No. 26A

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

ALISHEA SOPHIA KINGDOM, ET AL.

APPLICATION TO STAY THE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Donald J. Trump, in his official capacity as President of the United States; Todd Blanche, in his official capacity as Attorney General of the United States; William K. Marshall, III, in his official capacity as Director of the Federal Bureau of Prisons (BOP); Christopher A. Bina, in his official capacity as Assistant Director for the Health Services Division of BOP; Dana R. DiGiacomo, in her official capacity as Assistant Director of the Reentry Services Division of BOP; and Shane Salem, in his official capacity as Assistant Director of the Correctional Programs Division of BOP.

Respondents (plaintiffs-appellees below) are Alishea Sophia Kingdom, Solo Nichols, and Jas Kapule, on behalf of themselves and others similarly situated.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

Kingdom v. *Trump*, No. 25-cv-691 (Aug. 26, 2026)

United States Court of Appeals (D.C. Cir.):

Kingdom v. *Trump*, No. 26-5181 (June 17, 2026)

Kingdom v. *Trump*, No. 26-5236 (Sept. 18, 2026)

Kingdom v. *Trump*, No. 26-5310 (Sept. 18, 2026)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of Donald J. Trump, President of the United States, et al.—respectfully requests that this Court stay the order issued by the United States District Court for the District of Columbia (App., *infra*, 204a-207a) pending further proceedings in the D.C. Circuit and this Court.

The district court's order in this case prohibits the enforcement of a policy that the Federal Bureau of Prisons (BOP) adopted earlier this year regarding health care for inmates with gender dysphoria. Under prior policies, BOP had addressed gender dysphoria by providing both mental-health treatment (such as psychotherapy and psychiatry services) and sex-rejecting interventions (such as sex-trait-modification surgeries, hormone interventions, and social accommodations). In developing the 2026 policy at issue here, however, BOP determined that sex-trait-modification surgeries, hormone interventions in general, and social accommodations could no longer be justified as treatment for gender dysphoria. BOP reached that conclusion for two independent reasons: First, those interventions did not reflect the latest scientific

information, which had undermined BOP's prior reliance on the recommendations of the World Professional Association for Transgender Health (WPATH)—an organization whose standards had recently been called into serious question by medical professionals in the United States and other countries, as Justice Thomas recounted in *United States* v. *Skrmetti*, 605 U.S. 495, 537-540, 543-546 (2025). Second, those interventions raised security and prison-administration concerns that outweighed whatever limited benefits they had. In light of those reasons and an Executive Order directing a change in policy, BOP decided that it will continue to address gender dysphoria by providing mental-health treatment, but will no longer provide sex-trait-modification surgeries, hormone interventions in general, or social accommodations. In support of that decision, BOP produced a 43-page memorandum explaining its reasoning and a 3200-page administrative record containing the expert opinions, medical studies, and other materials that it considered.

Without meaningfully engaging with either BOP's reasoning or the administrative record, the district court prohibited BOP from applying its 2026 policy to any inmate who is or will be diagnosed with gender dysphoria. App., *infra*, 205a-206a. The court did so after concluding that respondents are likely to succeed on their claim that the 2026 policy is arbitrary and capricious under the Administrative Procedure Act (APA), 5 U.S.C. 706. App., *infra*, 187a-195a. But none of the reasons the court gave for that conclusion has merit, and all of them radically depart from the significant deference that BOP is due—under the APA in general, see *FDA* v. *Wages & White Lion Investments, L.L.C.*, 604 U.S. 542, 567 (2025), and in administering prisons in particular, see *Bell* v. *Wolfish*, 441 U.S. 520, 547-548 (1979).

First, the district court expressed the view that BOP did not adequately consider its own experience under its prior policies. App., *infra*, 188a. But BOP explained

that its prior policies reflected WPATH's standards of care, which had since been cast into serious doubt. BOP also repeatedly pointed to its prior experience in explaining why security and prison-administration concerns independently justified the 2026 policy. The court's demand for additional evidence cannot be reconciled with bedrock principles of administrative law or the double deference that BOP is due in this context.

Second, the district court stated that the 2026 policy is objectively unreasonable. App., *infra*, 191a. But BOP's decision to prioritize mental-health treatment, while discontinuing medically disputed and unproven sex-rejecting interventions, falls well within the bounds of reasoned decisionmaking. The court reached a contrary conclusion only by disregarding fundamental principles of APA review—relying on evidence outside the administrative record and substituting its own policy judgment for that of the agency.

Third, the district court took the view that the 2026 policy is pretextual and reverse-engineered to implement the Executive Order's direction to change policy. App., *infra*, 193a. But there is nothing improper about "an Administration's priorities" influencing an agency's policymaking, *Department of Commerce* v. *New York*, 588 U.S. 752, 781 (2019), and the court's remaining grounds for inferring pretext merely repeat its other, meritless reasons for deeming the 2026 policy arbitrary and capricious.

In all events, the district court's order also violates the Prison Litigation Reform Act (PLRA), 18 U.S.C. 3626. Procedurally, the court entered prospective relief without making the particularized findings that the PLRA requires. Substantively, the court entered preliminary injunctive relief that goes beyond the PLRA's limits—both by enjoining aspects of the 2026 policy that are not the source of any alleged harm and by enjoining the policy as to every inmate who is or will be diagnosed with gender dysphoria.

For all those reasons, the government is likely to succeed on the merits. Indeed, in denying a stay pending appeal, the court of appeals did not even contest most of the government's arguments for why the district court had erred. Instead, the divided appellate panel relied solely on a perfunctory determination that BOP failed to adequately consider its prior experience and a conclusory assertion that the government failed to demonstrate a PLRA violation. App., *infra*, 208a-209a.

The other relevant factors support a stay as well. In blocking a significant federal policy on a nationwide basis, the district court's order raises issues that would plainly warrant certiorari. In nullifying BOP's exercise of its statutorily conferred authority to adopt a policy that prison administrators have determined is necessary to maintain institutional security, the court's order causes irreparable harm to the government and to the public. Indeed, this Court has emphasized the importance of allowing politically accountable officials to make decisions about the permissible forms of treatment for gender dysphoria, and the need for such policymaking "flexibility" is even greater in the context of prison administration. *Skrmetti*, 605 U.S. at 524. Finally, the public interest substantially outweighs any irreparable harm to respondents—who will not experience any such harm in any event, because the 2026 policy provides appropriate, individualized treatment for gender dysphoria, while disallowing only interventions that are medically unnecessary. The government therefore respectfully requests a stay of the district court's order pending further review.

STATEMENT

A. The Bureau Of Prisons' Policies

1. Congress has charged BOP with "the management and regulation of all Federal penal and correctional institutions." 18 U.S.C. 4042(a)(1). BOP's duties in-

clude "provid[ing] for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States." 18 U.S.C. 4042(a)(2).

BOP's Health Services Division "oversees the treatment of inmates for all medical and psychiatric diagnoses," including gender dysphoria. App., *infra*, 10a. Gender dysphoria is a mental-health disorder listed in the *Diagnostic and Statistical Manual of Mental Disorders* (*DSM*), published by the American Psychiatric Association. Administrative Record (A.R.) 1455-1464; see App., *infra*, 9a. The most recent edition of the *DSM* defines gender dysphoria as a "marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration," that is "manifested" in various specified ways and is "associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning." A.R. 1456-1457.

2. During the Obama Administration, BOP issued guidelines for the treatment of inmates diagnosed with gender dysphoria. A.R. 1847-1896. Those guidelines relied on standards published by WPATH. A.R. 1848, 1850, 1870. In 2022, WPATH published a new version of its standards of care. A.R. 1587-1844. The following year, the Biden Administration made "[s]ignificant changes" to BOP's guidance to "more closely align" it with WPATH's new standards. A.R. 629; D. Ct. Doc. 7-3, at 41 (Mar. 17, 2025). The revised guidance stated that treatment for gender dysphoria "may include social supports," "mental health treatment" (such as "psychotherapy" and "psychiatry services"), and "medical treatment (including hormone therapy and surgery)." A.R. 639 (capitalization omitted); D. Ct. Doc. 7-3, at 51 (same).

