

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division**

JONATHAN S. PLOTNICK,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
MICHAEL D. CREWS, in his)	
official capacity as Secretary of the)	
Florida Department Corrections;)	
CORIZON, LLC, an out of state)	
corporation registered and doing business)	
in Florida; and VIRGINIA MESA, in her)	
individual capacity,)	
)	
Defendants.)	
_____)	

PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

and incorporated

MEMORANDUM OF LAW

Plaintiff, by and through undersigned counsel, and in accordance with Rule 65, Federal Rules of Civil Procedure, requests that this Court enter a preliminary injunction ordering Defendants to provide Plaintiff with an operation to repair his hernias and relieve him of his severe pain.

Plaintiff relies upon his Verified Complaint in support of this Motion and the Unsworn Declaration of Dr. Ernest Block. Briefly, Plaintiff came into custody of the Florida Department of Corrections (FDOC) on April 5, 2013, and he presented with an inguinal hernia on May 3, 2013 to Dr. Torres at Central Florida Reception Center. Plaintiff filed multiple unsuccessful {07094217;2}

grievances requesting relief for his hernia, only to be ignored, and his hernia got progressively worse. Radiological views were taken of Plaintiff's hernia at the Reception and Medical Center in Lake Butler, but nothing was done for him surgically. Records show that Plaintiff at times stated that his left side was "on fire" and that he felt like his "guts were exploding out of [his] body." Plaintiff's hernia popped out on August 29, 2013, and he was only given ibuprofen for his sharp pain. Plaintiff continued to file grievances stating that he was in severe pain and that he needed surgery, but his requests were continuously denied by Defendant Dr. Virginia Mesa, who also took away the medication and low bunk passes that Plaintiff had originally been prescribed. Requests for surgery sent to counsel for Defendant Corizon went unanswered.

In doing so, Defendants have exhibited deliberate indifference to Plaintiff's serious medical needs and risk of harm in violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment to the U.S. Constitution. Thus, an injunction is needed to put an end to the Defendants' unconstitutional and unlawful conduct so that Plaintiff can obtain the necessary surgery to repair his hernias and relieve him of debilitating pain.

I. Statement of Facts

Plaintiff entered the Florida Department of Corrections on April 5, 2013, and presented with an inguinal hernia on May 3, 2013. During Plaintiff's initial intake physical at Lake Correctional Institution on May 5, 2013, a physician issued low bunk activity, restricted activity, and hernia truss passes. Plaintiff's condition began to worsen and he wrote grievances in which he requested surgery consultations and further treatment for his hernias.

On August 12, 2013, Plaintiff stated that he felt like his side was on fire, and his hernia popped on August 29, 2013. Plaintiff was only given ibuprofen even though he was in intense

pain from his untreated condition, the same condition for which he had been requesting treatment for months. On September 30, 2013, an ultrasound showed two hernias on Mr. Plotnick. Dr. Ta, a Medical Doctor at Lake Correctional Institution, told the Plaintiff that he could not grant him a surgery consultation because of the state's money issues.

Plaintiff continued to file multiple unsuccessful grievances in which he repeatedly expressed his intense pain and need for surgery for his hernias. On December 20, 2013, Plaintiff stated that he could not "do anything at all ... no exercise, walking, laps, or anything." All of Plaintiff's medications that he had originally received at Central Florida Reception Center as well as from Dr. Ta at Lake Correctional Institution were further stripped away by Defendant Dr. Mesa, the Chief Health Officer at Lake Correctional Institution. Dr. Mesa also told the Plaintiff that there was "not enough time for surgery" even though Plaintiff's release date is not until 2021. Although Dr. Mesa was aware that Plaintiff's hernia was almost to his testicles and that the hernia belt was not helping, she did not prescribe him any other medication or treatment. She instead told Plaintiff to "shut up and not speak."

