

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

RODERICK KEITH JOHNSON (#623028),)
Michael Unit, Tennessee Colony, Texas,)
)
Plaintiff,)

v.)

Civil Action No. _____

GARY JOHNSON, Executive Director, Texas)
Department of Criminal Justice,)
ROBERT R. TREON, Senior Warden, James V.)
Allred Unit, RICHARD E. WATHEN, Assistant)
Warden, General Population, James V. Allred Unit,)
JAMES D. MOONEYHAM, Assistant Warden,)
MAJOR NORWOOD, James V. Allred Unit,)
MAJOR BRIGHT, James V. Allred Unit,)
MS. KUYAVA, Administrative Technician,)
Unit Classification Committee, James V. Allred)
Unit, MS. VITOLO, Administrative Technician,)
Unit Classification Committee, James V. Allred)
Unit, VIKKI D. WRIGHT, Director, Classification,)
CAPTAIN BOYLE, James V. Allred Unit,)
MAJOR BOWMAN, James V. Allred Unit,)
SERGEANT WILLINGHAM, James V. Allred)
Unit, LIEUTENANT PAUL, James V. Allred Unit,)
LIEUTENANT RANGEL, James V. Allred Unit,)
LIEUTENANT TAYLOR, James V. Allred Unit,)
JOHN DOE ONE, JOHN DOE TWO,)
JOHN DOE THREE, JOHN DOE FOUR,)
JOHN DOE FIVE,)
)
Defendants.)

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff Roderick Johnson, a Black prisoner in custody of the Texas Department of Criminal Justice, brings this suit under 42 U.S.C. § 1983 for violation of his rights under the Eighth and Fourteenth Amendments to the United States Constitution. For

eighteen months, from September 2000 to April 2002, Mr. Johnson was subjected to a system of gang-run sexual slavery at the James V. Allred Unit in Iowa Park, Texas. Gang members routinely bought and sold Mr. Johnson as a chattel, raped and degraded him on a virtually daily basis, and threatened him with death if he resisted. Defendant prison officials at Allred were well aware of his plight, but refused to conduct any meaningful investigation of his complaints and refused his repeated pleas to be housed in safekeeping. They made clear by words and deeds that they took sadistic pleasure in his victimization. They repeatedly insisted that because he is Black, Mr. Johnson should either be able to fight off his attackers or else accept his sexual victimization. They also repeatedly expressed contempt for non-aggressive gay men, and made it explicit that it was their practice to refuse to protect such inmates from sexual assault, at least until such inmates were savagely beaten or “guttled.” They reiterated to Mr. Johnson that he must “fight or f---.” They also threatened Mr. Johnson with severe retaliation for revealing their misconduct and for seeking redress administratively and through the courts.

2. On information and belief, the Allred Defendants follow a custom and practice of denying safekeeping to vulnerable Black inmates even in cases of obvious need. Defendants, all of whom, on information and belief, are white, are far less likely to grant safekeeping to Black inmates than to other similarly situated inmates. Defendants improperly considered Mr. Johnson’s race in denying him safekeeping. In addition, on information and belief, Defendants follow a custom and practice of denying safekeeping to non-aggressive, gay men in need of protection.

3. Defendant Gary Johnson, Executive Director of the Texas Department of Criminal Justice, was aware of the misconduct of the Defendants at Allred, and the injury

and danger to which they subjected Mr. Johnson, but failed to take timely and adequate remedial measures.

4. Mr. Johnson sues the Defendants in their official and individual capacities.

5. Mr. Johnson seeks permanent and preliminary injunctive relief, declaratory relief, and damages for the physical injuries, excruciating emotional pain, intense degradation and humiliation, and lasting psychic trauma caused by Defendants' acts and omissions.

JURISDICTION

6. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331, and pursuant to 28 U.S.C. § 1343(a)(3) and (a)(4).

VENUE

7. Venue in this District is proper as to all Defendants pursuant to 28 U.S.C. § 1391(a)(2) and (b)(2) because the events giving rise to the claims occurred within this district.

PARTIES

8. Plaintiff Roderick Johnson is a citizen of Texas currently incarcerated as a sentenced prisoner at the Michael Unit in Tennessee Colony, Texas. From September 2000 to April 2002 he was incarcerated at the Allred Unit in Iowa Park, Texas.