3. On his first day back in office, President Trump issued an Executive Order declaring it "the policy of the United States to recognize two sexes, male and female," which "refer to an individual's immutable biological classification" and do "not

include the concept of 'gender identity.'" App., *infra*, 1a; see Exec. Order No. 14,168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (Jan. 20, 2025), 90 Fed. Reg. 8615, 8615 (Jan. 30, 2025) (Executive Order). The Executive Order also directed the Attorney General, to the extent "consistent with applicable law," App., *infra*, 4a, to "ensure that [BOP] revises its policies concerning medical care to be consistent with this order" and to "ensure that no Federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex," *id.* at 3a.

In February 2025, BOP issued two memoranda implementing the Executive Order. The first memorandum prohibited BOP staff from granting "[r]equests for clothing accommodations," such as "undergarments that do not align with an inmate's biological sex." App., *infra*, 6a. The second memorandum provided that, "consistent with applicable law," "no [BOP] funds are to be expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex." *Id.* at 7a. In June 2025, the district court entered preliminary injunctive relief prohibiting the government from enforcing the Executive Order and the 2025 implementing memoranda. See pp. 11-12, *infra*.

4. In February 2026, after revisiting the matter, BOP issued a new policy on the treatment of inmates diagnosed with gender dysphoria, superseding the 2025 memoranda. App., *infra*, 8a-17a. BOP explained that although the Executive Order "support[ed]" the 2026 policy, BOP was "adopt[ing] th[e] policy independently of [the] Executive Order." *Id.* at 13a; see *id.* at 31a (explaining that the 2026 policy reflects "BOP's own independent judgment"). BOP produced a 3200-page administrative record containing the materials that it had considered in developing the 2026 policy, including "existing research, medical expert opinions, medical journals, national me-

dia reports, recent medical studies, state correctional policies, BOP's prior policies, and pertinent case law." App., *infra*, 27a; see *id.* at 18a-26a. BOP also produced a summary of the administrative record, *id.* at 27a-30a, and a 43-page memorandum explaining its reasons for adopting the 2026 policy, *id.* at 31a-73a.

The 2026 policy establishes the following guidelines:

- A diagnosis of gender dysphoria "will be made by a mental health clinician or primary care medical provider." App., *infra*, 11a. Because gender dysphoria is "often accompanied by other psychiatric comorbidities" (such as anxiety, depression, and personality or post-traumatic-stress disorders), "a complete diagnostic and psychiatric/medical assessment of those with [gender dysphoria] will be performed." *Id.* at 12a.
- Treatment plans should be "tailored to the specific clinical needs of the inmate." App., *infra*, 13a. "In general, identified medical and psychiatric comorbidities should be addressed before treatment for [gender dysphoria] proceeds." *Ibid.* Treatment for gender dysphoria "may include psychotherapy, group counseling, psychiatric services, and psychotropic medications." *Id.* at 34a. Treatment should "focus on managing the psychological distress/dysphoria, assisting with adjustment to incarceration, community re-entry, and strengthening resilience." *Id.* at 13a.
- "BOP will not provide sex trait modification surgeries to address gender dysphoria, but BOP will provide care necessary to address any complications or resulting conditions from such surgeries, such as urethral stricture and pelvic infections." App., *infra*, 34a. "Examples of [sex-trait-modification] surgeries include vaginoplasty, phalloplasty, orchiectomy, vulvoplasty, hysterectomy, oophorectomy, mastectomy, metoidio-

plasty, chest reconstruction, breast augmentation, hair removal, facial feminization surgery, and voice modification." *Id.* at 10a.

- "If an inmate is diagnosed with gender dysphoria but is not currently receiving hormones to address gender dysphoria, BOP will not provide hormones to address the inmate's gender dysphoria." App., *infra*, 34a. "If an inmate is previously and currently diagnosed with gender dysphoria and is currently receiving hormones to address gender dysphoria, BOP will develop a tapering plan for each inmate after consideration of appropriate factors." *Ibid.* Those factors include "the duration the inmate has been receiving hormones to address [gender dysphoria], the initial rationale for receiving the hormone intervention, the response by the inmate to the intervention, and whether the inmate has undergone sex trait modification surgery." *Id.* at 14a-15a.
- "BOP will not provide social accommodations to address gender dysphoria and when practicable, will remove or confiscate social accommodations." App., *infra*, 34a. Social accommodations include "buttock padding," "breast padding," chest "binders," "makeup," "wigs," and other items "used to alter the person's appearance to align with the person's 'gender identity.'" *Id.* at 10a.

In its memorandum accompanying the 2026 policy, BOP explained why it had changed its view of sex-trait-modification surgeries, hormone interventions, and social accommodations. App., *infra*, 31a-33a. BOP identified two independent reasons.

First, BOP explained that it had changed its view in light of "the latest scientific information." App., *infra*, 33a. BOP determined that although its prior policies had generally approved sex-rejecting interventions to address gender dysphoria, those

policies had "unreasonably relied" on standards published by WPATH and "other biased sources." *Ibid.* BOP noted that "[r]ecent revelations" had "suggest[ed] that WPATH * * * bases its guidance on insufficient evidence and allows politics to influence its medical conclusions." *Id.* at 31a (quoting *Skrmetti*, 605 U.S. at 543 (Thomas, J., concurring)); see *id.* at 30a-33a (citing other authorities criticizing WPATH). BOP further observed that those revelations had caused entities in the United States and other countries to reconsider their previous reliance on WPATH's standards. *Id.* at 32a. According to BOP, those revelations had likewise led prison administrators to view WPATH's standards as "unreliable" and "unpersuasive." *Id.* at 32a-33a. BOP explained that "[a]fter considering the relevant issues and factors and weighing the relevant considerations," it had "revised its policy to reflect treatment for gender dysphoria that is more aligned with the latest scientific information." *Id.* at 33a. That information indicates, contrary to WPATH's conclusions, that sex-trait-modification surgeries, hormone interventions in general, and social accommodations are "*not* medically necessary" to treat gender dysphoria. *Id.* at 35a, 42a, 50a (emphasis added).

Second, BOP explained that it had changed its view of sex-rejecting interventions in light of "the correctional environment's unique safety, security, and administration concerns." App., *infra*, 27a; see *id.* at 31a ("Though BOP considers community standards of care, BOP must consider such standards in light of the unique nature of the carceral environment."); *id.* at 36a ("BOP's general policy is to 'deliver medically necessary health care to inmates effectively in accordance with proven standards of care *without compromising public safety concerns inherent to the Bureau's overall mission*.'"). BOP explained that such security and prison-administration concerns had "independently" led it to conclude that providing greater access to sex-trait-modification surgeries, hormone interventions, and social accommodations was un-

justified. *Id.* at 37a, 44a, 54a. In particular, BOP had determined, based in part on its own "experience and expertise," *id.* at 37a, 38a, 45a, 46a, 55a, that providing greater access to those interventions would risk turning the recipients of those interventions into "target[s] for attacks," *id.* at 37a, 44a, 54a; "raise fairness concerns" and "breed resentment among other inmates," *ibid.*; and undermine BOP's "reasonable practice of refusing to reward threats of self-harm," *ibid.* In BOP's view, providing social accommodations also would enable inmates to "hide contraband" or "obfuscate or conceal [their] identity." *Id.* at 44a. BOP explained that such security and prison-administration concerns "outweigh[ed]" any benefits, medical or otherwise, from providing greater access to sex-trait-modification surgeries, hormone interventions, and social accommodations in the prison setting. *Id.* at 37a, 44a, 54a.

