No. 19-

IN THE

Supreme Court of the United States

DARIUS GREEN,

Petitioner,

v.

BRADLEY HOOKS, JOHN BROWN
AND TORIE GRUBBS

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JULIE OINONEN
WILLIAMS OINONEN LLC
44 Broad Street, NW, Suite 200
Atlanta, Georgia 30303
(404) 654-0288

JOHN M. SHOREMAN
MCFADDEN & SHOREMAN
1050 Connecticut Avenue, NW,
Suite 500
Washington, DC 20036
(202) 772-3188

MARIO B. WILLIAMS
Counsel of Record
WILLIAMS OINONEN LLC
NDH LLC
44 Broad Street, NW, Suite 200
Atlanta, Georgia 30303
(404) 254-0442
mario@goodgeorgialawyer.com
mwilliams@ndh-law.com

Counsel for Petitioner

296329

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED FOR REVIEW

1. Under Farmer v. Brennan, 511 U.S. 825 (1994), is a court precluded from granting summary judgment to defendants where there is evidence of an obvious, substantial risk of harm to a plaintiff based on an inmate's personal characteristics when considered in combination with material facts on the record?

2. Does the Eighth Amendment require a plaintiff to notify prison officials of a specific risk of harm, including the name of an assailant and the specific form of harm?

PARTIES TO THE PROCEEDING

Darius Green is the Petitioner. Respondents are Bradley Hooks, John Brown, and Torie Grubbs.

RELATED PROCEEDINGS IN FEDERAL AND APPELLATE COURTS

Green v. Hooks, et al., No. 17-11785-GG, United States Court of Appeals for the Eleventh Circuit. Judgment Entered January 6, 2020.

Green v. Hooks, et al., No. 6:14-cv-00046-JRH-GRS, United States District Court for the Southern District of Georgia. Judgment Entered March 21, 2017.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDING ii

RELATED PROCEEDINGS IN FEDERAL AND APPELLATE COURTS iii

TABLE OF CONTENTS iv

TABLE OF APPENDICES vii

TABLE OF CITED AUTHORITIES viii

CITATIONS TO OPINIONS BELOW 1

BASIS FOR JURISDICTION 1

CONSTITUTIONAL PROVISION INVOLVED 1

INTRODUCTION 1

1. Snapshot of split amongst circuits 4

STATEMENT OF THE CASE 6

I. Basis for jurisdiction in the court of first instance 6

II. The event at issue 6

Table of Contents

Page

III. First instance proceedings and the District Court's Order 8

IV. Facts relevant to the questions presented for review 9

A. The August 28, 2012 meeting between Petitioner Green, Warden Hooks, and Deputy Warden Brown 10

1. Respondents' knowledge on August 28, 2012 regarding Green's risk of sexual assault 11

B. Respondents' knowledge of Green's status as a transgender inmate and of risks to her safety 13

C. Green's September 21, 2012 placement in Administrative Segregation (protective custody) with Ricard 14

1. Administrative Segregation policies at Rogers 15

2. Respondents' knowledge of Green's assailant, Darryl Ricard, on September 21, 2012. 16

Table of Contents

Page

3. Evidence of Respondents' authorization of Green's placement with Ricard on September 21, 2012 18

REASONS FOR GRANTING THE PETITION 19

I. The Eleventh Circuit's opinion heightens the deliberate indifference standard by ignoring circumstantial evidence that, when combined with other material facts, shows that a risk is obvious 19

II. The majority of circuit courts recognize that evidence of a prisoner's personal characteristics in combination with other material facts, may support an inference of subjective awareness.....24

III. The majority of circuits reject requiring a plaintiff allege a specific source of harm and form of harm suffered.....29

IV. The Eleventh Circuit erroneously applied a pre-Farmer specific risk requirement 32

CONCLUSION 34

TABLE OF APPENDICES

Page

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED JANUARY 6, 2020 . . . . . 1a

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, STATSBORO DIVISION, DATED MARCH 21, 2017 . . . . . 36a

TABLE OF CITED AUTHORITIES

Page

CASES

Bistrian v. Levi,
696 F.3d 352 (3d Cir. 2012) 25, 27, 31

Calderon-Ortiz v. Laboy-Alvarado,
300 F.3d 60 (1st Cir. 2002). 31

Curry v. Scott,
249 F.3d 493 (6th Cir. 2001). 32

Giraldo v. California Dept. of Corrections
and Rehabilitation,
168 Cal. Appx. 4th 231 (1st Dist., 2008). 25

Giroux v. Somerset Cty.,
178 F.3d 28 (1st Cir. 1999) 25, 27

Green v. Hooks, et al.,
798 Fed. App'x 411 (11th Cir. 2020) 1

Greene v. Bowles,
361 F.3d 290 (6th Cir. 2004) . . . . . *passim*

Hayes v. N.Y. City Dept. of Corr.,
84 F.3d 614 (2d Cir. 1996) 31

Howard v. Waide,
534 F.3d 1227 (10th Cir. 2008) . . . . . *passim*

Page

Jenson v. Clarke,
73 F.3d 808 (8th Cir. 1996) 26

Jones v. Clark,
No. 3:09CV00214BSM/JJV, 2010 WL 234958
(E.D. Ark. Jan. 15, 2010) 26

Kosilek v. Spencer,
774 F.3d 63 (1st Cir. 2014) 124

Marbury v. Warden,
936 F.3d 1227 (11th Cir. 2019). 24, 34

Marsh v. Arn,
937 F.2d 1056 (6th Cir. 1991). 33

Mosher v. Nelson,
589 F.3d 488 (1st Cir. 2009). 27

Price v. Sasser,
65 F.3d 342 (4th Cir. 1995) 32

Riccardo v. Rausch,
375 F.3d 521 (7th Cir. 2004), cert. denied,
544 U.S. 904 (U.S. Mar. 7, 2005) 30, 34, 35

Ruefly v. Landon,
825 F.2d 792 (4th Cir. 1987). 33

Page

Smith v. Brenoettsy,
158 F.3d 908 (5th Cir. 1998). 31

Street v. Corrections. Corp. of Am.,
102 F.3d 810 (6th Cir. 1996). 33, 34

Taylor v. Michigan Dept. of Corrections,
69 F.3d 76 (6th Cir. 1995). 25, 28

Velez v. Johnson,
395 F.3d 732 (7th Cir. 2005) 32

Webb v. Lawrence Cty.,
144 F.3d 1131 (8th Cir. 1998). 24, 25

Weiss v. Cooley,
230 F.3d 1027 (7th Cir. 2000) 25, 26, 27

Williams v. McLemore,
247 Fed. Appx. 1 (6th Cir. 2007). 5, 30

Wilson v. Wright,
998 F. Supp. 650 (E.D. Va. 1998) 33

Woods v. Lecureux,
110 F.3d 1215 (6th Cir. 1997). 30

Young v. Quinlan,
960 F.2d 351 (3d Cir. 1992) 25, 27

Page

Zollicoffer v. Livingston,
169 F. Supp. 3d 687 (S.D. Tex. 2016) 25

STATUTES AND OTHER AUTHORITIES

U.S. Const., Amend. VIII. 1

28 U.S.C. § 1254(1). 1

28 U.S.C. § 1291 6

28 U.S.C. § 1331 6

28 U.S.C. § 1332 6

28 U.S.C. § 1343 6

42 U.S.C. § 1983 8

77 Fed. Reg. 37107 (June 20, 2012) 24

Allen J. Beck Et Al., U.S. Dep't Of Justice, Bureau Of Justice Statistics, Sexual Victimization In Prisons And Jails Reported By Inmates, 2011–12 9 (2013) 2

Hannah Belitz, Note, *A Right Without a Remedy: Sexual Abuse in Prison and the Prison Litigation Reform Act*, 53 HARV. C.R.-C.L.L. REV. 291, 297 (2018) 2

Page

Valeria, Jenness, et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault.* Report to the California Department of Corrections and Rehabilitation. Sacramento, California (2007) 2

CITATIONS TO OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Eleventh Circuit, which affirmed the United States District Court for the Southern District of Georgia, is available at Green v. Hooks, et al., 798 Fed.App'x 411 (11th Cir. 2020) and is reprinted in the appendix at Appx. 1a. The Order of the United States District Court for the Southern District of Georgia was not reported in F.Supp.3d. The District Court's Order is reprinted in the appendix at Appx. 36a.

BASIS FOR JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered as an Unpublished Opinion on January 6, 2020. The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." United States Constitution, Amendment VIII.

INTRODUCTION

Refusing to consider a prisoner's transgender status, when determining whether a transgender prisoner faces a serious threat of harm in a male prison full of maximum-security prisoners, violates this Court's precedent. See Farmer, 511 U.S. 825. Nevertheless, despite every indication that the Petitioner's transgender status,

along with material facts, established a threat of being raped that was easily appreciated and understood by Respondents, the Eleventh Circuit stated that "**Green's status as a transgender inmate does not change our analysis**" while affirming the District Court's Order. Appx. 27a. Such reasoning and outcome poses a serious threat to any chance of holding prison officials accountable when dealing with a recognized vulnerable group that already suffers from stigmatization and prejudice.

Sexual abuse is an epidemic in U.S. prisons. A 2013 federal survey found that over 80,000 prisoners reported they had been sexually victimized over a two-year period,[1] a number almost five times the rate reported by prison administrators.[2] A prisoner's likelihood of becoming a victim of sexual abuse is roughly thirty times higher than that of a person on the outside.[3] And that likelihood is exponentially higher for transgender prisoners.[4]

Against this backdrop, on August 28, 2012, Petitioner Green, a transgender prisoner housed at Rogers State

1. Allen J. Beck Et Al., U.S. Dep't Of Justice, Bureau Of Justice Statistics, Sexual Victimization In Prisons And Jails Reported By Inmates, 2011–12 9 (2013), https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf.

2. Hannah Belitz, Note, *A Right Without a Remedy: Sexual Abuse in Prison and the Prison Litigation Reform Ac*t, 53 HARV. C.R.-C.L.L. REV. 291, 297 (2018).

3. *Id.*

4. Valeria, Jenness, et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*. Report to the California Department of Corrections and Rehabilitation. Sacramento, California (2007).

Prison in Georgia, met with Warden Hooks and Deputy Warden Brown to discuss a letter Green wrote to her mother. In the letter, Green told her mother that she was "in big need of help and [that] it is life or death," that she "might be seriously hurt or killed," and that she needed an "immediate transfer;" Green's mother dutifully passed the letter on to prison officials, on top of personally conveying the content of the letter to Warden Hooks. But Warden Hooks and Deputy Warden Brown took no action because Green was unwilling to reveal the name of the inmate who had been abusing her. Green's reluctance was in large part because, in prison life, as those acquainted with it well know, "ratting" or "snitching" can get you killed. Consequently, Green said she was okay, and according to the lower courts, that statement alone negated all the facts demonstrating danger to Green—despite two expert reports and a laundry list of material facts (including missing segregation memos and activity logs) that demonstrated these Respondents absolutely appreciated the risk of harm posed to Green. Green was sent back to general population, where her assailant, Ricard (who was serving a life sentence for rape and molestation), *continued* to sexually assault Green by forcing her to perform oral sex. Notably, Ricard was the recognized high-ranking vice lord gang leader and also Green's dorm leader *who met with Warden Hooks monthly in efforts to keep the dorm under control, a fact inextricably tied to Ricard's documented history of providing information to prison officials.*

The story turns even more tragic. Green and two other known and self-identifying homosexual inmates were kicked out of their dorm ("put on the door") by fellow inmates who refused to live with openly homosexual

inmates. At that point, Green sought protective custody by telling Respondent Lt. Grubbs that she was in fear for her life as a transgender inmate. But instead of placing Green in a cell with one of her friends who had been put "on the door" with her, Respondents *placed Green in a "protective custody" cell with the very rapist she was trying to escape*, *Ricard*, who then orally and anally raped Green, a rape that Respondents confirmed through testing afterwards. Worth repeating, Warden Hooks approved Green to be placed in protective custody, not with one of the two self-identifying homosexual friends she left the dorm with, but with Ricard, the very person who had been sexually assaulting Green. The lower courts treated this fact, shockingly, as mere coincidence; common sense dictates otherwise. Green's odds at winning the lottery would have been higher than being placed in a protective custody cell with her sexual assailant *out of all the prisoners in the entire prison*.

1. Snapshot of split amongst circuits

The Eleventh Circuit's opinion joins a widening split on how to prove the subjective prong of the "deliberate indifference" standard, which is an evidentiary burden that is now in flux. The courts of appeals disagree on at least two fundamental questions regarding the application of Farmer at summary judgment: (1) whether prison officials' and guards' actual knowledge of a risk can be shown by a prisoner's personal characteristics when taken into consideration alongside other material facts; and (2) whether a prisoner is required to identify the name of her assailant or the specific form of harm she fears.

The majority of circuit courts hold that under Farmer, a court may infer that an official had knowledge of a risk of harm because a prisoner's personal characteristics, in combination with material facts, made the risk of assault obvious. See e.g., Greene v. Bowles, 361 F.3d 290, 294–95 (6th Cir. 2004). Here, the Eleventh Circuit's opinion ignored this approach. See Appx. 27a, 31a. In addition to ignoring her personal characteristics, the Eleventh Circuit required Green to identify her potential assailant with specificity in order to demonstrate deliberate indifference. See id. Again, the majority of courts disagree with the Eleventh Circuit and do not require a prisoner to identify the assailant or source of harm she fears, to demonstrate deliberate indifference. See e.g., Howard v. Waide, 534 F.3d 1227, 1237 (10th Cir. 2008). As the Sixth Circuit has said, "nothing in Farmer suggests that [the prisoner's] claim must fail because he cannot identify the person who stabbed him." Williams v. McLemore, 247 Fed. Appx. 1 (6th Cir. 2007).

This Court's opinion in Farmer contained a solution: "[A] factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk *was obvious*." Farmer, 511 U.S. at 842. By refusing to consider circumstantial evidence showing a risk is obvious, like Petitioner's transgender status, and by requiring a prisoner to state the specific source of harm she fears, the below opinion impermissibly raised an Eighth Amendment plaintiff's evidentiary burden. In the *twenty-five years* since Farmer, the Supreme Court has not returned to consider the Eighth Amendment's subjective intent requirement. On behalf of all prisoners in the United States, and especially LGBTQ minorities, Green respectfully asks for review of the Eleventh Circuit's opinion.

STATEMENT OF THE CASE

I. Basis for jurisdiction in the court of first instance

The jurisdiction of the district court was invoked under 28 U.S.C. §§ 1331, 1332, and 1343. The jurisdiction of the court of appeals was invoked under 28 U.S.C. § 1291. At all times relevant, Petitioner Green was a citizen of the United States residing in the state of Georgia.

II. The event at issue

On July 19, 2012, Darius Green, a transgender woman (born biologically male), was transferred to Rogers State Prison ("Rogers") from the Georgia Diagnostic and Classification Prison ("GDCP"), where she was classified for placement inside the Georgia Prison System. While at GDCP, Green was held in Administrative Segregation because of her transgender status, feminine appearance (Green began taking hormone therapy six years prior to her incarceration at Rogers) and pronounced breasts. (DE 163-2, pp. 9-10); (DE 144, pp. 23-36.)

Upon her arrival at Rogers on July 19, 2012, Green was again placed in Administrative Segregation and was issued a bra. Id. The Assignment Memo, detailing *why* she was placed in Administrative Segregation at Rogers, is missing. Four days later, when Green entered general population, she was approached by Darryl Ricard, a formerly high-ranking gang member and the representative of Green's new dorm. Id. at pp. 54-55. Ricard was serving a life sentence for aggravated child molestation, aggravated assault, rape, and kidnapping. Initially, Ricard offered Green protection. Id. at pp. 57-

71. About two weeks later, Ricard assaulted Green and demanded that Green perform oral sex on him whenever he desired thereafter. Id. Ricard threatened that he would have Green killed if she reported him or tried to leave. (DE 132-1, pp.11-12.)

On August 24, 2012, Green wrote a letter to her mother, which read:

> Mother, how are you? I am writing you now on an emergency basis I am in big need of help and it is life or death at this current time my life – is in great danger, listen I need for you to get me the address to the Dept of Correction, the address to the Commissoner the directors of the GA Department of Corrections something somebody I can write to get me an immediate transfer. I have to get transferred from this camp mother ASAP I don't want to go to the hole or P.C. unless it is absolutely necessary I have control of the situation for now but once I don't I might be seriously hurt or killed I am very scared but I am playing my part This is VERY Important I need those addresses ASAP I will explain the situation later Love you poohbear

(DE 162-21.) When Green's mother received the letter, she sent it to Warden Hooks, who, in response, brought Green in for a meeting on August 28, 2012. Green, Hooks, and Deputy Warden Brown were in attendance. Green stated that she was "okay," to which Hooks replied, "Well, I don't believe you…" (DE 144, pp. 84-85, 91-95.) Hooks never asked Green if she had any problems, if she was in danger,

or if she wanted to be placed in protective custody. (DE 144, pp. 82-89.) Both Hooks and Brown had the authority to place Green in protective custody at that time based on their own observations and perceptions of Green and Green's vulnerability as a transgender inmate; neither chose to do so. Hooks then sent Green back to general population because Green did not name the person who posed a threat to Green. (DE 142, pp. 85-88, 90-96.) Hooks gave Green a piece of paper to take back with her because Hooks knew the risks to Green for the appearance of being a snitch by way of visiting Hooks' office. (DE 143, p. 50-51, 85.)

Thereafter, on September 21, 2012, Green sought protective custody with two other inmates, both of whom are also homosexual. Green told Lt. Grubbs that she feared for her life as a transgender inmate. When Green was escorted to her protective custody cell, Ricard was waiting for her. Green told Ricard that she did not want to be around him. In response, Ricard forcibly raped Green, orally and anally. After being raped, Green secretly wrote a letter that read, "I'm being forced to have sex." Ricard found out about the letter and subsequently chased Green around the cell with a razor blade. (DE 132-1, pp. 31-37.) The Sexual Assault Response Team investigated, and ultimately substantiated Green's allegations of rape.

