

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-cv-03404-MSK-BNB

SCOTT HILL a/k/a SAMANTHA HILL

Plaintiff,

v.

UNITED STATES BUREAU OF PRISONS, a United States agency,
MICHAEL K. NALLEY, Regional Director, North Central Region, Bureau of Prisons, sued in his individual capacity,
CHARLES A. DANIELS, Warden of the United States Penitentiary – Florence, sued in his individual capacity,
DR. MARK CARTER, Staff Psychologist at the United States Penitentiary – Florence, sued in his individual capacity,
DR. DANIEL SEVERN, Staff Psychiatrist at the United States Penitentiary – Florence, sued in his individual capacity,
WILLIAM HUTCHINGS, captain at the United States Penitentiary – Florence, sued in his individual capacity,
LAMONT ANTHONY, lieutenant at the United States Penitentiary – Florence, sued in his individual capacity,
DIANE BORGES, counselor at the United States Penitentiary – Florence, sued in her individual capacity,
RICHARD DERR, unit manager at the United States Penitentiary – Florence, sued in his individual capacity,
BERNIE JANUSZ, case manager at the United States Penitentiary – Florence, sued in his individual capacity,
GILBERT LYDE, unit manager at the United States Penitentiary – Florence, sued in his individual capacity,
TODD JAVERNICK, CMC at the United States Penitentiary – Florence, sued in his individual capacity,
STEVE BROWN, special investigative agent at the United States Penitentiary – Florence, sued in his individual capacity, and
KEVIN JOHNSON, associate warden of the United States Penitentiary – Florence, sued in his individual capacity.

Defendants.

AMENDED COMPLAINT AND JURY DEMAND

PLAINTIFF Scott Hill a/k/a Samantha Hill (“Ms. Hill”), by and through undersigned counsel, hereby submits this Amended Complaint and Jury Demand alleging violations of her rights protected by the Eighth Amendment to the United States Constitution.

NATURE OF THE CASE

Ms. Hill is a prisoner in the custody of the Federal Bureau of Prisons (the “BOP”). Ms. Hill is anatomically male, but identifies as female, and has done so since a very young age. She prefers to dress and groom as a female and requests that others treat her as a female. Because Ms. Hill is anatomically male, the BOP houses Ms. Hill in all-male prisons. As a result of her effeminate appearance and presentation, her diminutive stature, her sexual orientation and gender identification, and knowledge among the prison population she has participated in investigations into the physical and sexual assaults against her, Ms. Hill is at a heightened risk of predation by other inmates. Her personal status alone – irrespective of the characteristics of her cellmate – puts her at heightened risk while incarcerated, as evidenced by her history of repeated sexual victimization while imprisoned.

Though it is obvious that Ms. Hill is viewed as “prey” in the prison environment, and though various BOP personnel have acknowledged Ms. Hill’s heightened risk of predation and included concerns regarding her risk level in her BOP Central File for all BOP personnel to see, the BOP has housed Ms. Hill in some of the BOP’s most notoriously dangerous high-security institutions. These institutions are unsafe for a transgendered prisoner like Ms. Hill, and Ms. Hill has routinely been housed with cellmates who have not been verified as “safe” to cohabitate with her. Ms. Hill has been assaulted or raped numerous times since she has been in the custody of the BOP. She lives in constant fear of assault if she leaves protective custody, which she has requested repeatedly to ensure her safety. Despite her frequent pleas to the BOP for placement in

a single cell or in a facility where she is not facing the risk of assault, and despite her exhaustion of administrative remedies to put all levels of the BOP on notice of her serious concerns regarding her personal safety, the BOP continues to house Ms. Hill in penitentiaries with violent criminals who target her as “prey,” and with cellmates. Despite the BOP’s awareness of the heightened risk posed to Ms. Hill’s safety, it has failed to protect her from actual and ongoing substantial risks of serious harm. Ms. Hill seeks injunctive and prospective relief from the BOP for its confirmed failure to provide Ms. Hill with consistent and permanent safe housing.

In particular, the BOP and Defendants housed Ms. Hill at the United States Penitentiary in Florence, Colorado (“USP-Florence”), one of the BOP’s most violent and dangerous high-security institutions. The BOP transferred Ms. Hill there in December 2010, knowing it was unsafe based on the well-documented history of sexual assault against Ms. Hill at similarly violent and dangerous institutions. Upon her arrival to USP-Florence, Ms. Hill informed USP-Florence staff in her intake screening interview that she had recently been sexually assaulted, was a “CIM case” (i.e., had been designated for Central Inmate Monitoring and thus should have received heightened review upon arrival), and should not be placed in the general population. She expressly informed Defendants Daniels, Carter, Severn, Hutchings, Anthony, Borges, Derr, and Johnson of her prior history of victimization and her ongoing fear of assault and of retaliation for her participation in an investigation regarding a prior assault, for which she had been labeled as a “snitch.” Even though the Defendants knew of the inherent risk in housing Ms. Hill in a dangerous environment, the Defendants housed Ms. Hill in the Special Housing Unit (the “SHU”) with a cellmate, despite her repeated requests to be single-celled and her administrative appeals of the decision to require her to be housed with a cellmate.

During the period from her transfer to USP-Florence until the date of her rape by her cellmate, Ms. Hill repeatedly notified the Defendants of her fears of being targeted based on her sexual orientation, effeminate appearance, and history of assault, and pled for a safe housing assignment. Ms. Hill's warnings notwithstanding—and despite the severity of the claims of repeated sexual assault and rape in her Central File, USP-Florence officials did nothing to protect her from the cellmate who eventually violently sexually assaulted her on December 17, 2011. As a consequence of the sexual assault, Ms. Hill suffered physical injuries and severe emotional distress. Ms. Hill therefore seeks nominal, compensatory, and punitive damages from the BOP and from “the Individual Capacity Defendants” (Nalley, Daniels, Carter, Severn, Hutchings, Anthony, Borges, Derr, Janusz, Lyde, Javernick, Brown, and Johnson) for their personal participation in failing to protect Ms. Hill from the violent sexual assault she suffered on their watch.

Additionally, Ms. Hill also seeks monetary relief from Defendants Carter and Severn, and injunctive relief from the BOP, for their failure to provide adequate medical and mental health treatment to Ms. Hill for her Post-Traumatic Stress Disorder and Rape Trauma Syndrome, both leading up to and following the December 17, 2011 rape. Defendants Carter and Severn each were repeatedly informed of Ms. Hill's trauma, fears, anxiety, and stress resulting from her repeated sexual victimization, and of her diagnoses of PTSD and RTS. Defendants Carter's and Steven's reports detail Ms. Hill's fragile mental state, acknowledge her need for treatment, and set forth the nominal and oftentimes delayed treatment actually provided. Despite acknowledging her PTSD and RTS, Defendants Carter and Severn each refused Ms. Hill adequate counseling and treatment and have failed to provide treatment as mandated by the Prison Rape Elimination Act and relevant community standards of care. The BOP has continued to fail to provide

adequate PTSD and RTS treatment in violation of Ms. Hill's rights protected by the Eighth Amendment.

Ms. Hill finally seeks injunctive relief against the BOP that would require it to properly treat Ms. Hill's gender dysphoria, for which she has repeatedly requested medical and mental health treatment. Until recently, the BOP had failed even to evaluate Ms. Hill's gender dysphoria, let alone provide any treatment, despite recognizing and documenting her gender identity issues as early as 2005. In 2012, the BOP finally performed an evaluation, and recently informed Ms. Hill that she would be transferred to a medical facility for treatment. As of now, Ms. Hill has not yet been transferred to a medical facility as promised. Moreover, the nature, duration, and adequacy of the treatment to be provided is unknown, and any voluntary provision of treatment and safe housing could be subject to cessation at any time. Injunctive relief is required to ensure Ms. Hill receives adequate treatment for her gender dysphoria in light of the BOP's practice of regularly and unpredictably moving inmates between correctional institutions and past failure to provide necessary treatment.

Defendants' acts and omission described herein constitute gross violations of Ms. Hill's rights protected by the Eighth Amendment to the United States Constitution and have caused and continue to cause Ms. Hill severe physical and emotional suffering. Accordingly, Ms. Hill respectfully requests that the Court grant her the relief requested herein and such other relief as the Court may deem just and proper.

JURISDICTION AND VENUE

1. This Court possesses subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(4), 1346, 2201, and 2202, and *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

2. This Court possesses personal jurisdiction over each of the Defendants, as set forth in this Amended Complaint.

3. Venue is proper within this district pursuant to 28 U.S.C. § 1391, as all Defendants reside here and a substantial part of the events or omissions giving rise to this action occurred here.

PARTIES

4. Plaintiff Samantha Hill is a federal prisoner in the custody of the BOP. Ms. Hill is transgender; she is anatomically male, but identifies as female. Ms. Hill is of Native American descent, and in that tradition identifies as a “Two Spirit.” The BOP identifies Ms. Hill as Scott Hill, Inmate Register Number 22297-038. Ms. Hill is presently housed at the Federal Correctional Institution in Butner, North Carolina (“FCI-Butner”).

5. Defendant Federal Bureau of Prisons is a federal agency charged with holding in its custody persons who have been convicted of violating the laws of the United States and sentenced to a period of incarceration. The BOP is also charged with establishing policies and regulations of the federal prison system and ensuring the safety of prisoners in its custody. As set forth herein, the BOP has continuously failed to protect Ms. Hill from a substantial risk of serious harm and to provide Ms. Hill with adequate medical and mental healthcare. The BOP is sued in its official capacity.

6. Defendant Michael K. Nalley was the regional director for the BOP North Central Region, which encompasses USP-Florence, at all times relevant to this action. In that capacity, Defendant Nalley was responsible, among other things, for overseeing the operations of USP-Florence and for investigating and responding to second-level requests for administrative remedies made by USP-Florence prisoners, including Ms. Hill. As set forth herein, Defendant

Nalley disregarded a substantial risk of serious harm posed to Ms. Hill by her being housed at USP-Florence. Defendant Nalley is sued in his individual capacity.

