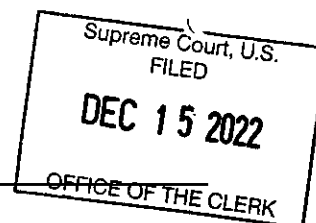


22-6366
No. _____

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ORIGINAL

SUPREME COURT OF THE UNITED STATES



Brala Beverly,

Petitioner

vs .

Orange County Sheriff Does 1-1000

Respondent.

On Petition for a Writ of Certiorari to
United States Court of Appeals, Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Brala Beverly

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Pro Se, Petitioner, Plaintiff

I . Questions Presented

Is it constitutional for the County of Orange in California, and the Orange County Sheriff, as a matter of custom or policy, to pretend transgender people don't exist and reassign the gender of transgender people simply for being in custody, by placing them in jails only based on biology, in pure ignorance of sociology, psychology and human behavior?

Is it a violation of the first amendment of the U.S. Constitution for the Orange County, California Sheriff to reassign the gender of a transgender person in custody?

Does the conduct of the Orange County Sheriff in California of subjecting transgender citizens to cross gender physical searches, cross gender sleeping quarters and bathing with those of another gender violate the fourth amendment right of a transgender person to be secure in their person?

Is it a violation of the fifth amendment of the U.S. Constitution and the right against self incrimination for a detainee in the Orange County, California jail to be forced to testify as to their guilt or innocence without proper representation of counsel as an option for the detainee?

Is it a violation of the sixth amendment of the U.S. Constitution and the right to counsel for a detainee in an Orange County, California jail to be forced to testify as to their guilt or innocence without proper representation of counsel as an option for the detainee?

Is it a violation of the fourteenth amendment of the U.S. Constitution due process clause for a transgender person in fear in a men's jail, handcuffed next to men, to be forced

to admit or deny guilt under this threat of gender violence at a jail hearing on her charge?

Is it a violation of the eighth amendment of the U.S. Constitution and cruel and unusual punishment for police to require a transgender person change their gender and be housed in traditional gender facilities as part of punishment for a crime?

Where police who have reassigned the gender of a transgender person in jail and they witness gender related violent threats to that transgender individual by other inmates based on the persons gender, is this a violation of the fourteenth amendment of the U.S. Constitution of equal protection under the law?

Is it a violation of any federal hate crimes laws for police to misgender, harass the gender of and at the same time physically force a transgender inmate into a jail with men threatening gender related violence on the transgender person at the same time?

Is it a violation of the California Bane Act for police to misgender and harass the gender of and physically force a transgender inmate into a jail with men threatening gender related violence on the transgender person at the same time?

Is it a violation of the California Senate Bill 132 for Orange County, California Sheriff and the County of Orange to misgender and harass the gender of and physically force a transgender inmate into a jail with men threatening gender related violence on the transgender person at the same time?

Is California Senate Bill 132 correct when it says placing transgender inmates in a

jail not of their gender identity is a violation of their constitutional rights?

Does the Orange County Sheriff and County having a policy to reassign the gender of transgender citizens upon arrest amount to an unconstitutional policy under the Monell Doctrine?

Does the Orange County, California Sheriff and County of Orange having a policy to reassign the gender of transgender citizens upon arrest and the inevitable violence to gender subsequent circumstances in the jail amount to rights violations under 42 U.S.C. 1983?

Do the federal civil rights violations alleged against the County of Orange, California in this lawsuit also therefore apply to other states and their counties in the treatment of transgender citizens under arrest regardless of their state laws?

Does the Prison Rape Elimination Act (42 U.S.C. 15607, 34 U.S.C. 30307) provide a private right of recovery when violated, including being violated with the violation of constitutional rights?

Do codes of Federal Regulations for the bureau of prisons provide a private right of recovery when violated or at least fair notice to police not to discriminate trans inmates?

Does California Penal Code 11410 provide a private right of recovery?

Do state laws such as California Senate Bill 132 and California Penal Codes 2605 and 2606 go ignored in pending lawsuits if the law was created before the final ruling in that

pending lawsuit but after the incident of the lawsuit?

Is the newly amended Violence Against Women Act 34 U.S.C. 12361 available for private recovery where constitutional rights have been violated by a state entity defendant?

Does the California Civil Rights Act of 2005, an amendment of the Unruh Act, which includes protections for transgender individuals from discrimination in public accommodations, apply to jails and prisons?

Are the acts of the Orange County, California Sheriff and the County of Orange of reassigning the gender of a transgender citizen upon arrest and physically forcing that individual into jail cells while slurring her gender while men are verbally threatening to rape and kill her in front of the same police slurring her gender also, violating that individual transgender person's fourteenth amendment constitutional right to equal protection relative to those afforded other inmates?

