FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WAYNE A. PORRETTI, *Plaintiff-Appellee*, v. JAMES DZURENDA, Nevada State Prison Director; LINDA FOX, Nevada Director of Pharmacy; BRIAN WILLIAMS, Warden; BOB FAULKNER; RIO MANALONG; FRANCIS OAKMAN; PERRY RUSSELL; ALBERTO BUENCAMINO, *Defendants-Appellants.*	No. 20-16111 D.C. Nos. 2:17-cv-01745-RFB-DJA 2:17-cv-02403-RFB-NJK OPINION

Appeal from the United States District Court
for the District of Nevada
Richard F. Boulware II, District Judge, Presiding

Submitted March 17, 2021[*]
San Francisco, California

Filed August 30, 2021

[*] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: Mary H. Murguia and Morgan Christen, Circuit Judges, and Joan H. Lefkow,** District Judge.

Opinion by Judge Murguia

SUMMARY***

Prisoner Civil Rights

The panel affirmed the district court's preliminary injunction requiring prison officials to provide plaintiff certain medication while incarcerated.

Plaintiff received Wellbutrin and Seroquel for his serious mental illnesses before he was incarcerated in Nevada and after he entered into the custody of the Nevada Department of Corrections ("NDOC"). In 2017, without the recommendation of a health-care provider, NDOC stopped providing plaintiff his medication because of a new administrative policy.

The panel held that the district court did not abuse its discretion in issuing a preliminary injunction that required Defendants to provide Wellbutrin and Seroquel to treat plaintiff's serious mental illnesses. The panel held that the district court carefully applied the preliminary-injunction factors and rendered highly detailed factual findings that

** The Honorable Joan H. Lefkow, United States District Judge for the Northern District of Illinois, sitting by designation.

*** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

rejected opinions from Defendants' experts for reasons grounded in the record evidence.

Thus, the district court did not err in determining that plaintiff's Eighth Amendment claim was likely to succeed on the merits and that he would suffer irreparable harm in the form of "very serious or extreme damage to his mental health" if injunctive relief were not granted. The panel further found no abuse of discretion in the district court's determination that plaintiff's severe and persistent psychotic symptoms overwhelmingly outweighed Defendants' financial or logistical burdens in providing Wellbutrin and Seroquel; and that an injunction was in the public's interest because prisons must comply with the standard of care mandated by the Eighth Amendment. Considering Defendants' actions, the district court did not render any illogical, implausible, or unsupported factual finding.

COUNSEL

Aaron D. Ford, Attorney General; D. Randall Gilmer, Chief Deputy Attorney General; Frank A. Toddre II, Senior Deputy Attorney General; Office of the Attorney General, Las Vegas, Nevada; for Defendants-Appellants.

Jason C. Makris, Makris Legal Services LLC, Las Vegas, Nevada; Samuel Weiss, Rights Behind Bars, Washington, D.C.; for Plaintiff-Appellee.

OPINION

MURGUIA, Circuit Judge:

This case involves Plaintiff-Appellee Wayne Porretti's Eighth Amendment right to receive adequate medical care while incarcerated. Porretti received medication to treat his serious mental illnesses long before he was incarcerated in Nevada. Without the recommendation of a health-care provider, the Nevada Department of Corrections ("NDOC") stopped providing Porretti his medication because of a new administrative policy. Porretti sued and the district court issued a preliminary injunction requiring the NDOC to give Porretti his medication. We hold that the district court did not abuse its discretion in issuing the preliminary injunction.

I.

A.

Wayne Porretti, a sixty-two-year-old man, is currently incarcerated at High Desert State Prison in Nevada. Porretti has suffered from serious mental illnesses—Tourette's syndrome, depression, obsessive-compulsive disorder, personality disorder, and paranoid schizophrenia—throughout his life. Porretti's mental illnesses have caused him to attempt suicide and to suffer psychotic symptoms, including compulsive ingestion of metal objects like razor blades, paranoid delusions, auditory hallucinations, and verbal tics.

