

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 11, 2025

No. 24-40709

Lyle W. Cayce
Clerk

DAVID ALLEN HAVERKAMP, *also known as* BOBBIE LEE
HAVERKAMP,

Plaintiff—Appellant,

versus

DOCTOR LANNETTE LINTHICUM; OWEN MURRAY; CYNTHIA
JUMPER; PHILLIP KEISER; JOHN BURRUSS; MICHELLE ERWIN;
KRIS COONS; BRIAN EDWARDS; JULIA HILNER,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:17-CV-18

Before STEWART, CLEMENT, and WILSON, *Circuit Judges*.

CORY T. WILSON, *Circuit Judge*:

In 1994, a Texas court sentenced David Allen Haverkamp to 45 years in prison for sexually assaulting his daughter. Twenty years later, Haverkamp was diagnosed with gender identity disorder, now known as gender dysphoria. In this lawsuit, Haverkamp alleges that state officials are violating the Equal Protection Clause by denying Haverkamp sex-reassignment surgery. The district court dismissed Haverkamp's claims

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as barred by sovereign immunity. We affirm because, irrespective of whether Defendants enjoy sovereign immunity, Haverkamp lacks standing.

I.

David Allen Haverkamp is a 78-year-old biological male who now “identifies as a transgender woman.” In 1994, Haverkamp was sentenced to 45 years in state prison for sexually assaulting his daughter. *See Haverkamp* [sic] *v. State*, No. 14-94-00829-CR, 1996 WL 283902, at *1–4 (Tex. App.—Houston [14th Dist.] May 30, 1996, no pet.). Haverkamp is currently housed in a men’s prison operated by the Texas Department of Criminal Justice (TDCJ). This appeal stems from Haverkamp’s desire to undergo “sex-reassignment” surgery.¹

A.

TDCJ contracts with the University of Texas Medical Branch at Galveston (UTMB) to provide healthcare to Texas inmates. *Haverkamp v. Linthicum* (*Haverkamp I*), 6 F.4th 662, 665 (5th Cir. 2021) (per curiam). A “statutorily created arm of the State” called the Correctional Managed Health Care Committee (the Managed Care Committee) promulgates “[t]he general policies that govern medical care for TDCJ inmates.” *Id.*

¹ As with the efficacy of the surgery at issue, the characterization of the procedure that Haverkamp seeks as “sex-reassignment” surgery, “gender-reassignment” surgery, or “vaginoplasty” is itself the subject of debate, as the surgery does not “reassign” sex or gender but rather alters the sex characteristics of the patient. *See United States v. Skremetti*, 145 S. Ct. 1816, 1843 (2025) (Thomas, J., concurring) (detailing what the surgery involves); *Gibson v. Collier*, 920 F.3d 212, 221 (5th Cir. 2019) (discussing the “sharply contested medical debate” over these surgeries); *see also Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality opinion) (noting that “sex . . . is an immutable characteristic”). We do not engage that debate today, but for the sake of simplicity, we refer to the procedure at issue as sex-reassignment surgery.

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In 2013, Haverkamp was diagnosed with gender identity disorder (now called gender dysphoria). According to the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, people suffering from gender dysphoria "perceive a 'marked incongruence'" between their sex and their "'experienced/expressed gender.'" *United States v. Varner*, 948 F.3d 250, 255 n.2 (5th Cir. 2020) (citation omitted). UTMB's Gender Dysphoria Specialty Clinic (the Clinic) treats TDCJ's gender-dysphoric inmates.

In October 2014, Clinic psychiatrist Dr. Walter Meyer prescribed Haverkamp "a 12-month course . . . of the hormone Estradiol" to suppress Haverkamp's body's production of testosterone. Meyer allegedly also contemporaneously "prescribed . . . a referral for gender-reassignment surgery at the end of [the 12-month] period"² and "confirmed" that the surgery "was available to Haverkamp." Five days later, Haverkamp requested sex-reassignment surgery (referring to the procedure as a "vaginoplasty") "at the earliest possible time."