Is the placement of a transgender individual in a jail not of their gender identity a violation of Title IX, given that it would be impossible for such an inmate to not be discriminated against on the basis of sex in education while in a jail providing an educational regimen?

Can a Federal District Court Refuse Plaintiff leave to amend with additional causes of action in a final and conclusive manner that prejudices the case of the Plaintiff without allowing the Plaintiff to make corrections to pleadings before a trial date has even been set?

Should the Orange County, California Sheriff and the County of Orange have honored an

8 year old minor misdemeanor warrant made out to a no longer legal name on the warrant when it was presented to them by the Newport Beach Police Department in light of the fourteenth amendment right to due process and the right to a speedy and unprejudiced trial?

Is a minor misdemeanor warrant that is 8 years old not made out to a name on the current ID of a suspect in custody enforceable?

Can the Ninth Circuit Court of Appeals refuse to hear all judicial notice motions and make an educated ruling without considering them?

Can the Ninth Circuit Court of Appeals make an educated ruling dismissing all claims of an action without even mentioning over half of them in their ruling?

II. List of Parties and Related Cases

A. Parties

Brala Beverly -Plaintiff

Orange County, California Sheriff-Defendant

County of Orange, California (Does party 1)-Defendant

Does 2-1000-Defendants

B. Related Cases

United States District Court, Central District of California
Case No. 8:20-cv-00797-JGB-SP

Judgment entered on 12/13/21

United States Court of Appeals for the Ninth Circuit
Case No. 22-55080

Judgment entered on 10/24/22

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V . Petition for Writ of Certiorari

Petitioner Brala Beverly respectfully petitions this court for a writ of certiorari, primarily to review the constitutionality of the judgment of the United States Ninth Circuit Court of Appeals after the court essentially made the claim that transgender people will have their gender reassigned by police when arrested. Other legal claims regarding due process regarding irregular on their face warrants and for prisoners at jail hearings are also included in this case. The Complaint was dismissed under Federal Court Rule of Civil Procedure 12 b (6) by the United States Central District of California after claiming there is no equal protection right for transgender inmates and other amendments don't apply either.

VI. Opinions Below

The proceedings related to this case include that of the United States Central District Court of California, case number 8:20-CV-00797 and the United States Court of Appeals Ninth Circuit Court case number 22-55080.

The Order of the District Court, Central District of California ruling on the merits appears at Appendix A to the petition and is unpublished.

The Objection to the Report and Recommendations and Order appears at Appendix B to the petition.

The Memorandum of the United States Court of Appeals Ninth Circuit appears at Appendix C to the petition and is unpublished.

The Petition for Rehearing En Banc appears at Appendix D to the Petition.

The decision of the United States Ninth Circuit Court of Appeals to deny the Petition for Rehearing En Banc appears at Appendix E.

VII. Jurisdiction

The date on which the highest federal court decided this case was on 10/24/22. This was the Memorandum of the United States Court of Appeals Ninth Circuit. A copy of this decision is attached at Appendix C.

A timely petition of Rehearing En Banc was thereafter denied on 11/30/22. A copy of the order denying rehearing appears at Appendix D.

Brala Beverly thereby and hereby requests and invokes this court's jurisdiction under Article III Section II of the United States Constitution, Supreme Court Rule 10, 28 U.S.C. 1254 and 28 U.S.C. 1257 now, within 90 days of the final ruling of the Ninth District Court in this case.

VIII. Constitutional Provisions Involved

A. Brala's Constitutional Assertions

Petitioner and Plaintiff Brala Beverly asserts her first amendment free speech right to be transgender regardless of being in custody of state or federal government officials. Police, by virtue of reassigning her legal gender on her state and federal ID from female, to male, preempted her first amendment constitutional right to be a transgender woman when placing her in men's jails. Once in those jails, Brala's fourteenth amendment right to equal protection under the law was violated because she faced unequal protection relative to other inmates. Inmates immediately and constantly threatened to rape and murder Brala out of nowhere. This was gender related violence and would not have been committed against Brala to that degree were she respectfully assigned to a jail matching her gender identity. It would not have even occurred anywhere near to the degree that it did if Brala was kept isolated from other inmates. Although that kind of treatment presents certain unfair and unequal issues, it would have been far better than placing Brala in an immediate life threatening situation. Brala asserts in this case that a genetic woman would have a constitutional right to not be placed in a men's jail for safety concerns, and a transgender women needs that same protection for the same reason.