All attempts by Plaintiff to obtain a surgery consult for his debilitating hernias were denied by Defendant Mesa at Lake Correctional Institution. In response to his multiple requests, Defendant Mesa repeatedly replied by telling him that "The small hernia does not require surgery at this time." Although Dr. Ta, another medical doctor at Lake Correctional Institution, told Plaintiff that he needed surgery, Dr. Mesa continuously denied him proper treatment and even went so far as to say that the hernia would heal itself. As a result of the Defendant not approving the surgery, Mr. Plotnick has suffered severe and debilitating pain while his hernias have gotten progressively worse and more dangerous.

Plaintiff's hernia on his right side is now about the size of a golf ball, and the hernia on his left side is about the size of a thumbnail. He can barely walk or even use the bathroom without being in pain. As a result of not having surgery to repair his hernias, Plaintiff has been in constant pain and cannot partake in any physical activity, including "exercise, walking, laps, or anything." The double hernia has also caused the Plaintiff great mental distress and embarrassment.

Further, Plaintiff's medical records have been extensively reviewed by Dr. Ernest Block, a physician who is board-certified in surgery and surgical critical care. Dr. Block's professional medical opinion is that Plaintiff needs immediate surgery to address his hernias, and that pain medication and hernia belts are clearly insufficient for his serious medical needs. Declaration of Ernest Block, M.D., ¶¶ 15, 17. Dr. Block further opines that FDOC and Corizon medical professionals were clearly aware of Mr. Plotnick's serious medical needs and the risk of harm he was, and is, exposed to, yet recklessly failed to approve the surgeries he so obviously needed. *Id.* at ¶ 21.

II. Need for a Preliminary Injunction

A preliminary injunction should issue if the Plaintiff successfully demonstrates that (1) there is a substantial likelihood of success on the merits; (2) the Plaintiff will suffer irreparable injury if the injunction is not issued; (3) the threatened harm to the Plaintiff outweighs any potential harm to the opposing party; and (4) the injunction, if issued, would not be adverse to the public interest. *Bellsouth Telecomms., Inc. v. MCI Metro Access Transmission Servs., LLC*, 425 F.3d 964, 968 (11th Cir. 2005); *Haitian Refugee Center, Inc. v. Nelson*, 872 F.2d 1555, 1561-62 (11th Cir. 1989), *aff'd* 498 U.S. 479 (1991).

This standard is not rigidly applied by assigning a fixed quantitative value to each of the four factors. Rather, a flexible scale -- which balances each consideration and arrives at the most equitable result, given the particular circumstances of each case -- is used. *Texas v. Seatrain International, S.A.*, 518 F.2d 175, 180 (5th Cir. 1975). And of all the factors, the "principal and overriding prerequisite is irreparable harm resulting from the absence of an adequate legal remedy." *Sampson v. Murray*, 415 U.S. 61, 88-92 & n.68 (1974). "It is the threat of harm that cannot be undone which authorizes exercise of this equitable power to enjoin before the merits are fully determined." *Parks v. Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975). Plaintiff easily meets each of these four requirements.

A. Plaintiff Has a Substantial Likelihood of Success

To prevail on a claim of deliberate indifference to serious medical need in violation of the Eighth Amendment, Mr. Plotnick must show: "(1) a serious medical need; (2) the defendant[']s deliberate indifference to that need; and (3) causation between that indifference and the plaintiff's injury." *Gilmore v. Hodges*, 738 F.3d 266, 273 (11th Cir. 2013) (citing *Youmans v. Gagnon*, 626 F.3d 557, 563 (11th Cir. 2010)). This analysis contains both an objective and a subjective component. *Id.* (citing *Thomas v. Bryant*, 614 F.3d 1288, 1304 (11th Cir. 2010)). Mr. Plotnick must first show an objectively serious medical need that, if unattended, poses a substantial risk of serious harm, and that the official's response to that need was objectively insufficient. *Id.* Plaintiff must establish that the official acted with deliberate indifference; that is, the official subjectively knew of and disregarded the risk of serious harm, and acted with more than mere negligence. *See id.*; *Taylor v. Adams*, 221 F.3d 1254, 1258 (11th Cir. 2000). Plaintiff has easily made a claim for deliberate indifference under this standard.