B. Procedural History

1. In March 2025, three BOP inmates who have been diagnosed with gender dysphoria filed a putative nationwide class action against the government in the United States District Court for the District of Columbia, challenging the Executive Order and BOP's two 2025 implementing memoranda. D. Ct. Doc. 4-1, at 3-9 (Mar. 10, 2025). The complaint acknowledged that "psychotherapy can be important to support individuals with gender dysphoria." *Id.* at 11. But the complaint alleged that the government's decision not to provide sex-trait-modification surgeries, hormone interventions, and social accommodations violated the Cruel and Unusual Punishments Clause of the Eighth Amendment; the equal protection component of the Due Process Clause of the Fifth Amendment; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; and the APA. D. Ct. Doc. 4-1, at 22-31. The named plaintiffs moved for class certification and a preliminary injunction requiring the government

to continue providing two out of the three categories of sex-rejecting interventions: "hormone therapy and [social] accommodations." D. Ct. Doc. 7, at 1 (Mar. 17, 2025).

In June 2025, the district court certified a nationwide class of "all persons who are or will be incarcerated in the custody of BOP facilities, with a current medical diagnosis of gender dysphoria or who receive such a diagnosis in the future." D. Ct. Doc. 68, at 1 (June 3, 2025). The court concluded that respondents—the three named plaintiffs and the certified class that they represent—were likely to succeed on their APA claim that BOP's 2025 implementing memoranda were arbitrary and capricious because BOP had not reasonably explained its actions. D. Ct. Doc. 67, at 17, 20-23 (June 3, 2025). The court then stayed the 2025 implementing memoranda under 5 U.S.C. 705 pending the conclusion of judicial review. D. Ct. Doc. 68, at 2. The court also issued a classwide preliminary injunction prohibiting the government from enforcing the Executive Order and the 2025 implementing memoranda "as applied to medical hormone therapy and social accommodations," and requiring the government to continue providing "hormone therapy and social accommodations in accordance with BOP policy and practice in effect immediately prior to" issuance of the Executive Order. *Ibid.*

The district court held that preliminary injunctive relief was consistent with the PLRA. D. Ct. Doc. 68, at 2. Specifically, the court stated that its order was "narrowly drawn," "extend[ed] no further than necessary to correct the harm that [it found] require[d] preliminary relief," and was "the least intrusive means necessary to correct that harm." *Ibid.*; see 18 U.S.C. 3626(a)(2). Under the PLRA, the court's preliminary injunctive relief was set to expire after 90 days. 18 U.S.C. 3626(a)(2). But the court made what it believed to be the findings necessary to issue "additional 90-day" injunctions, thereby continuing to prohibit the government from implementing the Executive Order. D. Ct. Doc. 79, at 1 (Aug. 20, 2025); see D. Ct. Doc. 96 (Nov.

17, 2025); D. Ct. Doc. 114 (Feb. 12, 2026). Rather than appeal those injunctions, BOP undertook an extensive administrative process to address the purported APA deficiencies that the court had identified, culminating in the 2026 policy that BOP issued this past February. See pp. 6-10, *supra*.

2. In April 2026, the government moved to dissolve the 90-day injunction then in effect given BOP's issuance of the new 2026 policy. D. Ct. Doc. 160 (Apr. 1, 2026). Respondents filed a supplemental complaint challenging the 2026 policy. D. Ct. Doc. 182 (Apr. 30, 2026). They also moved for a new preliminary injunction and Section 705 stay, prohibiting enforcement of the 2026 policy. D. Ct. Doc. 179 (Apr. 29, 2026).

While briefing on that motion was ongoing, respondents asked the district court to "maintain the status quo" by "renew[ing]" the existing injunction (which was set to expire on May 31, 2026) until 14 days after the court decided their motion for a new injunction and Section 705 stay. D. Ct. Doc. 188, at 1 (May 13, 2026). On May 26, the district court granted respondents' request to "[r]enew[]" the existing injunction over the government's opposition. D. Ct. Doc. 202, at 3 (May 26, 2026). The government asked the court of appeals to stay that order pending appeal.

On June 17, 2026, the court of appeals granted a stay. 2026 WL 1905418. The court determined that the May 26 order was tantamount to an "administrative injunction" without "any 'discernible legal basis.'" *Id.* at *1. The court further found that the government was "irreparably harmed" because the order was "'an improper intrusion by a federal court into the workings of a coordinate branch of the Government.'" *Id.* at *2.

3. On June 17, just hours after the court of appeals' ruling, the district court granted respondents' motion for a new preliminary injunction and Section 705 stay. App., *infra*, 169a-201a. The court concluded that respondents were likely to suc-

ceed on their claim that the 2026 policy is arbitrary and capricious under the APA for three reasons: (1) BOP did not adequately "consider its own experience providing gender-affirming care under its prior policy," *id.* at 188a (capitalization omitted); (2) the 2026 policy is "objectively unreasonable given the evidence before the agency," *id.* at 191a (capitalization omitted); and (3) the 2026 policy is "pretextual and reverse engineered to implement" the Executive Order, *id.* at 193a (capitalization omitted). The court further concluded that denying respondents "hormone therapy and social accommodations" would cause them irreparable injury, *id.* at 199a, and that the equities supported relief because respondents' "interests in receiving [such] treatment outweigh[] the minimal cost to the government of continuing [it]," *id.* at 200a.

The district court universally stayed the 2026 policy under Section 705. App., *infra*, 169a. The court also issued a classwide preliminary injunction prohibiting the government from enforcing the 2026 policy and requiring the government to continue providing "gender-affirming care in accordance with BOP policy and practice in effect immediately prior to" issuance of the Executive Order. *Ibid.* As before, the court stated that its order was consistent with the PLRA. *Id.* at 170a. But unlike its prior injunctions, the court's June 17 injunction was not limited to hormone interventions and social accommodations; it also barred the government from enforcing its prohibition on sex-trait-modification surgeries, even though respondents had not asserted any harm from that prohibition. See *id.* at 169a; D. Ct. Doc. 179-1, at 30, 52 (Apr. 29, 2026). The court denied the government's request for a stay. App., *infra*, 202a-203a.

4. The government appealed the district court's June 17 order and asked the court of appeals for a stay of that order pending appeal. After the government's stay motion had been pending before the court of appeals for 51 days, respondents moved the district court for an additional 90-day injunction, which would take effect

after the June 17 order was set to expire under the PLRA on September 15, 2026. D. Ct. Doc. 240, at 1-2 (Aug. 20, 2026). On August 26, 2026, the district court granted respondent's motion over the government's opposition. App., *infra*, 204a-207a; see D. Ct. Doc. 240, at 1. In doing so, the court "incorporate[d] the reasoning contained in its memorandum opinion for its June 17 [order]," App., *infra*, 205a (citation omitted), and issued an order that is identical in all relevant respects to its June 17 order, *id.* at 205a-207a.

The government appealed the district court's August 26 order, and the court of appeals consolidated that appeal with the government's appeal of the June 17 order. The government then asked the court of appeals to treat its pending stay motion as seeking a stay of both orders.