7. Defendant Charles E. Daniels was the warden of USP-Florence at all times relevant to this action. In that capacity, Defendant Daniels was charged with, among other things, ensuring the safety and adequate medical and mental health treatment of USP-Florence prisoners. As set forth herein, Defendant Daniels disregarded a substantial risk of serious harm to Ms. Hill while Ms. Hill was housed at USP-Florence. Defendant Daniels is sued in his individual capacity.

8. Defendant Dr. Mark Carter, Psy.D. is and was, at all times relevant to this action, a staff psychologist at USP-Florence. In that capacity, Defendant Carter is responsible for providing mental health treatment to USP-Florence inmates. As set forth herein, Defendant Carter disregarded Ms. Hill's known serious mental health needs during the entirety of her incarceration at USP-Florence, and disregarded the substantial risk of harm to Ms. Hill by virtue of her housing at USP-Florence. Defendant Carter is sued in his individual capacity.

9. Defendant Dr. Daniel Severn is and was, at all times relevant to this action, a staff psychiatrist at USP-Florence. In that capacity, Defendant Severn is responsible for providing mental health care to inmates housed at USP-Florence. As set forth herein, Defendant Severn disregarded Ms. Hill's known serious mental health needs during the entirety of her incarceration at USP-Florence. Defendant Severn is sued in his individual capacity.

10. Defendant William Hutchings was a captain at USP-Florence at all times relevant to this action. In that capacity, Defendant Hutchings was charged with, among other things, ensuring the safety of USP-Florence prisoners. As set forth herein, Defendant Hutchings disregarded a substantial risk of serious harm to Ms. Hill and Ms. Hill's serious medical and

mental health needs while Ms. Hill was housed at USP-Florence. Defendant Hutchings is sued in his individual capacity.

11. Defendant Lamont Anthony is and was, at all times relevant to this action, a correctional officer lieutenant at USP-Florence. In that capacity, Defendant Anthony was charged with, among other things, ensuring the safety of USP-Florence prisoners. As set forth herein, Defendant Anthony disregarded a substantial risk of serious harm to Ms. Hill and Ms. Hill's serious medical and mental health needs while Ms. Hill was housed at USP-Florence. Defendant Anthony is sued in his individual capacity.

12. Defendant Diane Borges is and was, at all times relevant to this action, a correctional counselor at USP-Florence. In that capacity, Defendant Borges is responsible for maintaining regular contact with inmates on her caseload and assisting them in various aspects of their daily lives. Defendant Borges was responsible for ensuring Ms. Hill's safety while she was housed at USP-Florence. As set forth herein, Defendant Borges was aware of and disregarded a substantial risk of serious harm to Ms. Hill. Defendant Borges is sued in her individual capacity.

13. Defendant Richard Derr is and was, at all times relevant to this action, the Unit Manager of the USP-Florence D/A, and oversaw Ms. Hill's housing assignments when she was housed at USP-Florence. In that capacity, Defendant Derr was responsible for ensuring the safety and well-being of certain prisoners housed in the USP-Florence SHU, including Ms. Hill, and for making custody decisions, including cell assignments and transfer decisions, pertaining to USP-Florence SHU inmates. As set forth herein, Defendant Derr created and disregarded a substantial risk of serious harm to Ms. Hill while she was housed in the USP-Florence SHU. Defendant Derr is sued in his individual capacity.

14. Defendant Bernie Janusz is and was, at all times relevant to this action, a case manager at USP-Florence. In that capacity, Defendant Janusz is responsible for ensuring the safety and well-being of prisoners on his caseload or about whom he is charged with making housing and protective custody decisions. As set forth herein, Defendant Janusz created and disregarded a substantial risk of serious harm to Ms. Hill while she was housed at USP-Florence. Defendant Janusz is sued in his individual capacity.

15. Defendant Gilbert Lyde was the Unit Manager of the USP-Florence D/A when Ms. Hill arrived at USP-Florence. In that capacity, Defendant Lyde was charged with, among other things, ensuring the safe housing of inmates, including Ms. Hill. As set forth herein, Defendant Lyde created and failed to respond reasonably to a substantial risk of serious harm to Ms. Hill while she was housed at USP-Florence. Defendant Lyde is sued in his individual capacity.

16. Defendant Todd Javernick is and was, at all times relevant to this action, a staff member at USP-Florence. In that capacity, Defendant Javernick was charged with, among other things, ensuring the safe housing of inmates in his custody and/or making housing and protective custody decisions for inmates at USP-Florence, including Ms. Hill. As set forth herein, Defendant Javernick created and disregarded a substantial risk of serious harm to Ms. Hill while she was housed at USP-Florence. Defendant Javernick is sued in his individual capacity.

17. Defendant Steve Brown was a special investigative agent at USP-Florence at all times relevant to this action. In that capacity, Defendant Brown was charged with, among other things, ensuring the safe housing of and making decisions about protective custody for inmates housed at USP-Florence, including Ms. Hill. As set forth herein, Defendant Brown created and

disregarded a substantial risk of serious harm to Ms. Hill while she was housed at USP-Florence. Defendant Brown is sued in his individual capacity.

18. Defendant Kevin Johnson is and was, at all times relevant to this action, an associate warden at USP-Florence. In that capacity, Defendant Johnson was charged with, among other things, ensuring the safe housing of and making decisions about protective custody for inmates housed at USP-Florence, including Ms. Hill. As set forth herein, Defendant Johnson created and disregarded a substantial risk of serious harm to Ms. Hill while she was housed at USP-Florence. Defendant Johnson is sued in his individual capacity.

TIMELINE OF TRAUMATIC EVENTS

DATE	LOCATION	NATURE OF INCIDENT
March 13-18, 2001	United States Penitentiary, Lewisberg	<ul style="list-style-type: none"> • Ms. Hill is raped while in protective custody by her cellmate • Ms. Hill is diagnosed with Post-Traumatic Stress Disorder following the incident
2002	United States Penitentiary, Allenwood	<ul style="list-style-type: none"> • Ms. Hill is physically assaulted by another inmate while in protective custody
March 26, 2003	United States Penitentiary, Allenwood	<ul style="list-style-type: none"> • Ms. Hill is sexually assaulted by her cellmate
April 4, 2009	United States Penitentiary, Terre Haute	<ul style="list-style-type: none"> • Ms. Hill is assaulted by two other inmates with a five pound rock and a knife • As a result of the assault, Ms. Hill receives 15 staples to her head and two stitches to her face • Ms. Hill is again diagnosed with Post-Traumatic Stress Disorder
2010	United States Penitentiary, Coleman II	<ul style="list-style-type: none"> • Ms. Hill is sexually assaulted by her cellmate
June 10, 2010	United States Penitentiary, Coleman II	<ul style="list-style-type: none"> • Ms. Hill is sexually assaulted by her cellmate
October 18, 2010 to October 28, 2010	United States Penitentiary, Victorville	<ul style="list-style-type: none"> • Ms. Hill is repeatedly and violently sexually assaulted over the course of a ten-day period by her cellmate, a Latin Kings gang member • Ms. Hill is again diagnosed with Post-Traumatic Stress Disorder, Chronic without Delayed Onset
December 17, 2011	United States Penitentiary, Florence	<ul style="list-style-type: none"> • Ms. Hill is, predictably and preventably, violently raped by her cellmate
May 21, 2012	United States Penitentiary, Tucson	<ul style="list-style-type: none"> • Ms. Hill is physically assaulted by her cellmate
2013	United States Penitentiary, Coleman II	<ul style="list-style-type: none"> • Ms. Hill is sexually assaulted by her cellmate
September 11, 2014	FCI Butner	<ul style="list-style-type: none"> • Ms. Hill suffers an attempted sexual assault in the shower.

GENERAL ALLEGATIONS

A. Ms. Hill's High Risk For Predation From Other Inmates

19. Prisons, including the BOP prisons where Ms. Hill has been housed, are highly predatory environments. There is a strict hierarchy within any prison system. Prisoners at the bottom of the hierarchy are perceived as weak and vulnerable, and as a result are relentlessly preyed upon by others.

20. Prisoners who appear feminine or physically weak, who identify as lesbian, gay, bisexual, or transgender (“LGBT”), who have a known history of being preyed upon, and who have cooperated with law enforcement or “snitched” are considered to be at the bottom of the hierarchy and are therefore at a heightened risk of attack by other prisoners.

21. Ms. Hill is transgender,¹ or a Two Spirit in the Native American tradition. Although Ms. Hill is physically a male, she identifies as a female. She strives to achieve a feminine appearance and to be recognized as a female by others. She is also has a naturally slight build, standing approximately five feet, five inches tall. She wears her hair long, wears make-up, and dresses as a female whenever possible. She requests that others refer to her using feminine pronouns. Ms. Hill has identified as female almost her entire life.

22. Because of her physical appearance, sexual orientation, history of sexual assault, and cooperation with law enforcement in reporting her history of sexual assault, Ms. Hill is at a very high risk of attack by other prisoners within the BOP.

23. The risk to Ms. Hill's safety in a prison environment is obvious as a result of her appearance alone.

¹ According to the Gay and Lesbian Alliance Against Defamation (“GLAAD”), “‘transgender’ is an umbrella term often used to refer to people whose gender identify differs from their assigned sex at birth.”

24. Ms. Hill has a long history of being sexually assaulted in the prison system. At a minimum, she was sexually assaulted at least eight times at five different United States Penitentiaries (“USPs”). She has endured additional physical assaults at many of the facilities where she has been housed, and, whenever she is housed at a USP, she receives frequent threats of sexual and physical assault.

25. Because Ms. Hill routinely reports these physical and sexual assaults to BOP officials, she has been identified by other prisoners as a snitch—someone who tells on other prisoners.

26. Even though Ms. Hill identifies and presents as female, she has always been housed in all-male prisons by the BOP because of her anatomy. The BOP has classified Ms. Hill to its highest custody level and routinely houses her in its highest security facilities, USPs. In fact, Ms. Hill has spent the vast majority of her incarceration in some of the BOP’s most violent USPs, including USP-Florence.

27. Because USPs are the most violent and dangerous of all federal prisons, the risk to a prisoner like Ms. Hill is significantly heightened when housed in a USP as opposed to a lower security prison, such as a Federal Correctional Institution “FCI,” a medium security BOP facility.