9. Defendant Gary Johnson is the Executive Director of the Texas Department of Criminal Justice ("TDCJ"). He has ultimate responsibility within the Department for overseeing the operations of state prison facilities and ensuring prison officials' adherence to federal and state law and official TDCJ policy.

10. Defendant Robert R. Treon is the Senior Warden of the Allred Unit. He is responsible for the daily operations of Allred.

11. Defendant Richard E. Wathen is the Assistant Warden for General Population at Allred.
12. Defendant James D. Mooneyham is an assistant warden at Allred.
13. Defendant Norwood is a major at Allred.
14. Defendant Bright is a major at Allred.
15. Defendant Boyle is a captain at Allred.
16. Defendant Bowman is a major at Allred.
17. Defendant Willingham is a sergeant at Allred.
18. Defendant Paul is a lieutenant at Allred.
19. Defendant Rangel is a lieutenant at Allred.
20. Defendant Taylor is a lieutenant at Allred.
21. Defendant Vikki D. Wright is the Director of Classification at Allred.
22. Defendant Kuyava is an administrative technician for the Unit Classification Committee at Allred.
23. Defendant Vitolo is an administrative technician for the Unit Classification Committee at Allred.
24. Defendants John Doe One, John Doe Two, John Doe Three, John Doe Four, and John Doe Five are employees at Allred who have served on one or more of the Unit Classification Committees that denied Mr. Johnson's requests for safekeeping.
25. At all relevant times, all Defendants acted under color of state law, and all individual Defendants were acting within the scope of their employment.

EXHAUSTION

26. Mr. Johnson has exhausted such administrative remedies as were available to him. Mr. Johnson's Step 2 grievance form is attached.

PREVIOUS LAWSUITS

27. Mr. Johnson has never previously filed any lawsuits in state or federal court relating to his imprisonment.

STATEMENT OF FACTS

28. Roderick Johnson, a homosexual with no history of violence and very little prison experience, came into the custody of the Texas Department of Criminal Justice in early January 2000. He was sent to the Diagnostic Unit at Gurney and then to Huntsville for processing and classification. Mr. Johnson informed prison officials at both institutions that he was gay. Because his background and characteristics made him a likely target for sexual victimization, prison officials in Huntsville appropriately housed him in safekeeping. A State Classification Unit member assured him he would remain in safekeeping when he was transferred to Allred.

29. At Allred, a Unit Classification Committee ("UCC"), consisting of three or more officials, makes decisions on whether inmates require safekeeping. Defendants Wathen, Mooneyham, Norwood, Kuyava, Vitolo, Boyle, Bowman, Rangel, and Taylor all served on the UCC at Allred at various times relevant to this Complaint.

30. The Texas Department of Criminal Justice defines safekeeping in its *Safe Prisons Program* as "a status that permits the unit/facility to house vulnerable individuals, and other potential victims together, separate from more aggressive offenders. . . . Safekeeping status is reserved for those offenders who require separate housing in the

general population because of substantiated threats to their safety due to a potential for victimization, (i.e., enemies in the offender population, a history of homosexual behavior, or other similar reasons.)”

31. Mr. Johnson met and meets the criteria for placement in safekeeping status.

32. Defendants have known for years of the pervasive and substantial risk of sexual assault at Allred. They were also aware that Mr. Johnson was vulnerable to sexual victimization. Nevertheless, they failed to take reasonable measures to prevent him from being victimized.

33. In September 2000, when Mr. Johnson arrived at Allred, a Unit Classification Committee that included Defendant Major Bright held an initial classification review. Mr. Johnson explained to the UCC that he had been placed in safekeeping at Huntsville because he is gay, and that a State Classification Officer had told him that he would remain in safekeeping at Allred. Defendant Bright responded, “We don’t protect punks on this farm.”

34. At the initial classification hearing at Allred, the Defendants placed Mr. Johnson in the general population on Building 8.

35. Predatory inmates raped Mr. Johnson almost immediately.

36. These inmates gave Mr. Johnson the name “Coco,” thereby designating him as an inmate available for sexual exploitation. The Defendants also adopted the name, addressing Mr. Johnson only as “Coco” and referring to Mr. Johnson as “she” and “her.”

37. Prison gang members in general population soon asserted ownership of Mr. Johnson. The Gangster Disciple gang was the first to officially “own” him.

38. In early October 2000, a Gangster Disciple, Andrew Hernandez, forced Mr. Johnson into his cell and raped him. Afterwards, other gang members congratulated Hernandez for his conquest of Mr. Johnson.

