

VIA E-MAIL AND FIRST-CLASS MAIL

Director Kenneth Lassiter  
North Carolina Department of Public Safety  
512 N. Salisbury St.  
Raleigh, NC 27604  
Kenneth.lassiter@ncdps.gov

March 4, 2019

Re: Kanautica Zayre-Brown (OPUS No. 0618705)

Dear Director Lassiter:

We write on behalf of our client, Kanautica Zayre-Brown, regarding the conditions of her confinement. Ms. Zayre-Brown is a woman who is transgender. She is presently incarcerated in a men's facility where her safety and well-being are compromised. Every day she is housed among men, forced to shower in group showers for men, and subjected to the constant indignities and threats to her health and safety that come with being stripped of her core identity. These gross violations of Ms. Zayre-Brown's constitutional rights are putting her at great risk of serious harm.

The North Carolina Department of Public Safety ("DPS") is constitutionally required to ensure that Ms. Zayre-Brown is protected while in custody and provided with medically necessary treatment. To remedy the ongoing violations of Ms. Zayre-Brown's constitutional rights, we request that she be moved to a facility for women, be provided access to a private shower, and be given all medically necessary treatment for her gender dysphoria, including appropriate grooming items and undergarments. If DPS does not respond to undersigned counsel to discuss the remediation of these harms by April 1, 2019 at 5 p.m., we will take formal legal action.

I. Factual Background

Ms. Zayre-Brown is a woman. She was assigned the sex of male at birth but has identified as female since she was a child. She has consistently been receiving treatment for gender dysphoria since 2010 including hormone therapy and surgeries to affirm her gender. In all aspects of her life, she lives as a woman.

**ACLU**

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

North Carolina

P.O. Box 28004  
Raleigh, NC 27611  
(919) 834-3466  
acluofnc.org

Jennifer Watson Marsh  
President

Karen M. Anderson  
Executive Director



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

North Carolina

Despite her female gender, her typically female physiological characteristics and her repeated requests to be transferred to a women's facility for her safety, DPS has incarcerated Ms. Zayre-Brown in multiple all-male facilities. After her arrest in 2017, Ms. Zayre-Brown was held in a men's ward of the Wake County Jail medical unit while still recovering from surgery. In the years that have followed, she has been moved from one men's facility to another. While incarcerated at Craven County Detention Center she requested a transfer to the North Carolina Correctional Institute for Women. DPS officials informed her that a transfer to a women's facility is not possible because DPS makes placements based on gender assigned at birth. From there, she was transferred to the Harnett County Correctional Institute ("Harnett C.I."), another men's prison, where she is currently incarcerated.

At Harnett C.I., Ms. Zayre-Brown's identity as a woman is deliberately ignored by staff, and she is subject to conditions that put her at serious risk of harm. She reports that she is forced to sleep in a room with 38 men. As per facility policy, she is not allowed to sleep with pants on, which leaves her even more vulnerable at night. Though she has repeatedly made requests for access to a private shower, she is required to use the community shower and toilet. The only alleged accommodation that has been made is to designate her shower time for 5 p.m. but there are no restrictions placed on other prisoners' use of the showers and restrooms at that time nor is there any supervision to ensure that Ms. Zayre-Brown is afforded privacy. Ms. Zayre-Brown has repeatedly documented her concerns about the exposure she faces during times when she is forced to shower and sleep in front of other prisoners. These concerns have been ignored as have her repeated requests to staff for protection.

In January of 2019, Ms. Zayre-Brown had a Facility Transgender Accommodation Review Committee ("TARC") meeting to review her request for placement in a women's prison and other needs related to her gender dysphoria. At this TARC review, upon information and belief, one of Ms. Zayre-Brown's treating providers indicated that Ms. Zayre-Brown will not be transferred to a women's facility because she had not "completed reassignment surgery." The Superintendent of Programs, M. Shelton, stated that she did not care what Ms. Zayre-Brown "was thinking in her head" about what gender she wanted to be and that she will be treated just like every other "male" housed at Harnett C.I.

In addition to the fear and exposure Ms. Zayre-Brown faces every day as a woman who is forced to live in a dorm unit of an all-male prison, she faces systematic humiliation by staff who refuse to recognize



her name and gender. Despite having a legal name change, DPS initially refused to list Ms. Zayre-Brown's name on her prison ID card to reflect her current legal name of "Kanautica Zayre-Brown." Staff at Harnett C.I. continue to identify her as male and call her by the name she was given at birth. Ms. Zayre-Brown is also subjected to intrusive searches by male officers despite her requests to be searched by female officers. And Nurse Black, who is charged with providing Ms. Zayre-Brown with medical care, has repeatedly threatened to thwart her transfer and medical treatment, citing her religious beliefs as authority.