Dr. Jerome Yaklic, a UTMB professor who subspecializes in female pelvic medicine and reconstruction surgery and who has treated female TDCJ inmates, explained in an affidavit submitted in the district court that the term "vaginoplasty" is a "generic term, often used for any surgical procedure involving the vagina." According to Yaklic, whereas vaginoplasties performed on female inmates aim to correct "significant anatomic or functional deficits, and restore normal female function," the surgery at issue here aims to make male genitals look, and sexually function, like female genitalia. *See United States v. Skrametti*, 145 S. Ct. 1816, 1843

² Haverkamp uses the terms "sex" and "gender" interchangeably when referring to the procedure.

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(2025) (Thomas, J., concurring) (explaining that the surgery involves “removal of the testicles” and “an attempt to create a pseudo-vagina by surgically opening the [male’s] penis, removing erectile tissue, and then closing and inverting the penis into a newly created cavity in order to simulate a vagina” (cleaned up)).³

In March 2015, five months after Haverkamp started taking estrogen, Meyer reiterated that Haverkamp “needed at least a year on enough estrogen . . . before being considered eligible for surgery.” That September, Meyer “told Haverkamp that TDCJ would not pay for sex-reassignment surgery.” The next month, after a full year on estrogen, Haverkamp filed a grievance with TDCJ “seeking confirmation of when [Haverkamp] could receive . . . surgery.” In December 2015, Meyer recommended “further increases in [Haverkamp’s] estradiol replacements” and said Haverkamp “need[ed] to be on a replacement or higher estrogen for at least one year before surgery [could] even be considered.” A “Practice Manager” identified as “K. Long” then responded to Haverkamp’s grievance by noting Meyer’s most recent recommended course of treatment.

Days later, Haverkamp filed a “Step 2 appeal” demanding “a letter saying [Haverkamp would] be approved for [the] surgery. Period.” TDCJ’s “Step II Medical Grievance Program” responded that (1) the Clinic’s specialists had to follow Correctional Managed Health Care Policy G-51.11 to treat Haverkamp’s gender dysphoria and (2) Haverkamp’s “requested remedy [was] not available through the Offender Grievance Program.”

Promulgated by the Managed Care Committee, Policy G-51.11 provides that “[w]hen a new diagnosis of [gender dysphoria] is under

³ Yaklic explained that after castration and penile “amputation,” the surgeon also uses “the skin and other tissue to ‘construct’ labia” and a “clitoris.”

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consideration or suspected,” the “inmate will be scheduled for medical evaluation” and then “refer[red] . . . to the designated Specialty Clinic consultant for further clinical evaluation and therapy as needed.” Upon diagnosing an inmate with gender dysphoria, the consultant may initiate “hormone therapy” and refer the inmate to “unit mental health services if clinically indicated.” The policy is conspicuously silent as to sex-reassignment surgery.

At a March 2016 appointment, Meyer noted that Haverkamp needed to “stay on a high-dose estradiol for at least a year before we would even consider the recommendation for surgery.” But Meyer allegedly also told Haverkamp that “UTMB [was] going to have to face the inevitable that gender reassignment surgery [was] going to happen.” Since at least that appointment, “Haverkamp has been chemically castrated” (*i.e.*, “Haverkamp’s testosterone levels have been completely suppressed”). Some weeks later, UTMB allegedly “communicated to Haverkamp that [Haverkamp] would not receive gender reassignment surgery.”

B.

In January 2017, Haverkamp filed this lawsuit. Initially, Haverkamp sued only UTMB’s Dr. Joseph Penn and TDCJ’s Dr. Lannette Linthicum. In an amended complaint, Haverkamp added other defendants and alleged that the defendants were unlawfully discriminating by providing vaginoplasties to women while denying surgery to Haverkamp despite the facts that Haverkamp had been chemically castrated and now “identifie[d] as a transgender woman.”