On September 18, 2026—after the government's stay motion had been pending for nearly three months and after the district court's June 17 order had already expired—a divided panel of the court of appeals denied a stay. App., *infra*, 208a-212a. The panel dismissed the government's motion to stay the expired June 17 order as moot. *Id.* at 208a. The majority then denied the government's motion to stay the August 26 order, expressing the view that the government had "not shown a strong likelihood of success on the question of whether [the 2026 policy] is arbitrary and capricious because [BOP] did not adequately consider its own experience providing gender-affirming care under its prior policy." *Id.* at 208a-209a. The majority gave a single "example" that implicates only one of the two independent grounds justifying the 2026 policy: It stated that "BOP makes claims about the security impact of providing gender-affirming care without addressing whether such issues have occurred." *Id.* at 209a. The majority also asserted, without any explanation, that the government had "not made a strong showing that the district court's order violates the PLRA

or improperly grants class-wide relief." *Ibid.* Because the majority concluded that the government was unlikely to succeed on the merits, the majority found it unnecessary "to address whether [the government had] established irreparable harm or whether the remaining factors favor[ed] a stay." *Ibid.*

Judge Walker dissented. App., *infra*, 210a-212a. He concluded that "[t]he government is likely to succeed on the merits because the district court lack[ed] the authority to reissue the 90-day preliminary injunction first issued on June 17." *Id.* at 211a (citing *Doe* v. *Blanche*, 172 F.4th 901, 926, 930 (D.C. Cir. 2026) (Randolph, J., dissenting)). Judge Walker also determined that the government "would likely suffer irreparable harm without a stay, and that the balance of equities tips in its favor." *Id.* at 210a-211a.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, to obtain a stay of preliminary injunctive relief pending review in the court of appeals and in this Court, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *NRCC* v. *Brown*, No. 26A274, slip op. 4 (Sept. 4, 2026); *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," the Court will balance the equities and weigh the relative harms. *Ibid.* All of those factors decisively favor a stay of the district court's August 26 order prohibiting the enforcement of BOP's 2026 policy in this case.

I. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

After the district court enjoined BOP's initial efforts to implement the Executive Order solely on the ground that BOP had not reasonably explained its actions, see D. Ct. Doc. 67, at 20-23, BOP revisited the matter; "considered the relevant issues,

factors, information, and sources," App., *infra*, 27a; and produced a new policy, together with a 3200-page administrative record and a 43-page memorandum explaining its reasoning, see pp. 6-7, *supra*. The court nevertheless enjoined the new policy as well, issuing an even broader injunction than it had before. In doing so, the court contravened the most basic principles of APA review—substituting its own policy judgment for that of the agency, relying on evidence outside the administrative record, and faulting the agency for following presidential directions. The court also denied prison administrators the substantial deference they are due and disregarded the PLRA's limits on injunctive relief. The government is likely to succeed in overturning the court's order staying and enjoining BOP's 2026 policy.

A. The 2026 Policy Is Not Arbitrary Or Capricious Under The APA

The APA directs that agency actions be held unlawful if they are "arbitrary" or "capricious." 5 U.S.C. 706(2)(A). Under that "deferential" standard, "[a] court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." *FCC* v. *Prometheus Radio Project*, 592 U.S. 414, 423 (2021). "The scope of this review 'is narrow,' and reviewing courts must exercise appropriate deference to agency decisionmaking and not substitute their own judgment for that of the agency." *FDA* v. *Wages & White Lion Investments, L.L.C.*, 604 U.S. 542, 567 (2025).

Deference is particularly warranted on matters "within the province and professional expertise of corrections officials." *Bell* v. *Wolfish*, 441 U.S. 520, 548 (1979). As this Court has recognized, "[p]rison administrators * * * should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Id.* at 547. Such deference is warranted "not merely because the

administrator ordinarily will, as a matter of fact in a particular case, have a better grasp of his domain than the reviewing judge, but also because the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial." *Id.* at 548.

The district court defied those fundamental principles in this case. Despite the narrow scope of APA review and the substantial deference that prison administrators are due, the court concluded that the 2026 policy is arbitrary and capricious for three reasons: (1) BOP did not reasonably consider its experience under its prior policies; (2) the 2026 policy is objectively unreasonable given the evidence before the agency; and (3) the 2026 policy is pretextual and reverse-engineered to implement the Executive Order. App., *infra*, 187a-195a; see *id.* at 205a (incorporating those reasons into the August 26 order). The court of appeals adopted only the first of these rationales in denying a stay, *id.* at 208a-209a, and none of them has merit.

1. BOP reasonably considered its experience under its prior policies

The district court expressed the view that BOP acted arbitrarily by failing to "properly consider its own experience" under its "prior policy," which endorsed sex-trait-modification surgeries, hormone interventions, and social accommodations as ways of addressing gender dysphoria. App., *infra*, 188a (capitalization omitted). That view is incorrect. BOP reasonably considered its prior experience both in determining that such interventions are not medically necessary and in determining that security and prison-administration concerns independently justified a change in policy.

a. In developing the 2026 policy, BOP properly considered its prior policies. BOP expressly said so: In its memorandum accompanying the 2026 policy, BOP explained that it had "considered the relevant issues, factors, information, and sources,

including * * * *BOP's prior policies*." App., *infra*, 31a (emphasis added); see *id.* at 27a (same). The administrative record thus contains all of the prior policies cited in the district court's opinion. See *id.* at 189a-190a. Those prior policies include BOP's 2014 Transgender Resource Guide, A.R. 1847-1856; its 2016 Clinical Guidance for Medical Management of Transgender Inmates, A.R. 918-957; its 2022 Transgender Offender Manual, A.R. 613-626; D. Ct. Doc. 7-3, at 25-38; and its 2023 Clinical Guidance for Gender-Affirming Care of Transgender and Gender Nonbinary Persons, A.R. 628-683; D. Ct. Doc. 7-3, at 40-95.

BOP also explained why it decided to depart from its prior policies. BOP articulated two independent reasons. First, BOP explained that it "revised its policy to reflect treatment for gender dysphoria that is more aligned with the latest scientific information." App., *infra*, 33a. BOP's prior policies had relied on standards published by WPATH (and other organizations influenced by WPATH). *Ibid.*; see p. 5, *supra*. Recent investigations had shown those standards to be "unreliable" and "unpersuasive." App., *infra*, 32a-33a; see *id.* at 30a-32a (citing, among other sources, *United States* v. *Skrmetti*, 605 U.S. 495, 537-538, 543-544, 547 (2025) (Thomas, J., concurring)); p. 9, *supra*. Because "the latest scientific information" did not support the sex-rejecting interventions that those standards recommended, App., *infra*, 33a, BOP decided to disallow those interventions, while prioritizing an approach that addresses gender dysphoria "by applying long-standing and evidence-informed tools of psychotherapy," *id.* at 85a; see *id.* at 13a, 30a, 88a.

Second, BOP explained that it "revised its policy to reflect treatment for gender dysphoria" that "accounts for the complex security and administration concerns in the correctional environment." App., *infra*, 33a. In doing so, BOP expressly relied on its prior "experience and expertise." *Id.* at 37a, 38a, 45a, 46a, 54a, 55a. For example:

- In concluding that providing sex-rejecting interventions to inmates with gender dysphoria "increases the risk of victimization by other inmates," BOP noted that it "incarcerates sexual predators and other violent individuals who have a tendency to prey upon inmates who appear feminine, including due to hormones or social accommodations." App., *infra*, 28a. Citing its own experience, BOP explained that its "staff spend a significant amount of time ensuring these inmates have appropriate cellmates and often use additional resources managing these inmates in protective custody." *Ibid.* "[B]ased on [its] experience and expertise," BOP further found that "these same concerns apply to both male and female correctional facilities, as female facilities also experience meaningful amounts of harassment and violence," *id.* at 45a; see *id.* at 37a, 54a, and that transferring an inmate to a facility of the opposite sex is not a viable solution because it raises other security and prison-administration concerns, *id.* at 29a, 37a-38a, 45a, 55a.
- BOP also relied on its "experience and expertise" in concluding that "fairness concerns counsel against" providing greater access to sex-trait-modification surgeries, hormone interventions, and social accommodations. App., *infra*, 38a, 46a, 55a. As to social accommodations in particular, BOP noted that, "[h]istorically, providing certain items to one group of inmates and not another creates conflict within BOP facilities." *Id.* at 28a.
- BOP similarly relied on its own experience in concluding that the "availability of cross-sex hormones and social accommodations can create improper incentives for inmates to harm themselves," noting that "inmates