39. Mr. Johnson informed Defendant Sergeant Willingham and Defendant Assistant Warden Mooneyham that he had been raped and that he feared for his life. He asked for medical attention. They refused, stating that immediate medical care was available only in cases of emergency.

40. On information and belief, Defendants Willingham and Mooneyham did not investigate or report Mr. Johnson's complaint and did nothing to protect him from future harm.

41. After Mr. Johnson reported the rape to Defendants Willingham and Mooneyham, Hernandez continued to rape and sexually abuse Mr. Johnson every day until mid-November, 2000. Hernandez also forced Mr. Johnson to clean his cell, make his bed, and cook his food. Hernandez told Mr. Johnson that if he did not submit, Hernandez would have him killed.

42. In mid-November 2000, Hernandez began sharing Mr. Johnson with his friends and forcing Mr. Johnson to perform sex acts for them. During this time, gang members badly beat another sex slave they called "Buttons" for refusing to submit to forced sex. Hernandez made it clear to Mr. Johnson that the same would happen to him if he resisted his role as a sex slave.

43. In December 2000, Hernandez stole Mr. Johnson's radio, fan, shoes, and \$30 in commissary from his cell. Mr. Johnson reported this theft to Defendant Willingham and Officer Lott, who laughed and insinuated that he should go get his property back by himself.

When Mr. Johnson asked Hernandez to return the property, Hernandez assaulted him, bruising his face. Mr. Johnson was treated in the medical department and placed in segregation in Building 11 for nine days alongside his attacker.

44. As a result of this attack, Defendant Willingham signed off on a “life endangerment” claim requesting safekeeping for Mr. Johnson. Mr. Johnson then appeared before a Unit Classification Committee to explain his need for safekeeping. The Unit Classification Committee consisted of Defendants Mooneyham, Vitolo, and John Doe One. Defendant Vitolo noted the recent attack and pointed out that, given Mr. Johnson’s characteristics, he should have been placed on safekeeping when he arrived at Allred. Defendant Mooneyham replied that initial classification mistakes are not the concern of the present UCC. Ignoring the obvious risk of serious harm, the UCC denied Mr. Johnson’s request for safekeeping and sent him back to general population.

45. After denying him safekeeping, Defendant Mooneyham handed Mr. Johnson a folded document and told him to sign it. Mr. Johnson asked Defendant Mooneyham what the paper was. Mooneyham replied, “It’s a waiver saying that we’re moving you to another pod and this will solve the problem.” Believing he was signing routine paperwork, Mr. Johnson complied with Defendant Mooneyham’s order. At a number of subsequent life endangerment hearings at Allred, UCC members directed Mr. Johnson to sign a similar document. Defendants never allowed Mr. Johnson to read these forms.

46. Before being moved back to Building 8 by the UCC, Mr. Johnson received a letter from Marty Smith, a member of the Bloods gang, indicating that Smith had “bought” Johnson from the Gangster Disciples and would be waiting for Johnson to return to Building 8. After nine days in Building 11, prison officials returned Mr. Johnson to Building 8.

47. As soon as Defendants Mooneyham, Vitolo and John Doe One returned Mr. Johnson to Building 8, Marty Smith began treating Mr. Johnson as his sexual slave. At first, only Smith raped Mr. Johnson. Soon, however, Smith began forcibly selling Mr. Johnson to other inmates.

48. In January 2001, desperate for help, Mr. Johnson wrote the first of several letters to Defendant Wright, the Director of Classification, explaining that other inmates were sexually attacking him, and asking for safekeeping. Defendant Wright ignored the letters.

49. In mid-January 2001, three inmates in the “Crips” gang assaulted Mr. Johnson in the back stairwell in Building 8. They called him a “renegade” for not obeying their orders. Mr. Johnson reported the attack to Sergeant Matthews. Sergeant Matthews refused to report the attack and took no other steps to investigate the complaint or to protect Mr. Johnson from further injury.

50. Mr. Johnson also sought help from the Allred Unit’s Security Threat Group. The Security Threat Group investigates gang problems on the unit. Mr. Johnson notified Sergeant Steagle and Officer Canaido of the Security Threat Group about his problems with the gangs and the sexual attacks that he was forced to endure. They took no action.

51. On February 4, 2001, Mr. Johnson again wrote to Defendant Wright, requesting safekeeping and pleading for protection from sexual assault by other inmates.

