

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSHUA D. ZOLLICOFFER a/k/a
PASSION STAR,
Plaintiff,

versus

BRAD LIVINGSTON, personally and in his official capacity as Executive Director of the Texas Department of Criminal Justice (“TDCJ”);
RALPH BALES, personally and in his official capacity as PREA Ombudsman;
JONI WHITE, personally and in her official capacity as Assistant Director of TDCJ’s Classification and Records Department;
BRUCE ARMSTRONG, personally and in his official capacity as Assistant Regional Director in the State Classification Committee;
FERNANDO FUSTER, personally and in his official capacity as Assistant Regional Director in the State Classification Committee;
KENNETH DEAN, in his personal capacity;
BRIAN BLANCHARD, in his personal capacity;
RENE MALDONADO, in his personal capacity;
RALPH MAREZ, JR., in his personal capacity;
SIGMUND L. SMITH, in his personal capacity;
PRINCE PICKETT, in his personal capacity;
LESLIE WALTERS, in her personal capacity;
RONALD FOX, personally and in his official capacity as Senior Warden at the Robertson Unit;
ADAM GONZALES, personally and in his official capacity as Assistant Warden at the Robertson Unit;
JIMMY S. WEBB, personally and in his official capacity as Assistant Warden at the Robertson Unit; and
JUAN LOPEZ, personally and in his official capacity as Sergeant at the Robertson Unit,
Defendants.

Case No. 4:14-cv-03037

Jury Trial Demanded

**PLAINTIFF’S COMPLAINT FOR
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF, DECLARATORY
JUDGMENT, AND DAMAGES**

1. Plaintiff Joshua Zollicoffer a/k/a Passion Star (“Ms. Star” or “Plaintiff”)¹ is a thirty-year-old transgender woman in the custody of the Texas Department of Criminal Justice (“TDCJ”) who has been brutally attacked by male inmates and continues to be tormented with escalating threats of assault, rape, and murder. Ms. Star has repeatedly begged TDCJ officials to protect her.

2. Deliberately indifferent to these harms, the defendants have repeatedly refused to place Ms. Star in a secure housing placement, known as “safekeeping”² or take other reasonable steps to reduce the acts and threats of harm to her. Instead, the defendants have forced Ms. Star to remain in the general population near her aggressors where she has faced documented serious injuries and escalating risks of additional serious harm.

3. Further, despite knowing that TDCJ prisons have exceptionally high rates of inmate-on-inmate assault, particularly against lesbian, gay, bisexual, transgender (“LGBT”), and gender-nonconforming inmates, TDCJ officials failed to adopt, adhere to, train and/or supervise officers on policies and procedures that could have prevented the harm to Ms. Star.

4. By this action, Ms. Star seeks preliminary and permanent injunctive relief to stop the defendants’ ongoing constitutional violations, along with declaratory relief and damages.

I. JURISDICTION AND VENUE

5. Plaintiff brings this action seeking preliminary and permanent injunctive relief, declaratory relief, and damages pursuant to 42 U.S.C. §§ 1983 and 1988 to redress the

¹ Although plaintiff’s legal name is Joshua D. Zollicoffer, she is known by and uses the name Passion Star in accordance with her female gender identity. Accordingly, this complaint refers to plaintiff as Ms. Star and uses female pronouns to refer to her.

² Safekeeping status is a housing status assigned to people in custody who need protection from other inmates in the general population, and whose need for protection could be met by housing them separately. In addition, safekeeping offenders receive their recreation time and meals apart from the general population.

deprivation under color of state law of rights secured by the United States Constitution.

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 and jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) because a substantial part of the relevant events occurred within the district, and pursuant to 28 U.S.C. § 1391(b)(2) because, upon information and belief, one or more defendants reside in and have offices in this district and all defendants are residents of Texas.

8. This Court has personal jurisdiction over each and every defendant because, upon information and belief, all defendants are residents of Texas and were employed in Texas acting under color of state law during all relevant times.

II. THE PARTIES

9. **PLAINTIFF PASSION STAR**, a citizen of Texas, is a black, transgender woman in the custody of TDCJ. From approximately 2011 to 2013, Ms. Star was housed in the Hughes Unit in Gatesville, Texas (“Hughes Unit”). On or around December 6, 2013, she was moved to the Robertson Unit in Abilene, Texas (“Robertson Unit”), where she is currently housed.

10. **DEFENDANT BRAD LIVINGSTON** (“Livingston”) is the Executive Director of TDCJ. As such, Defendant Livingston is the commanding officer of all TDCJ correctional officers, guards, and TDCJ employees and contractors, and is responsible for their training, supervision, and conduct. He has ultimate responsibility within TDCJ for overseeing the day-to-day operation of state prison facilities, including the Hughes Unit and Robertson Unit and is responsible for ensuring that people incarcerated in TDCJ facilities are protected from sexual assault and other violence and that correctional officers adhere to federal and state law, as well as

official TDCJ policy. Defendant Livingston maintains an office in Walker County, Texas and, upon information and belief, resides in Walker County, Texas. He is sued in his official and personal capacities.

11. **DEFENDANT RALPH BALES** (“Bales”) is the Prison Rape Elimination Act (“PREA”) Ombudsman appointed by the Texas Board of Criminal Justice to respond to eliminate the occurrence of sexual assault in correctional facilities. The primary responsibilities of the PREA Ombudsman are to monitor department policies for the prevention of sexual assault in correctional facilities; oversee the administrative investigation of inmate complaints of sexual abuse; ensure the impartial resolution of inmate complaints of sexual assaults; and collect statistics regarding all allegations of sexual abuse from correctional facilities. Defendant Bales maintains an office in Walker County, Texas and, upon information and belief, resides in Walker County, Texas. He is sued in his official and personal capacities.

12. **DEFENDANT JONI WHITE** (“White”) is Assistant Director of TDCJ’s Classification and Records Department. She is responsible for supervising the management of the State Classification Committee (“SCC”), Classification and Intake Operations, and the Classification Records Office. She is also responsible for the overall management and application of all TDCJ classification plans, policies, and procedures. Defendant White maintains an office in Walker County, Texas and, upon information and belief, resides in Walker County, Texas. She is sued in her official and personal capacities.

13. **DEFENDANT BRUCE ARMSTRONG** (“Armstrong”) is an Assistant Regional Director in the SCC. As such, he is responsible for final decisions with regards to agency-wide issues and unit classification committee (“UCC”) recommendations, including final decisions regarding safekeeping. Defendant Armstrong maintains an office in Walker County, Texas and,

upon information and belief, resides in Walker County, Texas. He is sued in his official and personal capacities.

14. **DEFENDANT FERNANDO FUSTER** (“Fuster”) is an Assistant Regional Director in the SCC. As such, he is responsible for final decisions with regards to agency-wide issues and UCC recommendations, including final decisions regarding safekeeping. Defendant Fuster maintains an office in Walker County, Texas and, upon information and belief, resides in Walker County, Texas. He is sued in his official and personal capacities.

15. **DEFENDANT KENNETH DEAN** (“Dean”) was a Senior Warden at the Hughes Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his personal capacity.

16. **DEFENDANT BRIAN BLANCHARD** (“Blanchard”) was an Assistant Warden at the Hughes Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his personal capacity.

17. **DEFENDANT RENE MALDONADO** (“Maldonado”) was an Assistant Warden at the Hughes Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his personal capacity.

18. **DEFENDANT RALPH MAREZ, JR.** (“Marez”) was a Major at the Hughes Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his personal capacity.

19. **DEFENDANT SIGMUND L. SMITH** (“Smith”) is a Captain at the Hughes Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his personal capacity.

20. **DEFENDANT PRINCE PICKETT** (“Pickett”) is a Sergeant supervising the 8

Building at the Hughes Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his personal capacity.

21. **DEFENDANT LESLIE WALTERS** (“Walters”) was a Classification Secretary at the Hughes Unit during all relevant times and, upon information and belief, is a resident of Texas. She is sued in her personal capacity.

22. **DEFENDANT RONALD FOX** (“Fox”) is a Senior Warden at the Robertson Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his official and personal capacities.

23. **DEFENDANT ADAM GONZALES** (“Gonzales”) is an Assistant Warden at the Robertson Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his official and personal capacities.

24. **DEFENDANT JIMMY S. WEBB** (“Webb”) is an Assistant Warden at the Robertson Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his official and personal capacities.

25. **DEFENDANT JUAN LOPEZ** (“Lopez”) is a Sergeant at the Robertson Unit during all relevant times and, upon information and belief, is a resident of Texas. He is sued in his official and personal capacities.

26. At all relevant times, Defendants Livingston, Bales, White, Armstrong, Fuster, Dean, Blanchard, Maldonado, Marez, Smith, Pickett, Walters, Fox, Gonzales, Webb, and Lopez (collectively “Defendants”) acted under color of state law.

III. FACTUAL BACKGROUND

27. Ms. Star is a transgender woman, meaning that she was assigned the sex of male

at birth, but identifies as a woman.³ She did not tell her family that she is a transgender woman until recently because she was afraid of their rejection.