Brala's fourth amendment right to be secure in her person was also violated when police reassigned her gender and felt they could speak for her about what her identity needed to be upon arrest. As a result of this police conduct, Brala was forced to sleep, live, use the washroom and shower next to men as they threatened to rape and kill her. Brala, as a result, was unable to sleep at all hours. Brala also asserts the reassigning of her gender upon arrest was cruel and unusual punishment irrelevant of the crime she was accused of and thus a violation of the eighth amendment of the US Constitution. As a non convicted inmate, Brala alleges due process violations under the fourteenth amendment. Although Brala was ultimately found not guilty of the crime after her jail stay, she was forced to plead guilty while at the jail hearing. This was done in order to leave the jail sooner given the lightness of the charge and the life threatening circumstance of being misgendered in the jail assignment. Due to being in the jail additional time to complete the sentence as a convicted inmate, the eighth amendment applies. As a result of Brala being subjected to a jail hearing where she was not properly presented by counsel as to her rights, where the issues of the charge were never discussed in detail, and where she was under intimidation to make a guilty plea due to the reassigning of her gender, putting her in a life threatening male gender jailing circumstance when she made the plea, Brala also made a claim for a fourteenth amendment due process violation. Brala also made a fifth amendment claim relative to being forced to incriminate herself without proper counsel under the sixth amendment.

B . The District Court's Constitutional Assertions

The underlying courts in this case barely even mentioned the constitutional claims of Brala Beverly in their opinions, fully neglecting the nature of this lawsuit by and large. However, the Central District Court of California did state that it refused the fourteenth amendment claim of Brala Beverly to equal protection under the law on the basis that it believed the Supreme Court has never made an affirmative ruling that transgender people are entitled to equal protection under the law when arrested (Appendix A pages 13-14). The court also said

that it believed Brala was not physically harmed by being assaulted by police by being physically forced to enter a men's jail against her will as a transgender woman or by being forced to bathe and shower with men making credible threats of violence against her based on her gender in front of those police. The court interpreted the fourteenth amendment apparently as only enforceable for equal protection under the law if Brala was first raped, beaten or killed based on her gender, as was widely threatened upon her arrival in the jail by inmates in front of police while police slurred her gender. The district court absurdly cites children being scolded by a schoolteacher in *Corales v. Bennett*, 567 F. 3d 554, 564-65 (Ninth Cir. 2009) as similar in violence and threat value to that alleged in this case. The court also cites *Guat v. Sunn*, 810 F. 2d 923, 925 (Ninth Cir. 1987) (Appendix A page 12), which discusses, in part of the case, jail staff making non credible physical threats of violence under a hypothetical circumstance if a certain action were taken by Plaintiff if it were to occur. This case however describes actual physical violence and credible threats of violence as against Brala only based on Brala being transgender. The court did not address why due process was not violated under the fourteenth amendment by police conduct described in this complaint. As for the due process clause of the fourteenth amendment (Appendix A page 11), the court states that the Ninth Circuit has included four elements for a violation on inmate due process in *Castro v. City of Los Angeles* 833 F. 3d 1060, 1067 (2016). Here, again, the court sees no harm done in rejecting the gender of a transgender women and throwing her to the wolves threatening to rape and kill her based on her gender, making credible threats of violence and being forced to shower and sleep with those same men. As a reasonable and logical person who experienced this, I disagree. The defendant knew the violent harm was likely and did nothing to stop it. The defendant Orange County Sheriff is therefore liable on all elements cited in this case.

The court continued its meaningless word play excuse making when saying Newport Beach Police, not the Orange County Sheriff arrested her, even though the court knows full well that the Orange County Sheriff is being sued for reassigning her gender in her jail placement

upon arrest based on policy decisions of the Orange County sheriff to disregard the gender of transgender people, which was not an action available to, or taken by the Newport Beach police (Appendix A page 12 footnote). Although Newport police also misgendered Brala, they simply sent Brala to the Orange County Sheriff facility upon arrest. Brala was not placed in a gendered jail facility in the city of Newport Beach. Newport police drove Brala to the Orange County facility and told the Orange County Sheriff of Brala's legal female name and gender at the time of the arrest by virtue of providing them her only currently legal form of identification on her state and federal ID, a female ID, where the damage in the jail gender reassignment itself thereafter occurred at the sole discretion of the Orange County Sheriff. As a result, Newport Beach police, although for them it was foreseeable this gender reassignment would occur when taking Brala to the OC Sheriff facility, because they were not responsible directly for this jail gender reassignment placement policy for transgender inmates, they were not included in this lawsuit although 1000 does parties were named, including Orange County.

The Central District Court attempted to evade and object to the statement of the case in its evaluation of the first amendment claim by saying that police misgendered and renamed Plaintiff upon arrest due to the face of the irregular 8 year old minor misdemeanor warrant she was arrested on which referred to her prior legal name, although she never used the prior name for regular daily purposes as a transgender woman in any case since she was a child. The complaint makes clear police were aware Brala was transgender and that they were also provided with her current legal name and gender of female on her state and federal ID at the time of the arrest. The court did not address reassigning Brala's gender to a men's jail with her current legal ID of female as being a violation of her first amendment right to be transgender.