28. Nonetheless, Ms. Hill is still not safe, even when she is housed in FCIs. Because of Ms. Hill’s sexual orientation, she has often been forced to “check-in” at some of the FCIs at which she has been housed by voluntarily admitting herself to the SHU to prevent attacks from prisoners in the general population.

29. The USPs at which Ms. Hill has been physically or sexually assaulted are some of the BOPs most notoriously dangerous institutions.

30. The risk to Ms. Hill's safety is well-documented in her BOP records, which are replete with reports of the unwanted sexual propositioning and threats she received, in addition to the repeated assaults she suffered.

31. For example, the first page of Ms. Hill's central file contains a large-print single-page document that reads: "NOT TO BE TRANSFERRED OR PARTICIPATE IN COMMUNITY ACTIVITIES WITHOUT CMC CLEARANCE. SEE PROGRAM STATEMENT TITLED 'CENTRAL INMATE MONITORING SYSTEM'." (Ex. 1 (Notice).)

32. Numerous BOP personnel have acknowledged that Ms. Hill is at an inherent and obvious heightened risk of predation because of her sexual orientation, effeminate appearance, and history of physical and sexual assault.

33. For example, on July 18, 2002, USP-Allenwood Chief Psychologist John R. Mitchell, Psy.D. ("Dr. Mitchell") advised other BOP officials that "[i]t must be emphasized how **inappropriate inmate Hill is to remain at a penitentiary environment. [She] was unable to make it here for even three days without encountering pressure for sex from predatory inmates and requiring protective custody.**" (Ex. 2 (Psychology Records) at SHILL00101 (emphasis added).)

34. Dr. Mitchell also noted in Ms. Hill's telepsychiatry clinic and mental health evaluation, dated July 17, 2002, that Ms. Hill was "considered a **high risk** for being preyed upon by other inmates." (*Id.* at SHILL00102 (emphasis added).)

35. In a February 10, 2003 Transfer Summary for Ms. Hill, Clinical Psychologist Georgina L. Ashlock, Ph.D. (U.S. Medical Center for Federal Prisoners, Springfield, Missouri) noted that Ms. Hill "is in a predicament, in that [s]he requires protection from other inmates . . . [sh]e is at high risk of being sexually assaulted given [her] small size, youthful appearance,

feminine mannerisms, and homosexual orientation.” Ms. Hill’s propensity for acting feminine, flirtatious, and provocative “contributes to [her] own victimization . . .” (Ex. 3 (Transfer Summary) at 4.) Accordingly, Dr. Ashlock recommended that she have “secure housing to protect [her] from other inmates . . .” because “**M[s]. Hill is also at high risk of being sexually assaulted** even without [her] provocative and inappropriate behavior because of [her] appearance, stature, and sexual orientation.” (*Id.* (emphasis added).)

36. In July 2003, Dr. Mitchell again recognized the safety risk to Ms. Hill, noting that “[Ms. Hill] has evidenced poor adjustment to BOP facilities throughout [her] incarceration, primarily due to [her] small physical stature, effeminate appearance, and homosexual background.” (Ex. 4 (Transfer Recommendation dated July 7, 2003).)

37. When treating Ms. Hill, Dr. Mitchell repeatedly alerted other BOP staff to Ms. Hill’s high risk for predation from other inmates through direct communications and notes in Ms. Hill’s psychology records.

38. Virtually every time Ms. Hill has been transferred to a new facility, her history of sexual victimization and the danger posed to her by being housed around other prisoners has been documented.

39. After ten years of repeated victimization without protection at USPs around the country, Ms. Hill was transferred back to USP-Allenwood in May 2013, and Dr. Mitchell again noted that “**[i]t will be important for staff to be aware of how high a risk for victimization inmate Hill is.**” (Ex. 2 at BOP000507-08 (emphasis added).)

40. Upon arrival to USP-Allenwood, BOP staff attempted to force Ms. Hill into general population. Dr. Mitchell quickly assisted Ms. Hill in obtaining a protective custody assignment in the SHU, however, to help insure Ms. Hill’s safety.

41. In June 2013, Dr. Mitchell noted that Ms. Hill is an inmate **with a high risk of sexual victimization**. [She] was on the compound for only a few days and ultimately had to request protective custody due to inmates pressuring [her] to not be on the compound. The primary concern I have for Hill remains [her] vulnerability for being sexually assaulted and sexually harassed.” (Ex. 2 at BOP000501.) Dr. Mitchell further recognized that Ms. Hill adapts successfully to medium-security prisons, and that such placements would “definitely reduce [her] PREA-related vulnerabilities rather than continuing to rotate [her] through various USP’s.” (*Id.*)

42. Dr. Mitchell also acknowledged that Ms. Hill’s high risk of victimization justified single-celling. (Ex. 2 at BOP000502.)

43. Also in June 2013, a BOP staff person acknowledged the causal relationship between Ms. Hill’s characteristics, identity, and history of assault to her repeated experience of sexual assault in the BOP. In responding to a Freedom of Information Act (“FOIA”) request for Ms. Hill’s complete central, medical, and mental health files made, a BOP employee stated, “I wanted to give you a head’s up that there is a lot of information in those documents regarding [her] sexual preference...definitely this file’s very sensitive, there’s a lot of sensitive issues, so not sure if these paperworks are getting back to [her] or not, but...if so please use caution because [she], you know, [she’s] had...several cases of being assaulted...in prison due to things like that.”

44. In July 2013, Ms. Hill was transferred from USP-Allenwood to USP-Terre Haute—another prison at which she has a history of being assaulted. During a Risk of Sexual Victimization consultation upon Ms. Hill’s transfer to USP-Terre Haute, the psychology staff reported that Ms. Hill “may be at **higher risk of sexual victimization than other inmates**.” (Ex. 2 at BOP000494 (emphasis added).)

45. During her transfer from USP-Allenwood to USP-Terre Haute, Dr. Mitchell reported on July 8, 2013, in a Recommendation for Management Variable to refer Ms. Hill to a lower-level security facility, that Ms. Hill “is a gender-identity disordered inmate who appears outwardly effeminate and has the gender identity of a female. As such, [she] is at **high risk for sexual victimization from predatory inmates**” and that “[p]redatory inmates who are likely to prey on inmate Hill are at greater numbers in high-security penitentiaries.” (Ex. 2 at BOP000499.) Dr. Mitchell also acknowledged that Ms. Hill “**has shown a pattern of not being able to safely exist in general population at USP high-security settings due to [her] high risk of victimization. . . and it is anticipated that this pattern would continue if [s]he is transferred to another USP.**” (*Id.* (emphasis added).) Dr. Mitchell further recognized that “[c]ontinued placement at USP facilities would represent an increased risk for Hill to be subject to further episodes of sexual harassment and/or sexual assault,” and noted that even at USP-Tucson, a supposedly safe USP, Ms. Hill was not safe and had to be placed in protective custody. (*Id.*)

46. Dr. Mitchell concluded that “it is believed Hill will be safest at a medium-security facility and that **continued placement at USP facilities would only ensure that inmate Hill remains a long-term protective custody case who languishes in SHU settings due to the safety risks that would befall [her] if in a general population setting at a USP.**” (*Id.* (emphasis added).)

47. In November 2013, BOP staff recognized the elevated risk posed to Ms. Hill based on her sexuality. Ted. L. Wunderlich, staff psychologist at Oklahoma City FTC, where Ms. Hill was briefly housed, indicated that Ms. Hill “does appear to be at an **elevated risk for**

victimization due to [her] self reported transgender status.” (Ex. 2 at BOP000468 (emphasis added).)

48. As recently as March 2014, BOP personnel have recognized that Ms. Hill “presents with a significantly increased risk for sexual victimization given [her] identification as transgendered, history of sexual victimization while incarcerated . . . , and [her] smaller physical stature.” (Ex. 2 at BOP000158 (emphasis added).)

49. The BOP also has, in the past, repeatedly acknowledged the risk posed to Ms. Hill’s safety by placing her on protective custody (“PC”) status, albeit temporarily.

50. PC is a classification status intended to provide additional protection to prisoners who are at a heightened risk of assault at the hands of other prisoners. While the protections afforded by PC status may vary, they can include assignment to a single cell (without a cellmate), directives to keep certain prisoners away from the prisoner on PC status, and directives that the prisoner be allowed to recreate, shower, and conduct other activities of daily life alone.

51. Even when on PC status, prisoners are not necessarily physically separated from prisoners who are not on PC status. On information and belief, there is no BOP facility that houses only prisoners on PC status.

52. In Ms. Hill’s case, placement on PC status has never afforded adequate protections from assault by other prisoners.

B. The Risk To Ms. Hill’s Safety While Housed At USP-Florence And Defendants’ Deliberate Indifference To This Risk

53. From approximately December 2010 to January 2012, Ms. Hill was housed at USP-Florence.

54. The risk of predation by other inmates posed to Ms. Hill at USP-Florence was extraordinary and obvious.

55. Defendants Nalley, Daniels, Carter, Severn, Hutchings, Anthony, Borges, Derr, Janusz, Lyde, Javernick, Brown, and Johnson (collectively, the “Individual Capacity Defendants”) were aware that Ms. Hill was at a high risk of physical and/or sexual assault from other inmates in the USP-Florence SHU but failed to respond reasonably to that risk, which ultimately led to her rape on December 17, 2011. The Individual Capacity Defendants’ knowledge of and failure to respond reasonably to the risk posed to Ms. Hill’s safety was willful, wanton, callous, and reckless.

56. To begin with, each of the Individual Capacity Defendants knew that immediately prior to her transfer to USP-Florence, Ms. Hill endured approximately ten days of sexual assault at the hands of her cellmate, a Latin Kings gang member, at the USP in Victorville, California (“USP-Victorville”) and that Ms. Hill was at a heightened risk for future sexual assaults as a result.

57. Ms. Hill reported the multiple rapes she had suffered to BOP officials and a Federal Bureau of Investigation (“FBI”) investigation was initiated. Ms. Hill was also placed on PC status as a result of the rapes.

58. After the rapes, Ms. Hill and her USP-Victorville assailant, Kenneth Lucez, were both transferred from the Victorville Correctional Complex (“VCC”) to other BOP facilities.