28. On or around December 3, 2002, a week after her nineteenth birthday, Ms. Star pled guilty to a felony for which she was sentenced to twenty years in prison.⁴

29. Since approximately 2003, Ms. Star has been in the custody of the TDCJ. She has been housed in at least six male TDCJ facilities. In every facility, male inmates have identified her as feminine and demanded that she perform sexual acts for them or pay them for protection against such demands and the repercussions of not acceding to such demands.

Incidents Prior to Ms. Star's Placement in the Hughes and Robertson Units that Put Defendants on Notice of Her Vulnerability to Sexual Assault

30. From 2003 to 2011, while in TDCJ custody, Ms. Star was raped, sexually assaulted, forced into coercive sexual relationships, and threatened with violence by other TDCJ inmates. Despite Ms. Star's numerous complaints to TDCJ officials, insufficient action was taken to protect her from the substantial risk of further serious harm.

31. For example, while housed in the Telford Unit in New Boston, Texas, a gang member known as D.D.⁵ threatened to hurt Ms. Star if she did not perform sexual acts for him or pay him with commissary items. Ms. Star complained to prison officials about threats from D.D. and other inmates, and told them that she was gay with a female alias and feared for her safety.

³ At earlier periods, when Ms. Star was less public about her transgender identity, she sometimes referred to herself in grievances and other written complaints as a gay man or a gay man with a female alias. While gender identity and sexual orientation are not the same, either identity places Ms. Star in a category of inmates who are recognized as particularly vulnerable.

⁴ The conviction, which was for aggravated kidnapping, arose from allegations that, on or around August 16, 2002, Ms. Star's boyfriend at the time refused to return a used Chevrolet that he was test driving to the Chevrolet dealership. Instead, to Ms. Star's surprise, he drove for nearly two hours with the salesman trapped in the passenger seat and Ms. Star in the back seat.

⁵ In an attempt to avoid further retaliation and violence from inmates who have already threatened and/or harmed her, Plaintiff has used initials to identify these inmates.

Prison officials did nothing to reduce the threats of harm to Ms. Star, and disciplined Ms. Star for declining to leave her cell because she feared serious harm from D.D.

32. In an effort to gain protection from D.D. and other inmates, Ms. Star submitted to a sexual relationship with a gang member known as M.M. When Ms. Star attempted to end that relationship, M.M. choked her until she agreed to remain in a sexual relationship with him.

33. In or about 2006, TDCJ transferred Ms. Star to the Allred Unit in Iowa Park, Texas. Gang members there, including member P.X., identified Ms. Star as feminine and threatened to harm her if she did not perform sexual acts for the gang. Ms. Star informed correctional officers that she had received repeated threats, that she was gay, and that she feared for her life. She asked them to place her in safekeeping, but her requests were denied. Ms. Wright, a TDCJ employee in the Allred Unit, told her, "You're black; you'll be alright."

34. In or about March 2007, TDCJ officials assigned Ms. Star to share a cell with an inmate called C.X., a member of another gang, who began to harass and sexually proposition her. Ms. Star informed a guard that she felt unsafe around her cellmate, but the guard refused to move Ms. Star to another cell or to remove her cellmate from the cell.

35. Approximately two days later, on March 29, 2007, C.X. threatened Ms. Star with a knife, held her down, and raped her. After Ms. Star reported the rape to a guard, begging him to help her, C.X. threw a fan at Ms. Star, cutting her head.

36. Linda Remmert, a nurse at the Correctional Managed Care Clinic, treated Ms. Star on March 29, 2007, the night of the rape. The nurse noted "dried secretions to anal area" and an abrasion at the top of Ms. Star's head. The nurse examining Ms. Star the next day noted "due to assault on 03/29/07 inmate feels unsafe around others."

37. After the rape, TDCJ officials moved Ms. Star into solitary confinement for

approximately two weeks, leaving her alone, frightened, and emotionally distressed. She wrote letters asking that C.X. be prosecuted for the rape, but was never informed whether or not he was punished.

38. Approximately two weeks later, despite her request to be placed in safekeeping, TDCJ officials transferred Ms. Star into the general population of a new facility in the Smith Unit in Lamesa, Texas. Inmates there again threatened Ms. Star with violence if she did not perform sex acts or pay for protection. Her cellmate, O.R., threatened to rape Ms. Star and forced her to watch him masturbate. Another inmate, P.O.X., demanded that Ms. Star perform sex acts for him if she did not want to be hurt. Ms. Star reported the threats to TDCJ staff verbally and in writing, but officials refused to take the actions necessary to help her.

39. Correctional officers responded to Ms. Star's requests for protection by telling her "you can't rape someone who's gay," telling her she was having the time of her life, frequently calling her "faggot," and suggesting she was enjoying the attention.

40. In 2008, Ms. Star was transferred into the general population on the Coffield Unit in Tennessee Colony, TX, where she was again threatened with sexual assault by an inmate named T.K. In part because he threatened her and in part because he offered to protect her from other predatory men, Ms. Star entered a coerced sexual relationship with T.K. When Ms. Star tried to end the relationship, T.K. punched her on the left side of her jaw, breaking one of her teeth and causing it to puncture her lip. In fear for her well-being, Ms. Star returned to the coerced sexual relationship with T.K.

Defendants' Failures to Protect Ms. Star From Assaults and Threats Directed at Ms. Star by Other Inmates in the Hughes Unit Between 2011 and November 15, 2013

41. In approximately July 2011, TDCJ officials transferred Ms. Star to the Hughes Unit, where she experienced more threats and attempts to sexually exploit her. Ms. Star lived in

constant fear that she would be raped again or seriously harmed.

42. Ms. Star was threatened by various inmates associated with the Crips gang. One member, known as T.X., called her “faggot” and regularly threatened to assault her. On December 25, 2011, T.X. attacked Ms. Star, punching her in the head, face, and torso. Ms. Star reported the threats and the assault to TDCJ officials verbally and in writing.

43. On February 3, 2012, Ms. Star submitted a grievance in which she described threats she was receiving from gang members and requested to be placed in safekeeping; Ms. Star explained that she is gay, not affiliated with a gang, and did not feel safe. On February 8, 2012, **Defendant Blanchard** denied the grievance, writing, “No action taken due to lack of evidence. No further action will be taken at this time.”

44. Upon information and belief, **Defendant Blanchard** did not investigate Ms. Star’s claims prior to denying her grievance, despite his obligation to do so, and despite the fact that Ms. Star had a documented history of being raped and threatened with violence.

45. Ms. Star requested in writing approximately five between December 2012 and May 2013 that she be transferred to a dormitory. Upon information and belief, dormitories are safer than the cell blocks because they are patrolled more frequently by TDCJ staff and have more security cameras than cell blocks. Ms. Star’s requests were denied, despite her documented history of sexual abuse, violence, threats, and her vulnerable status. Ms. Star complained to **Defendant Marez** and to the grievance committee about the denial of her requests to be moved to dormitories and the threats to her safety.

46. In or around March 2012, Bloods gang members, including E.H., demanded that Ms. Star pay for their protection or “ride,” meaning perform sexual acts for them. In or around March 2013, Ms. Star also complained about threats she was receiving from R.B., who was

incarcerated on the unit. In or around 2013, a Bloods gang member known as A.X. began writing sexually explicit letters to Ms. Star, demanding that she perform sexual acts for him in return for his protection. Another Blood, known as C.Y.X., made similar demands of Ms. Star.

47. Ms. Star informed TDCJ officials of the threats and demands, including Officer Thompson on or around April 19, 2013, and requested to be moved out of the general population and placed in safekeeping. TDCJ staff did not take reasonable steps to protect her and instead placed Ms. Star further at risk for assault. For example, Lieutenant Aragon called Ms. Star a “snitch” and a “punk” in front of other inmates during lineup, and Sergeant Lopez told Ms. Star in front of other inmates that she should “stop doing gay shit” or fight. Officer Thompson and other officers routinely pretended to grab Ms. Star’s buttocks, which they referred to as the “grab-ass” game.

48. On May 12, 2013, C.Y.X. and A.X. jointly confronted Ms. Star while she was at church and accused her of “snitching” on them. C.Y.X. said that a correctional officer had informed him that Ms. Star had reported that he was a gang member, and threatened to sneak into her pod and assault her any chance that he got. A.X. punched Ms. Star on the right side of her jaw, causing swelling and pain to her jaw and face.

49. Ms. Star went to the infirmary after the assault, and reported the attack and the threats to TDCJ officials verbally and in writing.

50. **Defendant Blanchard**, who had reviewed previous requests for protection from Ms. Star, denied her grievance on May 20, 2013, using formulaic language: “[T]here was no evidence or witnesses presented to substantiate your claims. No further action is warranted at this time.” **Defendant Blanchard** failed to actively investigate Ms. Star’s complaints and was deliberately indifferent to her obvious vulnerability based on her gender identity, perceived

sexual orientation, history of victimization, and the physical evidence of the assault by A.X.