Porretti asserts that, beginning more than twenty years ago, his doctors prescribed several different anti-psychotic or anti-depressant medications to treat his mental illnesses. But Porretti suffered serious side effects from almost every medication that his doctors prescribed. The side effects

included growing male breasts, twitching, jerking, and swelling of his tongue to the point that he could not talk. Porretti's doctors eventually found a combination of medication that helped treat Porretti's mental illnesses without producing the serious side effects: Wellbutrin (an anti-depressant medication) and Seroquel (an anti-psychotic medication).

Because the NDOC's medical staff agreed that Wellbutrin and Seroquel were appropriate to treat Porretti's mental illnesses, they continued to provide those two medications to Porretti after he entered the NDOC's custody. In May 2017, however, the NDOC stopped providing Wellbutrin and Seroquel to Porretti because of a new "administrative policy" and without any recommendation from a health-care provider. According to the NDOC, the administrative policy discontinued the distribution of Wellbutrin and Seroquel because the two medications could be abused in prison. Porretti contends, however, that the administrative policy discontinued the distribution of Wellbutrin and Seroquel solely because of financial reasons.

After May 2017, the NDOC's medical staff instead offered medication that caused Porretti to experience serious side effects. Porretti therefore found himself with an untenable choice: Take the NDOC's medication and suffer from serious physical side effects or take no medication and suffer from severe psychotic symptoms.

B.

In June 2017, Porretti sent a *pro se* complaint to the United States District Court for the District of Nevada, naming several prison officials (collectively, "Defendants") and alleging violations of his Eighth and Fourteenth Amendment rights to be free from cruel and unusual

punishment.[1] Porretti experienced years of hurdles in this litigation, starting with the filing of his *pro se* complaint. Although Porretti sent the complaint to the district court in June 2017, he did not have sufficient funds to pay the federal filing fee. This resulted in the district court sending instructions and an application for Porretti to proceed *in forma pauperis* ("IFP"). But Porretti failed on multiple occasions from June 2017 to September 2017 to send a proper IFP application to the district court.

In March 2018, the district court deferred ruling on Porretti's most recent IFP application and ordered the Clerk of Court to file Porretti's complaint. The district court then dismissed Porretti's complaint without prejudice because he failed to adequately plead a federal or state claim. In April 2018, Porretti filed a first amended complaint, but the district court dismissed it for similar reasons in September 2018. The operative second amended complaint was filed in September 2018. From June 2017 to September 2018, while attempting to litigate his case, Porretti received neither Wellbutrin nor Seroquel.

1.

On January 8, 2019, Porretti sent a letter to the district court because he was still receiving neither Wellbutrin nor Seroquel. In that letter, Porretti stated that his treating psychiatrist at High Desert State Prison, Dr. Carla Carroll, told him that Wellbutrin and Seroquel were appropriate treatments but not available in light of the NDOC's new administrative policy. The district court construed Porretti's

[1] Defendants include James Dzurenda, Alberto Buencamino, Bob Faulkner, Linda Fox, Rio Manalang, Francis Oakman, Perry Russell, and Brian Williams.

letter as a motion for a preliminary injunction that would require Defendants to treat him with Wellbutrin and Seroquel.

The district court held a motion hearing on January 18, 2019. During that hearing, Porretti moved the district court to appoint an independent psychiatrist to examine him pursuant to Federal Rule of Evidence 706. Instead of ruling on the Rule 706 motion prematurely, the district court took that motion under advisement and continued the motion hearing until late January 2019. The district court requested that Porretti's treating psychiatrist at High Desert State Prison, Dr. Carroll, testify before the district court to explain Porretti's current treatment and diagnosis. The district court ordered that Dr. Carroll receive Porretti's medical records so that she could opine as to whether Porretti needed Wellbutrin and Seroquel.