52. Mr. Johnson appeared before the UCC again in mid-February 2001. Defendants Bowman, Kuyava, and Boyle comprised the committee. Defendant Kuyava told Mr. Johnson, “You need to get down there and fight or get you a man.”

53. The UCC denied Mr. Johnson safekeeping again, saying that they would move him from L Pod to J Pod in Building 8. Mr. Johnson begged them to reconsider because merely moving him to a different housing pod in general population would provide no protection from the gangs. Defendant Bowman responded that they would tie him up and drag him back to his cell if he refused to return to Building 8.

54. On February 14, 2001, Mr. Johnson again wrote to Defendant Wright telling her about the forced sex acts and requesting safekeeping yet again. At this time, members of the Bloods, the Crips, and the Mexican Mafia were all sexually assaulting Mr. Johnson.

55. Another UCC was convened, consisting of Defendants Wathen, Vitolo, and John Doe Two. During this hearing, Defendant Wathen said that he did not believe Mr. Johnson because the Crips are a Black gang and a Black gang would not allow a Mexican to enslave an African-American. He told Mr. Johnson, "You need to start fighting." Mr. Johnson asked if he was required to fight to save himself. Defendant Wathen replied, "I don't care if you fight as long as you don't use a weapon. There's no reason why Black punks can't fight and survive in general population if they don't want to f---." The UCC again denied Mr. Johnson safekeeping.

56. In late February 2001, Mr. Johnson went before a Unit Classification Committee for a classification review hearing. The UCC gave Mr. Johnson a minimum custody status and moved him to general population in Building 7.

57. Gang activity was rampant in Building 7. Inmates who were young, handicapped, homosexual, or perceived as weak were quickly preyed upon by gang members. On information and belief, Defendants were well aware of this situation.

58. Marty Smith, who was transferred to Building 7 shortly after Mr. Johnson's transfer to Building 7, immediately reasserted his "ownership" of Mr. Johnson, forcibly hiring him out to other gang members as a sexual slave.

59. On February 25, 2001, Mr. Johnson filed a Step 1 grievance requesting safekeeping status. He received no reply.

60. On March 15, 2001, Mr. Johnson received an anonymous letter or "kite" from another inmate telling him that he would be dead once the unit was off lockdown because he was a snitch.

61. On March 16, 2001, Mr. Johnson went before a Unit Classification Committee for his fourth life endangerment hearing. The Committee was composed of Defendants Wathen, Kuyava, and John Doe Three. Defendant Wathen told Mr. Johnson that Mr. Johnson needed to fight his attackers. Defendant Kuyava told him, "Bring bruises or stay out of my face."

62. On March 18, 2001, Mr. Johnson filed another Step 1 grievance describing the sexual assaults and harassment and requesting safekeeping due to threats on his life.

63. On April 9, 2001, Mr. Johnson received a reply to his February 25, 2001 grievance with stock language stating that the UCC had reviewed his case on March 16, 2001 and denied his request for a transfer, safekeeping, or protective custody due to insufficient evidence.

64. On April 17, 2001, Mr. Johnson filed a timely Step 2 grievance detailing the efforts he had made to seek protection from rape and sexual assault. He provided prison officials with the name of inmate Marty Smith.

65. On May 4, 2001, Mr. Johnson received a reply to the Step 2 grievance indicating in the same stock language that his case had been investigated and that there was no evidence to support his claim of life endangerment.

66. Throughout this period, Mr. Johnson was routinely forced to endure sexual assault and rape by multiple gang members. He became increasingly hopeless and suicidal.

67. At the end of July 2001, Mr. Johnson went before the UCC for another procedural reclassification. He was assigned a job as a unit supply clerk and moved to a dormitory in Building 18.

68. Gang member Marty Smith, taking advantage of lax security at Allred, frequently left his own building and came to Building 18 to harass, threaten, and sexually assault Mr. Johnson.

69. In late July 2001, Mr. Johnson again reported the threats and assaults to Sergeant Matthews. Sergeant Matthews filed a life endangerment claim on Mr. Johnson's behalf.

70. In early August 2001, Mr. Johnson appeared before the Unit Classification Committee on his fifth life endangerment claim. The UCC on this occasion was composed of Defendants Wathen and John Does Four and Five. Defendant Wathen told Mr. Johnson that Building 18 was entirely safe. On information and belief, Defendants were well aware that this was untrue. The Defendants denied him safekeeping.