III. First instance proceedings and the District Court's Order

This is an action alleging federal claims pursuant to 42 U.S.C. § 1983. (DE 1.) Green's complaint asserted that all Respondents violated the Eighth and Fourteenth Amendments because they were deliberately indifferent

to a known risk that Green would be sexually assaulted, and asserting a supervisory-liability claim against all Respondents for violating the Eighth Amendment by failing to protect Green from sexual assault. (DE 1.) At the time of summary judgment, Hooks, Brown, and Grubbs were the remaining Defendants.

After briefing through summary judgment, the District Court granted Defendants' Motion for Summary Judgment in its entirety and closed this case. (DE 217, 218.) In doing so, the District Court concluded that Green did not present enough evidence to create a triable issue as to whether Hooks, Brown, or Grubbs had subjective knowledge of a risk of serious harm and were deliberately indifferent to the risk of serious harm, including rape, to Green. Id. Since Green failed, according to the District Court, to establish deliberate indifference amounting to a constitutional violation, the District Court granted Respondents summary judgment motion. Id. On the same grounds, per the District Court, Green's supervisory-liability claims failed. The Eleventh Circuit Court of Appeals affirmed. (Appx. 34a).

IV. Facts relevant to the questions presented for review

The following subsections will juxtapose the District Court's and the Eleventh Circuit's reasoning with the material facts that are relevant to the questions presented for review. The evidence presented within was on record at the time that the below courts reasoned that there was no genuine issue of material fact as to whether the Respondents had subjective knowledge of Green being in danger throughout her incarceration at Rogers State Prison.

A. The August 28, 2012 meeting between Petitioner Green, Warden Hooks, and Deputy Warden Brown

The District Court disagreed with Green's allegation that the Respondents had subjective knowledge of a risk of serious harm resulting from their receipt and consideration of Green's letter to her mother, stating:

> "*Given the lengths to which Warden Hooks went to investigate Plaintiff's complaint and Plaintiff's steadfast refusal to tell the truth*, no reasonable jury could find that he subjectively knew she was in danger. Although Hooks and Brown could have chosen to disbelieve Plaintiff in spite of her confidential assurances to the contrary, the Constitution does not require them to do so. I*t is illogical to conclude that Plaintiff could successfully claim prison officials not only should have known, but did in fact know, that she was in danger, despite her personal assurances that she was not.*" Appx. 60a (emphasis added).

Similarly, the Eleventh Circuit Court of Appeals found that:

> "Green's strenuous denials about being in danger *effectively erased* any "subjective knowledge" that the prison officials might otherwise have had from the initial letter and the phone call from Green's mother to Warden Hooks…Having already determined that Green's denials to Warden Hooks and Deputy

> Warden Brown rebutted the danger alleged in the letter, *Green's status as a transgender inmate does not change our analysis.*" Appx. 26a (emphasis added).

And:

> "The record indicates that Green was given a piece of paper to prevent suspicion by other inmates that she was a "snitch." This action shows that Warden Hooks *was subjectively aware of a different potential harm – the risk of physical harm to Green based on other inmates' belief that she was a snitch – not that Warden Hooks was aware of the risk of sexual violence that Ricard posed to Green.*" Appx. 28a (emphasis added).

1. Respondents' knowledge on August 28, 2012 regarding Green's risk of sexual assault

(1) When, in the August 28, 2012 meeting, Green reported that she "was okay", Hooks replied, "Well, **I don't believe you**. Your mother's calling saying this and that." (DE 142-13, p. 84)

(2) At this meeting, Hooks never asked Green if she had any problems, if she was in danger, or if she wanted to be placed in protective custody. (DE 142-13, pp. 82-89)

(3) Hooks testified that *he sent Green back to general population because Green did not name the*

person who posed a threat to Green and that "we can't protect you from somebody if we don't know who it is." (DE 142, p. 54-55.)

(4) Fear of retaliation is one of the greatest deterrents to inmates reporting sexual assault and to inmates naming a specific assailant. (Gunja Report, "[t]hat's what the inmates have to say or he's going to be labeled a snitch…You can't just take an inmate at his word for something like that. You've got to go above and beyond and take the matter into your own hands. You don't rely on what an inmate tells you."); (DE 147, p. 63, 67)

(5) Inmates are not required to name the person they fear in order to be placed in protective custody. (DE 150, pp. 38-40.)

(6) Hooks testified that he knew that inmates who report other inmates face great danger and risk repercussions for reporting, including physical and sexual assault. (DE 142, pp. 94-95.)

(7) Hooks testified that he knew inmates lied and refused to report wrongdoing or their fear of a person. (DE 142, 94-05.)

(8) On the night of September 21, 2012, when requesting protective custody, Green told Grubbs that she feared for her life as a transgender inmate and this was recorded on her Administrative Segregation Assignment Memo. (DE 144, p. 104)

B. Respondents' knowledge of Green's status as a transgender inmate and of risks to her safety

(1) At GDCP, Green was immediately placed in protective custody and housed in an "honor dorm" with other transgender inmates *because she was transgender.*

(2) Green was similarly placed in Administrative Segregation upon her arrival to Rogers. The Assignment Memorandum from her intake on July 19, 2012, the *only* document that would state the reason for her placement in Administrative Segregation upon arrival at Rogers on July 17, 2012, is *missing.*

(3) Hooks and Brown knew that Green was transgender at the August 28, 2012 meeting.

(4) Green told Hooks she had formerly been in protective custody at GDCP prior to arriving at Rogers *because she was transgender.* (DE 144, p. 19.)

(5) Brown testified that: "Green's characteristics were evident to me the first time I saw him at the institution…" (DE 141, p. 71.)

(6) Green's profile includes characteristics that render her differentially vulnerable to sexual assault in carceral environments. Institutional records indicated that Green was diagnosed with "gender identity disorder" and that she might have "possible gender issues with housing." (DE 163-2, p. 9.)

(7) Upon her transfer to Rogers, Green was stripped naked and searched in front of other incoming inmates and several guards, exposing her breasts and feminine appearance. (DE 144, p. 29.)

(8) At Rogers, Green was immediately placed in Administrative Segregation and was issued a bra. (DE 144, p. 29.)

(9) In 2012, it was common knowledge and described in GDC SOPs that transgender inmates and transgender women locked up in male detention facilities are at a higher and serious risk of harm and sexual assault. (DE 163-2, p. 9.)

(10) GDC training emphasized to Hooks and Brown that transgender persons in the prison system faced high risks, including risks of sexual assault. (DE 162, pp. 18, 20); (DE 162-2, p. 9.)

C. Green's September 21, 2012 placement in Administrative Segregation (protective custody) with Ricard

In relation to the placement of Green and Ricard in the same Administrative Segregation cell on September 21 2012, the District Court found that "*[Green] fails to put forth any evidence that any Defendant knew that pairing the two prisoners together would have placed Plaintiff at a substantial risk of serious harm.*" Appx. 62a (emphasis added). In a similar vein, the Eleventh Circuit Court of Appeals found that:

> "Even assuming, *arguendo,* that Lieutenant Grubbs made the cell assignments and/or agreed to place Ricard in the same cell with Green, such action does not establish that Lieutenant Grubbs acted with deliberate indifference to Green's safety because there is no evidence that Lieutenant Grubbs was aware of any threat posed *by Ricard to Green.*" Appx. 31a (emphasis added).

The following evidence was on record at the time of the District Court and Eleventh Circuit's findings:

1. Administrative Segregation policies at Rogers

(1) When an inmate requests protective custody, *regardless of whether the inmate names a specific threat*, an officer in charge has the authority and *it is their job to immediately place the inmate in a single-occupancy room "for [the inmate's] personal protection, and for his safety so nobody can touch him while he's locked up in that cell.*" (DE 150, pp. 38-40.)

(2) GDC's Standard Operations Procedures for Administrative Segregation state, as the only underlined passage in the Voluntary Assignment section: "Double bunking of offenders in protective custody status shall occur only in emergency situations and only with the recommendation of the facility Classification Committee. This recommendation shall be approved by the facility warden." (emphasis in original). No

"emergency situation" is noted in the Assignment to Segregation Memo or the Segregation Hearing Memo.

(3) "PROTECTIVE CUSTODY" was written on Green's Move Sheet on September 21, 2012 and Brown testified that was the reason Green was moved from general population on September 21, "because the inmate was placed in protective custody at this time." (DE 141, 29, 80-81.)

(4) Hooks testified that inmates in protective custody are placed **in single-man** cells. (DE 142, pp. 72-73).

(5) Hooks testified that there is a special document that must be filled out by inmates before they are permitted to be housed in the same protective custody cell. (DE 142, Hooks Dep., pp. 72-73). Green was not presented with the form that must be filled out by inmates before they are permitted to be housed in the same protective custody cell.

2. Respondents' knowledge of Green's assailant, Darryl Ricard, on September 21, 2012.

The District Court then reasoned that "[s]ure, Ricard had a criminal history of rape, but [Green] produced *no evidence that any Defendant knew Ricard's criminal history* at the time [Green] was placed in his cell [on September 21, 2012]. Neither is it a reasonable inference that they had such knowledge." Appx. 62a (emphasis added). At the time the District Court made such a statement, the following evidence was on record:

(1) Officers in Charge are required to check inmates' SCRIBE pages, which note inmates' criminal history, before housing inmates in the same cell in Administrative Segregation.

(2) The SCRIBE system showed that Ricard was a sex offender, had convictions for rape and aggravated molestation, came into GDC as a close security inmate, and had a life sentence.

(3) Ricard was well-known by prison staff and administrators. (DE 157, p. 38); (DE 157-5, ¶ 19); (DE 145, p. 59); (DE 163-3, 00:19:14 to 00:19:28)

(4) Reid testified that Grubbs knew of Ricard's violent background and that Grubbs was Ricard's "partner," that they "talked all the time" and were "always laughing and stuff of that nature" (DE 143, pp 43-45, 47); (DE 157-4); (DE 157-5, ¶¶ 21-22, 24.)

(5) Grubbs knew Ricard made Green sleep in his bed after lockdown hours when no inmates should have been allowed to roam around the A1 dorm. (DE 163-3, Ricard GBI Interview Audio Recording, 00:17:33 to 00: 18:00.)

(6) Hooks testified that he reviewed gang affiliations monthly and knew Ricard had been a gang member. (DE 142, p. 65.)

(7) Hooks testified that he knew Ricard was in prison for sexual assault and rape because he looked at Ricard's institutional file. (DE 142, p. 65-66.)

(8) Ricard was a *dorm leader* and met with Hooks every month in his role as dorm representative.

3. Evidence of Respondents' authorization of Green's placement with Ricard on September 21, 2012

(1) The Assignment Memos for both Green and Ricard show that both Hooks and Grubbs knew and authorized the assignment of Green and Ricard to the same cell on September 21, 2012. (DE 141, pp. 74-75); (DE 142, pp. 50-51); (DE 142, pp. 59-61.); (DE 142-12); (DE 142-16); (DE 162, pp. 3, 21.)

(2) Hooks and Grubbs testified that Grubbs was the individual who ultimately made the determination where to put Green on September 20, 2012. (DE 142, Hooks Depo, p. 61); (DE 143, Grubbs Depo. p. 51); (DE 143-3)

(3) Ricard told Green that he got Grubbs to get Green into his cell on September 21, 2012. (DE 144, pp. 113-188.)

(4) Douthitt testified that Ricard requested Protective Custody so that Ricard could be with Green. (DE 151, pp. 33.)

(5) Inmates who were housed with Ricard in A1 believed Ricard was a "snitch" and Ricard had a documented history of cooperating with prison officials to provide them with information. (DE 162-23); (DE 163-26); (DE 151, pp. 64-66); (DE 156, p. 30); (DE 145, pp. 38-43, 60-72.)

(6) **Reid testified** that after Green requested protective custody on September 20, 2012, Ricard told Grubbs that he would tell Grubbs where drugs, shanks, and cell phones were located, in exchange for Grubbs arranging for Ricard to be placed in the same Administrative Segregation cell as Green. (DE 157, pp. 30-33.); (DE 162, pp. 7, 21-23.)

(7) Reid testified that shortly after Ricard told Grubbs where the contraband was located, Grubbs and other guards initiated a shakedown and confiscated multiple items. (DE 157, pp. 30-33.)

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit's opinion heightens the deliberate indifference standard by ignoring circumstantial evidence that, when combined with other material facts, shows that a risk is obvious

The Eleventh Circuit's interpretation and application of Farmer differs crucially from the interpretation of this Court and other courts of appeals. Here, the Eleventh Circuit refused to consider Green's personal characteristic of being transgender, a characteristic that, when combined with other material facts, demonstrated an obvious risk. Instead, the Eleventh Circuit concluded that "Green's status as a transgender inmate does not change our analysis." Appx. 27a.

In Farmer, this Court remarked that a prison guard's state of mind is "subject to demonstration in the usual

ways, including inference from circumstantial evidence" and may be inferred "from the very fact that the risk was obvious." Id. at 842. The Court noted that the risk of sexual assault to the prisoner was obvious because he was a non-violent, transgender prisoner who "because of [his] youth and feminine appearance [was] likely to experience a great deal of sexual pressure in prison." Id. at 848–49. By making such a statement, this Court sent the message to the Eleventh Circuit and every court in this country that a prisoner's transgender status *must* be considered when considering a potential risk of harm posed to that prisoner. Notably, upon her arrival to Rogers, Green had pronounced breasts, arched eyebrows, and an undeniably feminine appearance.

Moreover, this Court established in Farmer that proving subjective awareness by pointing to evidence that a risk is obvious does not require a prisoner to reveal the exact identity of the potential assailant. See id. at 830. Indeed, in Farmer, the prisoner "voiced no objection to any prison official about the transfer to the penitentiary or to placement in its general population" and still, this Court found that the plaintiff's personal characteristics, combined with the prison environment (general housing in a high-security prison with a history of violence) was sufficient evidence to preclude granting summary judgment as a matter of law. Id. Farmer made clear that a prisoner's personal characteristics, such as one's slight stature or sexual identity, may make her particularly vulnerable to assault. See e.g., Farmer, 511 U.S. at 848; Greene, 361 F.3d at 294–95.

Here, when Green's transgender status is given even some weight, and considered in combination with other evidence such as Green's letter, her mother's conversation

with the Warden, and Warden Hooks actually segregating Green because of her transgender status upon her arrival to Rogers State Prison, there is no doubt, on those facts alone, that there exists a triable issue as to whether the Respondents appreciated the harm posed to Green, yet failed to take reasonable steps to abate that harm.

The lower courts, however, placed zero weight on Green's status as a transgender prisoner, meaning that she belongs to a vulnerable group, evidenced by, inter alia, the Eleventh Circuit's statement that "Green's status as a transgender inmate does not change our analysis." See Appx. 27a, 31a (omitting Green's transgender status from analysis). The lower courts categorically did not believe that circumstantial evidence of Green's personal characteristics should play a role in the analysis of whether she faced a serious risk of harm, misapplying Farmer by ignoring a long line of cases which have interpreted Farmer as permitting courts to infer a risk is obvious based, in part, on a prisoner's personal characteristics. See e.g., Farmer, 511 U.S. at 842; 848–49; Greene, 361 F.3d at 294–95. In fact, in unbelievable fashion, and contrary to how evidence should be assed under the prevailing standard of review, the Eleventh Circuit acknowledged that Hooks and Brown had "subjective knowledge" of harm, but then reasoned that their subjective knowledge was magically erased. Appx. 26a.

Amongst other material facts outlined in this Petition, Green's mother told Warden Hooks about Green's letter (and sent a copy of the letter to him), which conveyed that Green's situation was "life or death" and "VERY Important." Indeed, Green's mother begged Hooks to take precautionary measures to protect her child. That knowledge, indicating a risk of harm, was built upon Hook

and Brown's previous knowledge, such as knowledge of Green's breasts and feminine appearance, which led them to take precautionary actions and segregate Green upon her entry into Rogers S.P. immediately after her initial strip search. Notably, Green was issued a bra. But somehow, despite those facts and more, the lower courts negated a jury trial as to whether Respondents appreciated a serious risk of harm posed to Green because Green refused to identify her assailant and said that she was "okay." In doing so, the lower courts refused to credit, much less even discuss, Green's *expert reports*, which demonstrated that standard within prison culture is that prisoners will not name a person who poses a threat to their life due to fear of being labeled a snitch, a reality that will get prisoners killed. The truth behind Green's expert opinions was buttressed by Respondent Hooks, himself, when he gave Green a letter to take back to the dorm after their meeting on August 28, 2012, for the very purpose of protecting Green from being labeled a snitch. The Eleventh Circuit side-stepped that issue, though, by simply saying that Hooks recognized a different harm from the one posed by a risk of sexual assault at the hands of Ricard. Respectfully, that type of verbal judo that allowed the Eleventh Circuit to conclude that there was no known risk of harm chops away at this Court's precedent, at the expense of not only of Green's physical and emotional integrity, but the physical and emotional integrity of thousands upon thousands of transgenders and homosexual prisoners throughout this country.

Similarly, on the night of September 20, 2012, evidence on the record showed that Lt. Grubbs was aware that Green, a transgender prisoner, was "put on the door," meaning she was forced to leave general population housing because other prisoners no longer wanted to live

with openly homosexual prisoners. Appx. 13a. The record showed Green requested protective custody and told Lt. Grubbs that she feared for her life as a transgender inmate. Appx. 12a, 31a. Ignoring established policy that prisoners in protective custody are single-celled, Lt. Grubbs "*coincidentally*" placed Green in the same cell with Ricard, instead of in a cell with her friends, if she had to be placed with another prisoner at all. See Appx. 12a. This coincidence is all the more unbelievable when the facts on the record are properly considered, including the *testimony of at least three witnesses* that Ricard arranged to be placed in the same protective custody cell as Green, by revealing to Lt. Grubbs the location of contraband. See Appx. 12a. Correctly assessed, this circumstantial evidence approaches almost the entire record in Farmer. See Farmer, 511 U.S. at 848. While Farmer did not hold that a plaintiff could survive summary judgment on this showing alone, when other inferences are properly drawn in Green's favor, these facts raise a question that should have been reserved for a jury.