> have * * * threatened self-harm and suicide to obtain sex trait modification interventions, such as hormones and social accommodations." App., *infra*, 28a.

b. Contrary to the view of the courts below, BOP did not fail to reasonably consider its prior experience in developing either of its two independent justifications for the 2026 policy, let alone both.

i. As to the first justification, the district court concluded that BOP failed to adequately consider "evidence from its own medical or mental health professionals" regarding the efficacy of sex-rejecting interventions in treating "its own inmates." App., *infra*, 190a. The court of appeals did not endorse that specific conclusion, see *id.* at 209a (giving only a single "example" of BOP's purported failure to consider relevant evidence, concerning BOP's "security" justification), and for good reason: As BOP explained, the prior experience of its own medical or mental-health professionals reflected WPATH's standards of care. *Id.* at 33a; see pp. 5, 18, *supra*. Given that medical professionals around the world had already called those standards into question, see, *e.g.*, App., *infra*, 30a (observing that "recent investigations have called into question WPATH's current recommendations"), there was no need for BOP to develop its *own* evidence that WPATH's recommended interventions were "ineffective or harmful," *id.* at 190a, before updating its policies to reflect "the latest scientific information," *id.* at 33a; see *id.* at 29a-30a (summarizing BOP's review of recent studies).

Moreover, BOP's central concern with WPATH's recommended interventions was that they were "insufficiently proven by appropriate evidence." App., *infra*, 31a; see *id.* at 28a ("Existing studies are small in sample size, short in duration, observational rather than randomized, and focused on narrowly defined populations."); *id.* at 32a ("WPATH openly engages in ideologically-based political advocacy, systemati-

cally misrepresents evidence, and often bases its recommendations, no matter how impactful for the patient, on low-quality supporting evidence.") (quoting *id.* at 93a). As the administrative record shows, nothing in BOP's own experience could address that concern. At most, BOP's own experience in treating gender dysphoria could offer "anecdotal evidence" regarding the efficacy of sex-rejecting interventions. *Id.* at 82a. But as the administrative record makes clear, "anecdotal evidence" is the least reliable type of evidence for "evaluating treatments" because it "lack[s] the rigorous methodology needed for strong clinical recommendations." *Ibid.*; see A.R. 2796, 2798 (describing a "hierarchy for ranking of evidence evaluating healthcare interventions," and putting "[c]ase studies" at the bottom of the hierarchy). Thus, in criticizing BOP for not adequately considering its own experience, the district court misunderstood the nature of the problem that BOP had identified. The problem was the lack of "appropriate," higher-quality evidence—a problem that BOP's own, anecdotal experience could not fix. App., *infra*, 31a; see *id.* at 27a (explaining that "[r]obust clinical guidance is ideally built on high-quality research," such as "randomized controlled trials" and "systemic reviews").

Indeed, Dr. Elizabete Stahl—BOP's Medical Director and the person who certified the administrative record, App., *infra*, 18a—averred that she was not aware of any relevant evidence of BOP's "own experience" that could justify its prior policies, *id.* at 154a. The district court declined to consider Dr. Stahl's declaration on the view that it was a "post-hoc statement[]." *Id.* at 191a. But a reviewing court may consider a declaration submitted in litigation that is "merely explanatory of the original record." *Olivares* v. *TSA*, 819 F.3d 454, 464 (D.C. Cir. 2016), cert. denied, 580 U.S. 871 (2016); see *DHS* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (noting that an agency "may elaborate later" on "reasons" in the record). Here, Dr. Stahl's declaration

merely confirms what the administrative record shows: In developing the 2026 policy, BOP had no evidence that could make up for the lack of "appropriate," higher-quality studies supporting the efficacy of sex-trait-modification surgeries, hormone interventions, or social accommodations. App., *infra*, 31a.

To the extent the district court's opinion suggests that BOP should have produced its own higher-quality studies—such as a "randomized controlled trial[]" or a "cohort stud[y]," App., *infra*, 82a—that suggestion also fails. "The APA imposes no general obligation on agencies to conduct or commission their own empirical or statistical studies." *Prometheus Radio Project*, 592 U.S. at 427. BOP had no such study in its possession, and the APA did not require BOP to create one.

In any event, BOP explained that security and prison-administration concerns "independently" justified a change in its policies. App., *infra*, 37a, 44a, 54a. Thus, "even if" BOP's experience under its prior policies showed that sex-trait-modification surgeries, hormone interventions, and social accommodations "address gender dysphoria," any error in failing to adequately consider that prior experience would have been harmless. *Id.* at 37a, 44a; see *id.* at 54a. BOP would have adopted the 2026 policy anyway, because the security and prison-administration concerns "outweigh the benefits (medical or otherwise) from providing" greater access to those interventions. *Id.* at 37a, 44a; see *id.* at 54a; 5 U.S.C. 706 (requiring a reviewing court to take "due account" of "the rule of prejudicial error"); *Wages & White Lion*, 604 U.S. at 586-591 (reaffirming the APA's harmless-error rule).

ii. As to BOP's second justification, the courts below faulted BOP for not pointing to "evidence" that "providing [sex-rejecting interventions] previously led to security concerns at BOP facilities." App., *infra*, 190a; see *id.* at 209a. But BOP repeatedly pointed to its "experience and expertise" in explaining why security and

prison-administration concerns independently justified the 2026 policy. *Id.* at 37a, 38a, 45a, 46a, 54a, 55a; see *id.* at 28a; pp. 18-20, *supra.* To the extent the lower courts' rulings suggest that BOP had to provide additional factual support for those concerns, that suggestion is misguided. Considerations of "institutional security" are "'peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.'" *Wolfish*, 441 U.S. at 548. Any demand for additional evidence of security concerns cannot be reconciled with the "wide-ranging deference" to which BOP's expert judgment is entitled. *Id.* at 547. Nor can it be reconciled with the "deference" owed to agencies' policy judgments in general. *Wages & White Lion*, 604 U.S. at 567.

In any event, BOP's security and prison-administration concerns reflected more than just its own experience and expertise. BOP explained that its concerns also reflected the experience and expertise of others, see App., *infra*, 37a-38a, 44a-46a, 54a-56a—including state prison administrators, whose policies the district court recognized as "relevant," *id.* at 189a. For example, the BOP cited a case in which the Eleventh Circuit upheld the Florida Department of Corrections' decision to deny social accommodations to an inmate with gender dysphoria, both because "an inmate dressed and groomed as a female" could become a "target for abuse" in a male facility, *Keohane* v. *Florida Dep't of Corr. Sec'y*, 952 F.3d 1257, 1275 (2020), reh'g en banc denied, 981 F.3d 994 (2020), cert. denied, 142 S. Ct. 81 (2021), and because providing social accommodations would make it harder for prison officials to "detect contraband," *id.* at 1263; see App., *infra*, 37a, 45a, 54a, A.R. 3118-3125. BOP also cited a case in which the en banc First Circuit upheld the Massachusetts Department of Cor-

rection's decision to deny sex-trait-modification surgery to an inmate with gender dysphoria because providing the surgery "would incentivize the use of suicide threats by prisoners as a means of receiving desired benefits." *Kosilek* v. *Spencer*, 774 F.3d 63, 94 (2014), cert. denied, 575 U.S. 998 (2015); see App., *infra*, 38a, 46a, 55a-56a. In addition, BOP pointed to the expert opinion of Dr. Kristopher E. Kaliebe—a physician and psychiatrist who has treated patients with gender dysphoria, including in correctional environments, App., *infra*, 75a-77a—who confirmed that "inmates frequently use threats of self-harm and suicide to try to obtain concessions from prison officials," *id.* at 38a, 46a, 55a (quoting *id.* at 123a). The administrative record thus more than adequately supports BOP's security and prison-administration concerns.