51. In October 2013, an inmate known as C.F. threatened to assault Ms. Star if she did not perform sexual acts for him. When she refused, he attacked her on October 2, 2013 in the hallway by the dining hall, cutting her lip and her left hand, causing swelling and bruising on the left side of her face and jaw line and a knot on the left side of her head.

52. Ms. Star filed a grievance regarding the assault and threats from C.F. On October 22, 2013, **Defendant Blanchard** responded that “evidence was insufficient” and again decided that no action was warranted to protect Ms. Star.

53. On October 17, 2013, in desperation, Ms. Star wrote a letter to **Defendant Dean**, the Senior Warden at Hughes, explaining that she feared violence because of her sexual orientation and requesting to meet with him to discuss the possibility of being placed in safekeeping. He did not meet with her.

54. Ms. Star continued to receive threats and unwanted sexual advances from inmates in the general population at the Hughes Unit. For example, in 2013, J.T., a member of the Crips gang, sexually propositioned Ms. Star whenever he saw her.

55. On November 4, 2013, Ms. Star attended a meeting with the Unit Classification Committee (“UCC”) headed by **Defendant Marez**. She told **Defendant Marez** and the other members of the UCC that she was gay with a female alias, that she had been raped by inmates in the past, and that she had been repeatedly threatened with sexual and other violence. She explained that she feared for her life and requested to be reassigned to safekeeping and protected.

56. **Defendant Marez** and the other members of the UCC denied Ms. Star’s request for safekeeping, refusing to take steps necessary to protect her and forcing her back into the general population.

57. Ms. Star submitted a written grievance on November 6, 2013, appealing the UCC's November 4, 2013, decision to deny her safekeeping request. It stated:

I am gay and have been taken advantage of in the past. . . . My documented alias is 'Passion' which is not masculine at all. All of my problems stem from being a homosexual in a general population of offenders who have constantly attempted to take advantage of me or request sexual favors. . . . During my time in prison, . . . I have only been moved from 1 pod to another or section in general population where these same offenders and their gang affiliated homeboys still have easy access to get to me. TDCJ does not control the gang influenced general population enough to ensure . . . homosexual offenders safety from being assaulted, threatened or extorted.

58. On November 13, 2013, during a church service, J.T. threatened Ms. Star again. He said loudly in front of other Crips that Ms. Star "belonged" to him. He told her that refusal was not an option and that, since she was gay, she had to "stay in a ho's place."

59. The next day, November 14, 2013, **Defendant Blanchard** denied Ms. Star's November 6, 2014 grievance, responding solely: "You did not meet the criteria to be placed in safekeeping." **Defendant Blanchard** did not explain what the criteria were or inform Ms. Star of any recourse she might take to obtain protection against assault.

60. On November 15, 2013, Officer Johnson and Officer Deevers were sent to interview Ms. Star about the gang threats to her as a result of an offender protection investigation initiated by her building supervisor. Instead of taking Ms. Star seriously, Officer Johnson told her, "You've fought once. Fight again." Officer Deevers told Ms. Star that they had no intent of forwarding Ms. Star's request for help to the Safe Prisons Program.

61. Ms. Star appealed the UCC's denial of her request to be in safekeeping to the State Classification Committee ("SCC") on November 15, 2013, stating that she lives with the "constant threat of being hurt" because she is gay and effeminate in the general population. She also explained that she has been forced "to be sexually active in the past to ensure [her] safety and to protect [herself] from aggressive cellies."

November 19 and 20, 2013: Pleas for Safekeeping are Ignored, with Horrific Results

62. On November 19, 2013, Ms. Star again appeared in front of the UCC, composed of **Defendant Blanchard, Defendant Walters, and Defendant Smith**. Ms. Star told them about the threats she received from J.T. and other inmates and again requested to be placed in safekeeping. **Defendant Blanchard, Defendant Walters, and Defendant Smith** denied Ms. Star's request for protection and ordered her to be returned to "the next available cell" in her custody level in the general population.

63. Prior to reporting the threats, Ms. Star and J.T. were housed on different pods. On November 19, 2013, TDCJ officials, including **Defendant Blanchard, Defendant Walters, and Defendant Smith**, in deliberate indifference to the substantial risk to Ms. Star's safety, moved her into 8 Building, L-Pod, where J.T., the specifically identified person from whom she was seeking protection, was housed.

64. On this same day, November 19, 2013, on her way to dinner, Ms. Star appealed to **Defendant Pickett**, the 8 Building supervisor, for help. She explained the history of violence and threats directed against her by other inmates in the Hughes Unit and told him that she had already received threats from Crips gang members, that day, since being moved to L Pod. **Defendant Pickett** told her that it was "not [his] problem" and refused to do anything to help her.

65. That evening, Ms. Star filed an emergency grievance appealing the UCC's denial and again requesting to be moved to safekeeping and explaining the threats that she had received from J.T. and other Crips.

66. The very next morning, November 20, 2013, the assault that she had been begging to be protected from occurred. J.T. and other Crips gang members brutally attacked Ms. Star

from behind as she headed to breakfast. J.T. called her a “snitching faggot.” As other members of J.T.’s gang watched, J.T. repeatedly slashed Ms. Star’s face with a razor while she struggled. One cut came within a quarter of an inch of her right eye. Ms. Star bled profusely and suffered intense pain.

67. As a result of this brutal attack, Ms. Star was taken to Correctional Managed Care. The nurse who treated Ms. Star, on November 20, 2013, noted “lacerations to the facial area,” that required a total of 36 sutures. These included a laceration to the top of her right forehead, 5 ½ centimeters long, closed with 8 sutures; one above her right eyebrow, 5 ¼ centimeters long, closed with 9 sutures; one on the outer edge of her right eye, 4 centimeters long, closed with 7 sutures; and two below her right eye, both 5 centimeters long, closed with 8 sutures and 4 sutures, respectively. The nurse also noted a one-centimeter laceration on the top of Ms. Star’s right ear crease, which was closed with Dermabond, and two additional lacerations deemed superficial, on the top of her head and on her right check.

68. Despite the sutures and Dermabond, several of the lacerations reopened, causing Ms. Star to bleed further. These lacerations are leaving prominent, raised scars on her face, which are likely to be permanent.

69. After the attack, **Defendant Smith** brought Ms. Star her property. Ms. Star told **Defendant Smith** to look at her and said that she would have to live with this—meaning the lacerations and scarring—for the rest of her life. **Defendant Smith** said only, “Ah, man,” and left.

70. On November 22, 2013, two days after the razor attack occurred, **Defendant Maldonado** denied the grievance requesting assignment to safekeeping that Ms. Star had submitted on November 19, 2013, prior to the razor attack. **Defendant Maldonado** wrote, “You

were seen by UCC on 11/19/13. . . . The committee did not find sufficient evidence to support your allegations. Due to lack of evidence you were released from transient and scheduled to move to the next available cell in your custody.”

71. **Defendant Maldonado** failed to mention that since grieving the UCC’s decision to deny her protection on November 19, 2013, the attack that Ms. Star had warned would happen had indeed happened. **Defendant Maldonado** failed to conduct an active investigation into Ms. Star’s urgent pleas for help and was deliberately indifferent to her statements that she was in danger despite her vulnerable status based on her gender identity, perceived sexual orientation, and history of victimization, and the recent mutilation of her face by J.T.

72. On November 22, 2013, Ms. Star was again taken in front of the UCC, composed of **Defendant Blanchard, Defendant Walters** and **Defendant Smith**. Ms. Star again informed **Defendant Blanchard, Defendant Walters,** and **Defendant Smith** of the assaults and the threats against her, including the razor attack, and requested to be placed in safekeeping.

73. Despite the recent attack, the razor wounds, and Ms. Star’s obvious vulnerability, **Defendant Blanchard, Defendant Walters,** and **Defendant Smith** again denied Ms. Star’s request to be housed in safekeeping. **Defendant Blanchard, Defendant Walters,** and **Defendant Smith** instead recommended that Ms. Star be transferred to the general population of another unit.

74. **Defendant Blanchard, Defendant Walters,** and **Defendant Smith** recommended unit transfer even though they knew that gay men and transgender women were generally vulnerable to sexual assault, that gangs operated throughout TDCJ, and that Ms. Star would be targeted by members of J.T.’s gang in the new unit. Upon information and belief, **Defendant Blanchard, Defendant Walters,** and **Defendant Smith** were aware that transferring

Ms. Star to the general population of a different unit had been ineffective to protect Ms. Star in the past and would be ineffective to protect her from further serious harms. While informing Ms. Star on November 22, 2013, of the UCC's decision to transfer her rather than place her in safekeeping, **Defendant Blanchard** taunted Ms. Star, "Now I bet you really feel like your life is in danger."

75. On November 26, 2013, **Defendant Maldonado** concluded, when reviewing a grievance submitted by Ms. Star on November 20, 2013 after the razor attack, that at last there was "sufficient evidence" to support Ms. Star's claims, but instead of approving Ms. Star's request to be placed in safekeeping, **Defendant Maldonado** recommended that Ms. Star be transferred to the general population in a different unit. **Defendant Maldonado** denied the request for safekeeping even though he was aware that transferring Ms. Star to the general population of a different unit had been ineffective to protect Ms. Star in the past and would be ineffective to protect her from future harm.

