

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JANE DOE,

Plaintiff,

v.

Case No. 2:21-cv-  
Hon.  
Mag.

HEIDI WASHINGTON, Director of the Michigan  
Department of Corrections, in her official capacity, and  
TIFFANY KISOR, (LIEUTENANT) BLUNT,  
(SERGEANT) MATTHEWS, (ARUS)  
CHADWELL, (OFFICER) MORI, and  
(OFFICER) BARLOW,  
in their individual and official capacities,

Defendants.

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**COMPLAINT AND JURY DEMAND**

Plaintiff Jane Doe, through her attorneys Salvatore Prescott Porter & Porter, brings this Complaint against Defendants for violations of the Eighth Amendment of the United States Constitution and states the following:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Jane Doe is a prisoner in the Michigan Department of Corrections (MDOC).
2. During all relevant times, Plaintiff was housed at the G. Robert Cotton Correctional Facility (JCF) in Jackson, Michigan.
3. Defendants Deputy Warden Tiffany Kisor, Lieutenant Blunt, Sergeant Matthews, ARUS Chadwell, Officer Mori and Officer Barlow are employees of the Michigan Department of Corrections and are sued in their individual and official capacities.
4. On Plaintiff's belief, they are residents of the Eastern District of Michigan.
5. Defendant Heidi Washington is the Director of the Michigan Department of Corrections and is sued in her official capacity only.
6. Plaintiff's claims against Defendants in their official capacities are for prospective injunctive relief only.
7. Defendants acted under color of state law during all relevant times.

8. This is a civil action brought pursuant to 42 U.S.C. § 1983, seeking damages for failure to protect in violation of the Eighth Amendment of the U.S. Constitution.

9. The Court has jurisdiction under 28 U.S.C. § 1331, which grants the Court original jurisdiction over all civil rights actions arising under the laws and U.S. Constitution.

10. The Court has personal jurisdiction over the Defendants as public officials of the State of Michigan sued in their individual capacities for violations of Plaintiff's constitutional rights.

11. Venue is proper in the Eastern District under 28 U.S.C. § 1391(b)(2) as it is the district in which a substantial part of the events or omissions giving rise to the claims occurred.

### **GENERAL ALLEGATIONS**

#### **Transgender Women Bear A Heightened Risk of Rape in Men's Prisons**

12. In 2003, Congress passed the Prison Rape Elimination Act (PREA) to acknowledge and address the prevalent rape and sexual abuse of prisoners.

13. In doing so, Congress created the National Prison Rape Elimination Commission (Commission) to conduct a comprehensive study of the penological, physical, mental, medical, social, and economic impacts of prison rape in the United States.

14. In 2009, the Commission released its National Prison Rape Elimination Report, in which it found, among other things, that transgender prisoners are at a known heightened risk of sexual violence, with male-to-female transgender women incarcerated in men’s prisons having a special risk of harm.

15. As observed in the PREA Report, “Men’s correctional facilities tend to have very rigid cultures that reward extreme masculinity and aggression and perpetuate negative stereotypes about men who act or appear different. In this environment, gay, bisexual, and gender-nonconforming individuals are often the targets of sexual abuse precisely because the dominant ‘straight’ males expect and demand submission.”<sup>1</sup>

16. The nonconformity of male-to-female transgender women to gender norms puts them at an “extremely high risk for abuse.”<sup>2</sup>

17. As observed within the PREA Commission Report, “[E]very day, the lives and the physical integrity of lesbian, gay, bisexual, and transgender people are at stake within our prison systems.’ The discrimination, hostility, and violence members of these groups often face in American society are amplified in correctional environments.”<sup>3</sup>

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<sup>1</sup> PRISON RAPE ELIMINATION COMM’N, NATIONAL PRISON RAPE ELIMINATION REPORT 73 (2009).

<sup>2</sup> *Id.* at 74.

<sup>3</sup> *Id.* at 73, quoting, in part, Scott Lang, Human Rights Watch – Lesbian, Gay, Bisexual, and Transgender Rights Program.

**Prison Officials Have a Duty to Protect**

18. The Eighth Amendment of the U.S. Constitution imposes a duty on prison officials to protect prisoners from violence at the hands of other prisoners.

19. The duty of protection is well-established law which reasonable persons in Defendants' positions would know.

20. Over twenty-five years ago, when faced with a similar case involving the rape of a transgender prisoner by another prisoner in *Farmer v. Brennan*,<sup>4</sup> the U.S. Supreme Court recognized the obvious danger that transgender prisoners face and found that prisons had a duty to protect such prisoners from violence by other inmates.

21. The duty to protect is reflected in the MDOC Policy Directives.

22. Policy Directive 03.03.130 directs that prisoners shall be provided reasonable safety from assaults and iterates that prison staff have a responsibility to protect prisoners' lives.