59. When BOP prisoners are transferred, they fly from their originating facility to the federal transfer center in Oklahoma City, Oklahoma (“FTC-Oklahoma”), and from FTC-Oklahoma, on to their destination facility.

60. Ms. Hill and Lucez were destined for different facilities after they left VCC, but were transferred from VCC to FTC-Oklahoma on the same plane.

61. Also on the plane from VCC to FTC-Oklahoma were other Latin Kings gang members who were associated with Lucez. Some of these gang members were ultimately transferred to USP-Florence with Ms. Hill.

62. During the transfer process, Lucez identified Ms. Hill as a snitch to his associates because Ms. Hill had reported to BOP officials that he had raped her.

63. On trips to and from the bathroom on the plane, Lucez also threatened Ms. Hill's life.

64. In her intake screening with Defendant Carter, Ms. Hill reported her history of sexual assault.

65. Ms. Hill additionally reported her history of sexual assault at USP-Victorville and fears of future assault to Defendants Janusz, Lyde, Javernick, Brown, Hutchings, and Johnson. Ms. Hill requested protective custody from Defendants Carter, Janusz, Lyde, Javernick, Brown, Hutchings, and Johnson.

66. Recognizing the risk of predation and assault posed to Ms. Hill, the BOP initially placed Ms. Hill in a single cell (without a cellmate) and afforded other protections that prevented her from being assaulted by other prisoners. (Ex. 2 at SHILL00204 (noting that Ms. Hill "is currently housed solo on the SHU so [s]he is safe . . .").)

67. Defendants Carter, Janusz, Lyde, Javernick, Brown, Hutchings, and Johnson were aware that Ms. Hill was initially placed in a single cell at USP-Florence for her own protection.

68. On January 1, 2011, Ms. Hill sought an administrative remedy of being classified "single cell warranted" to protect her from future physical or sexual assaults, explaining that she

had attempted to informally resolve her complaint by explaining her fears and concerns to the psychology department, the unit team, and Defendant Daniels, amongst others. Ms. Hill specifically notified the BOP and staff that she feared placing her with another inmate in protective custody, without evaluating the other inmate's history of violence, physical assault, sexual assault, gang status, or other characteristics did not provide sufficient protection for a vulnerable non-violent inmate such as Ms. Hill, and that she was an "obvious target or 'prey' for both physical/sexual assault by others: based on [her] slight or youthful physical build, gay, feminine appearance, snitch (report rape), [and] prior state charge of sex offender." Defendants Lyde and Borges acknowledged receipt of and denied Ms. Hill's request for administrative remedy.

69. Even though the threat to Ms. Hill's safety was well-documented and obvious, Defendants Janusz, Lyde, Javernick, Brown, Hutchings, and Johnson concluded that there existed no verifiable threat to Ms. Hill's safety on January 25, 2011.

70. As a consequence of Defendants Janusz, Lyde, Javernick, Brown, Hutchings, and Johnson's findings, Defendants Borges, Derr, and an unknown lieutenant ordered that Ms. Hill's PC status (that had been awarded at USP-Victorville) be removed and directed that Ms. Hill be housed with a cellmate in the USP-Florence SHU.

71. The USP-Florence SHU houses inmates who have committed disciplinary infractions and who are awaiting transfer to the United States Penitentiary Administrative Maximum ("ADX"), among other people. Accordingly, the pool of inmates from which Ms. Hill's cellmate would be selected was, in general, particularly dangerous and disruptive segment of the USP-Florence inmate population.

72. After Defendants Janusz, Lyde, Javernick, Brown, Hutchings, Johnson, Borges, and Derr removed Ms. Hill's PC status, creating and exacerbating a risk to her safety, Ms. Hill notified the other Individual Capacity Defendants numerous times that she was at a risk of attack by other inmates.

73. For example, Ms. Hill filed a Request For Administrative Remedy on January 20, 2011, complaining that she feared for her safety because she was being forced to take a cellmate, and that once her current cellmate was released, she would be subject to predation again. (Ex. 5 (Request For Administrative Remedy, dated January 20, 2011).)

74. Ms. Hill repeatedly requested that the BOP keep her in PC instead of mandating that she take a cellmate based on her fears of threats to her safety from being in the general population, but though both Borges and Derr were fully informed of the risks to Ms. Hill's safety, they signed the denial of Ms. Hill's request to remain in PC anyhow. (*Id.*)

75. Defendants Daniels and Nalley denied Ms. Hill's appeals for request for a safe housing assignment made in her January 20, 2011 request for administrative remedy. (*Id.*)

76. Ms. Hill sought an administrative remedy when her protests did not convince Defendants Borges and Derr to retain her PC status. Defendant Daniels reviewed Ms. Hill's explicit explanation of her history of sexual exploitation, her fears of further assaults, and the efforts she had made to convince the USP-Florence Defendants to keep her in PC, and signed the form denying Ms. Hill's request for an administrative remedy, concluding that there was no verifiable threat to her safety at USP-Florence and thus denying her request to be single celled.

77. Ms. Hill also directly informed each of the Individual Capacity Defendants of the risks to her safety and requested that they take action to protect her via multiple cop-outs (letters)

and verbal conversations. None of the Individual Capacity Defendants responded to Ms. Hill's requests for safe housing.

78. Without the minimal protections afforded to her by PC status, and as a direct result of the decision by Defendants Janusz, Lyde, Javernick, Brown, Hutchings, Johnson, Borges, and Derr to strip Ms. Hill of her protective custody and forcing her to have a cellmate, and Defendants Daniels' and Nalley's ratification and affirmation of that decision, the risk to Ms. Hill's safety was substantially increased.

79. Defendant Carter also reviewed Ms. Hill's requests for protective custody and was aware of the substantial risk to her safety that existed at USP-Florence. Nonetheless, Defendant Carter failed to take any measures to ensure Ms. Hill's safety and in fact repeatedly attempted to coerce Ms. Hill into the extremely dangerous general population at USP-Florence by withholding mental health treatment on the ground that she needed to be "on the compound"—in other words, in general population—before he would provide such treatment.

80. Even though Defendants Janusz, Lyde, Javernick, Brown, Hutchings, Johnson, Borges, Derr, Daniels, and Carter exhibited deliberate indifference to Ms. Hill's need and requests for safe housing, Ms. Hill persisted in expressing her concerns.

81. For example, Ms. Hill filed an Inmate Request to Staff directed to Defendant Severn on April 20, 2011, expressing her fears of being raped or physically assaulted.

82. Predictably, after her removal from PC, prisoners began soliciting Ms. Hill for sex through "kites," which are written notes passed between prisoners. Some of these kites were sexually threatening. (*E.g.*, Ex. 6 (Kite).) Ms. Hill showed these threatening, sexually explicit kites to USP-Florence SHU staff, including Defendants Derr, Anthony, Borges, and Lyde.

83. Knowing that the risk to her safety was increased by other prisoners' knowledge that she had previously been sexually assaulted and was LGBT, Ms. Hill continued to request, through administrative remedies, kites, cop-outs, and verbal conversations, that she be placed back on PC status, afforded a single cell, and separated from prisoners who posed a risk to her safety. Ms. Hill requested safe housing from each and every one of the Individual Capacity Defendants.

84. Ms. Hill's repeated requests for a safe housing assignment were denied and/or ignored by the Individual Capacity Defendants.

85. Ms. Hill's repeated requests for a safe housing assignment further bolstered her reputation as a snitch amongst the USP-Florence SHU prisoners.

86. To make matters worse, Defendants Anthony and Hutchings exacerbated the risk to Ms. Hill's safety while housed in the USP-Florence SHU.

87. In early 2011, Defendant Hutchings removed Ms. Hill and her cellmate from the SHU and handcuffed them together inside a recreation cage. Under these conditions, Defendant Hutchings forced Ms. Hill to recount the details of the USP-Victorville rapes so that her cellmate could hear.

88. Defendant Hutchings engaged in this conduct because Ms. Hill had sent complaints about the USP-Victorville rapes to various BOP officials and governmental investigative agencies (*e.g.*, the Federal Bureau of Investigation).

89. After Defendant Hutchings forced Ms. Hill to recount the details of the USP-Victorville rapes in the presence of another prisoner, he removed all of Ms. Hill's property from her cell for 48 hours to prevent her from writing further complaints about her conditions of confinement.

90. Thereafter, and as a direct consequence of Defendant Hutching's conduct, USP-Florence SHU prisoners (in addition to Lucez's associates) learned of Ms. Hill's history of sexual assault, which significantly increased the risk to her safety.

91. Ms. Hill continued to receive sexually threatening kites from USP-Florence SHU inmates after this incident.

92. In response to continued threats to Ms. Hill's safety, Ms. Hill again requested that she be placed back on PC status, afforded a single cell, and separated from prisoners who posed a risk to her safety.

93. Knowing of Ms. Hill's repeated requests for a safe housing assignment, again in early 2011, Defendant Anthony called Ms. Hill a "little bitch" in audible range of other USP-Florence SHU prisoners and disclosed to those prisoners that Ms. Hill had cried in his office. Defendant Anthony's conduct caused Ms. Hill her to appear weak to other SHU prisoners, and thereby exacerbated the risk posed to Ms. Hill's safety.

94. Defendants' Hutchings and Anthony's conduct created the same risk to Ms. Hill's safety as would have been created if they had labeled Ms. Hill a snitch.

95. Throughout the course of her time at USP-Florence, Ms. Hill repeatedly requested mental health treatment for trauma symptoms related to the USP-Victorville rapes and other rapes she had endured in BOP custody and, in the course of those requests, Ms. Hill reported to Defendants Carter and Severn that there were existing threats to her safety at USP-Florence and that she feared future sexual and physical assaults.

96. Despite Ms. Hill's pleas for help, Defendants Carter and Severn did not provide mental health treatment, but instead repeatedly withheld treatment, claiming that such treatment could not be provided while Ms. Hill was living in the SHU. They denied Ms. Hill psychological

treatment for her PTSD and RTS even though they knew that Ms. Hill was in the SHU for her own safety and that she had a well-founded fear of assault and abuse should she be moved into the general population.