Throughout her incarceration, every request that Ms. Zayre-Brown has made for treatment for her gender dysphoria has been delayed or denied. It was only after some public attention that DPS began to make some necessary treatment available. For example, Ms. Zayre-Brown had not been given female undergarments until the day before she was set to speak with the media. Prior to February 25, 2019, the night before Ms. Zayre-Brown's on-camera interview with WRAL, Ms. Zayre-Brown had been forced to wear boxers, which prevented her surgical site from healing properly. When Ms. Zayre-Brown received female undergarments through commissary, she was disciplined. Previously, DPS disrupted the hormone therapy that Ms. Zayre-Brown has been taking consistently since 2010 causing her to experience a range of physical and emotional symptoms. As a result of DPS's yearlong refusal to give Ms. Zayre-Brown her medically necessary hormone treatment, she is now forced to take higher doses of hormones to rebalance her estrogen levels.

Rather than address the serious safety and medical needs Ms. Zayre-Brown's case has presented, DPS officials have repeatedly pressured Ms. Zayre-Brown to falsely state that she feels safe or risk facing punitive measures. At this time, Ms. Zayre-Brown's physical and emotional health is greatly deteriorating and if DPS does not act soon, dire consequences are likely to result.

## II. DPS's Refusal To Transfer Ms. Zayre-Brown To A Women's Facility Pursuant to A De Facto Policy that Requires Placement Based on Assigned Sex At Birth Is Inconsistent With PREA And Unconstitutional.

For over a year, DPS has denied Ms. Zayre-Brown's repeated requests to be transferred to a facility for women. By forcing Ms. Zayre-Brown to remain in men's prisons DPS is violating the clear requirements of the Prison Rape Elimination Act (PREA) and its implementing regulations as well as Ms. Zayre-Brown's rights under the Eighth and

## Fourteenth Amendments.

Over the past 20 years, Congress, the U.S. Department of Justice, congressionally convened commissions, and other expert bodies have extensively researched the incidence of sexual violence in correctional settings. Before implementing the final PREA regulations in May 2012, the Justice Department reviewed nine years of comments and reports by corrections staff and administrators, advocates, and health experts about the efficacy of different strategies for combating sexual abuse in detention. The research into sexual assault in confinement consistently documents the heightened vulnerability of transgender women to sexual victimization at the hands of facility staff and other prisoners in correctional settings.<sup>1</sup> The final PREA regulations include clear protections for transgender individuals because of their well-documented vulnerability. Indeed, DPS's own written policy requires a "totality of the circumstances" evaluation when making placement decisions for transgender prisoners – including assessing "the safety and security needs" of the individual transgender prisoner.<sup>2</sup> Despite PREA's mandate and DPS's formal implementation of it, however, Ms. Zayre-Brown's case demonstrates that transgender prisoners are being subjected to blanket rules with regard to placement.

The actions of DPS officials denying Ms. Zayre-Brown's transfer to a women's facility based on a de facto policy or practice to restrict placement based on assigned sex at birth flies in the face of PREA and its implementing regulations, which require that, "[i]n deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems." 28 C.F.R. § 115.42(c). Any policy that places individuals based exclusively—and unvaryingly—on their genital characteristics or assigned sex at birth further violates PREA's mandate that agencies "make individualized determinations about how to ensure the safety of each inmate." *Id.* § 115.42(b). Ms. Zayre-Brown has been repeatedly told that she cannot be housed in a women's facility



---

<sup>1</sup> National Prison Rape Elimination Commission Report 73 (June 2009) [hereinafter "Commission Report"]; A. Beck et al., *Sexual Victimization in Jails and Prisons Reported by Inmates, 2008-09* at 14-15 (Bureau of Justice Statistics Aug. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf>; V. Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* (Ctr. for Evidence-Based Corrs. 2009); J.M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 167-68* (Nat'l Ctr. for Transgender Equality & Nat'l Gay & Lesbian Task Force 2011), available at [http://endtransdiscrimination.org/PDFs/NTDS\\_Report.pdf](http://endtransdiscrimination.org/PDFs/NTDS_Report.pdf); A. Beck, P. Harrison, & P. Guerino, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09* at 11 (Bureau of Justice Statistics Jan. 2010), available at <http://www.bjs.gov/content/pub/pdf/svjfry09.pdf> (finding twelve percent of youth in the study reported a sexual orientation other than heterosexual).