71. Soon after Mr. Johnson was transferred to Building 18, the Tangos gang in Unit 18 targeted him for sexual victimization. A Tangos gang member named Eric Charbaneau began threatening Mr. Johnson with violence unless he submitted to sex. The Crips and the Mandingo Warriors also began demanding sex from Mr. Johnson.

72. Starting in August 2001 and continuing for five months to December 2001, the Tangos gang raped and prostituted Mr. Johnson. Only Tangos gang members were allowed to use Mr. Johnson's body during this time. During this period, Mr. Johnson fell into deep despair and hopelessness. He frequently considered suicide.

73. On December 1, 2001, the Tangos gang ordered Mr. Johnson to perform oral sex on an inmate in 18R dormitory. Sergeant Barnett found Mr. Johnson in this inmate's room and issued a disciplinary report against Mr. Johnson for being in another inmate's dormitory without authorization. As a result, Mr. Johnson lost recreation and commissary for 45 days.

74. On December 5, 2001, Mr. Johnson filed another Step 1 grievance requesting safekeeping and protection from forced sexual activity. He informed staff that the disciplinary violation on December 1, 2001, was the result of forced sexual activity by the gangs.

75. On December 5 and December 30, 2001, and January 16, 2002, desperate for help, Mr. Johnson wrote letters to the Senior Warden, Defendant Treon, pleading for protection. Mr. Johnson received no response to any of these letters. Mr. Johnson also wrote to Defendant Gary Johnson, the Executive Director of TDCJ, and to the Chairman of the State Classification Committee, explaining the situation and pleading for safekeeping.

76. On December 13, 2001, Mr. Johnson went before the Unit Classification Committee for his sixth life endangerment claim. Prior to the hearing, an inmate named Gilstrap, a member of the Mandingo Warriors gang, forced Mr. Johnson to put makeup on his face to attend the hearing. The Committee for this life endangerment claim consisted of Defendants Bowman, Kuyava, and Rangel. When Mr. Johnson entered the hearing room,

Defendant Rangel laughed derisively and told Mr. Johnson to remove the makeup.

Defendant Bowman told Mr. Johnson, "If you want to be a ho, you'll be treated like a ho," and "Get a man." Defendant Rangel remarked, "Preferably a Black one, since it's the Bloods you're having problems with."

77. Defendant Kuyava added, "You ain't nothing but a dirty tramp," and "Learn to fight or accept the f---ing."

78. Defendant Kuyava concluded the hearing by insisting that the record reflect that Mr. Johnson was wearing makeup. She then stated, "Ms. Pretty is going to a good place now." The Defendants had Mr. Johnson transferred from Building 18 to Building 7, the most heavily gang-infested building at Allred.

79. Upon information and belief, Defendants Bowman, Kuyava, and Rangel knew of the severe gang problem at Building 7 and the substantial risk that serious harm would befall Mr. Johnson at Building 7.

80. During his first week on Building 7, a member of the Crips gang forced Mr. Johnson to perform oral sex on him. The Tangos gang objected to this "disrespect" of their property and demanded \$60 commissary in payment from the Crips. Thereafter, members of the Mexican Mafia, the most powerful gang on Building 7, approached Mr. Johnson and told him that he must "ride or die," meaning that only by accepting sexual slavery with one gang could he avoid being killed.

81. The gangs began fighting over who owned Mr. Johnson, and Mr. Johnson was told that he must attend a gang meeting in the recreation yard where he would be forced to choose which gang would own him.

82. On December 30, 2001, Mr. Johnson filed another Step 1 grievance requesting safekeeping. He informed staff that day that he intended to break the disciplinary rules in order to get sent to segregation and thus escape the gangs.

83. On December 31, 2001, Mr. Johnson intentionally incurred a major disciplinary violation in an effort to avoid the choice between death and continued sexual servitude. He went to the recreation yard when not allowed to do so and intentionally gave an incorrect answer when a correctional officer asked him for his room number.

84. On or about January 9, 2002, Mr. Johnson had a hearing on his disciplinary report before Captain Hargrove. Mr. Johnson told Hargrove about being forced into sexual slavery at Allred and informed him that he had intentionally gotten a disciplinary case in order to protect himself. Captain Hargrove laughed and told Johnson that he would strip him of everything. Captain Hargrove proceeded to give Mr. Johnson the maximum allowable punishment. Mr. Johnson received restrictions on recreation, commissary, and property, as well as custody in a special cell restraint for 45 days. His classification dropped to a line 3, which will require him to remain in prison for more than two years past the date he otherwise would have been eligible for release.