97. Based on their repeated consultations with Ms. Hill and written requests Ms. Hill submitted to them, Defendants Carter and Severn knew that Ms. Hill was a person in need of heightened protection due to her effeminate appearance, history of sexual assaults, LGBT identity, and reputation as a snitch.

98. On two occasions, Defendant Borges went so far as to punish Ms. Hill for doing all that was in her power to protect herself by finding Ms. Hill guilty of disciplinary infractions for “Refusing a Program Assignment” and “Refusing a Direct Order.” On April 1, 2011, and September 22, 2011, Defendant Borges found that Ms. Hill had refused to obey an order to leave the SHU and go into general population at USP-Florence, and that Ms. Hill had therefore violated BOP rules. On both occasions, Ms. Hill defended against the charges by informing Defendant Borges that she was not safe in general population and could not leave the SHU.

99. In approximately August 2011, Defendants Daniels, and Derr temporarily transferred Ms. Hill to FCI-Florence, a lower security prison. On information and belief, this transfer was effectuated because Defendants Daniels and Derr were aware of the high risk of assault Ms. Hill faced while housed in the USP-Florence SHU. Nonetheless, Defendants Daniels and Derr transferred Ms. Hill back to the USP-Florence SHU in the fall of 2011, knowing of the substantial risk of serious harm posed to her by that placement.

100. Upon her return to USP-Florence, the counselor conducting Ms. Hill’s intake interview concluded that Ms. Hill should not be placed in the general population for numerous reasons, including that she had assisted law enforcement officers, had testified against others in

court (i.e., was a “snitch”), and was a CIM case. The counselor conducting the interview noted that he or she had reviewed Ms. Hill’s central file, which detailed her history of sexual abuse and assault, her mental health history, and the necessity of providing protective housing.

101. Ms. Hill was, accordingly, sent back to the USP-Florence SHU.

102. When Ms. Hill was sent back to the USP-Florence SHU, Defendant Derr told her that she had “made the choice” to come back to USP-Florence from FCI-Florence (where she had been relatively safe) by filing requests for administrative remedies about her unsafe and unconstitutional conditions of confinement.

103. Upon assignment to the USP-Florence SHU, Defendants Derr, Hutchings, Anthony, Borges, and Carter indiscriminately assigned Ms. Hill a cellmate without consideration for the documented and obvious risks to her safety. Predictably, that cellmate began threatening and physically assaulting Ms. Hill.

104. On December 6, 2011, Ms. Hill reported to Defendant Carter that her cellmate was physically assaulting her. According to Defendant Carter’s notes, he reported these physical assaults and recommended a cell reassignment to the SHU lieutenant. On information and belief, this SHU lieutenant was Defendant Anthony.

105. Even though he knew that her cellmate was physically assaulting her, Defendant Carter took Ms. Hill back to that cell and did not remove her immediately to protect her safety.

106. No BOP official took any action to remove Ms. Hill from these known dangerous conditions for two days.

107. Two days after Defendant Carter documented Ms. Hill’s need for protection from her cellmate, she was transferred into another cell with another dangerous inmate in early December 2011.

108. Knowing of Ms. Hill's vulnerability to sexual and physical assault and particular risk posed by Ms. Hill's cellmate in December 2011, Defendants failed to respond reasonably to this risk to when, among other things:

- a. They removed her PC status upon arrival to USP-Florence (Defendants Janusz, Lyde, Javernick, Brown, Hutchings, Johnson, Borges, and Daniels);
- b. They forced her, on multiple occasions, to live with a cellmate (Defendants Janusz, Lyde, Javernick, Brown, Hutchings, Johnson, Borges, Derr, and Anthony);
- c. They failed to choose a suitable, non-predatory cellmate for her (Defendants Janusz, Lyde, Javernick, Brown, Hutchings, Johnson, Borges, Derr, and Anthony);
- d. They failed to respond to Ms. Hill's requests for a safe housing assignment (All Individual Capacity Defendants);
- e. They failed to timely transfer Ms. Hill to an FCI (Defendants Daniels and Derr);
- f. After they did transfer Ms. Hill to FCI-Florence, they moved her back to the USP-Florence SHU and forced her to accept a cellmate (Defendants Daniels and Derr);
- g. Defendant Borges disciplined Ms. Hill for refusing to enter general population, which would have been even more dangerous than the USP-Florence SHU;
- h. Defendant Anthony physically assaulted Ms. Hill for refusing to accept a predatory and dangerous cellmate;

- i. They disregarded and failed to take action after learning that numerous USP-Florence SHU inmates had sent sexually threatening kites to Ms. Hill (Defendants Derr, Anthony, Borges, and Lyde);
- j. They failed to reasonably respond to Ms. Hill's numerous requests to staff and requests for administrative remedies asking for a safe housing assignment (All Individual Capacity Defendants);
- k. They failed to assign Ms. Hill a new cellmate after she complained that hers was physically assaulting her (Defendants Carter and Anthony);
- l. They exacerbated a hostile and unsafe environment for Ms. Hill in the USP-Florence SHU (Defendants Hutchings and Anthony); and
- m. Defendant Carter attempted to coerce Ms. Hill into an even more dangerous general population setting at USP-Florence by withholding mental health treatment.

109. The consequences of the Defendants' failure to respond reasonably to the risk posed to Ms. Hill's safety during the period in which she was housed in the USP-Florence SHU were grave.

110. The night of December 16, 2011, Ms. Hill's cellmate began stuffing rosary beads into the tip of his penis and commented to Ms. Hill to the effect of, "If you wake it, you're going to burp it till it spits."

111. Ms. Hill immediately notified the Number 1 SHU Officer, Angela McAlister – the then current officer in command – that she was at imminent risk of harm and that she needed to be removed from her cell.

112. Ms. McAlister came to Ms. Hill's cell and told her there was no space to move her to a different cell.

113. Hours later, shortly after midnight December 17, 2011, Ms. Hill was violently raped by her cellmate, who Defendants had been informed at least 10 days previously was violent and posed an extreme risk to Ms. Hill.

114. With the rosary beads still in his penis, the assailant caused significant tearing to Ms. Hill's anus. (Ex. 7 (St. Thomas More Hospital Records).)

115. Because Ms. Hill feared further attack if she attempted to alert USP-Florence staff that she had been raped, and because the cell in which Ms. Hill was housed was not equipped with any sort of emergency or panic button, Ms. Hill remained silent for the rest of the night. Until the morning, Ms. Hill was forced to sit in underwear wet with her assailant's semen and hold back tears and screams. For hours, Ms. Hill sat with her violent, predatory attacker only feet from her while having to relive the assault over and over again in her mind.

116. The first person to come by Ms. Hill's cell in the morning was a nurse, who came to deliver Ms. Hill's medications at approximately nine o'clock a.m.

117. Ms. Hill passed the nurse a note saying that she'd been raped and needed to be taken out of the cell immediately. In the note, Ms. Hill instructed the nurse to say Ms. Hill needed to be removed for blood work so as not to alert Ms. Hill's cellmate that Ms. Hill had told staff he had raped her. In response to the note, the nurse loudly said, "Is this real? Are you for real? This better be real."

118. The nurse finally notified guards, who came to remove Ms. Hill from the cell.

119. The guards took Ms. Hill to be interviewed for approximately an hour, where she was forced to sit in the clothes still soaked with her rapist's semen.

120. Because she was suffering extreme trauma, Ms. Hill's teeth were chattering during the interview. An officer, whose name is unknown, asked, "What, are you cold?" Ms. Hill responded, "No, don't you understand how I feel right now?" The officer responded, "No, I've never had a dick in my ass."

121. Throughout the course of the interview, this officer repeatedly expressed the opinion that men who identify as gay or transgendered cannot be raped because, under certain circumstances, they have consented to sex with someone of the same sex.

122. Following the interview, Ms. Hill was placed in the SHU "shock cell," a small, glass encased observation cell. While she was in the shock cell, multiple guards passed by and snickered and laughed at Ms. Hill, who was crying and visibly upset.

123. Ms. Hill was forced to continue to sit in clothes soaked in her rapist's semen while she was in the shock cell.

124. After spending approximately one hour in the shock cell, guards took Ms. Hill to the intake area of the prison and removed her clothing and put it in a paper bag. They provided Ms. Hill with fresh clothing in preparation for transportation to the hospital.

125. Before leading Ms. Hill to the transport van, guards placed a blindfold over Ms. Hill's eyes. It is not standard protocol to blindfold inmates during transport and Ms. Hill has never been blindfolded during transport before, including during her transport to USP-Florence.

126. Ms. Hill was transported to and received medical treatment at St. Thomas More Hospital in Cañon City, Colorado. (Ex. 7.)

127. Ms. Hill was taken back to the USP-Florence SHU and remained there for approximately two weeks, although she was then single-celled and kept away from all other inmates.

128. On December 30, 2011, Ms. Hill was transferred to FCI-Florence, where she was again given PC status.

129. The Individual Capacity Defendants' knowledge of and failure to respond reasonably to the risk posed to Ms. Hill's safety were the direct cause of severe physical and emotional injuries Ms. Hill received as a result of the December 17, 2011 rape.

130. Each of the Individual Capacity Defendants' knowledge of and failure to respond reasonably to the risk posed to Ms. Hill's safety, as set forth herein, was willful, wanton, callous, and reckless.

131. As a consequence of the December 17, 2011 rape, Ms. Hill suffered physical injuries and severe emotional distress and pain and suffering.

C. The BOP's Ongoing Failure To Respond Reasonably To The Risk Posed To Ms. Hill and the Resultant Harm Suffered

132. Since the December 17, 2011 rape, the BOP has continued to fail to safely house Ms. Hill. Repeating the pattern and practice that has caused Ms. Hill to be raped or physically assaulted at every USP she has ever been housed at, the BOP refuses to afford Ms. Hill a centralized, non-terminable PC status and permanent safe housing assignment that meets her needs as a transgendered prisoner and as a person who faces extraordinary risk of serious harm. Specifically, the BOP continues to transfer Ms. Hill from prison to prison, supposedly to effectuate her PC classification, and upon arrival to each new prison, strips her of that classification and attempts to force her into the general population. She is then forced to enter a double cell in the SHU, where she is predictably assaulted, at which point the BOP reactively reassigns Ms. Hill PC status and transfers her—again supposedly to effectuate the PC classification—only to have the cycle repeat all over again. The fundamental problem with the BOP's policy and practice as applied to Ms. Hill is that it completely fails to recognize and

account for the *de facto* risk of serious harm Ms. Hill faces each and every day at each and every male prison on account of her status as a transgendered prisoner, as a prisoner with a history of rape and other physical assault, as a snitch, and as a prisoner perceived by others to be effeminate and weak.