“A serious medical need is ‘one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.’” *Youmans*, 626 F.3d at 564 (citation omitted). “In general, serious medical needs are those ‘requiring immediate medical attention.’” *Id.* (quoting *Hill v. Dekalb Reg’l Youth Det. Ctr.*, 40 F.3d 1176, 1190 (11th Cir. 1994)). Mr. Plotnick’s two hernias, which are causing him constant, severe, and debilitating pain—the effects of which are not mitigated by the cursory care he is receiving—easily qualify as a serious medical need.

Further, Defendants have clearly exhibited deliberate indifference to this need. “Under section 1983 ‘knowledge of the need for medical care and intentional refusal to provide that care has consistently been held to surpass negligence and constitute deliberate indifference.’” *Carswell v. Bay Cnty.*, 854 F.2d 454, 457 (11th Cir. 1988) (quoting *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985)); *see also Bingham v. Thomas*, 654 F.3d 1171, 1176 (“A complete denial of readily available treatment for a serious medical condition constitutes deliberate indifference.”). Defendants have known about Mr. Plotnick’s serious medical need for over a year. His constant complaints and grievances, which are documented in his medical records, make this clear. Moreover, Defendants have continuously refused to provide him with the only treatment that is clearly indicated at this point: surgery to repair his hernias. Indeed, the FDOC’s own doctor, Dr. Ta, suggested that Plaintiff needed surgery, only to have his recommendation denied by Defendants Crews, Corizon, and Dr. Mesa. Mr. Plotnick is in constant severe pain that is not alleviated by pain medications and a hernia belt. Surgery is the clear option that will relieve his pain, and Defendants have intentionally refused to provide it to him. *See Ancata*, 769

F.2d at 704 (“Deliberate indifference to serious medical needs is shown when prison officials have prevented an inmate from receiving recommended treatment.”).

As the hernias keep growing, there is a chance that a portion of herniated intestine may become trapped and unable to slide back into the abdomen. *See* Block Declaration. If that occurs, the trapped intestine can twist and die because its blood supply is cut off. A medical need may be considered serious if a delay in treating it makes it worse. *Palazon v. Sec’y for Dep’t of Corr.*, 361 F. App’x 88 (11th Cir. 2010) (citing *Danley v. Allen*, 540 F.3d 1298, 1310 (11th Cir. 2008)). Mr. Plotnick’s hernias are currently the size of a golf ball and a thumbnail, and Plaintiff cannot even use the bathroom without intense pain. Without surgery, Mr. Plotnick’s condition will only worsen. Declaration of Ernest Block, ¶ 17.

Finally, causation is easily satisfied. Defendants’ refusal to provide Plaintiff with surgery is causing him to remain in severe pain. According to Dr. Block, the delay in obtaining access to corrective surgery has been extremely detrimental to Plaintiff’s physical and mental health, and if he were given surgery at the proper time, he would not be in the condition that he is in today. Declaration of Ernest Block, M.D., ¶¶ 16, 22. Dr. Block is confident that surgery is the only way to stop the continuous pain and serious damage that is occurring in Mr. Plotnick’s body, all of which has been caused by his delay in medical treatment and the Defendants’ failure to abide by the necessary standard of medical care. *Id.* at ¶ 14.

