

APPENDIX

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APPENDIX A

PUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-7540

JOSEPH RANDOLPH MAYS,
Plaintiff – Appellant,

v.

T. B. SMITH, Warden, FCI Butner 1; S. MA'AT, Assoc. Warden, FCI Butner 1; JAMIE HOSKINS, Unicor Factory Manager; V. WILLIS, Unit Manager; J. HALFAST, Case Manager; R. MARTIN, Counselor; LT. CHRISTOPHER; K. HENDRY; OFFICER V. WILKINS; OFFICER GLASS; OFFICER SLAYDON; OFFICER LASSITAR; J. CARAWAY, Regional Director; JOHN/JANE DOES,

Defendants – Appellees,

and

UNITED STATES OF AMERICA,
Party-in-Interest.

RIGHTS BEHIND BARS; RODERICK & SOLANGE MACARTHUR JUSTICE CENTER,
Amici Supporting Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:18-ct-03186-FL)

Before WYNN and RICHARDSON, Circuit Judges,
and TRAXLER, Senior Circuit Judge.

Affirmed by published opinion. Judge Wynn wrote the opinion, in which Judge Richardson and Senior Judge Traxler joined.

ARGUED: Devin L. Redding, WEST VIRGINIA UNIVERSITY COLLEGE OF LAW, Morgantown, West Virginia, for Appellant. Marie Cepeda Mekosh, DUKE UNIVERSITY SCHOOL OF LAW, Durham, North Carolina, for Appellee. **ON BRIEF:** Lawrence D. Rosenberg, JONES DAY, Washington, D.C., for Appellant. Michael F. Easley, Jr., United States Attorney, Sharon C. Wilson, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellees. Samuel Weiss, RIGHTS BEHIND BARS, Washington, D.C.; Easha Anand, RODERICK & SOLANGE MACARTHUR JUSTICE CENTER, San Francisco, California, for Amici Curiae.

WYNN, Circuit Judge:

Joseph Mays, a federal inmate, brings claims under the Fifth Amendment for money damages against federal prison officials for alleged violations of procedural due process and equal protection. Mays

contends his claims are authorized by *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and its progeny. But “the Supreme Court [has] all but closed the door on *Bivens* remedies” that do not fit within the precise confines of its prior *Bivens* cases. *Dyer v. Smith*, 56 F.4th 271, 277 (4th Cir. 2022). Such is the case here. Accordingly, we affirm the district court’s dismissal of the case.

I.

On review, we must accept as true the facts as alleged in the complaint. *Langford v. Joyner*, 62 F.4th 122, 123 (4th Cir. 2023).

In June 2016, Mays was housed at FCI Butner in North Carolina, where he was employed as a lead mechanic in the optics factory through the Bureau of Prisons’ (“BOP”) UNICOR employment program. On June 20, Mays submitted a grievance directly to the BOP’s regional director complaining that his UNICOR manager, Defendant Jamie Hoskins, engaged in racial discrimination and gave preferential treatment to other inmates who worked in the optics factory. Five days later, Mays submitted a second grievance to the regional director complaining that two prison officials retaliated against him by falsely claiming he was malingering and using abusive language at his job. The regional director instructed Mays to resubmit both complaints directly to his institution, which he did. On July 29, several Defendants met with Mays and attempted to informally resolve his complaints.

On August 10, Defendant S. Ma’at, the associate warden at FCI Butner, confronted Mays and accused

him of “giving his secretary . . . a hard time,” which Mays denied. J.A. 29.¹

On August 11, Hoskins and Ma’at met with Mays in the Butner dining hall to address Mays’s concerns about his UNICOR job. During this meeting, Hoskins falsely accused Mays of trying to disrupt the optics factory, and Ma’at threatened to fire Mays from UNICOR. Later that day, Mays was in fact fired from his job. According to the termination notice, Mays was fired for “making threatening comments” and threatening to cause a work stoppage. J.A. 84. That same day, Mays was also placed in administrative detention. The detention order did not specify a reason for that placement, but Defendant Officer Glass told Mays “off the record” that it was because “someone ‘got in their feelings’ because you filed a grievance” and that Ma’at and Hoskins did not want Mays to remain at FCI Butner. J.A. 33.

Mays remained in detention from August 11 through October 21, despite officials at FCI Butner opting, after an investigation, not to charge him with any disciplinary offense. Ultimately, on October 21, Mays was transferred from FCI Butner to another BOP institution. The transfer form stated that Mays had “maintained poor institutional adjustment” to Butner, including allegations that he had threatened staff and threatened a work stoppage at UNICOR—all of which Mays disputed. J.A. 74. Mays filed two more grievances—in September 2016 and June 2017—

¹ Citations to the “J.A.” refer to the Joint Appendix filed by the parties in this appeal.

complaining that he was denied due process via his detention, firing from UNICOR, and transfer.

Mays, proceeding *pro se*, filed a federal complaint in July 2018. The district court conducted a frivolity review and dismissed several claims. *See* 28 U.S.C. § 1915(e)(2)(B) (district court shall dismiss any action filed by an inmate that is “frivolous” or fails to state a claim). The court permitted Mays to file an amended complaint asserting three *Bivens*-based claims for 1) First Amendment retaliation; 2) Fifth Amendment due process, alleging Defendants placed him in administrative detention, terminated him from his UNICOR position, and transferred him to another institution without providing notice or an opportunity to rebut the allegations; and 3) Fifth Amendment equal protection, alleging racial discrimination. Defendants moved to dismiss, and the district court granted their motion after finding that Mays failed to state cognizable *Bivens* claims.² Mays timely appealed, and we appointed counsel to represent him on appeal.³

² The district court also analyzed whether Mays exhausted his administrative remedies with the BOP as required before filing his complaint, *see* 42 U.S.C. § 1997e(a) (stating exhaustion requirement), ultimately holding that there was at least a genuine dispute on the issue, before disposing of Mays’s case on the merits. Defendants do not address the issue on appeal. Because administrative exhaustion in this context is not a jurisdictional requirement, we can proceed directly to the merits of Mays’s *Bivens* claims. *Custis v. Davis*, 851 F.3d 358, 361 (4th Cir. 2017); *Anderson v. XYZ Corr. Health Servs., Inc.*, 407 F.3d 674, 677–78 (4th Cir. 2005).

³ Counsel—Lawrence Rosenberg and students from the West Virginia University College of Law U.S. Supreme Court

II.

Counsel for Mays has elected not to pursue the First Amendment-based *Bivens* claim. This was the correct decision, as both the Supreme Court and this Court have held in the interim between when Mays originally appealed *pro se* and when he was appointed counsel “that there is no *Bivens* action for First Amendment retaliation.” *Egbert v. Boule*, 142 S. Ct. 1793, 1807 (2022); *see Earle v. Shreves*, 990 F.3d 774, 776 (4th Cir.) (declining to extend *Bivens* to include a “federal inmate’s claim that prison officials violated his First Amendment rights by retaliating against him for filing grievances”), *cert. denied*, 142 S. Ct. 358 (2021). Accordingly, the only remaining *Bivens* claims before us are for the denial of procedural due process and equal protection, both brought under the Fifth Amendment. We review de novo the district court’s dismissal of these claims. *Annappareddy v. Pascale*, 996 F.3d 120, 132 (4th Cir. 2021).

III.

A.

The *Bivens* story is by now a familiar one. Although § 1983 gives plaintiffs the statutory authority to sue *state* officials for money damages for constitutional violations, *see 42 U.S.C. § 1983*, there is no statutory counterpart to sue *federal* officials.

In *Bivens*, the Supreme Court held for the first time that there existed an *implied* cause of action under the Fourth Amendment to sue federal officials for money damages arising from an unreasonable search and

Litigation Clinic—have ably represented Mays on appeal, and we are grateful for their important service to Mays and this Court.

seizure. *Bivens*, 403 U.S. at 389. In the ensuing decade, the Supreme Court found two more such implied causes of action for money damages for constitutional violations by federal officials—one for gender discrimination in violation of the equal protection component of the Fifth Amendment’s due process clause, *Davis v. Passman*, 442 U.S. 228, 230 (1979), and a second for deliberate indifference to an inmate’s serious medical needs in violation of the Eighth Amendment, *Carlson v. Green*, 446 U.S. 14, 18 (1980).

In the more than four decades since, however, “the [Supreme] Court has ‘consistently rebuffed’ every request—12 of them now—to find implied causes of action against federal officials for money damages under the Constitution.” *Tate v. Harmon*, 54 F.4th 839, 843 (4th Cir. 2022) (quoting *Hernandez v. Mesa*, 140 S. Ct. 735, 743 (2020)). And in the past six years in particular, the Supreme Court has “handed down a trilogy of opinions not only expressing regret over its *Bivens* cases but also demonstrating hostility to any expansion of them.” *Id.* While not opting to overrule its three *Bivens* cases, the Court has noted that the outcomes “might have been different if [those cases] were decided today.” *Ziglar v. Abbasi*, 582 U.S. 120, 134 (2017). The Court has made clear that expanding the *Bivens* remedy to a new context is an “extraordinary act,” *Egbert*, 142 S. Ct. at 1806 n.3 (citation omitted), that will be unavailable “in most every case,” *id.* at 1803. And it has imposed a “highly restrictive” analysis for future *Bivens* cases. *Tate*, 54 F.4th at 844.

To that end, a court must engage in a “two-step inquiry” when analyzing would-be *Bivens* claims.

Hernandez, 140 S. Ct. at 743. First, the court must determine whether a claim falls within the causes of action already authorized under the Supreme Court’s three prior *Bivens* cases or whether it “arises in a new context or involves a new category of defendants.” *Tate*, 54 F.4th at 844 (internal quotation marks omitted) (quoting *Hernandez*, 140 S. Ct. at 743). The Court’s understanding of a “new context” is “broad,” which means that the scope of the existing *Bivens* actions must be narrowly construed. *Id.*

Second, if a claim does arise in a new context, the court must ask “whether there are any special factors that counsel hesitation about granting the extension” of the *Bivens* remedy. *Id.* The “special factors” inquiry must focus on “separation-of-powers principles” and “requires courts to ask whether judicial intrusion into a given field is appropriate.” *Bulger v. Hurwitz*, 62 F.4th 127, 137 (4th Cir. 2023) (quoting *Hernandez*, 140 S. Ct. at 743). If “there is *any* reason to think that Congress might be better equipped to create a damages remedy,” then the court must decline to extend *Bivens* to a new context. *Egbert*, 142 S. Ct. at 1803 (emphasis added).

Given this legal backdrop, “courts are clearly warned to act with utmost hesitation when faced with actions that do not fall precisely under” the three existing *Bivens* cases. *Tate*, 54 F.4th at 845. And this Court has “repeatedly heeded” that warning, expressly declining to extend *Bivens* on numerous occasions over just the last few years. *Bulger*, 62 F.4th at 137–38 (collecting cases).

With this background in mind, we turn to Mays’s two remaining *Bivens* claims. We conclude that under

the Supreme Court’s current framework, neither presents a cognizable claim.

B.

First, Mays’s two remaining claims arise in a new context. This is a low bar because even “quite minor” differences between a proposed claim and the claims in the three existing *Bivens* cases can amount to a new context. *Tun-Cos v. Perrotte*, 922 F.3d 514, 523 (4th Cir. 2019).

The only Fifth Amendment-based *Bivens* claim that the Supreme Court has recognized was the one in *Davis*, which “concerned alleged sex discrimination on Capitol Hill.” *Hernandez*, 140 S. Ct. at 744; *see Davis*, 442 U.S. at 230. Here, Mays seeks to bring two different Fifth Amendment claims, for procedural due process and for discrimination based on race. The Supreme Court has never authorized a *Bivens* claim for procedural due process or race-based discrimination. *See Annappareddy*, 996 F.3d at 134 (“*Bivens* has never been extended to a Fifth Amendment due process claim.” (internal quotation marks omitted)); *Doe v. Meron*, 929 F.3d 153, 169 (4th Cir. 2019) (holding that multiple Fifth Amendment-based claims—“including violations of [the] right to parentage, to familial relations and to equal protection of the laws”—present new *Bivens* contexts); *see also Cantu v. Moody*, 933 F.3d 414, 422 (5th Cir. 2019) (“No one thinks *Davis* . . . means the entirety of the Fifth Amendment’s Due Process Clause is fair game in a *Bivens* action.”).

Further, Mays’s claims are brought against a “new category of defendants”—prison officials, as opposed to a former Congressman in *Davis*—operating in a

different legal and factual context (prisoner litigation). *Tate*, 54 F.4th at 846. Expanding *Bivens* to these types of claims would likely have “systemwide consequences” for the BOP in the form of increased litigation, and Congress has so far declined to create a damages remedy for these types of actions against federal prison officials. *See id.* (identifying these factors as relevant to the new-context inquiry).

We do not find Mays’s reliance on *Bistrian v. Levi*, 912 F.3d 79 (3d Cir. 2018), to be compelling. In that case, the Third Circuit recognized an inmate’s Fifth Amendment-based *Bivens* claim against federal prison officials for their alleged failure to protect him from inmate violence. *Id.* at 90–94. In doing so, the *Bistrian* court put near-dispositive weight on the Supreme Court’s decision in *Farmer v. Brennan*, 511 U.S. 825 (1994), which involved a *Bivens* action under the Eighth Amendment against prison officials for their failure to protect an inmate from a violent assault. *Id.* at 830–31.

But “while the [Supreme] Court allowed the action to proceed, it never addressed whether the claim was properly a *Bivens* claim.” *Tate*, 54 F.4th at 847. Also, since *Bistrian* was decided, the Supreme Court “has made clear that the universe of recognized *Bivens* claims consists of only three cases”—which do not include *Farmer*—and “lower courts should not interpret these cases to apply outside the precise contexts at issue.” *Bulger*, 62 F.4th at 139. As we recently stated, and reiterate here, *Bistrian* may very well have come out differently if the Third Circuit had the benefit of the Supreme Court’s more recent *Bivens* guidance in *Hernandez* and *Egbert*. *See id.* In any event, *Bistrian* does not aid Mays here given the

multiple differences between his claims and the claims recognized in the three existing *Bivens* cases. And even if *Farmer* was an appropriate *Bivens* action, it still would not help Mays given the significant differences between that case—which involved an Eighth Amendment failure-to-protect claim—and his claims here.

Mays also argues that his claims do not present a new context because both “arise under the Fifth Amendment” just like the claim approved of in *Davis*. Opening Br. at 43. But citation to the constitutional provision alone is insufficiently granular for the new-context inquiry. *See Hernandez*, 140 S. Ct. at 743 (“A claim may arise in a new context even if it is based on the same constitutional provision as a claim in a case in which a damages remedy was previously recognized.”); *Cantu*, 933 F.3d at 422 (“Courts do not define a *Bivens* cause of action at the level of ‘the Fourth Amendment’ or even at the level of ‘the unreasonable-searches-and-seizures clause.’” (citation omitted)). We know this to be so, because even where a case involves “similar allegations” or “almost parallel circumstances,” such “superficial” similarities “are not enough to support the judicial creation of a cause of action.” *Egbert*, 142 S. Ct. at 1805 (citation omitted). After all, “even a modest extension [of *Bivens*] is still an extension.” *Ziglar*, 582 U.S. at 147.

The Supreme Court’s own treatment of its prior *Bivens* cases is telling. For example, *Bivens* permitted a damages claim under the Fourth Amendment against a federal narcotics officer for excessive force while *Egbert* rejected a virtually identical claim against a Border Patrol agent. *Compare Bivens*, 403 U.S. at 389 (complaint alleged officer used

“unreasonable force” in making an arrest in violation of the Fourth Amendment), *with Egbert*, 142 S. Ct. at 1802 (complaint alleged a “Fourth Amendment violation for excessive use of force”); *see also Egbert*, 142 S. Ct. at 1810 (Gorsuch, J., concurring) (“The plaintiff [in *Egbert*] is an American citizen who argues that a federal law enforcement officer violated the Fourth Amendment Candidly, I struggle to see how this set of facts differs meaningfully from those in *Bivens* itself.”).

Similarly, while *Carlson* permitted a damages claim under the Eighth Amendment for a federal prison official’s failure to provide medical care, the Court later rejected a nearly identical suit against a private prison operator. *Compare Carlson*, 446 U.S. at 16 & n.1 (complaint alleged violation of Eighth Amendment for failure to provide adequate medical care), *with Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 63–65, 73 (2001) (same). Although the circumstances of the two cases were “almost parallel”—involving the same Eighth Amendment right and the same failure to provide adequate medical treatment—the Supreme Court nevertheless determined the “contexts” to be different. *Ziglar*, 582 U.S. at 139.