133. After USP-Florence, Ms. Hill was transferred to the USP in Tucson, Arizona (“USP-Tucson”), where, in accordance with BOP policy and practice, the PC designation she received after the USP-Florence rape was removed. Consequently, and again in accordance with BOP policy and practice, USP-Tucson staff attempted to force Ms. Hill into general population.

134. Knowing that she would certainly be physically and sexually assaulted in general population, and possibly even killed, Ms. Hill refused to enter general population. In so doing, she continued to notify BOP staff that she faced a significant and obvious risk of harm.

135. Again, in accordance with BOP policy and practice, USP-Tucson staff assigned Ms. Hill to a double-cell in the USP-Tucson SHU.

136. Predictably and in keeping with the pattern of Ms. Hill’s past victimization, Ms. Hill’s cellmate in the USP-Tucson SHU physically assaulted her on multiple occasions, which Ms. Hill reported to USP-Tucson staff.

137. She was subsequently given PC status and transferred to a USP in Coleman, Florida (“USP-Coleman I”).

138. Ms. Hill had been previously housed at USP Coleman I and had a documented history of being sexually assaulted there. Fearing for her safety at that facility, USP-Coleman I staff would not allow Ms. Hill into the general population, and submitted a transfer request for her.

139. Ms. Hill was then transferred to a different USP in Coleman, Florida (“USP-Coleman II”), where she was forced to continue to live in the SHU because she was not safe in general population.

140. BOP officials placed Ms. Hill in the USP-Coleman II SHU with a gang dropout with a history of sexual assault. Predictably, this inmate sexually assaulted Ms. Hill, and she was again placed on PC status and recommended for transfer.

141. After a brief holdover at the USP in Atlanta, Georgia, Ms. Hill was transferred to USP-Allenwood, where she also had a history of sexual and physical assault. Upon arrival to USP-Allenwood, Ms. Hill immediately notified staff that she was not safe, and was forced, again, to live in the SHU.

142. Ms. Hill’s transfer to USP-Allenwood allowed her to be reunited with Dr. Mitchell, who has, as set forth above, been a vocal advocate for Ms. Hill to ensure her safety in the BOP.

143. Even though Dr. Mitchell continued to emphasize the inherent safety risk posed to Ms. Hill by her placement in the USP environment, on or around July 19, 2013, the BOP transferred Ms. Hill to the United States Penitentiary at Terre Haute (“USP-Terre Haute”).

144. Ms. Hill had previously been assaulted at USP-Terre Haute and experienced significant anxiety and emotional distress when she was returned to that facility.

145. Given her history of assault at USP-Terre Haute and the inherent risk posed to her safety by being housed at the USP custody level, her safety remained at constant risk so long as she was housed there.

146. From USP-Terre Haute, Ms. Hill was transferred to the FCI in Butner, North Carolina (“FCI-Butner”). Although, on information and belief there is no formal or written

policy designating it as such, FCI-Butner is typically regarded as a prison that houses and treats the medical and mental health needs of transgendered inmates.

147. The ray of hope that emerged when Ms. Hill was transferred to FCI-Butner was quickly extinguished, however. Ms. Hill was transferred from FCI-Butner for medical treatment only two months after her arrival, and then sent back to Allenwood, Pennsylvania.

148. Although Ms. Hill was, this time, assigned to the FCI in Allenwood (“FCI-Allenwood”), where she was initially able to enter general population, she quickly faced hostility and threats from the inmate population and was forced to enter the SHU.

149. On September 11, 2014, Ms. Hill was transferred back to FCI-Butner. The BOP purports to have transferred Ms. Hill to FCI-Butner to receive treatment for her gender dysphoria.

150. On information and belief, FCI-Butner manages a program for sexually violent predators. The inmates who participate in this program are general population inmates who have access to other inmates, including transgender inmates, housed at FCI-Butner.

151. Within four hours of her arrival at FCI-Butner, a male inmate attempted to sexually assault her in the shower. On information and belief, this inmate is a participant in FCI-Butner’s program for sexually violent predators.

152. After this attempted sexual assault, Ms. Hill was transferred to another unit at FCI-Butner. Today, she is housed in a dormitory style area with 21 other males. She is one of two transgender inmates housed in this area.

153. Ms. Hill is housed with a male cellmate.

154. None of the cell doors at FCI-Butner lock, which creates a grave risk that any inmate, including a sexually violent predator, could enter Ms. Hill's cell at any time and physically and/or sexually assault her.

155. FCI-Butner is extraordinarily overcrowded.

156. FCI-Butner is not a safe housing assignment for Ms. Hill.

157. Despite the ongoing risk posed to Ms. Hill's safety, the BOP has completely failed to take reasonable measures to abate the inherent and substantial risk to Ms. Hill absent permanent PC status and/or single celling. For example, the BOP has failed to mandate that Ms. Hill be housed at no higher than the FCI custody level to preclude her placement in USPs, which are notoriously violent. The BOP has also failed to afford Ms. Hill a centralized PC designation that would require that she receive protection yet not be housed in the damaging and isolating conditions of the SHU wherever she is housed within the agency. Instead, The BOP has left individual facilities to create their own PC policies, which has resulted in inconsistent application of protective measures to Ms. Hill.

158. Moreover, the BOP has failed to house Ms. Hill in a facility commensurate with her needs as a transgender prisoner. Instead, the BOP has continued to house Ms. Hill in male institutions.

159. Ms. Hill's continuous transfers between dangerous BOP facilities, and the BOP's failure to provide a safe environment for her, demonstrate the agency's ongoing deliberate indifference to the substantial risk of harm posed to Ms. Hill.

D. Ms. Hill's Serious Medical And Mental Health Needs Arising From Repeated Rapes She Has Endured While In BOP Custody

160. As a result of the USP-Victorville rapes and other rapes she has endured while in BOP custody, including the USP-Florence rape, Ms. Hill has been diagnosed with Post Traumatic Stress Disorder (“PTSD”) and Rape Trauma Syndrome (“RTS”).

161. PTSD is a psychological condition commonly experienced by rape survivors. The condition causes persons who have suffered trauma to experience trauma symptoms even when not directly experiencing a trauma. PTSD is a condition that can last indefinitely.

162. Like PTSD, RTS is a psychological condition brought on by the traumatic experience of rape. RTS disrupts cognitive, emotional, physical, and interpersonal functioning. RTS is a condition that can last for years.

163. Symptoms Ms. Hill experiences that are associated with PTSD and RTS include, but are not limited to:

- a. Extreme anxiety and panic attacks;
- b. Fear and extreme nervousness;
- c. Overwhelming guilt and shame;
- d. Sleep deprivation;
- e. Hopelessness and helplessness;
- f. Difficulty maintaining close relationships;
- g. Flashbacks and reliving of past rapes and physical assaults;
- h. Upsetting dreams;
- i. Cognitive difficulties;
- j. Frequent crying;
- k. Mood swings;

- l. Dissociation;
- m. Fatigue; and
- n. Tension.

164. The most effective treatment for both PTSD and RTS is talk therapy or cognitive behavioral therapy. Other types of psychotherapy treatment may be appropriate.

165. PTSD and RTS constitute serious medical and mental health needs.

E. Defendants Carter and Severn's Failure to Provide Adequate Mental Health Treatment For Ms. Hill's Rape Trauma Syndrome And Post Traumatic Stress Disorder

166. To ease her mental suffering and symptoms associated with her PTSD and RTS, Ms. Hill repeatedly requested mental health treatment in the form of talk therapy and medication from while at USP-Florence.

167. Defendants Carter and Severn were assigned to treat Ms. Hill and therefore received these repeated requests for help. However, Defendant Carter repeatedly failed to reasonably respond to Ms. Hill's requests for mental health treatment.

168. Dr. Severn likewise was repeatedly directly asked for treatment – both medication and consultation – for Ms. Hill's RTS and did not timely respond or provide treatment as requested.

169. Specifically, Defendants Carter and Severn's actions included, but were not limited to:

- a. Repeatedly denying Ms. Hill talk therapy not on the grounds that it was unnecessary medical treatment, but, rather, on the grounds that she could only receive such treatment if she "agreed to come out to the compound," even

though Ms. Hill's life would have been threatened by entering general population at USP-Florence; and

- b. Repeatedly creating signed written records indicating that Ms. Hill had not requested mental health treatment and was not experiencing any significant mental health symptoms that would require treatment greater than that she was being provided even though Ms. Hill had repeatedly indicated she was in need of mental health treatment and had repeatedly requested such treatment.

170. In addition, although Defendants Carter and Severn continued Ms. Hill's prescription for medication intended to aid in treating her PTSD and RTS symptoms, medication alone constituted grossly inadequate treatment. Defendants Carter and Severn knew and recognized that additional treatment – namely, talk therapy – was necessary and appropriate treatment for Ms. Hill, but denied such treatment without grounds.

171. Defendants Carter and Severn's conduct constituted deliberate indifference to Ms. Hill's serious medical and mental health needs.

172. Defendants Carter and Severn's failure to provide mental health treatment to Ms. Hill was willful, wanton, callous, and reckless.

F. The BOP's Ongoing Failure To Treat Ms. Hill's Rape Trauma Syndrome And Post Traumatic Stress Disorder.

173. Since her transfer from USP-Florence, the BOP has continued to fail to adequately treat Ms. Hill's PTSD and RTS.

174. Ms. Hill continues to suffer severe symptoms of PTSD and RTS. Yet, the BOP has failed to afford Ms. Hill meaningful, consistent, and adequate medical and mental health treatment.

175. The Prison Rape Elimination Act (“PREA”), a federal statute intended to provide greater protection and improve rape trauma-related services available to survivors of prison rape, requires that prisons, including the BOP, provide timely and appropriate medical and mental health care after a prisoner has been raped. The PREA requirements, while not giving rise to a cause of action on their own, provide guidance as to what constitutes adequate medical and mental health treatment after a prisoner has suffered a rape.