The court only discussed the name on the old warrant which does not even refer to gender on its face. A first amendment right includes the right of expression beyond speech itself as *well Virginia v. Black, 538 U.S. 343, 359 S.Ct. 1536, 155, L. Ed. 2d 535 (2003)*. The district court claim that Brala's expressive and speech rights to be transgender were not chilled by the policy of

police to reassign her gender is absurd (citing *Mendocino Env'tl. Ctr. v. Mendocino City*, 192 F. 3d 1283, 1300 (9th Cir 1999)). The deterrence to being transgender was a motivating factor in defendant conduct and Brala cited police telling her transgender people don't exist throughout the Complaint. The District Court makes the miraculous claim that it is not a first amendment violation to disallow Brala from being transgender upon arrest and tell her she must see herself as a former legal name and gender she was assigned at birth which she never referred to herself as by any in any case. The court says she must be a man and be in men's only spaces in jails with men threatening her with gender related violence and her being forced to sleep and bathe with those same men. The court makes the claim that this conduct of police somehow respected Brala's first amendment right to be transgender anyway, by physically precluding Brala from being allowed to have her free speech as a transgender woman and be respected as a woman which she clearly could not be safely in a men's jail.

As for the eighth amendment claim of cruel and unusual punishment for being placed in a men's jail as a transgender women upon arrest, the district court disputes the facts alleged in the complaint upon a motion to dismiss (Federal Rule of Civil Procedure 12 b) that Brala stayed overnight in the jail as a convicted inmate after a guilty plea forced upon her in the jail due to being in the men's jail and trying to get out sooner, even though this plea was later reversed and the charge dropped after she served her sentence on the charge. The court thereby insisted only the due process fourteenth amendment claim for non convicted inmates could apply to this case instead, while Brala argues both should apply since she was in the jail as both a non convicted and a convicted inmate after her due process rights were violated. Police knew of the credible threats being made against Brala based on her gender and did nothing. They caused the danger by placing her in men's jails. They are thereby liable under the state created danger section 4.14 of the 42 USC 1983 code, which does not require hospitalization after injury to be enforceable. Brala also raised the issue that it was cruel and unusual punishment for a non convicted person on a minor misdemeanor with no criminal record of convictions to be

placed in a cell with a man who stabbed his wife in the first place, even beyond the gender issue. The court was not interested in this discussion either, ignoring it entirely.

On the fourth amendment claim, the district court watered the claim down to cross gender searches, while ignoring the bulk of the lawsuit, which is that police subjected Brala to be insecure in her person when they misgendered her, forced her into men's jails amid credible threats of violence against her based on her gender, and being forced to bathe, sleep and use the restroom in front of these same men. The ruling does not address how all these circumstances violate the code of federal regulations for transgender inmates. The ruling states that cross gender strip searches violate the fourth amendment and that is exactly what the Complaint referred to when it said police threatened to check between her legs to confirm they were right to place her in a men's jail and that if she did not disclose what body part she had, the men would strip search her as well as essentially what happens when a transgender women is forced to use the restroom or shower in front of men. Naturally , knowing the case was going to be appealed to the Ninth Circuit, the court again included a litany of Ninth district court rulings, even though they did so in negligence of the facts in this case, facts which the Ninth Circuit court generally appeared to not read either way.

As to the fifth amendment claim in this case. which pertains to a false incrimination of one's self and lack of counsel under the sixth amendment while being forced into a plea on the charge Brala was in jail for, the district court says they are confused by court records showing a plea was made in the jail, but decided they wished to not believe those court records, insisting that jails don't have hearings with inmates, which is absolutely false. As a result of the court refusing the facts as pled, it is hard to know what their argument is for inmate rights in the jail when forced to make a plea without proper counsel, under threat of being in the wrong gender jail at the same time of making the plea and being forced to incriminate one's self. Brala entered the jail as a non convicted inmate, but was forced to make a plea without discussing the details of the charge and without proper counsel at a jail hearing where she was handcuffed

next to men in a terrifying setting regarding her gender assignment in the prison. The plea was reversed after Brala served her sentence under California Penal Code 1018.

The California Bane Act claimed was rejected by the district court under the same fallacy the constitutional rights claims were rejected, noting it believes Brala's first amendment right to be transgender was not chilled or deterred by police disrespecting her gender and putting her in jails with men. The court again reiterated its prejudice that no violence occurred by placing a transgender woman in a men's jail where she would sleep and bathe next to men threatening to rape and kill her while police slurred her gender and forced her into those settings. Of course, the court would never make these claims if Brala was a genetic woman put in the same settings, even though Brala was no safer from violence, and, in some regards, in an even worse predicament than a genetic woman might be, given the transphobic violence issue. The ninth district court said that Brala did not allege police had a specific intent to violate her rights, but that's not what the Complaint says when it describes police saying transgender people don't exist, Brala should be in jail for life and Brala is on meth. Obviously, the ninth district court is not as socially liberal as its reputation provides. Callous is a better word.