Dr. Carroll appeared before the district court via videoconference on January 29, 2019. She testified that she had visited Porretti only once and that the one visit occurred via videoconference in November 2018. Dr. Carroll admitted that the NDOC stopped providing Wellbutrin and Seroquel to Porretti because of an administrative policy, not because of any medical recommendation. Dr. Carroll opined, however, that Porretti no longer needed Wellbutrin, Seroquel, or *any* medication at all. The district court inquired how Dr. Carroll could reach that medical conclusion even though Porretti's psychiatrists—and the NDOC's psychiatrists—had treated Porretti with medication for decades. Dr. Carroll responded that the previous psychiatrists who treated Porretti did not have access to the "wealth of information" that she reviewed in preparation for the district court's hearing. Dr. Carroll reviewed only

Porretti's medical records. She opined that Porretti was malingering.

In April 2019, the district court issued an order deeming Dr. Carroll's testimony not credible. The district court explained that Dr. Carroll examined Porretti once over multiple years, that the one visit was short in length and conducted over videoconference, and that her medical conclusion contradicted that of multiple psychiatrists who had treated Porretti with medication for decades. The district court concluded that Dr. Carroll—an NDOC employee—created a medical opinion tailored to support Defendants' litigation position.

In the same April 2019 order, the district court ordered each party to select a psychiatrist to conduct an independent examination of Porretti. This would allow the district court to have a more fully developed record before ruling on Porretti's motion for a preliminary injunction. The district court mandated that each psychiatrist provide a written medical report addressing the following topics:

> a) [Porretti's] current diagnosis including a review of his medical history; b) whether [Porretti's] prior prescriptions for Wellbutrin and Seroquel are medically necessary given his current diagnosis; c) the existence and efficacy of potential alternative medications and/or treatments; and d) requirements for [Porretti's] future care.

Porretti was appointed pro bono counsel and chose Dr. Norman Roitman as his psychiatrist. Dr. Roitman had examined Porretti more than fifteen times since 2004. Defendants chose Dr. Wade Exum, who—although not technically an NDOC employee—is a contractor whose

medical practice consists only of NDOC prisoners. Dr. Roitman and Dr. Exum both provided written medical reports. Throughout evidentiary hearings held in September and November of 2019, the district court reviewed each psychiatrist's medical report, heard live testimony from both psychiatrists, and received other evidence.

2.

In May 2020, the district court issued a written order—the order currently on appeal—granting Porretti's motion for a preliminary injunction. The district court first found that Dr. Roitman's medical report, which stated that Porretti should receive Wellbutrin and Seroquel, was credible and medically acceptable. Dr. Roitman's twenty-page report relied on approximately fifteen to twenty prior examinations of Porretti. Dr. Roitman reviewed Porretti's medical records, family history, and mental-health history. Dr. Roitman also provided ten pages of medical findings, explained the potential limitations of his findings, and determined that Wellbutrin and Seroquel are not prone to abuse in the prison system. Finally, Dr. Roitman explained why treatments other than Wellbutrin and Seroquel are not medically appropriate for Porretti.

On the other hand, the district court found that Dr. Exum's report, which recommended that Porretti receive cognitive behavioral treatment, was medically unacceptable and not credible for several reasons. Dr. Exum's brief four-page report relied almost exclusively on one short interview with Porretti. And although Dr. Exum called Porretti a "very poor historian" of his own medical history, Dr. Exum relied almost exclusively on Porretti's self-reported medical history. In addition, the district court found that Dr. Exum did not review Porretti's medical records, failed to discuss the potential abuse of Wellbutrin and Seroquel in the prison

system, failed to discuss Porretti's experience with Wellbutrin and Seroquel, and provided testimony designed to support Defendants' litigation position. The district court found, in sum, that Dr. Exum's report did not conform to that of a "prudent professional[] in the field" and was biased.[2]

After rendering these factual findings, the district court analyzed the four-part test for issuing a preliminary injunction. First, the district court determined that Porretti's Eighth Amendment claim would likely succeed on the merits because he could show that Defendants acted with deliberate indifference to a serious medical need. Second, the district court determined that Porretti would suffer irreparable harm absent injunctive relief. The irreparable harm included "very serious or extreme damage to his mental health should [injunctive] relief not be imposed." The district court "d[id] not reach this finding lightly but only after consideration of the testimony of two NDOC physicians, an independent psychiatrist, and a review of the extensive records in this case."

