

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

DEON HAMPTON (M15934),	)	
	)	
Plaintiff,	)	
	)	Case No. 18-cv-550
v.	)	
	)	Judge Nancy J. Rosenstengel
ILLINOIS DEPARTMENT OF	)	
CORRECTIONS DIRECTOR JOHN	)	
BALDWIN, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**PLAINTIFF’S RENEWED MOTION AND MEMORANDUM IN SUPPORT OF
A PRELIMINARY INJUNCTION**

Plaintiff is a transgender woman currently housed in segregation in Dixon 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 Dixon, Plaintiff was at Lawrence Correctional Center, Menard Correctional Center, and Pinckneyville Correctional Center; she was constantly sexually and physically abused by officers and other prisoners at all these institutions. When she reported this abuse, the officers at these institutions retaliated by filing false disciplinary charges against her that resulted in Plaintiff’s placement in segregation for approximately one year. Although Plaintiff was released from segregation at the end of May, Dixon staff placed her back in segregation one month later based on two false and retaliatory disciplinary tickets; Plaintiff does not know when she will be released from segregation.

Plaintiff was transferred from Lawrence to Dixon on March 16, 2018, after she filed the instant lawsuit and her first Motion for a Preliminary Injunction seeking emergency relief from conditions arising out of her placement in Lawrence, namely unconstitutional physical and sexual violence, unlawful discrimination, denial of mental health care, and unlawful placement in segregation. When the Defendants' initially transferred Plaintiff to Dixon, they began providing her some mental health treatment in segregation. Then, on May 25, 2018, the Defendants released Plaintiff from segregation, housed her in general population, and added group therapy to her mental health treatment plan. Because Plaintiff was no longer experiencing a mental health crisis, she withdrew her Motion for a Preliminary Injunction without prejudice on June 8, 2018.

Immediately upon withdrawing her Motion for Preliminary Injunction, staff at Dixon began treating Plaintiff much worse, placing her in danger and causing the rapid deterioration of her mental health. Dixon staff escalated their verbal harassment based on her gender identity, continuously calling her "faggot," "fag," "it," and "he-she," among other derogatory terms. Dixon staff have made it clear that they will not protect Plaintiff from other prisoners who wish to harm her due to her gender identity. Staff failed to protect Plaintiff from one prisoner who sexually assaulted Plaintiff by groping her breasts and exposing himself. They also failed to protect Plaintiff from another prison who for weeks sexually harassed and assaulted her by kissing her and groping her private parts; this prison also threatened to rape her and cause her physical harm. When Plaintiff has attempted to speak up about the mistreatment she is enduring at the hands of staff and other prisoners, Dixon staff have chastised her for filing too many complaints.

On June 26, 2018, Plaintiff received two false, retaliatory disciplinary tickets after officers repeatedly maced her in the face, resulting in her placement back in segregation. At that point, Plaintiff lost all hope and attempted suicide by hanging that same day. Staff found her unconscious and placed her on crisis watch. When she tried to come off crisis watch, she had a panic attack and was found trying to hang herself again. She was put back on crisis watch until July 2, 2018, when she was returned to segregation. Plaintiff continues to feel unstable and experience suicidal ideations. She fears that in segregation, she will try to hurt herself again, and that in general population, she will be hurt by other prisoners and staff. Plaintiff has already faced serious physical and emotional injury since arriving at Dixon and will continue to face a grave risk of serious injury if she remains there.

For these reasons, and pursuant to Federal Rule of Civil Procedure 65, Plaintiff seeks a preliminary injunction ordering Defendants Director John Baldwin and Warden John Vargas in their official capacities to: 1) transfer Plaintiff to Logan Correctional Center, a women's prison; and 2) remove Plaintiff from segregation.

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 discriminating against her on the basis of her gender identity and housing her in a men's prison, and (ii) her rights under the Eighth Amendment by failing to protect her from sexual and physical assault 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, and she will continue to decompensate in segregation; (3) there is no adequate remedy at law—only an injunction will ensure that Plaintiff is transferred to a women’s prison and removed from segregation; and (4) ensuring that Defendants appropriately house Plaintiff in general population of a women’s facility and protect her from harm 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.¹

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

¹ Prior to filing the amended complaint and this motion, undersigned counsel attempted to negotiate a resolution of Plaintiff’s claims with counsel for IDOC and Dixon Correctional Center. Undersigned counsel first initiated contact with counsel for IDOC and Dixon by sending an emergency grievance on Plaintiff’s behalf on June 29, 2018. Since that time, efforts to resolve Plaintiff’s claims have been unsuccessful, thus necessitating the request for emergency relief.

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 and Eighth Amendment claims.