Mays’s claims may “mirror” those in *Davis*. Opening Br. at 38. But reflection is not enough: “a new context may arise if *even one* distinguishing fact has the potential to implicate separation-of-powers considerations.” *Tate*, 54 F.4th at 846 (citing *Egbert*, 142 S. Ct. at 1805). For the reasons given, we conclude that Mays’s procedural due process and race-based equal protection claims have distinguishing factors from the Supreme Court’s three *Bivens* cases such that each arises in a “new context.”

C.

Special factors also counsel against extending the *Bivens* remedy to cover Mays's claims. The Supreme Court has distilled this inquiry down to a single question: whether "there is *even a single reason* to pause before applying *Bivens* in a new context." *Egbert*, 142 S. Ct. at 1803 (emphasis added) (citation and internal quotation marks omitted). Central to this inquiry are "separation-of-powers principles," which require us to ask whether the courts are better suited than Congress to "weigh the costs and benefits of allowing a damages action to proceed." *Hernandez*, 140 S. Ct. at 743 (citation omitted). The answer is almost always no.

So, too, here. We recently dealt with a highly analogous situation in *Bulger v. Hurwitz*. In that case, we declined to extend *Bivens* to cover a federal inmate's Eighth Amendment failure-to-protect claim. *Bulger*, 62 F.4th at 140. As to the special-factors prong, we concluded that "multiple special factors counsel against creating a new *Bivens* remedy." *Id.* Consideration of the same factors compels the same result in this case.

First, Mays's claims would "require scrutiny of new categories of conduct and a new category of defendants—namely, BOP employees involved in transferring inmates and managing the agency's housing system" and BOP employees involved in inmate discipline and employment, such as through the UNICOR program. *Id.*

Second, and related, Mays's claims "intersect with the statutory scheme delegating authority over prison designation, transfer, and housing decisions to the

BOP,” as well as those governing prison discipline and inmate employment. *Id.*; *see* 18 U.S.C. § 3621(b). Indeed, we recently rejected a similar complaint from an inmate placed in administrative detention as “rais[ing] serious questions relating to the reasoning, manner, and extent of prison discipline,” noting that allowing a *Bivens* action for such claims “could lead to an intolerable level of judicial intrusion into an issue best left to correctional experts.” *Earle*, 990 F.3d at 780–81 (citation and internal quotation marks omitted).

Third, inmates such as Mays have an “alternative remedial structure” that allows them to seek equitable relief for issues related to confinement, discipline, and the like. *Bulger*, 62 F.4th at 140 (quoting *Ziglar*, 582 U.S. at 137). Specifically, the BOP’s Administrative Remedy Program allows all inmates to seek formal review of an issue related to “any aspect” of their confinement. *Id.* (quoting 28 C.F.R. § 542.10(a)). As the Supreme Court has noted, the Administrative Remedy Program provides a “means through which allegedly unconstitutional actions and policies can be brought to the attention of the BOP and prevented from recurring.” *Malesko*, 534 U.S. at 74.

To be sure, the Administrative Remedy Program does not provide a damages remedy as a *Bivens* claim would, but “the relevant question ‘is not what remedy the court should provide for a wrong that would otherwise go unredressed’ but instead ‘whether an elaborate remedial system should be augmented by the creation of a new judicial remedy.’”

Tun-Cos, 922 F.3d at 527 (alterations omitted) (quoting *Bush v. Lucas*, 462 U.S. 367, 388 (1983)). And

as we have observed, “[t]he potential unavailability of a remedy in a particular circumstance does not warrant supplementing that scheme.” *Bulger*, 62 F.4th at 141. This also disposes of Mays’s argument that his allegations involve only individual instances of constitutional deprivations that are best remedied by damages actions. That may be, but the Supreme Court has made abundantly clear that it is for *Congress* to decide whether to “augment[]” any existing remedial scheme with a damages remedy. *Tun-Cos*, 922 F.3d at 527. It has not done so.

Fourth, Congress has frequently legislated in the area of prisoner litigation, most notably with the Prison Litigation Reform Act, but has so far declined to create an individual-capacity damages remedy for federal inmates. *See id.* The Prison Litigation Reform Act—which was enacted *after* the Supreme Court’s three *Bivens* decisions—“made comprehensive changes to the way prisoner abuse claims must be brought in federal court.” *Ziglar*, 582 U.S. at 148. Importantly, the Act “does not provide for a standalone damages remedy against federal jailers,” *id.* at 149, a silence that “speaks volumes and counsels strongly against judicial usurpation of the legislative function” to create one, *Bulger*, 62 F.4th at 141 (quoting *Tun-Cos*, 922 F.3d at 527).

Fifth, and finally, if we were to authorize this new category of prison litigation, claims like Mays’s would almost certainly “impose liability on prison officials on a systemic level” and amount to a “substantial burden” on government officials. *Id.* Mays couches his suit as an attempt to redress only “individual instances of discrimination and law enforcement overreach.” Opening Br. at 22. But this is the wrong level of

specificity. The operative question is “whether a court is competent to authorize a damages action not just against” the individual officers in the case at hand, but against all similarly situated officials “generally.” *Egbert*, 142 S. Ct. at 1806.

“The answer, plainly, is no.” *Id.* The BOP currently employs more than 34,000 employees overseeing nearly 160,000 inmates across almost 130 institutions. Fed. Bureau of Prisons, *About Our Agency*, <https://www.bop.gov/about/agency/> (last visited June 2, 2023) (saved as ECF opinion attachment); Fed. Bureau of Prisons, *About Our Facilities*, https://www.bop.gov/about/facilities/federal_prisons.js (last visited June 2, 2023) (saved as ECF opinion attachment).⁴ Were we to expand *Bivens* to cover Mays’s suit, it could open the door for increased litigation over the myriad decisions made every day regarding inmate discipline, transfer, and employment across the entire BOP system. But even “uncertainty alone” about such “systemwide” consequences “forecloses relief.” *Egbert*, 142 S. Ct. at 1803–04. Rather, if there is “any rational reason (even one) to think that *Congress* is better suited to ‘weigh the costs and benefits of allowing a damages action to proceed,’ we must decline to extend *Bivens*. *Id.* at

⁴ The Court takes judicial notice of these uncontested facts from Defendants’ Response Brief, which are publicly available on the BOP’s website. *United States v. Doe*, 962 F.3d 139, 147 & n.6 (4th Cir. 2020) (taking judicial notice of governmental reports and generally known facts); *Nolte v. Cap. One Fin. Corp.*, 390 F.3d 311, 317 n.* (4th Cir. 2004) (“[I]ndisputable facts are susceptible to judicial notice.” (citing Fed. R. Evid. 201(b))).

1805 (quoting *Ziglar*, 582 U.S. at 136). As discussed, such reasons exist here.

Accordingly, because Mays's claims would expand *Bivens* to a “new context” and because there are “special factors” counseling against our doing so, his Fifth Amendment-based claims are not cognizable.

IV.

Because this matter does not fit within the precise confines of the Supreme Court’s *Bivens* cases, we must adhere to the Supreme Court’s direction and affirm the district court’s grant of Defendants’ motion to dismiss.

AFFIRMED

APPENDIX B

FILED: June 6, 2023

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-7540
(5:18-ct-03186-FL)

JOSEPH RANDOLPH MAYS

Plaintiff – Appellant

v.

T. B. SMITH, Warden, FCI Butner 1; S. MA'AT, Assoc. Warden, FCI Butner 1; JAMIE HOSKINS, Unicor Factory Manager; V. WILLIS, Unit Manager; J. HALFAST, Case Manager; R. MARTIN, Counselor; LT. CHRISTOPHER; K. HENDRY; OFFICER V. WILKINS; OFFICER GLASS; OFFICER SLAYDON; OFFICER LASSITAR; J. CARAWAY, Regional Director; JOHN/JANE DOES

Defendants – Appellees

and

UNITED STATES OF AMERICA

Party-in-Interest

RIGHTS BEHIND BARS; RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER

Amici Supporting Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX C

FILED: August 4, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7540
(5:18-ct-03186-FL)

JOSEPH RANDOLPH MAYS

Plaintiff – Appellant

v.

T. B. SMITH, Warden, FCI Butner 1; S. MA'AT, Assoc. Warden, FCI Butner 1; JAMIE HOSKINS, Unicor Factory Manager; V. WILLIS, Unit Manager; J. HALFAST, Case Manager; R. MARTIN, Counselor; LT. CHRISTOPHER; K. HENDRY; OFFICER V. WILKINS; OFFICER GLASS; OFFICER SLAYDON; OFFICER LASSITAR; J. CARAWAY, Regional Director; JOHN/JANE DOES

Defendants – Appellees

and

UNITED STATES OF AMERICA

Party-in-Interest

RIGHTS BEHIND BARS; RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER

Amici Supporting Appellant

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O R D E R
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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wynn, Judge Richardson, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX D

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA
WESTERN DIVISION**

FILED

JUN 03 2019

PETER A. MOORE,
JR., CLERK
US DISTRICT
COURT, EDNC
BY _____ DEP
CLK

JOSEPH RANDOLPH MAYS,)
pro se)
)
Plaintiff,)
)
)
v.) Case No.: 5-18-ct-
) 03186-FL
)
T.B. SMITH, Warden, FCI)
Butner I, S. MA'AT, Associate) Judge: Hon. Louise
Warden, FCI Butner I, JAMIE) Wood Flanagan
HOSKINS, UNICOR Factory)
Manager, V. WILLIS, Unit) Magistrate Judge:
Manager, J. HALFAST, Case) Hon. Robert B. Jones
Manager, R. MARTIN,)
Counselor, Lt.) JURY TRIAL
CHRISTOPHER, Lt.) DEMANDED
HENDRY, Cpt. LESLIE,)
Officer, V. WILKINS, Officer)

GLASS, SIS, Officer)
SLAYDON, SIS, SUSAN)
DICKERSON, Supervisor/Q/A)
Specialist, H. WILLIAMS,)
Administrative Remedy)
Coordinator, J. CARAWAY,)
Regional Director, IAN)
CONNORS, Administrative
Remedy Coordinator,
John/Jane Does
)
Defendants)

COMPLAINT FOR MONEY DAMAGES

I. JURISDICTION

1. This is a civil action pursuant to 28 US § 1331 to redress the deprivation, under color of federal law, of rights secured by the Constitution and federal statutes. The United States District Court of the Eastern District of North Carolina has jurisdiction under 28 US §§ 1331 and 1343. This Court has supplemental jurisdiction over Plaintiff's state-law claims pursuant to 28 US § 1367.

II. VENUE

2. The Eastern District of North Carolina is an appropriate venue under 28 USC § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

III. PLAINTIFFS

3. Plaintiff Joseph R. Mays was at all times relevant to this action a federal prisoner who was incarcerated at FCI Butner I (Medium), in Butner, NC, from December 19, 2011 to August 11, 2016. The Plaintiff was retaliatorily fired, on August 11, 2016,

from his \$200/month job, as the Lead Mechanic at the UNICOR Optics Factory in Butner, NC. The Plaintiff was also placed in the SHU, retaliatorily, on false charges, without benefit of a hearing to learn of the charges against him, and subsequently transferred to FCI Gilmer, WV (a disciplinary/higher security [level] institution), in October 2016, as a result of filing grievances for staff misconduct. The Plaintiff is African-American and worked at the UNICOR Optics Factory, in Butner, NC, from October 24, 2012 to August 11, 2016. The Plaintiff was supervised by Defendant Dickerson and indirectly subordinate to Defendant Hoskins, who was the UNICOR Factory Manager. The Plaintiff's father died during the time he was enroute to FCI Gilmer, WV and the Plaintiff was not able to contact him directly, during the last two months of his life, as a result of this retaliatory transfer.

IV. DEFENDANTS

4. *Defendant Smith* was at all times relevant to this action the Warden at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. By statute, the Warden is responsible for establishing and exercising controls to protect individuals, and the security, discipline, and good order of the institution – 28 C.F.R. § 540.12(a). The Warden is the Chief Executive of a U.S. Penitentiary, Federal Correctional Institution, Medical Center for Federal Prisoners, Federal Prison Camp, Federal Detention Center, Metropolitan Correction Center, or any federal penal or correctional institution or facility as defined in 28 C.F.R. § 500.1 et seq. The Warden is responsible for the receipt of the written annual certification of inmate organizations, from the Associate Warden no

later than January 31 of each year as per 28 C.F.R. § 551.32 (FBOP Program Statement 5381.05 – Inmate Organizations). The Warden is also responsible for the implementation and operation of the Administrative Remedy Program at the institution level and shall: (1) Establish procedures for receiving, recording, reviewing, investigating, and responding to Administrative Remedy Requests (Requests) or (Appeals) submitted by an inmate; (2) Acknowledge receipt of a Request or Appeal by returning a receipt to the inmate; (3) Conduct an investigation into each Request or Appeal as per 28 C.F.R. § 542.11(a) – Responsibility [Administrative Remedy Program]. The Warden's responsibilities are also outlined in 18 U.S.C. § 4042 – Duties of Bureau of Prisons. The Warden (CEO) is responsible for ensuring staff are made aware of updates and revisions that affect employee conduct – FBOP Program Statement 3420.11 – Standards of Employee Conduct – 2. Definitions – a. Chief Executive Officer (CEO). The CEO of each facility has the primary responsibility for ensuring that the Standards of Employee Conduct are provided and made known to each employee, contractor, and volunteer. The CEO must ensure that staff are made aware of updates and revisions that affect employee conduct and receive annual training on their responsibilities under this policy. Each new employee, contractor, and volunteer must sign for this program statement at the time of appointment. Employee Development Managers, Volunteer Coordinators, or other designated staff ensure that supervisors and employees receive annual training on their responsibilities under this policy – FBOP Program Statement 3420.11 (Standards of Employee

Conduct – 3. PUBLICATION AND INTERPRETATION). Bureau employees are governed by regulations in 5 CFR Part 2635. By statute, Defendant Smith shall conduct him in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. He also has a duty, as per 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11 to disclose waste, fraud, abuse, and corruption to the appropriate authorities. Defendant Smith is also required, by statute, to comply with any supplemental agency regulations issued by the Federal Bureau of Prisons. – 5 CFR § 2635.105 and 5 CFR § 3801.101.

He is being sued in his individual capacity.

5. *Defendant Ma'at* was at all times relevant to this action the Associate Warden at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. By statute, the Associate Warden is responsible for the overall supervision of Work Programming and presides as chair at committee meetings. – FBOP Program Statement 4200.11 – Facilities Operations Manual. The Associate Warden is appointed by the Warden to be responsible for monitoring the activities of Inmate Organizations (IOM – Inmate Organizations Manager). The IOM is responsible for reviewing the information submitted by inmate organizations and for providing written annual certification to the Warden, no later than January 31 each year, that the inmate organization(s) comply with all applicable Bureau policies. – 28 CFR § 551.32 (FBOP Program Statement 5381.05 – Inmate Organizations). The Associate Warden, by statute, is also the Superintendent of Industries, also referred to

as Associate Warden/Industries and Education, and is responsible for the efficient management and operation of an FPI and was the immediate superior to/of Defendant Hoskins. – 28 CFR § 345.11 – [UNICOR/FPI] Definitions. The Associate Warden also has a duty of care to all inmates as outlined in 18 U.S.C. § 4042 – Duties of Bureau of Prisons. Defendant Ma'at was immediately subordinate to Defendant Smith. By statute, Defendant Ma'at has a duty to conduct himself in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. He also has a duty, as per 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11 to disclose waste, fraud, abuse, and corruption to the appropriate authorities.

He is being sued in his individual capacity.

6. Defendant Hoskins was at all times relevant to this action the UNICOR Factory Manager, at the UNICOR Optics Factory at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. By statute, the [UNICOR] Factory Manager is responsible for:

Initiating documents to obtain the Superintendent's approval to start production.

Preparing and approving requisitions for materials and supplies, and controlling items received for consumption in production or to the warehouse.

Approving Defective Work/Scrap Reports prepared by the Quality Assurance Manager.

Supervising directly or through a foreman, the utilization of labor and the maintenance of records of labor used.

Notifying the Business Manager of the completion of jobs or processes.

Furnishing required information (forms, reports, etc.) to the Business Manager and the Superintendent.

Analyzing the results and costs of production and purchasing in reviews with the Superintendent and the Business Manager.

This authority is granted/referenced in UNICOR/FPI Program Statement 8000.01 (UNICOR Corporate Policies and Procedures). Defendant Hoskins was immediately subordinate to Defendant Ma'at and indirectly subordinate to Defendant Smith. Defendant Hoskins was immediately superior to Defendant Dickerson, who was the supervisor of the Plaintiff. Defendant Hoskins has a duty of care to all inmates as outlined in 18 U.S.C. § 4042. – Duties of Bureau of Prisons. By statute, Defendant Hoskins has a duty to conduct himself in a professional and ethical manner and obey the Constitution and the laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. By statute, Defendant Hoskins is prohibited from discriminating against inmates on the basis of race, religion, national origin, sex, disability, or political belief. This includes the making of administrative decisions and providing access to work, housing, and programs. – 28 CFR § 551.90 – Policy. Defendant Hoskins is Caucasian. By statute, Defendant Hoskins has a duty to ensure that *ALL* inmates are in compliance with [UNICOR/FPI] work standards. – 28 CFR § 345.40(b). He was responsible for implementing the Plaintiff's idea (EOTM)

¹ in July 2016.

