TEAM 2104

No. 2021-22

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2021

MAX POSCA, IN HIS OFFICIAL CAPACITY AS WARDEN AND ADMINISTRATOR OF GARUM CORRECTIONAL FACILITY,
PETITIONER,

v.

LUCAS ESCOFFIER,
RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

COUNSEL FOR RESPONDENT
ORAL ARGUMENT REQUESTED

QUESTION PRESENTED

I. Whether the prison mailbox rule applies to a passively represented prisoner when the plain language of the rule does not limit the rule's application to *pro se* prisoners and the prisoner's attorney is incapacitated.

II. Whether a correctional facility's categorical ban on gender affirmation surgery for a prisoner suffering from gender dysphoria violates their Eighth Amendment right against cruel and unusual punishment.

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OPINIONS BELOW

The unreported opinion of the United States District Court for the District of Silphium appears in the record at pages 22–29. The unreported opinion of the United States Court of Appeals for the Fourteenth Circuit appears in the record at pages 30–47.

STATEMENT OF JURISDICTION

The United States District Court for the District of Silphium had jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331. R. at 8. The United States Court of Appeals for the Fourteenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. R. at 8. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Eighth Amendment to the United States Constitution, which provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

This case also involves Rule 4(c)(1) of the Federal Rules of Appellate Procedure, which provides:

> If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:
>
> (A) it is accompanied by:
>
> (i) a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or
>
> (ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or
>
> (B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

Fed. R. App. P. 4(c)(1).

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

Serious Medical Need. Mr. Lucas Escoffier is a transgender man residing in the state of Silphium. R. at 1. As a young adult, Mr. Escoffier sought help for his feelings of depression and suicidal ideation. *Id.* In 2011, he was diagnosed with gender dysphoria. *Id.* A year later, Mr. Escoffier began to "socially" transition, informally changing his name to Lucas and adopting the pronouns "he," "his," and "him," with hopes to treat his gender dysphoria. *Id.* Mr. Escoffier sought further abatement for his symptoms and began medical gender alignment therapies and treatment in 2013. *Id.* Though Mr. Escoffier continued to take legal and medical steps to treat his gender dysphoria, by April 2018, Mr. Escoffier again began suffering from chronic depression and regular suicidal ideation. *Id.* After several rounds of consultation, Mr. Escoffier's doctor determined that gender affirmation surgery was necessary to further treat Mr. Escoffier's condition. *Id.*

Denial of Necessary Treatment. Mr. Escoffier's doctor began preparing for Mr. Escoffier to receive gender affirmation surgery in December of 2019. R. at 2. Shortly after, Mr. Escoffier was arrested for criminal tax fraud. *Id.* Mr. Escoffier pleaded guilty to criminal tax fraud in the third degree and was sentenced to five years in prison. *Id.* He began his sentence at Garum Correctional Facility (GCF) on March 7, 2020. *Id.* Although access to medical facilities were curtailed due Miasmic Syndrome, Mr. Escoffier was able to continue hormone replacement therapy at GCF. R. at 4. Nevertheless, his mental health drastically declined. *Id.* He began to

experience serious depression, bouts of weight and hair loss, loss of appetite, severe anxiety and paranoia, and perpetual suicidal ideation. *Id.* Mr. Escoffier informed GCF administrators that his condition had become intolerable and that the gender affirmation surgery he intended to receive prior to incarceration was required to treat his gender dysphoria. *Id.* Although Mr. Escoffier's doctor recommended gender affirmation surgery, GCF policy prohibited all surgical intervention to treat gender dysphoria. R. at 5. Mr. Escoffier submitted several grievances to GCF, which were denied in accordance with GFC's policy banning gender affirmation surgery. *Id.*

II. NATURE OF THE PROCEEDINGS

The District Court. On October 5, 2020, Mr. Escoffier filed suit under 42 U.S.C. § 1983 against Max Posca (the Warden), in his official capacity as Warden of GCF, asserting that GCF violated Mr. Escoffier's Eighth Amendment rights by banning necessary gender affirmation surgery. *Id.* The Warden filed a motion to dismiss Mr. Escoffier's complaint, claiming that the prison's blanket policy did not target Mr. Escoffier and thus did not violate the Eighth Amendment. R. at 6. The District Court of Silphium converted the Warden's motion to dismiss into a motion for summary judgement. *Id.* The district court granted the Warden's motion and dismissed the claim on February 1, 2021. *Id.*

The Notice of Appeal. Shortly after the district court issued its decision, Mr. Escoffier's trial counsel, Sami Pegge, contracted a severe form of Miasmic Syndrome. R. at 6. Her health rapidly declined and she was immediately hospitalized. *Id.* Notwithstanding Ms. Pegge's assurances that she would continue

to represent Mr. Escoffier on appeal, Ms. Pegge was unable to work for over six weeks. R. at 6–7. Isolated from the outside world, Mr. Escoffier was unaware that Ms. Pegge contracted Miasmic Syndrome. *Id.* Mr. Escoffier became concerned when Ms. Pegge never reached out to update him on the status of his appeal. R. at 7.

Contact Restrictions. The stringent Miasmic Syndrome regulations at GCF significantly impeded Mr. Escoffier's ability to contact Ms. Pegge or her law firm. R. at 7. With in-person visitations canceled, GCF required inmates to conduct essential attorney-client visits by videoconference. R. at 3–4. And despite having one of the largest prison populations in the country, GCF had only five computers for this purpose. *Id.* Unsurprisingly, videoconference appointments were booked weeks in advance. *Id.* GCF also curtailed access to communal phones, requiring inmates to schedule calls through correctional staff, who often missed important phone calls. R. at 3–4.