Third, the district court determined that the "balance of equities" tipped in Porretti's favor. The district court explained that Porretti's ongoing and severe mental-health symptoms, combined with the denial of medication that helps him, "overwhelmingly outweighs" Defendants' logistical and financial burdens in providing Wellbutrin and Seroquel. Fourth, and finally, the district court determined that the "public interest" favored injunctive relief because prisons must comply with the standard of care mandated by the Eighth Amendment. The district court explained that the

[2] The district court again deemed Dr. Carroll's testimony from the January 29, 2019 hearing not credible for the same reasons mentioned in the April 2019 order.

"public has an interest in ensuring the continued dignity of [individuals] incarcerated in federal prisons" and "[i]nherent in that dignity is the recognition of serious medical needs, and their adequate and effective treatment" pursuant to the Eighth Amendment.

Because Porretti satisfied each part of the preliminary-injunction test, the district court granted Porretti's motion for a preliminary injunction in its May 2020 order. The order required Defendants to submit a treatment plan that included Wellbutrin and Seroquel. Defendants timely appealed the district court's order.

C.

Unfortunately, Defendants failed to follow the district court's order granting the preliminary injunction while their appeal was pending in our court. In June 2020, Defendants submitted a treatment plan that clearly violated the terms of the district court's order because it stated that Porretti would receive Wellbutrin and Seroquel only if the NDOC's medical provider decided to prescribe them. The district court responded in a July 2020 order that explained the court "did not afford Defendants the opportunity to 'decide' whether to follow the Court's ordered treatment" of Wellbutrin and Seroquel. Considering Defendants' "blatant violation" of the district court's order, the district court scheduled a hearing for August 7, 2020 to evaluate Defendants' compliance with the district court's injunction. The district court stated that it would impose sanctions on Defendants if a treatment plan that complied with the court's order was not submitted by August 7, 2020.

By August 7, 2020, however, Porretti started having heart problems. During the August 7, 2020 hearing, Porretti's counsel stated that the heart problems occurred

because Defendants treated Porretti with narcotics instead of Wellbutrin and Seroquel. Moreover, according to Porretti's counsel, doctors at the University Medical Center in Nevada examined Porretti's heart and suggested that the NDOC's medical staff was potentially overdosing Porretti on narcotics. After medical-treatment complications and additional court hearings, the district court finally approved a treatment plan—providing Wellbutrin and Seroquel to Porretti—in January 2021.[3]

In the end, Porretti waited approximately four years to receive the medication he requires.

II.

We have jurisdiction pursuant to 28 U.S.C. § 1292(a)(1). We review the grant of a preliminary injunction for abuse of discretion. *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (en banc) (per curiam). A district court abuses its discretion when it "relies on an erroneous legal standard or clearly erroneous finding of fact." *Arc of Cal. v. Douglas*, 757 F.3d 975, 983 (9th Cir. 2014) (citation and internal quotation marks omitted). A district court's factual finding is clearly erroneous "if it is illogical, implausible, or without support in inferences that may be drawn from the facts in the record." *Id.* at 983–84 (citation and internal quotation marks omitted). Our "[r]eview of factual findings at the preliminary injunction stage" is restricted to the "record available to the district

[3] Defendants' unopposed motion to supplement the record (Doc. 46) is **GRANTED**. We take judicial notice of the district court's minute order on January 6, 2021, which adopts a treatment plan consistent with the district court's directives. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

court when it granted or denied the injunction motion." *Zepeda v. INS*, 753 F.2d 719, 724 (9th Cir. 1983).

III.