85. Mr. Johnson was also sentenced to 15 days in solitary confinement. This fifteen days in punitive segregation was the first and only protection that Mr. Johnson ever received at Allred.

86. On January 17, 2002, Johnson went before the UCC on his seventh life endangerment claim. The Committee consisted of Defendants Vitolo, Norwood, and Taylor. After Mr. Johnson pleaded his case, Defendant Norwood told him that Johnson probably consented to the sex acts because "I personally believe you like d---." All the

defendants laughed at this comment. Defendant Norwood told Mr. Johnson, “You like this s---...I’m convinced you are with this gang. I don’t think you need no safekeeping. You need to be placed on high security where you don’t have anything but one cellie and then you can get f---ed all the time.” Defendant Taylor then said Mr. Johnson should be on medium custody in general population and that he should just “learn to f--- or fight.”

87. Mr. Johnson started sobbing, screaming, and pleading with the Defendants not to send him back to general population. They laughed. Two officers then grabbed Mr. Johnson and dragged him out kicking and screaming for help.

88. The next day, prison officials issued a written denial of Mr. Johnson’s December 30, 2001 grievance due to insufficient evidence. In response, on January 23, 2002, Mr. Johnson filed a timely Step 2 grievance. This grievance described the measures that he had taken to ensure his safety, and informed prison officials about the ongoing sexual harassment and assault that he was enduring at Allred. Once again, he pled for safekeeping.

89. The final reply to Mr. Johnson’s Step 2 grievance, dated February 7, 2002, stated in the same stock language that his complaint had been investigated but no evidence showed that his life was in danger.

90. Once prison officials released Mr. Johnson from solitary confinement and placed him on special cell restraint in Building 8, Black and Hispanic gangs on the unit fought over him. Each claimed he was their property.

91. Mr. Johnson received several threatening letters from inmate gang members addressing him as “Coco.” Some of the letters threatened physical and sexual violence;

others warned that he had been “pegged” as a snitch and that he might as well “do as you are told.” One letter offered to buy him.

92. Desperate to get help before he was off cell restriction and back in general population, Mr. Johnson began writing to the ACLU and other outside organizations for assistance. His family also attempted to advocate on his behalf. On February 11, 2002, his grandmother sent a life endangerment claim to the TDCJ Ombudsman. On March 7, 2002, the Ombudsman’s office replied that they had investigated the claim and found no support for it.

93. On February 22, 2002, officials returned Mr. Johnson to general population in Building 8. That night, gang members assaulted Mr. Johnson and forced him to perform sex acts with other inmates. The attacks continued the next day. In despair, Mr. Johnson did not report either attack.

94. On February 24, 2002, the Mexican Mafia claimed definitive ownership over Mr. Johnson. That same day, the gang sold him to another inmate who forced him to perform oral sex.

95. While the Mexican Mafia owned Mr. Johnson, the sexual assaults and exploitation escalated dramatically. The gang sold him to scores of other inmates.

96. Gang leaders in Building 8 negotiated with gang leaders in Building 7 for a fee of \$5 to \$10 in commissary for Mr. Johnson’s sexual services. Gang leaders controlled his life and his body. They told him to whom he had been sold and what he must do for that inmate. They told him that if he refused he would be beaten or killed. As a sexual slave, he was repeatedly penetrated anally and forced to perform oral sex at the command of gang members.

97. On or around February 27, 2002, another Mexican gang bought Mr. Johnson's sexual services for a week. He was forced to perform sex acts on eight inmates in the stairwell, in the shower, and in his cell.

98. On March 10, 2002, a white inmate called MJ came to Mr. Johnson's cell. MJ said that the Mexican Mafia sent him and told Mr. Johnson, "I already paid them, I don't want to f--- you, just suck my d---."

99. While MJ was demanding sex from Mr. Johnson, Sergeant Thomas discovered MJ in Mr. Johnson's cell and took MJ back to his assigned cell. Sergeant Thomas told Mr. Johnson, "I don't care how you make your money, but I'm not tolerating prostitution on this car...and tell your pimp he'd better comply." Sergeant Thomas did not issue a disciplinary report against MJ. MJ came back to Mr. Johnson's cell to "finish up" on Monday, March 11, 2002.