176. An express purpose of PREA is to bring the BOP into compliance with the Eighth Amendment.

177. Specifically, the Department of Justice regulations that implement PREA require, among other things, the BOP to provide timely and appropriate medical and mental health care to victims of sexual abuse, and provide the victim access to victim advocates from rape crisis centers for emotional support services relate to the sexual abuse. In addition, these regulations seek to restrict the use of SHU or solitary confinement as a means of protecting vulnerable inmates and require the BOP to create a safer environment through training and screening protocols, education of inmates and guards, development of protocols that encourage reporting of abuse, and requiring more prompt and thorough investigation of claims of rape.

178. The BOP has failed to comply with these regulations by not providing consistent, continuous, adequate, or appropriate mental health treatment to Ms. Hill, as well as by housing Ms. Hill in SHU as the only means of protecting her from further assaults.

179. Although Ms. Hill has had some access to mental health care providers who have provided talk therapy, that access has been minimal, sporadic at best, and insufficient to appropriately treat her PTSD and RTS. As of the date of this Amended Complaint, Ms. Hill does not have access to any talk therapy or other adequate emotional support services.

180. In addition, Ms. Hill's long-term placement in the SHU, which she has been forced to endure because the BOP has failed to house her at adequately safe facilities, also has exacerbated the symptoms of her PTSD and RTS.

181. The BOP's failure to consistently and appropriately safely house Ms. Hill exacerbates the symptoms of her PTSD and RTS.

182. These failures constitute deliberate indifference to a serious medical and mental health need.

G. Gender Dysphoria

183. Ms. Hill has gender dysphoria, as defined by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-V").

184. The American Psychiatric Association, in the DSM-V, describes transgender persons as those who suffer from gender dysphoria. The diagnostic criteria for gender dysphoria include a long-standing and strong identification with another gender, long-standing disquiet about the sex assigned or a sense of incongruity in the gender-assigned role of that sex, no physical intersex characteristics, and significant distress or impairment in occupational functioning, social functioning, and other areas of life. According to the DSM-V, a transsexual is someone who desires to live and be accepted as a member of the opposite sex, usually accompanied by the wish to make his or her body as congruent as possible with the preferred sex through surgery and hormone treatment, the transsexual identity has been present for at least two years, and the disorder is not a symptom of another mental disorder or a chromosomal abnormality.

185. Symptoms of gender dysphoria can be extremely painful. They can include extreme emotional discomfort, a desire to hide or be rid of physical signs of the biological sex, and a strong dislike for and desire to change the genitalia of the biological sex.

186. Gender dysphoria constitutes a serious medical need.

187. Appropriate treatment for gender dysphoria includes, but is not limited to:

- a. Mental health support;
- b. Hormone treatment;
- c. Dress of preferred gender role;
- d. Grooming supplies of preferred gender role;
- e. Hygiene supplies of preferred gender role;
- f. Use of name and pronouns of preferred gender role;
- g. Opportunities to behave in preferred gender role;
- h. Language and speech therapy;
- i. Hair removal treatments or devices;
- j. Peer support groups; and
- k. Sex reassignment therapy or surgery.

188. Additionally, in the prison or jail context, treatment for gender dysphoria includes, but is not limited to:

- a. Freedom from retaliation and harassment by prison or jail staff and other inmates;
- b. Housing with other LGBT inmates, or inmates of the same preferred gender;

- c. Separate housing, or at a minimum separate bathroom and shower facilities, from other inmates, if the inmate is housed in a facility of those with the same biological sex;
- d. Pat and strip searches conducted by a staff member of the gender of the inmate's choice;
- e. Confidentiality of the inmate's sexual orientation;
- f. Availability of LGBT literature and resources;
- g. Staff training regarding transgender inmates; and
- h. Protective custody.

189. Gender dysphoria constitutes a serious medical and mental health need.

H. The BOP's Failure to Timely Evaluate Ms. Hill And Provide Treatment Based Upon A Diagnosis of Her Gender Dysphoria

190. As early as 2005, Ms. Hill's prison psychologists recognized her gender identity issues, reporting in her file that Ms. Hill "continues to very appropriately discuss relevant **gender identity and sexuality issues**, as they relate to his functioning here, and more significantly to his transition to community and desire for healthy relationships. **He more clearly vocalizes his overt identification with females and wish to more fully express himself in this manner post-release.**" (Ex. 2 at SHILL00285.)

191. Despite the obvious need for an evaluation of Ms. Hill's claim that she identified as a woman and therefore had gender dysphoria, the BOP failed to provide a formal evaluation of Ms. Hill's condition in 2005. Indeed, no evaluation whatsoever was performed until 2012.

192. The BOP's medical records for Ms. Hill suggest a diagnosis in September 2012 and indicate another formal evaluation diagnosing Ms. Hill's gender dysphoria in November 2013.

193. Despite the 2012 and 2013 diagnoses, the BOP and its personnel have repeatedly asserted that additional evaluations were necessary to confirm Ms. Hill's gender dysphoria diagnosis before treatment can be provided.

194. The BOP has failed to timely perform these additional evaluations, and has not performed the necessary medical consultation to confirm that hormone therapy was an appropriate treatment, despite repeatedly recognizing that such a medical evaluation was the requisite next step in Ms. Hill's medical treatment.

195. The BOP's records, however, confirm that Ms. Hill was diagnosed with gender dysphoria and treatment should have been provided long ago to alleviate the severe distress she feels at being a woman in a man's body.

196. According to Ms. Hill's medical records, BOP doctor Rashid Khan diagnosed Ms. Hill as having gender dysphoria on September 20, 2012. (Ex. 8 (Clinical Records) at SHILL00329-333.)

197. In May 2013, Ms. Hill informed her doctors that she was "very distressed to have male anatomy" and "was requesting assistance in working towards transition." (Ex. 2 at BOP000361.) Ms. Hill also expressed her ideation about self-mutilation to remove her male anatomy. (*Id.*) The attending physician responded that he was unaware of the guidelines for treating inmates with gender dysphoria, and provided no treatment. (*Id.*)

198. Dr. Mitchell of USP-Allenwood reported that he had begun to discuss with Ms. Hill a "possible start to GID treatment procedures" as early as May 22, 2013, thus indicating that Ms. Hill's gender dysphoria already had been diagnosed, but no formal medical evaluation or treatment was provided. (Ex. 8 at BOP000503.)

199. Dr. Mitchell further reported in June and July 2013 that Ms. Hill “is a gender-identity disordered inmate who appears outwardly effeminate and has the gender identity of a female,” is “outwardly effeminate and has Gender Identity Disorder. . .” (Ex. 2 at BOP000499.) Again, no formal medical evaluation or treatment was provided at that time.

200. In July 2013, psychology staff recognized Ms. Hill as “a gender-identity disordered inmate who appears outwardly effeminate and has the gender identity of a female,” and that she expressed a desire to pursue hormone therapy. (Ex. 2 at BOP000480.) Again, no formal medical evaluation or treatment was provided at that time.

201. In August 2013, Ms. Hill informed the USP-Terre Haute psychologist that she was seeking a transfer to a lower security facility based on her transgender issues and history of sexual assault. (Ex. 2 at BOP000489.) Ms. Hill also requested materials on transgender issues and asked about possibility of hormone therapy. (*Id.*)

202. No additional evaluation of Ms. Hill’s gender dysphoria was performed until November 2013, however. (Ex. 2 at BOP000474-484.)

203. The psychologist performing that evaluation noted that no treatment for Ms. Hill’s gender dysphoria could commence until Ms. Hill also had an evaluation by a medical professional. (Ex. 2 at BOP000483.)

204. On November 5, 2013, staff psychologist Ericka N. Schmitt at Terre Haute FCI reported in her clinical notes that she discussed with Ms. Hill her diagnosis of gender identity disorder, and informed Ms. Hill that a treatment plan would be created. (Ex. 2 at BOP000473.) No treatment plan was created, however.

205. In November 2013, upon her transfer from USP-Terre Haute to FCI-Butner, Ms. Hill informed the staff psychologist, Jill R. Haughawout, that she had been diagnosed with

gender identity disorder while at USP-Terre Haute and had been sent to Butner for hormone therapy. (Ex. 2 at BOP000467.) The staff at FCI-Butner did not accept that a diagnosis already had been performed, or provide any hormone therapy.

206. Instead, in January 2014, Ms. Hill's doctors at FCI-Butner noted that her gender identity disorder evaluation was "in progress," even though her records diagnosed gender dysphoria in September 2012, and an evaluation formally confirmed the diagnosis in November 2013. (Ex. 8 at BOP000087-89 at 87.)

207. On January 5, 2014, BOP psychology staff again formally diagnosed Ms. Hill with gender dysphoria. (Ex. 2 at BOP000232-241.)

208. BOP psychology staff, doctors, and other personnel repeatedly confirmed this diagnosis throughout 2014.

209. By May 2014, Ms. Hill still had not received any hormone therapy for her gender dysphoria – nor any supplemental medical evaluations that the BOP claims are a predicate to treatment – and expressed concern to her doctors that she might never get treatment. (Ex. 8 at BOP000023.) Indeed, the fear of not receiving treatment was so dire for Ms. Hill that she expressed a desire to castrate herself because "it ([her] penis and scrotum) shouldn't be there." (*Id.*) Despite the severity of Ms. Hill's distress relating to her gender dysphoria, she has not yet received treatment.

210. Though Ms. Hill's medical records confirm a diagnosis of gender dysphoria as early as 2012, and again on January 5, 2014, on May 5, 2014, Ms. Hill's doctors noted that her gender dysphoria diagnosis needed to be **confirmed** before "efforts will be made to transfer patient to an institution that is close to an Endocrinologist with experience in Trans-Health Care." (Ex. 8 at BOP000028.)

211. Ms. Hill's doctors have recognized that "Inmate Hill is a candidate for hormone treatment. . ." (Ex. 8 at BOP00007-08.)