In sum, the lower courts erroneously gave determinative weight to Green's claim to be "okay," to the exclusion of circumstantial evidence that would allow inferences to be drawn in Green's favor regarding the Respondents' state of mind: that Hooks and Brown knew that Green was transgender, and that it was common knowledge that transgender prisoners in Georgia state prisons suffer from high rates of sexual assault. See Appx. 27a ("Green's status as a transgender inmate does not change our analysis.")[5]

5. The lower courts relied on the results of Green's and Ricard's Prison Rape Elimination Act ("PREA") intake screening to find Warden Hooks and Deputy Warden Brown had no reason

Unfortunately, the Eleventh Circuit's opinion is not an aberration but rather a reflection of an established divide where the Eleventh Circuit and other courts of appeals have continued to misapply Farmer at summary judgement. See Webb v. Lawrence Cty., 144 F.3d 1131, 1135 (8th Cir. 1998). Relevantly, a divide on this issue is brewing even within the Eleventh Circuit, as demonstrated by Honorable Judge Rosenbaum's dissent from another case where the Eleventh Circuit misapplied Farmer at summary judgment. Marbury v. Warden, 936 F.3d 1227, 1239 (11th Cir. 2019) (Rosenbaum, J., dissenting). Her dissent is apt here: "[T]he Majority Opinion does not account for important facts in its analysis" and "the Majority Opinion evaluates the evidentiary components of [the prisoner's Eighth Amendment] claim separately, rather than considering them as a whole." Id.

II. The majority of circuit courts recognize that evidence of a prisoner's personal characteristics in combination with other material facts, may support an inference of subjective awareness

At the outset, many federal courts have recognized the vulnerability of gay or transgender inmates to abuse. See Kosilek v. Spencer, 774 F.3d 63, 93 (1st Cir. 2014) ("Recognizing that reasonable concerns would arise

---

to suspect that Green was in danger of being sexually assaulted. The Department of Justice has clearly stated that PREA and the Eighth Amendment are not coextensive: "[T]he standards are not intended to define the contours of constitutionally required conditions of confinement. Accordingly, compliance with the standards does not establish a safe harbor with regard to otherwise constitutionally deficient conditions involving inmate sexual abuse." 77 Fed. Reg. 37107 (June 20, 2012).

regarding a post-operative, male-to-female transsexual being housed with male prisoners takes no great stretch of the imagination."); Zollicoffer v. Livingston, 169 F. Supp. 3d 687, 696 (S.D. Tex. 2016) ("Nor is it any secret that gay and transgender prisoners are vulnerable to abuse in prison."); see also Giraldo v. California Dept. of Corrections and Rehabilitation, 168 Cal.Appx.4th 231 (1st Dist., 2008).

That established, the Eleventh and Eighth Circuits are at odds with the First, Third, Sixth, Seventh, and Tenth Circuits, all of whom have acknowledged that prisoners may be identified as at–risk or may possess characteristics that they are at a particularly obvious risk for assault and that prison officials may be found liable based on their knowledge of those risks, in combination with other material facts. Compare Appx. 26a, 31a; Webb v. Lawrence Cty., 144 F.3d 1131, 1135 (8th Cir. 1998); with Giroux v. Somerset Cty., 178 F.3d 28, 33 (1st Cir. 1999), Bistrian v. Levi, 696 F.3d 352, 370 (3d Cir. 2012); Young v. Quinlan, 960 F.2d 351, 362 (3d Cir. 1992); Taylor v. Michigan Dept. of Corrections, 69 F.3d 76, 84 (6th Cir. 1995); Greene, 361 F.3d at 294–95; Weiss v. Cooley, 230 F.3d 1027, 1032 (7th Cir. 2000); Howard, 534 F.3d at 1238. As such, the Eleventh Circuit's opinion would not have occurred in the majority of circuit courts.

The Eighth Circuit has misapplied Farmer by claiming that Farmer stands for a proposition for which it simply does not stand. See Webb, 144 F.3d at 1135. In Webb, the plaintiff was repeatedly sexually assaulted by a cell mate. Webb, 144 F.3d at 1135. The Eighth Circuit stated that "[e]ven assuming for purposes of analysis that the risk of sexual assault faced by young, physically slight

inmates like Webb was obvious, and thus sufficient to put defendants on notice of its existence, Farmer v. Brennan specifically rejects the idea that liability may be found when a risk is so obvious that it should have been known." Id. (internal punctuation omitted) (quoting Jenson v. Clarke, 73 F.3d 808, 811 (8th Cir. 1996)) (citing Farmer, 511 U.S. at 836). Federal district courts in the Eighth Circuit have continued to apply this erroneous interpretation of Farmer. See Jones v. Clark, No. 3:09CV00214BSM/JJV, 2010 WL 234958, at *4 (E.D. Ark. Jan. 15, 2010). To the complete contrary, Farmer directly states that "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk *was obvious*." Farmer, 511 U.S. at 842. The Eighth Circuit is wrong.

At the polar opposite end of the spectrum from the Eighth and Eleventh Circuits, the Seventh Circuit has observed that subjective awareness of a risk may be obvious based on a guard's "knowledge of the victim's characteristics, not the assailants." Weiss, 230 F.3d at 1032. The Tenth Circuit has similarly stated that a court must *begin* its analysis by weighing circumstantial evidence that would inform prison officials of "obvious risks" to the plaintiff and then consider evidence of what the plaintiff told prison officials. Howard, 534 F.3d at 1238. Here, the Eleventh Circuit strayed from the method utilized by the majority of circuit courts greatly, refusing to take Green's status as transgender into consideration at all. The First Circuit provides a case worth briefly discussing, as it demonstrates that, in some instances, circumstantial evidence alone may be sufficient to show subjective awareness of a risk, without any evidence of the identity of the particular assailant. Giroux, 178 F.3d at 33.

In Giroux, a prisoner had been designated "cell feed," and a prison official acknowledged that of two possible explanations for cell feed status, one was that the prisoner was in protective custody for his own safety because he was at risk of being harmed by another inmate. 178 F.3d at 33. The First Circuit found there was a high probability that the designation was intended to call attention to the prisoner's at-risk status. Id. Because a prison guard was aware of the designation, a court found that this particular factor should have been taken into consideration, thereby justifying the denial of summary judgment that the prison guard had subjective awareness of the risk to the inmate. See id.; cf. Mosher v. Nelson, 589 F.3d 488, 494-95 (1st Cir. 2009) (agreeing with reasoning in Giroux but distinguishing facts where prisoner lacked characteristics that made him particularly vulnerable to attack).

Similarly, the Third and Seventh Circuits have found that considering factors such as being designated as an informant or a rapist in jails, along with other material facts, should be undertaken by courts when determining whether guards were put on notice of an obvious risk. Bistrian, 696 F.3d at 370 (finding in the Third Circuit that a plaintiff alleged adequate facts after prison officials were aware that that it was leaked to a violent criminal gang that he was an informant); Young, 960 F.2d at 362 (holding by the Third Circuit that a prisoner's young age and slight appearance put him at a higher risk of sexual assault); Weiss, 230 F.3d at 1032 (finding by the Seventh Circuit that a guard had knowledge of a risk when the plaintiff was an alleged rapist who was placed in general population).

The Sixth and Tenth Circuits have found that prisoners who are small and young are at an obvious risk for sexual assault. See Taylor, 69 F.3d at 84; Howard, 534 F.3d at 1238 (holding that a prisoner who alleged he was "openly gay," and "slight of build" and in a prison that included a violent prison gang provided circumstantial evidence "that approaches the entire record in Farmer.") In Taylor, a prisoner was raped after he was transferred from a single cell in a minimum-security prison to dormitory style housing. Taylor, 69 F.3d at 78. At five feet tall and 120 pounds, the prisoner was mildly mentally impaired, had youthful features, and suffered from a seizure disorder. Id. at 77-78. In addition, the Sixth Circuit quoted from a report that there was a problem of widespread sexual assaults. Id. at 84. Based on this circumstantial evidence, the court overturned the district court's grant of summary judgment and found the plaintiff stated a jury question. Id.

Finally, like in Farmer, the Sixth Circuit has found that *transgender prisoners* are at an obvious risk for sexual assault and has found prison guards liable because of their knowledge of those risks. Greene, 361 F.3d at 294–95. In Greene, the warden was aware of the plaintiff's greater vulnerability to physical or sexual assault because she was a transgender prisoner with a feminine appearance, and the warden authorized placing the plaintiff in protective custody for her own protection. Id. at 294-95. This evidence, combined with evidence of her assailant, who was placed in protective custody with her and who had a lengthy prison misconduct record and a reputation as a violent inmate, was sufficient to raise a dispute of material fact and overturn the district court's grant of summary judgment. Id. The facts of this Sixth Circuit case align with the facts of Petitioner's, though the result reached by the Eleventh Circuit differed greatly.

In sum, as the Tenth Circuit's opinion in Howard makes clear, only by giving proper weight to "background" circumstantial evidence, such as a prisoner's personal characteristics, will a district court properly assess a guard's subjective knowledge. Howard, 534 F.3d at 1238. By both refusing and failing to weigh specific evidence in light of a prisoner's acknowledged characteristic that renders that prisoner vulnerable to a serious threat of harm, lower courts misapply apply Farmer, by, inter alia, setting an impossibly high evidentiary burden on prisoners, especially those who are member of vulnerable groups, such as transgender prisoners.

III. The majority of circuits reject requiring a plaintiff allege a specific source of harm and form of harm suffered

Confusion further reigns amongst the circuits with respect to how specific a prisoner must be when identifying a particularized threat or danger, including whether a plaintiff is required (as the Eleventh Circuit held here) to identify her assailant and to allege the specific form of harm suffered.

Here, the Eleventh Circuit erroneously reasoned that Green failed to provide Warden Hooks and Deputy Warden Brown with sufficient "specific information" of her assailant because she did not provide them with a specific name. Appx. 28a. Then, in a complete spin off from the specific-risk requirement, the Eleventh Circuit also held that a prisoner must complain of the specific form of harm suffered, whether sexual or physical assault. Appx. 28a. While Warden Hooks and Deputy Warden Brown gave Green a piece of paper upon leaving the August

28th meeting, the court found this action showed that the prison officials Warden Hooks were subjectively aware of a "different potential harm—the risk of physical harm" but not "the risk of sexual violence." Id. In addition, the court found that "there [was] no evidence that Lieutenant Grubbs was aware of any threat *posed by Ricard to Green,*" and again reasoned that Green failed to provide Lt. Grubbs with sufficient "specific information" of her assailant, though Green told Lt. Grubbs that she feared for her life as a transgender prisoner. Appx. 31a.

The Seventh Circuit has also held that a prisoner must complain of the specific harm suffered, whether sexual or physical assault. See Riccardo v. Rausch, 375 F.3d 521, 526–27 (7th Cir. 2004). In Riccardo, a prisoner complained he was in fear for his life if celled with a Latin King gang member, but the Seventh Circuit discounted the risk and found a prison guard did not have subjective awareness *because the risk that the prisoner professed fear for his life did not come to pass; the prisoner was raped instead of killed.* See id. At odds with the Eleventh and Seventh Circuits on this issue are the First, Second, Third, Sixth, Seventh, and Tenth Circuits, which have refused to require prisoners to identify a specific source (or form) of harm in order to prevail at summary judgment.

For example, rejecting that a prisoner must identify a specific source of harm, the Sixth Circuit has said: "[N]othing in Farmer suggests that [the prisoner's] claim must fail because he cannot identify the person who stabbed him." Williams v. McLemore, 247 Fed.Appx. 1, 13 (6th Cir. 2007); see also Woods v. Lecureux, 110 F.3d 1215 (6th Cir. 1997) (finding warnings from prisoner himself are not required to establish deliberate indifference

when other evidence discloses substantial risk of serious harm); Greene, 361 F.3d 290. In Howard, the Tenth Circuit expressed the same point: "Regardless of how prison officials become subjectively aware of a substantial risk of serious harm to an inmate—and indeed, even in situations where the prisoner himself remains oblivious to the potential harm—the Eighth Amendment requires them to respond reasonably." Howard, 534 F.3d at 1237; see also Hayes v. N.Y. City Dept. of Corr., 84 F.3d 614, 621 (2d Cir. 1996) (holding that though a prisoner's identification of his enemies is relevant, it is not outcome determinative to permit a finding of deliberate indifference); Bistrian, 696 F.3d at 370 (finding officials were aware of risk of danger when a violent gang knew of informant's cooperation, despite officials not knowing which specific gang member posed a danger).

Rejecting that a prisoner must complain of the specific *form* of harm suffered (as opposed to *source* of harm suffered), the First Circuit stated that "knowledge may be averred generally" and did not require a prisoner to complain of the specific form of assault he suffered. Calderon-Ortiz v. Laboy-Alvarado, 300 F.3d 60, 64 (1st Cir. 2002). The prisoner's allegation that custodial staff failed to provide oversight sufficed even though the prisoner suffered a sexual assault. Id. Likewise, in Smith v. Brenoettsy, 158 F.3d 908, 912 (5th Cir. 1998), the Fifth Circuit opined: "While a prisoner normally must complain about a specific threat to a supervisory official in order to give actual notice to that official, we have never held that a supervisory official be warned of the precise act that the subordinate official subsequently commits." The Sixth Circuit concluded in another inmate on inmate assault case that "actual knowledge does not require that

a prison official know … that a particular prisoner would be harmed in a certain way." Curry v. Scott, 249 F.3d 493, 507 (6th Cir. 2001).

As many circuits have noted, a specific-risk requirement is inconsistent with this Court's precedent under Farmer when, as here, there was other circumstantial evidence, such as Green's letter to her mother and her transgender status, inter alia, sufficient to put Warden Hooks and Deputy Warden Brown on notice, even if they did not know the specific form (or source) of potential harm. See e.g., Velez v. Johnson, 395 F.3d 732, 736 (7th Cir. 2005) (noting that whether a prisoner's complaint to a guard is vague as to the details of a threat of harm is inconsequential if the complaint can also be substantiated by circumstantial evidence).

In sum, the majority of circuits reject placing a heightened evidentiary burden on prisoners to identify the specific source of harm for a prison official to be on notice; the Eleventh Circuit's steadfast specific-risk requirement to the exclusion of other evidence was erroneous.

IV. The Eleventh Circuit erroneously applied a pre-Farmer specific risk requirement

A further problem and danger of the Eleventh Circuit opinion is that it consciously adopted overturned precedent. Despite Farmer's adoption of an actual knowledge requirement, Farmer rejected an even stricter standard that prison guards have a "specific known risk of harm," which was the pre-Farmer standard in the Fourth and Sixth Circuits. Price v. Sasser, 65 F.3d 342, 346 (4th Cir. 1995) (discussing pre-Farmer caselaw in the Fourth

Circuit); Marsh v. Arn, 937 F.2d 1056, 1061–62 (6th Cir. 1991). In Ruefly v. Landon, 825 F.2d 792 (4th Cir. 1987), the Fourth Circuit held that deliberate indifference required showing that prison officials knew of a "specific risk of harm" to a specific prisoner. The plaintiff brought suit after he was assaulted by his cell mate, Lowe, an inmate who prison officials knew to be dangerous and violent. Id. at 794. Lowe had previously fought twice with other inmates, made remarks that he would kill one inmate, assaulted his wife during a prison visit, and was sent to a psychiatric facility for his unstable behavior. Id. But under the specific-risk requirement, the officials were not liable for assigning Lowe to share a cell with the plaintiff when Lowe had not made threats specifically against the plaintiff. Id.

Farmer eased the Fourth and Sixth Circuits' specific-risk requirement by holding that prison officials could not escape liability merely by showing that they did not know that a specific inmate posed a risk to the specific plaintiff. See Wilson v. Wright, 998 F. Supp. 650, 657 (E.D. Va. 1998); Street v. Corrections. Corp. of Am., 102 F.3d 810, 815 (6th Cir. 1996) ("To the extent that Marsh required a showing of "specific risk," it is inconsistent with Farmer.").

Here, the Eleventh Circuit erroneously applied the pre-Farmer specific-risk requirement in its analysis of Green's placement in protective custody. The court found that Green failed to provide Warden Hooks and Deputy Warden Brown with sufficient "specific information." Appx. 28a. Nor was Lt. Grubbs "aware of any threat posed by Ricard to Green." Appx. 31a. Pointing to a specific risk of harm is one way an Eighth Amendment plaintiff may demonstrate that he was at substantial risk

of serious harm, but the plaintiff cannot be *required* to show that he was subject to a specific risk of harm. Street, 102 F.3d at 815 n.12. By refusing to give any weight to Green's transgender status, by refusing to consider other circumstantial evidence that that prison officials knew of the risk to Green, and by requiring the plaintiff to point to a specific risk of harm from a specific inmate, the Eleventh Circuit erroneously applied the pre-Farmer specific-risk requirement. See Appx. 28a, 31a.

CONCLUSION

Other commentators have called for clarification of how Farmer v. Brennan should be applied at summary judgment. In a dissent last year, Judge Rosenbaum said, "[w]e do not sentence people to be stabbed and beaten. But we might as well, if the Majority Opinion is correct." Marbury, 936 F.3d at 1238 (Rosenbaum, J., dissenting). Hon J. Rosenbaum further and correctly stated, "[t] he Eighth Amendment does not allow prisons to be modern-day settings for Lord of the Flies. When a prison official knows of a substantial threat of serious harm to an inmate, she must undertake reasonable action to protect that inmate." Id. at 1252. Similarly, in a dissent to a denial of *en banc* review of Riccardo, Judge Ripple of the Seventh Circuit sharply criticized the opinion's holding that a prisoner was required to state the specific source of a threat: "Today, the court …. imposes on prison inmates a new and impossibly high standard of proof for establishing deliberate indifference in prison condition cases." Riccardo, 375 F.3d at 533 (Ripple, J., dissenting). Professor Erwin Chemerinsky has also called on this Court to clarify how Farmer v. Brennan should be implemented: "This is an issue that affects lawsuits

by prisoners, and ultimately the treatment of prisoners, everywhere in the country." Petition for Writ of Certiorari in Riccardo v. Rausch, 375 F.3d 521 (7th Cir. 2004) cert. denied, 544 U.S. 904 (U.S. Mar. 7, 2005) (No. 04-510). For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

JULIE OINONEN
WILLIAMS OINONEN LLC
44 Broad Street, NW,
Suite 200
Atlanta, Georgia 30303
(404) 654-0288

JOHN M. SHOREMAN
MCFADDEN & SHOREMAN
1050 Connecticut Avenue, NW,
Suite 500
Washington, DC 20036
(202) 772-3188

MARIO B. WILLIAMS
Counsel of Record
WILLIAMS OINONEN LLC
NDH LLC
44 Broad Street, NW,
Suite 200
Atlanta, Georgia 30303
(404) 254-0442
mario@goodgeorgialawyer.com
mwilliams@ndh-law.com

Counsel for Petitioner

June 4, 2020

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED JANUARY 6, 2020

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-11785

D.C. Docket No. 6:14-cv-00046-JRH-GRS.