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). At the same time, however, federal courts "must not shrink from their obligation to enforce the constitutional rights of all persons, including prisoners." *Brown v. Plata*, 563 U.S. 493, 511 (2011) (citation and internal quotation marks omitted). Nor may federal courts "allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration." *Id.*

To obtain a preliminary injunction, Porretti "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter*, 555 U.S. at 20. Where, as here, the government opposes a preliminary injunction, the third and fourth factors merge into one inquiry. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). We address these factors in turn.[4]

[4] We need not discuss whether the district court's preliminary injunction was "prohibitory" or "mandatory" because a preliminary injunction was appropriate under the standard for both types of injunctions, and we note that the district court here applied the higher standard for mandatory preliminary injunctions. *See Edmo v. Corizon, Inc.*, 935 F.3d 757, 784 n.13. (9th Cir. 2019) (per curiam).

A.

The first factor of the preliminary-injunction test requires Porretti to show that his Eighth Amendment claim will likely succeed on the merits. *Winter*, 555 U.S. at 20. The Eighth Amendment prohibits "cruel and unusual punishments." U.S. Const. amend. VIII. A prisoner suffers cruel and unusual punishment when prison officials act with deliberate indifference to the prisoner's serious medical need. *See, e.g.*, *Edmo v. Corizon, Inc.*, 935 F.3d 757, 766 (9th Cir. 2019) (per curiam). Because Defendants do not dispute that Porretti's mental illnesses constitute a serious medical need, we address only deliberate indifference.

For a prison official to act with deliberate indifference to a serious medical need, the prison official must knowingly disregard an excessive risk to a prisoner's health. *Peralta v. Dillard*, 744 F.3d 1076, 1082 (9th Cir. 2014) (en banc). This requires the prisoner to show "that the course of treatment the [prison official] chose was medically unacceptable under the circumstances and that the [prison official] chose this course in conscious disregard of an excessive risk to the [prisoner's] health." *Hamby v. Hammond*, 821 F.3d 1085, 1092 (9th Cir. 2016) (citation and internal quotation marks omitted).

The issue here, like in many other Eighth Amendment cases, is whether Porretti showed only a mere disagreement of medical opinion between dueling experts, as opposed to deliberate indifference in treating Porretti. *See, e.g.*, *Edmo*, 935 F.3d at 786–87; *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004). We have explained that a mere disagreement of medical opinion between experts does not demonstrate deliberate indifference as a matter of law. *See, e.g.*, *Edmo*, 935 F.3d at 786; *Toguchi*, 391 F.3d at 1058. But that is true only if *both* dueling medical opinions are

"medically acceptable under the circumstances." *Edmo*, 935 F.3d at 786.

Our recent opinion in *Edmo v. Corizon, Inc.* illustrates the point. There, a transgender prisoner, Edmo, sought a preliminary injunction because of inadequate medical care. *See id.* at 775, 781. Edmo's experts testified that Edmo needed gender confirmation surgery to treat gender dysphoria, but the State's experts testified that gender confirmation surgery was not medically necessary. *Id.* at 787. The district court determined that Edmo's experts were credible because they had extensive experience treating gender dysphoria. *Id.* at 780, 787. On the other hand, the district court rejected the contrary opinions of the State's experts because they lacked extensive experience treating gender dysphoria and "because aspects of their opinions were illogical and unpersuasive." *Id.* at 780, 789. The district court discredited the State's experts, granted Edmo's motion for a preliminary injunction, and ordered the State to provide gender confirmation surgery. *See id.* at 780–81.

We affirmed the district court's order granting injunctive relief to Edmo. *Id.* at 803. Because the district court in *Edmo* determined that the State's expert reports were not credible and not medically acceptable under the circumstances, the district court was not faced with a mere disagreement of medical opinion involving two medically acceptable treatments. *See id.* at 786–92. Edmo's experts had the requisite experience and therefore were credible in the district court's view. *Id.* at 787. But the State's experts in *Edmo* lacked the requisite experience and therefore were not credible in the district court's view. *Id.* Because "the district court did not clearly err in making its credibility determinations," it was "not our role to reevaluate them" on appeal. *Id.*

