normative feminine appearance, in accordance with the Facility's policy. Additionally, the decision to deny Plaintiff hormone therapy treatment was not made based on policy alone, but after examination of the Plaintiff's mental state and constant monitoring.

In *Estelle*, the Supreme Court cautioned courts to bear in mind the difference between claims of inadequate medical care and claims of deliberate indifference, for only the latter raise constitutional questions. *Estelle*, 429 U.S. at 105. Plaintiff has no right to the best medical care, only care sufficient to escape the deliberate indifference standard. Many circuit courts have found that "when inmates with serious mental illness are effectively prevented from being diagnosed and treated by qualified professionals, the system of care does not meet the constitutional requirements set forth by *Estelle v. Gamble*. . . ." *Inmates of Allegheny Cty. Jail v. Pierce*, 612 F.2d 754, 763 (3d Cir. 1979). However, Plaintiff's mental illnesses have been diagnosed and are being treated by qualified professionals. As such, no deliberate indifference can be found. In fact, the medical staff have repeatedly encouraged Plaintiff to join in psychotherapy sessions, which Plaintiff has repeatedly denied.

Furthermore, Plaintiff has exhibited no instances of self-harm. The most comprehensive articulation regarding the application of the deliberate indifference standard was expounded in *Farmer v. Brennan*. In *Farmer*, the Court mandated that a prisoner is required to show a "substantial risk of serious harm" objectively exists and that prison officials acted with a sufficiently culpable state of mind, that is, "deliberate indifference" to a prisoner's health or safety—which is equivalent to criminal recklessness. 511 U.S. 825, 828 (1994). While reversal of the effects of hormone therapy treatment is unfortunate, it is not a "substantial risk of serious harm." Of the cases, in which hormone therapy treatment is necessary, often the inmate has

resorted to extreme and incredibly dangerous actions of attempted self-harm. *See De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003) (holding the inmate's "need for protection against continued self-mutilation constitutes a serious medical need to which prison officials may not be deliberately indifferent."). *See also Kosilek v. Spencer*, 774 F.3d 63, 69 (1st Cir. 2014); *Battista v. Clarke*, 645 F.3d 449, 450 (1st Cir. 2011). No such situation exists here. While Plaintiff has alleged a worsening mental state, the medical staff has, again, repeatedly encouraged Plaintiff to join in psychotherapy sessions, which Plaintiff has repeatedly denied.

These are not the actions of "deliberate indifference" or "criminal recklessness." Therefore, upon consideration of the Statements of Points and Authorities in Support of Defendant's Motion for Summary Judgment, Statement of Undisputed Material Facts, filed herewith, and the oppositions filed thereto,

IT IS ORDERED that Defendant's motion for summary judgment is GRANTED.

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Julie Green  
United States District Judge

EXHIBIT 1

**EMORY CRIMINAL CODE § 420**

- (a) A person commits the crime of unlawful possession of marijuana if, except as otherwise authorized, the person possesses marijuana for their personal use only.
- (b) The first offense for unlawful possession of marijuana carries a maximum penalty of \$1000 or up to 30 days in prison.
- (c) Second or subsequent offenses for unlawful possession of marijuana carry a maximum penalty of up to five years in prison.

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF EMORY**

CASEY WILSON	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 18-7907
	)	
TAYLOR JOHNSON,	)	
Director of City of Emory	)	
Department of Corrections,	)	
	)	
Defendant.	)	

**DECLARATION OF PHYSICIAN**

To Whom It May Concern:

My name is Dr. Emma Galen, MD, and I am a licensed physician in the state of Emory. I am the primary care physician for Casey Wilson, and I have had a doctor/patient relationship with her since 2010. I attest that Casey met the requirements for a diagnosis of Gender Dysphoria under the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), and I diagnosed Casey with Gender Dysphoria in June 2013.

Shortly after diagnosis, I prescribed Casey estrogen, anti-androgens, and progestogens (collectively, "hormone therapy treatment") for the purpose of medical gender transition in July 2013. In addition, after these prescriptions were given, I observed noticeable favorable changes in Casey's mental health.