In June 2019, Penn, Linthicum, and other defendants jointly moved to dismiss Haverkamp’s complaint for lack of subject-matter jurisdiction (due to sovereign immunity) and for failure to state a claim upon which relief could be granted. A magistrate judge recommended dismissing Haverkamp’s

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equal-protection claims because Haverkamp, “as a biological male, does not have a vagina” and was therefore seeking a different type of “vaginoplasty” than female inmates receive. The district court rejected that recommendation, reasoning that Haverkamp “allege[d] that [d]efendants helped [Haverkamp] undergo gender transition, including chemical castration, making [Haverkamp] similarly situated to cis-gendered female inmates and resulting in a violation of the Equal Protection [C]ause when [Haverkamp’s] surgery request was denied.” The district court denied the motion to dismiss without addressing the immunity defense. *Haverkamp I*, 6 F.4th at 668. In May 2020, those defendants “filed an interlocutory appeal challenging the denial of their claim to sovereign immunity.” *Id.*

Shortly thereafter, seven other defendants moved to dismiss. The district court denied their motion, holding, *inter alia*, “that Haverkamp’s claim met the requirements of the *Ex [p]arte Young* exception to sovereign immunity.” *Id.*; see *Ex parte Young*, 209 U.S. 123 (1908). In October 2020, that group of defendants also appealed the denial of sovereign immunity. *Haverkamp I*, 6 F.4th at 668.

Our court consolidated the two appeals. *Id.* In July 2021, the *Haverkamp I* panel vacated the district court’s orders denying sovereign immunity, holding that Haverkamp had not adequately pled that any defendant was sufficiently connected to enforcement of the challenged policy. *Id.* at 672. But this court did not dismiss the defendants from the case “[i]n light of the State’s representations to the district court that [they were] the proper state officials to sue.” *Id.*

On remand, the district court appointed counsel for Haverkamp,⁴ who then filed a second amended complaint. That pleading alleges claims, among

⁴ The district judge then recused and retired, and the case was reassigned.

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others, against Dr. Linthicum and Dr. Owen Murray in their official capacities.⁵ Linthicum is the Director of TDCJ's Health Services Division and serves as a member of the Managed Care Committee. Murray is the Executive Director of Clinical Services and the Chief Physician Executive of UTMB Correctional Managed Care and serves as a member of the Managed Care Committee's Joint Medical Directors Working Group. Asserting that Haverkamp is "similarly situated to cisgendered prisoners who seek the same treatment," the operative complaint alleges a Fourteenth Amendment equal-protection claim and seeks "prospective injunctive relief to redress Defendants' failure to provide Haverkamp with medically necessary gender reassignment surgery." As alternative relief, "Haverkamp seeks a prospective injunction prohibiting Defendants from implementing Policy G-51[.]¹¹ in a manner that prohibits gender reassignment surgery."

After discovery, Defendants jointly moved for judgment on the pleadings, arguing that sovereign immunity barred Haverkamp's suit and that Haverkamp lacked standing. Defendants also moved for summary judgment, arguing primarily that Haverkamp's equal-protection claims lacked merit because Haverkamp was not similarly situated to women who "requir[e] reconstructive vaginoplasty surgeries." The district court granted judgment on the pleadings, concluding in relevant part that (1) Dr. Linthicum was an improper defendant under *Ex parte Young*, and (2) "while Dr. Murray may be a proper defendant, the relief [Haverkamp] requested [was] not permitted under the *Ex parte Young* exception" because "an injunction requiring Dr. Murray or medical providers under his direction to perform [sex-reassignment surgery] would impose upon their medical discretion in a manner that *Ex parte Young* prohibits." Having concluded that

⁵ On appeal, Haverkamp has abandoned all claims against other defendants. For reasons not relevant here, Murray was not a party to *Haverkamp I*. See 6 F.4th at 668 n.4.

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it lacked jurisdiction, the district court denied the summary judgment motion as moot and dismissed the lawsuit. Haverkamp timely appealed.

II.

“This court has a continuing obligation to assure itself of its own jurisdiction” *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 468 (5th Cir. 2020) (en banc) (internal quotation marks and citation omitted). State sovereign immunity and lack of standing are both “jurisdictional bar[s],” *see id.* at 470–71, and “there is no mandatory sequencing of jurisdictional issues,” *Daves v. Dallas County*, 22 F.4th 522, 532 (5th Cir. 2022) (en banc) (internal quotation marks and citation omitted). Because the district court decided the sovereign-immunity issue in favor of Drs. Linthicum and Murray, it declined to consider their argument that Haverkamp lacked standing. But we begin—and end—our jurisdictional analysis by assessing the standing question.