Moreover, even if BOP had not adequately "address[ed] whether [security] issues ha[d] occurred" under its prior policies, App., *infra*, 209a, that error would be harmless, see 5 U.S.C. 706, because BOP independently relied on the lack of scientific support for the efficacy of sex-rejecting interventions as a justification for its 2026 policy, see p. 18, *supra*. The court of appeals seemingly failed to appreciate this point. In concluding that BOP likely "did not adequately consider its own experience providing gender-affirming care under its prior policy," the court gave only a single "example," relating to "the security impact of providing gender-affirming care." App., *infra*, 209a. The court did not mention—and thus said nothing to call into question—BOP's other justification for the 2026 policy, relating to the lack of scientific support for the efficacy of sex-rejecting interventions.

2. The 2026 policy is substantively reasonable

The district court also concluded that the 2026 policy is "objectively unreasonable given the evidence before the agency." App., *infra*, 191a (capitalization omitted). Unsurprisingly, the court of appeals did not endorse that conclusion, see *id.* at 208a-

209a, for the administrative record shows that BOP acted well "within a zone of reasonableness" in deciding that it will continue to address gender dysphoria by providing mental-health treatment (such as psychotherapy and psychiatry services), but will no longer provide sex-trait-modification surgeries, hormone interventions in general, or social accommodations, *Prometheus Radio Project*, 592 U.S. at 423; see pp. 18-20, *supra* (summarizing BOP's reasoning). In concluding otherwise, the district court committed three errors—each one fatal to its view that the 2026 policy is "objectively unreasonable given the evidence before the agency." App., *infra*, 191a (capitalization omitted).

First, the district court relied almost entirely on evidence outside the administrative record—namely, a declaration of BOP's expert in a different case, see App., *infra*, 192a (citing D. Ct. Doc. 179-5 (Apr. 29, 2026)), and declarations of respondents' experts produced after BOP issued the 2026 policy, see *id.* at 192a-193a (citing D. Ct. Doc. 179-2 (Apr. 29, 2026), and D. Ct. Doc. 179-4 (Apr. 29, 2026)). In relying on that extra-record evidence in considering whether BOP acted arbitrarily, the court violated a fundamental principle of APA review: that "[t]he APA generally limits judicial review to the administrative record." *Id.* at 183a; see *Wages & White Lion*, 604 U.S. at 586 (declining to consider evidence "outside 'the administrative record already in existence'"); *Camp* v. *Pitts*, 411 U.S. 138, 142 (1973) (per curiam) ("In applying [the arbitrary-or-capricious] standard, the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court."). The court made no attempt to reconcile its consideration of extra-record evidence with that principle, see App., *infra*, 191a-193a, and there is no plausible exception that could justify the court's reliance on the extra-record evidence that it cited, see *Department of Commerce* v. *New York*, 588 U.S. 752, 781 (2019); *Olivares*, 819 F.3d at 464; *Theodore Roosevelt Conservation P'ship* v. *Salazar*, 616 F.3d 497,

514 (D.C. Cir. 2010). The court thus erred in deeming the 2026 policy objectively unreasonable based on evidence that was not before the agency.

Second, in deeming the 2026 policy objectively unreasonable, the district court "substitute[d] its own policy judgment for that of the agency." *Prometheus Radio Project*, 592 U.S. at 423. The court described the 2026 policy's prioritization of psychotherapy as "an alternative that has no evidentiary support." App., *infra*, 192a. But as BOP explained, psychotherapy is a "widely recognized" approach to treating gender dysphoria. *Id.* at 30a, 60a (quoting *K.C.* v. *Individual Members of the Med. Licensing Bd. of Ind.*, 121 F.4th 604, 610 (7th Cir. 2024)); see *id.* at 88a (explaining that "the psychotherapeutic model is the most appropriate treatment model"). Indeed, BOP's prior policies—which the court's injunction requires BOP to keep in place—recognized "psychotherapy" and "psychiatry services" as appropriate forms of treatment. A.R. 639 (capitalization omitted); D. Ct. Doc. 7-3, at 51 (same).

The district court also expressed the view that hormone interventions and social accommodations can be "medically necessary." App., *infra*, 192a. But the court itself acknowledged that there was "evidence" in the administrative record "to contest" that view. *Id.* at 196a. In fact, the record contains substantial evidence that such interventions are "highly controversial, medically disputed, and unproven," *id.* at 35a, 42a, 50a; see *id.* at 28a, 30a, and that they can harm, rather than help, individuals with gender dysphoria, see *id.* at 36a, 43a, 52a, 106a-111a, 113a-116a, 117a-120a. The court dismissed that evidence only by deeming it less credible than respondents' evidence (almost all of which lies outside the administrative record). *Id.* at 192a; see *id.* at 196a (declaring respondents the "winner in the battle of the experts"). But on factual issues like this one, a court's role under the APA is limited to "ask[ing] whether a 'reasonable mind might accept' a particular evidentiary record as

'adequate to support a conclusion.'" *Dickinson* v. *Zurko*, 527 U.S. 150, 162 (1999). "When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts even if, as an original matter, a court might find contrary views more persuasive." *Marsh* v. *Oregon Natural Res. Council*, 490 U.S. 360, 378 (1989). That is especially true on "medical and scientific matters where there is serious debate and disagreement," for "it can be difficult for courts to meaningfully evaluate the considered policy judgments of the [policymakers] who have scrutinized the medical evidence and scientific data before them." *West Virginia* v. *B.P.J.*, 146 S. Ct. 2356, 2379 (2026). In second-guessing BOP's evaluation of the medical and scientific evidence before the agency, the district court far exceeded its limited and proper role under the APA.

Third, the district court all but ignored BOP's determination that security and prison-administration concerns "independently" justified its decision not to provide greater access to sex-rejecting interventions. App., *infra*, 37a, 44a, 54a. Addressing only one of the various security and prison-administrative concerns that BOP had identified, the court stated that BOP "provide[d] no support for its assertion that [providing sex-rejecting interventions] could increase self-harm." *Id.* at 192a. To the contrary, BOP provided substantial support for that concern—relying not only on its own experience and expertise, but also on the experience and expertise of Dr. Kaliebe and other prison administrators. See pp. 19-20, 23-24, *supra*. In dismissing that evidence, the court again defied the most basic principles of judicial review—"substitut[ing] its own policy judgment for that of the agency," *Prometheus Radio Project*, 592 U.S. at 423, and refusing to "defer[]" to the "'professional expertise'" of prison administrators on a matter of "institutional security," *Wolfish*, 441 U.S. at 547-548.

3. The 2026 policy is not pretextual or improperly reverse-engineered

Finally, the district court concluded that the 2026 policy is "pretextual" and "reverse engineered to implement" the Executive Order. App., *infra*, 193a (capitalization omitted). That conclusion—which the court of appeals also did not endorse, see *id.* at 208a-209a—lacks merit.