Here, Defendants argue that Porretti cannot show deliberate indifference because Porretti's case involves a mere difference of medical opinions among Dr. Roitman, Dr. Exum, and Dr. Carroll concerning different acceptable treatments under the circumstances. This argument fails because the district court found that only Dr. Roitman's medical report was credible and medically acceptable under the circumstances. *See id.*; *Toguchi*, 391 F.3d at 1058 (a mere "difference of medical opinion . . . [is] insufficient, as a matter of law, to establish deliberate indifference," but not if the "chosen course of treatment was medically unacceptable under the circumstances") (citation and internal quotation marks omitted). With only one credible and medically acceptable recommendation, Porretti's case did not involve a mere disagreement of medical opinion between experts over different acceptable treatments. *See Edmo*, 935 F.3d at 787; *Toguchi*, 391 F.3d at 1058.

Contrary to Defendants' suggestions, the district court's findings as to Dr. Roitman's, Dr. Exum's, and Dr. Carroll's medical reports and recommendations are not clearly erroneous. The district court deemed Dr. Roitman's medical report and ultimate recommendation—Wellbutrin and Seroquel—credible and medically acceptable for several reasons grounded in record evidence. Dr. Roitman's *twenty-page* report included ten pages of medical findings; relied on approximately fifteen to twenty prior examinations of Porretti; and took into account Porretti's medical records, prior medical treatment, family history, and mental-health history. Dr. Roitman determined that Wellbutrin and Seroquel are not prone to abuse in the prison system and explained why alternative treatments are not appropriate for Porretti.

By contrast, the district court deemed Dr. Exum's report—recommending only cognitive behavioral treatment—not credible and medically unacceptable for reasons supported by record evidence. Dr. Exum's *four-page* report relied almost exclusively on one short interview with Porretti and Porretti's self-reported medical history. Dr. Exum called Porretti a "very poor historian" of his own medical history, but, at the same time, he relied almost exclusively on Porretti's self-reported medical history to compose his brief four-page report. Moreover, the district court found that Dr. Exum failed to review Porretti's medical records, failed to discuss Porretti's experience with Wellbutrin and Seroquel, and failed to discuss whether Wellbutrin and Seroquel are prone to abuse in the prison system. Considering those failures, among others, the district court determined that Dr. Exum provided biased testimony designed to support Defendants' litigation position and that Dr. Exum's medical evaluation did not conform to that of a "prudent professional[] in the [medical] field."

Similarly, the district court did not clearly err in deeming Dr. Carroll's report not credible. Dr. Carroll examined Porretti only one time for a few minutes over videoconference but recommended that Porretti receive no medication despite many other doctors—including the NDOC's doctors—providing medication to Porretti for decades to treat his serious mental illnesses. Dr. Carroll testified that Porretti exhibited addictive and drug-seeking behavior, but the record showed no formal diagnosis of drug abuse and instead showed the "drug-seeking" behavior to involve Porretti seeking the medication that he had been prescribed for years, Wellbutrin and Seroquel. The district court found that Dr. Carroll, an NDOC employee, created a

medical review tailored to support Defendants' litigation position.

In the end, because "the district court did not clearly err in making its credibility determinations," it is "not our role to reevaluate them." *Edmo*, 935 F.3d at 786; *see also Caro v. Woodford*, 280 F.3d 1247, 1253 (9th Cir. 2002) (explaining that we "must afford the District Court considerable deference in its determination that the witnesses were qualified to draw [their] conclusions"). The district court properly found that only Dr. Roitman's medical recommendation was credible and acceptable.