I originally referred Casey to a psychotherapist in April 2012, and it is my understanding that Casey saw a psychotherapist on a once-a-month basis both prior to her prescription and during the initial period of time when she was taking hormones. However, around November 2014, Casey stopped seeing her psychotherapist, and instead made me aware that she was self-medicating with the use of marijuana after she was arrested for possession. Based on regular

appointments and checkups in my office, Casey's mental health remained relatively constant throughout the rest of 2014 and 2015.

I attest that I have not seen Casey Wilson as a patient since her conviction and placement in the City of Emory Department of Corrections, following her fourth conviction for possession of marijuana. Please feel free to contact me with any questions or concerns regarding my treatment of this patient.

Sworn to on this 3<sup>rd</sup> day of October, 2015.

Sincerely,

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Dr. Emma Galen, MD  
Emory Regional Clinic

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EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF EMORY**

CASEY WILSON	)	
	)	
Plaintiff,	)	
	)	
	)	C.A. No. 18-7907
v.	)	
	)	
TAYLOR JOHNSON,	)	
Director of City of Emory	)	
Department of Corrections,	)	
	)	
Defendant.	)	

**Declaration of Physician**

To Whom It May Concern:

My name is Dr. John Martin, MD, and I am a licensed physician in the state of Emory. I am the head physician at the City of Emory Department of Corrections. I examined inmate Casey Wilson in July of 2015 after she arrived at the City of Emory Department of Corrections in addition to reviewing Casey Wilson’s medical files that were provided to me. I attest that I agreed with Casey Wilson’s Gender Dysphoria diagnosis under the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

Though Casey was receiving estrogen, anti-androgens, and progestogens (collectively, “hormone therapy treatment”) for the purpose of medical gender transition, I recommended replacing her hormone therapy treatment with antidepressants and psychotherapy. I did not perceive Casey to be a threat to herself as she showed no signs of self-harm or related tendencies, and pursuant to the City of Emory Department of Corrections’ policy, prescribed antidepressants and psychotherapy. The collective environment at the City of Emory Department of Corrections is not the most welcoming to inmates who do not display masculinity, as I have personally observed from my years of treating inmates who were attacked for their more docile or feminine

natures. I believed it to be in Casey's best interest to discontinue hormone therapy treatment related to this concern.

I continued to meet with Casey every other month to monitor her mental state. Casey refused to attend the psychotherapy sessions I had prescribed, or would go but not communicate. Casey consequently complained of worsening dysphoria and increased anxiety as a result of the hormone therapy treatment wearing off and reversal occurring. I encouraged Casey to make use of her psychotherapy sessions to address these anxieties. Casey remained adamant that she wanted to continue her hormone therapy treatments, even after I explained that I could not recommend them. Casey twice informed me, once during the fourth month of incarceration and once during the sixth month of incarceration, that she was contemplating self-harm. I continued to encourage her to attend and make use of her psychotherapy sessions. Casey did continue to take the prescribed antidepressants and no self-harm actually occurred.

Taylor Johnson, Director for the City of Emory Department of Corrections was aware of the treatment being given to Casey and Casey's subsequent appointments with me. All of these appointments and treatment recommendations were approved by Ms. Johnson.

Please feel free to contact me with any questions or concerns regarding my treatment of this patient.

Sworn to on this 19<sup>th</sup> day of February, 2016.

Sincerely,

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Dr. John Marin, MD  
City of Emory Department of Corrections

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EXHIBIT 4

**CITY OF EMORY DEPARTMENT OF CORRECTIONS**

**Section: 06**

**Guideline Policies for Medical Treatment of  
Inmates**

**06.18 Medical Treatment of Gender Dysphoria**

Gender dysphoria, formerly called gender identity disorder, involves a conflict between a person's physical or assigned gender and the gender with which he/she/they identify. People with gender dysphoria may be very uncomfortable with the gender they were assigned, sometimes described as being uncomfortable with their body (particularly developments during puberty) or being uncomfortable with the expected roles of their assigned gender.

People with gender dysphoria may often experience significant distress and/or problems functioning associated with this conflict between the way they feel and think of themselves (referred to as experienced or expressed gender) and their physical or assigned gender.

The gender conflict affects people in different ways. It can change the way a person wants to express their gender and can influence behavior, dress and self-image. Some people may cross-dress, some may want to socially transition, others may want to medically transition with gender reassignment surgery and/or hormone treatment. Socially transitioning primarily involves transitioning into the affirmed gender's pronouns and bathrooms.