DARIUS ISHUN GREEN,

Plaintiff-Appellant,

versus

WARDEN BRAD HOOKS, DEPUTY WARDEN JOHN BROWN, LIEUTENANT TORIE GRUBBS, GEORGIA DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia.

January 6, 2020, Decided

Before ROSENBAUM, BRANCH, and TJOFLAT, Circuit Judges.

BRANCH, Circuit Judge:

Appendix A

After being sexually assaulted by a fellow inmate at Rodgers State Prison, Darius Green brought suit under 42 U.S.C. § 1983, against Georgia Department of Corrections ("GDC") employees Warden Bradley Hooks, Deputy Warden of Security John Brown, and Lieutenant Torie Grubbs (collectively, "the prison officials"). First, Green asserted that the prison officials were deliberately indifferent to the risk of harm against Green, in violation of the Eighth Amendment. Second, under a theory of supervisory liability, Green alleged that the prison officials proximately caused Green's injuries.[1]

The prison officials filed a motion for summary judgment, arguing that they did not violate the Constitution and that they were nevertheless immune from suit because they are entitled to qualified immunity. The district court granted summary judgment in favor of the prison officials, finding that no constitutional violation had occurred. The district court also dismissed Green's supervisory liability claims. Alternatively, the district court found that the prison officials were entitled to qualified immunity. Green appealed.

After careful review of the record and with the benefit of oral argument, we affirm the district court's grant of summary judgment in favor of the prison officials.

---

1. Green also initially brought a conspiracy claim against Lieutenant Grubbs, but later abandoned it.

Appendix A

I. BACKGROUND

1. Facts

Darius Green is transgender.[2] Born biologically male, Green identifies with the female gender. Green has been taking hormone replacement therapy since age 17, has breasts, and maintains a feminine appearance.[3]

On May 10, 2012, Green formally entered the GDC through a standard intake procedure performed at the Georgia Diagnostic and Classification Prison ("GDCP"). Here, inmates undergo housing and classification prior to their placement in the Georgia prison system. The process takes into account the inmate's criminal history; individual characteristics; and treatment needs, including an inmate's medical and mental health needs. The intake process also provides an initial security classification, which is a comprehensive measure of risk that impacts an inmate's housing assignment, levels of supervision,

---

2. Because Green's counsel, counsel for Defendants-Appellants, and the district court have exclusively used the feminine pronoun to refer to Green, for clarity, we will also do so.

3. However, when entering the GDC on May 10, 2012, Green was not taking hormone replacement therapy ("HRT"). In fact, Green had not been taking HRT for approximately eight months prior to arrival at the GDC and did not receive HRT until after transfer to Rodgers State Prison. Because Green did not arrive at Rodgers State Prison until July 2012, it appears that Green was not on HRT for approximately 11 months prior to arriving at Rodgers.

and work detail assignment.[4] Green's intake resulted in a minimum-security classification and a finding that Green was fit for housing in the general population of male prisoners.

GDCP also screens inmates in accordance with the Prison Rape Elimination Act ("PREA"), 28 C.F.R. § 115 *et seq.*, to determine if they are at risk of being either a sexual victim or a sexual aggressor. PREA screening considers a variety of relevant factors, including whether an inmate has a disability; an inmate's age, physical build, incarceration history, criminal history, and prior experiences of sexual victimization; an inmate's actual and/or perceived sexual orientation and gender identity; and the inmate's own perception of vulnerability. *See generally id.* § 115.41(d). When assessing inmates for risk of being sexually abusive to others, PREA screening also considers "prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency." *Id.* § 115.41(e). Green was not designated as a PREA victim or as a PREA aggressor. Green also received institutional orientation, including PREA orientation, and was informed about how to make a report of sexual assault.

On July 19, 2012, Green was transferred to Rodgers State Prison ("Rodgers"). Rodgers is a medium-security facility for male felons and houses approximately 1,500

4. Factors include: severity of the current offense, severity of prior offenses, history of escape, history of institutional violence, along with any information regarding gang affiliation and activities.

inmates in six buildings (Buildings A through H). Green, at all times relevant to this case, was placed in Building A, which was comprised of four dormitories (A1, A2, A3, and A4). A1 was a general population dormitory, while A3 and A4 were used for Administrative Segregation housing.

A1 housed inmates that were generally well-behaved, and all inmates were cleared to live with each inmate in the dormitory. Although there were inmates with different security classifications in A1, both medium and minimum security inmates are deemed capable of abiding by rules and regulations of the prison.[5] Inmates of differing security levels are routinely housed together, and this practice is not prohibited by PREA.

A1 was made up of two halls with two bedrooms per hall; each bedroom contained eight bunkbeds, housing a total of sixteen inmates per bedroom. A1 also had a television room and day room. The open format of A1 allowed for free roaming throughout the bedrooms, and prison security officers were not continuously present in the dormitory. Every day, officers conducted multiple "official counts" of inmates, entered A1 to deliver mail, conducted "census counts," and monitored the hallways and common areas via the A-dormitory control room. Although the rooms in A1 had locks, the rooms were not locked during lights-out.

In contrast, Administrative Segregation units A3 and A4 were comprised of single- and double-occupancy rooms.

---

5. Green had a minimum-security classification and her assailant, Darryl Ricard, had a medium classification.

Inmates in Administrative Segregation were housed there for a variety of reasons: disciplinary purposes, pending investigation, pending protective custody review, protective custody, medical observation, and pending initial institutional classification. Prison policy required A3 and A4 security officers to perform security and safety checks every thirty minutes.

Upon arriving at Rodgers, Green was subjected to a strip search and was required to strip in front of the guards and other inmates who were being processed at the same time, which exposed her breasts to the individuals in the room. After processing at Rodgers, Green was placed in Administrative Segregation in A4 because of a bed shortage in general population. Green's institutional status at that time was designated as "pending reassignment," which is the status typically given when there is not enough bed space and an inmate is awaiting return to general population. Although Green's placement in A4 should have generated an initial assignment memorandum, this memorandum is missing.

After four days in Administrative Segregation, Green was transferred to A1 to be housed with the general population. The A1 unit generally housed inmates who were not considered to be problem inmates.

On Green's first day in A1, inmate Darryl Ricard approached Green to offer protection. Ricard identified himself as one of the nation's highest-ranking members of the Vice Lord gang. Ricard was serving a life sentence without parole for aggravated child molestation, aggravated assault, rape, and kidnapping of a child in

retaliation for her father's unpaid debts. Ricard's security classification was medium, and he was deemed appropriate for general population housing. Despite his rape and molestation convictions, Ricard's PREA screening did not designate him as a PREA victim or a PREA aggressor.[6]

Ricard told Green he was looking for a friend, and Green acquiesced. It is undisputed that the initial encounter and proffered arrangement was unthreatening and non-coercive. However, within the next two weeks, Ricard demanded Green perform oral sex upon him. Green initially resisted, but Ricard threatened Green with prison weapons,[7] physically assaulted Green in the bathroom, and threatened further bodily harm if Green refused to perform the demanded sexual acts. Ricard also threatened to have Green harmed if Green transferred to another dormitory. Green's testimony indicates that she relented to Ricard's demands out of fear. Ricard disputes Green's testimony, and claims that he was Green's prison "husband," all sexual acts were consensual, and that Green admitted to Ricard she was setting him up so she could fabricate a lawsuit against Rodgers.

On August 24, 2012, Green sent the following letter to her mother, Lisa Weaver (reproduced as written):

Hello

---

6. Under PREA, a sexual abuse act or prior rape conviction does not automatically result in an inmate being labeled a "sexual aggressor."

7. Green said Ricard "went berserk" and "went in his room, and brought a shank [a homemade knife] and a belt with a lock on it" to threaten Green.

> Mother, how are you? I am writing you now on an emergency basis I am in big need of help and it is life or death at this current time my life — is in great *danger*, listen I need for you to get me the address to the Dept of Correction, the address to the Commissoner the directors of the GA Department of Corrections something somebody I can write to get me an immediate transfer. I have to get transfered from this camp mother ASAP I don't want to go to the hole or P.C. unless it is absolutely necessary I have control of the situation for now but once I dont I might be seriously hurt or killed I am very scared but I am playing my part This is VERY Important I need those addresses ASAP
>
> I will explain the situation later
>
> Love you poohbear

Upon receiving this letter, Green's mother called Warden Bradley Hooks and informed him of the letter. On the same day—August 28, 2012—Warden Hooks had Green escorted to his office for a meeting. Deputy Warden John Brown was also in attendance. Although some specifics from that meeting are disputed,[8] it is undisputed that Green:

---

8. Warden Hooks testified that he asked Green whether she was in any danger or wanted protective custody, but Green denies that Warden Hooks specifically asked about protective custody. Although this fact is disputed, it is not material to our inquiry, given the plethora of undisputed facts supporting Warden Hooks's inquiry into Green's safety.

- Told Warden Hooks and Deputy Warden Brown that she "was okay"
- Never said she was in danger
- Never disclosed that she was being sexually assaulted
- Never disclosed that she was being sexually harassed
- Never mentioned Darryl Ricard's name
- Never admitted to being uncomfortable in A1
- Never asked to be moved to a different building
- Never asked to be moved to a different camp
- Never asked to be moved into protective custody

Furthermore, Green admits to telling Warden Hooks, "I was okay[,] because I did not want to alarm him into investigating or making me have to tell him exactly what was going on."

In response to Green's statements that everything was "okay," Warden Hooks replied, "Well, I don't believe you. Your mother's calling saying this and that." Warden Hooks then called Green's mother directly and gave Green the opportunity to speak to her on the phone. Warden Hooks also spoke with Green's mother, relaying Green's statements that Green was okay and that there were no problems.

Green later said these denials stemmed from being scared, as Ricard had repeatedly threatened serious harm to Green if she resisted.[9] However, Green also testified that she would *never* have disclosed the information to officials—even if her mother had provided the requested addresses of GDC officials, stating: "I never would have told them what was going on. I just wanted to write them to see if they could help me without having to tell on [Ricard] or tell what was going on so that I wouldn't receive any retaliation from him because I was hoping that they would be able to help me without having to tell them what was going on."

After the phone call, Warden Hooks gave Green a piece of paper to take with her so other inmates would not be suspicious of Green's meeting with the Warden.

Following the meeting with Warden Hooks and Deputy Warden Brown, Green allegedly wrote a letter to Warden Hooks in early-to-mid-September 2012, raising general grievances with the prison's building design. In this letter, Green did not mention Ricard or the sexual acts Ricard was forcing Green to perform. Instead Green lodged a more general complaint that Rodgers was not conducive to transgender inmates. Specifically, Green identified the open showers, open dormitory, toilets without locks, and A1's general policy of not locking

9. During Green's Incident Report interview, made following Ricard's assault of Green on September 22, 2012, Green detailed the threats and said Ricard had threatened to "find people" who could hurt Green if Green moved buildings or to beat Green so badly she would have to be "put [] on a life flight."

doors as being inappropriate for transgender inmates. In this letter, Green asked to be transferred. Green wrote the letter, placed it in an envelope addressed to Warden Hooks, and placed it in the prison mailbox. Warden Hooks denied receiving or reading the letter.

Later that month, on September 17, 2012, Green allegedly wrote another letter, this time to Deputy Warden Brown. The letter identified Ricard as Green's abuser and asked Deputy Warden Brown to handle the matter confidentially. In this letter, Green told Deputy Warden Brown that Ricard was forcing Green to perform oral sex on him. Green placed the letter in an envelope, wrote "confidential, urgent — urgent confidential correspondence" on the outside, addressed it to "deputy warden of security," and placed it in the prison mailbox. Deputy Warden Brown denied ever receiving or reading the letter.

On September 20, 2012, three days after Green wrote the letter to Deputy Warden Brown, Green and two other inmates were forced to exit A1. In prison jargon, Green and the others were "put on the door," a phrase that refers to being expelled from the dormitory by the other inmates in the dormitory and being forced to stand on the outside of the dormitory door. According to Green, the three inmates were "put on the door" because the inmates of A1 were tired of having openly homosexual inmates in the dormitory. Green was relieved to be leaving A1 and viewed this occurrence as a chance to escape Ricard. But, upon hearing that Green and the two other inmates were being "put on the door," Ricard joined them on the door in

solidarity. Together, the four inmates exited the dormitory and waited near the control room of the A Building.

Lieutenant Torie Grubbs received a report that several inmates had been "put on the door" and went to retrieve them. The inmates requested protective custody, telling Lieutenant Grubbs that they had been asked to leave. Green told Lieutenant Grubbs that she feared for her life as a transgender inmate, and Ricard told Lieutenant Grubbs that he feared for his life because he stood up for the homosexual inmates. Upon hearing this, Lieutenant Grubbs escorted the exiled inmates to Administrative Segregation and placed all four inmates on "protective custody review" status.[10] The only contact Lieutenant Grubbs had with the inmates who were "on the door" was when Grubbs escorted them from the door of A1 to the Administrative Segregation area. Lieutenant Grubbs told another officer to place the inmates in Administration Segregation cells but did not make the cell assignments. A different officer escorted the inmates into the Administrative Segregation building.

Another officer (not Lieutenant Grubbs) then escorted Green to the shower room of the A4 dormitory, while a different officer (also not Grubbs) escorted Ricard to a cell in the A3 dormitory. Ricard was placed in Cell 22, Bed 44 in the A3 dormitory, which was a double-occupancy room.

---

10. This status is given to inmates awaiting an assignment to protective custody. Inmates seeking voluntary protective custody are asked to identify a specific threat justifying protective custody placement. A Classification Committee then reviews an inmate's request for voluntary protective custody and determines which placement is appropriate.

From 11:00 p.m. on September 20, 2012, until 4:00 a.m. the following morning, Green waited in the shower room of A4 dormitory. During this time, Green made no mention of Ricard at all, but instead wrote a statement outlining the experience of being "put on the door" and noting that "now A building is putting open homosexual/ trans-gender inmates on the door only F building is allowing open homosexual on the door for now. This camp openly discriminate against open homosexual and they dont want us here." While in the shower room, Green acknowledges that she made small talk with officers, but did not mention Ricard or that Green was being sexually assaulted, harassed, or otherwise threatened.

At approximately 4:00 a.m. on September 21, 2012, Green was escorted by an unknown officer (who was not Warden Hooks, Deputy Warden Brown, or Lieutenant Grubbs) to Cell 22, Bed 43 in the A3 dormitory. Ricard was already in the cell, which Green noticed when walking into the cell—but only after the officer had shut the door. Ricard allegedly told Green that he had gotten Lieutenant Grubbs to place Green in the cell with him.[11] Ricard

11. Lieutenant Grubbs denied the allegation that Ricard had orchestrated Green's placement in Cell 22, and Ricard denied it as well. Ricard admitted that he may have asked to be placed in the cell with Green, but also noted that Rodgers officials would have "had no reason not to. I mean, we wasn't beefing or anything. They don't just—the only times these people—the Administration pays attention to who they place in a cell is if me and this guy right here just got into a big ass fight. . . . And that's the only reason that they would keep parties separated unless a PREA was, of course involved. Other than that, why would they separate us?"

attempted to talk to Green, but Green demurred and went to sleep. Green then slept, undisturbed, for several hours.

While Green slumbered, Warden Hooks reviewed the Assignment Memos requesting voluntary protective custody for Green and Ricard. The matter was sent to the Classification Committee for review and recommendation. That same day, September 21, 2012, the Classification Committee recommended that both inmates be returned to general population. Warden Hooks approved the recommendations of the Classification Committee, but Ricard and Green were not moved immediately because that day was not a day when routine inmate housing moves were typically made.

Upon awakening on September 21, 2012, Green told Ricard, "I don't want to be around you anymore, you know, because, you know, I can't deal with all the threats and all of the stuff that's going on." Ricard became distressed and agitated, and grabbed a razor blade. Ricard told Green he was tired of Green playing games with him. Ricard threatened Green with the razor blade, saying he would cut up Green's face. Against Green's will, Ricard then orally and anally sodomized Green. This assault occurred around midnight or 1 a.m. on September 22, 2012.

After the attack, Green secretly wrote a letter pleading for help. The letter stated "I'm being forced to have sex." About thirty to sixty minutes after the assault, Green was able to slip the letter out through the cell door when Ricard was not looking. Soon after the letter was slipped through the door, an officer took the letter, opened

the cell flap, and asked who wrote the letter. The officer then left. Approximately two minutes later, a sergeant arrived at the cell to find Ricard chasing Green around the cell with a razor blade. After the sergeant threatened to pepper-spray Ricard through the cell flap, Ricard dropped the razor blade and was escorted out of the cell.

In response to Green's allegation of sexual assault, the prison's Sexual Assault Response Team conducted an investigation. This investigation began almost immediately (mere hours after the assault occurred), and Green's interview with an Internal Affairs Investigator took place at 12:30 p.m. on September 22, 2012. The investigation substantiated Green's allegations of sexual assault.

Warden Hooks then referred the investigation to the GDC Internal Affairs Investigation unit, and a full investigation was conducted. Afterward, the Tattnall County District Attorney presented the case to two separate grand juries, in an attempt to indict Ricard. Both grand juries refused to indict.