* * *

After the district court determined that Porretti's case did not involve dueling experts disagreeing over medically acceptable treatments, the district court pointed out that Defendants stopped providing Wellbutrin and Seroquel because of an administrative policy, without the recommendation of any health-care provider, and without any evidence that Porretti abused Wellbutrin or Seroquel. The district court also pointed out that Defendants failed to provide Dr. Exum's recommended cognitive behavioral treatment, which suggests Porretti received *no* treatment at all for periods of time, despite his serious mental health condition. Considering these facts, among others, the district court did not clearly err in determining that Defendants likely acted with deliberate indifference to Porretti's serious medical need. *See Edmo*, 935 F.3d at 786–90; *Caro*, 280 F.3d at 1253. The district court therefore did not err in determining that Porretti's Eight Amendment claim will likely succeed on the merits. *See Edmo*, 935 F.3d at 786–90, 793–94; *Caro*, 280 F.3d at 1253.

B.

The second factor of the preliminary-injunction test requires Porretti to show that he would suffer irreparable harm absent injunctive relief. *Winter*, 555 U.S. at 20. Notably, "the deprivation of [a prisoner's] constitutional right to adequate medical care is sufficient to establish irreparable harm." *Edmo*, 935 F.3d at 798. Emotional injuries, psychological distress, and risk of suicide may constitute irreparable harm. *See id.* at 797–98; *see also Thomas v. Cnty. of L.A.*, 978 F.2d 504, 511 (9th Cir. 1992) ("Plaintiffs have also established irreparable harm, based on this Court's finding that the deputies' actions have resulted in irreparable physical and emotional injuries to plaintiffs and the violation of plaintiffs' civil rights.").

Here, the district court determined that Porretti would suffer irreparable harm in the form of "very serious or extreme damage to his mental health" if injunctive relief were not granted. The "very serious or extreme damage" included suicide or self-harm and "debilitating symptoms" like paranoid delusions, auditory hallucinations, and "compulsive ingestion of metal parts." The district court did not abuse its discretion in determining that these injuries and risks of additional harm to Porretti's mental health likely constituted irreparable harm and therefore required injunctive relief. *See, e.g.*, *Edmo*, 935 F.3d at 797–98; *see also Thomas*, 978 F.2d at 511.[5]

[5] Defendants suggest that Porretti would not suffer irreparable harm because Defendants offered a treatment plan *after* the preliminary injunction was ordered. This argument is meritless because we review the district court's factual findings on the record "available to the district court *when it granted* . . . the injunction motion." *Zepeda*, 753 F.2d at 724 (emphasis added).

C.

The third and fourth factors of the preliminary-injunction test—balance of equities and public interest—merge into one inquiry when the government opposes a preliminary injunction. *See Drakes Bay*, 747 F.3d at 1092. The "balance of equities" concerns the burdens or hardships to Porretti compared with the burden on Defendants if an injunction is ordered. *See Winter*, 555 U.S. at 24–31. The "public interest" mostly concerns the injunction's "impact on non-parties rather than parties." *Bernhardt v. L.A. Cnty.*, 339 F.3d 920, 931 (9th Cir. 2003) (citation omitted).

Here, the district court first weighed the equities. It determined that Porretti's severe and persistent psychotic symptoms "overwhelmingly" outweighed Defendants' financial or logistical burdens in providing Wellbutrin and Seroquel to Porretti. The district court then explained how an injunction was in the public's interest: "The public has an interest in ensuring the continued dignity of [individuals] incarcerated in federal prisons" and "[i]nherent in that dignity is the recognition of serious medical needs, and their adequate and effective treatment" pursuant to the Eighth Amendment's mandated standard of care. We see no abuse of discretion here. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights.") (citation omitted); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

Defendants nevertheless argue that the district court abused its discretion because it did not adequately consider the public's interest in stopping abuse of Wellbutrin and

Seroquel in prison. Defendants cite Dr. Carroll's testimony to support their view that Wellbutrin and Seroquel are abused in prison. Yet the district court discredited Dr. Carroll's testimony and instead credited Dr. Roitman's finding that no scientific evidence validated the fear that Wellbutrin and Seroquel are prone to abuse in the prison system. And we already have determined that the district court did not abuse its discretion in crediting Dr. Roitman's testimony over Dr. Carroll's testimony.