100. On March 13, 2002, on or around 12:30 am, an officer unlocked the door to Mr. Johnson's cell, allowing an inmate named JD to enter. JD told Mr. Johnson, "Some Mexican on 7 building sent me over. You know what it is." When Mr. Johnson balked at his request, JD told Mr. Johnson that he had already paid for Mr. Johnson's services. JD forced Mr. Johnson to perform oral sex.

101. On or about March 15, 2002, a white gang leader masturbated on Mr. Johnson in the shower. The showers were completely unguarded, and this type of humiliating assault became commonplace for Mr. Johnson. From the time Mr. Johnson was returned from cell restriction to general population on February 22, 2002, inmate gang members masturbated on him in the shower a minimum of 30 times. He could not take a shower without other inmates masturbating on him.

102. On March 17, 2002, around 10:30 am, a Mexican Mafia inmate called “Monster” approached Mr. Johnson in the dayroom and told him that he must go to the showers. When Mr. Johnson arrived, eight or nine other inmates were in the showers. Gang members also forced a mentally ill inmate, named Alazar, to the showers. The gang members then surrounded Mr. Johnson and Alazar and repeatedly forced Alazar to stick his finger in Mr. Johnson’s anus and lick it. Gang members then forced Alazar and Johnson to simultaneously masturbate each other.

103. Despite the multitude of horrors he had already experienced at Allred, the surrealistic and nightmarish nature of this “show” stunned Mr. Johnson. The gang members tried to force him to perform oral and anal sex with Alazar, but he refused. He was only spared this further degradation because the other inmates relented when called to a meal. However, gang members pushed Mr. Johnson down the back stairwell as punishment for refusing to comply with the gang’s order.

104. Immediately after this incident, Alazar ran to Defendant Lieutenant Paul in the dayroom to beg for help. Alazar was hysterical, but Defendant Paul refused to help him and ordered him to go away. Alazar then tackled the lieutenant and was hauled away on a disciplinary charge. When Mr. Johnson saw Defendant Paul after the meal, the lieutenant told him that he had better not act like Alazar or he would be “carried off the unit in a body bag.”

105. On March 23, 2002, Mr. Johnson returned from church to find a white inmate named Kevin in his cell. Kevin told Mr. Johnson that he had already paid for his services, and “I don’t want to lose my money.” Kevin then forced Mr. Johnson to perform oral sex.

106. On March 27, 2002, Defendant Bowman interrupted an attorney-client telephone call between Mr. Johnson and lawyers from the National Prison Project of the American Civil Liberties Union. Defendant Bowman ordered Mr. Johnson to get off the phone, and Mr. Johnson was taken into a meeting in Defendant Boyle's office.

107. Defendant Boyle told Mr. Johnson that there was no concrete evidence to support his life endangerment claim and that since he had not been stabbed or "gutted," prison officials would not place him in safekeeping. Defendant Boyle then coerced Mr. Johnson into signing a form waiving his life endangerment claims, threatening that unless he did so, "we are really going to f--- you over." That same day, Mr. Johnson filed a grievance about the coercion.

108. On March 28, 2002, the ACLU sent a letter to Defendant Gary Johnson regarding Mr. Johnson's situation and requesting that he have Mr. Johnson placed immediately in safekeeping in order to prevent further irreparable injury.

109. On March 29, 2002, after receiving a copy of the ACLU's letter to Defendant Gary Johnson, Defendant Major Bowman called Mr. Johnson into a meeting and told him that "the ACLU don't run s---" and that Mr. Johnson needs "to have his a-- kicked." At the same meeting, Defendant Warden Treon said, "the ACLU don't run my damn classification unit" and that Mr. Johnson "better not say [he] was coerced into s---." Finally, Defendant Treon threatened Mr. Johnson, "With your classification, I can send you to a terrible place."

110. On April 1, 2002, Mr. Johnson again went before the UCC. During the hearing, Defendant Wathen told Mr. Johnson, "Right now, we're recommending to transfer you, and you're going to see a 'good friend' of ours on another unit." Defendant Wathen

then told Mr. Johnson that he would not be placed on safekeeping at this new unit because, he, Wathen, was recommending against it.

111. On April 5, 2002, Defendant Gary Johnson notified the ACLU that “due to his demeanor and orientation,” Mr. Johnson would be transferred from Allred and placed in safekeeping.