2. Procedural History

In May 2014, Green filed suit in federal court under 42 U.S.C. § 1983 alleging that Warden Hooks, Deputy Warden Brown, and Lieutenant Grubbs were deliberately indifferent to Green's safety, in violation of Green's rights under the Eighth and Fourteenth Amendments. Green also sued other prison employees in *Green v. Calhoun* ("Green II"). The two cases were consolidated. Following

discovery and by stipulation, certain defendants (including all *Green II* defendants) and other claims (including the conspiracy claim against Lieutenant Grubbs) were dismissed.

Two claims against Warden Hooks, Deputy Warden Brown, and Lieutenant Grubbs survived dismissal: (1) Defendants violated Green's Eighth and Fourteenth Amendment rights to be free from cruel and unusual punishment, and (2) Defendants are liable under the theory of supervisory liability.[12]

The district court granted summary judgment in favor of Warden Hooks, Deputy Warden Brown, and Lieutenant Grubbs, holding that the Defendants did not violate any constitutional rights. The court also found that Defendants were entitled to qualified immunity. Green's supervisory-liability claims similarly failed because Defendants did not violate Green's constitutional rights.

II. STANDARD OF REVIEW

We review *de novo* a district court's grant of summary judgment, "viewing the facts and drawing all reasonable

12. Green's complaint articulates the claims as follows: prison officials violated Green's constitutional rights by "condoning and promoting unsafe prison conditions known to place transgender Green in substantial risk of physical injury; by showing deliberate indifference to actual physical injuries Defendants knew Green had suffered and thereby creating an environment that led to her actually being anally raped; and by showing deliberate indifference to Green being placed in a 'protective-custody' cell with an inmate Defendants (at the very least Grubbs . . .) knew was Green's sexual assailant."

inferences in the light most favorable to . . . the nonmoving party." *Goodman v. Kimbrough*, 718 F.3d 1325, 1331 (11th Cir. 2013) (citing *Liese v. Indian River Cty. Hosp. Dist.*, 701 F.3d 334, 341-42 (11th Cir. 2012)). In doing so, we determine "whether, viewing the record as it existed before the district court in the light most favorable to [Green], a genuine issue of material fact existed as to whether [the prison officials'] actions constituted deliberate indifference" to Green. *Steele v. Shah*, 87 F.3d 1266, 1269 (11th Cir. 1996).[13]

"Where the evidence is circumstantial, a court may grant summary judgment when it concludes that no reasonable jury may infer from the assumed facts the conclusion upon which the non-movant's claim rests." *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 743 (11th Cir. 1996). "[M]ere conclusions and unsupported

13. We "pause to emphasize attorneys' obligations under Federal Rule of Appellate Procedure 28 generally and in the specific context of a qualified immunity appeal." *Johnson v. City of Fort Lauderdale, Fla.*, 126 F.3d 1372, 1373 (11th Cir. 1997). Appellants must submit a brief containing "a concise statement of the case setting out the facts relevant to the issues submitted for review . . . with appropriate references to the record." *See* Fed. R. App. P. 28(a)(6). These requirements are particularly pertinent in a qualified immunity appeal where the plaintiff is required to "carefully set out the facts which, if proven, would constitute violations of clearly established law on the part of each defendant." *Johnson*, 126 F.3d at 1373.

Unfortunately, as was the case in the district court, Green has "made exceedingly difficult this Court's task of determining what material facts are in genuine dispute." On appeal, Green continues to "repeatedly mystif[y] the facts, confuse[] the timeline of the events, and make[] multiple unsupported assertions."

factual allegations are legally insufficient to defeat a summary judgment motion." *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005). We will affirm the district court's grant of summary judgment "if we conclude that there is no genuine issue of material fact—that is, if no 'fair-minded jury could return a verdict for the plaintiff on the evidence presented.'" *Goodman*, 718 F.3d at 1331 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

We now turn to the issues raised on appeal. We consider whether Warden Hooks, Deputy Warden Brown, or Lieutenant Grubbs violated Green's Eighth and Fourteenth Amendment rights to be free from cruel and unusual punishment, and whether they are liable under the theory of supervisory liability.

For the reasons that follow, we affirm the district court's grant of summary judgment in favor of the prison officials.

III. EIGHTH AMENDMENT DELIBERATE INDIFFERENCE CLAIM

Green's constitutional claim centers around the Eighth Amendment's prohibition of "cruel and unusual punishment."[14] In particular, Green alleges that Warden

14. The Eighth Amendment applies to convicted inmates, while a pretrial detainee's constitutional rights arise from the Due Process Clause of the Fourteenth Amendment. *See Purcell ex rel. Estate of Morgan v. Toombs Cty.*, 400 F.3d 1313, 1318 n.13 (11th Cir. 2005). Thus, only Green's Eighth Amendment right is at issue here.

Hooks, Deputy Warden Brown, and Lieutenant Grubbs knowingly ignored the substantial risk of danger to Green as a transgender inmate, thus subjecting Green to cruel and unusual punishment by allowing Green to be sexually assaulted by Ricard while in prison.

The Eighth Amendment prohibits the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. *See Purcell ex rel. Estate of Morgan v. Toombs Cty., Ga.*, 400 F.3d 1313, 1319 (11th Cir. 2005). It is well settled that "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994) (quoting *Helling v. McKinney*, 509 U.S. 25, 31, 113 S. Ct. 2475, 125 L. Ed. 2d 22 (1993)). Although prison officials have a duty to protect a prisoner from violence by other prisoners, not "every injury suffered by one prisoner at the hands of another translates into constitutional liability for prison officials responsible for the victim's safety." *Id.* at 834. "Rather, a prison official violates the Eighth Amendment [in the context of a failure to prevent harm] only 'when a substantial risk of serious harm, of which the official is subjectively aware, exists and the official does not respond reasonably to the risk.'" *Bowen v. Warden Baldwin State Prison*, 826 F.3d 1312, 1320 (11th Cir. 2016) (quoting *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1099 (11th Cir. 2014)); *Marsh v. Butler County, Ala.*, 268 F.3d 1014, 1028 (11th Cir. 2001)

Regardless, "the standards under the Fourteenth Amendment are identical to those under the Eighth." *Goebert v. Lee Cty.*, 510 F.3d 1312, 1326 (11th Cir. 2007).

(en banc) ("[a] prison official's *deliberate indifference* to a known, substantial risk of serious harm to an inmate violates the Eighth Amendment." (emphasis added)), abrogated on other grounds by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561-63, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)).

Thus, in order to survive summary judgment on her § 1983 deliberate-indifference claim, Green must "produce sufficient evidence of (1) a substantial risk of serious harm; (2) the defendants' deliberate indifference to that risk; and (3) causation." *Hale v. Tallapoosa Cty.*, 50 F.3d 1579, 1582 (11th Cir. 1995) (citation omitted). "[D]eliberate indifference has three components: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence." *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999). Accordingly, Green must show that an objectively serious risk of harm existed *and* that the prison officials were subjectively aware of this risk of harm. *Farmer*, 511 U.S. at 834. Subjective awareness requires that the prison officials "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed], and [they] must also draw the inference." *Id.* at 837. Under the Eighth Amendment, "an official's failure to alleviate a significant risk that he *should have* perceived but did not . . . cannot under our cases be condemned as the infliction of punishment." *Id.* at 838 (emphasis added). In short, we will not find a prison official liable under the Eighth Amendment "unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware

of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [they] *must also draw the inference*.'" *Goodman*, 718 F.3d at 1332 (quoting *Purcell*, 400 F.3d at 1319-20).

Even if Green's Eighth Amendment claim survives summary judgment, the prison officials argue that they are nevertheless entitled to qualified immunity. Qualified immunity protects government officials[15] like Warden Hooks, Deputy Warden Brown, and Lieutenant Grubbs "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Morris v. Town of Lexington*, 748 F.3d 1316, 1321 (11th Cir. 2014) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009)).

Green's Eighth Amendment arguments can be summarized as follows. First, the prison officials were subjectively aware of the substantial risk to Green's safety as a transgender inmate placed in a general population dormitory. Second, Warden Hooks and Deputy Warden Brown were aware of and disregarded the threats to

15. For qualified immunity to apply, the government officials must be "acting within the scope of [their] discretionary authority when the allegedly wrongful acts occurred.'" *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002) (quoting *Courson v. McMillian*, 939 F.2d 1479, 1487 (11th Cir. 1991)). In this case, it is undisputed that the prison officials were acting within the scope of their discretionary authority, so the only question is whether "the official's alleged conduct violated a constitutional right, and [if] the constitutional right at issue was clearly established." *Id.*

Green's safety that she identified in the letters Green sent to her mother, Warden Hooks, and Deputy Warden Brown. Third, Lieutenant Grubbs was aware of the threat Ricard posed to Green's safety and acted with deliberate indifference by placing Green in a cell with Ricard. Lastly, the prison officials were aware of the general threat to Green's safety posed by unsafe prison conditions at Rodgers. Green argues that, because the prison officials knew of and disregarded these various risks to her safety, the prison officials violated the Eighth Amendment. We address each of Green's arguments in turn.

1. Green's Placement in General Population

Green alleges that the prison officials were deliberately indifferent when they placed Green in a general population dormitory, despite knowing that Green was transgender and initially sending her to Administrative Segregation when she arrived at Rodgers. In support, she argues that her initial assignment in Administrative Segregation demonstrated the prison officials' subjective knowledge of the risk posed by the general population dormitory to Green as a transgender inmate.

While it is undisputed that Green was initially sent to Administrative Segregation upon arrival at Rodgers, the only material evidence in the record demonstrates her placement there was due to a bed shortage, not because of a safety risk. The prison officials testified about the Rodgers intake process and the bed shortage at the time Green arrived at Rodgers, which resulted in her temporary placement in Administrative Segregation.

Furthermore, Green admitted to a GDC investigator that she was placed in Administrative Segregation "for about four days" upon arrival at Rodgers because "[t]hey did not have bed space" in general population. Moreover, in Green's written admissions pursuant to Rule 36 of the Federal Rules of Civil Procedure, Green confirmed that her statements to the investigator were truthful and accurate. *See* Fed. R. Civ. P. 36(a).[16] Because Green's Rule 36 admission has not been withdrawn or amended, it conclusively establishes that Green was initially housed in Administrative Segregation simply because there was a shortage of beds in general population housing. *See* Rule 36(b) ("A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended."). Thus, Green may not now argue that a genuine dispute of fact exists with respect to why she was placed in Administrative Segregation. *See United States v. 2204 Barbara Lane*, 960 F.2d 126, 129-30 (11th Cir. 1992) ("Unless the party securing an admission [under Rule 36] can depend on its binding effect, he cannot safely avoid the expense of preparing to prove the very matters on which he has secured the admission, and the very purpose of the rule is defeated." (quotations omitted)).

---

16. Fed. R. Civ. P. 36(a)(1) states: "A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

> (A) facts, the application of law to fact, or opinions about either; and
>
> (B) the genuineness of any described documents."

Green nonetheless asks us to disregard her Rule 36 admission as well as the other evidence and infer that the missing memorandum regarding the basis for the decision initially placing Green in Administrative Segregation, confirms Green's version of the "central fact." Specifically, Green argues that this missing memorandum would have established: (1) that the prison officials knew Green was transgender and (2) acknowledged the substantial risk to her safety by placing her in involuntary protective custody immediately upon her arrival. In short, Green wants an adverse inference based on the missing memorandum. Notwithstanding that Green's assertions as to the contents of the missing memorandum are based on pure speculation, "an adverse inference is drawn from a party's failure to preserve evidence only when the absence of that evidence is predicated on bad faith." *Bashir v. Amtrak*, 119 F.3d 929, 931 (11th Cir. 1997). Green has presented no evidence of bad faith and, as such, no adverse inference may be drawn from the memorandum's absence.

To the extent that Green points to the mere fact of her placement in general population as evidence of deliberate indifference, the record does not support such an argument. It is undisputed that Green was screened and classified as a minimum-security prisoner, and she was not designated as a PREA victim or aggressor. The PREA screening took into account details like Green's sexual orientation, gender orientation, and Green's own perception of her vulnerability. Based on Green's intake screening, officials had no reason to suspect that Green

was in any particular danger of being sexually assaulted.[17] Moreover, the record indicates that Green had been housed in general population when she was previously incarcerated. Thus, Green has failed to prove that officials were subjectively aware of any risk to Green's safety simply by virtue of placing her in general population.

For these reasons, no reasonable jury could conclude that that the prison officials were deliberately indifferent when they placed Green in the general population dormitory.

2. The meeting between Green, Warden Hooks, and Deputy Warden Brown[18]

Green also argues that Warden Hooks and Deputy Warden Brown had subjective knowledge of the heightened risk to Green's safety because they were aware of specific threats faced by Green. Green points to the letter she

---

17. Green also points to the fact that she was sexually assaulted by Ricard as proof that the risk she faced was substantial. But "[t]his argument does not hold up to logical scrutiny; it rests entirely on hindsight bias. The mere fact that an event takes place does not indicate how likely it was to occur. A risk calculation is a prospective determination of what might happen based upon events that have already occurred." *Brooks v. Powell*, 800 F.3d 1295, 1301 (11th Cir. 2015).

18. Given that Lieutenant Grubbs was not present for the meeting and played no part in returning Green to general population, no reasonable jury could find that Lieutenant Grubbs was subjectively aware of a substantial risk of serious harm to Green that may have arisen from the meeting.

sent to her mother—which prompted her mother's call to Warden Hooks—and to the subsequent meeting Green had with Warden Hooks and Deputy Warden Brown about that letter, in order to establish the prison officials' awareness of the risk.

It is undisputed that Green's mother, upon receiving the letter from Green stating that her life was in "great danger," immediately called Warden Hooks. Warden Hooks—the same day he received this call—sent for Green. Nevertheless, Green has failed to establish that the prison officials had any "subjective knowledge of" a risk to her safety. *Farmer*, 511 U.S. at 834, 837; *McElligott*, 182 F.3d at 1255. It is undisputed that, during the private meeting with Warden Hooks and Deputy Warden Brown, Green repeatedly denied being in any danger. Moreover, Green reiterated the denial when pressed by Warden Hooks and again explicitly denied being in danger while on the phone with her mother during the meeting. Green's strenuous denials about being in danger effectively erased any "subjective knowledge" that the prison officials might otherwise have had from the initial letter and the phone call from Green's mother to Warden Hooks. Because Green reiterated that everything was "okay," no reasonable jury could conclude that the prison officials "actually knew of a *substantial risk* that [a fellow inmate] would *seriously harm*" her. *Caldwell v. Warden*, 748 F.3d 1090, 1102 (11th Cir. 2014) (emphasis in original).

But, Green argues, they should have known anyway. The prison officials should have disregarded Green's denials at the meeting because "being a transgender person and being inside a facility like Rogers [sic] and

being around people that are with violent offenses, whether it was Darryl Ricard or any other individual," placed the officials on alert that Green was subject to a substantial risk of serious harm. In sum, Green asks us to infer that the prison officials must have known of this harm based on the letter Green sent to her mother and the fact that Green is a transgender inmate.

We disagree. An argument that "they should have known" is insufficient; Green must present evidence to "support a reasonable jury's finding that [the prison officials] harbored a subjective awareness that [Green] was in serious danger." *Goodman*, 718 F.3d at 1332; *see also Farmer*, 511 U.S. at 838 ("[A]n official's failure to alleviate a significant risk that he *should have* perceived but did not . . . cannot under our cases be condemned as the infliction of punishment." (emphasis added)). Having already determined that Green's denials to Warden Hooks and Deputy Warden Brown rebutted the danger alleged in the letter, Green's status as a transgender inmate does not change our analysis. As explained above, based on Green's intake screening, officials had no reason to suspect that Green was in any particular danger of being sexually assaulted.

Green also argues that her mere failure to identify her attacker by name should not shield the prison officials. In *Rodriguez v. Secretary for Department of Corrections*, we found that an inmate is not required to identify the individual who poses a threat so long as the inmate provides prison officials with other specific facts that put prison officials "on actual notice of a substantial risk of harm." 508 F.3d 611, 621 (11th Cir. 2007). For instance,

while not identifying a particular individual who posed a threat, Rodriguez informed prison officials: "(1) that he was a former Latin King who decided to renounce his membership; (2) that members of the Latin Kings had threatened to kill him when he returned to the compound in retaliation for his renunciation; (3) that the compound at [the prison] was heavily populated with Latin Kings; and (4) that, in order to prevent an attempt on his life, he needed either to be transferred to another institution or to be placed in protective custody." *Id.* at 621. We concluded that based on this "specific information," "a reasonable juror could find . . . that [the prison official] actually knew Rodriguez faced a substantial risk of serious harm." *Id.* at 621-22. But that is not the case here. Green did not just fail to identify her attacker, she denied that she faced any threat of being attacked at all.

Green further alleges that, because Warden Hooks gave Green a piece of paper upon leaving the meeting, the prison officials knew about the risk of harm to Green. But the record indicates that Green was given a piece of paper to prevent suspicion by other inmates that she was a "snitch." This action shows that Warden Hooks was subjectively aware of a different potential harm—the risk of physical harm to Green based on other inmates' belief that she was a snitch—not that Warden Hooks was aware of the risk of sexual violence that Ricard posed to Green.[19] Thus, the note does not support a finding that either official was deliberately indifferent to any potential harm Green faced from Ricard.

---

19. Moreover, this action demonstrates that when Warden Hooks and Deputy Warden Brown had knowledge or apprehension of potential danger, they took action to protect Green.

3. Green's Letters to Warden Hooks and Deputy Warden Brown[20]

Green also points to the letters she sent to Warden Hooks and Deputy Warden Brown in September as evidence that the prison officials had subjective knowledge of the substantial risk of harm she faced. However, both Warden Hooks and Deputy Warden Brown insist that they never received or read a letter from Green. Deputy Warden Brown, who was allegedly sent the only letter that expressly identified Ricard as Green's assailant, further stated that he would not have received such a letter without acting on it.

