

Edmo v. Corizon: Gender Reassignment Surgery in State Prison

Case Summary
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Imagine having a headache. This headache is always there, lingering in the shadows and never fully subsiding. For some, this headache is mild but persistent, while for others, it is throbbing and severe. Not only that, but turning your neck in the wrong direction causes sudden, shooting pain. This is the way one individual felt she could best describe what it was like living with gender dysphoria. A woman explained that she lives with constant distress, feeling as though something is always off. For her, this feeling is mild but persistent. However, certain experiences make her feel as though she is trapped inside a body that does not match the way she mentally experiences her gender. These encounters can suddenly make her distress much, much worse.

This is what it was like for Adree Edmo, an individual that likely fell on the more severe side of gender dysphoria.¹ The distress felt by Edmo had been so severe at times that on two separate occasions she attempted self-castration in the hopes of relieving some of her symptoms.² Gender Dysphoria (GD) is distress that results from a difference between an individual's experienced or expressed gender and the gender that the individual was assigned at birth.³ The severity of GD can vary greatly, and an appropriate treatment option is often determined by evaluating the amount of distress that is caused by the GD.⁴ Treatment for many, involves only cross-sex hormone therapy, however, those with more severe distress often require gender confirmation surgery (also known as sex reassignment surgery) in order to reduce levels of distress experienced by GD.⁵ The differences in treatment based on the severity of GD is one of the greatest sources of controversy in this case.

Another complication in Edmo's case arose in the fact that she is currently an inmate housed by Idaho Department of Corrections.⁶ As an inmate, Edmo argued that her GD is so severe that she required gender confirmation surgery (GCS), and that denial of this surgery amounted to an Eighth Amendment violation by treating her in a way that amounts to cruel and unusual punishment.⁷ On the other hand, the state raised the question as to whether Edmo's GD

¹ *Edmo v. Corizon, Inc.*, 935 F.3d 757, 766 (9th Cir. 2019).

² *Id.* at 766, 774.

³ AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 451–59 (5th ed. 2013).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 767.

⁷ Plaintiff-Appellee's Answering Brief at 3, *Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019) (No. 19-35017); *Edmo*, 935 F.3d at 766.

is severe enough to even warrant the surgery in the first place.⁸ Both parties utilized the World Professional Association for Transgender Health’s (WPATH) “Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People” to determine whether the surgery was necessary for Edmo.⁹ In this case, the state did not attempt to argue that GCS would always be medically unnecessary, instead the state took the stance that Edmo did not meet the WPATH standards to be eligible for the surgery in the first place.¹⁰ The standards set forth by WPATH are flexible in their application, but generally suggest that a person being evaluated for GCS meet the following criteria:

1. Persistent, well-documented gender dysphoria;
2. Capacity to make a fully informed decision and to consent for treatment;
3. Age of majority in a given country;
4. If significant medical or mental health concerns are present, they must be well controlled;
5. 12 continuous months of hormone therapy as appropriate to the patient’s gender goals (unless hormones are not clinically indicated for the individual).
6. 12 continuous months of living in a gender role that is congruent with their gender identity.¹¹

In addressing the WPATH criteria, Edmo argued she met the requirements for GCS.¹² On the other hand, the state argued that Edmo had not met the fourth criteria because she had co-existing mental concerns that were not well controlled (such as Major Depressive Disorder and Alcohol Use Disorder).¹³ Additionally, the state argued that the sixth criteria had not been met because Edmo had been incarcerated for the entire duration of her GD diagnosis.¹⁴ The state presented this argument saying it “believed it would be in [Edmo’s] best interest for her to first experience living as a woman in her real-world social network – family and friends – outside the artificial environment of a prison.”¹⁵ Ultimately, the 9th Circuit primarily ruled in favor of Edmo, upholding the lower courts’ decisions, and ordered the state to provide Edmo with GCS.¹⁶ In reaching this decision, the court created a circuit split.¹⁷

⁸ Defendant-Appellants’ Joint Opening Brief at 10-16, *Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019) (No. 19-35017).