He is being sued in his individual capacity.

7. *Defendant Willis* was at all times relevant to this action the Unit Manager, for the Plaintiff, at Clemson Unit, at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. By statute, the Unit Manager is responsible for directing and managing the housing unit's operation and security, within appropriate policy, as well as for planning, developing, implementing, supervising and coordinating individual programs tailored to meet the needs of the inmates in the unit. The Unit Manager shall ordinarily chair all Unit Discipline Committee (UDC) hearings and is also responsible for the quality control of all correspondence and programs generated at the unit level. While either the Unit Manager, Case Manager, or Counselor must make at least daily visits to inmates housed in the institution hospital or special housing units, the Unit Manager shall visit them at least weekly. – FBOP Program Statement 5321.07 – Unit Management Manual. The Unit Manager, under guidance from the Administrative Remedy Program, is also responsible for that inmate notices (receipts, extension notices, and receipt disregard notices from institutions, regions, and the Central Office) are printed and delivered daily to inmates in their units and for deleting these notes from SENTRY promptly after delivery to the inmate. – 28 C.F.R. § 542.11(a) – Responsibility [Administrative Remedy Program]. The Unit Manager is responsible for maintaining current information on each inmate through progress

¹ EOTM – Employee of the Month

reports completed by staff (Unit Team). The progress report summarizes information relating to the inmate's adjustment during confinement, program participation, and readiness for release. – Title 28 CFR Subpart E – Progress Reports - § 524.40 – Purpose and Scope – FBOP Program Statement 5803.08 2/27/2014 – Progress Reports) and Title 28 CFR Part 524 – Classification of Inmates – (FBOP Program Statement 5322.13 – Inmate Classification and Program Review), and 28 CFR § 345.41 – Performance appraisal for inmate workers [UNICOR/FPI]. By statute, Defendant Willis has a duty of care to all inmates as outlined in 18 U.S.C. § 4042 – Duties of Bureau of Prisons. He also has a duty to conduct himself in a professional and ethical manner and obey the Constitution and the laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Willis, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

He is being sued in his individual capacity.

8. *Defendant Halfast* was at all times relevant to this action the Case Manager, for the Plaintiff, at Clemson Unit, at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. By statute, the Case Manager is responsible for all areas of case management. This ordinarily includes preparation of the visiting list, notarizing documents, preparation of various reports and other case management duties. They are ordinarily a member of Unit Team. – FBOP Program Statement 5212.07 – Control Unit Program. The Case Manager is also responsible for the notification, in writing, as soon as

possible, of an inmate's classification as a CIM (Central Inmate Monitoring) case and the basis for it. The inmate shall sign for it and receive a copy of the notification form. ... Any subsequent notification of a CIM assignment or removal from the CIM system requires separate notification to the inmate. The Program Statement defines "prompt" as within 30 days of classification. – 28 CFR § 524.73 (Classification Procedures) and 28 CFR § 524.73(b) Notification – FBOP Program Statement 5180.05 – Central Inmate Monitoring System. The Case Manager is responsible for maintaining current information on each inmate through progress reports that are completed by staff (Unit Team). The progress report summarizes information relating to the inmate's adjustment during confinement, program participation, and readiness for release. – Title CFR Subpart E – Progress Reports – § 524.40 – Purpose and Scope. – (FBOP Program Statement 5803.08 – Progress Reports) and Title 28 CFR Part 524 – Classification of Inmates – (FBOP Program Statement 5322.13 – Inmate Classification and Program Review). ...Care Manager, or Counselor must make at least daily visits to inmates housed in the institution hospital or special housing units, ... – FBOP Program Statement 5321.07 – Unit Management Manual. Defendant Halfast, by statute and her duties regarding progress reports, has a duty to receive and review the Plaintiff's progress report (performance appraisal) from UNICOR. – 28 CFR § 345.41. Defendant Halfast has a duty of care to all inmates as outlined in 18 U.S.C. § 4042 – Duties of Bureau of Prisons. She also has a duty to conduct herself in a professional and ethical manner and obey the

Constitution and the laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Halfast, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

She is being sued in her individual capacity.

9. *Defendant Martin* was at all times relevant to this action the [Unit] Counselor, for the Plaintiff, at Clemson Unit, at FCI Butner I (Medium) in Butner, NC, and was acting under color of federal law. By statute, the [Unit] Counselor ordinarily handles phone call requests, special concerns and requests of inmates and requests for administrative remedy forms. The Unit Counselor is also available for consultation and for counseling as recommended in the mental health evaluation. – (FBOP Program Statement 5212.07 – Control Unit Program). The Unit Counselor is responsible for maintaining current information on each inmate through progress reports completed by staff (Unit Team). The progress report summarizes information relating to the inmate's adjustment during confinement, program participation, and readiness for release – Title 28 Subpart E – Progress Reports – § 524.40 – Purpose and Scope. – (FBOP Program Statement 5803.08 – Progress Reports), 28 CFR § 345.41 – (Performance Appraisal for Inmate Workers [UNICOR/FPI], and Title 28 CFR Part 524 – Classification of Inmates – (FBOP Program Statement 5322.13 – Inmate Classification and Program Review. ...the Unit Manager, Case Manager, or Counselor must make at least daily visits to inmates housed in the institution hospital or special housing units,... – (FBOP Program Statement 5321.07 – Unit Management Manual). Defendant Martin has a duty

of care to all inmates as outlined in 18 U.S.C. § 4042 – Duties of Bureau of Prisons. He also has a duty to conduct himself in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Martin also has a duty, by statute, to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

He is being sued in his individual capacity.

10. *Defendant Christopher* was at all times relevant to this action a Lieutenant at FCI Butner I (Medium) in Butner, NC, and was acting under color of federal law. By statute/policy, Defendant Christopher is responsible for the security of the institution. He is immediately subordinate to Defendant (Captain) Leslie. He is indirectly subordinate to Defendants Ma'at and Smith. Defendant Christopher has a duty of care to all inmates as outlined in 18 U.S.C. § 4042 – Duties of Bureau of Prisons. He also has a duty to conduct himself in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Christopher, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

He is being sued in his individual capacity.

11. *Defendant Hendry* was at all times relevant to this action a Lieutenant at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. By statute/policy, Defendant Hendry is responsible for

the security of the institution. He is immediately subordinate to Defendant (Captain) Leslie. He is indirectly subordinate to Defendants Ma'at and Smith. Defendant Hendry has a duty of care to all inmates as outlined in 18 U.S.C. § 4042. – Duties of Bureau of Prisons. He also has a duty to conduct himself in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Hendry, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

He is being sued in his individual capacity.

12. *Defendant Leslie* was at all times relevant to this action a Captain at FCI Butner (Medium), in Butner, NC, and was acting under color of federal law. By statute/policy, Defendant Leslie is responsible for overseeing the security of the institution. She is subordinate to Defendants Smith and Ma'at and the immediate superior of Defendants Christopher and Hendry. She is the indirect superior of Defendant Willis. Defendant Leslie was also the contact point/person for Defendant Hoskins in relation to the memo that initiated the retaliatory detention. Defendant Leslie has a duty to conduct herself in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Leslie, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11. Defendant Leslie, by statute, has a duty of care to all inmates as outlined in 18 U.S.C. § 4042 – Duties of Bureau of Prisons.

She is being sued in her individual capacity.

13. *Defendant Wilkins* was at all times relevant to this action a Compound Officer at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. Defendant Wilkins is immediately subordinate to Defendants Christopher and Hendry. Defendant Wilkins is indirectly subordinate to Defendants Leslie, Ma'at, and Smith. Defendant Wilkins, by statute, is responsible for the security of the institution. Defendant Wilkins has a duty of care to all inmates as outlined in 18 U.S.C. § 4042 – Duties of Bureau of Prisons. He also has a duty to conduct himself in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Wilkins, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

He is being sued in his individual capacity.

14. *Defendant Glass* was at all times relevant to this action an SIS (Special Investigative Supervisor) Officer with the SIS Office at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. By statute, the SIS (Special Investigative Supervisor) is responsible for presenting each criminal matter to the Warden to determine whether it is to be referred to the appropriate federal, state, or local law enforcement agency. – (FBOP Program Statement 1350.01 – Criminal Matter Referrals). Defendant Glass is also responsible for investigations of matters initiated by his office or referred to his office (i.e. alleged inmate offenses, etc.). Defendant Glass, by statute, has a duty of care to all inmates as outlined in

18 U.S.C. § 4042 – Duties of Bureau of Prisons. He also has a duty of care to conduct himself in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Glass, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11. Defendant Glass is subordinate to Defendants Smith and Ma'at. Defendant Glass coordinated with Defendant Leslie in matters of institution security. Defendant Glass was responsible for taking the Plaintiff to the SHU (Special Housing Unit) at FCI Butner II with an intermediate stop at R&D (holding cell/cage) at FCI Butner I (Medium). He also worked in the SIS Office with Defendant Slaydon.

He is being sued in his individual capacity.

15. Defendant Slaydon was at all times relevant to this action an SIS (Special Investigative Supervisor) Officer with the SIS Office at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. By statute/policy, the SIS (Special Investigative Supervisor) is responsible for presenting each criminal matter to the Warden to determine whether it is to be referred to the appropriate federal, state, or local law enforcement agency. – FBOP Program Statement 1350.01 – Criminal Matter Referrals). Defendant Slaydon is also responsible for investigations of matters initiated by his office or referred to his office (i.e. alleged inmate offenses, etc.). Defendant Slaydon, by statute, has a duty of care to all inmates as outlined in 18 U.S.C. § 4042 – Duties of Bureau of Prisons. He also has a duty to conduct himself in a professional and ethical manner and obey the Constitution and

laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Slaydon, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11. Defendant Slaydon is subordinate to Defendants Smith and Ma'at. Defendant Slaydon coordinated with Defendant Leslie in matters of institution security. He also worked in the SIS Office with Defendant Glass.

He is being sued in his individual capacity.

16. Defendant Dickerson was at all relevant to this action a [UNICOR/FPI] Quality Assurance Specialist and the supervisor of the Plaintiff at the UNICOR Optics Factory at FCI Butner I (Medium), in Butner, NC, and was acting under color of federal law. By statute, Defendant Dickerson was responsible for the Plaintiff's performance evaluations. As his supervisor, she was responsible for the Plaintiff's work assignments and ensuring that his work performance was in compliance with UNICOR work standards. – 28 CFR § 345.40 – General, with emphasis on 28 CFR 345.40(b) – Compliance with Work Standards. Defendant Dickerson, by statute, was also responsible for evaluating the Plaintiff's work performance. She was also required to submit copies of the Plaintiff's performance appraisal form to the Plaintiff's unit team (Defendants Willis, Halfast, and Martin). This included completing a form when the inmate (the Plaintiff) was terminated and transferred from the industrial work assignment. – 28 CFR § 345.41 – Performance appraisal for inmate workers (UNICOR/FPI). By statute/policy, the Quality Representative at each FPI Operation has the authority and responsibility to:

Ensure that the local quality system is established, implemented, and maintained in accordance with this Manual, and, when required by the General Manager, be certified to the ISO-9001 Quality Management System (QMS) Requirement standard.

Routinely report on the performance of the Quality System to the AW/SOI for review and as a basis for improving the Quality System.

UNICOR/FPI Program Statement 8340.08 – Quality Program Manual.

Defendant Dickerson has a duty of care to all inmates as outlined in 18 U.S.C. § 4042. She also has a duty to conduct herself in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Dickerson, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11. Defendant Dixon was immediately subordinate to Defendant Hoskins and indirectly subordinate to Defendant Ma'at.

She is being sued in her individual capacity.

17. Defendant Lassiter was at all times relevant to this action the SRO (Segregation Review Official) at the FCI Butner II SHU (Special Housing Unit), in Butner, NC, and was acting under color of federal law. By statute, the SRO is responsible for the review(s) of an [inmate's] placement in the SHU. – 28 CFR § 541.26 – Review of Placement in the SHU (FBOP Program Statement 5270.10 – Special Housing Units – *NOTE* This program statement was updated on 11/23/2016 – FBOP Program Statement 5270.11). See Exhibit 39 Defendant Lassiter, by statute, has a duty

of care to all inmates as outlined in 18 U.S.C. § 4042 – Duties of the Bureau of Prisons. She also has a duty to conduct herself in a professional and ethical manner and obey the Constitution and laws of the United States – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Lassiter, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

She is being sued in her individual capacity.

18. Defendant Williams was at all times relevant to this action the Administrative Remedy Coordinator for the Mid-Atlantic Regional Office, in Annapolis Junction, MD, and was acting under color of federal law. By statute, the Administrative Remedy Coordinator shall monitor the program's operation at the Coordinator's location and shall ensure that appropriate staff (e.g. Clerk, unit staff) have the knowledge needed to operate the procedure. The Coordinator is responsible for signing any rejection notices and ensuring the accuracy of SENTRY entries; e.g. abstracts, subject codes, status codes, and dates. The Coordinator also shall serve as the primary point of contact for the Warden (Defendant Smith) or Regional Director (Defendant Caraway) in discussions of Administrative Remedies appealed to higher levels. – 28 CFR § 542.11 – Responsibility [Administrative Remedy Program] – (FBOP Program Statement 1330.18 – Administrative Remedy Program). Defendant Williams was subordinate to Defendant Caraway. By statute, Defendant Williams has a duty to all inmates, as per 18 U.S.C. § 4042 and 28 CFR § 542.14(d), to, respectively, provide for their care,

safety, and protection and, in administrative remedy matters, provide for an inmate's safety or well-being.

Defendant Williams has a duty to conduct himself in a professional and ethical manner and obey the Constitution and laws of the United States. – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Williams, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

He is being sued in his individual capacity.

19. *Defendant Caraway* was at all times relevant to this action the Regional Director of the FBOP's Mid-Atlantic Regional Office, in Annapolis Junction, MD, and was acting under color of federal law. By statute, the Regional Director is responsible for the implementation and operation of the Administrative Remedy Program at the regional level and shall 1) Establish procedures for receiving, recording, reviewing, investigating, and responding to Administrative Remedy Requests (Request) or Appeals submitted by an inmate 2) Acknowledge receipt of a Request or Appeal by returning a receipt to the inmate; and conduct an investigation into each Request or Appeal; – 28 CFR § 542.11 – Responsibility [Administrative Remedy Program]. Defendant Caraway is the superior of Defendant Williams. Defendant Williams is the primary point of contact for Defendant Caraway in discussions of Administrative Remedies appealed to higher levels. – 28 CFR § 542.11 – Responsibility [Administrative Remedy Program]. By statute, Defendant Caraway has a duty to all inmates, as per 18 U.S.C. § 4042 and 18 CFR

§ 542.14(d), to, respectively, provide for their care, safety, and protection and, in administrative remedy matters, provide for an inmate's safety or well-being. Defendant Caraway has a duty to conduct himself in a professional and ethical manner and obey the Constitution and laws of the United States. – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Caraway, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

He is being sued in his individual capacity.

20. *Defendant Connors* was at all times relevant to this action the Administrative Remedy Coordinator for General Counsel at the Central Office for the Federal Bureau of Prisons, in Washington, DC, and was acting under color of federal law. By statute, Defendant Connors is responsible for monitoring the program's operation at the Coordinator's location and shall ensure that appropriate staff (e.g., Clerk, unit staff) have the knowledge needed to operate the procedure. The Coordinator is responsible for signing any rejection notices and ensuring the accuracy of SENTRY entries; e.g., abstracts, subject codes, status codes, and dates. The Coordinator also shall serve as the primary point of contact for the Warden (Defendant Smith) or Regional Director (Defendant Caraway) in discussions of Administrative Remedies appealed to higher levels. – 28 CFR § 542.11 – Responsibility [Administrative Remedy Program] – (FBOP Program Statement 1330.18 – Administrative Remedy Program). By statute, Defendant Connors has a duty to all inmates, as per 18 U.S.C. § 4042 and 28 CFR § 542.14(d), to, respectively, provide for their

care, safety, and protection and, in administrative remedy matters, provide for an inmate's safety or well-being. Defendant Connors has a duty to conduct himself in a professional and ethical manner and obey the Constitution and laws of the United States. – 5 CFR §§ 2635.101, 2635.901, and 2635.902. Defendant Connors, by statute, has a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities. – 5 CFR § 2635.101(b)(11) and 28 CFR § 45.11.

