

Kevin Díaz, OSB No. 970480
Email: kdiaz@aclu-or.org
ACLU Foundation of Oregon
PO Box 40585
Portland, OR 97240
Tel.: (503) 227-6928; Fax: (503) 227-6928

Nathan Freed Wessler (*pro hac vice* application pending)
Email: nwessler@aclu.org
Ben Wizner (*pro hac vice* application pending)
Email: bwizner@aclu.org
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2500; Fax: (212) 549-2654

Attorneys for the Plaintiffs-Intervenors

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**OREGON PRESCRIPTION DRUG
MONITORING PROGRAM**, an agency of
the **STATE OF OREGON**,

Plaintiff,

v.

**UNITED STATES DRUG
ENFORCEMENT ADMINISTRATION**,
an agency of the **UNITED STATES
DEPARTMENT OF JUSTICE**,

Defendant.

Case No.: 3:12-cv-02023-HA

**DECLARATION OF JOHN DOE 2 IN
SUPPORT OF MOTION TO FILE
COMPLAINT IN INTERVENTION USING
PSEUDONYMS**

JOHN DOE 1, et al.,

Plaintiffs-Intervenors,

v.

**UNITED STATES DRUG
ENFORCEMENT ADMINISTRATION,**
an agency of the **UNITED STATES
DEPARTMENT OF JUSTICE,**

Defendant in Intervention.

I, John Doe 2,¹ hereby declare and state as follows:

1. I submit this declaration based on my personal knowledge in support of Intervenors' Motion to File Complaint in Intervention Using Pseudonyms, in the above-captioned case.

2. I am one of the individuals seeking to intervene in this action.

3. I am an attorney in the Portland area and a resident of Oregon.

4. I take prescription testosterone on a regular basis. Testosterone is classified in schedule III under the federal Controlled Substances Act.

5. This medication is prescribed by my Oregon-based physician and I obtain refills of my prescription at pharmacies in Oregon. As a result, I believe that records of my testosterone prescriptions are recorded by the Oregon Prescription Drug Monitoring Program ("PDMP").

6. Although I was assigned female sex at birth, throughout my life I have identified strongly with a male gender identity.

¹ This is not my real name. I am proceeding under a pseudonym in order to protect my constitutional right to privacy.

7. Over ten years ago, I was diagnosed with Gender Identity Disorder (“GID”) (also sometimes called gender dysphoria or transsexualism), which is a recognized medical condition that involves strong and persistent cross-gender identification and persistent discomfort about one’s assigned sex.

8. After I was diagnosed with GID, I began receiving medical treatment, as recommended and prescribed by my doctors, to help me transition from female to male sex. Part of that treatment involves hormone replacement therapy in the form of weekly injections of testosterone.

9. Hormone replacement therapy is a necessary part of my medical treatment and my ability to maintain my gender expression as male. I have consistently lived as a man since I started my transition.

10. I expect to continue using prescribed testosterone for the rest of my life.

11. My prescription for testosterone comes in the form of vials or bottles of the medication that I self-administer via injection once per week.

12. Normally, a bottle contains a three- or four-week supply of testosterone, meaning that I must obtain a refill or new prescription at the pharmacy after three or four weeks. Sometimes, however, I am dispensed larger bottles. The pharmacy recently provided me with a bottle of testosterone that contains approximately 20 weeks’ worth of the medication.

13. As part of the medical treatment of GID recommended by my doctors, I plan to have a complete hysterectomy, involving the removal my uterus and ovaries. After that surgery my body will produce less estrogen and, therefore, it is likely that my necessary dosage of testosterone will decrease. It is possible that I will be able to switch from testosterone injections to testosterone pills or transdermal patches.

14. I have not tried to hide my status as a person engaged in the transition from female to male gender identity. However, I have no interest in the public knowing the sensitive, personal, and private details about the future course of my medical treatment and the status of my transition. Further, although I have not kept my status secret, I know many people who go to significant lengths to conceal their transgender identity and who would experience harm to their reputations, safety, or livelihood if information about their status were publicly known.

15. Detailed information about my ongoing testosterone dosage should remain between me and my doctor, and I do not want it shared with the public.

16. In particular, I recently started a new job. Although some of my coworkers know about my female-to-male status, they do not know the details of my hormone replacement therapy, and it is important to me that this information remain private.

17. I am aware that the DEA claims the authority to obtain prescription records from the PDMP without a warrant. I believe the privacy protections created by Oregon law, including the requirement that law enforcement obtain a court order based on probable cause before requesting prescription records from the PDMP, are extremely important.

18. I do not want the DEA to access or obtain my prescription information because I take testosterone for a legal and medically necessary purpose and I consider information about my prescriptions to be private.

19. I fear that because the quantity of testosterone dispensed to me sometimes varies widely, from small bottles containing a three- or four-week supply to large bottles containing a 20-week supply, law enforcement might think that I am using testosterone for an illicit purpose. Law enforcement agents should be required to prove that they have evidence of wrongdoing before they gain access to my medical records.

20. If the DEA (or the public) obtained information about my testosterone dosage in the future, they would be able to deduce private information about the status of my transition. For example, if my testosterone dosage decreased in the future, it could indicate that I had had my uterus and ovaries removed.

21. It would be distressing to me if the DEA was allowed to obtain prescription records from the PDMP without a warrant. Because there is currently no alternative treatment for my GID that does not involve testosterone, I would not be able to avoid the DEA gaining easy access to my prescription information and the private medical information it reveals. However, I might take steps to protect my privacy by, for example, requesting that I receive only smaller supplies of testosterone from the pharmacy in order to avoid potential suspicion and attention from law enforcement. Having to refill my prescription more frequently is inconvenient, and causes me to incur the expense of traveling to the pharmacy more frequently.


22. Although I want to protect my right to the privacy of my prescription records and the medical information that they reveal, I also want to be able to assert my constitutional rights in court to ensure that the DEA cannot obtain personally identifying information from the PDMP that reveals my private prescription information without complying with the Fourth Amendment. The only way for me to do that is to proceed under a pseudonym because, otherwise, I will have to disclose to the DEA (and the public at large) the very information—my name, connected with the specific schedule III drug I take, the dosage I am prescribed, the frequency with which I take it, and the condition it treats—that my Complaint in Intervention is seeking to protect.

23. Additionally, it would be embarrassing and uncomfortable if detailed private and confidential medical information about myself were disclosed to the public.

24. Neither my name nor any other personally identifying information about me (including my image) will be revealed in any public statement that I or my representatives make about this case.

Pursuant to 28 U.S.C. § 1746, I hereby declare and state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED this 22nd day of January, 2013.

A handwritten signature in black ink that reads "John Doe 2". The signature is written in a cursive style and is positioned above a horizontal line.

John Doe 2²

² As noted above, this is a pseudonym.