⁹ See Plaintiff-Appellee’s Answering Brief at 3, *Edmo*, 935 F.3d 757 (No. 19-35017); see also Defendant-Appellants’ Joint Opening Brief at 10-16, *Edmo, Inc.*, 935 F.3d 757 (No. 19-35017).

¹⁰ See Defendant-Appellants’ Joint Opening Brief at 10-16, *Edmo, Inc.*, 935 F.3d 757 (No. 19-35017).

¹¹ WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, STANDARDS OF CARE FOR THE HEALTH OF TRANSEXUAL, TRANSGENDER AND GENDER-NONCONFORMING PEOPLE 59–60 (7th rev. 2012).

¹² See Plaintiff-Appellee’s Answering Brief at 7–13, *Edmo*, 935 F.3d 757 (No. 19-35017).

¹³ See Defendant-Appellants’ Joint Opening Brief at 14–16, *Edmo, Inc.*, 935 F.3d 757 (No. 19-35017).

¹⁴ Plaintiff-Appellee’s Answering Brief at 7 n.1, 12, *Edmo*, 935 F.3d 757 (No. 19-35017).

¹⁵ Defendant-Appellants’ Joint Opening Brief at 15, *Edmo, Inc.*, 935 F.3d 757 (No. 19-35017).

¹⁶ *Edmo*, 935 F.3d at 803.

¹⁷ *Edmo v. Corizon, Inc.*, 949 F.3d 489 (9th Cir. 2020). The panel acknowledged the split with the Fifth Circuit’s opinion in *Gibson v. Collier*, 920 F.3d 212 (5th Cir. 2019), but distinguished the First Circuit’s en ban opinion in *Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014). *Id.* at 29. The panel did not address the Tenth Circuit’s opinion in *Lamb v. Norwood*, 899 F.3d 1159 (10th Cir. 2018). *Id.*; see also Tommy Simmons, Idaho Transgender Prison Receives First Presurgical Treatment; Case’s Future in

Over the course of the litigation, Idaho Governor Brad Little openly criticized the Ninth Circuit rulings and stated that he planned to appeal the case to the United States Supreme Court.¹⁸ Governor Little's dissatisfaction was embedded in theories that Idaho taxpayers should not be compelled to pay for Edmo's operation when it conflicted with opinions of medical health experts, and the Court's decision was both in direct confliction with its sister circuits and exceeded the scope of the Eight Amendment.¹⁹

Two weeks after the Ninth Circuit's decisions, the state submitted a Petition For Rehearing *En Banc*.²⁰ On February 10, 2020, the Ninth Circuit denied the Petition for Rehearing *En Banc*, but with several judges dissenting.²¹ In affirming its original decision, the Ninth Circuit became the first federal court of appeals to hold that the Eight Amendment mandates that a State is prohibited from refusing to finance and provide for a sex reassignment surgery for inmates currently under the care and custody of a state's Department of Corrections.²²

After the Ninth Circuit denied the rehearing *en banc*, it came as no surprise when the state attempted again to prevent Edmo's sex-reassignment surgery.²³ On May 6, 2020, under the guidance of Governor Little, the state filed two separate petitions with the United States Supreme Court.²⁴ The first being a Writ of Certiorari to United States Supreme Court.²⁵ The second being an Application For Reinstatement of Stay Issued by the Ninth Circuit Pending Disposition of A Petition for Writ of Certiorari, that was specifically addressed to Justice Kagan.²⁶

Limbo, POST REGISTER (Dec. 3, 2019), https://www.postregister.com/news/local/idaho-transgender-prisoner-receives-first-presurgical-treatment-case-s-future/article_ba2d807a-c769-550f-866a-6bae5cb7008c.html (recognizing the significant influence that a circuit split creates if there is a possibility of the United States Supreme Court granting Certiorari).

¹⁸ Court Says Idaho Must Provide Gender Confirmation Surgery to Transgender Inmate, NPR (August 23, 2019, 3:59PM), <https://www.npr.org/2019/08/23/753788697/court-says-idaho-must-provide-gender-confirmation-surgery-to-transgender-inmate>; see also 9th Circuit rejects rehearing request from Idaho in Edmo case, Gov. Little vows to appeal to US Supreme Court, IdahoPress.com (Feb. 11, 2020), https://www.idahopress.com/eyeonboise/9th-circuit-rejects-rehearing-request-from-idaho-in-edmo-case-gov-little-vows-appeal-to/article_8959412f-9984-5122-aeb0-1c1fa646e3ae.html.