76. On November 29, 2013, Ms. Star appealed the decision to send her to general population in a new unit, stating that:

simply recommending that I be transferred off the unit isn't enough to ensure that I am no longer victimized. . . . I followed instruction and was placed back into a position to be hurt – knowingly. So, I request safekeeping away from the general population of offenders that have victimized me and will continue to do so.

77. **Defendant Armstrong**, who had previously reviewed other grievances appealed by Ms. Star to the SCC and was on notice that Ms. Star was particularly vulnerable to abuse in the general population, reviewed Ms. Star's November 29, 2013 grievance. On January 8, 2014, **Defendant Armstrong** denied Ms. Star's appeal, indicating that Ms. Star had been designated "not for same unit" as J.T., transferred to the Robertson Unit, and that no further action was warranted. **Defendant Armstrong** disregarded the fact that transferring Ms. Star to a new unit

would not protect her, rubber-stamped the UCC's actions, failed to actively investigate Ms. Star's claims, and was deliberately indifferent to the significant threat of serious harm to Ms. Star.

Defendants' Failures to Protect Ms. Star From Assaults and Threats Directed at Ms. Star by Other Inmates in the Robertson Unit

78. On December 6, 2013, TDCJ officials transferred Ms. Star to the general population in the Robertson Unit. Upon information and belief, TDCJ officials did not screen her for vulnerability or use relevant information to separate her from likely aggressors.

79. J.T. had been housed in the general population of the Robertson Unit prior to his transfer to the Hughes Unit, and he was well known at Robertson as a high-ranking member of the Crips. Even though there were many Crips in the Robertson Unit, and TDCJ staff knew that Ms. Star was the target of a well-known Crips gang member, TDCJ staff took no measures to protect Ms. Star in this new unit.

80. On or around December 11, 2014, when reviewing paper work Ms. Star filed seeking an offender protection investigation ("OPI") into the sexual harassment and threats to which Ms. Star had been subjected, **Defendant Lopez** told Ms. Star to "suck dick, fight or quit doing gay shit and you'll be okay but quit running me with OPIs."

81. On December 12, 2013, Ms. Star appeared before the UCC in Robertson headed by **Defendant Gonzales**. She told **Defendant Gonzales** and the other members of the UCC that she was gay, had a history of sexual and physical assaults in other TDCJ facilities, including the recent razor attack by J.T., as well as the sexual coercion she had experienced at the hands of other TDCJ inmates, and was afraid that she would be targeted by the Crips in Robertson once they learned about the incident with J.T. Ms. Star explained that she feared for her life, and requested to be placed in safekeeping.

82. **Defendant Gonzales** and the other members of the UCC denied Ms. Star's request to be placed in safekeeping.

83. Ms. Star filed and appealed additional grievances in which she explained that J.T. had until recently been a high ranking member of the Crips gang on Robertson, members of the Crips gang associated with J.T. were housed in close proximity to her, and that she feared that she would be attacked again.

84. Soon after she arrived in Robertson, gang member T.T. spread the word among the Crips in Robertson that Ms. Star was a "snitching faggot" and told Ms. Star that the Crips at Robertson would finish what J.T. started.

85. Inmates in Robertson also identified her as feminine and aggressively propositioned her for sex. For example, from January to March 2014, a Crips gang member known as C.G.X. repeatedly pressured Ms. Star to perform sexual acts for him in return for her safety. C.G.X. told Ms. Star that she had to find a man to protect her or be raped.

86. In or around March 2014, an inmate known as P.N., also a member of the Crips, sent Ms. Star a "kite" (a letter threatening to kill Ms. Star). Ms. Star gave this letter from P.N. to Officer Scott, a member of the Security Threat Group, on or around March 27, 2014, and asked for help and protection.

87. In desperation and fear, Ms. Star sent letters to the Safe Prisons Program Coordinator, **Defendant White** at the SCC, and **Defendant Bales**, the PREA ombudsman, begging for help. **Defendant Gonzales**, the assistant warden, angrily told Ms. Star on or around April 1, 2014 that she would "get nothing" by going over his head and writing his superiors for help.

88. Ms. Star again appeared in front of the UCC headed by **Defendant Gonzales** on

April 7, 2014 and again explained the threats to her safety. **Defendant Gonzales** and the other members of the UCC denied Ms. Star's request to be placed in safekeeping. Instead, they recommended that Ms. Star be transferred to the general population of yet another unit.

89. Ms. Star appealed the denial of her request to be moved to safekeeping on April 9, 2014. She wrote that the dangers to her were

all rooted in the fact that I am a homosexual housed in the gang influenced general population of offenders. . . Just recommending that I be transferred to another unit will not ensure my safety, just as it did not after the 3-29-07 sexual assault, nor after the 11-20-13 assault with a weapon. I am an offender with a 'potential for victimization', otherwise I wouldn't be constantly victimized and threatened by other offenders.

90. Soon after, Ms. Star received a response from **Defendant Bales** dated April 8, 2014, acknowledging receipt of her letters to him dated March 27, 2014 and March 28, 2014, in which she described her history and the threats to which she had been subjected at the Robertson Unit. **Defendant Bales** wrote that the "unit administration was unable to substantiate the allegations," explaining that "'unsubstantiated' means there was insufficient evidence to determine if the incident occurred or did not occur." In deliberate indifference to Ms. Star's safety, the PREA Ombudsman failed to conduct an active or independent investigation or to take Ms. Star's claims seriously. Instead, **Defendant Bales** informed Ms. Star that the inquiry would be closed and no further action would be taken.

91. On April 23, 2014, **Defendant Webb** denied Ms. Star's April 9, 2014 grievance, stating that the SCC was considering whether to accept the UCC's recommendation of unit transfer and that no further action was necessary. **Defendant Webb** disregarded Ms. Star's complaint that moving her to the general population in a new unit would not be sufficient to protect her from harm.

92. Ms. Star again sent a letter to **Defendant Bales** on May 13, 2014, writing that she

had been called a “snitching faggot . . . told that I need to find a man and threatened with rape.”

93. On May 15, 2014, **Defendant Gonzales** reviewed another grievance where Ms. Star laid out the threats to her safety. Despite knowing that Ms. Star was at substantial risk of serious harm, he still denied her pleas to be housed in safekeeping.

94. On May 30, 2014, **Defendant Armstrong** denied Ms. Star’s appeal to the SCC. **Defendant Armstrong** informed Ms. Star in writing that the SCC had not only rejected Ms. Star’s request to be moved to safekeeping, but had also rejected the UCC’s recommendation that Ms. Star be transferred to a different unit. **Defendant Armstrong** denied Ms. Star’s request for safekeeping and the UCC’s request for unit transfer despite being aware of Ms. Star’s history of being threatened and assaulted, including the assault in the Hughes Unit, in effect instructing that Ms. Star should be placed back in the general population in the Robertson Unit in the midst of the inmates **Defendant Armstrong** had been informed were threatening Ms. Star’s life.

95. On or about June 17, 2014, Ms. Star appeared before the UCC headed by **Defendant Fox**, the Senior Warden at Robertson. **Defendant Fox** denied Ms. Star’s request for safekeeping, instead moving her to a different building, Building 3, in the general population at Robertson, even though he was aware that she would continue to be targeted by the Crips gang and other inmates.

96. In approximately July 2014, T.T. spread word to the Crips gang members in Building 3 that Passion was a “snitching faggot” who should be killed. A Crips gang member in Building 3, known as T.K.X., told Ms. Star that she would be killed. He called her a “snitch” and a “faggot” and said that she could not “run forever” but would sooner or later “have to face the consequences” because she rejected J.T. and pressed charges against him. Ms. Star received similar threats from other members of the Crips in Building 3.

97. Ms. Star filed another grievance on July 21, 2014, detailing threats she had received from Crips gang members in the new building. She said that the Crips wanted to retaliate against her because of her conflict with J.T. while at the Hughes Unit. She wrote, “I have been told that I will be killed if I remain in population.”

98. On July 26, 2014, counsel from Lambda Legal visited Ms. Star for the first time in the Robertson Unit. The next day Sergeant Marquez moved Ms. Star into “lock-up,” a cell in solitary confinement, which is used to discipline inmates. Ms. Star’s belongings were packed by someone else and brought to her in the solitary confinement cell. Ms. Star was placed in solitary without a disciplinary infraction, and has remained in solitary confinement for more than 80 days, where she was confined to her cell for more than 23 hours a day. In solitary, she was denied opportunities to attend church, work, study, call her family, and was even denied the one hour of recreation time afforded to inmates housed in administrative segregation.

99. When Ms. Star asked **Defendant Lopez** why she was stuck in solitary without a hearing or a disciplinary infraction, while the investigation into the threats against her was pending, **Defendant Lopez** told her to “quit filing OPIs,” if she did not want to be in solitary.