He is being sued in his individual capacity.

21. *Other Defendants* ([As yet unknown parties] as evidence (i.e. SIS Investigative Report (unredacted)) becomes available to the Plaintiff. – *John/Jane Does*).

They will be sued in their individual capacities.

V. FACTUAL ALLEGATIONS

Statement of the Facts

This section will outline the supporting facts of this case and will serve to show the culpability of the Defendants and their malicious and evil intent and how their retaliatory actions (firing, detention, and subsequent transfer of the Plaintiff), without just cause and/or a valid penological interest or reason, deprived the Plaintiff of due process of law. It will show how the Defendants subjected the Plaintiff to unnecessary emotional distress, which culminated with the loss of the Plaintiff's father, who died while the Plaintiff was in transit to FCI Gilmer, WV. It points out how the Defendants fabricated false allegations to silence the Plaintiff and, in an effort to frustrate his efforts to file a grievance, retaliatorily transferred the Plaintiff ***without*** the benefit of a disciplinary hearing, a [f]actual finding of guilt or a

disciplinary report. This was done in violation of the Constitution of the United States and multiple federal statutes.

22. Defendants Williams and the Mid-Atlantic Regional Director failed to protect the Plaintiff's well-being when they rejected the Plaintiff's grievances (Remedy ID No's: 868292-R1 and 868290-R1) and failed to investigate the Plaintiff's allegations of retaliation by Defendants Hoskins and Humphries (Defendant in separate suits) in July 2016. See Exhibits 1 and 2.

23. Defendant Williams and the Mid-Atlantic Regional Director refused to comply with the Federal Bureau of Prison's (herein referred to as FBOP) Administrative Remedy Program's "Criteria for Rejection" policy, which states, "...consideration ***shall be given*** to accepting a Request or Appeal that raises a ***sensitive*** issue or problematic issue such as medical treatment, sentence computation, or ***staff misconduct***...". – 28 C.F.R. § 542.14(d) (FBOP Program Statement 1330.18).

24. Defendants Williams and the Mid-Atlantic Regional Director subjected the Plaintiff to being fired from UNICOR, wrongful detention in the FCI Butner II SHU, and a retaliatory transfer as a result of their failure to address the Plaintiff's concerns of the, then current, retaliation and future retaliation, which came to pass.

25. Defendants Williams and the Mid-Atlantic Regional Director's personal liability is supported and confirmed by the fact that they typed, into "Subject 1", "Unprofessional, inappropriate conduct or misconduct

by staff" and thereby were made aware of the issue(s) via the Plaintiff's allegations. See Exhibit 2

26. Defendants Williams and ([J. Caraway] – Mid-Atlantic Regional Director) are personally liable for the negative actions against the Plaintiff, when the Plaintiff, in the interest of complying with the rejection letters instructions and compliance with proper exhaustion, was misled by the Defendants and asked to submit the grievance back to the institution, which was counter to the Plaintiff's desire to avoid retaliation. See Exhibit 2

27. Defendant Smith failed to protect the Plaintiff's well-being from the retaliatory actions of Defendants Ma'at and Hoskins by failing to conduct an investigation into the Plaintiff's allegations, when they [grievances] were resubmitted at the institution level as directed in paragraph 22. See Exhibits 3 and 4.

28. Defendant Dixon (party in a separate suit) rejected the resubmitted BP-9's (868292-R1 and 868290-R1) and instructed Plaintiff to restart the process with a BP-8. See Exhibit 5

29. Defendant Dixon rejected the grievances, in paragraph 28., by stating that the Plaintiff's exhibits were continuation pages.

30. Plaintiff filed a grievance against Defendant Dixon to assert the fact that he has a right to present evidence [exhibits] to, vindicate himself and/or to prove his allegations. See Exhibit 6

31. Defendant Dixon, when asked in July 2016, where she obtained her information to reject my exhibits, stated that it was from her "verbal" training.

32. Defendant Martin gave the BP-8's (Informal Resolution Forms) to Defendant Hoskins, but refused to give him the supporting exhibits (returned them to the Plaintiff) as he had done for Defendant Smith. See Exhibits 7 and 8

33. Plaintiff met with Defendants Hoskins and Dickerson, on July 29, 2016, in Defendant Hoskins' office about the grievances (868292-R1 and 868290-R1). See Exhibit 7

34. Defendant Hoskins, in the presence of Defendant Dickerson, reassured the Plaintiff that he *was not* getting transferred when the Plaintiff alerted him to information, that was voluntarily given to the Plaintiff, about the source of the transfer rumor earlier in the year.

35. Defendants Hoskins and Halfast were both made aware, at that time, of the rumor of inmates from the Habilitation Program getting transferred and both Defendants assured the Plaintiff that he *wasn't* getting transferred.

36. Plaintiff also discussed the issue of hot temperatures in the Plaintiff's work area with Defendants Hoskins and Dickerson.

37. Defendant Dickerson, in July 2016, called the Plaintiff into her office to confirm an order for a new tool bag and new tools for the Plaintiff.

38. On August 10, 2016, outside of the FCI Butner I Education Building, Defendant Ma'at demanded to see the Plaintiff as he was walking by on his way to lunch from work [UNICOR]. See Exhibit 9

39. Shortly thereafter, Defendant Ma'at accused the Plaintiff of giving his secretary (Defendant Dixon)

a hard time in reference to Plaintiff's grievance (Remedy ID No.: 872015-F1) dated August 9, 2016. See Exhibits 6 and 9

40. The Plaintiff disputed Defendant Ma'at's allegations by stating that he **was not** giving her a "hard time".

41. Plaintiff went on to explain, to Defendant Ma'at, that he was rebutting Defendant Dixon's assertion that the Plaintiff could not use his exhibits to support the allegations in his grievances (868292-R1 and 868290-R1).

42. Defendant Ma'at asked the Plaintiff where Defendant Hoskins was, but after not being able to locate him, this concluded the Plaintiff's issue with this grievance (Remedy ID No.: 872015-F1) for the day.

43. On August 11, 2016, Plaintiff left UNICOR to go eat lunch at the FCI Butner I Dining Hall.

44. After Plaintiff exited the dining hall, Plaintiff asked Defendant Hoskins, in the presence of Mr. Miller from Computer Services, if the Plaintiff could be a little late in order to mail out a certified letter during the FCI Butner I Mail Room's open house (11:00–11:30AM). See Exhibits 9 and 10

45. Shortly thereafter, the Plaintiff mailed off his certified letter (Certified Mail Receipt#: 7008 3230 0003 1958 3974) to Mr. Warren Buffet. See Exhibits 9 and 10

46. On the way back to work [UNICOR], after leaving the mailroom, the Plaintiff was flagged down (motioned to come inside) by Defendant Hoskins. See Exhibit 9

47. The Plaintiff, as per Defendant Hoskins directions, entered the dining hall and proceeded to meet with Defendants Ma'at and Hoskins, just inside the inmate entrance to the dining hall. See Exhibit 9 and Exhibit 42

48. As to the claims in paragraphs 46. and 47., the Plaintiff notes for the record, that this contradicts Defendants Ma'at and Hoskins assertion that the Plaintiff confronted them. See Exhibit 11

49. Defendant Ma'at greeted Plaintiff with the following statement, "I know you work with the Positive Programming Committee. Why don't you tell Mr. Hoskins what we talked about [on August 10, 2016] since you can articulate it better." See Exhibits 12 and 13

50. Plaintiff explained to Defendants Ma'at and Hoskins about the withholding of communications information [to help troubleshoot the new machines], from the Plaintiff, by Defendants Hoskins and Inmates Steve Bullis and Eric Walls, who was my *helper*. See Exhibit 14

51. Defendant Ma'at responded in a surprised tone of voice, "An inmate did this?!"

52. Plaintiff acknowledged Defendant Ma'at by saying, "Yes."

53. Defendant Ma'at stated that Defendant Hoskins probably had a reason for doing that.

54. Defendant Hoskins stated that Inmate Bullis, who works in the Quality Assurance Department, had IT experience.

55. Defendant Hoskins failed to acknowledge, to Defendant Ma'at, that the Plaintiff was the ***Lead Mechanic***.

56. Defendant Hoskins failed to acknowledge, to Defendant Ma'at, that the Plaintiff and his coworker, Inmate Eric Walls, had been trained, on the machines in question, in January 2016, by a technical representative from Coburn Technologies.

57. Defendant Hoskins failed to acknowledge, to Defendant Ma'at, the Plaintiff's ***good work record*** of nearly ***four years***. See Exhibit 15

58. Defendant Hoskins failed to acknowledge, to Defendant Ma'at, the fact that the Plaintiff had ***29 years*** of computer experience, ***11 years*** of experience building, programming and troubleshooting computers, including setting up modems, routers, VOIP (Voice Over Internet Protocol), IP addresses, administrator and user accounts ***and*** had computer access at/for his job at UNICOR.

59. Defendant Hoskins failed to acknowledge, to Defendant Ma'at, that ***he failed to provide*** the communications troubleshooting information to the Plaintiff.

60. Defendant Hoskins failed to acknowledge, to Defendant Ma'at, that he failed to make the Plaintiff's two coworkers (Inmates Steve Bullis and Eric Walls) accountable for their withholding of this information from the Plaintiff.

61. As to the claim in paragraph 50., the Plaintiff had requested this information several times, verbally, and finally in writing, from coworker/***helper*** Eric Walls on June 2, 2016, in the presence of coworkers Hernandez and Wright in the Tool Cage in the

UNICOR Optics Factory, in Butner, NC. See Exhibit 14

62. Defendant Hoskins failed to provide, to Defendants Ma'at and the Plaintiff, a *valid/legitimate* penological reason or interest for restricting Plaintiff's access to this information, which was needed for the proper performance of the Plaintiff's duties on *those* machines. See Exhibit 16

63. Defendant Hoskins asked the Plaintiff about Edger #1 and was dissatisfied with Plaintiff's response because it brought to light the issues the Plaintiff had previously raised regarding the Maintenance Department.

64. At this point, Defendant Hoskins falsely accused the Plaintiff of starting to disrupt the orderly running of the factory.

65. Defendant Ma'at interjected and asked, "What can we do to resolve this?"

66. Plaintiff responded by stating, "We have two choices. I can push (file) the "9" (BP-9) or..."

67. Defendant Ma'at interrupted Plaintiff before he could say, "...we can work this out.", by stating, with verbal and physical aggression and intimidation (body and hand gestures), "Or we can fire you! If you ain't trained, we can fire you and get someone else!"

68. Defendant Ma'at, who had already been informed, by the Plaintiff, that the communications information had been withheld from him, blatantly and maliciously, used the unjustified deprivation unfairly against the Plaintiff with the statement in paragraph 67. [if you ain't trained...].

69. Defendant Ma'at continued by stating, to the Plaintiff, in the presence of Defendant Hoskins, "You ain't got no union!!!", in an intimidating and arrogant fashion.

70. The Plaintiff, in disbelief, looked at Defendant Ma'at and then turned to Defendant Hoskins and stated, "You aren't making my coworker [Inmate Eric Walls] accountable."

71. Defendant Hoskins raised his hands and stated, "What do you want me to do? This is prison!"

72. The Plaintiff points out, in reference to the claim in paragraph 71., that Defendant Hoskins and Defendant Humphries (party in another suit for retaliation) had no problem trying to make the Plaintiff "accountable", on June 23, 2016, ten days after Plaintiff acknowledged, to Defendant Hoskins, that the rumor of the Plaintiff's filing of a grievance was true, in a meeting called by Defendant Hoskins on June 13, 2016.

73. Defendant Ma'at then stated, to Defendant Hoskins, "Fire them both!" "We can fire both of you and get someone to replace both of you!" (Coworker/helper Eric Walls and the Plaintiff).

74. Plaintiff points out, in reference to paragraph 73., that the failure to fire Inmate/coworker Walls, as suggested by Defendant Ma'at, lends credibility to previous allegations, by the Plaintiff, of racial discrimination and preferential treatment of inmates by Defendants Hoskins and Humphries.

75. Plaintiff looked at Defendants Ma'at and Hoskins and walked away, without saying a word and went back to work, without either the Defendants or any staff member "hitting the deuces" (body alarm),

which is in stark contrast to the allegations made on the UNICOR/FPI Form 96 dated August 11, 2016 and the EMS-409 Form dated September 28, 2016. See Exhibits 11 and 17 and reference paragraph 76.

76. The allegations referenced in paragraph 75., by Defendants Ma'at and Hoskins, stated that the Plaintiff made threatening comments/threatened staff.

77. Plaintiff was **not stopped** on the way back to UNICOR.

78. Plaintiff walked past the time clock and goes to his desk and returned to the time clock to clock in from lunch.

79. Plaintiff returned to the Utility/Air Compressor Room to resume work (replacement of the drive belts) on the Saylor-Beall Air Compressor, which had been initiated prior to the Plaintiff going to lunch.

80. Defendant Christopher, at 12:29PM, on August 11, 2016, shortly before coming to pick up the Plaintiff, did willfully and knowingly made a decision to write up the Plaintiff [Administrative Detention Form], based on false allegations and never noted, specifically (i.e. alleged charges), what the Plaintiff had done to justify his placement in the SHU. See Exhibit 18

81. Defendant Hendry was a party to the factual allegations in paragraph 80. because he concurred with Defendant Christopher's findings and his personal involvement was confirmed with his signature at the staff witness at 12:29PM on August 11, 2016.

82. Shortly thereafter. Defendants Christopher, Glass, and Wilkins entered the Utility Room and

informed the Plaintiff that he was going to the SHU at FCI Butner II, but ***did not*** offer a specific reason why. See Exhibit 18

83. Defendant Wilkins, who used to supervise the Plaintiff during “hot trash” runs at 1:30PM during the week in 2012, ***knows*** the Plaintiff’s **good institutional record**.

84. Defendant Glass refused to put handcuffs on the Plaintiff, when asked by one of the other two staff members (Defendants Christopher and Wilkins) as they were escorting the Plaintiff to R&D, which is in stark contrast to the allegations of the Plaintiff “threatening staff members” in paragraphs 75. and 76., which would **mandate** the handcuffing/restraint of the Plaintiff to prevent harm to other staff members and/or to other inmates. See Exhibit 19

85. Defendant Glass, in an interview with the Plaintiff in the holding cell at FCI Butner I R&D, stated, “off the record”, that “Someone ‘got in their feelings’ because you filed a grievance.”

86. Defendant Leslie showed surprise/disbelief when she saw the Plaintiff in the holding cell, at FCI Butner I R&D, and shook her head and chuckled (not against Plaintiff, but out of disbelief), when Plaintiff explained the situation with Defendants Ma’at and Hoskins a short while earlier. See Exhibit 42

87. Defendant Leslie is also familiar with the Plaintiff’s **good institutional record** and involvement with the Positive Programming Committee and had been approached, by the Plaintiff, for support for the formation of a Commissary Committee, which Defendant Ma’at disapproved, but

Defendant Leslie supported, by telling the Plaintiff not to give up (i.e. resubmit it later). See Exhibit 20

88. Defendants Ma'at, Hoskins, and Willis became personally and criminally liable for the falsification of documents, when they signed their signatures on the Plaintiff's UNICOR/FPI Form 96 (Inmate Industrial Employment Action [UNICOR Work Performance Document]) on August 11, 2016. See Exhibit 17

89. Defendants Ma'at and Hoskins alleged, falsely, that the Plaintiff made threatening comments to them and comments of causing a work stoppage [in UNICOR].

90. Defendant Glass visited Plaintiff at the FCI Butner II SHU, Room B122 on August 11, 2016, but did not provide Plaintiff with any details and/or information as to the reason(s) for his detention.

91. Defendant Glass visited Plaintiff at the FCI Butner II SHU, Room B122, on August 12, 2016, but, again, did not provide Plaintiff with any specific details on the reason for his detention.

92. Defendant Halfast visited Plaintiff at the FCI Butner II SHU, Room B122, on August 13, 2016, and dropped off the Plaintiff's BP-9 (Administrative Remedy ID No.: 871972-F1) and its rejection Notice and attachments. See Exhibit 21

93. Defendant Halfast did not provide the Plaintiff with any information or notification of the Plaintiff's situation during this visit.

94. Defendant Halfast visited Plaintiff at/during recreation, on August 17, 2016, at the FCI Butner II

SHU, but did not provide the Plaintiff with any information or notification of the Plaintiff's situation.

95. Defendant Glass visited Plaintiff on August 26, 2016, at approximately 1500, at the FCI Butner II SHU, and told the Plaintiff, "off the record", that they (Defendants Ma'at and Hoskins) don't want me to come back and that I would be transferred.