Regarding the 34 U.S.C 12361 and 42 U.S.C 13981 claim relative to the Violence Against Women Act, the court did not address why a private party and a public entity defendant would be seen as the same under *U.S. v. Morrison*, 529 U.S. 598, 627 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000) or why the newly amended Violence Against Women Act, which includes protections for transgender women, does not provide a right to a private right of action against a public entity defendant. The Morrison ruling targets that the defendant was a private individual and that congress lacked authority to enforce the Violence Against Women Act pursuant to the fourteenth amendment equal protection clause on that basis. Here, the defendant is a public entity (the Orange County Sheriff and County of Orange), so I ask this court to evaluate the relevance of the Violence Against Women Act in this context for private remedy.

The district court argues that prisons and jails are not public accommodations and that California's Unruh Act and the California Civil Rights Act of 2005 only pertains to non discrimination policies in business settings. The Civil Rights Department in California begs to differ, claiming on its government website that government entities with public accommodations can be held liable under the Unruh Act for acts of discrimination and constitutional violations under this code of law. The act of pretending transgender people do not exist in the placement of transgender women in men's jails is surely discrimination in public accommodations no matter what word play the Ninth Circuit is trying to squeeze in here.

In discussing the claim for 42 U.S.C. 1983, Monell violations and the state created danger section therein, the district court doubles down on its prejudice that no constitutional rights were violated in this case and adds another factual misstatement to get this claim thrown out as well all the rest when falsely claiming the Complaint does not allege the Orange County Sheriff had a policy of reassigning the gender of transgender inmates. The Complaint makes clear repeatedly that this was the policy for all transgender inmates and that the police so much as confirmed that to Brala during her stay. Yet, according to the district court, that doesn't somehow sound like a policy. The district court maliciously misstated the facts of this case to gain the ends it sought, to smother the constitutional rights of all transgender women being arrested and having their gender reassigned. Either that, or they didn't read the Complaint. Appendix B pages 5-6 in the objection to this report and recommendation reminded the court of this factual misstatement in their ruling as to the nature of the policy of the OC Sheriff to reject the gender of trans inmates. The court refused to correct their misstatement, again, making the ruling malicious. The policy of the County of Orange, Orange County Sheriff to reject the gender of transgender inmates is a constitutional rights violation, a due process rights violation and a Monell policy violation (*Monell v. Dept. of Soc Services of the City of NY*, 436, U.S. 658, 694, 98, S. Ct. 2018, 56 L. Ed. 2d 611 (1978)). While the Complaint named the Orange County Sheriff in its official capacity and the court concluded this meant liability for the County

of Orange, the Complaint included 1000 does parties and can easily be amended to add the County of Orange as a named defendant so this is not a reason to dismiss the complaint or the claim. It is never illegal to sue police for valid misconduct in any case, so in that regard the OC Sheriff was never "erroneously named" as the caption in the district court and ninth district court claim.

The 1972 Education Amendments Title IX claim is based on the premise that jails are essentially educational facilities and that by Brala being assigned to the facility based on gender identity discrimination there is no way she could have received education without being discriminated against on the basis of gender identity or sex. The district court disputed the basis of the claim on the grounds that Brala was a jail detainee not a prison inmate (unclear the meaningful difference between a jail and a prison) and on the conversation that Brala did not receive an educational program while in the jail and told what to do. For all practical purposes, there is no way a transgender inmate can receive any education in a jail or prison without being discriminated against while placed in accommodations not of their gender identity.

California Penal Code 11410 was dismissed summarily on the claim that it does not provide for a private right of action, without citing any common law findings to this end. This code of law states that it is a constitutional right of anyone, including those based on gender identity, not to be subject to discrimination and to be permitted to express their beliefs, which Brala was not when her gender was reassigned upon arrest. The law also says it is not constitutionally protected to do what police did to Brala, place her in very likely danger of physical harm due to violent credible threats against her. The law states nowhere therein that no private right of recovery is available upon its violation.

California Senate Bill 132, the Transgender Dignity Act was created in 2019, when this incident occurred and codified by Penal codes 2505, 2506, which passed in January of 2021, All of this was before the ruling occurred in this case. This law requires that jails and prisons honor the stated gender identity of trans inmates regardless of legal gender identification documents

matching, which Brala nevertheless had when she was arrested and misgendered. The district court ignores this law despite its being passed before it made its ruling, which presents some problems. First however, it must be noted that this law specifically refers to constitutional rights as is basis, the same constitutional rights the district court claims don't exist in this case, the same constitution which has existed for hundreds of years. So, in addition to dismissing this claim on being made after the law passed, the Supreme Court has had some cases on how to handle new laws in pending cases including *Landgraf v. USI Film Products* 511 U.S. 244 (1994) and *Lindh v. Murphy*, 521 U.S. 320 (1997). Contrary to the claim of the Ninth Circuit and District court on this matter, the Supreme Court has never said it was a given pending cases would ignore laws established after the incident of the lawsuit but before its ruling. Instead, the court appears to have hinged its enforcement of the law based on the details of the case and whether there was no way defendant could see this coming. In this case, it is more than apparent police should have seen this case coming and the Prison Rape Elimination Act and the Federal Code of Regulations pertaining to trans inmates for prisons prove they were on notice.

In discussing Brala's claim for a violation of the Prison Rape Elimination Act 34 U.S.C. 30307, 42 U.S.C. 15607 (b) 34 U.S.C. 30301-30309. Here, again, the district court claims this area of law, again demanding that transgender inmates be protected from violence in jails, is not a reason for Brala to be filing a lawsuit because there is supposedly no private right of action. Unlike with the claim of California Penal Code 11410 where they offered no citations to support this argument, here they cite something but it is unclear what kind of citations they are as they are not district court, superior court, legislative, circuit court or Supreme Court citations. They instead explain that the law was passed just to study where funding is needed within the government (Appendix A page 16). I suppose this means that the government entities are free to break the law as long as it won't cost them any money to do it.

IX . Statement of the Case

A . Preliminary Statement on Transgender Identity

Despite allegations by those opposed to the transgender community that all of human existence can be defined by biology, the reality in society is that human existence regards psychology, human behavior and sociology in most daily settings far more than biology. For example, it is not legal to jail someone due to their biology. The law only provides that a person may be jailed only due to their behavior. So, the law already understands that biology is not equal to behavior. Police are described in the Complaint of this action as telling Brala no such thing as transgender exists, but that simply is not how inmates responded to Brala in the jail nor how anyone in society responds to transgender women. Inmates knew full well Brala was not a man, but a transgender woman as they perceived her due to her appearance and demeanor. So, in reality, transgender people are distinguished from CIS normative or traditional gender people based on their mindset and behavior, which is most similar to that of the gender they identify as.

It is firmly established from Brala's experience that most men objected to her being in the men's jail because she is a transgender woman. Yet people have claimed religious grievances to transgender men or women being in the spaces of the other biological sex based on biology alone as well, and not based on behavior, since transgender women, for example, don't behave as men. Women have basically never objected to Brala or even noticed Brala being in a woman's rooms exclusively her entire adult life. So, the number of women with objections, at least in Brala's case, have been few and far between. Nevertheless, if an

woman, for example, in a jail setting, wanted to make such a religious exception to being in cell with a trans woman based on biology alone, the jail could accommodate such an arrangement for that person in the jail without forcing trans women into men's jails due to the small minority of women who would object to transgender women in a woman's jail. Any inmate of any sex or gender should be addressed on their behavior and the safety of their behavior toward others, which is not their biology. Any woman has a right to safety in a jail, locker room or any other women's only space. Transgender women also deserve that right to safety, but that right will summarily not be afforded to a transgender woman in a men's jail for the same reasons it will not be provided to a genetic woman in a men's jail. Some unique differences still exist between transgender women and women based on biology, for example an inmate could impregnate a woman in a men's jail but not a transgender woman. Yet, it is also more likely trans women will face violent assault in men's jails based on her gender alone, probably more than a genetic woman would if placed in a men's jail. We can speculate on the differences, but in the end, neither trans women nor women are well protected placed in men's jails, so neither should be placed there.

**B . The County of Orange and the Orange County Sheriff Violate
the Constitutional Rights of Transgender Citizens by Reassigning Their Gender Upon
Arrest**

On September 23, 2019 and through to the date of September 25, 2019, the Orange County Sheriff under direction of county policy, and policy of the sheriff department itself,

ordered Brala Beverly, as a transgender female, with state and federal ID of female, to be housed in a men's prison despite claims of horror at this assignment by Brala Beverly during incarceration as police slurred her gender repeatedly made fun of her and physically forced her into cells with men threatening to rape and kill her due to her obvious gender. Police had a clear specific intent to violate the rights of Brala in this regard consistent within the standard of a Bane Act claim under California law when they saw inmates making threats and ignored those threats upon Brala based on her gender, when police slurred her gender in front of those same inmates, and said trans don't exist, said she was on meth and she should be in jail for life.

C . Courts Have not Been Consistent on Transgender Rights if This Ruling Stands

In *Farmer v. Brennan* 511 U.S. 825,847-48 (1994) the Supreme court held that police deliberately ignored dangers presented with a transgender woman inmate housed with men. In this instance, an eighth amendment violation was noted. The definition of deliberate indifference should not require first that the inmate suffer a rape or assault, but it should be enough to see the tremendous number of gender related violent threats by inmates, as stated in this case, to know it is not a good idea to house a transgender woman with men, let alone regulations already in place from the bureau of prisons to protect transgender inmates. A due process right was also employed by the Supreme Court when evaluating discrimination claims of LGBT people in *U.S. v. Windsor* 570 U.S.744 (2013). In *Romer v. Evans* 517 U.S. 620 (1996), the Supreme Court affirmed that the Equal Protection Clause protects LGBT people from discrimination. In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court

ruled that discrimination based on sex is equivalent to discrimination based on gender identity. Some courts have also ruled that prison officials should know based on the appearance of an inmate they will face additional risks, *Taylor v Mich. Department of Corrections*, 69 F. 3D (6TH Cir. 1995), *Howard v. Waide*, 534 F. 3d 1227, 1238 (10th Cir. 2008). Brala discussed her appearance throughout the case as a factor in the risks she faced. *Grimm v. Gloucester City. Sch. Bd.* 972 F. 3d 586 (4th Cir 2020) was a recent case of a transgender boy using the boy's room. Originally, it was ruled that Title IX protections provided that Grimm could use the boy's room. Courts have also stated that prison officials are put on notice by regulations for prisons to protect transgender inmates (*Zollicoffer v. Livingston* 169 F. Supp. 3d 687, 696 (S.D. Tex 2016)). California has the Prison Rape Elimination Act protection rules sent to Orange County prisons which forbid pretending transgender people don't exist as happened in this case. The Code of Federal Regulations do this as well. Rather than discuss these citations in their rulings, the underlying courts here ignored these cases altogether with the Ninth Circuit merely explaining that Brala is pro se as its justification. This is also just a small sample of the cases presented to them, although I believe the Supreme Court cases should have provided them more than enough reason to not dismiss this case, they obviously seek further guidance.

X . REASONS FOR GRANTING THE WRIT

A . Transgender Individuals in Gender Specific Spaces is a Hot National Topic That is Legally Unresolved

As has been stated in this petition, a minority of women, arguably a very small minority, would have objected to Brala Beverly being placed in a women's prison, based on Brala's lived experience in women only public spaces for many decades, while a large majority of men clearly objected to Brala being in a men's prison. For those women with religious objections, this court could surely find accommodations for those women in a ruling that also protects transgender inmates. As it stands now, the deck is going completely against transgender inmates with police regularly reassigning their gender to their danger and to their detriment not related to a crime. Being transgender is not a crime, and it is not punishable with unequal protection under the law. This topic will not go away without clarification from the court on guidelines for police, who are currently engaging in systemic transphobia in most communities across the country.

B. The Ninth Circuit Court Ruling is Appalling

Looking at the absolutely dismissive 2 ½ page, entirely uninformative in explanation, ruling of the Ninth District Court in this matter, where the court didn't even care what the entire docket looked like, ignoring all case motions which cited relevant cases and also asked for documents from the district court to be included in the appeal transcript which defendant improperly omitted (the defendant didn't even include their own motion to dismiss document in the transcript which the Ninth circuit was supposedly ruling on), one might think it has long been held it is a given transgender people don't exist and will therefore be assigned to jails against their gender identity and this must be the automatic ruling no matter what. After all, the Ninth circuit court lamented, Brala is pro se! What relevance does that have to any legal matter? Even more amazingly. The court did not look at the case En Banc when offered the opportunity. Any natural human being who reads a complaint where police say to an inmate transgender people don't exist, you are on meth and you should be in jail for life and reads a

ruling that says this description of events doesn't show police had an intent to violate the constitutional rights of that inmate, as this Ninth District court ruling does, would say this Ninth Circuit court and the District Court beneath is show dishonesty and bigotry at the highest levels imaginable with complete constitutional rights disregard for transgender people.

**C . Hearings Inside Jails Appear to be Routinely Chaotic in Violation of
Constitutional Rights**

As an aside in this lawsuit, the topic of a chaotic jail hearing came up wherein Brala was forced to testify against herself without counsel. While Brala's circumstance was unique in that she also did so based on the lightness of her charge and trial delays if not admitting guilt, in addition to being severely threatened by being in a jail not of her legal gender of female, Brala also noted as a general rule many inmates' cases were not being discussed, while only pleas were decided to be made or not. The defendant in this case denied such a jail hearing even existed and the courts already in a hurry to throw this case out ignored this entire dialogue in their rulings in addition to the due process claims under the fourth amendment, right against self incrimination under the fifth amendment and right to counsel under the sixth amendment therein. A due process rights violation was also alleged relative to Brala's 8 year old minor misdemeanor warrant being honored yet drafted to her no longer legal name.

**D . An 8 Year Old Minor Misdemeanor Warrant Made Out to the Wrong Name is Not
Enforceable**

Another side topic in this case is whether the Orange County Sheriff should have honored an 8 year old minor misdemeanor warrant not made out to the name on Brala Beverly's driver's license, Brala Beverly. Brala argued a lack of due process rights in the enforcement of the warrant. The OC Sheriff, while they took the word of the Newport Beach Police that Brala was nevertheless the same person as the name on the warrant, by doing so they enforced a warrant irregular on its face which immediately lends itself to a lack of due process claim. Brala made clear in her Complaint that she was never made aware of any court hearing after this charge

was initially dropped at a hearing in 2011. Police refiled the charge and send notice of a hearing to an old address that they were never authorized to use for notice of legal proceedings causing Brala to not appear at the rescheduled hearing. Police never appeared at the criminal trial in 2020 on this charge, naturally. In *Doggett v. U.S.* 505 U.S. 647 (1992) the Supreme Court discussed concerns about warrants that are irregular in terms of time elapsed before enforcement with regards to prejudicing a case and against the principles of a speedy trial. *Quinnette v. Garland* (C.D. Cal. 1967 277 F. Supp. 999 also discussed the impropriety of police enforcing minor misdemeanor warrants of the age, let alone one also not written out to the correct name as was the one in this case. Neither the district court nor the ninth circuit addressed the warrant aspect of the complaint. Were the court to invalidate the arrest based on this facially irregular warrant, it would be a claim for false arrest and fourteenth amendment due process violations.

XI . Conclusion

There is a lot of talk in transphobic disingenuous circles that transgender women don't exist, yet this is often the same people who routinely discriminate and harass transgender women in employment and in all walks of life. So, at the end of the day it is impossible to argue transgender women are treated like men in society, so why are the police doing it? The Complaint in this lawsuit makes clear that the Orange County Sheriff Does-1000, including the County of Orange has a policy of reassigning the gender of all transgender inmates taken into custody (Federal Rule of Civil Procedure 21 allows for adding the name of a Does defendant. Federal Rule of Civil Procedure 15 (c) (1) also allows for adding new claims to the case so long as they relate back to the original incident. This was disputed by the district court in this action) .

The Department of Justice has stated in their reports on transgender inmates that they are 10 times more likely than others to be sexually assaulted placed in traditional gender jails.

The most recent report for the DOJ federal bureau of prisons on transgender inmates is number 5200.08 approved by M.D. Carvajal. The Inspector General in California (September 2020 Special Report Bryan B. Beyer) reported on the dangers of doing this as well. California Attorney General Rob Bonta has said that the Department of Corrections and Rehabilitations has the authority to respect the gender of transgender inmates in their prison placements. Any individual circumstance where any female inmate feels a transgender woman is a threat should be accommodated. The reality is however that transgender women use women's rooms nationwide, stay in women's shelters and so on and it simply is not a regular occurrence that something bizarre happens. Police in San Francisco do not put trans women in men's jails at all. The county cited the Attorney General's definition of sex as their basis for doing this. Police in Los Angeles tend to separate trans women from men without putting them in women's prisons, while Orange County ignores that transgender people exist altogether and let the disproportionate dangers be faced by them without batting an eye. The code of federal regulations 115, 115.343, 214,315 and 342 do not permit this kind of treatment of trans inmates. These regulations put police on notice of the dangers of discriminating against trans inmates in jail placements. The prison rape elimination act and California Senate Bill 132 expressly forbid disrespecting the gender of trans people upon arrest, whether male or female trans, and do so by citing the constitution of the United States.

Having read the opinion of this court in *Bostock v. Clayton County* just two short years ago, I note that some of the justices felt legislation should be passed to specifically address the concerns of the transgender population, and California has done that specifically to protect transgender people under arrest. It is also true however that the U.S. Constitution has generally not referred to any protected class community in each of its amendments with few exceptions. It has simply generally been understood the constitutional principles apply to all and that the government should honor that.

Lastly, the fact that police slurred Brala's gender in front of inmates throughout Brala's 3 day stay in jail in 2019 in this case, as was described in the Complaint of this action, shows that police knew exactly what they were doing when Brala's constitutional rights were being violated. This was malicious, dangerous, immoral and wrong. Cases like these will keep coming to this court unless this court decides to provide some clarity to police on this very important topic of how police must treat transgender individuals upon arrest with regards to their gender. There are cases in the courts all over the country, many organizations taking the side of transgender inmates and others opposing transgender inmates. I have proposed a solution that can accommodate all sides. Please don't ignore this petition because I am pro se. I will follow up with any court requests promptly. I was put in a cell with a man who stabbed his wife. He was making gender violence related threats along with other inmates he was talking to about me. He could have killed me with his bare hands in seconds. I was no physical match for that person or situation. Police saw the threats and didn't care. What Orange County did here was purposeful, malicious and wrong. The Ninth District court made a 2 page ruling on this case and didn't even rule on the motions to correct the transcript, clearly prejudicing their judgment.

Dated on this 12th Day of December, 2022,

Respectfully Submitted,



Brala Beverly