23. Policy Directive 04.06.184 reflects the heightened risk of harm transgender prisoners bear, requiring that staff create special management plans developed in consideration of specific factors to determine where to house transgender prisoners, including considering:

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<sup>4</sup> 511 U.S. 825 (1994).

- a. “[t]he prisoner’s own views with respect to safety shall be given serious consideration;”
- b. “placement and housing in accordance with PREA standards (generally single-occupancy cell);” and
- c. “characteristics of the prisoner, including stature, trauma history ... [and] the likelihood of being a victim of violence or of predatory behavior, or being a former victim ...”

24. Here, Plaintiff is a male-to-female transgender woman with gender dysphoria,<sup>5</sup> who is incarcerated in a men’s prison, was housed in contravention of her special management plan, and was forced by Defendants to bunk with a known rapist who raped Plaintiff within 24 hours of her housing.

### **Plaintiff is Raped After Incarceration with Male Prisoner**

25. On or around December 5, 2019, the MDOC issued a medical detail (or order) that prohibited Plaintiff from being housed with a cellmate who did not have gender dysphoria.

26. On or around January 5, 2020, Plaintiff was assigned to a cell in B-Unit.

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<sup>5</sup> Gender dysphoria is “a clinically significant distress or impairment related to a strong desire to be of another gender, which may include desire to change primary and/or secondary sex characteristics.” What is Gender Dysphoria?” American Psychiatric Association (2020), found at <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria#:~:text=Gender%20dysphoria%3A%20A%20concept%20designated,and%2For%20secondary%20sex%20characteristics.>

27. Prior to her assignment in B-Unit, Plaintiff notified several officers of her medical detail prohibiting her housing with a non-gender dysphoric cellmate.

28. Plaintiff was informed that the control center was aware of the restriction.

29. When Plaintiff arrived at B-Unit, Officer Mori told Plaintiff to wait while a prisoner vacated a two-man cell into which Plaintiff was being moved.

30. Plaintiff told Mori about her medical detail and its housing restriction.

31. The prisoner with whom Plaintiff was assigned to bunk was Daniel Clay, a known rapist and murderer imprisoned for life for killing a woman during sexual intercourse.

32. Clay, who is non-gender dysphoric and was hostile to having Plaintiff in the cell with him, protested to Mori that he did not want Plaintiff in his cell, while other prisoners began taunting Clay, laughing and joking that he would be sharing a cell with a transgender bunkie.

33. Plaintiff, concerned that she would be housed with a cellmate who was not transgender, was hostile and was capable of seriously harming her, again showed Officer Mori her medical detail directing that Plaintiff was only to be housed with another gender dysphoric person.

34. After some back and forth about the meaning of the medical detail, Officer Mori said he was tired of Plaintiff's complaints and did not care what the medical detail said.

35. Mori threatened Plaintiff that if she did not enter the cell, he would issue a misconduct ticket and put Plaintiff in disciplinary segregation.

36. Plaintiff had no choice but to enter the cell with Clay, as receiving misconduct tickets can have substantial adverse effects on a prisoner including loss of privileges, housing in solitary confinement, escalation of security level and negative effects on parole opportunities.

37. When Plaintiff entered the cell, Clay was yelling down to officers that he (Clay) is a rapist and murderer and that they should not have “this faggot” in here with him and to get her out.

38. Officer Mori was present and in earshot of Clay’s protests.

39. Clay also told Plaintiff directly that he was a rapist and murderer intimating that he was going to harm Plaintiff and warning Plaintiff that it would be better for her to go to the hole.

40. After it became clear that officers were not going to move Plaintiff, Clay became more aggressive and hostile.

41. When Plaintiff was called out of her cell to complete paperwork, she again told Mori and Barlow that she should not be housed with a non-gender dysphoric cellmate and that she feared for her safety because of her cellmate’s threats.

42. Officer Mori again threatened Plaintiff with disciplinary segregation if she did not re-enter the cell.

43. Later, Officer Barlow called Plaintiff to the officer's desk.

44. Plaintiff told Barlow and Mori (who was also at the desk) that she was not supposed to be housed with her cellmate and that she was afraid because Clay was threatening her and claiming to be a rapist and murderer.

45. Barlow and Mori said they could give Plaintiff a misconduct ticket and she could go to the hole.

46. During the exchange, Sgt. Matthews came to the desk.

47. Plaintiff explained the situation to Sgt. Matthews, including the threats from her cellmate, and she showed Matthews the detail.

48. Matthews said there was nothing he could do.

49. Plaintiff asked to speak to Matthews' supervisor.

50. Mathews responded that Lt. Blunt was his supervisor and that Lt. Blunt decided to keep Plaintiff in the cell.

51. Neither Matthews nor Mori nor Barlow nor Blunt took any steps to protect Plaintiff despite knowledge of threatened harm and risk of assault.