100. On July 27, 2014, Ms. Star wrote to **Defendant Fox** begging him for help. On information and belief, **Defendant Fox** did not respond to Ms. Star’s letter to him or investigate her claims that she was at substantial risk of serious harm and that his staff was not responding appropriately.

101. On August 1, 2014, Ms. Star appeared in front of the UCC headed by **Defendant Webb**. Ms. Star again explained her problems and the threats against her. She told the Committee that her problems related to her being a transgender woman confined in the general population in a male prison. **Defendant Webb** replied, “It’s a man’s prison. You can’t expect to

walk around acting like that and not have problems.”

102. Despite his knowledge of the danger that Ms. Star faced, **Defendant Webb** denied Ms. Star’s request for safekeeping and recommended that she be transferred to the general population in a different unit.

103. On August 1, 2014, and again on August 11, 2014, Ms. Star filed more grievances, outlining the threats made to her safety by gang members and requesting placement in safekeeping. In the August 11, 2014 grievance, Ms. Star wrote:

[T]ransferring me from unit to unit in general population does nothing to rectify this problem that is pervasive. . . . I have been threatened with my life as well as threatened with rape. Housing me in general population to repeat the same cycles with different offenders is absurd. . . .

104. The next day, Ms. Star wrote directly to SCC, requesting placement in safekeeping. She identified herself as a transgender woman and again explained that her “life is in danger.”

105. On or around August 14, 2014, Ms. Star again appeared before a UCC headed by **Defendant Gonzales**. Despite his knowledge of the danger that Ms. Star faced, **Defendant Gonzales** again denied Ms. Star’s request for housing in safekeeping and recommended no further action be taken until a decision concerning Ms. Star’s request was made by SCC.

106. On September 8, 2014, a transgender woman called Renee Divine was brought into the wing where Ms. Star was confined on a stretcher. Ms. Divine told Ms. Star that she had been sexually assaulted by her cellmate in her previous building. Ms. Star also learned that when Ms. Divine reported the rape to **Defendant Lopez**, instead of taking her for medical care and filing a report, **Defendant Lopez** forced Ms. Divine to take a shower and placed her back in the cell with her assailant, who raped her again.

107. When Ms. Star attempted to intervene on behalf of Ms. Divine, Officer Snodgrass

told her, “Shut up! Mind your own business, faggot,” and threatened Ms. Star with a disciplinary and “food loaf” as punishment. Upset by the treatment of Ms. Divine and fearing that Ms. Divine would not be able to file a grievance, on September 10, 2014, Ms. Star submitted a grievance reporting the alleged rape of Ms. Divine and the threats she had received from officers when she tried to help Ms. Divine. After Ms. Star filed the grievance, a grievance officer came to her cell and told her that she was permitted only to write grievances about issues that concerned her personally—even though federal law provides otherwise.

108. After attempting to help Ms. Divine, TDCJ officials transferred Ms. Star on or around September 15, 2014, to a different solitary cell in administrative segregation in the 12 building.

109. On or around October 6, 2014, Ms. Star learned that the SCC had denied the UCC’s recommendation that she be transferred to a new unit. Even though he possessed information about the current threats to Ms. Star in the Robertson Unit and Ms. Star’s documented history of being threatened and assaulted, **Defendant Fuster** denied Ms. Star’s request for safekeeping and the UCC’s recommendation for unit transfer, in effect instructing that Ms. Star should remain in the general population of the Robertson Unit, where the risk that she would be seriously harmed again was substantial.

Particular Vulnerability of LGBT People in Custody

110. At all times relevant to this action, Defendants were aware that LGBT inmates face a heightened risk of sexual abuse in general and at TDCJ facilities, including the Hughes and Robertson Units.

111. LGBT and gender-nonconforming people are sexually abused more frequently in prisons and jails than other inmates. Thus, they are widely considered particularly vulnerable to

sexual abuse in the correctional context.

112. Before 2012, it was widely known and discussed both inside and outside the correctional community that LGBT and gender-nonconforming inmates are among the groups with the highest rates of sexual victimization in prisons and jails. For example, the Bureau of Justice Statistics (“BJS”), the Department of Justice, the National Institute of Corrections, the American Jail Association, the National Prison Rape Elimination Commission, and Human Rights Watch have all noted publicly that LGBT inmates are particularly vulnerable to sexual abuse while incarcerated.

113. TDCJ’s internal training documents note that LGBT people are vulnerable to sexual abuse while incarcerated and have a greater potential for being victimized than other inmates. TDCJ’s written policy recommends that an inmate’s sexual orientation and/or gender identity be taken into account when assigning housing to reduce the possibility of sexual abuse.

114. Upon information and belief, prior to Ms. Star’s complaints, Defendants knew that LGBT inmates at TDCJ facilities, including the Hughes and Robertson Units, had been victims of sexual assault or were forced to perform sexual acts for other inmates to escape violence.

Violence in TDCJ Facilities

115. Defendants were aware of the violence and sexual abuse throughout TDCJ, including at the Hughes and Robertson Units.

116. TDCJ facilities rank as some of the worst prisons in the country for reported inmate-on-inmate sexual assault and victimization.

117. As confirmed by a 2013 study by BJS, Texas has more prison facilities with high rates of inmate-on-inmate sexual violence than any other state. Of the state and federal prisons

surveyed by BJS in 2011 and 2012, five out of the ten facilities with the highest prevalence of sexual assault were part of the TDCJ.

118. In 2010, BJS reported that nearly nine percent of inmates surveyed in the Hughes Unit had been sexually assaulted by other inmates.

119. Between September 2012 and August 2013, TDCJ documented fourteen cases of sexual assault at the Hughes Unit and eighteen at the Robertson Unit.

120. As early as 2001, the Texas Legislature noted the systemic problem of prison rape and sexual assault in TDCJ facilities. Texas legislators have stated that the failure of government to address such violence is one of the most egregious human rights violations in Texas.

121. The violence at TDCJ prisons includes gang violence.

122. At all relevant times, Defendants were aware that individuals who have a conflict with one gang member are at risk of violence from other members of the same gang, that gangs or security threat groups (“STGs”) operated throughout TDCJ facilities, and that their reach extends beyond a particular unit.

123. TDCJ collects, analyzes, and disseminates gang-related information to its staff and law enforcement agencies. TDCJ currently recognizes twelve gangs or STGs, including the Bloods and the Crips, who operate and coordinate unlawful activities across TDCJ facilities and outside TDCJ facilities.

124. Prison gang-related crime and violence pose a significant threat to inmates and staff at TDCJ. Gang members, including members of the Bloods and the Crips, have been responsible for many sexual and physical assaults and homicides in TDCJ facilities.

125. **Defendants** have demonstrated deliberate indifference to the documented substantial risk of serious harm to TDCJ inmates—particularly with respect to the substantial

risk of serious harm to LGBT inmates and the substantial risk of serious harm from gangs.

Defendants Have Adopted a Practice and Custom that Tolerates Sexual Abuse of Inmates and Have Failed to Train and Supervise TDCJ Staff

126. Although **Defendant Livingston, Defendant Bales, Defendant White, Defendant Dean, and Defendant Fox** are knowledgeable about PREA⁶ and have even adopted many of the mechanisms to prevent sexual abuse in prisons into TDCJ's written policies, such as the Safe Prisons Plan,⁷ these defendants have failed to adequately train and supervise their staff on the known mechanisms to reduce and prevent sexual abuse of inmates, demonstrating deliberate indifference to the substantial risk of serious harm to LGBT inmates, including Ms. Star.

127. If **Defendant Livingston, Defendant Bales, Defendant White, Defendant Dean, and Defendant Fox** had adequately trained and supervised their staff and/or implemented PREA or Texas's written policies, such as the Safe Prisons Plan, Ms. Star would not have lived under the constant threat of sexual assault and other harm and would not have been repeatedly assaulted.

128. Instead of implementing the mechanisms to protect inmates from sexual abuse developed in PREA and Texas's own policies, **Defendant Livingston, Defendant Bales, Defendant White, Defendant Dean, and Defendant Fox** have adopted widespread and pervasive customs and practices that are so deficient that these defendants are deliberately

⁶ Congress unanimously enacted the Prison Rape Elimination Act of 2003 ("PREA"), which was signed into law by President George W. Bush in 2003. As part of PREA, Congress established the bipartisan National Prison Rape Elimination Commission to investigate the problem of sexual abuse of people in government custody and to propose standards to eliminate such sexual abuse. The final standards became effective June 20, 2012, when they were published in the Federal Register. *See* 28 C.F.R. Part 115.

⁷ In 2007, the Texas Legislature acknowledged the problem of sexual abuse within Texas correctional facilities and passed legislation requiring TDCJ to adopt a "zero-tolerance policy" concerning the detection, prevention, and punishment of sexual abuse of persons in the custody of TDCJ. *See* Tex. Cov't Code § 501.011. TDCJ's Safe Prison/PREA Plan is available at http://www.tdcj.state.tx.us/documents/cid/Safe_Prisons_PREA_Plan.pdf.

indifferent to the substantial risk of serious harm to LGBT inmates, including Ms. Star.