Yet even if Dr. Carroll is correct about prisoners potentially abusing Wellbutrin and Seroquel, the district court ordered only that Porretti receive Wellbutrin and Seroquel in High Desert State Prison. The district court did not order that Wellbutrin and Seroquel be rendered available for all prisoners at High Desert State Prison. The district court's order would therefore present other prisoners with almost no opportunity to abuse Wellbutrin and Seroquel.

IV.

Defendants offer other unpersuasive arguments against the issuance of a preliminary injunction, which we briefly address and reject. First, Defendants argue that the district court erred in rendering credibility determinations among medical doctors because factual findings are the jury's responsibility. This argument fails because our case law makes clear that the district court may render credibility determinations before deciding a motion for a preliminary injunction. *Edmo*, 935 F.3d at 787 (reviewing expert medical testimony in a prison-conditions case and explaining that because "the district court did not clearly err

in making its credibility determinations," we would not "reevaluate them").[6]

Second, Defendants contend that the district court's preliminary injunction is not narrowly drawn. Defendants are correct that the Prison Litigation Reform Act ("PLRA") requires that preliminary injunctions in prison cases be "narrowly drawn" and the "least intrusive means necessary to correct th[e] harm." 18 U.S.C. § 3626(a)(2). But the PLRA "merely codifies existing law [governing injunctive relief] and does not change the standards for determining whether to grant an injunction." *Gomez v. Vernon*, 255 F.3d 1118, 1129 (9th Cir. 2001) (citation omitted). Here, the district court issued a narrow and simple injunction: Create a treatment plan and provide Porretti with the two medications that he needs, Wellbutrin and Seroquel. Nothing about the district court's preliminary injunction is overbroad.

Third, Defendants contend that the district court impermissibly micromanaged Porretti's case. *See Armstrong v. Brown*, 768 F.3d 975, 983 (9th Cir. 2014) (stating that a district court's preliminary injunction in the prison context may "provide guidance and set clear objectives" but may not micromanage prison administration). The record clearly shows, however, that the district court held multiple status conferences and hearings because Defendants repeatedly refused to follow the district

[6] Defendants also appear to argue that the district court should have conducted a *Daubert* analysis before making a credibility determination among the medical doctors in this case. Because Defendants never filed a *Daubert* motion in the district court, their *Daubert* argument is forfeited. *Orr v. Plumb*, 884 F.3d 923, 932 (9th Cir. 2018) ("The usual rule is that arguments raised for the first time on appeal . . . are deemed forfeited.").

court's orders, refused to give Porretti the court-ordered medications, and allowed several months to pass without providing *any* medical treatment to Porretti. Simply put, after Defendants failed to follow court orders, they unpersuasively characterize the district court as a micromanager because it enforced its orders.

Fourth, Defendants suggest that the district court altered the preliminary injunction after the notice of appeal was filed in this case. But the district court never changed its injunction, and Defendants fail to point to a new injunction. Instead, the district court attempted to enforce the same preliminary injunction that Defendants routinely failed to follow. The district court explained that "the only thing" it sought to do was implement the existing order that required the NDOC to treat Porretti with Wellbutrin and Seroquel.

Finally, Defendants suggest that changed factual circumstances—Porretti's heart problems—require the district court to modify the preliminary injunction. Defendants' current appeal, however, is not an appropriate vehicle to argue that changed factual circumstances justify modification of the injunction. That is because our "[r]eview of factual findings at the preliminary injunction stage" is restricted to the "record available to the district court *when it granted* or denied the injunction motion." *Zepeda*, 753 F.2d at 724 (emphasis added).

V.

In the end, the district court carefully applied the preliminary-injunction factors and rendered highly detailed factual findings that rejected opinions from Defendants' experts for reasons grounded in record evidence. Considering Defendants' actions in the present case, the district court did not render any illogical, implausible, or

unsupported factual finding. The district court did not abuse its discretion in issuing a preliminary injunction that required Defendants to provide Wellbutrin and Seroquel to treat Porretti's serious mental illnesses.

AFFIRMED.