<sup>2</sup> N.C. Dept. of Pub. Safety Policy TX 1-13 (2018).



because her surgical treatment is not “complete” and she was assigned male at birth. This is a clear violation of PREA’s individualized-determination requirement and fails to take into account Ms. Zayre-Brown’s views of her own safety, which must be given “serious consideration,” 28 C.F.R. § 115.42(e).

In addition to violating the state’s obligation under PREA, DPS’s refusal to transfer Ms. Zayre-Brown violates her Eighth Amendment right to be free from cruel and unusual punishment. A prison official can be found liable under the Eighth Amendment if the official “knows of and disregards an excessive risk to inmate health or safety...” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Such knowledge may be inferred where the risk of harm is obvious. *Id.* at 842. It is difficult to identify a more obvious harm than one that has been documented extensively in federal regulation, recognized by the Supreme Court more than twenty-five years ago, and which the prisoner herself has complained of since her arrest. Indeed, courts are increasingly finding officers liable for failing to protect transgender prisoners from the obvious risks of harm that flow from placing transgender women in men’s facilities without sufficient safeguards to protect them.<sup>3</sup>

By discriminating against Ms. Zayre-Brown on the basis of her sex and transgender status, DPS also violates her right to equal protection under the Fourteenth Amendment. Indeed, in a similar case, the Illinois Department of Corrections recently transferred a transgender woman into a women’s facility after the court ordered training and held that she was likely to succeed on her equal protection claims against agency officials for keeping her in a facility for men solely because she is transgender.<sup>4</sup> The court noted that “[t]he State has presented no evidence that transgender inmates generally pose a greater security threat than cisgender inmates, and anyway, ‘generalized concerns for prison security are insufficient to meet the ‘demanding’ burden placed on the State to justify sex-based classifications.’” *Hampton v. Baldwin*, No. 3:18-CV-550-NJR-RJD, 2018 WL 5830730, at \*11 (S.D. Ill. Nov. 7, 2018)(internal citations omitted). A transgender woman incarcerated in Massachusetts was also recently transferred to a women’s facility after the court held that she stated a claim against prison officials for Equal Protection violations for

---

<sup>3</sup> See, e.g., *Greene v. Bowles*, 361 F.3d 290, 293-94 (6th Cir. 2004) (finding a transgender woman prisoner in a men’s facility was vulnerable both to physical and sexual attacks); *Green v. Hooks*, No. 6:13-cv-17, 2013 WL 4647493, at \*4 (S.D. Ga. Aug. 29, 2013) (denying qualified immunity to officials in Eighth Amendment case involving transgender woman who was assaulted by a male prisoner while incarcerated in a men’s prison); *R.W. v. United States*, 958 A.2d 259, 267 (D.C. Ct. App. 2009) (affirming lengthy sentence where former prison guard sexually assaulted a transgender inmate and finding that the “sentence was intended to reflect his victim’s particular vulnerability as a transgender inmate in an all-male prison unit”).

<sup>4</sup> Angie Leventis Lourgou, Transgender inmate moved to Illinois women’s prison after alleging years of abuse, *Chicago Tribune* (Dec. 27, 2018), <https://www.chicagotribune.com/news/ct-met-transgender-prisoner-transfer-illinois-20181227-story.html>.

forcing her to be incarcerated with men solely because of her assigned sex at birth.<sup>5</sup>

### III. DPS's Failure to Adequately Treat Ms. Zayre-Brown's Gender Dysphoria Violates the Constitution.

“The government has an ‘obligation to provide medical care for those whom it is punishing by incarceration,’ and failure to meet that obligation can constitute an Eighth Amendment violation cognizable under § 1983.”<sup>6</sup> This includes medical care to treat gender dysphoria.

Courts across the country, including the Fourth Circuit, have held that gender dysphoria is a serious medical condition and that the Eighth Amendment does not permit prisons to institute blanket policies banning or limiting treatment, including hormones and surgery, for prisoners with gender dysphoria without leaving discretion for individualized treatment based on the specific needs of the prisoner.<sup>7</sup> The Fourth Circuit held in *De'lonta v. Johnson (De'lonta II)*, 708 F.3d 520 (4th Cir. 2013) that a transgender prisoner who had been diagnosed with gender dysphoria and treated with hormones stated an Eighth Amendment claim against the Virginia Department of Corrections' due to the agency's failure to provide an individualized assessment of her need for surgical treatment. See also *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011)(invalidating a Wisconsin statute barring medical treatment for transgender prisoners).