112. On or about April 10, 2002, more than 18 months after he first requested safekeeping and after repeatedly requesting such protection due to being sexually assaulted hundreds of times, Mr. Johnson was transferred to the Michael Unit and placed in safekeeping.

113. On April 10, 2002, at Mr. Johnson’s initial classification hearing at the Michael Unit, a UCC member, Major Fox, announced that an acquaintance of his at Allred had put a note in Mr. Johnson’s file stating that Mr. Johnson is a manipulator who makes false complaints. Major Fox indicated that based on this note he considers Mr. Johnson to be a troublemaker, and that if Johnson ever makes any trouble at Michael Unit he, Major Fox, will make sure that Mr. Johnson is placed in close custody.

114. Because of his past sexual enslavement by gangs, and because gang members have branded him as a “snitch,” Mr. Johnson faces a substantial risk of further sexual assault, brutal beating, and even death, if he is returned to general population. Mr. Johnson remains in constant fear that prison officials will follow through with their threats to have him returned to general population in retaliation for petitioning for redress of his grievances administratively and through the courts.

115. Because he was sexually assaulted hundreds of times at Allred without any means of protection, Mr. Johnson lives in constant dread that he may have contracted HIV

or hepatitis. Defendants have never offered him appropriate medical treatment, psychiatric care, or counseling for the physical and psychic trauma resulting from these sexual assaults.

116. Defendants never ordered that any rape kits be taken or conducted any meaningful investigation of Mr. Johnson's multiple claims that he was being sexually assaulted and enslaved.

117. On information and belief, Defendants have never imposed any significant discipline on any of Mr. Johnson's assailants for sexually abusing and enslaving him, and have never sought prosecution of Mr. Johnson's assailants.

118. On information and belief, TDCJ has never disciplined the Defendants for their failure to protect Mr. Johnson from sexual abuse and enslavement.

119. As a direct result of the Defendants' acts and omissions, Mr. Johnson has suffered physical injuries, intense degradation and humiliation, excruciating emotional pain, and lasting psychic trauma.

CAUSES OF ACTION

120. With respect to each of the following claims, Defendants engaged in conduct with malice and reckless or callous indifference to the constitutional and statutory rights of Mr. Johnson.

First Claim for Relief Eighth Amendment

121. Defendants knew they had a legal obligation to protect Mr. Johnson from assault and sexual attack, and knew that their actions and omissions created a substantial risk of serious injury to Mr. Johnson. With deliberate indifference to Mr. Johnson's personal safety, Defendants failed to protect him from substantial risk of serious harm, in

violation of his rights under the Eighth and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

122. The deprivations of Mr. Johnson's rights described herein constitute a risk of harm so grave that it violated contemporary standards of decency.

**Second Claim for Relief
Equal Protection --Racial Discrimination**

123. In applying prison policies, practices and procedures to deny Mr. Johnson protection from sexual victimization, Defendants intentionally treated Mr. Johnson differently than other similarly situated inmates on account of his race, and motivated by racial animus deprived him of the equal protection of the laws, in violation of his rights under Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

**Third Claim for Relief
Equal Protection – Sexual Orientation**

124. In applying prison policies, practices and procedures to deny Mr. Johnson protection from sexual victimization, Defendants subjected Mr. Johnson to an irrational and arbitrary classification based on his sexual orientation, and treated him differently than other similarly situated inmates based on their hostility and animus towards non-aggressive gay men, thereby denying him the equal protection of the laws, in violation of his rights under Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests the following relief from this Court:

1. A declaratory judgment that the policies, practices, acts and omissions complained of herein violated Plaintiff's rights;
2. A permanent injunction directing the Defendants to do the following:

- A. Maintain the Plaintiff in safekeeping status so long as he remains in TDCJ custody;
 - B. Expunge the disciplinary violations on Plaintiff's record caused by Defendants' failure to protect Plaintiff;
 - C. Offer the Plaintiff appropriate medical and psychiatric treatment and counseling for the physical and psychic injury he has suffered as a result of their acts and omissions;
3. Compensatory damages against each Defendant, jointly and severally;
 4. Punitive damages against each Defendant, jointly and severally;
 5. Retention of jurisdiction over Defendants until such time that the Court is satisfied that defendants' unlawful policies, practices, acts and omissions no longer exist and will not recur;
6. Reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
 7. Such further relief as the Court may deem just and proper.

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Dated: April _____, 2002