Green argues that the letters are entitled to a presumption of receipt under the classic "mailbox rule" doctrine. In so arguing, Green refers to the common-law doctrine that "has long recognized a rebuttable presumption that an item properly mailed was received by the addressee." *Konst v. Fla. E. Coast Ry. Co.*, 71 F.3d 850, 851 (11th Cir. 1996); *see also Barnett v. Okeechobee Hosp.*, 283 F.3d 1232, 1239 (11th Cir. 2002). Under this Circuit's precedent, "[t]he 'presumption of receipt' arises upon proof that the item was properly addressed, had sufficient postage, and was deposited in the mail." *Konst*, 71 F.3d at 851. Green asks us to extend this doctrine to the internal prison mail system at Rodgers and assume Warden Hooks and Deputy Warden Brown received the letters.

---

20. It is undisputed that Green never sent a letter to Lieutenant Grubbs.

We have not previously ruled on the applicability of the mailbox rule in the context of a prison mail system for internal mail within the prison. The record is entirely devoid, however, of any evidence about how internal mail is collected, sorted, and delivered at Rodgers; the timeliness and consistency with which mail is delivered; or the overall reliability of the system. Without any factual development as to how the Rodgers internal mail system operates, we cannot ascertain the reasonableness of the "mailbox rule" presumption to the Rodgers mail system.

Accordingly, on this record, we decline to extend the "mailbox rule" presumption requested by Green. We will not assume that because Green placed the letters in the internal prison mail system, the letters were delivered to and received by the prison officials prior to the assault. Consequently, those letters cannot serve as a basis for finding that Warden Hooks and Deputy Warden Brown were subjectively aware of any risk to Green.

4. Placement of Green in Cell 22 with Ricard

Green argues that Lieutenant Grubbs was deliberately indifferent to the threat Ricard posed to Green's safety by placing Ricard and Green in Cell 22 together. In support of this argument, Green alleges that Ricard told Green he had "arranged" for Lieutenant Grubbs to place them in the same cell. This allegation was corroborated by another inmate, Joel Reid, who testified that Ricard told him that he was going to speak to Lieutenant Grubbs and ensure that Ricard and Green were placed in the same cell in administrative segregation.

Both Ricard and Lieutenant Grubbs, however, tell a distinctly different story. Although Ricard admitted that he may have asked to be placed in the cell with Green, he denied telling Green that he orchestrated the arrangement with Lieutenant Grubbs. Likewise, Lieutenant Grubbs denies that Ricard asked her to be placed in a cell with Green. Moreover, Lieutenant Grubbs denied making the cell assignments. Rather, she stated that she only escorted Green, Ricard, and the other inmates that had been "put on the door" from the A1 dormitory to the Administrative Segregation housing unit, and then asked another officer to make the cell assignments.

Nevertheless, even assuming, *arguendo*, that Lieutenant Grubbs made the cell assignments and/or agreed to place Ricard in the same cell with Green, such action does not establish that Lieutenant Grubbs acted with deliberate indifference to Green's safety because there is no evidence that Lieutenant Grubbs was aware of any threat posed by Ricard to Green. It is undisputed that Lieutenant Grubbs was not present at the meeting between Warden Hooks, Deputy Warden Brown, and Green during which Green's letter to her mother was discussed. Green does not allege that she spoke to Lieutenant Grubbs about feeling threatened or being sexually assaulted. And, Lieutenant Grubbs confirmed that during her limited encounter with Green while escorting her to the Administrative Segregation unit, Green did not tell Lieutenant Grubbs that she was being sexually assaulted by anyone, nor did Green relay any other specific threat. Accordingly, Green failed to produce enough evidence to survive summary judgment on this issue.

5. Allegations that Rodgers State Prison was exceedingly dangerous

Green argues that, as a general matter, Rodgers was exceedingly dangerous and had high rates of sexual assault and violence. It is well established that an inmate has an Eighth Amendment right "to be reasonably protected from constant threat of violence and sexual assault by his [or her] fellow inmates." *Purcell*, 400 F.3d at 1320-21 (quoting *Woodhous v. Virginia*, 487 F.2d 889, 890 (4th Cir. 1973)). While "confinement in a prison where violence and terror reign is actionable," *id.* at 220, "[w]e stress that [a] plaintiff . . . must show more than 'a generalized awareness of risk.'" *Caldwell*, 748 F.3d at 1101. In order to show that a substantial risk of serious harm existed based on the general threat posed by inmate-on-inmate violence at Rodgers, Green must prove "that serious inmate-on-inmate violence was the norm or something close to it." *Purcell*, 400 F.3d at 1322 (citation omitted).

In *Harrison v. Culliver*, 746 F.3d 1288 (11th Cir. 2014), we considered whether 33 incidents of inmate-on-inmate violence—four of which occurred in the same hallway where the assault of the plaintiff occurred—over the period of three and a half years in a prison housing 800-900 inmates created a substantial risk of serious harm, for purposes of § 1983 Eighth Amendment liability. We concluded that the evidence presented in that case was "hardly sufficient to demonstrate that [the institution] was a prison 'where violence and terror reign.'" *Id.* at 1300 (quoting *Purcell*, 400 F.3d at 1320).

Here, the record in this case does not support Green's claim. There is evidence that 28 reported incidents of sexual assault occurred over five years at Rodgers, which had a prison population of 1,500 inmates. While sexual assault is terrible, under our precedent, these numbers do not rise to the level of demonstrating that Rodgers was "a prison 'where violence and terror reigned.'" *Id.* Indeed, Green has pointed to fewer instances of sexual violence reported over a longer period of time at Rodgers, in an even larger facility than the prison in *Harrison*. Nor has Green pointed to any evidence that specific features of Rodgers[21] or its population[22] render it particularly dangerous. Because Green has failed to offer evidence of pervasive staffing issues, logistical issues, or other risks posed by the prison population in Rodgers, we cannot

21. For example, pervasive staffing issues or logistics issues that prevent prison officials from addressing violence may support a claim of deliberate indifference to a substantial risk of serious harm. *See, e.g., Lane v. Philbin*, 835 F.3d 1302, 1307-08 (11th Cir. 2016) (allegations that only one officer supervised two separate dorms and that inmates regularly brought back weapons from their work detail, fashioned weapons from prison materials—and officials did not confiscate weapons sufficiently set out a substantial risk of serious harm); *Hale*, 50 F.3d at 1582-83 (evidence that defendant was aware of severe overcrowding problems and the fact that "inmate-on-inmate violence occurred regularly when the jail was overcrowded" was sufficient to withstand summary judgment).

22. *See Cottone v. Jenne*, 326 F.3d 1352, 1355-56, 1358-59 (11th Cir. 2003) (prison population of mentally ill inmates who were kept in unlocked cells and they could interact with each other was sufficient to prove potential knowledge of a substantial risk of serious harm when the guards were aware of an inmate's history of violent schizophrenic outbursts).

say that Green has proven that the conditions at Rodgers posed a substantial risk of serious harm.

* * *

Ultimately, we conclude that no genuine issues of material fact remain with respect to Green's deliberate indifference Eighth Amendment claim because the record taken as a whole could not lead a rational trier of fact to find in favor of Green. *Goodman*, 718 F.3d at 1331 (quotation marks omitted); *see also* Fed. R. Civ. P. 56(a). We affirm the district court's order finding no constitutional violation.[23]

IV. SUPERVISORY LIABILITY CLAIMS

"It is well established in this Circuit that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability." *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003) (quoting *Hartley v. Parnell*, 193 F.3d 1263, 1269 (11th Cir. 1999)). Simply put, "there can be no supervisory liability . . . if there was no underlying constitutional violation." *Paez v. Mulvey*, 915 F.3d 1276, 1291 (11th Cir. 2019) (quoting *Gish v. Thomas*, 516 F.3d 952, 955 (11th Cir. 2008). Because Green failed to allege a constitutional violation, her supervisory-liability claims cannot stand.

---

23. Because we find that no constitutional violation occurred, we need not address the prison officials' argument that they are entitled to qualified immunity.

V. CONCLUSION

In light of the foregoing, the district court did not err in granting summary judgment in favor of the prison officials.

AFFIRMED.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, STATSBORO DIVISION, DATED MARCH 21, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA,
STATESBORO DIVISION

CV 614-046

DARIUS ISHUN GREEN,

Plaintiff,

v.

BRAD HOOKS, ET AL.,

Defendants.

March 21, 2017, Decided;
March 21, 2017, Filed

ORDER

Presently before the Court is Defendants' Motion for Summary Judgment. (Doc. 131.) Plaintiff, a former Georgia Department of Corrections ("GDC") inmate, alleges that Defendants violated the Eighth Amendment of the United States Constitution and brings suit under 42 U.S.C. § 1983. Defendants argue that they did not violate the Constitution and that they are immune from

suit based upon the principle of qualified immunity. This Court agrees with Defendants.

I. Background

The Court notes, at the onset, that Plaintiff has made exceedingly difficult this Court's task of determining what material facts are in genuine dispute. As Defendants noted in their reply brief, Plaintiff's response to Defendants' Statement of Material Facts and Plaintiff's response to Defendants' motion for summary judgement repeatedly mystifies the facts, confuses the timeline of events, and makes multiple unsupported assertions.[1] These actions placed an excessive burden on the Court to continually

1. Local Rule 56.1 states that "Upon any motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, in addition to the brief, there shall be annexed to the motion a separate, short, and concise statement of the material facts as to which it is contended there exists no genuine dispute to be tried as well as any conclusions of law thereof. Each statement of material fact shall be supported by a citation to the record. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by a statement served by the opposing party." This rule clearly requires the responding party to not only admit or deny any disputed material facts, but also to support any denial with citations to the record.

Unfortunately, Plaintiff has not adhered to these rules. At least thirteen times Plaintiff rebutted a statement of material fact by Defendant without providing a single citation to the record. (*See* Doc. 163 ¶¶ 38, 44, 77, 107, 121, 123, 126, 128, 133, 134, 135, 137, 166.) And, with some overlap, at least fourteen times Plaintiff's denial was not responsive to the fact asserted. (*See id.* ¶¶ 56, 65, 72, 73, 74, 77, 101, 107, 121, 123, 126, 128, 133, 137.)

parse through the record to determine fact from fiction, when in reality no genuine dispute of fact actually existed. *See Reese v. Herbert*, 527 F.3d 1253, 1268 (11th Cir. 2008) (citing with approval the Seventh Circuit's admonition that "judges are not like pigs, hunting for truffles buried in briefs"); *Smith v. Lamz*, 321 F.3d 680, 683 (7th Cir. 2003) ("A district court is not required to 'wade through improper denials and legal argument in search of a genuinely disputed fact.'").

A. Plaintiff's Incarceration

Plaintiff's story begins on May 10, 2012, in the Georgia Diagnostic and Correction Prison ("GDCP"). The GDCP houses and classifies new inmates so that they can be appropriately placed inside the Georgia Prison System. (Doc. 131-1 ¶¶ 15-26.) As part of the classification program, prison officials evaluate the inmate's criminal history, individual characteristics, and mental and physical health needs. (*Id.*) Prison officials make an initial security classification to determine appropriate housing, levels of supervision, and work-detail assignment. (*Id.*) They also screen inmates in accordance with the Prison Rape Elimination Act ("PREA") to determine if they are at risk of being either a sexual victim or a sexual aggressor. (*Id.*) The PREA screening considers many factors, including the inmate's actual and perceived sexual orientation and gender identity, disabilities, age, physical build, incarceration history, criminal history, prior experiences of sexual victimization, and the inmate's own perception of vulnerability. (*Id.*) Prison officials gave Plaintiff a minimum security classification fit for general population

and designated her[2] as neither a PREA victim nor a PREA aggressor. (*Id.* at ¶¶ 124-128.)

While at GDCP, Plaintiff also underwent orientation about prison life and the PREA. She acknowledged this orientation in writing, and she also acknowledged that she had the responsibility to request protective custody if she felt her safety threatened in the future. (Doc. 131-1 ¶¶ 121-123.) On July 19, 2012, prison officials transferred Plaintiff to Rodgers State Prison. (*Id.* at ¶ 130.)

B. The Prison

Rodgers State Prison is a medium-security facility that houses adult male felons for the Georgia Department of Corrections. (Doc. 131-1 ¶ 46.) Located in Reidsville, Georgia, it consists of 6 buildings: Buildings A, B, C, F, G, and H. (*Id.* ¶ 48.) Each building is composed of four dormitories numbered 1-4. Inside each dormitory are either rooms or cells. And inside each room or cell are beds, which are numbered and assigned to individual inmates. Prison officials placed Plaintiff in Building A, Dormitory 1, Room 3, Bed 5. (Doc. 163, Exhibit 30.)

Al Dormitory was a general-population dormitory. Inmates in general population were usually well-behaved and were all cleared to live with each inmate in their dormitory. (Doc. 131-1 ¶¶ 56, 57, 71.) A1 Dormitory housed

2. Plaintiff is transgender. The Court will refer to Plaintiff using the feminine pronoun as Plaintiff identifies with the female gender although biologically male. (Doc. 131-1 ¶ 116.)

inmates in an open format that allowed them to roam freely from room to room. (*Id.* at ¶ 55.) It had two halls with two bedrooms per hall, a television room, and a day room. (*Id.* at ¶¶ 58-64.) Each bedroom had eight bunkbeds and housed sixteen inmates. (*Id.* at ¶ 60.)

The security in A1 Dormitory reflected its general population status. Officers were not continuously present in the dormitory, but they daily conducted multiple "official counts." (Doc. 131-1 ¶ 66.) The parties dispute the frequency with which those occurred, (*see id.*; doc. 131-11 at 134-136), but the number appears to be at least twice per day, and potentially up to five times per day, with at least one count occurring at night (doc. 131-11 at 134-136). Officers would also regularly enter the dormitory to deliver mail, and they conducted "census counts" several times per day, "including at each shift change." (Doc. 131-1 ¶ 67; Doc. 163 ¶ 67; Doc. 131-11 at 134-136.) Additionally, an officer located in the control room of building A monitored the hallways and common rooms of the A1 Dormitory 24 hours a day. (Doc. 131-1 ¶¶83-85; Doc. 141 at 41-44.)

A3 and A4 Dormitories, on the other hand, were used for Administrative Segregation. (Doc. 131-1 ¶¶ 80-81.) Prisoners placed in Administrative Segregation, unlike those placed in general population, usually have reason to be isolated from other prisoners. Thus, A3 Dormitory contained twenty-three double-occupancy cells and one single-occupancy cell, and A4 Dormitory contained twenty-four single-occupancy cells. (Doc. 131-4 ¶ 23.)

The security in A3 and A4 was also commensurate to its population. Prison policy required A3 and A4 security

officers to perform 30-minute security and safety checks. (Doc. 131-1 ¶ 87.) Officers would document these safety checks by marking on a "door sheet" or "30-minute Check Sheet." (Doc. 143 at 18-20.) Additionally, Officers would notate information about individual inmates, such as whether an inmate ate his meals, took a shower, or went to the yard for exercise. (*Id.*)

C. Plaintiff's Arrival

When Plaintiff arrived at Rodgers on July 19, the prison did not have enough beds to accommodate her in a general-population dormitory. (Doc. 131-1 ¶ 133.) Thus, prison officials put Plaintiff in Administrative Segregation and placed her in A4 Dormitory until they could find a permanent spot for her in the prison. Four days later, Prison officials moved Plaintiff to her permanent spot in the general-population Al Dormitory. (Doc. 163, Exhibit 30.)

Plaintiff's troubles began almost immediately upon stepping foot into the A1 Dormitory. Prior to arriving at Rodgers, Plaintiff supposedly had breast enhancement surgery, and she maintained a feminine appearance upon entering Rodgers. (Doc. 163-3; Doc. 162 at 19.) Because of Plaintiff's feminine appearance, Plaintiff's arrival did not go unnoticed. (*Id.*)

On Plaintiff's first day in the dormitory, inmate Darryl Ricard, a retired member of the Vice-Lord gang who was serving a life sentence without parole for the malicious rape of an eleven-year-old child in retaliation for her father's unpaid debts, approached Plaintiff to offer

protection. (Doc. 131-1 ¶ 166.) Ricard claimed he was a lifer and only looking a friend. (Doc. 132-1 at 8.) Plaintiff assented. (*Id.*) But while Plaintiff and Ricard both agree that this initial encounter was not threatening or coercive, Plaintiff alleges that the relationship quickly turned sour. (*Id.* at 7-9.)

Plaintiff alleges that within two weeks Ricard demanded Plaintiff perform sexual acts upon him or else risk serious bodily harm. (Doc. 131-1 ¶ 171.) Plaintiff also alleges that Ricard threatened to have Plaintiff harmed if Plaintiff transferred to another building. (Doc. 132-1 at 11-12.) Thus, despite an initial resistance, Plaintiff states she relented to Ricard's demands and performed sexual favors for him for fear of her life.

Ricard, naturally, denies Plaintiff's allegations. Ricard alleges that he was Plaintiff's prison "husband" and that any sexual acts between the two were consensual. (Doc. 163-3 at 10:00-12:00.) Nonetheless, regardless of their differing views about whether such acts were consensual, Plaintiff and Ricard agree that during the next several weeks Plaintiff performed sexual acts upon Ricard multiple times. (*Id.*; Doc. 132-1 at 18.)

D. The Meeting

On or around August 24, 2012, Plaintiff penned a letter to her mother stating that her "life was in great *danger*" and asking her mother for help. (Doc. 131-28 (emphasis in original).) Plaintiff's mother responded as any good mother would: She called Warden Bradley Hooks and

informed him of the situation. (Doc. 131-1 ¶ 210.) On the same day, Warden Hooks summoned Plaintiff to his office to discuss the situation with him and Deputy Warden of Security John Brown. (Doc. 131-1 ¶ 214.)

In the confines of his office, Warden Hooks inquired into Plaintiff's personal well-being. The parties, however, cannot agree on exactly what questions the Warden asked. Defendants assert that Warden Hooks asked Plaintiff whether she was in any danger or wanted to go into protective custody. (Doc. 131-1 ¶¶ 219-222.) But Plaintiff denies that Warden Hooks ever "specifically asked Plaintiff if she was in danger" or that he ever "ask[ed] Green directly if she wanted to be placed in protective custody." (Doc. 163 ¶¶ 219-222.) Nevertheless, the parties agree that, whatever questions were asked, Warden Hooks elicited from Plaintiff statements that she was not afraid and that she did not have any problems. (Doc. 131-1 ¶¶ 223-224.) The parties also agree that Plaintiff never disclosed to Warden Hooks or Deputy Warden Brown that Ricard, or anyone, was sexually assaulting her in A1 Dormitory, that she never asked to be moved to a different dormitory or camp, and that she never admitted to being so much as uncomfortable in A1 Dormitory. (Doc. 144 at 85-88.)