People with gender dysphoria may allow themselves to express their true selves and may openly want to be affirmed in their gender identity. They may use clothes and hairstyles and adopt a new first name of their experienced gender. Similarly, children with gender dysphoria may express the wish to be of the opposite gender and may assert they are (or will grow up to be) of the opposite gender. They prefer, or demand, clothing, hairstyles and to be called a name of the opposite gender. (Medical transition is only relevant at and after the onset of puberty.)

The City of Emory recognizes gender dysphoria as a mental illness and recommends allowing individuals diagnosed with gender dysphoria to cross-dress as desired. However, due to limited funding, the City does not recommend allowing hormone therapy treatment unless an individual has displayed suicidal or self-mutilation tendencies that can only be alleviated by hormone therapy treatment. Under no circumstance shall the City approve gender reassignment surgery.

Approved 09/29/2010  
Director Taylor Johnson

EXHIBIT 5

**CITY OF EMORY DEPARTMENT OF CORRECTIONS**

**STATEMENT OF AUTHENTICITY  
OF INMATE INSTITUTIONAL RECORDS**

The attached documentation is sworn to be true and exact copy of the institutional records belonging to:

Inmate Name: Casey Wilson

State ID No.: 123456

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City of Emory Department of Corrections  
Staff Signature

Administrative Assistant 3  
Title

Date: August 5, 2015



CITY OF EMORY DEPARTMENT OF CORRECTIONS

STATE OF EMORY

Offender Personal Data Summary



Wilson, Casey J

EDC ID: 123456

Supervision level: Normal

Status: Inmate

Alias Names: None

DOB: 08/16/1993

Race/Sex: Caucasian/M

Height: 5'3"

Weight: 150

Eyes/Hair: Brown/Black

SSN: 123-45-6789

DL#: 7654321

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Validated Security Threat Group: N/A

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Recorded Offenses: Poss. Marijuana – First Offense; Poss. Marijuana – Second Offense; Poss. Marijuana – Third Offense; Poss. Marijuana – Fourth Offense (currently serving)

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CITY OF EMORY DEPARTMENT OF CORRECTIONS  
 STATE OF EMORY  
 Offender Grievance  
 Wilson, Casey J – EDC ID 123456  
 Grievance #1234 – Status: Denied



**GRIEVANCE DETAIL:**

Facility Grievance Against: City of Emory Department of Corrections Medical  
 Grievance Date: 06/19/2015  
 Grievance Type: Formal  
 Form Received: 06/30/2015  
 Grievance Category: Medical

**PERSONS INVOLVED:** Dr. John Martin, treating physician; Taylor Johnson, Director

**INCIDENTS INVOLVED:** No Incident Involved

**INVESTIGATION RESULTS:**

Formal Process Initiated: 07/02/2015  
 Institution Response Due: 07/12/2015  
 Grievance Coordinator: Fisher, Tom  
 Date Coordinator Received: 07/10/2015  
 Investigator: Busy, Bob  
 Investigator Response Due: 07/20/2015  
 Investigator Response Date: 07/19/2015  
 Recommendation Status: Denied

Grievance Coordinator Comments:

THE MEDICAL STAFF HAVE NOT IGNORED INMATE’S REQUESTS AND HAVE ADEQUATELY TREATED INMATE. I RECOMMEND THIS GRIEVANCE BE DENIED.

**GRIEVANCE CLOSURE:** Offender Notified Date: 08/01/2015

IN THE  
**Supreme Court of the United States**

—————  
TAYLOR JOHNSON,  
DIRECTOR OF CITY OF EMORY  
DEPARTMENT OF CORRECTIONS  
*Petitioner,*  
v.

CASEY WILSON  
*Respondent.*  
—————

ON WRIT OF CERTIORARI FOR THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRTEENTH CIRCUIT

Petition for writ of certiorari to the Supreme Court of the United States is granted, limited to the following questions:

1. Whether nominal damages are sufficient to continue litigation and keep the status of the case from becoming moot.
2. Whether denial of hormone therapy treatment constituted a violation of the Eighth Amendment.