B. Plaintiff Will Continue to Suffer Irreparable Injury in the Absence of a Preliminary Injunction.

Plaintiff must next demonstrate that he will suffer irreparable injury if the requested injunction is not issued. *Haitian Refugee Center, Inc.*, 872 F.2d at 1561-2. “Irreparable injury” is

distinguishable from mere injury, in that irreparable injury cannot be adequately compensated through the award of money. *United States v. Jefferson County*, 720 F.2d 1511, 1520 (11th Cir. 1983). In the context of Eighth Amendment cruel and unusual punishment, courts have consistently held that “[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm.” *Laube v. Haley*, 234 F.Supp.2d 1227, 1251(M.D. Ala. 2002) (quoting *Preston v. Thompson*, 589 F.2d 300, 303 n. 3 (7th Cir. 1998)). *See also Maynor v. Morgan County*, 147 F.Supp.2d 1185, 1189 (N.D.Ala.2001) (“[Plaintiffs] will suffer irreparable harm by virtue of Defendants' ongoing serious violations of their federal constitutional rights.”).

That Plaintiff will suffer such irreparable harm here is indisputable. Since he became incarcerated, Mr. Plotnick has been unable to walk, run, exercise, work, or even use the bathroom without pain due to the increasing severity of his hernias. Already excluded from certain prison work assignments and faced with the daily stress of not being able to walk, run, and exercise with other inmates due to his hernias, Plaintiff Plotnick is now cell bound for the most part and has continued to gain unhealthy amounts of weight. The denial of this opportunity to more easily get around – one which is so vital to those individuals who are incarcerated – and the resulting physical, emotional and psychological stress which it creates – cannot be fully compensated later by a monetary remedy. *See Jefferson County*, 720 F.2d at 1520. Mr. Plotnick is in constant pain, and the only thing that will relieve his pain is surgery to repair his hernia.

C. The Continued and Irreparable Harm Suffered by Plaintiff Far Outweighs Any Potential Harm Which the Injunction May Cause

The irreparable harm suffered by the Plaintiff, as discussed at length above, is clear. Without the surgery requested herein, Plaintiff will continue to be unable to walk, run, work, ex-

ercise, or use the bathroom without pain, and he may face permanent injury to his intestines. Defendants, on the other hand, can point to no legally recognizable harm whatsoever to themselves or others if they are required to take the steps necessary to provide Mr. Plotnick with a surgery consultation and ultimately surgery to correct his hernias.

D. The Public Interest Clearly Supports Injunctive Relief

The broad public interest in providing protection against constitutional violations decidedly tips the balance of equities in favor of the entry of a preliminary injunction. There simply can be no question of any harm to the public by ensuring that Defendants comply with the Eighth Amendment and its prohibition against cruel and unusual punishment. Quite to the contrary, it has been found that it is in the public's interest that our prison officials not believe themselves to be above the law, as the late U.S. District Court Judge Charles Scott once stated:

A free democratic society cannot cage inmates like animals in a zoo or stack them like chattels in a warehouse and expect them to emerge as decent, law abiding, contributing members of the community. In the end, society becomes the loser.

Costello v. Wainwright, 397 F. Supp. 20, 38 (M.D. Fla. 1975) (footnotes omitted).

It serves the public interest to carry out the mandates of our United States Constitution.

E. Plaintiff Should Not be Required to Post Bond

This Court has the discretion to issue a preliminary injunction without requiring the Plaintiff to post bond. *People of State of Cal. ex rel. Van De Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319 modified on other grounds, 775 F.2d 998 (9th Cir. 1985); *Roth v. Bank of the Commonwealth*, 583 F.2d 527, 539 (6th Cir. 1978). Exercise of that discretion is particularly appropriate where, as here, an action is brought by an indigent Plaintiff, *Orantes-Hernandez v.*

Smith, 541 F. Supp. 351 (C.D. Cal. 1982), or where issues of public concern or important federal rights are involved. *See Cont'l Oil Co. v. Frontier Ref. Co.*, 338 F.2d 780, 782 (10th Cir. 1964).

WHEREFORE Plaintiff, for the foregoing reasons, respectfully requests that this Court:

- A. issue a Preliminary Injunction requiring Defendants to provide Plaintiff Plotnick with the necessary surgery and medical care to correct his hernias;
- B. waive the posting of a bond for security; and
- C. grant such other relief as the Court may deem just and equitable.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that on July 18, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/ Randall C. Berg, Jr. .
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