During their meeting, Warden Hooks also went beyond merely talking to Plaintiff. In response to questions he had about the veracity of Plaintiff's assurances in light of her mother's grave complaints, he telephoned Plaintiff's mother. (Doc. 144 at 84.) He spoke with Plaintiff's mother himself, and he also gave Plaintiff the opportunity to speak with her mother. (*Id.* at 84-85.) But Plaintiff continued to

assure Warden Hooks she had no problems. (*Id.*) Unable to substantiate any of the claims made by Plaintiff's mother, Warden Hooks arranged for Plaintiff to return to A1 Dormitory in a manner that would not raise suspicion among the other inmates. (*Id.* at 85.)

Several weeks later, on September 17, 2012, Plaintiff, allegedly, made another cry for help. Plaintiff claims she wrote a letter alleging that Ricard was forcing her to perform sexual acts in A1 Dormitory. (Doc. 131-1 ¶ 225.) Plaintiff claims that she addressed the letter to the Deputy Warden of Security and placed it in the prison mailbox. (*Id.* ¶ 226.) Defendants claim no Defendant ever received or read this letter. (*Id.* ¶¶ 257-259.) Plaintiff claims Defendants are lying, but she can offer no proof for this assertion beyond her own testimony. (Doc. 163 ¶¶ 257-259.)

E. "Put on the Door"

On the night of Thursday, September 21, 2012, inmates in Al Dormitory, allegedly tired of having too many open homosexuals in the dormitory, forced Plaintiff and two other inmates to exit the dormitory. (Doc. 131-1 ¶¶ 261-263.) In prison parlance, Plaintiff and the other ousted inmates were "put on the door." (*Id.*) Plaintiff packed her belongings, exited the dormitory, and waited for a security officer so that she could request protective custody. She viewed her departure from A1 Dormitory as a blessing, because it finally granted her freedom from Ricard without any fault of her own. (Doc. 132-1, p. 24.)

Unfortunately, Plaintiff's relief was short lived. When Ricard learned that Plaintiff had been put on the door,

he informed Plaintiff that he would join her. (Doc. 131-1 ¶ 266.) Whether Ricard joined because he feared retaliation for protecting homosexual inmates, as he claimed, or because he desired to follow Plaintiff to her next location for more nefarious purposes, is not clear. What is clear, however, is that Ricard requested protective custody in response to the ouster of inmates Green, Reid, and Kiya, and that prison officials placed him in Administrative Segregation because of his request. (*Id.* ¶ 267.) Also clear, despite Plaintiff's averments to the contrary, is that Ricard left A1 Dormitory at the same time as the other three inmates. (Doc. 132-1 at 23-24; Doc. 131-1 ¶ 277.)

Once outside the dormitory, all four inmates were met by Lieutenant Terrie Grubbs, and they requested protective custody. (Doc. 131-1 ¶ 272; Doc. 132-1 at 24.) Another officer then escorted Plaintiff to the shower room of A4 Dormitory, while a third officer placed Ricard in A3 Dormitory. (Doc. 131-1 ¶¶ 292A-294.)

For the next five hours, from 11:00 p.m. on September 20, 2012, to 4:00 a.m. on September 21, 2012, Plaintiff remained in the shower room of A4 Dormitory. (Doc. 131-1 ¶ 298.) During that time, she wrote a statement detailing her request for protective custody, and she made small talk with officers. (*Id.* at ¶ 296-299.) At no point in either her written statement or casual conversation with officers did she mention that Ricard had sexually assaulted her in A1 Dormitory. (*Id.* ¶ 300.) Then, around 4:00 a.m. an unknown officer, but not Lt. Grubbs, escorted Plaintiff to Cell 22 of A3 Dormitory — the cell of inmate Darryl Ricard. (*Id.* ¶¶ 302-303.)

F. The Assault

Once in Cell 22, Plaintiff's situation allegedly went from bad to worse. After a short reprieve in which Ricard allowed Plaintiff to get some sleep, Plaintiff alleges that Ricard demanded Plaintiff perform sexual acts on him. (Doc. 131-1 ¶¶ 319-320; 347-351.) Plaintiff alleges that Ricard threatened her with a razor blade and then proceeded to orally and anally rape her. (*Id.* ¶¶ 350-351.) After the assault, Plaintiff returned to her bed and wrote a letter claiming that she had just been raped. (*Id.* ¶ 354.) When Ricard was not looking, Plaintiff slipped the note under the cell door. (*Id.* ¶ 355.) Approximately two minutes later, guards opened the door of Cell 22 to see Ricard threatening Plaintiff with a razor blade. (*Id.* ¶ 363.) The responding sergeant convinced Ricard to drop the blade, guards removed Ricard from the cell, and the Sexual Assault Response Team arrived to investigate the situation. (*Id.* ¶¶ 364-367.)

After the alleged assault, Plaintiff and Ricard submitted to an interview with the GDC's Internal Investigation Unit. In her interview, Plaintiff informed investigators that Ricard had been sexually assaulting her for weeks and that none of their sexual contact had been consensual. (Doc. 132-1 at 9-14.) Ricard, for his part, asserted that the sexual contact was consensual and that Plaintiff admitted to him she was setting him up in order to fabricate a lawsuit against the prison. (Doc. 163-3.) State prosecutors subsequently twice attempted to indict Ricard. (Doc. 171 at 15.) The grand juries rejected both attempts. (*Id.*) Ricard never faced any criminal charges

for the alleged rape. (*Id.*) In 2014, Plaintiff filed suit in this Court.

II. Standard of Review

Summary judgment is appropriate only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Facts are "material" if they could affect the outcome of the suit under the governing substantive law, and a dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The Court must view factual disputes in the light most favorable to the non-moving party, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), and must draw "all justifiable inferences in [the non-moving party's] favor." *United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1437 (11th Cir. 1991) (en banc) (internal punctuation and citations omitted). The Court should not weigh the evidence or determine credibility. *Anderson*, 477 U.S. at 255.

The moving party has the initial burden of showing the Court, by reference to materials on file, the basis for the motion. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Because the standard for summary judgment mirrors that of a directed verdict, the initial burden of proof required by either party depends on who carries the burden of proof at trial. *Id.* at 323. When the movant does not carry the

burden of proof at trial, it may satisfy its initial burden in one of two ways — by negating an essential element of the non-movant's case or by showing that there is no evidence to prove a fact necessary to the non-movant's case. *See Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 606-08 (11th Cir. 1991) (explaining *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970) and *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). The movant cannot meet its initial burden by merely declaring that the non-moving party cannot meet its burden at trial. *Clark*, 929 F.2d at 608.

If — and only if — the movant carries its initial burden, the non-movant must "demonstrate that there is indeed a material issue of fact that precludes summary judgment." *Id.* When the non-movant bears the burden of proof at trial, the non-movant must tailor its response to the method by which the movant carried its initial burden. If the movant presented evidence affirmatively negating a material fact, the non-movant "must respond with evidence sufficient to withstand a directed verdict motion at trial on the material fact sought to be negated." *Fitzpatrick*, 2 F.3d at 1116. If the movant shows an absence of evidence on a material fact, the non-movant must either show that the record contains evidence that was "overlooked or ignored" by the movant or "come forward with additional evidence sufficient to withstand a directed verdict motion at trial based on the alleged evidentiary deficiency." *Id.* at 1117. The non-movant cannot carry its burden by relying on the pleadings or by repeating conclusory allegations contained in the complaint. *See Morris v. Ross*, 663 F.2d 1032, 1033-34 (11th Cir. 1981). Rather, the non-movant

must respond with affidavits or as otherwise provided by Federal Rule of Civil Procedure 56.

In this action, the Clerk of the Court gave Plaintiff notice of the motions for summary judgment and informed her of the summary judgment rules, the right to file affidavits or other materials in opposition, and the consequences of default. (Doc. 133.) Therefore, the notice requirements of *Griffith v. Wainwright*, 772 F.2d 822, 825 (11th Cir. 1985) (per curiam), are satisfied. The time for filing materials in opposition has expired, and the motion is now ripe for consideration.

III. Discussion

Plaintiff asserts two theories of recovery: (1) Plaintiff asserts that all Defendants violated the Eighth and Fourteenth Amendments to the United States Constitution because they were deliberately indifferent to a known risk that Plaintiff would be sexually assaulted, and (2) Plaintiff asserts a supervisory-liability claim against all Defendants for violating the Eighth Amendment by failing to protect Plaintiff from sexual assault in the A1 and A3 Dormitories. Although Plaintiff's supervisory-liability claims merely re-hash her deliberate indifference claims, the Court will analyze each claim separately. It begins with the question of deliberate indifference.

A. Deliberate Indifference Claims

Plaintiff's deliberate indifference claim rests upon the Eighth Amendment's prohibition of "cruel and

unusual punishment." Essentially, Plaintiff claims that Defendants knowingly ignored dangers to Plaintiff such that the conditions Plaintiff faced in prison constituted cruel and unusual punishment. Because the Supreme Court has extended the Eighth Amendment's prohibitions to the States, Plaintiff may properly make an Eighth Amendment claim against Defendants, employees of the State of Georgia. *See Rhodes v. Chapman*, 452 U.S. 337, 344-45, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981). Thus, the Court must determine if Defendants' actions violated the Eighth Amendment.

The Eighth Amendment, as interpreted by the Supreme Court, applies to the treatment of prisoners as well as the conditions of their confinement. *Rhodes*, 452 U.S. at 345. While the Eighth Amendment "does not mandate comfortable prisons" or preclude "restrictive and even harsh" prison conditions, it does establish a minimum level of prisoner safety. *Farmer v. Brennan*, 511 U.S. 825, 832-33, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). Thus, a prison official violates the Eighth Amendment when *both* (1) his acts or omissions deny prisoners "the minimal civilized measure of life's necessities," *and* (2) he has a "sufficiently culpable state of mind," i.e., "one of deliberate indifference to inmate health of safety." *Id.* at 834 (citations omitted)(internal quotation marks omitted).

"To survive summary judgment in a case alleging deliberate indifference, a plaintiff must 'produce sufficient evidence of (1) a substantial risk of serious harm; (2) the defendants' deliberate indifference to that risk; and (3) causation.'" *Goodman v. Kimbrough*, 718 F.3d 1325, 1331

(11th Cir. 2013)(quoting *Carter v. Galloway*, 352 F.3d 1346, 1349 (11th Cir. 2003)). To establish the deliberate indifference prong, a plaintiff must prove "'(1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than gross negligence.'" *Id.* at 1332 (quoting *Townsend v. Jefferson County*, 601 F.3d 1152, 1158 (11th Cir. 2010)). Or, put differently, "[t]o be deliberately indifferent, a prison official must know of and disregard 'an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, *and he must also draw the inference*.'" *Id.* (emphasis in original) (quoting *Purcell ex. rel. Estate of Morgan v. Toombs Cty., Ga*, 400 F.3d 1313, 1319-20 (11th Cir. 2005)). Thus, to prove deliberate indifference, a plaintiff may not merely prove the defendant should have objectively known that a substantial risk of serious harm existed, but that the defendant "subjectively knew of the substantial risk of serious harm and that [he] knowingly or recklessly disregarded that risk." *Id.*

Deliberate indifference, however, is not merely negligence. The deliberate indifference standard requires "a great deal more" proof than a traditional negligence standard. *Goodman*, 718 F.3d at 1332. "'It is not . . . every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety.'" *Id.* at 1333 (quoting *Farmer*, 511 U.S. at 834).

The heightened deliberate indifference standard reflects the fact that "just as not every injury is an injury

of constitutional magnitude, not every wrong that would be actionable under state or common law is cognizable as a constitutional tort under § 1983." *Goodman*, 718 F.3d at 1333. It also reflects the fact that judges are ill-suited to meddle, even with the best of intentions, in the day-to-day operations of the nation's prisons. *Id.* at 1334. Therefore, federal courts must be careful to strictly adhere to the exacting standards for deliberate indifference claims and avoid the temptation to apply a lesser standard in acquiescence to any personal sympathies or desires, no matter how justified. *Id.*

Goodman v. Kimbrough provides a particularly vivid illustration of the high walls a plaintiff must scale before succeeding on a deliberate indifference claim. In *Goodman*, the plaintiffs, a 67-year old man with dementia, Mr. Goodman, and his wife, Mrs. Goodman, sued prison officials after Mr. Goodman's cell mate viciously beat him in the night. Despite overwhelming evidence of negligence, however, the Eleventh Circuit declined to find a violation of his constitutional right to be free of cruel and unusual punishment.

Police arrested Mr. Goodman for mistakenly trying to gain entry into a neighbor's trailer during an evening walk. Upon learning of her husband's arrest, Mrs. Goodman drove to the police station where she provided copies of her husband's medical records and requested that he be placed in an isolation cell "so that he would not unintentionally insult another inmate and thereby come in harm's way." 718 F.3d at 1329. Despite Mrs. Goodman's request, however, police housed her husband with another inmate.

When the officers returned to the cell several hours later, they found Plaintiff covered in blood with contusions on his face, his eyes swollen shut, and the floor of the cell "laden with blood." 718 F.3d at 1330. When asked what caused his injuries, "Goodman, clearly bewildered, lifted up his hands and said, 'These two right here.'" *Id.* The sheriff's department subsequently determined that Goodman's cellmate was the real culprit. As a result of his injuries, Goodman spent seven days in the intensive-care unit and an additional two to three weeks in the jail infirmary.

Plaintiff and his wife sued prison officials on a claim of deliberate indifference. Plaintiffs presented two particularly damaging pieces of evidence. First, prison policy stated that officers were supposed to perform "head counts" at 6:00 p.m. and 12:00 a.m. every night in which they would physically enter the cells and look at prisoners' faces and check their armbands. Additionally, they were supposed to perform "cell counts" every hour after 12:00 a.m. in which they would look into the window of each cell. On the night of the incident, one officer conducted a "head count" at 6:00 p.m., but he failed to enter the cell and merely looked through the window. Neither officer on duty conducted the 12:00 a.m. "head count" or even a single "cell count." Plaintiff also presented evidence that another inmate had repeatedly pushed the emergency call button to notify officers of the fight in Goodman's cell, but officers deactivated the call button and failed to investigate the situation.

Despite the definitive evidence of negligence, the Court of Appeals affirmed the district court's opinion in

favor of the defendants. The Court noted that although the judges were "disturbed by the dereliction of duty that facilitated the violence visited upon Goodman while he was under the officer's charge," Goodman failed to prove that either officer was "subjectively aware of the peril to which Goodman was exposed on the night in question." 718 F.3d at 1334. The Court concluded that:

> the fact that the officers deviated from policy or were unreasonable in their actions — even grossly so — does not relieve Goodman of the burden of showing that the officers were subjectively aware of the risk; in other words, he cannot say, "Well, they should have known." Were we to accept that theory of liability, the deliberate indifference standard would be silently metamorphosed into a font of tort law — a brand of negligence redux — which the Supreme Court has made abundantly clear it is not.

Id. (citing *Farmer*, 511 U.S. at 838).

The facts of this case dictate a similar outcome. Plaintiff makes three claims: (1) Defendants "condon[ed] and promot[ed] unsafe prison conditions known to place transgender Green in substantial risk of physical injury"; (2) Defendants "show[ed] deliberate indifference to actual physical injuries Defendants knew Green had suffered and thereby creating an environment that led to her actually being anally raped"; and (3) Defendants "show[ed] deliberate indifference to Green being placed

in a protective-custody cell with an inmate Defendants (at the very least Grubbs and John Doe) knew was Green's sexual assailant." (Doc. 1 ¶41.) To support her claims, Plaintiff makes several factual allegations, including: (1) Defendants knew Plaintiff was transgender upon her arrival at Rodgers but ignored the dangers she faced as a transgender by placing her in a general population dormitory; (2) Defendants knew Plaintiff was in "substantial danger" because Al Dormitory was a dangerous place with high rates of sexual assault; (3) Defendants knew Plaintiff faced a substantial risk of assault by inmate Ricard because Plaintiff's mother had informed Warden Hooks she was in danger and Defendants Hooks and Brown received a letter from Plaintiff alleging that Ricard was sexually assaulting her; and (4) Defendants knew that Plaintiff faced a substantial risk of harm when they placed her in a cell with inmate Ricard after Plaintiff and Ricard were "put on the door." Even taking Plaintiff's evidence in a light most favorable to her, however, Plaintiff has failed to provide sufficient evidence by which any reasonable jury could find any Defendant was deliberately indifferent to a substantial harm. *See Goodman*, 718 F.3d at 1332 ("[The plaintiff] must adduce specific evidence from which a jury could reasonably find in his favor; [t]he mere existence of a scintilla of evidence in support of [his] position will be insufficient." (internal quotation marks omitted)).

1. Subjective Knowledge of a Risk of Serious Harm

Plaintiff has failed to sufficiently prove that any Defendant had subjective knowledge of a risk of serious

harm. Plaintiff makes several attempts to establish subjective knowledge. In the opening pages of her response brief, Plaintiff claims that "Hooks authorized Green to be put in administrative custody after guards recognized Green's feminine characteristics along with noticing Green had breasts during an initial strip search." (Doc. 162 at 2.) The clear inference of Plaintiff's assertion is that Defendants knew, from Plaintiff's very arrival, that Plaintiff would be exposed to harm if she was placed in general population, so they segregated her immediately. Plaintiff's assertion (and subsequent inference) fails to hold up for multiple reasons.

First, Plaintiff's assertion contradicts a Rule 36 admission she made during the course of discovery. Federal Rule of Civil Procedure 36 allows parties to request admissions of fact from the opposing party. The responding party must admit the fact, or, "if not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it." Fed. R. Civ. P. 36(a)(4). Once a party makes an admission, the admission "is conclusively established unless the Court, on motion, permits the admission to be withdrawn or amended." Fed. R. Civ. P. 36(b).