Counsel Abandons Mr. Escoffier. Eventually, Mr. Escoffier contacted Ms. Pegge's direct line and left a voice message. R. at 7. When no one replied, Mr. Escoffier attempted to reach out again and sent an email to the general inbox of Ms. Pegge's law firm on March 1, 2021. *Id.* The next day, an associate at Ms. Pegge's law firm, Hami Sharafi, saw the email and called Mr. Escoffier. *Id.* Mr. Sharafi informed Mr. Escoffier that Ms. Pegge was hospitalized and that Mr. Escoffier would need to immediately submit his notice of appeal using the prison mailing system. *Id.* Although the law firm had other associates, Ms. Pegge was responsible for almost all the firm's incarcerated clients. *Id.* Thus, Mr. Sharafi informed Mr.

Escoffier that he "did not have any attorney to help him" file his notice of appeal. *Id.* Reasonably believing he was on his own, Mr. Escoffier deposited his notice in the prison mail system on March 2, 2021—one day before the March 3, 2021, filing deadline. *Id.* The appeal was not mailed by prison authorities until March 7, 2021, and the district court received the notice on March 10, 2021. *Id.*

The Court of Appeals. On August 1, 2021, the Fourteenth Circuit reversed the district court's grant of summary judgement for the Warden. R. at 8. First, the Fourteenth Circuit held that the notice of appeal was timely filed under the prison mailbox rule. *Id.* Based on the plain language of Rule 4(c) and the policy considerations outlined in *Houston v. Lack*, 487 U.S. 266, 271 (1988), the Fourteenth Circuit concluded that the prison mailbox rule applies to both represented and *pro se* litigants. R. at 38–39. Second, the Fourteenth Circuit held that the medical consensus that gender affirmation surgery is effective in appropriate circumstances obligates the Warden to individually evaluate whether gender affirmation surgery is medically necessary for Mr. Escoffier. R. at 43–44. Thus, GCF's blanket ban on gender affirmation surgery violated Mr. Escoffier's Eighth Amendment rights. R. at 8.

The Warden petitioned this Court for a writ of certiorari on August 15, 2021. R. at 9. That writ was granted on September 22, 2021. *Id.*

SUMMARY OF THE ARGUMENT

I.

Mr. Escoffier timely filed his notice of appeal when he deposited the notice in the prison mail system before the filing deadline. The prison mailbox rule applies, even though Mr. Escoffier was represented by counsel. The plain language of the rule does not distinguish between represented and *pro se* litigants. And policy rationales confirm that formal representation status does not determine whether the prison mailbox rule applies. Rather the prison mailbox rule applies to prisoners proceeding "without the assistance of counsel," which includes passively represented prisoners like Mr. Escoffier. Finally, the mailing certificate accompanying Mr. Escoffier's notice of appeal is sufficient "evidence" of the deposit date and prepaid postage. Therefore, Mr. Escoffier complied with Rule 4(c) and his notice of appeal was timely filed.

II.

Garum Correctional Facility's categorical ban on gender affirmation surgery is cruel and unusual punishment. The Eighth Amendment bars cruel and unusual punishment in the form of deliberate indifference towards an inmate's serious medical need. Here, the refusal to provide Mr. Escoffier with gender affirmation surgery violated his Eighth Amendment rights. The Fourteenth Circuit properly held that (1) gender dysphoria is recognized as a serious medical condition requiring treatment and (2) the prison administration's categorical ban of necessary

treatment was deliberately indifferent to Mr. Escoffier's serious medical need. Therefore, the Warden violated Mr. Escoffier's Eighth Amendment rights.

<u>ARGUMENT</u>

This Court should affirm the holding of the Fourteenth Circuit for two reasons. First, Mr. Escoffier's notice of appeal was timely filed under the prison mailbox rule. Second, denying Mr. Escoffier medically necessary gender affirmation surgery constitutes cruel and unusual punishment in violation of the Eighth Amendment. This Court reviews the lower court's grant or denial of summary judgement *de novo*. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451 (1992).

I. Mr. Escoffier's notice of appeal was timely filed under the prison mailbox rule because Rule 4(c) applies to passively represented prisoners.

Mr. Escoffier's notice of appeal was timely filed because the prison mailbox rule applies to all inmates—regardless of whether they are represented by counsel. An inmate has no "control over the processing of his notice" after handing it off to prison authorities. *Houston v. Lack*, 487 U.S. 266, 271 (1988). Recognizing this reality, this Court held that a notice of appeal is considered filed on the day the prisoner places the notice in the prison mail system rather than the day the notice arrives at the clerk's office. *Id.* The Judicial Conference Committee (the Committee) affirmed this principle and codified the prison mailbox rule in Rule 4(c) of the Federal Rules of Appellate Procedure. Fed. R. App. P. 4(c). Rule 4(c) states that a notice of appeal filed by "an inmate" is timely if the notice is (1) "deposited in the institution's internal mail system on or before the last day for filing" and (2) "accompanied by" an affidavit or "evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid." *Id.*

Mr. Escoffier satisfied the two requirements of Rule 4(c). First, Mr. Escoffier's notice of appeal was timely filed when he placed the notice in the prison mail system before the filing deadline. Mr. Escoffier is entitled to rely on the prison mailbox rule because the plain language of Rule 4(c) applies to all inmates regardless of representation status. Further, policy considerations in *Houston* confirm that prisoners should not be punished for timely filing a notice of appeal using the prison mail system when counsel cannot file the notice on their behalf. Second, Mr. Escoffier accompanied his notice of appeal with a mailing certificate, verifying that the notice was deposited and that postage was prepaid before the filing deadline. Consequently, Mr. Escoffier's notice of appeal was timely filed and complies with the requirements of Rule 4(c).

A. Expanding the text of Rule 4(c) to exclude represented prisoners contradicts the plain meaning of the rule.

Mr. Escoffier is entitled to rely on the prison mailbox rule because the text of Rule 4(c) draws no distinction between represented and *pro se* prisoners. The starting point when interpreting statutes and rules is always the plain language of the text. *See, e.g.*, *Marek v. Chesny*, 473 U.S. 1 (1985); *Delta Air Lines, Inc. v. August*, 450 U.S. 346 (1981). The text of Rule 4(c) contains no qualifier specifying that the rule only applies to *pro se* prisoners. Fed. R. App. P. 4(c). Rather the rule states that "inmates"—without limitation—are entitled to rely on the prison mailbox rule. *Id.* Additionally, the title of Rule 4(c), "Appeal by an Inmate Confined in an Institution," is most naturally read to include both *pro se* and represented inmates. *Id.* Where the Committee wanted to limit application of the prison mailbox

rule, it expressly stated those limitations. *See id.* at 4(c)(1) (requiring prisoners to use the legal mail system if available at the prison). Thus, the absence of specific language confining application of Rule 4(c) to *pro se* prisoners indicates that the Committee did not intend to limit the rule's application in this manner. *See Jones v. Blanas*, 393 F.3d 918, 926 (9th Cir. 2004). As a result, an inmate need only be "confined in an institution" to rely on the prison mailbox rule. Fed. R. App. P. 4(c).

Courts consistently interpret Rule 4(c) to apply to represented and unrepresented prisoners alike. *See, e.g.*, *United States v. Craig*, 368 F.3d 738, 740 (7th Cir. 2004); *United States v. Moore*, 24 F.3d 624, 625 (4th Cir. 1994). While some courts have concluded that the prison mailbox rule applies only to *pro se* prisoners, these decisions are *not* based on an interpretation of Rule 4(c). *See, e.g.*, *Stillman v. LaMarque*, 319 F.3d 1199 (9th Cir. 2003) (filing a habeas petition under Rules Governing § 2254 Cases); *United States v. Camilo*, 686 Fed. App'x 645, 646 (11th Cir. 2017) (objecting to plea agreement under local rules). In *Cretacci v. Call*, for example, the Sixth Circuit considered whether the prison mailbox rule applied to a represented prisoner filing *a civil complaint*, not a notice of appeal under Rule 4(c). 988 F.3d 860, 864 (6th Cir. 2021). The court's conclusion that the prison mailbox rule only applies to *pro se* prisoners was not based on the plain meaning of Rule 4(c). *Id.* at 867. Instead, the court explained that because the case was "not governed by Appellate Rule 4(c)," its conclusion was "readily distinguishable" from other circuit opinions applying Rule 4(c) to represented prisoners. *Id.*

The distinction between a notice of appeal and other types of filings is crucial because other rules of civil procedure differentiate between *pro se* and represented prisoners. For instance, in *Camilo* the court refused to apply the prison mailbox rule to a represented prisoner because local rules prohibited *pro se* filings by represented parties. 686 Fed. App'x at 646 (citing S.D. Fla. R. 11.1(d)(4)). However, courts uniformly conclude that the plain language of Rule 4(c) "does not distinguish between represented prisoners and those acting *pro se*." *Moore*, 24 F.3d at 626 n.3. The Committee's decision not to distinguish between *pro se* and represented prisoners, in contrast to other rules of civil procedure, illustrates that Rule 4(c) applies to all prisoners regardless of representation status.

Furthermore, the history of Rule 4(c) supports the conclusion that the prison mailbox rule applies to both represented and unrepresented prisoners. For example, the Committee considered a version of Rule 4(c) which limited the application of the rule to inmates "not represented by counsel." Advisory Comm. on Fed. Rules of Appellate Procedure, Minutes of the April 17, 1991, Meeting of the Advisory Committee on Federal Rules of Appellate Procedure at 26 (1991). This draft was rejected in favor of the rule's current language, which contains no such limitation. *Id.* Additionally, the Advisory Committee Note to Rule 4(c) states that the rule was intended to "reflect" this Court's opinion in *Houston*. Fed. R. App. P. 4(c) advisory committee's notes to 1993 amendment. While *Houston* discusses the plight of *pro se* prisoners, the opinion does not hinge on the distinction between *pro se* and represented inmates. *Moore*, 24 F.3d at 625 ("[T]here is little justification for

limiting *Houston's* applicability to situations where the prisoner is not represented by counsel."). The reasoning and purpose underlying this Court's analysis in *Houston* support the application of the prison mailbox rule to passively represented prisoners. Regardless, when the text is clear and unambiguous, statutory interpretation begins and ends with the plain meaning of the text. *See, e.g.*, *Caminetti v. United States*, 242 U.S. 470, 485 (1917). The text unambiguously applies to "inmates" and "[a] court ought not pencil 'unrepresented' or any extra word into the text of Rule 4(c)." *Craig*, 368 F.3d at 740.

In the present case, Mr. Escoffier is an inmate at Garum Correctional Facility (GCF). R. at 2. The District Court of Silphium has not adopted a local rule prohibiting *pro se* filings. R. at 6. Accordingly, Mr. Escoffier's assertion that he is an inmate confined in an institution is sufficient to invoke the prison mailbox rule. Fed. R. App. P. 4(c); *Craig*, 368 F.3d at 740; *Moore*, 24 F.3d at 625. The Warden's contention that inmates invoking Rule 4(c) must proceed without the assistance of counsel contradicts the plain meaning of the text.

B. The policy considerations in *Houston* confirm that the prison mailbox rule applies to passively represented prisoners.

The prison mailbox rule applies to passively represented prisoners, like Mr. Escoffier, because the decision in *Houston* was intended to rectify obstacles faced by prisoners "seeking to appeal without the aid of counsel." 487 U.S. at 270. The majority's analysis in *Houston* is premised not on a prisoner's *pro se* status, but on whether the prisoner is proceeding "without the aid of counsel." *Id.* (quoting *Fallen v. United States*, 378 U.S. 139, 144 (1964)). While *pro se* prisoners are formally

proceeding without the aid of counsel, there are a variety of other circumstances where a prisoner is "represented" in fact but not in effect. *See, e.g.*, *Moore*, 24 F.3d at 625. Thus, this Court recognized that when a prisoner has done "all he could under the circumstances" to ensure the filing of a notice of appeal, the court should not "read the Rules so rigidly as to bar a determination of his appeal on the merits." *Fallen*, 378 U.S. at 144. A passively represented prisoner—who relies on the prison mailing system after counsel fails to file the notice on his behalf—has done all he could under the circumstances and is entitled to rely on the prison mailbox rule. This conclusion is supported by three policy considerations in *Houston*. 487 U.S. at 270.

First, the rule was intended to place inmates, who cannot personally monitor the mail or deliver relevant documents to the clerk, on equal footing with litigants outside prison walls. *Id.* Passively represented prisoners and prisoners proceeding *pro se* are both faced with the inability to personally assure the filing of vital court documents. *Moore*, 24 F.3d at 625. In *Moore*, the prisoner, represented by counsel during trial, decided to appeal his conviction and sentence. Brief of the Appellant at 1–2, *United States v. Moore*, 24 F.3d 624 (4th Cir. 1994) (No. 92-5042). Three weeks after requesting that his court appointed attorney file the appeal, the prisoner learned that the attorney had yet to do so. *Id.* Concerned that he would miss the filing deadline, the prisoner submitted his notice of appeal himself using the prison mail system. *Id.* The notice was deposited with prison authorities before the filing deadline but arrived at the courthouse two days after the deadline. *Id.* Emphasizing

that even prisoners represented by counsel can be forced to rely on the prison mailing system, the Fourth Circuit concluded that the notice of appeal was timely filed. *Moore*, 24 F.3d at 625.

By definition, passively represented prisoners cannot rely on counsel to deliver relevant court documents on their behalf. Passively represented prisoners are precluded from placing "the notice directly into the hands of the United States Postal Service" or traveling "to the courthouse to see that the notice is stamped 'filed.'" *Houston*, 487 U.S. at 271. Consequently, the principles in *Houston* illustrate that passively represented prisoners should not be punished for relying on the prison mailing system—the only method available to file vital court documents.

Second, this Court adopted the prison mailbox rule because a prisoner's legal rights should not depend on the good faith or diligence of prison officials. *Id.* at 270–72. Prison officials "have every incentive to delay," whether the prisoner is represented by counsel or proceeding *pro se*. *Id.* at 272. Concerns of intentional delay are exacerbated by prison officials' exclusive access to key evidence a prisoner may need to prove that the appeal was timely filed. *Id.* at 276. Determining whether delays in the delivery of legal mail are attributable to the prison authorities, the Postal Service, or the court clerk, would be difficult if not impossible for a prisoner adjudicating his claim from the confines of his cell. *Id.*

Some courts contend that the rights of represented prisoners are not dependent on prison officials because counsel can file important court documents on their behalf. *E.g.*, *Cretacci*, 988 F.3d at 867. This reasoning is based on the incorrect

assumption that being represented *by* counsel is equivalent to having access *to* counsel. As the court in *Moore* noted, if it is possible for prison officials to delay the delivery of important filings, "it is just as possible that they could choose to delay his access to counsel." 24 F.3d at 625. Thus, even when a prisoner obtains counsel, the limitations imposed by incarceration are not alleviated.

Third, the prison mailbox rule was created because it is easy apply. *Houston*, 487 U.S. at 275. This Court's reluctance to adopt a mailbox rule in other contexts was based on the difficulty of determining the filing date with certainty. *Id.* However, in the prison context, basing filing on the date the prisoner hands the document to prison authorities creates a simple, easy to apply rule. *Id.* Because prison authorities have "well-developed procedures" for recording the receipt of court documents, the prison mailbox rule created a "bright-line" rather than an "uncertain" rule for determining compliance with the filing deadline. *Id.*

Complicating the prison mailbox rule with complex questions about representation status contradicts this clear policy rationale. Representation status often involves "thorny" questions of state law that are difficult for courts, let alone inmates, to resolve. *Cretacci*, 988 F.3d at 872 (Readler, J., concurring) ("Is an inmate 'represented,' for instance, if her counsel is not admitted in the state in which the inmate's case must be filed? Or if she has consulted with a lawyer only informally? Or with a family member with a law degree who has offered to assist the inmate, but not to formally represent her?"). Requiring courts to engage in an additional layer of analysis to determine a prisoner's representation status

complicates a rule this Court intended to be easily administered. *See Houston*, 487 U.S. at 276. Consequently, the prison mailbox rule was intended to apply to both *pro se* and represented prisoners.

Here, Mr. Escoffier filed his notice of appeal without the assistance of counsel; thus, the policy rationales in *Houston* affirm that the prison mailbox rule applies. After the District Court of Silphium's ruling, Ms. Pegge assured Mr. Escoffier that she would file his notice of appeal. R. at 6. Shortly after their conversation, however, Ms. Pegge contracted a severe form of Miasmic Syndrome. *Id.* Ms. Pegge was immediately hospitalized and unable to file Mr. Escoffier's appeal on his behalf. *Id.* "Unskilled in law, unaided by counsel, and unable to leave the prison," Mr. Escoffier pursued the only avenue available to him to file his notice of appeal—the prison mail system. *Houston*, 487 U.S. at 271. In essence, Mr. Escoffier's circumstances are analogous to the prisoner in *Moore*. 24 F.3d at 625. Both prisoners were assured by counsel that the notice of appeal would be timely filed; both attorneys failed to file the notice; and both prisoners were forced to rely on the prison mailing system to file their appeal. R. at 6; Brief of the Appellant at 1–2, *United States v. Moore*, 24 F.3d 624 (4th Cir. 1994) (No. 92-5042). Therefore, like the court in *Moore*, this Court should affirm that *Houston* applies to passively represented prisoners who, like *pro se* prisoners, are proceeding without the assistance of counsel. *Moore*, 24 F.3d at 625–26.

Even more so, Miasmic Syndrome regulations at the prison impeded Mr. Escoffier's ability to contact Ms. Pegge and inquire about the status of his appeal. R.

at 3–4. In-person visitation was prohibited, access to prison libraries was significantly curtailed, prison officials controlled incoming and outgoing phone calls, and videoconference appointments were booked for weeks. R. at 3–4, 7. In effect, prison officials could choose to delay both the mailing of a notice of appeal and an inmate's access to counsel. *Moore*, 24 F.3d at 625. *Houston* sought to remedy this exact problem: A prisoner, isolated from the outside world, forced to rely on prison officials for the filing of essential court documents is entitled to have his notice of appeal considered filed on the day it is delivered to prison authorities. 487 U.S. at 271–72.

While Mr. Escoffier may have been represented under local law, he could not be expected to know that and should not be punished for his lawyer's inability to submit a filing. When Mr. Escoffier finally reached Ms. Pegge's law firm, he was told that the firm "did not have any attorney to help him" and that he would need to file his notice of appeal using the prison mail system. R. at 7. Even though Ms. Pegge was not the only attorney at the firm that could have filed the notice of appeal, Mr. Escoffier reasonably believed that he was on his own. Under the Warden's interpretation of *Houston*, if Mr. Escoffier had explicitly fired Ms. Pegge before filing the notice of appeal, he could have received the benefits of the prison mailbox rule. Mr. Escoffier's serious allegations of abuse should not be barred by such fortitudes and formalism. Accordingly, Mr. Escoffier "did all he could under the circumstances" to ensure timely filing of his notice of appeal. *Fallen*, 378 U.S. at

144. The policy considerations in *Houston* support the application of the prison mailbox rule.

C. Mr. Escoffier's mailing certificate is sufficient evidence that the notice of appeal was deposited with prepaid postage prior to the filing deadline.

By attaching his mailing certificate, which includes evidence that the appeal was delivered to prison authorities with prepaid postage before the filing deadline, Mr. Escoffier timely filed his notice of appeal. Inmates must attach either a declaration *or* "evidence" demonstrating "that the notice was so deposited and that postage was prepaid," in addition to depositing the notice of appeal with prison authorities before the filing deadline. Fed. R. App. P. 4(c)(1)(A)(i)–(ii). The government then bears the burden of proving that the notice was delivered to prison authorities on a date other than the date alleged by the prisoner. *Jeffries v. United States*, 748 F.3d 1310, 1314 (11th Cir. 2014); *see also Houston*, 487 U.S. at 275–76. Prison logs and other records are available to prison officials to contradict a prisoner's assertion that the notice was deposited on a specific date. *Moody v. Conroy*, 762 Fed. Appx. 71, 73 (3d Cir. 2019). Therefore, courts are to assume that "an inmate places a filing in the hands of prison authorities for mailing on the date that it is signed." *Id.*; *see also Ray v. Clements*, 700 F.3d 993, 1011 (7th Cir. 2012).

To satisfy the "evidence" requirement, courts have analyzed a wide range of documents, including: a postmark or date stamp, *Abuelazam v. Kowalski*, 18-1262, 2018 WL 4214315, at *1 (6th Cir. June 22, 2018); a certificate of service with a signature date, *Jeffries*, 748 F.3d at 1314; a prison mailing card, *May v. Mahone*,

876 F.3d 896, 899 (7th Cir. 2017); and prison mail logs, *Harman v. United States*, 3:17-CR-325, 2021 WL 3403534, at *6 (M.D. Pa. Aug. 4, 2021).

A mailing certificate is sufficient "evidence" that a prisoner's notice of appeal was timely filed. *Ewing v. Burke*, 5:19-CV-34-DCB, 2020 WL 1151068, at *2 (S.D. Miss. Mar. 9, 2020). For example, in *Ewing*, a prisoner alleged he filed his notice of appeal before the June 12, 2019, filing deadline. *Id.* Along with the notice of appeal, the prisoner attached a certificate of service alleging that he filed the notice with prepaid postage before the deadline. *Id.* The prisoner also "requested urgent legal assistance on June 10, 2019, for mailing and copying legal documents," which the court interpreted as further evidence that the prisoner was "actively trying to mail his pleadings." *Id.* The court concluded that this evidence satisfied Rule 4(c)(1)(A)(ii). *Id.* The prison officials failed to provide any evidence to contradict the prisoner's assertion. *Id.* Rather, the prison mail logs indicated a document was deposited by the prisoner into the prison mail system on June 12, 2019. *Id.* Although the prison mail logs "lack[ed] the necessary details" and did not identify the document mailed on June 12, 2019, as the notice of appeal, the court found that the evidence offered by the prisoner complied with Rule 4(c)(1)(A)(ii). *Id.* Thus, a mailing certificate and attempts by the prisoner to obtain legal assistance for the filing of his notice is sufficient "evidence" that the notice was deposited and postage prepaid.

By contrast, courts will inquire further into the prisoner's allegation when prison officials provide evidence to cast doubt on the prisoner's assertion that the

notice was deposited before the filing deadline. In *May*, for instance, the prisoner attached a copy of his prison mailing card with his notice of appeal as other "evidence" of timely filing. 876 F.3d at 897. The prison mailing card established that mail was sent out on February 19, 2015. *Id.* at 898. Nevertheless, the government provided evidence that the document mailed on February 19, 2015, might not have been the prisoner's notice of appeal because the prisoner was party to four other lawsuits. *Id.* This created a factual dispute as to whether the February 19, 2015, document was in fact the notice of appeal. *Id.* The court remanded to allow the prisoner to develop additional evidence that his notice was timely filed. *Id.*; *see also Jeffries*, 748 F.3d at 1315 (concluding that the notice of appeal was not timely filed when prison mail logs contradicted the prisoner's alleged filing date). Unrebutted evidence, such as a mailing card, prison logs, or file stamp, is sufficient to satisfy the "evidence" requirement and support the prisoner's assertion that the notice was deposited before the filing deadline.

Here, Mr. Escoffier's notice of appeal was accompanied by a mailing certificate verifying that his notice was deposited with prepaid postage in the prison mailing system on March 2, 2021, one day before the filing deadline. R. at 7, 21. Mr. Escoffier, like the prisoner in *Ewing*, requested assistance with the filing of his notice and provided a certificate confirming the deposit date and that postage was prepaid. R. at 7, 21; *Ewing*, 2020 WL 1151068, at *2. Even though the prison logs did not identify the document mailed as the notice of appeal, the court in *Ewing* held that the other evidence—the mailing certificate and attempt to request legal

assistance—satisfied Rule 4(c)(1)(A)(ii). *Id.* Thus, the evidence supplied by Mr. Escoffier fulfills the requirements of Rule 4(c)(1)(A)(ii).

Additionally, the Warden has failed to supply *any* evidence to contradict Mr. Escoffier's assertion that the notice was timely filed. While the government in *May* offered evidence that the prisoner was engaged in multiple lawsuits, casting suspicion on whether the document mailed on February 19, 2015, was the notice of appeal, Mr. Escoffier is a party to *one* lawsuit. 876 F.3d at 898; R. at 2, 7. The sole document Mr. Escoffier needed to mail in connection with his pending legal proceedings was the notice of appeal. R. at 2, 7. The document mailed on March 2, 2021, is specified as legal mail with prepaid postage. R. at 21. Accordingly, the mailing certificate satisfies Rule 4(c)(1)(A)(ii) and the Warden has failed to provide any evidence to the contrary.

II. Garum Correctional Facility's categorical ban on gender affirmation surgery is cruel and unusual punishment.

The Warden violated Mr. Escoffier's Eighth Amendment right to be free from cruel and unusual punishment by enforcing GCF's categorical ban on gender affirmation surgery. By denying this necessary treatment, the Warden was deliberately indifferent to Mr. Escoffier's serious medical need.

An inmate's Eighth Amendment rights are violated when the inmate is subjected to cruel and unusual punishment. U.S. Const. amend. VIII. The government is obligated to provide medical care for incarcerated individuals. *See Estelle v. Gamble*, 429 U.S. 97, 105 (1976). An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs go

unmet. *Id.* Failure to treat an inmate's medical needs allows for physical torture and, in some cases, a lingering death. Thus, the denial of necessary medical care to prisoners constitutes a violation of the Eighth Amendment.

To demonstrate an Eighth Amendment violation, it must be shown that (1) the prisoner has a serious medical need and (2) the prison administrators exhibited deliberate indifference to that serious medical need. *Id.* at 105–06. The first prong is evaluated objectively. *Kosilek v. Spencer* (*Kosilek II*), 774 F.3d 63, 82 (1st Cir. 2014). It requires a diagnosis and either a physician's mandate for treatment or that the treatment be so obviously necessary that "even a lay person would easily recognize the necessity for a doctor's attention." *Id.* (quoting *Gaudreault v. Municipality of Salem, Mass.*, 923 F.2d 203, 208 (1st Cir. 1990)). The second prong subjectively evaluates whether the inadequate medical care constitutes "deliberate indifference." *Kosilek II*, 774 F.3d at 83.

Mr. Escoffier suffers from gender dysphoria, which is the "marked incongruence" between a person's expressed or experienced gender and the gender assigned at birth. Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 451–59 (5th ed. 2013). This incongruence may be resolved through counseling, hormone therapy, and gender affirmation surgery; the denial of treatment can result in serious mental problems such as depression, anxiety, self-castration, or suicidal ideation. *Kosilek v. Spencer* (*Kosilek I*), 889 F. Supp. 2d 190, 197 (D. Mass. 2012) (considering the transgender plaintiff's attempts at suicide and self-castration while incarcerated). Courts uniformly acknowledge that gender

dysphoria is a serious medical condition. *See generally Kosilek I*, 889 F. Supp. 2d at 190; *Edmo v. Corizon, Inc.* (*Edmo II*), 949 F.3d 489 (9th Cir. 2020). In this case, Mr. Escoffier's gender dysphoria is so severe that it requires gender affirmation surgery to treat. The Warden knew of the ineffective nature of Mr. Escoffier's current treatment and failed to remedy it. The Warden was also aware of the substantial risk of harm that could occur as a result of GCF's categorical ban on gender affirmation surgery. This is cruel and unusual punishment.

A. Gender affirmation surgery is necessary to treat Mr. Escoffier's serious medical condition.

The Warden's failure to treat Mr. Escoffier's serious medical condition is a violation of the Eighth Amendment. The primary concern of the drafters of the Eighth Amendment was to proscribe torture and other barbarous methods of punishment. *Estelle*, 429 U.S. at 102. This Court recognized that denying prisoners treatment for serious medical needs constitutes torture and is a barbarous method of punishment. *Id.* A showing of inadequate medical treatment is not solely based on a scientific or statistical inquiry. *Helling v. McKinney*, 509 U.S. 25, 35 (1993). This Court must also assess whether society considers the risk that the prisoner complains of to be so grave as to violate contemporary standards of decency. *Id.*

Transgender individuals have a gender identity—a deeply felt, inherent sense of their gender—that does not align with their sex assigned at birth. Am. Psychol. Ass'n, Guidelines for Psychological Practice with Transgender and Gender Nonconforming People, 70 Am. Psychologist 832, 834 (2015). Gender dysphoria is defined as distress that is caused by a discrepancy between a person's gender

identity and that person's sex assigned at birth. World Prof'l Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People 2 (7th ed. 2011). Treatment must be catered to the needs of individual patients and the failure to conduct an individualized assessment of a prisoner's needs violates the Eighth Amendment. *Kosilek II*, 774 F.3d at 91 (citing *Roe v. Elyea*, 631 F.3d 843, 862–66 (7th Cir. 2011)).

The Ninth Circuit, in *Edmo II*, identified the World Professional Association for Transgender Health (WPATH) as the standard for constitutionally acceptable treatment for gender dysphoria. 949 F.3d at 494. The WPATH Standards of Care outline evidence-based treatment options for individuals with gender dysphoria: (1) changes in gender expression and role; (2) psychotherapy to explore gender identity; (3) hormone therapy to feminize or masculinize the body; and (4) surgery to change primary and/or secondary sex characteristics. *Edmo v. Corizon, Inc.* (*Edmo I*), 935 F.3d 757, 770 (9th Cir. 2019). Left untreated, gender dysphoria can lead to debilitating distress, depression, impairment of function, substance use, self-surgery to alter one's genitals or secondary sex characteristics, self-injurious behaviors, and even suicide. *Id.*

In Mr. Escoffier's case, gender affirmation surgery is the necessary and logical next course of treatment. When determining the sufficiency of treatment for gender dysphoria, the First Circuit held that the analysis does not center on whether existing treatment is adequate, but whether the denial of gender affirmation surgery is sufficiently harmful to violate the Eighth Amendment.

Kosilek II, 774 F.3d at 89. Although a prison provides an inmate with some treatment consistent with the WPATH Standards of Care, it does not follow that they have provided constitutionally adequate treatment. *De'lonta v. Johnson*, 708 F.3d 520, 525–26 (4th Cir. 2013). The Fourth Circuit rejected the notion that alleging a prison has actively provided some treatment directed to an inmate's urges to self-mutilate prevents the prisoner from alleging that the prison violated their Eighth Amendment rights. *Id.* Total deprivation of care is not a necessary condition for finding a constitutional violation. *Langford v. Norris*, 614 F.3d 445, 460 (8th Cir. 2010). Grossly incompetent or inadequate care will suffice, as can a doctor's decision to take an easier and less efficacious course of treatment. *Id.*

Mr. Escoffier was diagnosed with gender dysphoria in 2011. R. at 1. Since his diagnosis, Mr. Escoffier has been treated with a change in gender expression, psychotherapy, and hormone therapy. *Id.* None of these approved treatments for gender dysphoria prevented Mr. Escoffier's symptoms from escalating. R. at 4. Mr. Escoffier stated that he would rather end his life than continue to live in a woman's body. R. at 17. The WPATH Standard of Care lists this circumstance as the precise situation where gender affirmation surgery is necessary. World Prof'l Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People 2 (7th ed. 2011). Mr. Escoffier informed GCF that his condition was intolerable, that the current treatment plan was ineffective and insufficient, and that he required gender affirmation surgery, as he intended to undergo prior to incarceration. R. at 4.

GCF's categorical ban on gender affirmation surgery is cruel and unusual punishment, a violation of Mr. Escoffier's Eighth Amendment rights. The risk to Mr. Escoffier's life is so grave that it violates all sense of decency to deny him this necessary treatment. Providing this necessary surgery for Mr. Escoffier is supported by the science set out in the WPATH Standards of Care and the experiences of the transgender community in American society. Under these circumstances, gender affirmation surgery is a medical necessity.

B. The Eighth Amendment prohibits Garum Correctional Facility's deliberate indifference to Mr. Escoffier's serious medical condition.

The Warden's refusal to evaluate Mr. Escoffier individually to determine whether gender affirmation surgery is warranted constitutes deliberate indifference in violation of the Eighth Amendment. When society takes from a person the means to provide for their own needs—as is the case with prisoners—failure to provide such care can produce physical torture. *Brown v. Plata*, 563 U.S. 493, 510 (2011). This Court held that the unnecessary and wanton infliction of pain and punishment, which are incompatible with the developing standards of decency that reflect the advancement of our maturing society, are incompatible with the Eighth Amendment. *Estelle*, 429 U.S. at 102–03 (citing *Trop v. Dulles*, 356 U.S. 86 (1958); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Weems v. United States*, 217 U.S. 349 (1910)).

The Cruel and Unusual Punishment Clause prohibits "deliberate indifference to serious medical needs of prisoners." *Estelle*, 429 U.S. at 106. Deliberate indifference is shown when medical professionals consciously disregard an excessive risk to a patient's health and choose a treatment that is unacceptable under the

circumstances. *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996). A blanket ban of medically necessary surgery based solely on an administrative policy is the paradigm of deliberate indifference. *Colwell v. Bannister*, 763 F.3d 1060, 1063 (9th Cir. 2014). The symptoms resulting from Mr. Escoffier's gender dysphoria are so severe that it requires gender affirmation surgery. After being informed of Mr. Escoffier's condition, the Warden knew of the substantial risk that harm would occur and was deliberately indifferent towards that risk by banning necessary treatment.

i. Garum Correctional Facility's categorical ban on gender affirmation surgery is deliberately indifferent to Mr. Escoffier's serious medical need.

Prison officials' decisions regarding adequate treatment are not afforded deference when an inmate alleges a violation of the Eighth Amendment. *Johnson v. California*, 543 U.S. 499, 511 (2005). When prison officials deny, delay, or intentionally interfere with medical treatment, they are shown to be deliberately indifferent to the inmate's serious medical needs. *Hutchinson v. United States*, 838 F.2d 390, 392 (9th Cir.1988). Prison authorities are obligated to ensure that inmates receive adequate medical care. *See Estelle*, 429 U.S. at 103. If prison authorities do not provide adequate care, inmates will suffer. *Id.* A prisoner does not enjoy a constitutional right to the treatment of their choice, however, the treatment a prison facility does provide must be adequate to address the prisoner's serious medical need. *De'lonta*, 708 F.3d at 526.

The test for deliberate indifference consists of two prongs. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). First, the plaintiff must show a "serious medical

need" by demonstrating that "failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain." *Id.* Second, the plaintiff must show the defendant's response to the need was deliberately indifferent. *Id.*

Gender dysphoria is established as a serious medical condition that, if left untreated, can lead to debilitating distress, depression, impairment of function, substance use, self-surgery to alter one's genitals or secondary sex characteristics, self-injurious behaviors, and even suicide. *Edmo I*, 935 F.3d at 770; World Prof'l Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People 2 (7th ed. 2011). Thus, the first prong is satisfied by Mr. Escoffier's formal gender dysphoria diagnosis. R. at 16.