96. Defendant stated, to the Plaintiff, that the investigation results cannot be given to/shared with him and that the Plaintiff must have them subpoenaed by an attorney. See Exhibit 43

97. Defendant Glass also stated that "he was going to stand on his own integrity."

98. Plaintiff sent a copout (Request to Staff) to Defendant Martin, for two BP-9's, on August 27, 2016. See Exhibit 22

99. Defendant Martin, on August 29, 2016, at approximately 1325, dropped off the response to the grievance (Remedy ID No.: 872015-F1) that Defendant Ma'at had confronted the Plaintiff about, on August 10, 2016, as the Plaintiff was on his way to lunch that day. See Exhibit 23

100. Defendant Martin did not stick around to ask about or allow the Plaintiff to address his concerns and/or needs as Defendant Martin was already gone from in front of the Plaintiff's cell by the time the Plaintiff straightened up from picking up the grievance, referenced in paragraph 99., from under the door of his cell.

101. This was Defendant Martin's **first** time seeing the Plaintiff since August 11, 2016, where the Defendant was present, during the initial part of the

Plaintiff's conversation with Defendants Ma'at and Hoskins, in the FCI Butner I Dining Hall.

102. Plaintiff filled out a copout (Request to Staff) for Defendant Martin, at/around 1803, to request (4) BP-10's (Administrative Remedy Forms) due to the lack of availability of the Defendant.

103. Plaintiff wrote to the Mid-Atlantic Regional Director about the situation and to request an extension of time to file a grievance.

104. The request was picked up by FCI Butner II SHU Officer K. Roldan, when he picked up B-Range's commissary sheets.

105. Defendant Willis, accompanied by FCI Butner I Unit Manager Scarantino, visited the Plaintiff, at the FCI Butner II SHU, at approximately 1015, on August 31, 2016.

106. Defendant Willis informed the Plaintiff that the FCI Butner I SIS Office is still conducting an investigation, but no information and/or details were made known to the Plaintiff.

107. Plaintiff, on September 2, 2016, at approximately 1300, at the FCI Butner II SHU, Room B125, talked to Defendant Slaydon, who had just talked to Inmate Gonzalez, who was also from FCI Butner I.

108. Defendant Slaydon stated that he knew about the Plaintiff's situation and said it was "complicated", but failed to fill the Plaintiff in on what was going on with the investigation or what it was about.

109. Plaintiff notified CO Abraham, an officer at the FCI Butner II SHU, at approximately 2004, that

the Plaintiff needed to see the Lieutenant so he could talk to someone from Psychology.

110. The Plaintiff, at approximately 2009, wrote a copout (Request to Staff) to the FCI Butner II SHU Lieutenant to see someone in Psychology immediately. See Exhibit 24

111. The Plaintiff, at approximately 2045, and in tears, pushed the “Panic” button to get someone to come to the cell (B125) after receiving no response to the initial request at 2004.

112. CO Walker responded to the activation of the “Panic” button.

113. The Plaintiff notified CO Walker that the Plaintiff had initially informed CO Abraham that the Plaintiff needed to see the Lieutenant so that he could speak with someone from Psychology.

114. Plaintiff talked to Lieutenant Hackler, at the FCI Butner II SHU, for nearly an hour about his detention situation.

115. Plaintiff talked to Defendant Leslie, on September 12, 2016, in the FCI Butner II Rec Cage, in the presence of CO/Mr. Sailor.

116. Plaintiff explained his situation (reason for administrative detention) to Defendant Leslie and she responded with a question, “Why are you in here?”

117. When the Plaintiff responded with, “Exactly!” and still in the presence of Mr. Sailor, Defendant Leslie jotted down some notes and said she would look into it and bring it up in the SHU meeting on Wednesday [September 14, 2016].

118. In reference to paragraphs 116. and 117., Defendant Leslie had an opportunity to address the

Plaintiff's situation, within a few hours of the incident, on August 11, 2016, but Defendant failed to do so.

119. Plaintiff wrote a copout (Request to Staff), on September 14, 2016, to Defendants Halfast and Willis, to suggest a transfer destination (FCI Petersburg, VA) to try to continue to be near his father.

120. Plaintiff's father had medical issues and was trying to get well so that he could come visit the Plaintiff.

121. The Plaintiff had not seen his father in almost two years.

122. The copout (Request to Staff) was picked up by Case Manager Ms. Jackson, from the Butner Low Security Correctional Institution, at approximately 1351.

123. Defendant Willis, on September 14, 2016, in the presence of FCI Butner I Unit Manager Scarantino, told the Plaintiff that the SIS investigation was complete.

124. Defendant Willis informed the Plaintiff that he would be transferred to any "appropriate" medium [security] institution.

125. Defendant Willis also informed the Plaintiff that he **did not receive** a "shot" (disciplinary action/report). See Exhibit 25

126. Defendant Willis failed to provide the Plaintiff with details and/or specifics of the investigation or, more importantly, the reason(s) for the investigation.

127. Lieutenant Hawley, of the FCI Butner II SHU, on September 15, 2016, confirmed that the Plaintiff was pending transfer and received no "shot" (disciplinary action). See Exhibit 25

128. Plaintiff, on September 16, 2016, at approximately 0820, in the FCI Butner II Rec Cage, became dizzy and lightheaded and eventually passed out momentarily. See Exhibit 26

129. Inmate Claude Kinney, in the cage to the left of the Plaintiff, was a witness, along with other inmates on the Rec Yard.

130. Plaintiff, on September 21, 2016, at the FCI Butner II SHU, asked Defendant Leslie if she talked to the Associate Warden and/or Warden about the Plaintiff's situation. See Exhibit 42 and Exhibit 43 Page 1

131. Defendant Leslie responded by telling the Plaintiff that he was being transferred.

132. Plaintiff stated to Defendant Leslie that he thought she was going to intercede on his behalf; at least in the interest of fairness.

133. Defendant Leslie responded by stating that the Plaintiff was *still* getting transferred.

134. Plaintiff questioned Defendant Leslie by asking her, "Why did you bother to ask about my situation – write it down? See paragraphs 87., 116., and 117.

135. Plaintiff told Defendant Leslie that "they (Defendants Ma'at and Hoskins) were coming after me." See Exhibit 42

136. Defendant rebutted by stating that her peers said it was the Plaintiff that was coming after them.

137. The Plaintiff responded and closed the conversation by stating to Defendant Leslie, "I have the right to file a [legitimate] grievance."

138. Defendants Smith, Ma'at, Hoskins, Glass, Slaydon, Halfast, Willis, and possibly others, falsified documentation (EMS-409.051 – Request for Transfer/Application of Management Variable Form) on September 28, 2016, when they fabricated false allegations against the Plaintiff. See Exhibit 11

139. Defendants Smith, Halfast, and Willis are personally, directly, and criminally liable for the falsification of this documentation by virtue of their signatures on this document.

140. Defendants Smith, Ma'at, Hoskins, Glass, Slaydon, Christopher, Hendry, Willis, and Halfast are directly responsible for defaming the character of the Plaintiff, because they all have access to the Plaintiff's progress reports, which clearly dispute the allegations, especially Item "2." – Institutional Adjustment on the form in paragraph 138. See Exhibit 27 (Note last item on Page 4)

141. Defendant Halfast is aware of the *good* institutional record of the Plaintiff, because she was responsible for sending the Plaintiff's progress report to the Office of the Pardon Attorney for the Plaintiff's clemency petition. See Exhibits 27 and 28

142. The Office of Pardon Attorney had requested the Plaintiff's progress report and he had to sign for it in Defendant Halfast's office on July 7, 2016. See Exhibit 28

143. Defendants Smith, Ma'at, Hoskins, Glass, Slaydon, Christopher, Hendry, Willis, Halfast, and possibly others, may have negatively impacted his clemency petition.

144. Plaintiff had recently filed a "sensitive" BP-9 to the Mid-Atlantic Regional Director (Certified Mail

Receipt No.: 7016 0340 0000 6351 9360) See Exhibit 29

145. Plaintiff talked to Defendant Willis on October 2, 2016, at the FCI Butner II SHU, and asked him if he had received the Plaintiff's copouts (Request to Staff) that requested/suggested a transfer to Petersburg FCI, in Virginia.

146. Defendant Willis stated that the Plaintiff was already designated, and when Plaintiff asked where he was going to, Defendant Willis stated that he knew, but could not tell the Plaintiff.

147. Plaintiff asked Defendant Willis to send the Plaintiff the two BP-8's (Informal Resolution Forms), dated July 18, 2016, designated "1A" and "1B", and were given to Defendant Hoskins by way of Defendant Martin in July 2016. See Exhibit 7

148. Defendant Willis left Plaintiff's door, but doubled back and made the following statement to the Plaintiff, "For what it's worth, it's a good spot."

149. Defendant Williams and the Mid-Atlantic Regional Director received the Plaintiff's "sensitive" BP-9 on October 18, 2016. See Exhibit 30/41

150. Defendants and the Mid-Atlantic Regional Director rejected the Plaintiff's grievance (Remedy ID No.: 879805) without an investigation on October 19, 2016. See Exhibit 31

151. Defendants Williams and the Mid-Atlantic Regional Director put "Unprofessional, inappropriate conduct or misconduct by staff" in the "Subject 1" subject code and thereby are personally liable and knowledgeable of the issues for the grievance in

paragraph 150. that corresponds to this claim. See Exhibit 31

152. Plaintiff began transfer and was sent to FTC Oklahoma City, Oklahoma on October 21, 2016.

153. Plaintiff was visited, in his unit (5B), at FTC Oklahoma City, Oklahoma, by the Chaplain, who informed the Plaintiff that his father had died.

154. Plaintiff was emotionally overcome and cried to mourn the loss of his father. See Exhibit 32

155. Plaintiff was allowed to call his sister to acknowledge his receipt of her message [that their father had died].

156. Plaintiff had not been able to talk to his father after August 21, 2016, because he had to choose (1) person to call, due to the administrative segregation policy of one (1) phone call every 30 days. See Exhibits 33 and 34

157. Plaintiff was treated, at FTC Oklahoma City, Oklahoma, for his stomach problems that resulted from his stay in the FCI Butner II SHU. See Exhibit 35 Page 3

158. Plaintiff was prescribed Omeprazole at FTC Oklahoma City. See Exhibit 35 Page 3

159. Plaintiff **did not** have stomach issues or severe occurrences of lightheadness and dizziness prior to his detention at the FCI Butner II SHU. See Exhibits 26 Pages 1 and 4 and 35 page 1

160. Plaintiff had also lost weight during his stay in the SHU.

161. Plaintiff arrived at FCI Gilmer, WV, on November 1, 2016.

162. Plaintiff filed, on December 19, 2016, an appeal to the rejection of his “sensitive” BP-9, dated September 29, 2016, to the Office of General Counsel (Central Office) – BP-11. See Exhibit 36

163. Plaintiff's appeal was received by General Counsel on December 30, 2016. See Exhibit 36 Page 4

164. Defendants (*[Ian Connors]* – National Inmate Appeals Coordinator) and (*[Name Unknown]* – General Counsel) rejected Plaintiff's grievance on January 25, 2017. See Exhibit 37

165. Defendant (*[Ian Connors]* – National Inmate Appeals Coordinator) crossed out **printed** receipt date and changed it to January 31, 2017. See Exhibit 37

166. Defendants (*[Ian Connors]* – National Inmate Appeals Coordinator) and (*[Name Unknown]* – General Counsel) failed to conduct an investigation into the Plaintiff's allegations.

167. Defendants (*[Ian Connors]* – National Inmate Appeals Coordinator) and (*[Name Unknown]* – General Counsel) put “Unprofessional, inappropriate conduct, or misconduct by staff” as the “Subject 1” subject code and, by this action, were made aware of the Plaintiff's allegations of staff misconduct and were obligated to act on them.

168. Plaintiff received the grievance [package] (Remedy ID No. 879805-A1) on 2-3-2017 without its envelope. See Exhibit 37

169. Plaintiff was finally able to see, on March 22, 2017, by way of the Freedom of Information Act, the specified allegations against him.

VI. CAUSES OF ACTION**Count I****Plaintiff was Subjected to the Restriction of His Right to Petition the Government for a Redress of Grievances in Violation of the First Amendment to the Constitution.**

170. Plaintiff incorporates paragraphs 1. through 169. as though they were stated fully herein.

171. Defendants Ma'at and Hoskins violated Plaintiff's First Amendment right to petition the Government for a redress of grievances by retaliating against him when the Plaintiff gave notice, to the Defendants, that filing a formal grievance was an option open to the Plaintiff.

172. Defendants Ma'at and Hoskins violated Plaintiff's First Amendment rights by fabricating false charges, firing him from his \$200/month UNICOR job, placing him in administrative detention, and transferring him to a higher security [level] institution in retaliation for filing grievances. See Exhibit 38

173. Defendants ~~Smith, Glass, Slaydon, Christopher, Hendry, Leslie, Wilkins, Willis, Halfast, Martin, and Dickerson~~ violated the Plaintiff's First Amendment rights by failing to ~~immediately~~ report violations, by Defendants Ma'at and Hoskins, of the Standards of Employee Conduct, which expressly forbids retaliation against staff or inmates who report staff misconduct.

174. Defendant Smith violated the Plaintiff's First Amendment rights by failing to protect him from the retaliatory actions of his subordinates, Defendants Ma'at and Hoskins, in violation of Title 28 C.F.R.

§ 540.12(a), which states that, “The Warden ***shall*** establish and ***exercise*** controls to ***protect individuals***, and the security, discipline and good order of the institution.

175. Defendants Smith and ([*J. Caraway*] – Mid-Atlantic Regional Director) violated the Plaintiff’s First Amendment right to be free from reprisals/retaliation by failing to conduct an investigation into the Plaintiff’s allegations [of retaliation], that could have prevented the retaliatory actions of Defendants Ma’at and Hoskins.

173. Defendants Smith, Glass, Slaydon, Christopher, Hendry, Leslie, Wilkins, Willis, Halfast, Martin, and Dickerson violated the Plaintiff’s First Amendment Right to be free from retaliation by failing to [immediately] report the retaliation against and the wrongful detention of the Plaintiff, by Defendants Ma’at and Hoskins, in violation of 18 U.S.C. § 4042, 5 CFR § 2635, and 28 CFR §§ 40.9 and 45.11.

VI. CAUSES OF ACTION

Count II

~~Plaintiff was Subjected to the Restriction of His Access to the Courts in Violation of the First Amendment to the Constitution.~~

~~176. Plaintiff incorporates paragraph 1. through 175. as though they were stated fully herein~~

~~177. Defendant Martin violated the Plaintiff’s First Amendment right to file a grievance by failing to be available, to the Plaintiff, for obtaining grievance forms and for his assistance with other matters, while the Plaintiff was in the FCI Butner II SHU.~~

178. Defendants Smith, Ma'at, Hoskins, Willis, and Halfast violated the Plaintiff's First Amendment right to access the courts, by firing him from UNICOR and taking away his sole [financial] means (\$200/month) to achieve that, and severely impacted his ability to pursue his grievances through the system.

179. Defendants Smith, Ma'at, Hoskins, Willis and Halfast violated the Plaintiff's First Amendment right to access the courts because they have the personal knowledge, via the FBOP's SENTRY system (Inmate Information Database), of all aspects of the inmate's incarceration, including family and outside support, and, therefore, were in a culpable state of mind as to the negative impact, of their actions, on the Plaintiff.

VI. CAUSES OF ACTION

Count III

Plaintiff was Subjected to the Deprivation of His Due Process Rights in Violation of the Fifth Amendment to the Constitution.

176. Plaintiff incorporates paragraphs 1. through 175. as though they were stated fully herein.

177. Defendants Smith, Ma'at, Hoskins, Glass, Slaydon, Christopher, Hendry, Willis, and Halfast violated the Plaintiff's Fifth Amendment right to due process by fabricating false charges against the Plaintiff without the benefit of a hearing.

178. As to the claim in paragraph 181, the Defendants may have negatively impacted the Plaintiff's clemency petition, which had been submitted several months prior to the incident on August 11, 2016.

179. Defendants Christopher and Hendry violated the Plaintiff's Fifth Amendment right to due process when they failed to specify, to the Plaintiff, what he was being investigated for, on the Administrative Detention Form dated August 11, 2016.

180. Defendants Smith, Ma'at, Hoskins, Willis, and Halfast violated the Plaintiff's Fifth Amendment right to due process when they fired him from his \$200/month job at UNICOR and never gave the Plaintiff an opportunity to be informed of the reason(s) why so he could properly defend himself and get his job back.

181. Defendants Smith, Ma'at, Hoskins, Willis, and Halfast acted in concert and violated the Plaintiff's Fifth Amendment right to due process, when they fabricated allegations of threatening staff members and circulating flyers to create a work stoppage and denied the Plaintiff access to this information until March 22, 2017.