¹⁹ *Id.*

²⁰ Petition for Rehearing *En Banc* at 16, Edmo, 935 F.3d 757 (No. 19-35017).

²¹ 949 F.3d at 489.

²² *Id.* at 490.

²³ Gov. Little appeals to U.S. Supreme Court to stop transgender inmate's sex reassignment surgery, Idaho.gov (Thursday, May 7, 2020), <https://gov.idaho.gov/pressrelease/gov-little-appeals-to-u-s-supreme-court-to-stop-transgender-inmate-s-sex-reassignment-surgery/>.

²⁴ *Id.*

²⁵ Little appeals to U.S. Supreme Court to stop transgender inmate's sex-reassignment surgery, EastIdahoNews.com (May 7, 2020, 4:03PM), <https://www.eastidahonews.com/2020/05/little-appeals-to-u-s-supreme-court-to-stop-transgender-inmates-sex-reassignment-surgery/>.

²⁶ *Idaho Department of Correction v. Edmo*, SCOTUSBLOG <https://www.scotusblog.com/case-files/cases/idaho-department-of-correction-v-edmo/> (19A1038). (last visited Oct. 20, 2020).

On May 21, 2020, the United States Supreme Court effectively cleared the way for Edmo's sex reassignment surgery by denying the State's request to pause Edmo's operation.²⁷ Although, Justice Thomas and Justice Alito would have granted the state's request that the surgery be put on hold.²⁸

On July 10, 2020, Edmo became the second²⁹ incarcerated individual to receive gender transformation surgery while in prison.³⁰

Then, on October 13, 2020, the United States Supreme Court denied the State's Writ of Certiorari, effectively ending a three-year court battle against the State of Idaho.³¹

At this time, Ms. Edmo is incarcerated at the Pocatello Woman's Correctional Center, Medical, with a scheduled release date of July 3, 2021.³²

²⁷ Adam Liptak, *Idaho Dep't of Correction v. Edmo*, 140 S. Ct. 2800, 206 L. Ed. 2d 961 (2020); *see also* Supreme Court Won't Block Surgery for Transgender Inmate, *NEW YORK TIMES*, (May 21, 2020), <https://www.nytimes.com/2020/05/21/us/supreme-court-surgery-transgender-inmate.html>.

²⁸ *Id.* at 2800, 206 L. Ed. 2d 961.

²⁹ In a similar California case, a federal judge had ordered the state to provide an inmate with GCS, however, shortly before the inmate was scheduled for the surgery, the inmate was released on parole making her unable to receive the court-ordered surgery. *See* Transgender California Inmate Wins Parol, *NEW YORK TIMES*, (Aug. 8, 2015), <https://www.nytimes.com/2015/08/09/us/transgender-california-inmate-wins-parole.html>.

³⁰ Idaho Transgender inmate becomes 2nd in country to receive gender confirmation surgery, *Idahostatejournal.com* (July 28, 2020), https://www.idahostatejournal.com/news/local/idaho-transgender-inmate-becomes-2nd-in-country-to-receive-gender-confirmation-surgery/article_fb843708-d8f1-5ca6-b56e-2de480081d35.html.

³¹ *ID DOC, ET AL. v. EDMO, ADREE*, No. 19-1280, 2020 WL 6037411 (U.S. Oct. 13, 2020). In a brief decision, Justice Thomas and Justice Alito concurred to have the decision be dismissed pursuant to *States v. Munsingwear, Inc.*, 340 U.S. 36 (1950) on the grounds that the case was now moot. *E.g.*, Michigan Law Review, Collateral Estoppel and Supreme Court Disposition of Moot Cases, 78 MICH. L. REV. 946 (1980) for an analysis concerning the *Munsingwear* doctrine.

³² IDAHO DEPARTMENT OF CORRECTION, https://www.idoc.idaho.gov/content/prisons/offender_search/detail/94691?last_page= (last visited Oct., 20, 2020).