129. **Defendant Livingston, Defendant Bales, Defendant White, Defendant Dean, and Defendant Fox** have adopted a widespread and pervasive custom and practice that deters inmates from filing complaints, denies them protection from sexual assault and physical abuse, refuses to investigate inmate complaints, and fails to staff and fund the facilities in a way that adequately protects against physical violence among inmates, including measures to protect gay and transgender inmates from the substantial risk of serious harm.

130. Upon information and belief, TDCJ staff members regularly refuse to offer safekeeping protection to inmates, including Ms. Star, who are obviously vulnerable to sexual abuse, even when the inmates specifically and repeatedly request that status and other alternatives to protect them prove ineffective.

131. In contrast to this widespread and pervasive custom and practice, the Texas Safe Prisons Plan requires that safekeeping status be available for incarcerated people in all general population custody levels “who require separate housing from general population because of threats to their safety due to a history of homosexual behavior, a potential for victimization, or other similar reasons.” Inmates in safekeeping sleep and receive their meals and recreation time apart from the general population and are thus provided additional protection from inmate-on-inmate sexual abuse.

132. Upon information and belief, direct supervision in TDCJ facilities is insufficient to protect inmates from sexual abuse or for guards to properly supervise the inmates in their care. Upon information and belief, TDCJ has not been able adequately to identify and retain qualified employees. Upon information and belief, inattentive and undercompensated guards allow aggressive inmates to have the run of the prison, to exert control over other inmates, and to

victimize vulnerable inmates. Upon information and belief, video surveillance is insufficient to document and/or deter sexual predation in the general population at TDCJ facilities. Many areas in the general population lack security cameras. There is a custom and practice of insufficient supervision in TDCJ facilities.

133. In contrast to the widespread and pervasive custom and practice in TDCJ, Texas's written policies and the PREA require that TDCJ maintain "adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse." 28 C.F.R. § 115.13.

134. Upon information and belief, TDCJ staff members are not adequately trained on, *inter alia*, the importance of protecting inmates from sexual abuse. Upon information and belief, training provided to TDCJ employees is perfunctory and inadequate to ensure that staff members know how to prevent sexual abuse and how to respond to allegations of threatened sexual abuse. Upon information and belief, high turnover rates and the influx of new staff means that many staff have not been trained or had only basic training. According to a 2012 survey of TDCJ correctional officers, conducted by the Texas Criminal Justice Coalition, more than half the correctional officers surveyed do not believe that they receive adequate training, and nearly two-thirds do not believe the training they have received has prepared them for the challenges of their job. Furthermore, TDCJ has not trained its staff concerning professional interactions with LGBT or gender-nonconforming inmates. In fact, as alleged above, it is common for TDCJ staff to call inmates "faggot" and "punk;" to speak to them in a derogatory manner; and to suggest that a gay inmate cannot be raped. There is a custom and practice of deficient training in TDCJ.

135. In contrast to the widespread and pervasive custom and practice in TDCJ, Texas's written policies and PREA require TDCJ to train all employees who may have contact with

inmates on the zero-tolerance policy for sexual abuse and sexual harassment; the dynamics of sexual abuse and sexual harassment in confinement; how to detect and respond to signs of threatened and actual sexual abuse; how to prevent, detect, report, and respond to allegations; the common reactions of sexual abuse and sexual harassment victims; and how to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender-nonconforming inmates. *See* 28 C.F.R. § 115.31.

136. Upon information and belief, despite being obligated to do so, Defendants fail to adequately screen inmates for vulnerability to sexual abuse and to separate them from likely aggressors. Upon information and belief, TDCJ placed Ms. Star into the general population of multiple TDCJ units without first adequately screening her for vulnerability. Defendants did not use the information available to them that, as an LGBT person who had been previously sexually abused in the general population, Ms. Star was substantially vulnerable to future serious abuse, nor did they take into consideration her own perceptions of vulnerability to inform her housing and other assignments. Instead of recognizing that Ms. Star's LGBT identity made her more vulnerable, TDCJ officials suggested that Ms. Star should enjoy being sexually abused and ridiculed her. The failure to screen inmates and separate vulnerable inmates from aggressive inmates is the custom and practice at TDCJ.

137. In contrast to the widespread and pervasive custom and practice, Texas's written policies and PREA require that inmates be screened for vulnerability and separated from likely aggressors. The screening assessment shall include "whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;" "whether the inmate has previously experienced sexual victimization;" and "the inmate's own perception of vulnerability." § 115.41.

138. Defendants failed to actively investigate Ms. Star's complaints of assaults, sexual harassment and threats to her safety. Upon information and belief, despite being obligated to do so, Defendants did not adequately review Ms. Star's repeated complaints or respond reasonably given the fact that the assaults and threats were based on her perceived sexual orientation and her gender identity. When investigating Ms. Star's complaints and grievances, Defendants ignored the well-known culture of silence in prisons that offers swift and severe retribution for "snitches" and instead approached Ms. Star's complaints as necessarily unworthy of attention unless substantiated by additional witnesses or evidence, when often the only witnesses were Ms. Star and the inmate who was threatening or assaulting her. Defendants seemingly ignored the physical evidence of Ms. Star's repeated abuse and summarily closed Ms. Star's grievances, ignoring her pleas to be placed in safekeeping. Perfunctory and incomplete investigation of inmate complaints is the custom and practice at TDCJ.

139. In contrast to the widespread and pervasive practice and custom, Texas's written policies and PREA require that employees investigating sexual abuse must receive specialized training, including training on gathering and preserving direct and circumstantial evidence; must take immediate action to protect inmates from a substantial risk of imminent sexual abuse; and must take an active role in the investigation, interviewing alleged victims, suspected perpetrators, and witnesses and reviewing prior complaints and reports of sexual abuse involving the suspected perpetrator. *See* §§ 115.34, 71.

140. Despite alternative placement options, including safekeeping, as a result of reporting threats against her, Ms. Star has been involuntarily held in solitary confinement for periods exceeding 30 days, in conditions similar to those used to punish inmates for disciplinary infractions. Upon information and belief, TDCJ staff members employ isolation as a tool to deter

inmates from complaining about sexual and other abuse in TDCJ facilities. There is a widespread practice and custom of using the threat of solitary to deter inmates from complaining about sexual abuse and threats of violence.

141. In contrast to the widespread and pervasive custom and practice, because of the well-documented harmful effect of solitary confinement, Texas's policies and PREA prohibit the use of involuntary segregated housing unless a determination has been made that there is no available alternative means of separation from likely abusers. If no alternative means are available, the policies require that an inmate remain in involuntary segregated housing only "until an alternative means of separation from likely abusers can be arranged," a period that "shall not ordinarily exceed 30 days" and that people incarcerated in segregated housing should have access to programs, privileges, education, and work opportunities. *See* § 115.43.

142. The PREA Ombudsman office, headed by **Defendant Bales**, is charged, *inter alia*, with monitoring the policies for responding to inmate sexual abuse and ensuring that complaints of sexual abuse are impartially and adequately investigated, but, upon information and belief, the office employs only three staff members, a staff wholly insufficient to review and investigate hundreds of complaints of sexual abuse every year.

143. Upon information and belief, **Defendant Livingston, Defendant Bales, Defendant White, Defendant Dean, and Defendant Fox** have at all relevant times had personal knowledge of the widespread sexual abuse and other violence in TDCJ and of the mechanisms to prevent sexual abuse of inmates. Yet despite years of ineffective training, supervision, customs, and practices, these defendants have failed to take necessary action to correct these institutional problems.

144. Far from evincing a "zero-tolerance" policy for sexual assault, Defendants'

conduct has established a widespread and pervasive custom and practice of tolerance and apathy toward sexual assault and sexual harassment in TDCJ facilities. It is the custom and practice of Defendants, implemented without regard to the safety or constitutional rights of Ms. Star, which has caused her injuries and the continuing, severe threat to her constitutional rights.

145. The willful refusal to address the widespread violence in TDCJ is further exacerbated by Texas Governor Rick Perry's March 2014 announcement that he would refuse to certify that TDCJ prisons complied with the PREA or work towards compliance, thereby forfeiting approximately \$1 million in federal funds that could have been used to address sexual assaults in TDCJ. In doing so, Governor Perry called the PREA standards "ill-conceived" and "impossible" to implement, despite the National Prevention and Elimination of Rape Commission's and the DOJ's extensive engagement with relevant authorities, as well as the TDCJ's own involvement in the development of PREA standards.

Defendants Were Personally Involved and Could Have But Did Not Prevent the Harm and Threats to Ms. Star

146. **Defendant Bales**, the PREA Ombudsman, received several letters from Ms. Star describing the substantial risk of serious harm that she faced, including letters on March 27, 2014 and March 28, 2014. Nevertheless, on April 8, 2014, without determining that her pleas were unfounded, Defendant Bales informed Ms. Star that he would take no action to protect her.