182. Defendants Smith, Ma'at, Lassiter, Hoskins, Willis, Halfast, Martin, Glass, Slaydon, and other, as yet unknown, parties, violated the Plaintiff's Fifth Amendment right to due process when they failed to provide the Plaintiff access to attend the **required** hearings (Seven-Day Review and the 30-Day Review), which are authorized to be attended by the Plaintiff. Exhibit 39

183. Defendants Smith, Ma'at, Hoskins, Christopher, Hendry, Glass, Slaydon, Lassiter, Willis, Halfast, and Martin violated the Plaintiff's Fifth Amendment right to due process when they failed to inform the Plaintiff of the allegations against him.

184. Defendants Smith, Ma'at, Hoskins, Christopher, Hendry, Glass, Slaydon, Lassiter, Willis, Halfast, and Martin violated the Plaintiff's Fifth Amendment right to due process when they transferred him without a [f]actual finding of guilt, as evidenced by the lack of disciplinary action or a report outlining the same. See Exhibit 25

185. Defendants Smith, Ma'at, Hoskins, Willis, and Halfast violated the Plaintiff's Fifth Amendment right to due process when they conspired together, on September 28, 2016, to create the EMS-409 Form (Request for Transfer/Application of Management Variable), which contains false information and was not made available to the Plaintiff, for viewing, until March 22, 2017, via a Freedom of Information Act Request.

186. Defendant Glass violated the Plaintiff's Fifth Amendment right to due process, when they informed the Plaintiff, in August 2016, that he would not be able to view the SIS investigative report and that the Plaintiff would have to get an attorney to subpoena it. See Exhibit 43

187. Defendants Smith and ([*J. Caraway*] – Mid-Atlantic Regional Director) violated the Plaintiff's Fifth Amendment right to due process when they failed to conduct an investigation **prior to** these retaliatory acts, and, had they done so, could have **prevented** the wrongful detention and subsequent transfer of the Plaintiff.

188. Defendants Smith, Ma'at. Hoskins, Slaydon, Glass, Christopher, Hendry, Willis, Halfast, Martin, and Lassiter violated the Plaintiff's Fifth Amendment right to due process and to be free of segregation,

especially in the absence of a [f]actual finding of guilt, when they kept him confined for 71 days in the SHU, at FCI Butner II, without disciplinary action and/or a report to validate it.

189. Defendants Willis, Halfast, Martin, Wilkins, Christopher, Glass, and Slaydon violated the Plaintiff's Fifth Amendment right to due process when they refused to rebut the false allegations, by Warden Smith, that the Plaintiff had poor institutional adjustment at [during the Plaintiff's entire time] FCI Butner I, especially in light of their own personal knowledge of the **good** character of the Plaintiff.

~~194. Defendants Williams and (J. Caraway) Mid-Atlantic Regional Director violated Plaintiff's Fifth Amendment right to due process, when they mishandled the Plaintiff's grievances, by stating that they were **not** "sensitive", in contrast to the specifications (staff misconduct) that are outlined in Title 28 C.F.R. § 542.14(d).~~

~~195. Defendant Ma'at violated the Plaintiff's Fifth Amendment right to due process, on August 11, 2016, because Defendant Hoskins was **not** supposed to be a party to his own investigation and he [Defendant Hoskins] was the Plaintiff's superior (UNICOR Factory Manager) and Defendant Ma'at's immediate subordinate at UNICOR.~~

190. Defendants Williams and Caraway violated the Plaintiff's Fifth Amendment right to due process when they failed to investigate the alleged retaliation (the "sensitive" issue) as required in 28 CFR §§ 542.11 and 542.14(d) and honor the Plaintiff's right to a review by a person or persons not under the

institution's control as required in 28 CFR § 40.7(c) and (f).

191. Defendant Ma'at violated the Plaintiff's Fifth Amendment right to due process when he allowed Defendant Hoskins to be a party to his own investigation and not considering the fact that Defendant Hoskins was the Plaintiff's superior and Defendant Ma'at's immediate subordinate in violation of 28 CFR § 40.7(c)(f).

192. Defendants Smith, Ma'at, and Hoskins violated Plaintiff's Fifth Amendment right to due process, when they, absent credible charges and evidence, fired Plaintiff from UNICOR and deprived Plaintiff of the liberty interest of remaining on the compound and being permitted to access the courts without interference. See Exhibit 40 (A,B & D)

193. Defendants Smith, Ma'at, and Hoskins violated Plaintiff's Fifth Amendment right to due process, when they, absent credible charges and evidence, fired Plaintiff from UNICOR and deprived Plaintiff of the liberty interest of remaining on the compound and participating in [then] current and future programming to rehabilitate himself and to prepare for future reentry back to society. See Exhibit 40 (A, C & D)

194. Defendant Ma'at violated Plaintiff's Fifth Amendment right to due process, when he failed to investigate and/or correct the issue, that was mentioned to him, on August 10th and 11th, 2016, of the unjustified denial of information, by coworker Steve Bullis, coworker/*helper* Eric Walls, and Defendant Hoskins, that was needed, by the Plaintiff, in order to properly perform his job. See Exhibit 16

195. Defendants Willis, Halfast, and Martin (Unit Team) violated the Plaintiff's Fifth Amendment right to due process when they failed to notify the Plaintiff, as required by 28 CFR § 524.73, of his classification as a CIM (Central Inmate Monitoring) case and/or have me sign for this notification. See Exhibit 11 – bottom of Section 3.

Count IV

Plaintiff was Subjected to Deliberate Indifference in Violation of the Eighth Amendment to the Constitution.

199. Plaintiff incorporates paragraphs 1. through 198. as though they were stated fully herein.

200. Defendants Williams and ([J. Caraway])—Mid-Atlantic Regional Director) acted with deliberate indifference against the Plaintiff, in violation of the Eighth Amendment to the Constitution, when they failed to investigate, in July 2016, the Plaintiff's allegations of retaliation and protect him [and his well-being] from the retaliatory actions and negative consequences that followed.

201. Defendant Smith acted with deliberate indifference against the Plaintiff, in violation of the Eighth Amendment of the Constitution, when he failed to investigate, in July 2016, the Plaintiff's allegations, which he was made aware of on more than one occasion, and as a result, failed to protect the Plaintiff [and his well-being] from the retaliatory and negative consequences that followed.

202. Defendant Ma'at acted with deliberate indifference against the Plaintiff, in violation of the Eighth Amendment to the Constitution, when he failed to investigate and correct the withholding of the

~~communications information, from the Plaintiff, by Defendant Hoskins and coworkers Steve Bullis and Eric Walls (*helper*), when he was informed of this issue on August 10th and 11th, 2016.~~

203. Defendants ~~Smith, Ma'at, Hoskins, Willis, Halfast, and Martin~~ acted with deliberate indifference to the Plaintiff's mental health, in violation of the Eighth Amendment to the Constitution, when they failed to take into account the Plaintiff's history of depression, especially in light of the effects of the wrongful administrative detention, retaliation, and the transfer on the Plaintiff and the lack of specific charges and a disciplinary action and/or a report.

Count V

~~**Plaintiff was Subjected to Cruel and Unusual Punishment in Violation of the Eighth Amendment to the Constitution.**~~

204. Plaintiff incorporates paragraphs 1. through 203. as though they were stated fully herein.

205. Defendants ~~Smith, Ma'at, Hoskins, Christopher, Hendry, Glass, Slaydon, Willis, and Halfast~~ violated Plaintiff's right to be free from cruel and unusual punishment, when they placed Plaintiff in administrative detention, in the FCI Butner II SHU, for 71 days, without notification of the specific charges, without justification or for the fulfillment of a legitimate penological interest, without a [f]actual finding of guilt, without disciplinary action or a report and in retaliation for filing [legitimate] grievances. See Exhibit 25

206. Defendants ~~Smith, Ma'at, Hoskins, Christopher, Hendry, Glass, Slaydon, Willis, and Halfast~~ violated Plaintiff's right to be free from cruel

~~and unusual punishment, when they separated the Plaintiff from his family, by virtue of the administrative detention's policy of one (1) phone call a month, which forced the Plaintiff to have to choose one (1) person to call and took its toll on the Plaintiff when he lost the opportunity to contact, via email and telephone, during the last two months of his life (the Plaintiff's father died on October 23, 2016). See Exhibit 34~~

~~207. Defendants Smith, Ma'at, Hoskins, Christopher, Hendry, Glass, Slaydon, Willis, and Halfast violated Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment when, by virtue of Plaintiff's placement in the SHU, suffered numerous gastric problems (diarrhea, gas, excessive stools), dehydration, and blood pressure problems, which resulted in the Plaintiff passing out, temporarily, on September 16, 2016.~~

COUNT VI

Plaintiff was Subjected to Discrimination and Disparate Treatment in Violation of the Equal Protection Clause of the Fifth Amendment to the Constitution.

196. Plaintiff incorporates paragraphs 1. through 195. as though they were stated fully herein.

197. Defendants Smith, Ma'at, Hoskins, Willis, and Halfast discriminated against the Plaintiff, in violation of the Equal Protection Clause, by firing him solely on the basis of engaging in protected activity and not on a legitimate factor such as work performance.

198. Defendants Smith, Ma'at, Hoskins, Glass, Slaydon, Christopher, Hendry, Willis, and Halfast

discriminated against the Plaintiff, in violation of the Equal Protection Clause, by fabricating false charges against him for grievances that were filed, by the Plaintiff, that served a legitimate penological interest for the FBOP, UNICOR, and for society.

199. Defendants Smith, Ma'at, Hoskins, Willis, and Halfast discriminated against the Plaintiff and treated him disparately [by firing, detaining, and transferring him] in comparison to an inmate who might have the same good work record, but did not engage in protected activity (filing of grievances), in violation of the Equal Protection Clause.

200. Defendants Ma'at and Hoskins treated my coworker/*helper* Eric Walls with preferential treatment, in violation of the Equal Protection Clause, by not firing him with me, as Defendant Ma'at had suggested to Defendant Hoskins on August 11, 2016 and lending credibility to the Plaintiff's claims of racial discrimination.

201. Defendant Hoskins, who is Caucasian, discriminated against the Plaintiff, in violation of the Equal Protection Clause, when he refused to get a soldering iron for the Plaintiff to fix the Lens Coater (S/N 5969), but promptly obtained the soldering iron for coworker/helper Eric Walls, who is Caucasian.

202. Defendant Hoskins gave preferential treatment to the Plaintiff's coworkers (Inmates Steve Bullis (Q/A Clerk) and Inmate Eric Walls (helper)) and, as a result, discriminated against the Plaintiff, in violation of the Equal Protection Clause, by allowing them, who are both Caucasian, to withhold information from the Plaintiff who, as the Lead Mechanic, was privileged to access it.

203. Defendant Hoskins allowed this discriminatory and disparate treatment, in violation of the Equal Protection Clause, even with the knowledge that the Plaintiff had received training on those machines (Coburn Technologies HPE-8000 Intelligent Edger and the HAB-8000 Auto Blocker) with coworker/helper Eric Walls, in January 2016, that was authorized by Defendant Hoskins.

204. As to paragraph 203, Defendant Hoskins discriminated against the Plaintiff, who was the Lead Mechanic, in violation of the Equal Protection Clause, when he AND my two coworkers (Inmates Steve Bullis (Q/A Clerk) and Eric Walls (helper) refused to share information, that was received via multiple emails from Brian Mann from Coburn Technologies on May 18, 2016, with the Plaintiff.

Count VII

~~Plaintiff was Subjected to Retaliation in Violation of NC Gen. Stat. § 162-55, which states that the standard of care owed by a jailer to an inmate placed in his care is to keep the inmate safe and free from harm, to render him medical aid when necessary, and to treat him humanely and refrain from oppressing him.~~

~~213. Plaintiff incorporates paragraphs 1. through 212. as though they were stated fully herein.~~

~~214. Defendants Ma'at and Hoskins subjected the Plaintiff to retaliation in violation of NC Gen. Stat. § 162-55, when they retaliatorily fired, detained, and transferred him for filing and speaking out about his grievance.~~

~~215. Defendants Caraway, Williams, Ma'at, and Smith violated NC Gen Stat § 162-55, when they failed~~

~~to prevent the retaliation against the Plaintiff after he alerted them to possible future retaliation and recent retaliation that had occurred against him.~~

~~216. Defendants Smith, Ma'at, Hoskins, Dickerson, Willis, Halfast, Slaydon, and Glass violated NC Gen Stat § 162-55 when they falsified the Plaintiff's Form 409 and UNICOR Form 96.~~

~~217. As to paragraph 216., those forms give the reason for the Plaintiff's transfer and firing, respectively.~~

~~218. As to paragraph 216., Defendants Smith, Glass, Slaydon, Willis, Halfast, Martin, Lassiter, Ma'at, and Leslie refused to provide information to the Plaintiff about the specific reasons for his detention in violation of NC Gen Stat. § 162-55.~~

~~219. Defendant Hoskins, in his actions against the Plaintiff, falsified the UNICOR Form 96 by signing for the Associate Warden (Defendant Ma'at) and without the Plaintiff's knowledge of any legitimate reason why, fired him.~~

~~220. As to paragraph 219. the Plaintiff was unaware of this until he received an unredacted copy of the Form 96 in August 2016; over a year later.~~

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Honorable Court:

- A. Declare that the acts and/or omissions violated the Plaintiff's rights under the Constitution and laws of the United States;
- B. Order Defendants to pay compensatory damages for lost wages and wrongful detention on false charges (Lost wages at \$200/month (8-12-2016 to 6-30-2018));

- C. Order Defendants to pay punitive damages for intentional infliction of emotional distress and retaliation for exercising my First Amendment rights;
- D. Award actual damages of no less than \$300,000;
- E. Order Defendants to pay reasonable attorney fees and costs;
- F. Grant a jury trial on all issues triable by a jury; and
- G. Grant other just and equitable relief that this Honorable Court deems necessary.

Dated: May 24, 2019

Respectfully submitted,

s/ Joseph R. Mays

Joseph R. Mays, 43487-007, pro se

Federal Correctional Institution – Gilmer

PO Box 6000

Glenville, WV 26351-6000

VERIFICATION

By my signature below and pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing complaint is true and correct, except as to matters alleged on information and belief, and as to these, I believe them to be true.

I also certify that:

- 1) I am a party in the case;
- 2) that my allegations and claims have evidence to support them;
- 3) that these claims have an arguable basis in the law; and
- 4) that this claim/complaint is not frivolous and is being pursued in the interest of fairness, justice, and for a legitimate penological and societal interest.