52. Plaintiff had no choice but to return to her cell.

53. When Officer Barlow later came to her door, Plaintiff again told her that she was afraid.

54. Plaintiff's cellmate was yelling that he was a murderer and rapist and did not want Plaintiff in the cell with him.

55. Barlow laughed when she went by and heard Clay's threats and complaints.

56. That night, Clay raped Plaintiff with forcible penetration.

57. When Clay went to sleep, and Plaintiff was safely able to, Plaintiff exited the cell to find help.

58. Plaintiff found Barlow half asleep with her back to the cells, while two other officers were watching a movie on a computer.

59. Plaintiff was later taken to the hospital for treatment.

60. On or around January 8, Plaintiff's security level was moved from Level 2 to Level 4, even though Plaintiff had not engaged in any misconduct.

61. On or around the same day, Plaintiff was assigned to a cell with another cellmate who self-identified as a rapist and was incarcerated for first-degree criminal sexual conduct.

62. The cellmate described in detail to Plaintiff the multiple rapes committed, including while in detention, and pressured Plaintiff to expose her genitals.

63. Plaintiff wrote a grievance opposing her housing, on the top of which she wrote, "PREA Request for Protection."

64. Plaintiff gave the protection request to an officer.

65. Plaintiff also talked to a therapist who had her moved to protective custody on or around January 9.

66. While in protective custody, ARUS Chadwell remarked that Plaintiff would not be needing a protective cell and that she would be sent back to her cell with the same cellmate.

67. Dep. Warden Kisor angrily confronted Plaintiff.

68. Kisor questioned Plaintiff about the rape, accused her of lying about her current cellmate, and refused to look at Plaintiff's written protection request.

69. Kisor then directed Plaintiff be returned to her cell with the convicted rapist, even though Plaintiff was seeking protection and there were single-man cells available in which Kisor could have placed Plaintiff.

70. That night, Plaintiff awoke to her cellmate sexually assaulting her.

71. Shortly thereafter Plaintiff transferred from the facility.

72. Plaintiff, having suffered rape and sexual assault, became depressed and suicidal.

**COUNT I**  
**EIGHTH AMENDMENT: FAILURE TO PROTECT – PENETRATIVE**  
**RAPE**

**42 U.S.C. § 1983**

*(against Lt. Blunt, Sgt. Matthews, CO Barlow and CO Mori)*

73. Plaintiff restates and incorporates here all previously stated allegations.

74. The Eighth Amendment protects inmates by requiring prison officials to take reasonable measures to guarantee inmates' safety.

75. The duty of prison officials to protect prisoners from violence from other prisoners is well-established law of which reasonable persons in Defendants' positions would know.

76. Awareness of a substantial risk of harm can be demonstrated through inference from circumstantial evidence.

77. Defendants were aware of facts from which the obvious inference could be and was drawn that a substantial risk to Plaintiff's health and safety existed, including Plaintiff's heightened vulnerability to sexual abuse as a male-to-female transgender prisoner in a male prison; Clay's violent sexual and predatory history; Clay's open hostility toward Plaintiff and warning that Plaintiff should not be in his cell because of his violent criminal history as a rapist and murder; and Plaintiff's direct reports to Defendants that Clay was threatening her.

78. Defendants acted with deliberate indifference by knowingly and recklessly disregarding the known excessive risks to Plaintiff's health and safety, resulting in Plaintiff's rape within hours of her placement in the cell.

**COUNT II**  
**EIGHTH AMENDMENT: FAILURE TO PROTECT – SEXUAL BATTERY**  
**42 U.S.C. § 1983**  
*(against Dep. Warden Kisor and ARUS Chadwell )*

79. Plaintiff incorporates and restates here all previously stated allegations.

80. As in Count I, Defendants were acutely aware of facts from which the obvious inference could be and was drawn that a substantial risk to Plaintiff's

health and safety existed, including Plaintiff's cellmate's aggressive sexual conduct and advances; Plaintiff's request for protection; Plaintiff's therapist's request for protection; Plaintiff's transfer to segregation for protection; and Plaintiff's heightened vulnerability for sexual abuse as a recent rape victim.

81. Defendants nonetheless acted with deliberate indifference by knowingly and recklessly disregarding the excessive risk to Plaintiff's health and safety, of which they were aware, resulting in Plaintiff's sexual assault.

**RELIEF REQUESTED**

Plaintiff requests all available relief, including:

- a. all appropriate prospective injunctive relief, including requiring Defendants to house Plaintiff in accordance with the MDOC's policies, medical details, and legal obligations to protect her from harm;
- b. compensatory damages;
- c. punitive damages; and
- d. attorney fees and costs.

Respectfully Submitted,  
SALVATORE PRESCOTT & PORTER

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Dated: March 2, 2021

**JURY DEMAND**

Plaintiff requests a trial by jury in the above-captioned matter.

Respectfully Submitted,  
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Dated: March 2, 2021