To have standing, a “plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). To satisfy the second element, a plaintiff’s injury must be “fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Lujan*, 504 U.S. at 560 (cleaned up). “The party invoking federal jurisdiction bears the burden of establishing these elements.” *Id.* at 561. “[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Id.* When, as here, a defendant introduces evidence to challenge jurisdictional facts, the plaintiff must substantiate jurisdiction by a preponderance of the evidence. *Paterson*

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v. Weinberger, 644 F.2d 521, 523 (5th Cir. 1981) (contrasting a facial attack on subject-matter jurisdiction with a factual attack).

Haverkamp alleges injury due to “Defendants’ failure to provide Haverkamp with medically necessary gender reassignment surgery.” As relief, Haverkamp seeks to require Defendants to provide the procedure—or at least to cease “implementing Policy G-51[.]”¹¹ in a manner that prohibits gender reassignment surgery.”

But Haverkamp’s claim falters because, based on the record before us, the injury alleged is not traceable to Defendants or redressable through the relief that Haverkamp seeks in this action. To be sure, Dr. Linthicum directs the health-services division of a department (TDCJ) that classifies sex-reassignment surgery as “a category of elective surgery” and not “medically necessary care,” and she helped explain TDCJ’s position to a reporter about ten years ago.⁶ For his part, Dr. Murray does not contest Dr. Meyer’s assertion that Murray told Meyer that the Clinic’s consultants may not refer inmates for sex-reassignment surgery. However, nothing in the record indicates that any TDCJ physician who has treated Haverkamp after 2018, when Meyer retired from UTMB, would actually refer Haverkamp for the surgery—or has determined that Haverkamp is a suitable candidate for the procedure.

We acknowledge that in his capacity as Haverkamp’s litigation expert, Dr. Meyer opined (in his 2023 expert report) that Haverkamp had a “serious,

⁶ Haverkamp also asserts, without support, that Linthicum “approved” a 2021 TDCJ fact sheet’s statement that “[i]nmates cannot receive surgery to change their sex, which would be considered elective and not medically necessary.” Before the district court, however, Haverkamp stated only what the record suggests: Linthicum merely “received” that fact sheet.

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urgent, and longstanding medical need” for sex-reassignment surgery.⁷ But Meyer stopped treating Haverkamp upon retiring in 2018, and Meyer’s progress notes from when he was Haverkamp’s treating physician are much less definitive. If anything, the notes undermine Haverkamp’s assertion that Meyer ever attempted to refer Haverkamp as a candidate for the surgery. For example, Meyer’s last progress note in the record, dated March 2016, states that Haverkamp was “very happy with the results of . . . estradiol therapy” but added that Haverkamp “need[ed] to stay on a high-dose estradiol for at least a year before we would even consider the recommendation for surgery.”

Either way, the claim at issue in this case is thus distinct from the plaintiff’s (unsuccessful) claim in *Gibson v. Collier*, which was grounded on the assertion “that Policy G-51.11 . . . prevent[ed] TDCJ *from even considering* whether sex reassignment surgery [was] medically necessary” for the plaintiff. 920 F.3d 212, 218 (5th Cir. 2019) (emphasis added). In *Gibson*, this court rejected an Eighth Amendment challenge to Policy G-51.11 on the merits, holding that “[a] state does not inflict cruel and unusual punishment by declining to provide sex reassignment surgery to a transgender inmate.” *Id.* at 215. But Haverkamp has, at least to some extent, been evaluated for the surgery. Indeed, Haverkamp’s complaint repeatedly asserts that “Dr. Meyer recommended gender reassignment surgery.” The medical records from the time Meyer treated Haverkamp substantiate that they discussed the surgery, even if the records do not show that Meyer ever actually made a referral. So this case does not turn on TDCJ’s unwillingness to provide “an

⁷ Meyer, who died in 2024, served as the President of the World Professional Association for Transgender Health (WPATH) from 2003 to 2005, as well as, *inter alia*, the lead author of WPATH’s 2005 Standards of Care. Since 1998, WPATH has endorsed genital surgery for people as young as 18. *Skrmetti*, 145 S. Ct. at 1843 (Thomas, J., concurring). “[T]he WPATH Standards of Care reflect . . . merely one side in [the] sharply contested medical debate” over these surgeries. *Gibson*, 920 F.3d at 221.