Executed at Glenville, West Virginia on May *24th* 2019.

s/ Joseph R. Mays

Joseph R. Mays, 43487-007, pro se

Federal Correctional Institution – Gilmer

PO Box 6000

Glenville, WV 26351-6000

EXHIBIT LIST

Referring Paragraph Number(s)	Exhibit Number(s)	Page Number(s)	Document Title	# of Pages
1	22	17	Grievances [Originating] – (868292-R1 and 868290-R1 (Forms Only)) Dated 6-20-16 and 6-25-16, respectively	2
2	22/25/26	17/18	Receipts/Rejection Notices (868292-R1 and 868290-R1) Dated 7-6-16 and 7-7-16	2
3	27	18	Copout (Request to Staff) to Warden Smith Dated 7-12-16 RE: Grievance Resubmissions at Institutional Level	2
4	27	18	Electronic Copout (Request to Staff) to Warden Smith Dated 7-14-16 RE: Grievance Resubmissions at Institutional Level	1
5	28	18	Resubmitted Grievances (Institutional Level) – For 868292-R1 and 868290-R1 (Forms Only) Dated 7-13-16 *NOTE: The Regional Office receive date for 868292-R1 should read 7-7-16	2
6	30/39	18/19	Grievance for Rejection of Exhibits Dated 8-2-16 and BP-8 Response which is unsigned and undated (Failure of counselor to follow procedures)	2

Referring Paragraph	Exhibit Number	Page Number(s)	Page	Document Title	# of Pages
7	32/33/147	18/28		BP-8's (Informal Resolution) – (1A – [For 868292-R1] and 1B [For 868290-R1] Dated 7-18-16 3:39PM **NOTE: They were never returned to me **	2
8	32	18		Copy of Outside of Envelope (Grievance Package) Given to Counselor Martin Page 1 – To Warden Smith (BP-9) – Page 2 – To Defendant Hoskins (BP-8)	2
9	38/39/44/45	19		Drawing/Map of FCI Butner I (Medium) – Depiction of Events on 8-10-16 and 8-11-16	1
10	46/47	19		Copy of Certified Mail receipt to Warren Buffett (7008 3230 0003 1958 3974	1
11	44/45		19/22/27	Copy of EMS-409 Form (Request For Transfer) – Item “3., Line 1 [48], Item “3.”, Line 3 [75], Positive Programming Committee [FCI Butner I (Medium)] Information	1
12	48/75/138			Copout (Request to Staff) to Associate Warden Ma'at Dated 1-9-16 RE: PPC Proposed Activities and Events Calendar for 2016	3
13	49	20			

Referring Paragraph	Exhibit Number	Page Number(s)	Page	Number(s)	Document Title	# of Pages
14	50/61	20/21				1
15	57	20			UNICOR/FPI Form 44 (Work Performance Evaluation Record) 2012-2016	3
16	62	21			[UNICOR/FPI] Standard Operating Instructions for Maintenance Mechanic/Helper	1
17	75/88	22/23			UNICOR/FPI Form 96 (UNICOR Work Performance Document) Dated 8-11-16	1
18	80/82	22/23			Copy of BP-S308 Form (Administrative Detention Order) Dated 8-11-16 12:29PM	1
19	84	23			Title 28 C.F.R. § 552.20 – Use of Force and Application of Restraints on Inmates	1
20	87	23			Copout (Request to Staff) to Captain Leslie (with attachments) Dated 10-29-16 RE: Positive Programming Committee/ Commissary Committee	3
21	92	24			Receipt/Rejection Notice (Remedy ID No.: 871972-FT) Dated 8-9-16 Delivered to Plaintiff at the FCI Butner II SHU	1

Referring Paragraph	Exhibit Number)	Page Number(s))	Document Title	# of Pages
22	98	24	Copy of Handwritten Copy of Copout (Request to Staff) to Counselor Martin Dated 8-27-16	1
23	99	24	Copy of Warden Smith's Response to Grievance (Remedy ID No.: 872015-F1) Dated 8-26-16	1
24	110	25	Copy of Handwritten Copy of Copout (Request to Staff) to SHU Lieutenant Dated 9-2-16	1
25	125/127	26	Copy of Inmate (Plaintiff's) Classification Form [Transaction Date: 9-14-16] Dated 5-11-17 - See "Freq Discip Rpt", "Type Disc Rpt" and "Violence"	1
26	128	26	Medical Records (Fainting/Syncope/Blood Pressure Issues) Dated 9-16-16 (2) Pages, Dated 11-8-16 (2) Pages	4
27	140	27	Copy of FBOOP Program Statement 5100.08 – Inmate Security Designation and Custody Classification – Dated 9-12-06 – Definition of Poor Adjustment	5
28	141/142	27	List [Generated by Defendant Halfast] for Inmates/Plaintiff to Sign Paperwork For Clemency or Release – For 7-7-16 at 07:00AM	1

Referring Paragraph	Exhibit Number)	Page Number(s))	Document Title	# of Pages
29	144	28	Copy of Certified Mail Receipt to Mid-Atlantic Regional Director Postmarked 10-4-16 – RE: “Sensitive” BP-9 [Wrongful Detention/Retaliation]	1
30	149	28	Copy of “Sensitive” BP-9 Received by Mid-Atlantic Regional Office 10-18-16 (Form Only)	1
31	150/151	28	Copy of Receipt/Rejection Notice (Remedy ID No.: 879805-R1) Dated 10-19-16	1
32	153	28	Copy of Email from Plaintiff to his family to read at his father's funeral	1
33	156	28	TruLincs Account (Plaintiff's) Transactions – TruFone Dated 6-23-17 Transaction Date: 8-21-16	1
34	156	28	FBOP Program Statement 5270.11 – Special Housing Units – Part 540, Subpart I – Inmate Telephone Regulations	2
35	157/158	28	Medical Records (Dizziness, Abnormal ECG (Electrocardiogram), and Gastro-Esophageal Reflux without esophagitis) – Pages 1-3, respectively	3

Referring Paragraph	Exhibit Number)	Page Number(s))	Page Number(s))	Document Title	# of Pages
36	162	29		Copy of Letter and Grievance (Appeal of Rejection [Remedy ID No.: 879805-R1] to General Counsel) Dated 12-20-16 and 12-19-16, respectively	5
37	164/165/168	29		Copy of Receipt/Rejection Notice (Remedy ID No.: 879805-A1) Dated 1-25-16	1
38	172	30		Copy of Trulincs Account (Plaintiff's) Transactions – Commissary – 6-23-17 Reference No.: RIS2124 Dated 08-08-16 – Payroll – UNICOR	1
39	182	33		Title 28 C.F.R. § 541.26 – Review of Placement in the SHU (Special Housing Unit)	1

Referring Paragraph	Exhibit Number(s)	Page Number(s)	Document Title	# of Pages
40	192/193	36	FBOP Program Statement 5270.09 – Inmate Discipline Program Dated 7-8-11	7
			A – (Page 3) – Appendix C. Inmate Rights and Responsibilities Item “1.” – Right to Be Treated Fairly	
			B – (Page 4) – Appendix C. Inmate Rights and Responsibilities Item “6.” – Right to Unrestricted and Confidential Access to the Courts	
			C – (Page 5) – Appendix C. Inmate Rights and Responsibilities Item “10.” – Right to Participate in Educational, Vocational Training... in Keeping With Your Plaintiff’s Interest, Needs and Abilities [State/Government-Created Liberty Interest]	
			D – (Page 6) – Appendix D. [UDC/DHO] DATA ENTRY INSTRUCTIONS *NOTE “Code 203” and sentence after “SENTRY Screens.”	

Referring Paragraph	Exhibit Number)	Page Number(s))	Document Title	# of Pages
41	149	28	United States Postal Service Certified Mail Recipient Confirmations Letter to Appalachian Consumer Affairs dated 6-9-17 ***NOTE: See first entry on page. The exhibit date says it was received on October 18, 2016, but you can clearly see that it was confirmed, by the Postal Service, as received on October 6, 2016 (12 days earlier) and signed for by G. A. Johnson at 1:19PM.	1
42	47/86/130/ 135	19/23/26/27 24/26	Memo from Defendant Hoskins to Defendant Leslie dated 8-11-2016 FCI Butner I – SIS Report dated 8-9/2016 (No date on Cover Page)	1
43	96/130			3
			Total Page Count for Exhibits	78
N/A	–	–	Declaration of Facts by Joseph R. Mays dated 8-10-2018 (Pursuant to 28 U.S.C. § 1746)	4
N/A	–	–	Declaration of Facts by Joseph R. Mays dated 5-12-2019 (Pursuant to 28 U.S.C. § 1746)	7

APPENDIX E

Exhibit 17 – Case No.: 5:18-ct-03186-FL

UNICOR WORK PERFORMANCE DOCUMENT

Date: 8/11/16

Inmate's Name: Mays, Joseph

Register Number: 43487-007

Unit: Clemson

Grade: 1

IN COMPLIANCE WITH UNICOR, FPI WORK PROGRAMS FOR INMATES, P.S. 8120.01, WHICH INCLUDES INMATE WORKER STANDARDS, PAY AND BENEFITS, I RECOMMEND THE FOLLOWING ACTION BE TAKEN ON THE ABOVE:

- COUNSELED
- DEMOTION TO GRADE ____ FOR 90 DAYS (MINIMUM)
- WITHHOLD VACATION CREDIT FOR PRESENT MONTH OF _____
- WITHHOLD HOLIDAY PAY FOR PRESENT MONTH OF _____
- WITHHOLD LONGEVITY PAY FOR PRESENT MONTH OF _____
- REMOVAL FROM PREMIUM PAY STATUS
- TERMINATION FROM UNICOR

REASON(s) Inmate Mays has been terminated from UNICOR. On 8/11/2016 he was placed in the Special Housing Unit for making threatening comments to AW Ma'at and myself. He also made comments of causing a work stoppage in UNICOR.

(b)(6),(b)(7),(C)

FACTORY MANAGER: (b)(6),(b)(7),(C)

ASSOCIATE WARDEN, INDUS:

INMATE ACKNOWLEDGEMENT:

INMATE REFUSAL TO ACKNOWLEDGEMENT:

DUE TO THE ABOVE INFRACTION, THE
ASSOCIATE WARDEN (I) AND UNIT TEAM
AGREE TO TERMINATE THIS INMATE FROM
UNICOR EMPLOYMENT EFFECTIVE: 8/11/2016
ASSOCIATE WARDEN (I) SIGNATURE:

(b)(6),(b)(7),(C)

UNIT MANAGER'S SIGNATURE:

APPENDIX F

Rev. 5/2017 Prisoner Complaint

United States District Court
Eastern District of North Carolina
Western Division

Case No. 5:18-CT-3186

(to be filled by Clerk's Office only)

Joseph Randolph Mays

(*In the space above enter Inmate Number 43487–
the full name(s) of the 007
plaintiff(s).*)

-against-

COMPLAINT

(*Pro Se Prisoner*)

T. B. Smith, Warden

Jury Demand?

S. Ma'at, Associate
Warden

Yes

No

Jamie Hoskins,
UNICOR Factory
Manager

<See attached>

(*In the space above enter
the full name(s) of the
defendant(s). If you
cannot fit the names of
all of the defendants in
the space provided,
please write “see*

attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section IV. Do not include addresses here.)

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

United States District Court
Eastern District of North Carolina
Western Division

Case No. _____

ATTACHMENT TO COMPLAINT: Defendant List
Continuation

Joseph R. Mays

Inmate Number: 43487-
007

Susan Dickerson

R. Martin

J. Halfast

V. Willis

Slaydon

Glass

Christopher

V. Wilkins

Lassiter

K. Hendry

T. Leslie

H. Williams

J. Caraway

Ian Connors

John/Jane Doe

John/Jane Doe(s)

Rev. 5/2017 Prisoner Complaint

I. COMPLAINT

Indicate below the federal legal basis for your claim, if known. This form is designed primarily for pro se prisoners challenging the constitutionality of their conditions of confinement, claims which are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

- 42 U.S.C. § 1983 (state, county, or municipal defendants)
- Action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (federal defendants)
- Action under Federal Tort Claims Act (United States is the proper defendant; must have presented claim in writing to the appropriate Federal agency and received a notice of final denial of the claim pursuant to 28 U.S.C. § 2401(b))

II. PLAINTIFF INFORMATION

Joseph Randolph Mays

Name

43487-007

Prisoner ID #

Federal Correctional Institution - Gilmer

Place of Detention

PO BOX 6000

Institutional Address

Glenville West Virginia 26351-6000

City State Zip Code

III. PRISONER STATUS

Indicate whether you are a prisoner or other confined person as follows:

Pretrial detainee State Federal
 Civilly committed detainee
 Immigration detainee
 Convicted and sentenced state prisoner
 Convicted and sentenced federal prisoner

IV. DEFENDANT(S) INFORMATION

Please list the following information for each defendant. If the correct information is not provided, it could result in the delay or prevention of service. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant 1: T. B. Smith
Name
Warden - FCI Butner 1 (Medium)
Current Job Title
PO BOX 1000
Current Work Address
Butner North Carolina 27509-1000
City State Zip Code

Capacity in which being sued:

Individual
 Official
 Both

Defendant 2: S. Ma'at
Name
Associate Warden - FCI Butner I
(Medium)
Current Job Title
PO BOX 1000
Current Work Address
Butner North Carolina 27509-1000
City State Zip Code

Capacity in which being sued:

Individual
 Official
 Both

Defendant(s) Continued

Defendant 3: Jamie Hoskins
Name
UNICOR Factory Manager - FCI
Butner I (Medium)
Current Job Title
PO BOX 1000
Current Work Address
Butner North Carolina 27509-1000
City State Zip Code

Capacity in which being sued:

Individual
 Official
 Both

Defendant 4: V. Willis
 Name
Unit Manager (Clemson Unit) - FCI
Butner I (Medium)
 Current Job Title
PO BOX 1000
 Current Work Address
Butner North Carolina 27509-1000
 City State Zip Code

Capacity in which being sued:

Individual
 Official
 Both

Defendant 5: J . Halfast	Defendant 6: R. Martin
Position Case Manager (Clemson Unit)	Position Counselor (Clemson Unit)
Employed at FCI Butner I (Medium)	Employed at FCI Butner I (Medium)
Address PO Box 1000, Butner, NC 27509-1000	Address PO Box 1000, Butner, NC 27509-1000
Capacity in which being sued: Individual (x) Official () Both ()	Capacity in which being sued: Individual (x) Official () Both ()

Defendant 7: Christopher	Defendant 8: K. Hendry
-----------------------------	------------------------

Position Lieutenant	Position Lieutenant
Employed at FCI Butner I (Medium)	Employed at FCI Butner I (Medium)
Address PO Box 1000, Butner, NC 27509-1000	Address PO Box 1000, Butner, NC 27509-1000
Capacity in which being sued: Individual (x) Official () Both ()	Capacity in which being sued: Individual (x) Official () Both ()

Defendant #9: T. Leslie	Defendant #10: V. Wilkins
Position Captain	Position Compound Officer
Employed at FCI Butner I (Medium)	Employed at FCI Butner I (Medium)
Address PO Box 1000, Butner, NC 27509-1000	Address PO Box 1000, Butner, NC 27509-1000
Capacity in which being sued: Individual (x) Official () Both ()	Capacity in which being sued: Individual (x) Official () Both ()

Defendant #11: Glass	Defendant #12: Slaydon
Position SIS Officer	Position SIS Officer
Employed at FCI Butner I (Medium)	Employed at FCI Butner I (Medium)
Address PO Box 1000, Butner, NC 27509-1000	Address PO Box 1000, Butner, NC 27509-1000

Capacity in which being sued: Individual (x) Official () Both ()	Capacity in which being sued: Individual (x) Official () Both ()
--	--

Defendant #13: S. Dickerson	Defendant #14: Lassiter
Position Q/A Specialist/Supervisor	Position SHU Review Officer
Employed at FCI Butner I (Medium)	Employed at FCI Butner II
Address PO Box 1000, Butner, NC 27509	Address PO Box 1500, Butner, NC 27509-
Capacity in which being sued: Individual (x) Official () Both ()	Capacity in which being sued: Individual (x) Official () Both ()

Defendant #15: H. Williams	Defendant #16: J. Caraway
Position Administrative Remedy Coord.	Position Regional Director
Employed at FBOP Mid- Atlantic Req.	Employed at FBOP Mid- Atlantic Req.
Address 302 Sentinel Drive Suite 200, Annapolis Junction, MD 20701	Address 302 Sentinel Drive Suite 200, Annapolis Junction, MD 20701
Capacity in which being sued: Individual (x) Official () Both ()	Capacity in which being sued: Individual (x) Official () Both ()

Defendant #17: Ian Connors	Defendant #18: John/Jane Doe
Position Administrative Remedy Coord.	Position General Counsel
Employed at FBOP Central Office	Employed at FBOP Central Office
Address 320 First Street NW, Washington, DC 20534	Address 320 First Street NW, Washington, DC 20534
Capacity in which being sued: Individual (x) Official () Both ()	Capacity in which being sued: Individual (x) Official () Both ()

Defendant 19: John/Jane Doe	Defendant #__: N/A
Position Unknown at this time	Position N/A
Employed at Unknown at this time	Employed at N/A
Address Unknown at this time	Address N/A
Capacity in which being sued: Individual (x) Official () Both ()	Capacity in which being sued: N/A Individual (x) Official () Both ()

Rev. 5/2017 Prisoner Complaint

V. STATEMENT OF CLAIM

Place(s) of occurrence: FCI Butner I (Medium), FCI Butner II, and FCI Oklahoma

Date(s) of occurrence: 8-11-16, 10-21-16, 10-23-16, and 11-1-16

State which of your federal constitutional or federal statutory rights have been violated:

1st, 5th, and 8th Amendments; 28 C.F.R. §§ 40.6, 40.7, and 40.9 (Reprisals), 18 U.S.C. § 4042, 28 C.F.R. § 541.25, 42 U.S.C. § 1997d (Retaliation)

State here briefly the FACTS that support your case. Describe how each defendant was personally involved in the alleged wrongful actions, state whether you were physically injured as a result of those actions, and if so, state your injury and what medical attention was provided to you.

FACTS:

Who did Dfdts Ma'at and Hoskins retaliatorily what to fired and detained me on false charges. you? Dfdts Smith, Leslie, Christopher, and

Hendry approved the retaliatory detention. Dfdt Glass informed me that “someone got ‘in their feelings’ because you (plaintiff/me) filed a grievance.”, yet he refused to allow me to see a copy of the SIS report. Dfdts Halfast, Glass, Leslie, Martin, Willis, Christopher, Wilkins, Ma'at, and Dickerson refused to speak up about the true [good] character of the Plaintiff. Dfdts Hendry and Christopher refused to specify the reason(s) for the Plaintiff's detention. Dfdts Smith, Willis, Halfast, Glass, Slaydon, Lassiter, Martin, and Leslie

failed to allow the Plaintiff to attend a hearing, in the SHU, to learn of the [false] charges against him. Dfdts Williams and Caraway refused to address the Plaintiff's allegations of retaliation, including future retaliation. Dfdt Hoskins reassured the Plaintiff, in the presence of Dfdt Dickerson, on 7-29-2016, that he would NOI' be getting transferred. The Plaintiff was on his way back to work, on 8-11-2016, after mailing out a certified letter to Warren Buffet. Had the Plaintiff not been called to talk to Dfdts Ma'at and Hoskins, the retaliation would NOT have occurred. Dfdts Connors and General Counsel refused to provide a post-deprivation remedy for Plaintiff.