147. **Defendant White**, Assistant Director of TDCJ's Classification and Records Department, upon information and belief, was aware that Ms. Star had been assaulted in the past by other inmates in TDCJ facilities and was at substantial risk of serious future assaults. Upon information and belief, Defendant White received at least two letters from Ms. Star pleading for help and multiple grievances that Ms. Star submitted to the SCC, but refused to act or authorize action to protect Ms. Star.

148. **Defendant Armstrong**, Assistant Regional Director in the SCC, refused to take or authorize reasonable actions to protect Ms. Star, even though he was aware that she had been assaulted in the past by other inmates at the Hughes and Robertson Units, as well as other TDCJ facilities, and was at risk of future assaults by inmates. On behalf of the SCC, between November 2013 and October 2014 Defendant Armstrong reviewed and denied at least six appeals of grievances in which Ms. Star sought safekeeping because of threats of violence and imminent harm. On May 30, 2014, he denied a recommendation by the UCC at Robertson to transfer Ms. Star to a new unit.

149. **Defendant Fuster**, Assistant Regional Director in the SCC, refused to take or authorize reasonable actions to protect Ms. Star even though he was informed that she had been assaulted in the past by other inmates at the Hughes and Robertson Units, as well as other TDCJ facilities, and was at substantial risk for serious future assaults. Defendant Fuster reviewed at least one grievance in which Ms. Star requested safekeeping because of threats of violence and imminent harm on September 26, 2014 on behalf of the SCC. He denied Ms. Star's request for safekeeping and further denied a recommendation by the UCC to transfer Ms. Star from Robertson to a new unit.

150. **Defendant Dean**, Senior Warden at the Hughes Unit, was aware that Ms. Star had been assaulted in the past by other inmates and was at substantial risk of serious future assaults. Ms. Star sent him a letter detailing the threats against her in October 2013. Upon information and belief, Defendant Dean received and reviewed this letter, but took no action to protect her.

151. **Defendant Blanchard**, Assistant Warden at the Hughes Unit, was aware that Ms. Star had been assaulted in the past by other inmates at the Hughes Unit and was at substantial risk of serious future assaults. Nevertheless, Defendant Blanchard denied at least four grievances

submitted by Ms. Star regarding threats and violence against her. On November 19, 2013, as a member of the UCC, Defendant Blanchard denied Ms. Star's request for safekeeping based on violence and threats against her and had her moved to the same pod in the general population where her attacker was housed, and again denied her request for safekeeping on November 22, 2013, after she was attacked.

152. **Defendant Maldonado**, Assistant Warden at the Hughes Unit, denied at least two grievances submitted by Ms. Star regarding violence and threats of violence against her, disregarded readily available evidence, and failed to adequately investigate Ms. Star's claims. Even though Defendant Maldonado was aware that Ms. Star had been assaulted by other inmates at the Hughes Unit in the past and was at substantial risk of serious future assaults, on November 22, 2013, Defendant Maldonado disregarded information that Ms. Star had been viciously attacked two days earlier and denied her request for safekeeping.

153. **Defendant Marez**, a Major at the Hughes Unit, was aware that Ms. Star had been assaulted by other inmates at TDCJ facilities in the past and was at substantial risk of serious future assaults. Nevertheless, he denied at least five requests by Ms. Star to be placed in dormitories, and on November 4, 2013, as a member of the UCC, denied Ms. Star's request for safekeeping.

154. **Defendant Smith**, a Captain at the Hughes Unit, was aware that Ms. Star had been assaulted by other inmates at TDCJ facilities in the past and was at substantial risk of serious future assaults. Nevertheless, on November 19, 2013, Defendant Smith denied Ms. Star's request for safekeeping and had her moved to the same pod in the general population where her attacker was housed, and again denied her request for safekeeping on November 22, 2013, after she was attacked in that pod.

155. **Defendant Pickett**, a Sergeant in Hughes, was informed that Ms. Star had been assaulted by other inmates at TDCJ facilities in the past and was at substantial risk of serious future assaults. Nevertheless, on November 19, 2013, Defendant Pickett ignored Ms. Star's desperate plea for help to protect her against a threatened attack and refused to take action to protect her from the attack that occurred the next morning.

156. **Defendant Walters**, a Classification Secretary at the Hughes Unit, was aware that Ms. Star had been assaulted by other inmates at TDCJ facilities in the past and was at substantial risk of serious future assaults. Nevertheless, on November 19, 2013, Defendant Walters denied Ms. Star's request for safekeeping and had her moved to the same pod in the general population where her attacker was housed, and again denied her request for safekeeping on November 22, 2013, after she was attacked.

157. **Defendant Fox**, a Senior Warden at the Robertson Unit, was aware that Ms. Star had been assaulted by inmates at TDCJ facilities in the past and was at substantial risk of serious future assaults while in the general population. Nevertheless, on June 17, 2014, as a member of the UCC, he denied Ms. Star's request for safekeeping. Upon information and belief, Defendant Fox received letters sent to him by Ms. Star detailing the threats against her.

158. **Defendant Gonzales**, an Assistant Warden at the Robertson Unit, was aware that Ms. Star had been assaulted by inmates at TDCJ facilities in the past and was at substantial risk of serious future assaults while in the general population. Nevertheless, as a member of the UCC, he denied at least three of Ms. Star's requests for safekeeping between December and August 2014, and also denied a grievance on April 7, 2014, in which Ms. Star requested safekeeping.

159. **Defendant Webb**, an Assistant Warden at the Robertson Unit, was aware that Ms. Star had been assaulted in the past and was at substantial risk of future assaults while in the

general population. Yet, he denied at least one grievance that she submitted requesting placement in safekeeping on April 9, 2014, and, as a member of the UCC, denied Ms. Star's request for safekeeping on August 1, 2014.

160. **Defendant Lopez**, a Sergeant at the Robertson Unit, was aware that Ms. Star had been assaulted by other inmates at TDCJ facilities in the past and was at substantial risk of serious future assaults while in the general population. Yet, he displayed deliberate indifference to the substantial risk that Ms. Star would be seriously harmed, telling her to stop filing OPIs requesting additional protection and to "suck dick, fight, or quit doing gay shit." He was also aware that Ms. Divine had been sexually assaulted and took no action to protect her.

161. In light of the following, **Defendants Bales, White, Armstrong, Fuster, Dean, Blanchard, Maldonado, Marez, Smith, Pickett, Walters, Fox, Gonzales, Webb, and Lopez** were personally aware that Ms. Star was at substantial risk of serious harm, and they should have placed her in safekeeping or taken other actions to reduce the harm and the threat of harm to her.

FIRST CLAIM FOR RELIEF
Injunctive and Declaratory Relief
U.S. Const. Amend. VIII - Deliberate Indifference
(Against Defendants Bales, White, Armstrong,
Fuster, Fox, Gonzales, Webb, and Lopez in their
Official Capacities)

162. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here.

163. With deliberate indifference to Ms. Star's personal health and safety, **Defendants Bales, White, Armstrong, Fuster, Fox, Gonzales, Webb, and Lopez** failed and continue to fail to protect her from substantial risk of serious harm in violation of her rights under the Eighth and the Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

164. **Defendants Bales, White, Armstrong, Fuster, Fox, Gonzales, Webb, and**

Lopez are aware that violence in the prison was frequent and regular and that predatory gangs operated across TDCJ facilities and targeted vulnerable inmates, including Ms. Star, for violence, sexual assault, and sexual exploitation.

165. **Defendants Bales, White, Armstrong, Fuster, Fox, Gonzales, Webb, and Lopez** are aware that gay men and transgender women housed in male correctional institutions, including Ms. Star, are particularly vulnerable to violence, sexual assault and sexual exploitation. The substantial risk of serious harm to Ms. Star is obvious.

166. In addition, **Defendants Bales, White, Armstrong, Fuster, Fox, Gonzales, Webb, and Lopez** have actual knowledge of the substantial risk of serious harm to Ms. Star.

167. **Defendants Bales, White, Armstrong, Fuster, Fox, Gonzales, Webb, and Lopez** failed to take reasonable safeguards to protect Ms. Star despite their knowledge of a substantial risk to her safety.

168. The actions and omissions of **Defendants Bales, White, Armstrong, Fuster, Fox, Gonzales, Webb, and Lopez** are so grave that they violate contemporary standards of decency to expose anyone unwilling to a substantial risk of serious harm, and it is clearly established that such deliberate indifference is a violation of the Eighth Amendment's prohibition of cruel and unusual punishment.

169. **Defendants Bales, White, Armstrong, Fuster, Fox, Gonzales, Webb, and Lopez** are disregarding the immediate and substantial risk of serious harm to Ms. Star and failing to act reasonably to prevent Ms. Star from being sexually and physically assaulted.

170. The Court should declare that the conduct of these **Defendants** as described in this First Claim for Relief violated the Eighth Amendment's prohibition of cruel and unusual punishment.