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individualized assessment of the inmate’s particular medical needs.” *Id.* at 224.

Haverkamp’s claim is also distinguishable from denial-of-care cases in which there was no dispute about the medical necessity of the treatment in question. *E.g.*, *Delaughter v. Woodall*, 909 F.3d 130, 138 (5th Cir. 2018) (sustaining an inmate’s Eighth Amendment claim arising from delay in hip replacement surgery). In *Delaughter*, a doctor had “determined . . . that [the inmate] require[d] hip replacement and reconstructive surgery,” and “[n]o party point[ed] to evidence that any medical professional ha[d] disagreed with” the treating doctor. *Id.* By contrast, even discounting any disparity between Meyer’s 2023 expert report and his treatment notes, there remains “significant disagreement within the medical community” about whether sex-reassignment surgery is an “effective treatment for gender dysphoria.” *Gibson*, 920 F.3d at 216, 223. And the record divulges nothing about where Haverkamp’s TDCJ treating physicians after Dr. Meyer fall in that debate, *i.e.*, whether any TDCJ physician treating Haverkamp would ever recommend the surgery, irrespective of either Defendant’s alleged interpretation or enforcement of Policy G-51.11. That lapse alone is likely fatal to Haverkamp’s standing.

But positing that a TDCJ physician were willing to refer a suitable candidate for sex-reassignment surgery, Haverkamp would still need to substantiate that a TDCJ physician has determined that *Haverkamp* is a viable candidate for the procedure. And Haverkamp offers no evidence to support that any TDCJ physician has done so—including Dr. Meyer during the time he treated Haverkamp. The lack of evidence on this point is all the more significant given Haverkamp’s advanced age and comorbidities, which would likely give any physician pause before making a referral for *any* invasive surgery to treat a non-life-threatening condition: Haverkamp is 78 years old, has an obesity-range body mass index, suffers from diabetes, high blood

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pressure, and high cholesterol, and is at high risk for chronic kidney disease and failure.

In short, lacking any evidence that TDCJ's treating physicians would otherwise refer Haverkamp as a suitable candidate for sex-reassignment surgery, despite Haverkamp's age and poor health, there is no cognizable injury traceable to Dr. Linthicum or Dr. Murray that could be remedied by ordering them either to green-light sex-reassignment surgery for Haverkamp or to interpret Policy G-51.11 one way or another. In other words, even if Murray and Linthicum were ordered to require TDCJ to provide its inmates sex-reassignment surgery (and assuming *arguendo* that *Ex parte Young* allowed for such relief against them), that would not allow an inmate to override—or bypass—a treating physician's contrary medical judgment and demand the procedure anyway. *Cf. id.* at 216 (“‘[M]ere disagreement with one's medical treatment is insufficient’ to state a claim under the Eighth Amendment.” (quoting *Delaughter*, 909 F.3d at 136)). With nothing in the record showing that Haverkamp is a suitable candidate for surgery, this dispute is not suitable to proceed.

III.

Haverkamp fails to show that TDCJ's alleged denial of sex-reassignment surgery in this case is fairly traceable to the challenged actions of Linthicum or Murray, rather than “the result of the independent action” of Haverkamp's treating physicians, who are “not before the court.” *See Lujan*, 504 U.S. at 560 (cleaned up). And if Haverkamp's treating physicians would not refer Haverkamp for the surgery, then Haverkamp's injury is not “likely to be redressed by a favorable judicial decision” granting the relief sought against Defendants. *See Spokeo*, 578 U.S. at 338.

Haverkamp therefore lacks standing. The judgment of the district court is AFFIRMED.