Under the APA, courts "may not set aside an agency's policymaking decision solely because it might have been influenced by political considerations or prompted by an Administration's priorities." *Department of Commerce*, 588 U.S. at 781. "Agency policymaking is not a 'rarified technocratic process, unaffected by political considerations or the presence of Presidential power.'" *Ibid.* To the contrary, agencies "must * * * be controlled by the Chief Executive" in exercising the "executive power" that the Constitution "vest[s]" solely in him. *Trump* v. *Slaughter*, 146 S. Ct. 2283, 2305 (2026). The Constitution thus grants the President the authority to ensure that agencies act "in accordance with the policies that the people presumably elected the President to promote." *Collins* v. *Yellen*, 594 U.S. 220, 252 (2021). And the President may exercise that authority by issuing directions to agencies concerning actions within their authority. See, *e.g.*, *Trump* v. *American Federation of Gov't Emps.*, 145 S. Ct. 2635, 2635 (2025); *ibid.* (Sotomayor, J., concurring). It is thus entirely proper for political officials to "come into office with policy preferences" and "work with staff attorneys to substantiate the legal basis for a preferred policy," *Department of Commerce*, 588 U.S. at 783, provided that the final agency action is "reasonable and reasonably explained," *Prometheus Radio Project*, 592 U.S. at 423; see *Biden* v. *Texas*, 597 U.S. 785, 812 (2022) (declining to infer from an "agency's *ex ante* preference" for achieving the "administration's policy agenda" that the agency "failed

to procced with a sufficiently open mind"); *Jagers* v. *Federal Crop Ins. Corp.*, 758 F.3d 1179, 1185-1186 (10th Cir. 2014) (explaining that any "internal political pressure" or "desire to reach a particular result" does not render the result invalid under the APA where "objective evidence [adequately] support[s] the agency's conclusion").

Here, the district court observed that the 2026 policy uses language identical to that of the Executive Order in restricting the use of "federal funds" for "any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex." App., *infra*, 16a; see *id.* at 193a-194a. But there is nothing improper about that, for "an agency's policymaking decision" may be "influenced by political considerations or prompted by an Administration's priorities." *Department of Commerce*, 588 U.S. at 781. Under the APA, the question is whether the agency's policymaking decision is "reasonable and reasonably explained." *Prometheus Radio Project*, 592 U.S. at 423. As to that question, the court pointed only to its other two grounds for deeming the 2026 policy arbitrary and capricious. See App., *infra*, 194a. Because those grounds lack merit, see pp. 16-27, *supra*, the court's conclusion that the 2026 policy is "pretextual" lacks merit as well. Indeed, BOP emphasized that the 2026 policy reflects its "independent[]" judgment—*i.e.*, its judgment based on the record before it. App., *infra*, 13a. And that record more than adequately supports the policy that the BOP adopted.

B. The District Court's Order Violates The PLRA

The government is likely to succeed in overturning the district court's order for an additional, independent reason: The order violates the PLRA twice over. Procedurally, the court entered prospective relief without making the particularized findings that the PLRA requires. Substantively, the court entered preliminary injunctive relief that exceeds the PLRA's limits.

1. The PLRA governs the entry of "[p]rospective relief in any civil action with respect to prison conditions." 18 U.S.C. 3626(a)(1). The preliminary relief that the district court ordered in this case—a preliminary injunction against the 2026 policy, as well as a stay of the policy under 5 U.S.C. 705—constitutes "[p]rospective relief" under the PLRA. 18 U.S.C. 3626(a)(1); see 18 U.S.C. 3626(g)(7) (defining "prospective relief" to mean "all relief other than compensatory monetary damages").

The PLRA provides that a "court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(a)(1). It is not enough for a court to make "summary conclusions" regarding those requirements. *Hoffer* v. *Secretary, Fla. Dep't of Corr.*, 973 F.3d 1263, 1278 (11th Cir. 2020) (brackets omitted). Rather, the PLRA demands "particularized findings" that each requirement is satisfied. *Ibid.*

The district court did not make any particularized findings here. Instead, the court merely appended a series of conclusory statements to the end of its order, see App., *infra*, 170a, 206a-207a, with language nearly identical to that which the court included in previous orders enjoining BOP's 2025 implementing memoranda, see D. Ct. Doc. 68, at 2-3; D. Ct. Doc. 79, at 2-3; D. Ct. Doc. 96, at 2; D. Ct. Doc. 114, at 3. Because the PLRA demands more than a "rote" assertion that its requirements are satisfied, *Hoffer*, 973 F.3d at 1279, the court's order does not comply with the PLRA. Tellingly, while the court of appeals asserted otherwise, it provided no explanation to support that assertion, App., *infra*, 209a, as none is available.

2. The district court's order also exceeds the limits that the PLRA imposes on preliminary injunctive relief. Under the PLRA, such relief may "extend[] no fur-

ther than necessary to correct *the harm* the court finds requires preliminary relief." 18 U.S.C. 3626(a)(2) (emphasis added). The only harm that the district court found in granting the relief at issue here was harm from the denial of "hormone therapy and social accommodations." App., *infra*, 199a. That is the only harm that respondents asserted in moving for preliminary injunctive relief. See D. Ct. Doc. 7-1, at 31 (Mar. 17, 2025) (asserting harm only from the denial of "hormone therapy and [social] accommodations"); D. Ct. Doc. 7-2, at 17 n.2 (Mar. 17, 2025) (noting that "the preliminary injunction motion does not seek relief related to gender-affirming surgeries"); D. Ct. Doc. 179-1, at 30 (asserting "harms to the class" from the denial of "hormone therapy and social accommodations") (capitalization omitted); D. Ct. Doc. 179-1, at 52 (asserting "irreparable injuries" from the denial of "hormone therapy and accommodations"); D. Ct. Doc. 240-1, at 8 (Aug. 20, 2026) (asserting "irreparable injuries" from the denial of "hormone therapy and social accommodations"). And it is the only harm that the district court's original injunction addressed. See D. Ct. Doc. 68, at 2; p. 11, *supra*.

The order at issue here nevertheless prohibits the enforcement of all the 2026 policy's provisions, see App., *infra*, 205a-206a—even aspects of the policy that respondents never identified as the source of any alleged harm, such as its prohibition on sex-trait-modification surgeries, see *id.* at 34a. That was error, especially given that the 2026 policy contains an express severability provision, specifying that "each of [its] provisions" is "intended to operate independently of each other" and that "the potential invalidity of one provision should not affect the other provisions." *Id.* at 60a; see *ibid.* ("[I]f a court concludes that the aspect or any aspect of the [2026 policy] regarding hormones or social accommodations is unlawful, BOP would still prohibit sex trait modification surgeries."). Even accepting respondents' assertion of irreparable harm from the denial of hormone interventions and social accommodations, the

court's order extends "further than necessary to correct th[at] harm," in violation of the PLRA. 18 U.S.C. 3626(a)(2).

The court of appeals concluded that the government "likely forfeited" the argument that "the district court's order is overbroad to the extent it affects the [2026 policy's] provisions regarding surgical procedures." App., *infra*, 209a. That is incorrect. In asking the court of appeals for a stay of the district court's June 17 order, the government argued that the order extended further than necessary by enjoining aspects of the 2026 policy, including its prohibition on sex-trait-modification surgeries, that respondents had not alleged were the source of any harm. Gov't C.A. Stay Mot. 22-23. When respondents moved for an additional 90-day injunction, the government reiterated that argument in the district court, expressly opposing the motion on the ground, among others, that the requested relief went "further than necessary to correct the alleged harm, in violation of the [PLRA]." D. Ct. Doc. 240, at 1; see *id.* at 8. The court of appeals thus erred in concluding that the government did not raise that argument "in the district court." App., *infra*, 209a.

The district court's order also extends further than necessary because it enjoins the 2026 policy on a universal and classwide basis, even though there is no support for the proposition that all BOP inmates who are or will be diagnosed with gender dysphoria will face irreparable harm from the denial of hormone interventions or social accommodations. As the district court itself acknowledged, "not every class member requires the same treatment for their gender dysphoria." App., *infra*, 195a. And even respondents stop short of asserting that "social transition and hormone therapy" are "medically necessary" for *all* "patients with gender dysphoria." D. Ct. Doc. 179-1, at 14 (asserting only that they are medically necessary for "many"). Thus, in granting relief to all inmates who are or will be diagnosed with gender dysphoria, the court's

order extends "further than necessary to correct the [alleged] harm" from the denial of hormone interventions and social accommodations. 18 U.S.C. 3626(a)(2).