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 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., Doe v. Massachusetts Dep't of Correction, et al.*, No. 17-12255-RGS, 2018 WL 2994403, at *9 (D. Mass. June 14, 2018) ("The trend in recent cases is to apply heightened scrutiny to classifications based on transgender status." (collecting cases)); *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. 1, 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. 2, 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 Massachusetts Dep't of Correction*, 2018 WL 2994403, at *9 (refusing to dismiss transgender woman prisoner's equal protection claim because "[t]he court agrees with Doe that for present purposes the DOC has not met its burden of demonstrating that housing her and other similarly-situated transgender prisoners in facilities that correspond to their birth sex serves an important governmental interest"); *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 Equal Protection Clause by constantly sexually harassing her.

Defendants have also intentionally discriminated against Plaintiff by subjecting her to constant verbal sexual harassment, insults, threats, and intimidation that male prisoners do not endure due to her transgender status. It is well settled that sexual harassment is a form of gender discrimination proscribed by the Equal Protection Clause. *See, e.g., Locke v. Haessig*, 788 F.3d 662, 667 (7th Cir. 2015) (finding that it was clearly established that "sexual harassment by a state actor under color of state law violated the Equal Protection Clause and was actionable under § 1983"); *Hickman v. Laskodi*, 45 Fed. App'x 451, 455 (6th Cir. 2002) ("This court made clear long before [the date of the incident] that sexual harassment by government official violates the

Equal Protection Clause.”); *Hayut v. State Univ. of N.Y.*, 352 F.3d 733, 743-49 (2d Cir. 2003) (denying summary judgement on student’s claim that professor violated her rights under the Equal Protection Clause by sexually harassing her). To succeed on a sexual harassment claim, Plaintiff must establish that (1) the harassment was intentional and based on sex and (2) the harassment was “sufficiently severe or pervasive.” *Trautvetter v. Quick*, 916 F.2d 1140, 1149 (7th Cir. 1990); *see also Adair v. Hunter*, 236 F. Supp. 3d 1034, 140 (E.D. Tenn. 2017) (While isolated incidents of verbal harassment do not rise to the level of constitutional violations, “where, as here, a plaintiff alleges ongoing harassment, the equal protection clause applies.”).

Plaintiff satisfies both prongs. Since arriving at Dixon and particularly after withdrawing her first Motion for a Preliminary Injunction, the Defendants have constantly harassed her based on her gender identity. On a daily basis, they call her derogatory names such as “fag,” “faggot,” “it,” “he-she,” and more. One female staff member told Plaintiff she is not a real woman. The sexual harassment is so severe and pervasive that it rises to the level of a constitutional violation. *See Owens v. Ragland*, 313 F. Supp. 2d 939, 944-47 (W.D. Wis. 2004) (denying summary judgement on plaintiff’s equal protection claim where city official made sexually explicit comments and proposals to plaintiff); *Joyner v. Snyder*, No. 06-3062, 2007 WL 401269, at *2 (C.D. Ill. Feb. 1, 2007) (finding that prisoner sufficiently stated an equal protection violation where prisoner alleged that he was harassed and discriminated against because of his sexual orientation).

C. 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 Dixon 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 men's prisons—they have actual knowledge of the risk of harm by nature of their participation in Plaintiff's prior lawsuit, Plaintiff's grievances and PREA complaints, and prior Internal Affairs investigations.

Second, Defendants disregarded the risk by failing to take reasonable measures to protect Plaintiff from abuse at the hands of other prisoners. The Defendants failed to protect Plaintiff from two prisoners at Dixon: one who sexually assaulted Plaintiff on the yard and exposed himself; another who, over the course of weeks, repeatedly sexually assaulted Plaintiff and threatened her with rape and physical harm. Neither of these prisoners were punished for harming Plaintiff. See *Farmer*, 511 U.S. at 845 (“one does not have to await the consummation of threatened injury to obtain preventive relief” (citation omitted)); *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”); *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).

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 was subjected to segregation for one year, released for one month, and then placed back in segregation. 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 a total of six times (four times at Lawrence and two times at Dixon).

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 Dixon that she is in emotional distress because of her placement in segregation, and she has attempted suicide two times at Dixon; she attempted suicide four times at Lawrence. Yet, IDOC continues to house her in segregation. 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.

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 who wish to harm her. The Defendants already allowed two prisoners to sexually assault and threaten her. *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. She has been forced to endure constant sexual and physical abuse at various men’s facilities, including Dixon, which has taken a toll on her mental health. 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. 1, 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. 1, 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 multiple times (including two times at Dixon) and there is a serious risk that she will continue to have suicidal ideations.

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

Money will not make Plaintiff whole or protect her from physical and emotional abuse. Only an order from this Court will accomplish this. *See Flower Cab Co. v. Petite*, 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 house her appropriately. 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 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"). Furthermore, without this injunction, Defendants will likely continue to pass Plaintiff from male institution to male institution like a hot potato, exacting greater cost to both them and 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. 1, 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. 2, 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 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. 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; and 2) remove Plaintiff from segregation.

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 and removing her from segregation—tracks the very constitutional violations that Plaintiff suffered, and therefore is narrowly tailored to remedy them.

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 July 17, 2018.

/s/ Vanessa del Valle