In her initial interview with GDC's internal investigator, Plaintiff stated that she was placed in Administrative Segregation upon her arrival at Rodgers because the prison did not have enough bed space. (Doc. 132-1 at 5-6.) Prison officials recorded this interview on a CD. In response to Defendants' Rule 36 request for admissions of fact, Plaintiff admitted the CD that

Defendants entered into evidence was a true and accurate copy of the audio recording of Plaintiff's statement to the GDC internal investigator. (Doc. 131-20 at 7.) She then admitted that the statements she made on the CD were "truthful and accurate." (*Id.*) This Rule 36 admission conclusively establishes, for purposes of this litigation, that prison officials placed Plaintiff in Administrative Segregation because the prison lacked sufficient bed space. Plaintiff is bound to that admission. Fed. R. Civ. P. 36(b); *see Williams v. City of Dothan, Ala.*, 818 F.2d 755, 762 (11th Cir. 1987) (noting that a Rule 36 admission of fact is "conclusively established" and a district court is not free to ignore it). Plaintiff had full time and opportunity to review the audio recording and reflect upon its accuracy. Plaintiff cannot now use alternative facts.

Plaintiff's assertion also suffers from another flaw: it lacks sufficient supporting evidence. Federal Rule of Procedure 56 requires that factual assertions be supported by some form of evidence. Plaintiff cites as support for her assertion paragraphs 14, 29, and 133 of her Response to Defendants' Statement of Material Facts. (Doc. 163.) Paragraphs 14, 29, and 133, however, do not contain a single citation to the record that supports Plaintiff's proposition that guards noticed Plaintiff's breasts and for that reason placed her in Administrative Segregation. Indeed, Plaintiff's citations do not even support the assertion that guards noticed her breasts or feminine appearance. Thus, even if Plaintiff had not made a Rule 36 admission, she has still failed to offer any support for her assertion, and the Court cannot declare any genuine issue of material fact as to why prison officials

initially placed Plaintiff in Administrative Segregation. It must accept Plaintiff's own explanation — officials placed her in Administrative Segregation because the prison lacked adequate bed space.

Plaintiff's other evidence similarly fails to provide sufficient evidence of deliberate indifference. For example, although Plaintiff asserts that Warden Hooks "reviewed the sexual assault reports," she provides no evidence to prove her assertion. At deposition, Plaintiff inserted the reports into evidence but failed to ask Warden Hooks any questions as to when he reviewed the records, how often he reviewed the records, or whether he was ever aware of the records. In fact, Plaintiff asked Warden Hooks no questions about the report and made no attempt to gather any evidence that Warden Hooks knew of the report and had knowledge of its contents.

But, even assuming that Warden Hooks did review the records, they hardly establish that he subjectively knew Plaintiff was in substantial danger of assault. The sexual assault report Plaintiff cites is not sufficient evidence to prove either a substantial risk of harm or that any Defendant had knowledge of such harm and recklessly disregarded it. The report records assault *allegations* and the actions taken by prison officials in response to the allegations. (Doc. 167.) It spans five years and encompasses the entire 1,500 person prison, not merely Al Dormitory. (*Id.*) By the Court's count, it details twenty-eight allegations of sexual assault over that five year period, or, a little over five recorded allegations per year. Also by the Court's count, of the twenty-eight recorded

allegations, three occurred in Building A, four in Building B, two in Building C, four in Building F, three in Building G, two in Building H, and ten in undisclosed locations. The charts also make clear that not all allegations are credible and that some allegations are later retracted. (*See* 167 at 16, 26-28.)

Plaintiff has the burden of producing enough evidence such that a reasonable jury could conclude that Warden Hooks, or any Defendant, subjectively knew of a substantial harm to Plaintiff and also recklessly disregarded that risk. First, the report does not establish a substantial risk of harm to Plaintiff, or any prisoner. While any sexual assault is one too many, twenty-eight allegations of rape — not confirmed incidents — over the course of five years in a 1,500 person prison is not a substantial risk. Prisons are dangerous places because they are filled with people who society has already deemed too dangerous to live amongst law abiding persons. Prisoners will always be at some risk of harm simply by being surrounded by these people. Furthermore, the report itself shows that, at a minimum, Warden Hooks did not recklessly disregard a known risk of sexual assault. A review of the report indicates that Warden Hooks consistently instructed his employees to investigate every allegation. Thus, the sexual assault reports do not satisfy Plaintiff's evidentiary burden that Plaintiff faced a substantial risk of harm.

Nor does Plaintiff's allegation of subjective knowledge based upon Plaintiff's letter to her mother or her alleged letter to Deputy Warden Brown stand up to scrutiny. Upon receiving notice of Plaintiff's letter to her mother,

Warden Hooks took swift action to investigate Plaintiff's allegations. On the same day he became aware of Plaintiff's letter, Warden Hooks held a meeting with Plaintiff and Deputy Warden Brown during which Plaintiff denied she was in danger and refused to identify any potential assailant. Moreover, Plaintiff had the opportunity to speak with her mother in the presence of Warden Hooks. Plaintiff, however, gave Warden Hooks no information that could have enabled him to help her. Finally, Warden Hooks took additional measures to protect Plaintiff by providing her with paperwork that concealed from the other inmates in Al Dormitory the true purpose of their meeting.

Given the lengths to which Warden Hooks went to investigate Plaintiff's complaint and Plaintiff's steadfast refusal to tell him the truth, no reasonable jury could find that he subjectively knew she was in danger. Although Hooks and Brown could have chosen to disbelieve Plaintiff in spite of her confidential assurances to the contrary, the Constitution does not require them to do so. It is illogical to conclude that Plaintiff could successfully claim prison officials not only should have known, but did in fact know, that she was in danger, despite her personal assurances that she was not.

Plaintiff's alleged letter to Deputy Warden Brown also fails to establish subjective knowledge. While Plaintiff might have written a letter to Deputy Warden Brown alleging Ricard as her assailant, she has provided no evidence of this letter other than her own testimony. But, even taking her testimony as true for purposes of summary judgment, Plaintiff has provided no evidence

that Deputy Warden Brown, or any Defendant, ever received or had knowledge of the letter. Moreover, simply receiving the letter would not have established deliberate indifference because "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, *and he must also draw that inference.*" 718 F.3d at 1332.

A genuine dispute exists only "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248. Plaintiff has not provided sufficient evidence that a reasonable jury could conclude Defendants not only received the letter but subjectively knew that Plaintiff was at a risk of substantial harm. Such a conclusion would subject every official to trial if a prisoner merely alleged that she wrote a letter claiming abuse. Thus, Plaintiff's claim that she sent a letter to Defendants, without more, does not create a genuine dispute of material fact.

The Court also finds that even if one takes a holistic view of all potential inferences from each piece of evidence offered by Plaintiff, Plaintiff has still failed to produce sufficient evidence such that a reasonable jury could find Defendants subjectively knew Plaintiff was in substantial danger. Thus, the Plaintiff has failed to provide sufficient evidence of deliberate indifference.

2. Disregard of a Substantial Risk

Even if Defendants did have subjective knowledge of a substantial risk, however, Plaintiff offers insufficient

evidence that any Defendants disregarded that risk. Plaintiff's main argument on this element is that Defendants consciously disregarded a substantial risk to Plaintiff when they placed her in a cell with Ricard. Plaintiff produces some evidence that one Defendant might have authorized Plaintiff to be placed with Ricard (no one can dispute that somebody in the prison authorized the move), but Plaintiff fails to put forth any evidence that any Defendant knew that pairing the two prisoners together would have placed Plaintiff at a substantial risk of serious harm. Sure, Ricard had a criminal history of rape, but Plaintiff produced no evidence that any Defendant knew Ricard's criminal history at the time Plaintiff was placed in his cell. Neither is it a reasonable inference that they had such knowledge. Rodgers State Prison houses over 1,500 inmates, many of them convicted of violent felonies. Ricard was never labeled a PREA aggressor and Plaintiff was never labeled a PREA victim. (Doc. 131-2 at 6-7.) Furthermore, despite spending several hours in a secure location and giving testimony to officers, Plaintiff never mentioned any problems with Ricard or any history of sexual assault in A1 Dormitory.

The Court also notes that Plaintiff's assertion that Warden Hooks "authorized" Plaintiff to be in the same cell as Ricard is quite a stretch. After scouring the citations in Plaintiff's brief, the Court concludes that Plaintiff's assertion stems from two Administrative Segregation memos signed by Warden Hooks on September 21, 2012. The Administrative Segregation memos (each prisoner had a separate memo on a separate piece of paper) contained the cell number and bed number of

each prisoner requesting Administrative Segregation. Plaintiff's inference is that because Warden Hooks could have seen the bed assignments on the separate memos, he must have approved Plaintiff and Ricard being placed in the same cell. Plaintiff, however, has not provided sufficient evidence to support this inference.

Plaintiff's evidence is insufficient to create a genuine dispute of fact over whether Warden Hooks disregarded a substantial risk to Plaintiff when he signed the Administrative Segregation memos. Administrative Segregation memos are documents sent to the Warden when prisoners request protective custody. (Doc. 141-1 at 2-3, Doc. 142-3 at 5-6.) Per prison policy, the Warden must sign the memos before the Classification Committee can determine if protective custody is warranted. (*Id.*; Doc. 131-4 ¶¶ 31-32; *see* Doc. 131-31.) The purpose of signing the memos is not to "approve" the cell assignments of inmates in Administrative Segregation. (Doc. 142 at 71-72, 92-96.) The purpose is to review the merits of each prisoner's request. (*Id.*) The prisoner's cell assignment is secondary information. (*See* docs. 131-31, 131-32.) Plaintiff cannot impute knowledge of a substantial risk based on an inference that the Warden would recognize, based on two separate memos, on two separate pieces of paper, that two prisoners without a PREA aggressor or PREA victim designation were not only placed in the same cell, but *should not have been placed in the same cell*. Warden Hooks testified that he could have up to fifty such memos on his desk at a given time, and the prison contains 1,600 inmates. (Doc. 142 at 93.) Additionally, Warden Hooks testified that he did not notice that Ricard

and Plaintiff were in the same cell at the time he signed the two memos. (*Id.*) No reasonable jury could expect the supervisor of such a large facility to have such substantial knowledge of its numerous, ever-changing inmates *and* connect all the various dots required to even have a hunch that Plaintiff and Ricard should not have been placed together — especially not under a standard more lenient than gross negligence.

Plaintiff's second piece of evidence that Defendants disregarded a substantial risk is her evidence that they left the doors to the four rooms of A1 Dormitory unlocked during the night, contrary to prison protocol. This evidence, however, fails to demonstrate a disregard for a serious harm. A1 Dormitory is a general population dormitory that allows all prisoners to roam freely, even under standard protocol, for 18 hours a day. (*See* Doc. 141 at 61-64.) The four rooms left unlocked housed sixteen inmates apiece. (Doc. 142 at 84-85; Doc. 131-4 at 5-6.) The logical conclusion of Plaintiff's inference, then, is that not locking the doors of four sixteen person rooms for six hours of the day that happen to occur when the sun is no longer in the sky amounts to a substantial risk of serious harm, and Defendants disregarded that risk when the failed to enforce the policy of locking the doors. The Court declines to make such a declaration. While Defendants might have acted negligently, their failure to lock the doors, in light of all the evidence, does not present sufficient evidence such that a reasonable jury could find Defendants disregarded a substantial risk to Plaintiff.

Plaintiff's other allegations do not fare much better. Plaintiff alleges that Defendant Hooks disregarded a

substantial risk to Plaintiff because "there is no evidence that Hooks took any disciplinary measures against inmates who engaged in consensual or non-consensual sex acts, even though he reviewed the sexual misconduct reports — the brightest example of this is that Hooks did not ensure that Ricard received a disciplinary report after Ricard sexually assaulted Green." (Doc. 162 at 6.) This evidence is misleading in several respects.

First, Warden Hooks did not, as Plaintiff suggests, ignore Ricard's alleged rape. After the incident, a Sexual Assault Response Team conducted an investigation and determined that the allegations of rape were substantiated. (Doc. 142-15.) Warden Hooks then referred the incident to the Internal Investigation Unit and allowed them to conduct a full investigation. (*Id.*; Doc. 142 at 81-83.) Subsequently, state prosecutors attempted to secure an indictment from a two separate grand juries and both refused to indict Ricard. (Doc. 171 at 15.)

Second, Plaintiff provides no evidence that Warden Hooks failed to take disciplinary action when he should have. She cites to the Sexual Assault Report and Paragraph 144 of her response to Defendants' Statement of Material Facts, but neither supports an assertion that Hooks failed to discipline inmates for sexual misconduct. To the contrary, the Sexual Assault Report shows the actions Warden Hooks took to investigate allegations of sexual assault. Additionally, because the records merely show the complaints *alleged* by inmates and the immediate action taken by correctional officers, it provides no evidence of substantiated claims of sexual assault or

resulting discipline. Thus, it provides no evidence that Warden Hooks failed to discipline prisoners who were found to have committed sexual misconduct.

Paragraph 144 likewise includes no information proving the assertion that "no one ever got disciplined for consensual or nonconsensual sexual encounters." Other than the assertion that Ricard was not disciplined — a misleading, if not false, assertion — Plaintiff provides no evidence detailing cases deserving of discipline where no discipline was given. She merely asserts that "no one ever got disciplined" and cites the incident report of Darryl Ricard. This is not sufficient evidence or citation for such a bold assertion.

Plaintiff also asserts as evidence of disregard that "Hooks was repeatedly told that control booths were not manned inside the dorms, but again, Hooks took no corrective action." (Doc. 162 at 6.) Plaintiff cites as support for this assertion minutes from a safety team meeting as well as Paragraph 72 of her response to Defendants' Statement of Material Facts. Once again, however, Plaintiff's assertion is misleading.

The minutes referred to by Plaintiff state the following: "Due to the staff shortage in security control rooms are not being manned in the dorms. Officers are required to carry keys for the building inside living areas." (Doc. 163-8.) These minutes, however, are not the whole story. Deputy Warden Brown unambiguously testified that the control room in building A was always manned, and he explained why it was always manned:

Q: Out of the seven control rooms that you just named, which control rooms were not being manned during the month of July 2012?

A: Specifically, I can't say. But if — if any, it would have only been available — or there would have only been three that they could not have manned during that month.

Q: Which were those?

A: B, C, and F Builidng.

Q: Why is that?

A: Population dormitories on both sides of the building. There's population all around.

Q: Oh, okay. I got you. So A is not population dormitories because it has seg units —

A: The seg unit —

Q: — on one side?

A: — side of A building requires the control room to be manned.

Q: Okay. So that was what I was trying to get. So you can say for certain that — from July 1, 2012, through September 22, 2012, that the control room in the A building was being manned?

A: Yes.

(Doc. 141 at 41-42.)

Even after taking this deposition, Plaintiff procured no other evidence showing to which building the Safety Meeting notes referred. No reasonable jury could agree with Plaintiff's interpretation of the facts. While the evidence presented might create a mere inference that the control room in A1 Dormitory was not manned on a regular basis, given the totality of the evidence, such an inference is not reasonable.

B. Supervisory-Liability Claim

In addition to her claims of deliberate indifference, Plaintiff also makes supervisory-liability claims against Hooks, Brown, and Grubbs for proximately causing Green's injuries. Supervisory defendants may only be held liable under § 1983 "if they personally participated in the allegedly unconstitutional conduct or if there is 'a causal connection between [their] actions . . . and the alleged constitutional deprivation.'" *West v. Tillman*, 496 F.3d 1321, 1328 (11th Cir. 2007) (quoting *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003)). They cannot be held liable for the unconstitutional acts of their subordinates under the traditional tort standards of respondeat superior or vicarious liability. *Cottone*, 326 F.3d at 1360. Because the Court has already determined that no unconstitutional conduct occurred, Plaintiff cannot prove that any Defendant personally participated in or caused a constitutional deprivation. Thus, Plaintiff's supervisory-liability claims fail.

Appendix B

C Qualified Immunity

Qualified immunity aims to limit personal liability of government officials by allowing them to "reasonably anticipate when their conduct may give rise to liability for damages." *Anderson v. Creighton*, 483 U.S. 635, 646, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)(internal quotations omitted). It provides that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)(citations omitted).

Establishing qualified immunity is a two-step process. First, the official must "prove that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred." *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002) (quoting *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002)). If "the defendant establishes that he was acting within his discretionary authority, the burden shifts to the plaintiff to show that qualified immunity is not appropriate." *Id.* To prove qualified immunity is not appropriate at the summary-judgment stage, the Plaintiff must prove (1) that the officer's actions violated the constitution, *and* (2) the constitutional right violated was clearly established. *See id.* at 1346.

All Defendants involved in this litigation were acting under their discretionary authority, thus the question to be answered is whether Plaintiff has provided sufficient

evidence such that a reasonable jury could conclude that any of the Defendants' actions violated the Constitution *and* the constitutional right violated was clearly established. As this Court has already discussed, none of Defendants' actions violated the Constitution. Because the Defendants did not violate a constitutional right, the Court cannot address whether the right was clearly established. Thus, Defendants are entitled to qualified immunity.

IV. Conclusion

In reaching its conclusion, the Court stresses that the Plaintiff's failure to produce evidence of deliberate indifference does not necessarily mean that officials at Rodgers State Prison did nothing wrong. The Court is simply bound by the high standards of deliberate indifference mandated by the Constitution and the Supreme Court.

Because Plaintiff has failed to establish deliberate indifference, and because Defendants are entitled to qualified immunity, the Court **GRANTS** Defendants' motion for summary judgment. (Doc. 131.) The Court also **DENIES** as moot Defendants' motion to exclude expert testimony. (Doc. 134.) It **DIRECTS** the Clerk to **CLOSE** this case and **ENTER JUDGMENT** in favor of Defendants and against Plaintiff.

ORDER ENTERED at Augusta, Georgia, this 21st day of March, 2017.

Appendix B

/s/ J. Randal Hall
HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA