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2 APPENDIX A (24 pages)
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 BRALA BEVERLY, } Case No. 8:20-cv-797-JGB (SP)
12 Plaintiff, }
13 v. } **ORDER ACCEPTING FINDINGS AND**
14 ORANGE COUNTY SHERIFF, } **RECOMMENDATION OF UNITED**
15 et al., } **STATES MAGISTRATE JUDGE**
16 Defendants. }
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19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended
20 Complaint, records on file, and the Report and Recommendation of the United States
21 Magistrate Judge. Further, the Court has engaged in a de novo review of those
22 portions of the Report to which plaintiff has objected. The Court accepts the
23 findings and recommendation of the Magistrate Judge.

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1 IT IS THEREFORE ORDERED that (1) defendant's Motion to Dismiss
2 (docket no. 27) is granted, and (2) judgment will be entered dismissing the First
3 Amended Complaint and this action without leave to amend.

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6 DATED: December 13, 2021
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HONORABLE JESUS G. BERNAL
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRALA BEVERLY,

Plaintiff,

v.

ORANGE COUNTY SHERIFF, et
al.,

Defendants.

} Case No. 8:20-cv-797-JGB (SP)

JUDGMENT

Pursuant to the Order Accepting Findings and Recommendation of United
States Magistrate Judge,

IT IS HEREBY ADJUDGED that the First Amended Complaint and this
action are dismissed without leave to amend.

Dated: December 13, 2021


HONORABLE JESUS G. BERNAL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 BRALA BEVERLY,

12 Plaintiff,

13 v.

14 ORANGE COUNTY SHERIFF, et al.

15 Defendant.

16 } Case No. 8:20-cv-00797-JGB (SP)

17 } **REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

18 This Report and Recommendation is submitted to the Honorable Jesus G.

19 Bernal, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636
20 and General Order 05-07 of the United States District Court for the Central District
21 of California.

22 I.

23 **INTRODUCTION**

24 On April 24, 2020, pro se plaintiff Brala Beverly filed a civil rights
25 complaint in this court under 42 U.S.C. § 1983 (“Complaint”). Plaintiff alleged
26 defendant County of Orange violated her constitutional rights and state law by

1 placing her, a transgender woman, in a men's jail cell.¹ On August 26, 2020, this
2 court dismissed all of plaintiff's claims with leave to amend, except for the Unruh
3 Act claim which was dismissed with prejudice.

4 On August 30, 2020, plaintiff, filed a First Amended Complaint ("FAC").
5 In the FAC, plaintiff again alleges defendant violated her constitutional rights,
6 federal law, and state law by detaining her in an Orange County men's jail, and
7 asserts ten additional claims for a total of fifteen claims.

8 On September 14, 2020, defendant filed a motion to dismiss for failure to
9 state a claim ("MTD"). Plaintiff filed an opposition on October 4, 2020
10 ("Opposition"). Defendant filed a reply on October 16, 2020. On October 20,
11 2020, plaintiff filed a surreply, titled Declaration in support Opposition to the
12 Motion to Dismiss the First Amended Complaint. Defendant filed an objection to
13 the surreply the same day.²

14 Reviewing the facts as set forth in the First Amended Complaint and
15 liberally construing the allegations, the court finds plaintiff fails to state any claim
16 against defendant. As such, it is recommended that defendant's Motion to Dismiss
17 be granted.

18 II.

19 **ALLEGATIONS OF THE FIRST AMENDED COMPLAINT**

20 On September 23, 2019, Newport Beach police officers arrested plaintiff, a
21 transgender woman, based on an eight- or nine-year-old arrest warrant for a
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24 ¹ In both the Complaint and First Amended Complaint, plaintiff identified the
25 sole named defendant as the Orange County Sheriff in his official capacity. In
26 response to both, defendant County of Orange has noted it was erroneously sued
27 and served as the Orange County Sheriff. *See* MTD at 1.

28 ² The court did not grant plaintiff leave to file a response to the Reply. The
court therefore sustains defendant's objection and does not consider the surreply.

1 misdemeanor. FAC at 5-6, 11, Ex. A.³ Despite defendant's policy of placing
2 females in female prisons, plaintiff was placed in an Orange County men's jail
3 from September 23-25, 2019. *Id.* at 2-3, 5. Plaintiff's wrist identification
4 wristband listed her former name, not her legal name. *Id.* at 6. Deputies told
5 plaintiff that transgender women did not exist and were no different than gay men.
6 *Id.* at 5. Deputies placed plaintiff in the same cell as a man who stabbed his wife.
7 *Id.* That man, as well as other detainees, threatened to rape and kill her. *Id.*
8 Deputies heard the threats but still forced plaintiff into the cell. *Id.* Deputies also
9 would not allow her to see a doctor. *Id.* When plaintiff saw a doctor, the doctor
10 repeatedly denied she had a right to identify as a female and laughed at her. *Id.* at
11 6.

12 Plaintiff was forced to use a toilet and shower in front of men. *Id.* at 7-9.
13 Plaintiff did not shower during her detention. *Id.* at 11-12.

14 The deputies “were maliciously treating” plaintiff “to transgender slurs and
15 random insults.” *Id.* at 10, 16. Although the initial search was conducted by
16 female officers, male officers performed the subsequent searches. *Id.* at 11.

17 In order to be released from jail, plaintiff pled guilty in a sham trial. *Id.* at 5,
18 13. Plaintiff later withdrew her plea and the conviction was reversed. *Id.* 5, 8, 13.
19 Plaintiff was not represented at the sham trial but there was a defense counsel who
20 spoke on her behalf. *Id.* at 13. The judge did not force defendant to relocate
21 plaintiff. *Id.* Plaintiff was sentenced on September 25, 2019. *See id.*, Ex. B. The
22 charges against plaintiff were dismissed on February 18, 2020. *See id.*

23 | Based on these allegations, plaintiff asserts fifteen claims:

24 (1) Section 1983 claim for a state created danger;

25 (2) Section 1983 claim for a First Amendment violation;

³ All references to the FAC refer to the page numbers designated by the CM/ECF system.

- 1 (3) Title IX violation;
- 2 (4) Section 1983 claim for a Fourteenth Amendment violation;
- 3 (5) Section 1983 claim for *Monell* liability;
- 4 (6) Section 1983 claim for an Eighth Amendment violation;
- 5 (7) Section 1983 claim for a Fourth Amendment violation;
- 6 (8) Section 1983 claim for a violation of 42 U.S.C. § 15607(b);
- 7 (9) Section 1983 claim for a Fifth Amendment violation;
- 8 (10) Violation of California Penal Code § 11410;
- 9 (11) Violation of California Senate Bill 132;
- 10 (12) Section 1983 claim for a violation of 34 U.S.C. § 12361;
- 11 (13) Section 1983 claim for a violation of 34 U.S.C. § 12361;
- 12 (14) Violation of the California Civil Rights Act of 2005; and
- 13 (15) Violation of the Bane Act, California Civil Code § 52.1.

14 FAC at 5-19.

15 **III.**

16 **STANDARD OF REVIEW**

17 Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a defendant
18 may move to dismiss a complaint for “failure to state a claim upon which relief can
19 be granted.” A motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency
20 of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal for
21 failure to state a claim “can be based on the lack of a cognizable legal theory or the
22 absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*
23 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990) (as amended). A court
24 may not dismiss a complaint under Rule 12(b)(6) “unless it appears beyond doubt
25 that the plaintiff can prove no set of facts in support of his claims which would
26 entitle him to relief.” *Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994).

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1 “When there are well-pleaded factual allegations, a court should assume
2 their veracity and then determine whether they plausibly give rise to an entitlement
3 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 173 L. Ed. 2d 868
4 (2009). A claim “has facial plausibility when the plaintiff pleads factual content
5 that allows the court to draw the reasonable inference that the defendant is liable
6 for the misconduct alleged.” *Id.* at 678. This plausibility standard does not amount
7 to a probability requirement, “but it asks for more than a sheer possibility that a
8 defendant has acted unlawfully.” *Id.*

9 “[T]he tenet that a court must accept as true all of the allegations contained
10 in a complaint is inapplicable to legal conclusions. Threadbare recitals of the
11 elements of a cause of action, supported by mere conclusory statements, do not
12 suffice.” *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct.
13 1955, 167 L. Ed. 2d 929 (2007)). The complaint must both “contain sufficient
14 allegations of underlying facts to give fair notice and to enable the opposing party
15 to defend itself effectively . . . [and] must plausibly suggest an entitlement to relief,
16 such that it is not unfair to require the opposing party to be subjected to the
17 expense of discovery and continued litigation.” *Starr v. Baca*, 652 F.3d 1202,
18 1216 (9th Cir. 2011).

19 On a motion to dismiss, a court may take judicial notice of “matters of
20 public record.” *See Mack v. South Bay Beer Distrib., Inc.*, 798 F.2d 1279, 1282
21 (9th Cir. 1986), overruled on other grounds, *Astoria Fed. Sav. and Loan Ass’n v.
22 Solimino*, 501 U.S. 104, 111 S. Ct. 2166, 115 L. Ed. 2d 96 (1991). Moreover,
23 “courts routinely take judicial notice of documents filed in other courts . . . to
24 establish the fact of such litigation and related filings.” *Kramer v. Time Warner
25 Inc.*, 937 F.2d 767, 774 (2d Cir. 1991). But the effect of taking judicial notice of
26 documents filed in other courts is limited. “On a Rule 12(b)(6) motion to dismiss,
27 when a court takes judicial notice of another court’s opinion, it may do so not for
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1 the truth of the facts recited therein, but for the existence of the opinion, which is
2 not subject to reasonable dispute over its authenticity.” *Lee v. City of Los Angeles*,
3 250 F.3d 668, 690 (9th Cir. 2001) (internal quotation marks and citation omitted).

4 Where a plaintiff appears pro se in a civil rights case, the court must
5 construe the pleadings liberally and afford the plaintiff any benefit of the doubt.
6 *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). The rule of
7 liberal construction is “particularly important in civil rights cases.” *Ferdik v.*
8 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). Nonetheless, in giving liberal
9 interpretation to a pro se civil rights complaint, courts may not “supply essential
10 elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ.*
11 *of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “Vague and conclusory allegations
12 of official participation in civil rights violations are not sufficient to withstand a
13 motion to dismiss.” *Id.*; *see also Jones v. Cnty. Redev. Agency*, 733 F.2d 646, 649
14 (9th Cir. 1984) (finding conclusory allegations unsupported by facts insufficient to
15 state a claim under § 1983). “The plaintiff must allege with at least some degree of
16 particularity overt acts which defendants engaged in that support the plaintiff’s
17 claim.” *Jones*, 733 F.2d at 649 (internal quotation and citation omitted).

18 **IV.**

19 **DISCUSSION**

20 **A. The First Amended Complaint Exceeds the Scope of Amendment**
21 **Permitted**

22 Defendant argues the court only granted plaintiff leave to amend the first,
23 third, fourth, and fifth claims of the Complaint and did not grant leave to add
24 additional new claims. MTD at 12-13. Recognizing the Complaint arguably
25 encompasses some of the new claims in the FAC, defendant contends plaintiff
26 improperly added eight new claims: (1) claim two – First Amendment violation;
27 (2) claim three – Title IX violation; (3) claim eight – 42 U.S.C. § 15607(b)

1 violation; (4) claim nine – Fifth Amendment violation; (5) claim ten – Cal. Penal
2 Code § 11410 violation; (6) claim eleven – California Senate Bill 132 violation; (7)
3 claim twelve – 34 U.S.C. § 12361; and (8) claim thirteen – 34 U.S.C. § 12361.⁴ *Id.*
4 at 12. Defendant further argues claim fourteen should be dismissed because the
5 court dismissed the Unruh claim from the Complaint with prejudice. *Id.* at 14.

6 The Federal Rules of Civil Procedure permit a plaintiff to amend a complaint
7 as a matter of right within 21 days after service or 21 days after service of a
8 responding service. Fed R. Civ. P. 15(a)(1). In all other cases, a party may amend
9 his or her complaint only with the opposing party's consent or leave of court. Fed.
10 R. Civ. P. 15(a)(2).

11 When the court dismissed the Complaint, it granted plaintiff leave to amend
12 the Fourth, Eighth, and Fourteenth Amendment and Bane Act claims, but
13 dismissed the Unruh claim with prejudice. *See* docket no. 19. Rather than simply
14 amending the four remaining claims, plaintiff added ten additional claims.
15 Arguably, claims one, four through seven, fourteen and fifteen of the FAC were
16 incorporated – whether enumerated or unenumerated – into plaintiff's arguments in
17 the Complaint. Nevertheless, even liberally reading the Complaint to include some
18 of the new claims, plaintiff has exceeded the scope of the court's order by adding
19 claims two, three, and eight through thirteen in the FAC, as well as including an
20 Unruh violation claim (claim fourteen).

21 For this reason alone, claims two, three, and eight through fourteen should
22 be dismissed. But to the extent the court's dismissal order could be interpreted as
23 allowing for the addition of new claims, claims two, three, and eight through
24 thirteen should still be dismissed, along with all the other claims, for the reasons
25 discussed below.

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27 ⁴ The MTD contains typographical errors regarding claim numbers. *See* MTD
28 at 12.

1 **B. The FAC Fails to Allege a § 1983 Claim Under *Monell***

2 Plaintiff raises six claims of constitutional violations – claims one, two, four,
 3 six, seven, and nine – as well as a separate claim of *Monell* liability (claim five).
 4 FAC at 5-6, 8-10, 13. Defendant contends plaintiff fails to allege a § 1983 claim
 5 against it because she has not alleged municipal liability under *Monell*. MTD at
 6 13-15.

7 As in the Complaint, plaintiff names a single defendant in the FAC, the
 8 Orange County Sheriff in his official capacity only. The Supreme Court has held
 9 that an “official-capacity suit is, in all respects other than name, to be treated as a
 10 suit against the entity.” *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S. Ct. 3099,
 11 87 L. Ed. 2d 114 (1985); *see also Brandon v. Holt*, 469 U.S. 464, 471-72, 105 S.
 12 Ct. 873, 83 L. Ed. 2d 878 (1985); *Larez v. City of Los Angeles*, 946 F.2d 630, 646
 13 (9th Cir. 1991). Such a suit “is *not* a suit against the official personally, for the real
 14 party in interest is the entity.” *Kentucky v. Graham*, 473 U.S. at 166. Thus, the
 15 real party in interest here is the County of Orange. Defendant has recognized this,
 16 with the County of Orange filing the motion to dismiss the FAC and noting it was
 17 erroneously sued as the Orange County Sheriff in his official capacity.

18 A local government entity such as defendant Orange County may not be
 19 sued under § 1983 for an injury inflicted solely by its employees or agents.
 20 Instead, it is only “when execution of a government’s policy or custom, whether
 21 made by its lawmakers or by those whose edicts or acts may fairly be said to
 22 represent official policy, inflicts the injury that the government as an entity is
 23 responsible under § 1983.” *Monell v. Dep’t of Soc. Servs. of City of N.Y.*, 436 U.S.
 24 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Thus, defendant may not be
 25 held liable for the alleged actions of its officers or other employees unless “the
 26 action that is alleged to be unconstitutional implements or executes a policy
 27 statement, ordinance, regulation, or decision officially adopted or promulgated by

1 that body's officers," or if the alleged constitutional deprivation was "visited
 2 pursuant to a governmental 'custom' even though such a custom has not received
 3 formal approval through the body's official decisionmaking channels." *See id.* at
 4 690-91; *accord Redman v. Cty. of San Diego*, 942 F.2d 1435, 1443-44 (9th Cir.
 5 1991).

6 In order to establish liability, a plaintiff must prove four elements: "(1) that
 7 [the plaintiff] possessed a constitutional right of which [s]he was deprived; (2) that
 8 the municipality had a policy; (3) that this policy amounts to deliberate
 9 indifference to the plaintiff's constitutional right; and, (4) that the policy is the
 10 moving force behind the constitutional violation." *Dougherty v. City of Covina*,
 11 654 F.3d 892, 900 (9th Cir. 2011) (quotation marks and citation omitted).

12 Plaintiff alleges violations of the First (claim two), Fourth (claim seven),
 13 Fifth (claim nine), Eighth (claim six), and Fourteenth Amendments (claims one and
 14 four) but, as discussed below, plaintiff fails to allege facts stating a claim.
 15 Nevertheless, assuming plaintiff's allegations of constitutional violations were
 16 sufficient to survive the motion to dismiss, plaintiff's constitutional violations are
 17 still subject to dismissal because she fails to plead facts sufficient to establish
 18 *Monell* liability.

19 Plaintiff fails to identify a policy of defendant's that resulted in the alleged
 20 constitutional violations. Plaintiff merely alleges defendant has a policy of placing
 21 female inmates in female prisons for safety purposes, but such policy does not
 22 relate to the housing of transgender women. *See* FAC at 5-10. Reading the
 23 FAC liberally, plaintiff may also be arguing that defendant has a policy or custom
 24 of rejecting the identity of transgender women. But plaintiff does not state any
 25 facts to support her claim that defendant has such a policy or longstanding practice.
 26 *See Hunter v Cty. of Sacramento*, 652 F.3d 1225, 1233 (9th Cir. 2011) (a custom or
 27 practice may be inferred from evidence of repeated constitutional violations).

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1 Instead, plaintiff's allegations reflect a single instance of placing a transgender
2 woman in a men's jail. Allegations of one occurrence of an alleged constitutional
3 violation does not equate to a policy or custom. *See City of Oklahoma City v.*
4 *Tuttle*, 471 U.S. 808, 824, 105 S. Ct. 2427, 85 L. Ed. 2d 791 (1985) ("Proof of a
5 single incident of unconstitutional activity is not sufficient to impose liability under
6 *Monell*, unless proof of the incident includes proof that it was caused by an
7 existing, unconstitutional municipal policy, which policy can be attributed to a
8 municipal policymaker.").

9 Accordingly, claims one, two, four, five, six, seven, and nine should be
10 dismissed for failure to state *Monell* liability.

11 **C. All the Claims Should Be Dismissed for Failure to State a Claim**

12 In addition to the reasons cited above, all of the claims in the First Amended
13 Complaint should be dismissed for the following reasons.

14 **1. Claim One – “State Created Danger” or Failure to Protect**

15 In claim one, plaintiff alleges Sheriff's deputies placed her in a dangerous
16 situation by placing her in a men's jail. FAC at 5. Plaintiff alleges she was placed
17 in a cell with a man who stabbed his wife and other detainees threatened to rape
18 and kill her. *Id.* Although characterized as a "state created danger" claim, plaintiff
19 appears to be arguing that defendant violated her Fourteenth Amendment rights by
20 being deliberately indifferent to the dangerous conditions of her confinement. *See*
21 *Bell v. Wolfish*, 441 U.S. 520, 535 n.16, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)
22 (for claims by pretrial detainees pertaining to their conditions of confinement,
23 courts "properly rel[y] on the Due Process Clause rather than the Eighth
24 Amendment Due process requires that a pretrial detainee not be punished.");
25 *see also DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 199-200,
26 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989) ("[W]hen the state takes a person into
27 custody and holds [her] there against [her] will, the Constitution imposes upon it a
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1 corresponding duty to assume some responsibility for [her] safety and general
2 well-being.”).

3 Under the Fourteenth Amendment, pretrial detainees have a due process
4 right to be free from violence from other inmates. *Castro v. Cty. of Los Angeles*,
5 833 F.3d 1060, 1067 (9th Cir. 2016). As such, corrections officers have a duty to
6 protect prisoners from violence by other detainees. *Id.* The Ninth Circuit has
7 identified the following as elements of a failure to protect claim under the
8 Fourteenth Amendment:

- 9 (1) The defendant made an intentional decision with respect to the
10 conditions under which the plaintiff was confined;
- 11 (2) Those conditions put the plaintiff at substantial risk of suffering
12 serious harm;
- 13 (3) The defendant did not take reasonable available measures to abate
14 that risk, even though a reasonable officer in the circumstances would
15 have appreciated the high degree of risk involved – making the
16 consequences of the defendant’s conduct obvious; and
- 17 (4) By not taking such measures, the defendant caused the plaintiff’s
18 injuries.

19 *Id.* at 1069 (footnote omitted). A pretrial detainee plaintiff must prove the
20 defendant official had a state of mind similar to reckless disregard – more than
21 negligence but less than subjective intent – to establish the third element in this
22 failure to protect claim. *Id.*

23 Here, plaintiff may have alleged facts supporting the first three elements of a
24 failure to protect claim (albeit not according to any County policy or custom, and
25 therefore not sufficiently for defendant County of Orange to be liable under
26 *Monell*, as discussed above). But plaintiff has not alleged any facts to show
27 defendant caused plaintiff’s injuries because, just as in the original Complaint,

1 plaintiff again has failed to allege facts demonstrating she suffered any harm at all.
2 Although plaintiff alleges she was placed in a cell with a violent person and other
3 detainees threatened her, she does not allege any actual harm or injury as required
4 to state a civil rights claim. *See, e.g., Corales v. Bennett*, 567 F.3d 554, 564-65
5 (9th Cir. 2009) (mere threats to violate the Constitution are not a violation of the
6 Constitution); *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (“mere naked
7 threat” of bodily harm does not constitute a “constitutional wrong”). Plaintiff does
8 not allege she was attacked or physically harmed in any manner. As such, plaintiff
9 fails to state a Fourteenth Amendment violation.

10 **2. Claim Two – First Amendment**

11 In claim two, plaintiff alleges defendant violated her First Amendment rights
12 by placing her former name, which was the name on the arrest warrant, on her
13 wristband. FAC at 6. By using her former name, defendant “renamed” and
14 “regendered” plaintiff.⁵ *Id.*

15 The First Amendment prohibits the government from abridging the freedom
16 of speech. U.S. Const. amend. I; *Long Beach Area Peace Network v. City of Long*
17 *Beach*, 574 F.3d 1011, 1020-21 (9th Cir. 2009). To state a First Amendment
18 claim, a plaintiff must allege that government action deterred or chilled plaintiff’s
19 speech and such deterrence was a motivating or substantial factor in defendant’s
20 conduct. *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir.
21 1999). The FAC does not contain any allegations of defendant’s employees or
22 agents placing limits on plaintiff’s freedom of speech or expression. The act of
23 using plaintiff’s former name on her wristband, which was the name on the arrest

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⁵ Plaintiff alleges she was renamed and regendered upon arrest. FAC at 6. Plaintiff was arrested by the Newport Beach Police Department, not by the Orange County Sheriff’s Department. *Id.*, Ex. A.

1 warrant, did not deter or stifle plaintiff's speech. As such, the FAC fails to state a
2 First Amendment violation.

3 **3. Claim Three – Title IX**

4 In claim three, plaintiff contends defendant violated Title IX of the
5 Education Amendments of 1972 ("Title IX") when her gender was ignored and she
6 was housed in a men's jail. FAC at 7.

7 "Title IX prohibits sex discrimination by recipients of federal education
8 funding." *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173, 125 S. Ct. 1497,
9 161 L. Ed. 2d 361 (2005). The Ninth Circuit has held that "state prisons receiving
10 federal funds must comply with the regulations applicable to Title IX" in their
11 prison educational programs. *Jeldness v. Pearce*, 30 F.3d 1220, 1226 (9th Cir.
12 1994).

13 Putting aside the fact plaintiff was a detainee in a jail and not a prison
14 inmate, plaintiff fails to state a Title IX claim in any event because she has not
15 alleged discrimination with respect to an education program offered at the jail.

16 **4. Claim Four – Fourteenth Amendment**

17 Plaintiff contends, in claim four, defendant violated her due process and
18 equal protection rights under the Fourteenth Amendment by using her former name
19 and treating her differently than other females. FAC at 8. Plaintiff further argues
20 that her due process rights were violated by a sham trial on September 24, 2019.
21 *Id.*; Opposition at 10.

22 Under the Equal Protection clause of the Fourteenth Amendment, "all
23 persons similarly situated should be treated alike." *City of Cleburne v. Cleburne*
24 *Living Ctr.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985). Plaintiff
25 does not argue that she was treated differently than other transgender women.
26 Instead, plaintiff contends defendant, by placing her in a men's jail, treated her
27 differently than cisgender women. But the Supreme Court has not ruled
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1 transgender women have a constitutional right to be housed in a female cell, and as
2 discussed below with respect to claim eleven, no law then required it.

3 Plaintiff similarly has not alleged facts stating a procedural due process
4 claim. Plaintiff's claim relies on her legal status as female. But again, the law
5 existing at the time of her detention did not require transgender women to be
6 housed in a women's jail, and plaintiff does not allege facts demonstrating
7 defendant did not follow proper protocol to determine which facility to house
8 plaintiff.

9 As for plaintiff's claim relating to a "sham trial," she appears to be asserting
10 a procedural due process claim. Plaintiff alleges the sham trial at which she was
11 forced to plead guilty occurred inside the jail on September 24, 2019. FAC at 8;
12 *see* Opposition at 10. While administrative or other disciplinary hearings may
13 occur in a jail, trials on criminal charges are not held in jails, nor would plaintiff be
14 able to plead guilty to a criminal charge in a jail hearing. Plaintiff presents no facts
15 indicating there was a trial while she was detained. *See* FAC at 8, 13; *see also*
16 Opposition at 10. Indeed, the docket from plaintiff's case indicates the only
17 activity in September 2019 was an arraignment on September 25, 2019, the day she
18 was released from jail, and she did not attend it. *See* Defendant's Request for
19 Judicial Notice in Support of MTD ("RJN"), Ex. A.⁶

20 Accordingly, claim four should be dismissed.

21 **5. Claim Six – Eighth Amendment**

22 In claim six, plaintiff alleges deputies violated her Eighth Amendment rights
23 by placing her in men's jail, allowing her to be subjected to threats of rape and
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26 ⁶ Courts may "take judicial notice of court filings and other matters of public
27 records." *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th
28 Cir. 2006). Pursuant to Rule 201 of the Federal Rules of Evidence, the court takes
judicial notice of Exhibit A to the RJN.

1 violence, forcing her to use a toilet and shower in front of men (although she states
2 she did not in fact shower), and insulting her. FAC at 10.

3 As this court has previously informed plaintiff, the Eighth Amendment
4 applies to convicted prisoners, not pretrial detainees. *See* docket no. 19 at 4-5;
5 *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1246 n.5 (9th Cir. 2016)
6 (“Eighth Amendment protections apply only once a prisoner has been convicted of
7 a crime, while pretrial detainees are entitled to the potentially more expansive
8 protections of the Due Process Clause of the Fourteenth Amendment.”); *Castro*,
9 833 F.3d at 1067-68 (“Inmates who sue prison officials for injuries suffered while
10 in custody may do so under the Eighth Amendment’s Cruel and Unusual
11 Punishment Clause or, if not yet convicted, under the Fourteenth Amendment’s
12 Due Process Clause.”). Plaintiff is required to bring such a claim under the
13 Fourteenth Amendment, which she does in claims one and four, as discussed
14 above. As such, claim six is without merit and should be dismissed.

15 **6. Claim Seven – Fourth Amendment**

16 Plaintiff contends, in claim seven, that her Fourth Amendment rights were
17 violated when male officers searched her in the jail. FAC at 11.

18 The Fourth Amendment protects the rights of persons, including the
19 incarcerated, against unreasonable searches. U.S. Const. amend. IV; *Bull v. City &*
20 *Cty. of S.F.*, 595 F.3d 964, 974-75 (9th Cir. 2010). “The reasonableness of a
21 search is determined by reference to its context.” *Bull*, 595 F.3d at 971. Cross-
22 gender searches are not categorically prohibited. While the courts have found that
23 “cross-gender strip searches in the absence of an emergency violate an inmate’s
24 right under the Fourth Amendment to be free from unreasonable searches,” a cross-
25 gender pat-down search does not. *Byrd v. Maricopa Cty. Sheriff’s Dep’t*, 629 F.3d
26 1135, 1146 (9th Cir. 2011); *Grummett v. Rushen*, 779 F.2d 491, 496 (9th Cir.
27 1985); *Sweet v. Ruiz*, 2020 WL 4919683, at *4 (C.D. Cal. Jul. 20, 2020).

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1 Here, plaintiff alleges three women searched her upon entry, but men
2 performed the subsequent searches. FAC at 11. Plaintiff fails to allege in the FAC
3 what kind of searches were performed, how they were performed, or any other
4 relevant information, although she implies in the Opposition that male deputies
5 performed pat-down searches. *See* Opposition at 12. As such, plaintiff fails to
6 state a Fourth Amendment claim.

7 **7. Claim Eight – 34 U.S.C. § 30307**

8 Plaintiff argues defendant failed to comply with the guidelines on how to
9 treat transgender inmates set forth in 42 U.S.C. § 15607(b). FAC at 12. The
10 provisions of former § 15607 are now found in 34 U.S.C. § 30307.

11 Section 30307 is a section of the Prison Rape Elimination Act (“PREA”).
12 The PREA was enacted to address the problem of rape in prison by creating
13 national standards and applying such standards to federal and state agencies.
14 *Carroll v. Toelet*, 2020 WL 3469363, at *8 n.8 (S.D. Cal. June 25, 2020); *Ford v.*
15 *Spinny*, 2018 WL 10408905, at *3 (C.D. Cal. Nov. 29, 2018) (“PREA was enacted
16 to study the problem of prison rape and to provide funding and the expertise to
17 address it.”). It does not create a private right of action. *See, e.g., Sweet*, 2020 WL
18 4919683, at *4 (“the PREA does not give rise to a privately enforceable cause of
19 action on its own or under Section 1983”); *Olive v. Harrington*, 2016 WL
20 4899177, at *4 (E.D. Cal. Sept. 14, 2016) (“Nothing in the Act suggests that it
21 created a private right of action, enforceable under section 1983.”). Consequently,
22 plaintiff cannot state a claim under § 30307.

23 **8. Claim Nine – Fifth Amendment**

24 In claim nine, plaintiff argues she was forced to be a witness against herself
25 and plead guilty in a sham trial on September 24, 2019. FAC at 13; Opposition at
26 14. The docket in plaintiff’s underlying state criminal case, of which the court has
27 taken judicial notice, belies plaintiff’s allegations. The docket clearly reflects
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1 plaintiff did not have a hearing or trial on September 24, 2019. RJN, Ex. A.
2 Instead, there was a second arraignment on September 25, 2019, at which plaintiff
3 failed to appear and was sentenced to ten days in jail. *Id.* Subsequently, on
4 February 18, 2020, the court dismissed the case. *Id.*

5 Admittedly, there is some confusion. A Notice to Defendant dated February
6 18, 2020 indicates that on that date the Orange County Superior Court granted
7 plaintiff's oral motion to withdraw her guilty plea. FAC, Ex. 2. There is no
8 indication in the criminal docket of plaintiff entering a guilty plea, nor does the
9 docket explain why plaintiff was sentenced to ten days in jail. *See* RJN, Ex. A.

10 In any event, plaintiff's claim of a sham trial held within the jail at which she
11 was allegedly forced to plead guilty is contrary to the court record, unsupported by
12 any facts alleged, and utterly implausible. *See Iqbal*, 556 U.S. at 678 (to survive a
13 motion to dismiss a claim must have "facial plausibility"; "mere conclusory
14 statements" do not suffice). As such, the court should dismiss claim nine for
15 failure to state a claim.

16 **9. Claim Ten – California Penal Code § 11410**

17 In claim ten, plaintiff contends defendant failed to protect her from fear and
18 intimidation caused by individuals in violation of Cal. Penal Code § 11410. FAC
19 at 14. Section 11410 of the California Penal Code contains legislative findings,
20 declarations, and definitions. *See* Cal. Penal Code § 11410. It does not provide for
21 a civil remedy. As such, claim ten is without merit.

22 **10. Claim Eleven – California Senate Bill 132**

23 With claim eleven, plaintiff alleges defendant violated California Senate Bill
24 132. FAC at 15. After its enactment, Senate Bill 132 was codified as California
25 Penal Code §§ 2605 and 2606, and became effective January 1, 2021.⁷ Among

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27 ⁷ California Senate Bill 132 was signed into law on September 29, 2020 and
28 became effective on January 1, 2021. *See*

1 other things, it provides for transgender inmates to be housed and searched
2 consistent with their gender identity. California Senate Bill 132 was not an
3 existing law at the time plaintiff was detained, and therefore defendant cannot be
4 liable for violating it.

5 **11. Claims Twelve and Thirteen – 34 U.S.C. § 12361**

6 Claims twelve and thirteen are virtually identical claims in which plaintiff
7 argues defendant violated 34 U.S.C. § 12361, the Violence Against Women Act
8 (“VAWA”). *See* FAC at 16-17. The Supreme Court found the civil remedy
9 provision of VAWA to be unconstitutional. *U.S. v. Morrison*, 529 U.S. 598, 627,
10 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000) (affirming the dismissal of the civil
11 claims brought under VAWA’s former section). As such, claims twelve and
12 thirteen should be dismissed.

13 **12. Claim Fourteen – California Civil Rights Act of 2005**

14 In claim fourteen, plaintiff argues defendant violated the California Civil
15 Rights Act of 2005. FAC at 18. The California Civil Rights Act of 2005 amended
16 the Unruh Act to prohibit discrimination based on marital status or sexual
17 orientation.⁸ This court already dismissed plaintiff’s Unruh Act claim with
18 prejudice because jails are not business establishments and therefore do not fall
19 within the ambit of the Unruh Act. *See* docket no. 19; *see also Wilkins-Jones v.*
20 *Cty. of Alameda*, 859 F. Supp. 2d 1039, 1048-49 (N.D. Cal. 2012); *Taormina v.*
21 *Cal. Dep’t of Corr.*, 946 F. Supp. 829, 834 (S.D. Cal. 1996). Accordingly, this
22 claim must be dismissed.

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⁸ *See*
26 [https://www.cdcr.ca.gov/insidecdcr/2020/09/29/governor-newsom-signs-senate-bil](https://www.cdcr.ca.gov/insidecdcr/2020/09/29/governor-newsom-signs-senate-bill-132-to-respect-gender-identity-during-incarceration/)
27 [132-to-respect-gender-identity-during-incarceration/](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200520060AB1400).

28 ⁸ *See*
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200520060AB1400.

1 **13. Claim Fifteen – Bane Act**

2 Plaintiff alleges a violation of the Bane Act in claim fifteen. FAC at 19.
3 Specifically, plaintiff contends the police deprived her of her gender identity in
4 violation of the First Amendment when deputies “slurred her for being
5 transgender,” and said she was on meth, she should stay in jail forever, and should
6 “go live” with men threatening to rape and kill her. *Id.*

7 “The Bane Act civilly protects individuals from conduct aimed at interfering
8 with rights that are secured by federal or state law, where the interference is carried
9 out ‘by threats, intimidation or coercion.’” *Reese v. Cty. of Sacramento*, 888 F.3d
10 1030, 1040 (9th Cir. 2018) (citation omitted). In order state a claim under the Bane
11 Act a plaintiff must establish: (1) defendant interfered with or attempted to
12 interfere with plaintiff’s constitutional or statutory rights by threatening or
13 committing violent acts; (2) plaintiff reasonably believed defendant would commit
14 violence against his or her property if plaintiff exercised that right, or that the
15 defendant injured plaintiff or his/her property to prevent him/her from exercising
16 that right or retaliate against plaintiff for exercising such right; (3) plaintiff was
17 harmed; and (4) defendant’s conduct was a substantial factor in causing plaintiff
18 harm. *Austin B. v. Escondido Union Sch. Dist.*, 57 Cal. Rptr. 3d 454, 471, 149 Cal.
19 App. 4th 860, 872 (2007) (citing the Judicial Council of California Civil Jury
20 Instructions).

21 Plaintiff’s allegations are once again deficient, just as the court found with
22 respect to her Bane Act claim in the original Complaint. *See* docket no. 19.
23 Plaintiff fails to allege sufficient facts to establish the required elements.
24 Plaintiff’s allegations do not state a First Amendment violation, as discussed above
25 with respect to claim two. In addition, the allegations do not establish a reasonable
26 belief that defendant County or any of its employees would commit violence, and

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1 plaintiff does not allege she was harmed. Accordingly, the Bane Act claim should
2 again be dismissed.

3 **D. No Further Leave to Amend Should Be Granted**

4 The court generally must give a pro se litigant leave to amend her complaint
5 “unless it determines that the pleading could not possibly be cured by the
6 allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en
7 banc) (quotation marks and citations omitted). Thus, before a pro se civil rights
8 complaint may be dismissed, the court must provide the plaintiff with a statement
9 of the complaint’s deficiencies. *Karim-Panahi*, 839 F.2d at 623-24. But where
10 amendment of a pro se litigant’s complaint would be futile, denial of leave to
11 amend is appropriate. *See Hills v. Indymac Mortg. Holdings, Inc.*, 730 Fed. Appx.
12 513, 514 (9th Cir. 2018).

13 This court has already granted plaintiff leave to amend and provided plaintiff
14 a statement of the Complaint’s deficiencies. Plaintiff failed to correct the
15 deficiencies previously identified. In addition, plaintiff added new claims
16 exceeding the scope of the leave to amend, all of which have the same deficiencies
17 as the claims in the Complaint, are based on constitutional rights or other legal
18 provision inapplicable to the facts alleged, or are based on statutes that do not
19 provide a cause of action or remedy. It is thus clear that further amendment would
20 be futile. *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004) (“Futility alone
21 can justify the denial of a motion to amend.”).

22 Accordingly, the court should dismiss the First Amended Complaint without
23 leave to amend.

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1 V.
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RECOMMENDATION

3 IT IS THEREFORE RECOMMENDED that the District Court issue an
4 Order: (1) approving and accepting this Report and Recommendation; (2) granting
5 the Motion to Dismiss (docket no. 27); and (3) directing that Judgment be entered
6 dismissing the First Amended Complaint and this action without leave to amend.

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8 DATED: September 21, 2021

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11 SHERI PYM
12 United States Magistrate Judge
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APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Brala Beverly)	Case # 8:20-cv-00797-JGB (SP)
V.		Objection to Report and
Orange County Sheriff Does 1-1000)	Recommendation, Memorandum of Points and Authorities
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Memorandum of Points and Authorities

I. Introduction

This Objection incorporates all case studies, legal citations and law cited in the first and amended Complaint, as well as oppositions and declarations in response to all motion to dismiss endeavors by the defendant. There is no need for repeating each point here. The report and recommendation to dismiss this case with prejudice as to all causes of action fails each time and is an affront not only to plaintiff but to the entire transgender community and simply cannot stand under any literal and compassionate reading of the law. I am confident no LGBT organization in America would support this recommendation of the magistrate judge. Plaintiff clearly stated it was the policy of the OC Sheriff to ignore the gender identity of all transgender inmates. However, it was also the policy of the OC Sheriff to place individuals legally identified as female on their state and federal ID in womens' jails. It was never the policy to feel up or interrogate individuals about their genitals, which was done in this case. The report and recommendation misstates the face of the complaint and imagines this is just a single transgender person treated this way and singled out for no particular reason from other trans inmates. This was never the case, nor was it stated anywhere in either the first or amended complaint. In fact, even the

Report concedes the actions of the defendant pertained to all trans inmates later in the report. Defendant even in their motion to dismiss documents conceded SB 132 , the California transgender dignity act, was not honored by them, nor any other law, including constitutional rights, and codes of federal regulations cited throughout this case and the opposition to the previous report in to original Complaint being dismissed with leave to amend. The conduct of the defendant in this case is a complete denial of the transgender community's existence. Nowhere in their response did defendant claim to treat Plaintiff differently than other transgender inmates. They claimed the opposite. They claimed they denied the gender identity of all trans inmates and claimed it was legal to do so. Only the Report and Recommendation uses its imagination and falsely claims plaintiff was singled out from other trans inmates . The Report later clarifies it simply doesn't think denying gender identity endangers anyone.

Plaintiff faced a life and death situation as a legally identified woman on her state and federal ID at the time of her arrest placed nevertheless in a mens' jail. There is an actual practical reason behind why transgender people change their state and federal ID to match the gender they are living as. It is for their protection from treatment like that described in this complaint. State and federal laws have long held this legal gender change process to be legally sound. This recommendation however has gone far out of its way to ignore this very blatant disregard of the existence of transgender women and the different way people treat them from traditional gender people. It has concluded this is somehow the normal stance to take, even though nowhere in society are transgender people actually treated as traditional gender people. Any identification stating a transgender woman as a man would be deceptive at best. No one in society does physical genital investigations of people in public as this report expects the defendant has the right to do to Plaintiff in this case. As Larry Elder, wanna be governor of California this year who once fashioned himself as a judge on a court tv show once told Plaintiff Brala Beverly on ABC television, "Brala, you can expect to be discriminated against for your appearance. You can expect to have problems in employment settings." While Elder approved of that discrimination, (he lost his recent election by 40 points as people know this is the kind of person he is), he still, like everyone else, other than this report and defendant, recognized transgender women aren't treated the same as traditional gender people, as he himself was busy discriminating against a transgender woman. Discrimination in employment or accommodations for being transgender is not relative to being treated

equally as any gender would expect to be treated. This Report's attempt to pretend Plaintiff was treated equally under the law as other female inmates in protection from danger inside the jail by having her legally certified gender as female ignored and tossed into a mens' prison is dishonesty at the highest level, and a complete denial of the facts laid out in the Complaint. The fact that the warrant, which was invalid on its face (a conversation ignored in the Report), yet honored by the OC sheriff, was 8 years old for a minor misdemeanor and made out to a name Brala Beverly legally changed in 2011 did not justify treating Plaintiff against her current legal status as Brala Beverly and as female at the time of the arrest in 2019 as the report suggests it did.

The amended complaint in this action laid out instance after instance of state and federal courts honoring the gender of trans inmates throughout the country. This report nevertheless believes it must wait for the supreme court to affirmatively state a constitutional right to equal protection under the law for trans inmates before it will honor such treatment in this case despite that equal treatment was clearly not provided in this case. Any literate person should know someone with current state and federal ID stating their gender as female, should not, based on the law, be placed in a mens' prison. There has never been a supreme court ruling stating that the government must physically feel up individual's genitals to determine how to place them in jails either, yet that is what this court is demanding when it refuses to acknowledge the legal gender on the ID of Plaintiff. Such an assumption assumes a lot, to invade the privacy and secureness in ones person at the hands, no pun intended, of government. The Complaint made clear that if Plaintiff did not answer to police about her genitals they would physically attack her for the answer.

The magistrate judge took nearly a year to make this frankly very bigoted ruling. Any final ruling affirming the dismissal of this case with prejudice will immediately be sent to the court of appeals. The life of Plaintiff was threatened like no other inmate in a mens' jail would have been for being a man because all the inmates knew Plaintiff was a transgender woman and treated her accordingly, generally, with violent threats as a result. If the court is so confident this ruling won't be overturned on appeal, it should not delay in affirming this absolutely terrible report and recommendation so the appeal process can begin. It is already a well known fact this ruling would not stand in the state of California courts where defendant is located as state law clearly explicitly forbids government conduct taken by defendant in this case under SB 132 let alone the other laws stated in the

amended complaint. This objection won't reiterate every legal argument made in the First Amended Complaint, but stands by each of them.

II. Dismissing Additional Causes of Action with Prejudice in the Amended Complaint on a Technicality Demanding a Leave to Amend Motion is Not in the Interest of Justice

While it is true the federal court system only permits an amended complaint within 21 days after a rule 12 motion is filed, it is also true that the federal court system, like the California state court system, will allow amendments all the way up until trial (*Foman v Davis* 371 U.S. 178,182 (1962)). In the interests of justice, the mere fact that pro se litigant Plaintiff overlooked the need to file a special motion to amend the complaint before the motion to dismiss order was ruled on, and instead did so within two months of the entire case being filed, does not negate the fact that a motion to amend would be unfair to rule against if filed in this case. Although it may seem needless at this point since the report addresses the additional causes of action on their merits in any case, Plaintiff would have no problem making the motion for leave to amend request. It was a bit difficult to make this request in the midst of a deadline for a motion to dismiss response requirement. The purpose of a court is not to manipulate a complaint, but to first hear it out. Ideally the court will find legal ground to accept the first amended complaint without a formal request to amend the complaint however based on the fact that this report addresses the merits of each claim added in the amended Complaint regardless of such motion. As it currently stands, it appears the report has dismissed the additional causes of action on other grounds while the motion for leave to amend is only being used as an excuse to further deny the causes of action. In California state court, no such harsh deadline or motion is required for a first amended complaint. This distinction between the court systems is not something Plaintiff was aware of. The dismissal of the added causes of action in the amended complaint by the report is based on a legal technicality not in the interests of justice, as the amendment was made within two months of the initial filing and all the added causes of action were based on the same facts outlined in the initial complaint. The added causes of action only reflected more thorough legal research as to laws available to protect Plaintiff in the amended complaint and in no way did that prejudice defendant's defense as to the same facts pled in the initial complaint. It is also true that the defendant did not object to the amended complaint on grounds that a motion for leave to amend needed to be filed in any of their filed documents after the amended Complaint was filed. Nowhere,

even in the federal court system, which is clearly harder on Plaintiffs than the California court system, is there legal precedent which says, any opportunity to deny amending a Complaint must be rushed to as quickly as possible by the courts. The opposite is generally the precedent.

III. The Report Misstates what the Complaint says about the policy of the OC sheriff related to Jail Assignments by Gender

Nowhere in the first amended Complaint does the Plaintiff allege a single officer went against the policy of the OC sheriff in their transphobic treatment of Plaintiff. It states the opposite yet the report somehow manufactures a reading of the Complaint as saying as single officer went against the grain somehow. Harassing trans inmates, making transphobic remarks to the inmates who are transgender, misgendering the inmates is the stated actual policy of the OC Sheriff. The report says this sounds like equal protection under the law because the supreme court hasn't said it isn't. Nothing could be further from the truth. The Monell Claim is clearly valid in this case as the OC Sheriff clearly has a policy of placing those with legal state and federal ID as female in womens' jails, yet at the same time refuses to acknowledge transgender women with valid female state and federal ID as women in their placement of trans women in jails, instead ignoring their gender identity entirely and somehow treating them as traditional gender inmates. This policy is a constitutional rights violation of transgender inmates based on all the constitutional rights claims made in the amended Complaint for the First,Fourth,Fifth,Eighth and fourteenth amendments of the U.S. constitution. Plaintiff is entitled under the First Amendment to self identity of her name and gender. Nowhere does the law establish that respecting this self proclamation hinders the life of anyone else on the planet. Placing a legally female transgender woman in a mens' jail is cruel and unusual punishment under the Eighth amendment of the U.S. Constitution (Plaintiff stayed in the prison as a convicted inmate due to a plea bargain made in the jail at a hearing on 9/24/19 to get out sooner due to the gender placement, despite that the charge was reversed and dismissed after the jail time). The Fourth amendment rights violation regards lack of privacy permitted as to Plaintiff's genitalia as though further interrogation was needed beyond the legal ID of Plaintiff by the OC Sheriff. It also refers to illegal pat downs by male officers despite her status as female, as well as forcing her to shower and use the restroom in front of men, things she never did her entire adult life as a transgender woman. The Fifth amendment rights violation regards the right against self incrimination, the right of Plaintiff to not put herself in harms

way by being forced to talk about genitals with the OC Sheriff as a reason for her placement in the jail despite her legal ID stating otherwise. The legal definition of female on state and federal ID is not based on genitals but the gender identity of the individual.

As stated in the introduction, the Report claims the Complaint says something it does not. It claims the OC Sheriff doesn't have a policy denying the identity of transgender women despite that the OC Sheriff attorneys in this case clearly admit to denying the identity of transgender women in their motion to dismiss documents. How the Report manages to refute both what the Complaint and what the defendant agree is the policy of the OC Sheriff to reject the gender identity of trans inmates is beyond unbelievable.

IV. The Report Wrongly Denies that the OC Sheriff Policy to Deny Transgender Inmates' Gender Identity Causes State Induced Danger to Transgender Individuals

42 U.S Code 1983 has a section which refers to state induced danger. Beyond denying that the OC Sheriff policy of denying transgender inmates' gender identity thereby puts transgender individuals in state induced danger, the Report assumes the threats described placed on Plaintiff in the jail for being transgender in the First Amended Complaint somehow didn't matter. The Report goes on to state that because the Complaint doesn't outline an actual physical attack only the threats of physical attack based on the short jail stay and surely not more, therefore none of this matters. Actually this commentary once again defies what the face of the Complaint states. The Complaint does state a physical attack of being searched by men in the jails, and also by being forced to shower in front of men, use the bathroom in front of men and being attacked about her genitals, which, if Plaintiff did not discuss with police they threatened physical assault. Police do not arrest transgender women for using the womens' restrooms in public in California because doing so would be illegal, yet in the jails they expect to get away with the illegal behavior of denying the legal ID of transgender women and putting them in mens' restrooms. This lawsuit seeks to remedy this blatant hypocrisy and bigotry and the danger it causes transgender inmates.

V. The Report Misstates what the Complaint Allege about the First Amendment Rights of Transgender Inmates

Essentially, the entirety of the First and First Amended Complaints outline why denying the gender identity of a transgender person is a violation of that individual's first amendment right to self identify.

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Yet, here the Report waters the allegation down to Plaintiffs former legal name being used on her jail
wristband because the defunct warrant that was improperly honored for the minor misdemeanor 8
years later had that name on it (a Franks motion in criminal court would have negated the validity of
that warrant). Well, that's not entirely what happened in this case, The entirety of what happened that
Plaintiff's current legal name and gender were denied at the time of arrest, an arrest which utilized her
current legal name and gender on her ID to misplace her in a mens' jail. The attempt to censor the
speech of Plaintiff by jail officers who repeatedly misgendered Plaintiff is an attempt to censor her first
amendment rights by physically blocking her from the womens' jai and placing her in the mens' jail
despite her legal status as female.

VI. The OC Sheriff Displaces Trans Inmates in Jails in Violation of Title IX

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Although Plaintiff was not in the jail long enough to attend formal education programs in the
jail, the conduct of the OC Sheriff is to deny trans inmates educational programs for women in women's
jails and prisons. The court should take judicial notice of this fact.

VII. The Report Misstates that no Law Exists to Protect Trans Inmates

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The U.S. Constitution and the code of federal regulations (which have expressly protected
trans inmates) have existed long before California Senate Bill 132 was passed. Unless this court is
prepared to announce SB 132 as unconstitutional, it stands to reason laws were already on the books
protecting Plaintiff when she was jailed by the OC Sheriff in 2019. It is also true that SB 132 protects
individuals regardless of their legal ID matching their gender identity, whereas Plaintiff has legal ID
matching her gender identity so arguably did not need SB 132 to pass in her case as her legal ID was
already self evident. Nevertheless, the Report alleges the supreme court must pass a similar ruling to its
rulings protecting transgender people in restrooms and employment also in prisons. Why does the
supreme court have to rule the gender identity of trans must be respected in each separate location
they go to one at a time? Isn't it sort of the fact that the writing is already on the wall? The supreme
court refused to overturn rulings allowing a transgender boy to use the boys room in G.G. V. Gloucester
County. They also ruled that the 1964 civil rights act bars discrimination based on gender identity in
Bostock v. Clayton County as previously discussed in the opposition to dismiss in this case. The Report
assumes the supreme court will suddenly contradict itself and read that the constitution supports
denying the gender identity of trans inmates without explaining why this instance should be different.

Plaintiff states a fourteenth amendment violation of her equal protection under the law assurance from government by being placed in a mens' jail and berated with rape and death threats constantly due to her gender identity. The report sees this as no big deal.

Plaintiff also alleges a due process violation of the fourteenth amendment when she was subjected to a sham trial inside the jail on 9/24/19, which the criminal court agreed with her about when they reversed the guilty plea in 2020. The Report refutes the citation of the complaint that a hearing in the jail occurred wherein Plaintiff was forced to take a guilty plea with no discussion of the actual case or stay in jail and await a trial. With no criminal record she was held on an 8 year old \$4 drink theft arrest warrant because police targeted her for being transgender and she wasn't released on her own recognizance. Once again, this is why courts have trials not mere dismissals.

VII. The Report Misstates the Facts of the Complaint Regarding the Eighth Amendment Claim

Plaintiff was held in jail as both a pre trial detainee and a convicted inmate as the Complaint and opposition to dismiss state clearly. Because the Report refutes the fact that a hearing took place on 9/24/19 where Plaintiff was forced into a guilty plea due to being in the not legal gender jail and life threatening situation, the Report insists Plaintiff never stayed at the jail as a convicted inmate and therefore can not argue cruel and unusual punishment under the Eighth amendment for being held in the mens' jail. The reality is Plaintiff came to the jail on 9/23/19 as a pre trial detainee, became a convicted inmate on 9/24/19 due to the guilty plea, finished her sentence on 9/25/19, and reversed the judgement of guilty later in 2020 in a criminal court where the court found the hearing held on 9/24/19 improper due to no facts in the case presented to cause a conviction and no testimony by the prosecutor stating otherwise available.

VIII. The Report Misstates the Allegations of the Fourth Amendment Claim

Plaintiff alleges her gender identity was not honored by the OC Sheriff and as a result her right to be secure in her person as a female were not honored when she was forced to shower in front of men, use the bathroom in front of men, be housed with men, and pat down searched by men. Plaintiff has never used a mens' public restroom or washroom in her entire adult life. The Report says basically, "So what?," in its transphobic heyday.

VIII. 34 U.S.C. 30307 Provides for Declaratory and Injunctive Relief by Courts

Plaintiff states she was threatened with rape throughout her jail stay by prison inmates. The PREA

prison rape elimination act specifically has protections for trans inmates to not be placed in jails contrary to their legal gender so they are better protected from this type of inmate conduct. The Report seemingly dismisses this claim based on that no monetary damages for a private party are available under this code, only fines for prisons and in this case the defendant by the attorney general or others in the government. It is also notable that unless this court is prepared to announce this code of law including trans inmates is unconstitutional , the U.S. constitution must thereby support the placement of trans inmates in jails consistent with their gender identity.

X. The Report Contradicts itself on the Fifth Amendment Claim

As with the Eighth amendment claim, the Report denies the facts of the Complaint with no trial. The FAC states clearly a hearing was held in the jail on 9/24/19. In fact hundreds of inmates had hearings that same day making plea bargains or case hearings. Yet, the Report denies this can be true while saying it is still confusing because a guilty plea was withdrawn in 2020 in this case. So, the Report acknowledges a guilty plea was made and withdrawn but nevertheless claims Plaintiff was never an inmate under a guilty nor had a hearing causing one. It seems the modus of the judge making this report is to just agree with whatever the defendant says. It is also true that the right from self incrimination occurred when Plaintiff was forced to discuss genitals with police rather than having her gender identity respected and made to state her genitals or be attacked although this type of self incrimination was not within the court itself it was in communications with police who wrongly violated her rights in order to force such a confession. Jails are for punishment of a crime, not punishment for gender identity.

XI. California Penal Code 11410 Protects Trans from Threats of Violence

The allegations of this Complaint are that Plaintiff was subjected to threats of violence and literal physical violence based on her gender identity not being respected, including being searched by men, told to shower and use the restroom in front of men, and sleep next to a man who was threatening to rape her. This codes of law provides for fines against the offending parties. It further states it is a constitutional right of those based on gender identity to be treated equally under the law, which was not offered by the OC Sheriff to Plaintiff.

XII. California Senate Bill 132-The Transgender Dignity Act

The Report says that because this act did not become law until 2020, and Plaintiff was held in jail in 2019, its protections for transgender inmates is irrelevant to this case. However, this code of law

protects individuals who do not have legal ID matching their gender as well as those that do. In the case of Plaintiff this law was not necessary as she already had legal standing as female under the law with her state and federal ID. Unless this court is prepared to announce this code of law unconstitutional it stands to reason Plaintiff also has constitutional rights to rely on in this case. It is also true that because this has been the law while this case has been pending, it would be unfair for the court to not take judicial notice of it, and its reflections on the current state of the law.

XIII. The Report cites a 2000 Supreme Court Ruling while the FAC cites a 2019 Version of VAWA

The Report claims the Violence Against Women Act is not available for civil remedy based on the ruling in the Supreme Court in *U.S. V. Morrison*. However, that ruling pertains in part to state versus federal jurisdictions being sued. The status of the OC Sheriff as a state or federal jurisdiction would be the issue here. That case involved an individual defendant not a public entity as this case does. In any case, the law was updated in 2019 to include gender identity as a protected class. The law may not be written the same in its 2019 version since that supreme court ruling. It is also true that 42 US code 13981 is related to the VAWA and can be enforced in this case for civil remedy. In any case, 34 U.S.C. 12361 clearly provides for civil remedy. This was the claim cited in the Complaint. Plaintiff experienced gender based violence based on the OC Sheriff refusing to respect her legal gender.

XIII. Unruh Act

This claim was based on the state legislature defining jails as public accommodations in the Equality Act passed by congress in 2019, where the intent to protect trans inmates was predictable. The Report views this act as relevant to only business accommodations not public accommodations.

XV. The Bane Act was Violated as Plaintiff Experienced Gender Identity Based Violence in Jail

For transphobic people such as the individual making this report, gender violence cannot exist against a transgender person because they have no constitutional right to be transgender, and placing a transgender woman in a mens' jail to sleep, use the restroom ,shower and bathe next to men threatening to rape and kill her based on her gender seems reasonable conduct for the defendant to

subject her to. Of course if Plaintiff were a genetic female not a transgender female, the Report would surely not accept a woman had no constitutional right to refuse to be placed in a mens' jail. The Report would clearly say the defendant was in the wrong. So, the issue of this report is one of lies and transphobia and not more.

10/3/21

Date


Brala Beverly

Appendix C

FILED

NOT FOR PUBLICATION

OCT 24 2022

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRALA BEVERLY,

Plaintiff-Appellant,

v.

COUNTY OF ORANGE, a public entity,
erroneously sued and served as Orange
County Sheriff, in its official capacity;
ORANGE COUNTY SHERIFF; DOES, 1
-1000,

Defendants-Appellees.

No. 22-55080

D.C. No.
8:20-cv-00797-JGB-SP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Submitted October 20, 2022**
San Francisco, California

Before: FERNANDEZ, SILVERMAN, and N.R. SMITH, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Brala Beverly appeals pro se from the district court's judgment dismissing her first amended complaint with prejudice. She alleged a variety of federal and California claims against Defendant County of Orange arising from her placement in a men's jail. We affirm.

The district court did not err in dismissing Beverly's constitutional claims under 42 U.S.C. § 1983 for failure to adequately allege liability under *Monell v. Department of Social Services*, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037–38 L. Ed. 2d 611 (1978). The district court also did not err in dismissing Beverly's statutory claims. Her claim under Title IX failed because she did not allege discrimination related to an education program. *See Schwake v. Ariz. Bd. of Regents*, 967 F.3d 940, 946 (9th Cir. 2020). Her claim under the Prison Rape Elimination Act, 34 U.S.C. §§ 30301–30309 failed because this act does not provide for a private right of action. *Cf. Alexander v. Sandoval*, 532 U.S. 275, 286–87, 121 S. Ct. 1511, 1519–20, 149 L. Ed. 2d 517 (2001). Her claim under the Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994) failed because the civil remedy under 42 U.S.C. § 13981 (now codified at 34 U.S.C. § 12361) was held unconstitutional. *See United States v. Morrison*, 529 U.S. 598, 627, 120 S. Ct. 1740, 1759, 146 L. Ed. 2d. 658 (2000). Beverly's claim under California Penal Code sections 2605 and 2606 failed because the statutes were not in effect when

Beverly was in jail, and they do not apply retroactively. *See Evangelatos v. Superior Court*, 753 P.2d 585, 598 (Cal. 1988). Her claim under the Unruh Civil Rights Act, Cal. Civ. Code § 51, failed because jails are not a “business establishment” within the meaning of the act. *See Carter v. City of Los Angeles*, 169 Cal. Rptr. 3d 131, 144 (Ct. App. 2014); *see also Brennon B. v. Superior Court*, 513 P.3d 971, 984 n.8 (Cal. 2022). Beverly’s claim under the Tom Bane Civil Rights Act, Cal. Civ. Code § 52.1, failed because she did not allege that a government official had the specific intent to violate one of her constitutional rights. *See Hughes v. Rodriguez*, 31 F.4th 1211, 1224 (9th Cir. 2022).

We perceive no abuse of discretion in the district court’s dismissal of the action with prejudice. *See United States v. Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011); *United States v. Hinkson*, 585 F.3d 1247, 1261–62 (9th Cir. 2009) (en banc). The district court properly accounted for Beverly’s pro se status¹; it had already granted Beverly leave to amend her complaint and provided guidance to remedy the pleading’s deficiencies, but Beverly failed to follow that advice. *See Abagninin v. AMVAC Chem. Corp*, 545 F.3d 733, 742 (9th Cir. 2008); *cf. Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). The district court had no further obligation to further assist her in drafting an adequate statement of her claims. *See*

¹ *See Jacobsen v. Filler*, 790 F.2d 1362, 1364–65, 1364 n.4 (9th Cir. 1986).

Bias v. Moynihan, 508 F.3d 1212, 1219 (9th Cir. 2007); *see also Byrd v. Maricopa Cnty. Sheriff's Dep't*, 629 F.3d 1135, 1140 (9th Cir. 2011) (en banc). Moreover, the district court reasonably concluded that further leave to amend would be futile because Beverly's claims could not possibly be cured by amendment, and Beverly does not argue otherwise. *See Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011); *see also Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED. All pending motions are **DENIED** as unnecessary.

APPENDIX D (16 pages)

Case No. 22-55080

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Brala Beverly,
Appellant, Plaintiff

v.

Orange County Sheriff Does 1-1000
Appellees, Defendants

On Appeal of Decision from the
United States Central District Court of California
Case No. 8:20-CV-00797

Petition for Rehearing En Banc

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PETITION FOR REHEARING EN BANC

INTRODUCTION

Federal Rule of Appellate Procedure Rule 35 provides for en banc determination of a proceeding in the appeals court. En banc consideration is important in this lawsuit to maintain uniformity in the laws regarding transgender citizens in the United States on a crucial issue for this community. This proceeding addresses life threatening circumstances in a prison which petitioner and appellant Brala Beverly endured as a result of the government reassigning her gender in contrast with her stated gender identity and on her state and federal identification of female and placing her in men's jail in violation of her constitutional and federal right to be transgender despite being arrested. This is a topic of exceptional importance not only to Brala Beverly but to the entire transgender community who need equal protection and civil rights in their interactions with police. It is also of concern that the court issuing the ruling in this case misstated a material fact when it said Brala did not allege in her Complaint dismissed under Federal Rule of Civil Procedure 12 (6) c) that police had a specific intent to violate her constitutional rights when conducting themselves in this manner. The opposite is true. The Complaint repeatedly and explicitly accuses police of gender animus in their transphobic reassigning of her legal and stated gender identity upon arrest. Laws have also been updated since the filing of this case, including California Penal Codes 2605,2606.

On October 24, 2022, the Ninth District Court of Appeals filed a very dismissive and callous two and a half page memorandum dismissing all claims related to constitutional and federal rights violations asserted by Brala Beverly

against Orange County and Orange County Sheriff in this case under the Federal Code of Civil Procedure 12 6) c) after ignoring all her motions and refusing to directly address many of the Claims in the Complaint at all. These rights violations were made by Brala primarily as a consequence of the state reassigning her gender against her will upon arrest and placing her in jails with large numbers of male inmates threatening her constantly with rape and murder as a result of her being a trans woman while police physically forced Brala against her will into those men's cells despite witnessing this. Police also directly harmed Brala and further encouraged the inmates to endanger Brala based on her gender identity by their bigoted words and conduct toward Brala in front of those inmates. The ruling claimed to not be setting a precedent by not being published but essentially thereby insured that no transgender person can expect government to respect their gender as their constitutional and federal law rights.

The court rejected motions in this case by Brala Beverly without reviewing them and nevertheless ruled on the case. They did not cite what code of law permitted ignoring motions altogether submitted before a ruling. These ignored motions include Docket numbers 7,19,20,22, wherein case citations from the Ninth District Court of Appeals and the United States Supreme Court are in direct conflict with the ruling in this case. The ruling in this case essentially supports that the transphobic police conduct described in the Complaint of reassigning the legal gender of a transgender person under arrest is constitutional, that the individual's legal name and gender of female can be ignored, as well as the statements of the individual confirming that identity. Common law citations for equal protection, constitutional and federal law rights for transgender individuals

and all individuals under the law included in the filings by Brala in this case which contradict the ruling in this case include but are not limited to, *Farmer v. Brennan*, 511 U.S. 825, 847-848 (1994), *Forman V. Davis* 371 U.S. 178, 182 (1962), *Bostock v. Clayton County*, 140, S. Ct. 1731 (2020), *Karnoski v. Trump*, 926, F. 3d 1180 (9 Cir. 2019), *U.S. V. Morrison* 529, U.S. 598 (2000), *McClane Co. V. EEOC* 137 S. Ct. 1159 (2017), *Schwenk v. Hartford*, 204 F. 3d 1187, 1202 (9th Cir. 2000), *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), *Thompson v. City of Los Angeles*, 885 F. 2d 1439, 1444 (9th Cir. 1989) and *the City of Riverside v. McLaughlin*, 500 U.S. 44 55-58 (1991). The court also ignored motions sought to augment the appendix with documents relevant to the claims submitted in the district court case that were improperly excluded when the defendant filed the appendix in the case.

The judges seemingly had made up their minds already that transgender individuals should expect police to reassign their gender upon arrest so they felt no need to concern themselves with the legal citations or appendix motions provided by Brala Beverly in her documents in the district court before making their ruling. It is unclear why the court believes it is constitutional to reassign the gender of transgender inmates however, as the two and a half page ruling also ignores providing an clear explanation of why. The closest explanation of why appears to be the ruling's insistence that Brala did not satisfy a Bane Act claim because she supposedly did not allege that a government official had the specific intent to violate one of her constitutional rights. While stating this, the ruling cites a fully irrelevant case of *Hughes v. Rodriguez*, 31 F. 4th 1211, 1224 (9th Cir, 2022) wherein it is alleged video evidence and statements by an inmate contradict one

another. There is no dispute of facts in this case. Police reassigned Brala's gender in violation of her constitutional, state and federal law rights according to the assertions of the Complaint. The Complaint explicitly states this throughout. The court is simply not willing to read the allegations of the Complaint as true upon a motion to dismiss. The court suggests that Brala just didn't know how to amend her Complaint because she is filing in pro per, yet the court misstated the most material fact of the Complaint in failing to respect the allegations. Courts are required by law to respect the filing of any party on the merits, not based on whether the filings are in pro per or whether they agree with the allegations of the Complaint as mattering. The fact that this court has dismissed this case by first denying that the allegations of the Complaint are that constitutional rights exist to be transgender regardless of being arrested is an abuse of discretion. Because the court could not first accept the allegations of the Complaint, it was immediately incapable of rendering a legitimate judgment by discussing the issues. In California, rehearing petitions are most commonly granted when the ruling does not truly address matters which the parties are in court over and misstates a material fact essential to the case (California Rule of Court 8.500 (c) (2). This also why federal courts ask for a rehearing process before appealing further into the court process when facts are misstated in a ruling. It is also true that this ruling does not even address each claim made in the Complaint in this action. It does address some of them with one sentence statements. That's about it.

ARGUMENT

I. Most Claims were Rejected Without Citation or Explanation in the Ruling

The claim of 42 U.S.C. 1983 section 4.14 for state created danger in this action was not directly addressed by the ruling. The ruling does however state generally that it does not believe a Monell Claim validly exists in this case without providing an explanation of why. The lack of explanation establishes a remarkable show of prejudice in the ruling. Brala's Complaint states that police had an unconstitutional policy toward all transgender inmates in Orange County to reassign their gender, not just her, and that this policy properly lays a claim under 42 U.S.C. 1983. The Complaint explains how Brala was harmed and endangered by the policy while police claimed no such thing as transgender exists to Brala repeatedly during her jail stay, even though inmates clearly disagreed as proven by the manner the Complaint describes she was being treated. The refusal of the court to even discuss the facts of this case in its ruling is a remarkable show of prejudice upon motion to dismiss.

Brala's claim of a first amendment right to be transgender as violated by police reassigning her gender upon arrest was a claim the ruling did not care to address. This is a remarkable show of prejudice and a refusal to accept the allegations of the Complaint as true upon motion to dismiss.

Brala's claim of Title IX Education Amendments (1972) violation was made due to the discrimination by sex in the reassigning of her gender and the fact that jails are educational facilities. The ruling misstates the reason behind making the claim and therefore dismisses the claim.

Brala's claim for fourteenth amendment due process and equal protections violations was not addressed by the ruling at all. Brala was treated differently than other women by being placed in a men's jail, and was also facing disproportionate danger by being placed in a men's jail. Brala also alleged a due process clause violation as a result of the manner her trial was improperly conducted in the jail. Motion documents ignored by the court for judicial notice included court records related to this improperly held jail hearing on the merits of her case. The refusal of the court to address the facts of this claim, not even mentioning it in their ruling, is a remarkable show of prejudice and a refusal to accept the allegations of the Complaint as true upon motion to dismiss.

Brala's claim for a violation of her eighth amendment rights violation was made due to Brala being a convicted inmate while being reassigned a gender in jail even though the charge was reversed after her jail stay. The refusal of the court to address the facts of this claim, not even mentioning it in their ruling, is a remarkable show of prejudice and a refusal to accept the allegations of the Complaint as true upon motion to dismiss.

Brala's claim for a violation of her fourth amendment rights to be secure in her person and not be subjected to illegal searches by male police officers, showering with men threatening to rape and kill her, and sleeping with men threatening to rape and kill her in disrespect of her gender identity. The refusal of the court to address the facts of this claim, not even mentioning it in their ruling, is a remarkable show of prejudice and a refusal to accept the allegations of the Complaint as true upon motion to dismiss.

Brala's claim for 42 U.S.C 15607 (B) discusses standards of care for the Bureau of Prisons including the standards under the code of federal regulations and the prison rape elimination act for transgender inmates. Rather than discussing this claim directly, the ruling refers to 34 U.S.C. 30301-30309 whereby they claim the prison rape elimination act doesn't provide a private right of action. We are left to assume the prisons can violate the code of federal regulations regarding transgender inmate standards set forth therein without a private right of action under this code. The purpose of their being there is greatly thereby diminished and insignificant.

Brala's claim of a fifth amendment violation pertaining to the trial inside the jail without proper counsel was yet another claim ignored by this court in its ruling on the claim without explanation.

Brala's claim of a California Penal Code 11410 violation was ignored by

the court in its ruling on the claim. The court instead discusses California Penal Codes 2605 and 2606 saying those codes aren't relevant as they did not exist when this case occurred in 2019. Brala did not include those codes in her case despite what the court claims. Nevertheless their mention brings up a good topic of the retroactivity of laws while cases are still pending. The ruling in this case mentions a 2022 lawsuit *Hughes* for example, yet doesn't want to honor new and current legislative laws. This refusal of the court to address the facts of the California Penal Code 11410 claim, not even mentioning it in their ruling, is a remarkable show of prejudice and a refusal to accept the allegations of the Complaint as true upon motion to dismiss.

Brala's California Senate Bill 132 claim was ignored by the court in its ruling on the claim without explanation. This law protects transgender inmates from having their gender reassigned by police citing their constitutional rights. Obviously the ruling in this case asserts no such constitutional right can exists for transgender inmates, even though it doesn't directly address any of the constitutional claims it does affirm the district court rulings which rejects them. This law was passed at around the same time as the arrest in this case, but the U.S. constitution cited therein has been around much longer. The court refuses to address this discussion. This refusal of the court to address the facts of this claim, not even mentioning it in their ruling, is a remarkable show of prejudice and a

refusal to accept the allegations of the Complaint as true upon motion to dismiss.

Brala's claim for a violation of 34 U.S.C. 12361 regards police knowingly endangering Brala and effectively assaulting her by forcing her into a men's jail and reassigning her gender while witnessing the inevitable inmate gender related violence responses. This refusal of the court to address the facts of this claim, not even mentioning it in their ruling, is a remarkable show of prejudice and a refusal to accept the allegations of the Complaint as true upon motion to dismiss.

Brala's claim of an Unruh Act violation, California Civil Rights Act of 2005, Assembly Bill 1400, for discrimination based on gender identity in public accommodations was rejected by the court who concluded that prisons are not public accommodations despite the claim contrary to that made by Congress in the Equality Act of 2019.

Brala's Bane Act rights violation claim under California Code of Civil Procedure 52.1 was rejected while the court disputed the allegations of the complaint, somehow stating that Brala never alleged a specific gender animus toward her by police in this case, despite that it is exactly what this case is all about. This refusal of the court to address the facts of this claim, not even mentioning them in their ruling, is a remarkable show of prejudice and a refusal to accept the allegations of the Complaint as true upon motion to dismiss.

The court made a further remark that the Violence Against Women Act has no private right of claim. Brala has stated in case documents that because the defendant was a state, not private entity, and because VAWA has been updated, *U.S. v. Morrison*, 529, 627, 120 S. Ct. 1740, 1759, 146 L. Ed. 2d. 658 (2000) should not apply to this case.

The court made no remarks regarding other legal citations in the Complaint including Title VII of the 1964 Civil Rights Act, wherein the Supreme Court ruled on principle in *Bostock v. Clayton County*, that sex discrimination under the law includes discrimination based on gender identity. Brala was discriminated against based on sex throughout this case. This is illegal no matter the context, including in prison. This is not the punishment of a crime.

We can sit here and debate that it is illegal to discriminate against transgender people in all contexts other than during arrests but that makes for inconsistent law. Why aren't police even respecting the legal name and gender of Brala on her driver's license and federal ID? What right do they have to demand physical genital checks of individuals under arrest as they did in this case if Brala refused to tell them first? There were dozens of cases Brala presented in this appeal of which this court discussed none of, where transgender inmates successfully sued police for mistreating them in prisons. The context of this brief is simply too short to reiterate each case argument. I urge the court to hear this

case in earnest and grant this petition for rehearing en banc.

CONCLUSION

The overlooking of the material fact of this case, that Brala Beverly alleges constitutional rights violations by police for reassigning her gender upon arrest is shocking to say the least. Brala Beverly is someone who as an adult never used a men's restroom in her life. The experience the government put her through ignoring her legally stated gender of female on her state and federal ID and placing her in a jail cell with a man who stabbed his wife and among men threatening to rape and kill her constantly and in large numbers based on her obvious gender appearance was beyond horrifying and dangerous no different that it would be for a woman, and surely, in some violent regards, worse. Would a woman not have a constitutional right to protection from being put in a men's jail? Some police departments separate trans women inmates from men even in instances of not placing them with women, but only a truly ignorant and dishonest county such as Orange County believes it is safe and reasonable to assume trans people don't exist and people don't have a reaction to transgender people and just place them in traditional gender settings like no one would ever notice. The County of Orange must be held responsible for their callous and despicable acts against Brala Beverly. They must be shown to never treat another transgender person under arrest in this manner again.

11/1/22

/s/ Brala Beverly

Date

Brala Beverly

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Self Represented

CERTIFICATE OF COMPLIANCE

I, Brala Beverly, self represented party, asserts the following:

This brief contains 3,373 words excluding the items exempted by Fed R. App. P. 32 (f). This brief's type size and typeface comply with the Fed. R. App. P. 32 (a)(5) and (6). I certify that this brief complies with the word limit of Cir R. 32-1 and the Code of Appellate Procedure Rule 35 b) 2) a) .

11/1/22

/s/ Brala Beverly

Date

Brala Beverly

FILED

Appendix

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOV 30 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BRALA BEVERLY,

Plaintiff-Appellant,

v.

COUNTY OF ORANGE, a public entity,
erroneously sued and served as Orange
County Sheriff, in its official capacity;
ORANGE COUNTY SHERIFF; DOES, 1
-1000,

Defendants-Appellees.

No. 22-55080

D.C. No.

8:20-cv-00797-JGB-SP

Central District of California,
Santa Ana

ORDER DENYING PETITION
FOR REHEARING EN BANC

Before: FERNANDEZ, SILVERMAN, and N.R. SMITH, Circuit Judges.

Appellant's petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing en banc is DENIED.