171. Without preliminary and permanent injunctive relief, Ms. Star will most certainly continue to suffer severe irreparable harm for which she has no adequate remedy at law. Ms. Star is likely to succeed on the merits of her claim and, in any event, the balance between the harm to the Plaintiff in failing to grant injunctive relief greatly outweighs any potential harm to the Defendants in granting injunctive relief. Finally, the public interest is always served in holding governmental actors accountable for violating the constitutional rights of its citizens.

172. The Defendants should be preliminarily and permanently enjoined by Court order directing them to maintain Plaintiff in safekeeping status while she remains in TDCJ custody.

SECOND CLAIM FOR RELIEF
Injunctive and Declaratory Relief
Failure to Train, Supervise, and Enforce TDCJ Policies -
Deliberate Indifference
U.S. Const. Amend. VIII
(Against Defendants Livingston, Bales, White, Dean, and Fox
in Their Official Capacities)

173. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here.

174. **Defendants Livingston, Bales, White, Dean, and Fox** failed to train, supervise, and enforce TDCJ employees adequately regarding TDCJ policies and, specifically, measures to protect gay and transgender inmates from the substantial risk of serious harm.

175. **Defendants Livingston, Bales, White, Dean, and Fox** disregarded a known or obvious consequence of their failure to train and supervise their subordinates adequately and to enforce TDCJ policies.

176. As a consequence of the lack of proper training and/or supervision of TDCJ staff and enforcement of the TDCJ policies, Ms. Star suffered not only a substantial risk of serious harm, but also was assaulted, lacerated, raped, and forced to perform sexual acts against her will.

177. The Court should declare that the conduct of these **Defendants** as described in this Second Claim for Relief violated the Eighth Amendment's prohibition of cruel and unusual punishment.

178. Without preliminary and permanent injunctive relief, Ms. Star will most certainly continue to suffer severe irreparable harm for which she has no adequate remedy at law. Ms. Star is likely to succeed on the merits of her claim and, in any event, the balance between the harm to the Plaintiff in failing to grant injunctive relief greatly outweighs any potential harm to the Defendants in granting injunctive relief. Finally, the public interest is always served in holding governmental actors accountable for violating the constitutional rights of its citizens.

179. The Defendants should be preliminarily and permanently enjoined by Court order directing them to properly train and supervise TDCJ staff to enforce TDCJ's zero-tolerance policy for sexual assault and physical violence for the duration of Ms. Star's incarceration.

THIRD CLAIM FOR RELIEF
Injunctive and Declaratory Relief
Custom and Practice – Deliberate Indifference
U.S. Const. Amend. VIII
(Against Defendants Livingston, Bales, White, Dean, and Fox
in Their Official Capacities)

175. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here.

176. Contrary to the actual written TDCJ policies, **Defendants Livingston, Bales, White, Dean, and Fox** have adopted and permitted a widespread and pervasive custom and practice that deters inmates from filing complaints, denies them protection from sexual assault and physical abuse, refuses to investigate inmate complaints, and fails to staff and fund the facilities in a way that adequately protects against physical violence among inmates, including measures to protect gay and transgender inmates from the substantial risk of serious harm.

177. **Defendants Livingston, Bales, White, Dean, and Fox** disregarded a known or obvious consequence of the widespread and pervasive custom and practice they have adopted or permitted to occur.

180. As a consequence of the widespread and pervasive custom and practice adopted by these defendants, Ms. Star suffered not only a substantial risk of serious harm, but also was assaulted, lacerated, raped, and forced to perform sexual acts against her will.

181. The Court should declare that the conduct of these **Defendants** as described in this Third Claim for Relief violated the Eighth Amendment's prohibition of cruel and unusual punishment.

178. Without preliminary and permanent injunctive relief, Ms. Star will most certainly continue to suffer severe irreparable harm for which she has no adequate remedy at law. Ms. Star is likely to succeed on the merits of her claim and, in any event, the balance between the harm to the Plaintiff in failing to grant injunctive relief greatly outweighs any potential harm to the Defendants in granting injunctive relief. Finally, the public interest is always served in holding governmental actors accountable for violating the constitutional rights of its citizens.

179. The Defendants should be preliminarily and permanently enjoined by Court order from permitting this widespread and pervasive custom and practice to continue and be directed to enforce the existing written policy in all respects that ensures the safekeeping of inmates.

FOURTH CLAIM FOR RELIEF
Damages and Declaratory Relief
U.S. Const. Amend. VIII
(Against All Defendants in their personal capacities)

182. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here.

183. With deliberate indifference to Ms. Star's personal health and safety, **Defendants**

Bales, White, Armstrong, Fuster, Dean, Blanchard, Maldonado, Marez, Smith, Pickett, Walters, Fox, Gonzales, Webb, and Lopez failed to protect her from substantial risk of serious harm in violation of her rights under the Eighth and the Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

184. In addition, **Defendants Bales, White, Armstrong, Fuster, Dean, Blanchard, Maldonado, Marez, Smith, Pickett, Walters, Fox, Gonzales, Webb, and Lopez** had actual knowledge of the threats to Ms. Star and the substantial risk of serious harm to her.

185. **Defendants Bales, White, Armstrong, Fuster, Dean, Blanchard, Maldonado, Marez, Smith, Pickett, Walters, Fox, Gonzales, Webb, and Lopez** failed to take reasonable safeguards to protect Ms. Star despite their knowledge of a substantial risk to her safety.

186. The actions and omissions of **Defendants Bales, White, Armstrong, Fuster, Dean, Blanchard, Maldonado, Marez, Smith, Pickett, Walters, Fox, Gonzales, Webb, and Lopez** are so grave that they violate contemporary standards of decency to expose anyone unwilling to a substantial risk of serious harm, and it is clearly established that such deliberate indifference is a violation of the Eighth Amendment's prohibition of cruel and unusual punishment.

187. **Defendants Livingston, Bales, White, Dean, and Fox** failed to train, supervise, and enforce TDCJ employees adequately regarding TDCJ policies and, specifically, measures to protect gay and transgender inmates from the substantial risk of serious harm.

188. **Defendants Livingston, Bales, White, Dean, and Fox** disregarded a known or obvious consequence of their failure to train and supervise their subordinates adequately and to enforce TDCJ policies.

189. As a consequence of the lack of proper training and/or supervision of TDCJ staff

and enforcement of the TDCJ policies, Ms. Star suffered not only a substantial risk of serious harm, but also was assaulted, lacerated, raped, and forced to perform sexual acts against her will.

190. **All Defendants** were aware that violence in the prison was frequent and regular and that predatory gangs operated across TDCJ facilities and targeted vulnerable inmates, including Ms. Star, for violence, sexual assault, and sexual exploitation.

191. **All Defendants** were aware that gay men and transgender women housed in male correctional institutions, including Ms. Star, were particularly vulnerable to violence, sexual assault and sexual exploitation. The substantial risk of serious harm to Ms. Star was obvious.

192. The Court should declare that the conduct of **All Defendants**, as described in this Complaint and alleged in the First, Second, and Third Claims for Relief, above, violated the Eighth Amendment's prohibition of cruel and unusual punishment. The Court should further declare that the law proscribing **All Defendants'** conduct was clearly established as unconstitutional at the time they engaged in such conduct.

193. Plaintiff was harmed and suffered damages as a result of all of the Defendants' misconduct, including damages for the physical injuries, permanent disfigurement, excruciating emotional pain, and lasting psychic trauma. Thus, Plaintiff is entitled to recover compensatory damages against all Defendants in their personal capacities.

194. The Defendants acted with a malicious or evil intent or callous disregard of Plaintiff's federally protected rights. Additionally, Defendants engaged in "oppressive" conduct that misused official authority or exploited the Plaintiff's weakness. Accordingly, Plaintiff is entitled to an award of punitive damages against all Defendants in their personal capacities.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief from the Court:

1. A preliminary injunction pursuant to Fed. R. Civ. P. 65 enjoining Defendants from housing Ms. Star in the general population or, in the alternative, giving adequate notice to counsel of no less than fourteen days prior to any attempt to do so;
2. A permanent injunction directing Defendants to maintain Plaintiff in safekeeping status while she remains in TDCJ custody;
3. A declaratory judgment that the policies, practices, acts and omissions complained of herein violated Plaintiff's rights;
4. Expungement of any disciplinary violations on Plaintiff's record connected to Defendants' failure to protect Plaintiff;
5. Appropriate medical and psychiatric treatment and counseling for Plaintiff's physical and psychic injuries suffered as a result of Defendants' acts and omissions;
6. Compensatory damages, including damages for the physical injuries, permanent disfigurement, excruciating emotional pain, and lasting psychic trauma, against each Defendant who is named in his or her personal capacity;
7. Punitive damages against each Defendant who is named in his or her personal capacity;
8. Reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
9. Such further relief as the Court may deem just and proper.

Dated October 23, 2014.

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

By: s/ Kenneth D. Upton, Jr.

Kenneth D. Upton, Jr.

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**Pro hac vice* application submitted separately

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is the Original Complaint. Plaintiffs' Counsel will cause Summons to be served on each Defendant as required by Fed. R. Civ. P. 4.

s/ Kenneth D. Upton, Jr.
Kenneth D. Upton, Jr.