

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHELLE (a/k/a MYCHAL)
CONCEPCION,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

Case No. 1:18-cv-01743-NONE-JLT (PC)

**ORDER DIRECTING DEFENDANTS TO
FILE SUPPLEMENT TO MOTION TO
DISMISS**

30-DAY DEADLINE

Plaintiff alleges that Defendants denied him sex reassignment surgery (SRS) in violation of the Eighth Amendment, the Fourteenth Amendment, and the Patient Protection and Affordable Care Act. (Doc. 15.) Pending before the Court is Defendants’ motion to dismiss Plaintiff’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 27.) Plaintiff has filed an opposition, to which Defendants have filed a reply. (Docs. 34, 38.) In their reply, Defendants state that, after filing their motion, Plaintiff was approved for SRS, which “raises the question of whether the Court has subject-matter jurisdiction over Plaintiff’s claim for injunctive relief.” (Doc. 38 at 2.)

Generally, parties “cannot raise a new issue for the first time in their reply briefs.” *State of Nev. v. Watkins*, 914 F.2d 1545, 1560 (9th Cir. 1990) (internal quotation marks and citations omitted); *see also Bolton v. McEwen*, No. 2:14-cv-0803-GEB-CKD, 2014 WL 4368274, at *1

1 (E.D. Cal. 2014). “However, ‘[a] party may raise jurisdictional challenges at any time during the
2 proceedings,’ even on appeal for the first time.” *Bolton*, 2014 WL 4368274, at *1 (quoting
3 *Attorneys Tr. v. Videotape Computer Prod., Inc.*, 93 F.3d 593, 595 (9th Cir. 1996)) (citation
4 omitted). The Court will therefore consider the issue of subject-matter jurisdiction. The Court,
5 however, requires additional briefing. Accordingly, the Court ORDERS:

- 6 1. Within 30 days of the date of service of this order, Defendants shall file a
7 supplemental brief on the question of the Court’s subject-matter jurisdiction, pursuant
8 to Federal Rule of Civil Procedure 12(b)(1), including the issues of standing and
9 mootness;
- 10 2. Within 21 days of the date of Defendants’ filing of the supplemental brief, Plaintiff
11 shall file a supplemental opposition or a statement of non-opposition; and,
- 12 3. Within 7 days of the date of Plaintiff’s filing of a supplemental opposition, if any,
13 Defendants may file a reply.

14 IT IS SO ORDERED.

15 Dated: October 15, 2020

16 /s/ Jennifer L. Thurston
17 UNITED STATES MAGISTRATE JUDGE