Absent a blanket policy restricting treatment for gender dysphoria, denial of care, including evaluative care by competitive clinicians, where such care is necessary violates a prisoner's constitutional rights. The



<sup>5</sup> Michael Levenson, Transgender inmate moved to women's prison, *The Boston Globe* (Jan. 25, 2019), <https://www.bostonglobe.com/metro/2019/01/24/transgender-inmate-moved-women-prison/Nf2k5Oqa3Ojnh1yH1IwWkL/story.html>.

<sup>6</sup> *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014).

<sup>7</sup> See, e.g., *De'lonta v. Angelone (De'lonta I)*, 330 F.3d 630, 635 (4th Cir. 2003) (in allowing deliberate indifference claim to proceed, court noted that prison policy not to provide hormone therapy to prisoners, among other things, “supports the inference that Appellees’ refusal to provide hormone treatment to De’Lonta was based solely on the policy rather than on a medical judgment concerning De’Lonta’s specific characteristics); *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011) (enforcement of a statute that banned prisoners from receiving hormone therapy to treat Gender Identity Disorder violated Eighth Amendment), *cert. denied*, 132 S. Ct. 1810 (2012); *Norsworthy v. Beard*, No. 14-cv-00695-JST, 2015 WL 1500971 (N.D. Cal. Apr. 2, 2015) (finding likelihood of proving Eighth Amendment violation where prison officials ignored the recommendations of transgender prisoner’s health care provider and instead followed blanket policy against providing sexual reassignment surgery for transgender inmates); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 2451 (D. Mass. 2012) (finding corrections department’s blanket policy of denying sex reassignment surgery “facially invalid as far as it determines, without exception, that certain accepted treatments for GID are never medically necessary for inmates” without providing an individualized medical assessment);

relevant inquiry under the Eighth Amendment is not whether *any* care has been provided but whether “constitutionally adequate” care has been provided. *Estelle v. Gamble*, 429 U.S. 97, 103-06 (1976) (prison officials may not adopt an “easier and less efficacious treatment” that does not adequately address a prisoner’s serious medical needs); *see also De’lonta II*, 708 F.3d at 526; *Keohane v. Jones*, 328 F. Supp. 3d 1288, 1314 (N.D. Fla. 2018)(“just because Defendant provides some care, like counseling and hormones, doesn’t mean this suffices as constitutionally adequate treatment.”).



Items that affirm an individual’s gender including grooming items and undergarments are a critical component of medical treatment for many transgender individuals and cannot be withheld for non-medical reasons when doing so undermines a prisoner’s health or safety. *See Keohane*, 328 F. Supp. 3d at 1317 (holding prison officials liable for deliberate indifference where transgender woman referred to with male pronouns and denied female undergarments and grooming). In *Keohane v. Jones*, 328 F. Supp. 3d 1288, a Florida court recently admonished prison officials for treating a transgender prisoner comparable DPS’s treatment of Ms. Zayre-Brown. After a full trial on the merits, the *Keohane* Court found prison officials violated the Eighth Amendment by referring to Ms. Keohane with male pronouns and denying her access to undergarments and grooming items available to other women. *Id.* “Ms. Keohane is not an animal,” the Court wrote, “She is a transgender woman. Forthwith, Defendant shall treat her with the dignity the Eighth Amendment commands.” *Id.* at 1318. DPS should heed the clear commands of the Constitution and provide Ms. Zayre-Brown with adequate care for her serious medical condition.

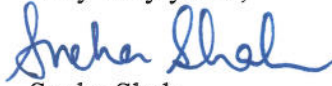
\*\*\*

DPS need not await tragedy to respond to the dire needs of transgender prisoners in its care. Ms. Zayre-Brown is facing escalating distress and fears for her safety. She is a woman who is held in an all-male prison solely because she is transgender. Every day she faces not only the disruption of her medical treatment and need to be affirmed in her female gender but also the risk that she will face physical and sexual violence.

Please confirm in writing by 5 p.m. on April 1, 2019, that your office will take immediate action to remedy these violations by transferring Ms. Zayre-Brown to a facility for women and providing her with access to a private shower and all medically necessary treatment for her gender dysphoria. If Ms. Zayre-Brown’s health and well-being continue to be ignored, we are prepared to pursue litigation to vindicate

her rights.

Very truly yours,



Sneha Shah  
Staff Attorney  
ACLU-NCLF

Chris Brook  
Legal Director  
ACLU-NCLF

Michele Luecking-Sunman  
Attorney  
NC Prisoner Legal Services

Taittiona Miles  
Attorney  
NC Prisoner Legal Services

CC: Jane Ammons Gilchrist  
General Counsel  
North Carolina Department of Public Safety

[jane.gilchrist@ncdps.gov](mailto:jane.gilchrist@ncdps.gov);



North Carolina