The second prong is satisfied by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by that indifference. *Jett*, 439 F.3d at 1096. After exhausting the treatment options available at the prison, the Warden received notice of Mr. Escoffier's continuous serious depression, bouts of weight and hair loss, loss of appetite, severe anxiety and paranoia, and perpetual suicidal ideation due to his gender dysphoria. R. at 4. The Warden then denied Mr. Escoffier's further necessary treatment, satisfying the second prong of the deliberate indifference test.

ii. The Warden knew of the substantial risk that harm would occur as a result of Garum Correctional Facility's categorical ban on gender affirmation surgery.

Deliberate indifference is shown when prison officials are aware that a substantial risk of serious harm exists and fail to act. *Farmer v. Brennan*, 511 U.S.

825 (1994). This Court held in *Estelle* that inadequate treatment must be "sufficiently harmful to evidence deliberate indifference to serious medical needs." 429 U.S. at 107. Threats of suicide and self-harm should be taken seriously by prison administrations, and an inmate should not and "does not have to await the consummation of threatened injury to obtain preventive relief." *Farmer*, 511 U.S. at 845 (citing *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)). It would be inhumane for prison officials to wait for the disastrous and permanent consequences of suicide before providing adequate care. Suicidal ideation and self-mutilation are sufficient harms. World Prof'l Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People 2 (7th ed. 2011).

A prison's failure to provide gender affirmation surgery after a prisoner expresses the impulse to self-harm is deliberate indifference to a prisoner's serious medical need. *De'lonta*, 708 F.3d at 526. In *De'lonta*, the Fourth Circuit held that the prison violated the Eighth Amendment for failure to provide gender affirmation surgery to treat gender dysphoria. *Id.* Though the prison provided counseling and hormone therapy, the inmate's urges to self-castrate continued. *Id.* Despite this knowledge, the prison refused to provide gender affirmation surgery. *Id.* The Fourth Circuit held that the prison violated the Eighth Amendment, reasoning that it was not necessary to show a total deprivation of care. *Id.* The fact that hormone therapy was provided is not determinative. *Id.* Continuing to experience thoughts of suicide

is not only a risk that the afflicted will commit suicide, but it is also sufficient harm to evidence the prisons' indifference towards the inmate's serious medical need. *Id.*

The circumstantial nature of medical care conflicts with categorical treatment prohibitions. Prison policies refusing to offer gender affirmation surgery as a treatment option violate the Eighth Amendment. *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 243–44 (D. Mass. 2012) (quoting *Fields v. Smith*, 653 F.3d 550, 559 (7th Cir. 2011)). In *Fields*, the Seventh Circuit held that the Eighth Amendment is violated by removing surgery from consideration as a treatment option for gender dysphoria. 653 F.3d at 559. The categorical denial of medically necessary surgery based solely on an administrative policy is the prime example of deliberate indifference. *Colwell*, 793 F.3d at 1063.

GCF's policy is a categorical denial. The gender dysphoria treatment policy allows only for mental health counseling, hormone therapy, and adjustments to housing or privileges of care while at the facility. R. at 10–11. These methods of treatment proved to be ineffective for Mr. Escoffier. R. at 4. Consequently, Mr. Escoffier requested gender affirmation surgery to treat his serious depression, bouts of weight and hair loss, loss of appetite, severe anxiety and paranoia, and perpetual suicidal ideation caused by his gender dysphoria. *Id.* The Warden denied this request, citing GCF's policy prohibiting surgical intervention for gender dysphoria. R. at 4–5. By doing so, the Warden subjected Mr. Escoffier to a substantial risk of harm.

It is evident from Mr. Escoffier's medical record that the hormone therapy did nothing to ease the suicidal ideation and self-harming impulses produced by his severe case of gender dysphoria. R. at 17–19. Yet the prison officials refused to offer gender affirmation surgery. R. at 19. Not only was the treatment ineffective, it was recommended in bad faith and was prescribed as the only option for Mr. Escoffier's condition. *Id.* Upon denying Mr. Escoffier's request, the Warden provided no explanation other than that GCF policy prohibits gender affirmation surgery. *Id.*

Recognizing that the current treatment is ineffective, GCF's policy to categorically ban any individual assessment for gender affirmation surgery is deliberately indifferent to Mr. Escoffier's serious medical need. The lack of further action to treat Mr. Escoffier's serious medical need leaves him at substantial risk of harm and is cruel and unusual punishment. The Warden thereby violated Mr. Escoffier's Eighth Amendment rights.

CONCLUSION

This Court should affirm the Fourteenth Circuit's holding. Mr. Escoffier timely filed his notice of appeal under the prison mailbox rule and the Warden violated Mr. Escoffier's Eighth Amendment rights.

First, the prison mailbox rule applies to passively represented prisoners. Rule 4(c) contains no text that limits the rule's application to *pro se* litigants. The policy considerations in *Houston* support the conclusion that the prison mailbox rule applies to passively represented inmates. Unable to personally deliver his notice to

the courthouse or rely on his attorney, who was incapacitated, Mr. Escoffier had no choice but to entrust his notice of appeal to prison authorities—the exact situation *Houston* was designed to address. Second, Mr. Escoffier included a mailing certificate with his notice of appeal, which satisfies the requirement that inmates provide evidence that the notice was deposited with prepaid postage before the filing deadline. The Warden has failed to offer any evidence to contradict Mr. Escoffier's assertion that the notice was timely deposited. Consequently, Mr. Escoffier's notice complies with Rule 4(c) and is timely filed.

It is unrebutted that Mr. Escoffier has a serious medical need. Since Mr. Escoffier's diagnosis, he has not received adequate medical care for his gender dysphoria and has not seen any improvement in his symptoms. Mr. Escoffier had no choice but to rely on prison authorities to treat his serious medical need. That need remains unmet. The Warden unconstitutionally stood by while Mr. Escoffier suffered. And the Warden's deliberate indifference violates Mr. Escoffier's Eighth Amendment rights.

For the foregoing reasons, Respondent respectfully requests that this Court AFFIRM the ruling of the United States Court of Appeals for the Fourteenth Circuit.