II. THE OTHER FACTORS SUPPORT STAYING THE DISTRICT COURT'S ORDER

The remaining factors—*i.e.*, whether the underlying issues warrant review, whether the applicants likely face irreparable harm, and, in close cases, the balance of equities, see *Hollingsworth*, 558 U.S. at 190—likewise support relief here.

A. The Issues Raised By The District Court's Order Plainly Warrant This Court's Review

If the court of appeals were to uphold the district court's order, certiorari would plainly be warranted. Respondents challenge BOP's 2026 policy as arbitrary and capricious. That challenge concerns a matter of imperative public importance: the authority of federal prison administrators to adopt and execute policies that in their judgment are needed to "provide for the safekeeping, care, and subsistence of all persons" in their custody. 18 U.S.C. 4042(a)(2). Exercising that authority following the President's issuance of the Executive Order, BOP reevaluated its policies concerning inmates with gender dysphoria in light of "existing research, medical expert opinions, medical journals, national media reports, recent medical studies, state correctional policies, BOP's prior policies, and pertinent case law." App., *infra*, 27a. And after "considering the relevant issues and factors and weighing the relevant considerations," BOP adopted the 2026 policy—a policy that prison administrators have determined "is more aligned with the latest scientific information," "is consistent with BOP's longstanding policy of providing medical care that is tailored to the unique needs of the inmate," and is responsive to "the complex security and administration concerns in the correctional environment." *Id.* at 33a.

The district court's order nullifies that exercise of "expert judgment" by federal prison administrators. *Wolfish*, 441 U.S. at 548. And it does so on a universal and classwide basis, broadly countermanding BOP's policy as applied to any inmate who is or will be diagnosed with gender dysphoria. See D. Ct. Doc. 68, at 1; App., *infra*, 205a-206a. If the court of appeals were to affirm the district court's universal and classwide order, a judicial intrusion of that significance and breadth into an area "peculiarly within the province and professional expertise of corrections officials" would unquestionably warrant this Court's review. *Wolfish*, 441 U.S. at 548; see *Labrador* v. *Poe*, 144 S. Ct. 921, 931 n.3 (2024) (Kavanaugh, J., concurring) ("The scope of the injunction may affect evaluation * * * of certworthiness."). Indeed, this Court frequently grants review of lower-court decisions that find significant agency policies or programs to be arbitrary or capricious. See, *e.g.*, *FDA* v. *Wages & White Lion Investments, L.L.C.*, *supra*; *FCC* v. *Prometheus Radio Project*, *supra*; *DHS* v. *Regents of the Univ. of Cal.*, *supra*; see also *DHS* v. *League of Women Voters*, No. 26A308, slip op. 5 (Sept. 25, 2026) (per curiam) (finding the certworthiness factor satisfied because the Court has "often granted certiorari where a lower court has set aside an important federal program"). And the Court has previously granted certiorari to address disputes over policies concerning individuals with gender dysphoria. See, *e.g.*, *West Virginia* v. *B.P.J.*, *supra*; *Chiles* v. *Salazar*, 607 U.S. 627 (2026); *United States* v. *Skrmetti*, *supra*.

B. The District Court's Order Causes Irreparable Harm To The Government And To The Public

The district court's order irreparably harms the government and the public by blocking BOP's exercise of its statutorily conferred power to prescribe policies "for the safekeeping, care, and subsistence of all persons" in their custody. 18 U.S.C. 4042(a)(2).

Here, BOP's exercise of that authority reflected both its "own independent judgment" and the President's Executive Order. App., *infra*, 31a. The court's ruling nevertheless prevents the application of the Executive's chosen policy on a universal and classwide basis. And when the government is enjoined from carrying out its responsibilities under a "statute[] enacted by representatives of [the] people," "it suffers a form of irreparable injury." *Trump* v. *CASA, Inc.*, 606 U.S. 831, 861 (2025) (quoting *Maryland* v. *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)); see *League of Women Voters*, slip op. 5 (finding that the government was "likely to suffer irreparable harm" from an order that "set aside" a federal program); *Trump* v. *California*, No. 26A124, slip op. 8-9 (Aug. 24, 2026) (per curiam) (finding that the government was "likely to suffer irreparable harm" from an injunction that "deal[t] 'a serious setback' to the Executive's 'goals'"); *Trump* v. *Orr*, 146 S. Ct. 44, 46 (2025) (finding that the government faced "'irreparable injury'" from a classwide injunction prohibiting it from "requiring all new passports to display an individual's biological sex"); *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1306 (1993) (O'Connor, J., in chambers) (granting a stay of an order that operated as "an improper intrusion by a federal court into the workings of a coordinate branch of the Government").

That injury is particularly pronounced in the area of prison administration. "Prison administration is * * * a task that has been committed to the responsibility of th[e] [legislative and executive] branches, and separation of powers concerns counsel a policy of judicial restraint." *Turner* v. *Safley*, 482 U.S. 78, 85 (1987). Far from exhibiting judicial restraint, however, the district court's order defies principles of deference embodied in both the APA and the PLRA—forcing BOP to maintain prior policies that prison administrators have determined do not "align[] with the latest scientific information" or "account[] for the complex security and administration con-

cerns in the correctional environment." App., *infra*, 33a. The court's order thus irreparably interferes with those administrators' "expert judgment" on how best to operate federal correctional facilities across the Nation. *Wolfish*, 441 U.S. at 548. And it does so in an area of "'medical and scientific uncertainty,'" where this Court has admonished courts to avoid "second-guess[ing]" the judgments of policymakers regarding the risks and benefits of sex-rejecting interventions. *Skrmetti*, 605 U.S. at 524.

C. The Balance Of Equities Favors Staying The District Court's Order

On the other side of the balance, overturning the district court's order would not irreparably injure respondents. Respondents do not contend that the denial of sex-trait-modification surgeries under the 2026 policy would cause them any irreparable harm. See p. 31, *supra*. Rather, respondents assert that they would suffer irreparable harm only from the policy's restrictions on hormone interventions and social accommodations. See D. Ct. Doc. 179-1, at 52; D. Ct. Doc. 240-1, at 8. But BOP found that hormone interventions in general and social accommodations are "not medically necessary" for the treatment of gender dysphoria. App., *infra*, 42a, 50a. In fact, BOP found that such sex-rejecting interventions can "prolong symptoms of gender dysphoria" and "undermine other treatments to address gender dysphoria." *Id.* at 52a; see *id.* at 43a. Instead of relying on such "highly controversial, medically disputed, and unproven" interventions, *id.* at 42a, 50a, the 2026 policy provides appropriate, individualized treatment for gender dysphoria through "psychotherapy, group counseling, psychiatric services, and psychotropic medications," *id.* at 34a. And "[i]f an inmate is previously and currently diagnosed with gender dysphoria and is currently receiving hormones to address gender dysphoria, BOP will develop a tapering plan for each inmate after consideration of appropriate factors." *Ibid.* Thus, the policy's restrictions on hormone interventions and social accommodations will not ir-

reparably injure any inmate—let alone every inmate who is or will be diagnosed with gender dysphoria. See pp. 32-33, *supra*.

In any event, any harm to respondents is substantially outweighed by the harm to the government and to the public from forcing BOP to maintain prior policies that it has determined do not "align[] with the latest scientific information" or "account[] for the complex security and administration concerns in the correctional environment." App., *infra*, 33a; see pp. 34-36, *supra*; *Winter* v. *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008) (holding that even if the plaintiffs had shown "irreparable injury," the public interest "outweighed" any such injury, thereby precluding injunctive relief). Indeed, BOP specifically found that security and prison-administration concerns "outweigh" any benefits, medical or otherwise, from providing greater access to hormone interventions and social accommodations. App., *infra*, 44a, 54a. The balance of equities therefore tips decisively in favor of staying the district court's order.

CONCLUSION

This Court should stay the district court's order pending further proceedings in the D.C. Circuit and this Court.

Respectfully submitted.

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