212. As of June 20, 2014, Ms. Hill's doctors recognized that "[t]here does not seem to be any disagreement with the diagnosis of gender dysphoria for this inmate." (Ex. 2 at BOP000009-11 at 10.) Her doctors noted that "transfer to a facility with an endocrinologist nearby who has experience with transgender patients is recommended." (*Id.*)

213. Despite the uniformity of the BOP's medical opinions regarding the need for treatment of Ms. Hill's gender dysphoria and the propriety of hormone therapy, and even though she was purportedly transferred to FCI-Butner to receive treatment, Ms. Hill still has not received any treatment for her gender dysphoria.

214. Ms. Hill has specifically requested the following treatment for her gender dysphoria:

- a. To be provided hormone therapy;
- b. To have sexual reassignment surgery;
- c. To be free from retaliation and harassment by BOP staff and other inmates;
- d. To be referred to using her female name, Samantha, and feminine pronouns;
- e. To be provided female clothing, undergarments, hygiene and grooming products, and any cosmetic products as may be allowed for her custody level;
- f. Separate bathrooms and shower facilities where males are not present;
- g. Housing with females or other LGBT inmates;
- h. To be free from sexual and physical assault by other inmates;
- i. Pat and strip searches to be conducted by a staff member of the gender of Ms. Hill's choice;

- j. Confidentiality of Ms. Hill's sexual orientation;
- k. LGBT literature and resources;
- l. Medical and mental health care appropriate to Ms. Hill's sexual orientation and history of rape in custody;
- m. Staff training regarding transgender inmates; and
- n. Protective custody.

215. BOP policy provides that inmates who have gender dysphoria will receive treatment, or will at least be evaluated to determine the appropriateness of treatment.

216. Specifically, BOP policy requires that:

[I]nmates who assert they have [gender dysphoria]² will receive thorough medical and mental health evaluations from medical professionals with basic competence in the assessment of the DSM [V] sexual disorders and who have participated in BOP's [gender dysphoria] training... The evaluation will include an assessment of the inmate's treatment and life experiences prior to incarceration (including hormone therapy, completed or in-process surgical interventions, real life experience consistent with the inmate's gender identity, private expressions that conform to the preferred gender, and counseling). If a diagnosis of [gender dysphoria] is reached, a proposed treatment plan will be developed which promotes the physical and mental stability of the patient. The development of the treatment plan is not solely dependent on services provided or the inmate's life experiences prior to incarceration. The treatment plan may include elements or services that were, or were not, provided prior to incarceration, including, but not limited to: those elements of the real life experience consistent with the prison environment, hormone therapy and counseling. Treatment plans will be reviewed regularly and updated as necessary.

Current, accepted standards of care will be used as a reference for developing the treatment plan. All appropriate treatment options prescribed for inmates with [gender dysphoria] in currently accepted standards of care will be taken into consideration during evaluation by the appropriate medical and mental health care staff. Each treatment plan or denial of treatment must be reviewed by the Medical Director or BOP Chief Psychiatrist. Hormone therapy must be requested through

² In 2013, the Diagnostic and Statistical Manual of Mental Disorders was updated from version IV to version V. A significant change in version V is the renaming of what was previously termed gender identity disorder to gender dysphoria. As the relevant BOP policy was written before this update, it refers to gender identity disorder.

the non-formulary review process, and approved by the Medical Director and/or BOP Chief Psychiatrist.

In summary, inmates in the custody of the Bureau with a possible diagnosis of [gender dysphoria] will receive a current individualized assessment and evaluation. Treatment options will not be precluded solely due to level of services received, or lack of services, prior to incarceration.

(Ex. 9 (Memorandum for Chief Executive Officers dated May 31, 2011).)

217. The BOP has failed to provide any treatment whatsoever, and certainly adequate treatment, for Ms. Hill's gender dysphoria.

218. The BOP has failed to permanently assign Ms. Hill to a facility where she will obtain adequate medical and mental health treatment, including safe housing, for her gender dysphoria.

219. Additionally, PREA requires that the BOP, among other things:

- a. Develop and maintain a zero-tolerance policy regarding sexual abuse;
- b. Screen inmates for risk of being sexually abused or sexually abusive, and use screening information to inform housing, bed, work education, and program assignments;
- c. Educate and train employees on their responsibilities in preventing, recognizing and responding to sexual abuse;
- d. Ban cross-gender pat-down searches of female inmates in prisons and jails;
- e. Enable inmates to shower, perform bodily functions and changes clothing without improper viewing by staff of the opposite gender;
- f. Require adequate levels of staffing to protect vulnerable inmates;
- g. Provide adequate medical and mental health care; and

- h. Adequately investigate all reports of sexual and physical abuse and sufficient and safe means for prisoners to report abuse.

220. The BOP has failed to comply with PREA requirements pertaining to gender dysphoria treatment.

221. The BOP's failure to treat Ms. Hill's gender dysphoria constitutes deliberate indifference to a serious medical and mental health need.

FIRST CAUSE OF ACTION
(Failure to Protect – All Defendants)

222. Plaintiff incorporates the preceding paragraphs of this Amended Complaint as if fully set forth herein.

223. As set forth herein, each of the Individual Capacity Defendants was aware that Ms. Hill was at a heightened risk of sexual predation based on her diminutive stature, her effeminate appearance, her history of sexual assault, and her sexual orientation.

224. Each of the Individual Capacity Defendants was expressly and personally informed of the substantial risk to Ms. Hill's safety, but failed to respond reasonably to that risk and ensure that she was housed in safe conditions.

225. Each of the Individual Capacity Defendants deliberately, willfully, wantonly, callously, and recklessly disregarded the substantial risk that Ms. Hill would be sexually assaulted while housed at USP-Florence, causing her to be raped by her cellmate on December 17, 2011.

226. Defendant BOP continues to deliberately disregard the substantial risk of serious harm posed to Ms. Hill's safety by failing to provide safe housing for her and ensure her safety wherever she is housed in the BOP.

227. Defendants' failure to protect Ms. Hill from a substantial risk of serious harm constitutes a violation of her right against cruel and unusual punishment protected by the Eighth Amendment to the United States Constitution.

SECOND CAUSE OF ACTION

(Deliberate Indifference to Rape Trauma Syndrome and Post Traumatic Stress Disorder - Defendants Carter, Severn, and BOP)

228. Defendants Carter and Severn failed to provide Ms. Hill adequate mental health care pertaining to her RTS and PTSD while she was housed at USP-Florence.

229. Defendants Carter and Severn each were repeatedly directly informed of Ms. Hill's symptoms and diagnoses of RTS and PTSD, and acknowledged that those medical issues required treatment, but failed to timely and appropriately provide treatment by denying her access to treatment while in protective custody, the SHU, or otherwise outside the general population, despite knowing that Ms. Hill would be at greater risk of further physical and sexual assault in general population.

230. Defendants Carter and Severn acted with deliberate indifference to Ms. Hill's serious medical and mental health needs while she was at USP-Florence.

231. Defendants Carter and Severn willfully, wantonly, callously, and recklessly disregarded Ms. Hill's serious medical and mental health needs while she was housed at USP-Florence.

232. Defendant BOP continues to deliberately disregard Ms. Hill's serious medical and mental health needs pertaining to her RTS and PTSD.

233. Defendants Carter, Severn, and BOP's failure to provide adequate medical and mental health treatment to Ms. Hill constitutes a violation of her right against cruel and unusual punishment protected by the Eighth Amendment to the United States Constitution.

THIRD CAUSE OF ACTION

(Deliberate Indifference to Gender Dysphoria - Defendant BOP)

234. Defendant BOP, on an ongoing basis, has failed to provide Ms. Hill adequate medical and mental health care pertaining to her gender dysphoria.

235. Defendant BOP, on an ongoing basis, has acted with deliberate indifference to Ms. Hill's serious medical and mental health needs.

236. Defendant BOP's failure to provide adequate medical and mental health treatment to Ms. Hill constitutes a violation of her right against cruel and unusual punishment protected by the Eighth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants for:

(a) Nominal and compensatory damages to compensate her for her physical injuries, pain, suffering, and emotional distress suffered as a result of the Individual Capacity Defendants' failure to protect her and Defendants Carter and Severn's failure to provide adequate mental health treatment;

(b) Punitive damages in a sum as to deter the Individual Capacity Defendants from conduct of this nature in the future;

(c) An injunction directing that the BOP implement such measures as are necessary to ensure Ms. Hill is safely housed within the BOP. At a minimum, Ms. Hill shall be afforded:

- a. A centralized protective custody designation not subject to removal;
- b. Housing with other LGBT inmates and separation from male inmates;
- c. Removal from SHU and cessation of social isolation;
- d. Access to programming and rehabilitative services commensurate with the access afforded other inmates of Ms. Hill's custody level; and

- e. Housing in a facility where staff have been appropriately trained in custody matters pertaining to LGBT inmates.
- (d) An injunction prohibiting the BOP from housing Ms. Hill at a male USP.
- (e) An injunction directing that the BOP provide Ms. Hill with consistent, continuous, appropriate, and adequate medical and mental health treatment for her PTSD, RTS, and gender dysphoria. At a minimum, that treatment shall include:
 - a. Freedom from retaliation and harassment by BOP staff and other inmates;
 - b. Reference using her female name, Samantha, and feminine pronouns;
 - c. Female clothing, undergarments, hygiene and grooming products, and any cosmetic products as may be allowed for her custody level;
 - d. Separate bathrooms and shower facilities where males are not present;
 - e. Hormone therapy;
 - f. Housing with females or other LGBT inmates;
 - g. Freedom from sexual and physical assault by other inmates;
 - h. Pat and strip searches to be conducted by a staff member of the gender of Ms. Hill's choice;
 - i. Confidentiality of Ms. Hill's sexual orientation;
 - j. LGBT literature and resources;
 - k. Medical and mental health care appropriate to Ms. Hill's sexual orientation and history of rape in custody;
 - l. Staff training regarding transgender inmates;
 - m. Protective custody; and
 - n. Sex reassignment surgery;

(f) A declaration that Defendants' conduct, as set forth in this Amended Complaint, violated and continues to violate Ms. Hill's rights under the Eighth Amendment to the United States Constitution;

(g) An award of attorneys' fees and costs;

(h) Such other relief as this Court deems just and proper.

DATED this 25th day of September, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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Elisabeth L. Owen