What
happened
to you?

- 1) I was retaliatorily fired from my \$200/month UNICOR Job at FCI Butler I UNICOR Optics Factory for expression my option to file a BP-9 (Administrative Remedy Request)
- 2) I was wrongfully and retaliatorily placed in the SHU with no notice of why I was placed there – found out several months later
- 3) I passed out in the SHU (Rec Cage) on 9-16-16 from dehydration as a direct result of my placement in the SHU. Low Blood Pressure
- 4) I lost out on the opportunity to talk to and/or email my father for the last two

months of his life – he died on 10-23-2016

5) I was retaliatorily transferred to FCI Gilmer, WV, but received NO disciplinary report.

When did Item “1)” and “2)” occurred on 8-11-16
it happen Item “3)” above occurred on 9-16-2016
to you? Item “4)” occurred between 8-22-2016 to
10-23-2016

Item “5)” occurred on 10-21-2018 -
Arrived at FCI Gilmer, WV 11-1-16

Where Item “1)” above happened at FCI Butner
did it I (Medium)
happen Items “2)” and “3)” occurred at FCI
to you? Butner II (SHU)

Item “4)” above occurred, initially at FCI
Butner II, then FTC Oklahoma City,
Oklahoma

Item “5)” occurred, initially at FCI
Butner II and ended at FCI Gilmer

What Loss of consciousness, temporarily, on
was your September 16, 2016, as a result of low
injury? blood pressure due to dehydration from
the Plaintiff's placement in the SHU.
The ventilation duct blew air directly
onto the Plaintiff, who slept on the top
bunk, and dried his mouth out while he
slept. The Plaintiff had been away from
this style of housing unit for nearly five
years. The Plaintiff was also taking
water pills (hydrochlorothiazide) which
also dehydrated the Plaintiff by

removing water from his system. Additionally, the Plaintiff was forced to restrict water intake, because he could not freely return to his cell, from the SHU recreation cage, to urinate. The Plaintiff suffered from gastrointestinal issues, due to the food and/or water issues. This caused him to use the bathroom excessively. So much so that he had to, regularly, ask for more toilet paper, beyond the six (6) rolls given for his cell, which he shared with another inmate. The Plaintiff had problems, at times, getting that. The Plaintiff sent "Request to Staff" memos to Health Services to address this issue, but it went unaddressed. The Plaintiff lost weight as a result. The Plaintiff began treatment for gastrointestinal reflux disease (GERD), in October 2016, at the Federal Transfer Center in Oklahoma City, Oklahoma. The Plaintiff continues to be treated, to this day, for this condition. The lack of follow-up, by medical staff at FCI Butner II, is being addressed in a separate grievance/claim.

VI. ADMINISTRATIVE PROCEDURES

WARNING: Prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions. 42 U.S.C. § 1997e(a). Your case may be dismissed if you have not exhausted your administrative remedies.

Have you filed a grievance Yes No
concerning the facts relating
to this complaint?

If no, explain why not:

Is the grievance process Yes No
completed?

If no, explain why not:

VII. RELIEF

*State briefly what you want the court to do for you.
Make no legal arguments. Cite no cases or statutes.*

Declare that the acts and omissions violated the Plaintiff's rights

Order Defendants to pay compensatory damages for lost wages and wrongful detention on false charges (Lost wages at \$200/mon (8-12-16 to 6-30-18)

Order Defendants to pay punitive damages for intentional infliction of emotional distress and retaliation for exercising my First Amendment rights

Award actual damages of no less than \$300,000

Grant a jury trial on issues triable by jury; and other just and equitable relief that this Honorable Court deems necessary

VIII. PRISONER'S LITIGATION HISTORY

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in forma pauperis in federal court if that prisoner has "on three or more occasions, while incarcerated or detained in any facility, brought

an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Have you brought any other Yes No
lawsuits in state or federal
court while a prisoner?

If yes, how many? N/A

Number each different lawsuit below and include the following:

Name of case (including defendants' names), court,
and docket number

Nature of claim made

How did it end? (For example, if it was dismissed,
appealed, or is still pending, explain
below.)

N/A

IX. PLAINTIFF'S DECLARATION AND WARNING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay; or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or

discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint and provide prison identification number and prison address.

7-18-2018 /s/Joseph Randolph Mays
Dated Plaintiff's Signature

Joseph Randolph Mays
Printed Name

43487-007
Prison Identification #

Federal Correctional Institution – Gilmer
PO BOX 6000 Glenville West Virginia 26351-6000
Prison Address City State Zip Code

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA
WESTERN DIVISION

NO. 5:18-CT-3186-FL

•	JOSEPH RANDOLPH	•
	MAYS,)
)
	• Plaintiff,)
)
•	v.)
)
		• ORDER
•	T.B. SMITH, S. MA'AT,)
	JAMIE HOSKINS, V. WILLIS, J.)
	HALFAST, R. MARTIN, LT.)
	CHRISTOPHER, LT. K.)
	HENDRY, OFFICER V.)
	WILKINS, OFFICER GLASS,)
	OFFICER SLAYDON, OFFICER)
	LASSITER, J. CARAWAY, and)
	JOHN/JANE DOES,)
)
•	Defendants. ¹)
)
)
)

¹ The court has constructively amended the caption of this order to reflect dismissal of formerly named defendants Ian Connors, Cpt. T. Leslie, Susan Dickerson, and H. Williams by orders entered February 27, 2019, and December 29, 2019.

• --)
UNITED STATES OF AMERICA,)

- Interested Party.

This matter is before the court on defendants' motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (DE 53), and to strike plaintiff's sur-reply in opposition to same (DE 66). The motion to dismiss was fully briefed and in this posture the issues raised are ripe for ruling. For the reasons stated below, the court grants the motion to dismiss and denies as moot the motion to strike.

STATEMENT OF THE CASE

Plaintiff, a D.C. Code offender proceeding pro se, commenced this action by filing complaint on July 23, 2018, asserting claims for violations of his civil rights pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Following an initial period of frivolity review, the court allowed plaintiff to file the operative amended complaint on October 29, 2019, asserting the following claims for relief: 1) First Amendment claim alleging defendants retaliated against him for filing grievances, 2) Fifth Amendment claims alleging that defendants placed him in administrative detention without cause, terminated him from his UNICOR position, and transferred him to another correctional institution without providing notice of the alleged misconduct or an opportunity to rebut the allegations, and 3) Fifth Amendment claim alleging racial discrimination.

The court, however, dismissed upon frivolity review plaintiff's claims alleging denial of medical care,

unconstitutional conditions of confinement, violations Federal Bureau of Prisons (“FBOP”) policies, denial of access to the courts, and unfair administrative remedy procedures. The defendants, sued in their individual capacities only, are T.B. Smith (“Smith”), S. Ma’at (“Ma’at”), Jamie Hoskins (“Hoskins”), V. Willis (“Willis”), J. Halfast (“Halfast”), R. Martin (“Martin”), Lt. Christopher (“Christopher”), Lt. K. Hendry (“Hendry”), officer V. Wilkins (“Wilkins”), officer Glass (“Glass”), officer Slaydon (“Slaydon”), officer Lassiter (“Lassiter”), J. Carraway (“Caraway”), and unnamed officials designated John and Janes Does.

Defendants filed the instant motion to dismiss on January 7, 2020, arguing plaintiff’s complaint should be dismissed because it fails to state a claim upon which relief can be granted, and because plaintiff failed to exhaust administrative remedies prior to filing this action. In support, defendants rely upon memorandum of law, declaration Mallory Storus, an attorney at the Federal Correctional Institution in Butner, North Carolina (“FCI-Butner”), and plaintiff’s administrative remedy records. That same day, the court provided plaintiff notice, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), that it may construe the motion as one for summary judgment because the motion relied upon matters beyond the pleadings. Plaintiff responded in opposition on October 24, 2019. In support, plaintiff relies upon his personal declaration and exhibits thereto comprising his FBOP administrative remedy records, medical records, and records pertaining to his placement in administrative detention and transfer. Defendants filed reply in further support of the motion to dismiss on April 7, 2020.

On May 22, 2020, plaintiff filed unauthorized sur-reply responding to issues raised in defendants' reply brief. On June 4, 2020, defendants filed motion to strike plaintiff's sur-reply. Plaintiff did not respond to the motion to strike.

STATEMENT OF THE FACTS

The facts, as alleged in plaintiff's complaint, may be summarized as follows. Plaintiff is a D.C. Code offender in FBOP custody, and he was housed at FCI-Butner and subsequently the Federal Correctional Institution in Gilmer, West Virginia ("FCI-Gilmer") during the relevant time period. (Am. Compl. (DE 1) ¶ 3). On June 20 2016, plaintiff submitted administrative remedy request to the FBOP regional director's office, complaining that defendant Hoskins, the FCI-Butner UNICOR² optics factory manager, "engaged in racial discrimination, disparate treatment, harassment, abuse of authority, and defamation of character against plaintiff." (*Id.* ¶¶ 6, 22; Am. Compl Ex. 1 (DE 45-2) at 4).³ Plaintiff further alleged that defendant Hoskins gave "preferential treatment" to other inmates. (Am. Compl. Ex. 1 (DE 45-2) at 5). On June 25, 2016, plaintiff filed another administrative remedy request with the regional director complaining that defendants Hoskins and another FBOP official retaliated against him by accusing him of malingering

² UNICOR is an FBOP employment program. (*See, e.g.* Am. Compl. (DE 45) ¶ 3).

³ Unless otherwise specified, page numbers specified in citations to the record in this order refer to the page number of the document designated in the court's electronic case filing (ECF) system, and not to page numbering, if any, specified on the face of the underlying document.

and using abusive and demeaning language. (*Id.* at 4). These grievances, however, were rejected because they did not raise sensitive issues and thus plaintiff was required to submit them at the institution level. (*See* Am. Compl. (DE 45) ¶¶ 22-26; Am. Compl. Ex. 2 (DE 45-2) at 6-7).

On July 12, 2016, plaintiff resubmitted the foregoing administrative remedy requests at FCI-Butner on “BP-8” forms. (*See* Am. Compl. Ex. 3 (DE 45-2) at 8). Defendant Martin, plaintiff’s unit counselor, forwarded the BP-8 forms to defendant Hoskins to attempt informal resolution of plaintiff’s complaints. (Am. Compl. (DE 45) ¶¶ 9, 32). On July 29, 2016, defendants Hoskins and Dickerson, a UNICOR optics factory supervisor, met with plaintiff to discuss his concerns. (*Id.* ¶¶ 33-34). During that meeting, defendants Hoskins and Dickerson “reassured” plaintiff that he would not be transferred to another correctional facility. (*Id.* ¶ 34).

On August 10, 2016, defendant Ma’at, the associate warden at FCI-Butner, confronted plaintiff and accused him of “giving his secretary a hard time” in reference to processing another administrative remedy request. (*Id.* ¶ 39). Plaintiff disagreed that he gave defendant Ma’at’s secretary a hard time, noting that he only expressed his disagreement with the secretary’s position on the procedures for filing his administrative remedy request. (*Id.* ¶¶ 40-41).

On August 11, 2016, defendants Hoskins and Ma’at met with plaintiff in the dining hall to address plaintiff’s concerns about his UNICOR position. (*Id.* ¶¶ 43-50). Plaintiff informed defendant Ma’at that defendant Hoskins had withheld information from

plaintiff that was necessary to complete his work as a lead mechanic. (*Id.* ¶¶ 3, 49-50). Defendant Hoskins responded that he provided the information to another inmate who had “IT experience” but failed to acknowledge that plaintiff was the lead mechanic, had been trained on the relevant machines by an outside contractor, and had prior experience working in an information technology position. (*Id.* ¶¶ 54-60). Defendant Hoskins then allegedly falsely accused plaintiff of “starting to disrupt the orderly running of the facility.” (*Id.* ¶ 64). Plaintiff responded by stating “we have two choices. I can [file an administrative remedy request] or --”⁴ and before plaintiff could finish the sentence defendant Ma’at stated, “or we can fire you! If you [are not] trained, we can fire you and get someone else.” (*Id.* ¶¶ 66-67). Defendant Ma’at then stated, “you [do not have a] union” in an allegedly intimidating and arrogant manner. (*Id.* ¶ 69). Plaintiff then asked whether his co-worker would be held accountable,⁵ and defendant Hoskins replied, “what do you want me to do, this is prison.” (*Id.* ¶¶ 70-71). Defendant Ma’at then stated, “fire them both! We can fire both of you and get someone to replace both of you.” (*Id.* ¶ 73). Plaintiff then calmly walked out of the dining hall. (*Id.* ¶ 75). Plaintiff, who is African American, was fired from his position, but his white co-worker was not. (*See id.* ¶¶ 74, 197-204).

⁴ If plaintiff had been allowed to finish the sentence, he would have said “or we can work this out.” (Am. Compl. (DE 45) ¶ 67).

⁵ Plaintiff suggests that his co-worker also should have been reprimanded for “disrupting” the orderly running of the UNICOR program. (*See Am. Compl. (DE 45) ¶¶ 70-71.*)

Plaintiff was accused of making threatening comments to staff and threatening to cause a work stoppage during the meeting with defendants Ma'at and Hoskins. (*Id.* ¶¶ 76, 89; Am. Compl. Ex. 42 (DE 45-2 at 71).⁶ Later that same day, defendants Christopher and Hendry, FCI-Butner corrections officers, drafted an administrative detention order requiring that plaintiff be transferred to the special housing unit (“administrative detention”). (Am. Compl. (DE 45) ¶¶ 10, 80-81). The administrative detention order, however, did not specify the reason for plaintiff’s placement in administrative detention. (*Id.*).

Defendants Christopher, Glass, and Wilkins then approached plaintiff at his workstation in a utility room and informed him he was being sent to administrative detention. (*Id.* ¶ 82). At the time, defendant Wilkins was an FCI-Butner corrections officer and defendant Glass was a special investigations supervisor assigned to FCI-Butner. (*Id.* ¶¶ 13-14). When they arrived at the holding cell, defendant Glass informed plaintiff that “someone got in their feelings because you filed a grievance.” (*Id.* ¶ 85). Defendant Glass, however, did not explain to plaintiff the precise reason he was placed in administrative detention. (*Id.* ¶¶ 90-91).

⁶ Defendants Ma'at and Hoskins alleged specifically that plaintiff “became agitated and made threatening comments” during the meeting, which included the following: “[Plaintiff stated, ‘He would do what he had to do.’ He said he was the one who works on the equipment in UNICOR, and he could cause problems in the factory.” (Am. Compl. Ex. 42 (DE 45-2) at 71). Plaintiff denies making these comments. (See, e.g., Am. Compl. (DE 45) ¶ 89).

Plaintiff was terminated from his UNICOR position on August 11, 2016. (Compl. Ex. 17 (DE 45-2) at 31). The termination notice states plaintiff was discharged because he made threatening comments to defendants Ma'at and Hoskins and threatened a UNICOR work stoppage. (*Id.*).

On August 13 and 17, 2016, defendant Halfast, plaintiff's assigned FBOP case manager, visited plaintiff in administrative detention. (*Id.* ¶ 92-94). Defendant Halfast, however, did not explain to plaintiff why he was placed in administrative detention. (*Id.*). On August 26, 2016, defendant Glass informed plaintiff "off the record" that defendants Ma'at and Hoskins did not want plaintiff to return to the general population at FCI-Butner, and that he would be transferred. (*Id.* ¶ 95). Defendant Glass also informed plaintiff that the investigation results into the incident with defendants Ma'at and Hoskins were private and could not be disclosed to plaintiff. (*Id.* ¶ 96).

On September 2, 2016, plaintiff saw defendant Slaydon, a special investigations supervisor assigned to FCI-Butner, and asked him why he had been placed in administrative detention. (*Id.* ¶¶ 15, 107-08). Defendant Slaydon responded "it's complicated" but did not further explain the basis of plaintiff's transfer to administrative detention. (*Id.* ¶ 108).

On September 14, 2016, plaintiff submitted a "request to staff," which was forwarded to defendants Halfast and Willis⁷ plaintiff's unit manager,

⁷ Defendant Willis is plaintiff's unit manager. (Am. Compl. (DE 45) ¶ 7).

requesting transfer to the Federal Correctional Institution in Petersburg, Virginia so that he could be close to his father. (*Id.* ¶ 119). That same day, defendant Willis visited plaintiff in administrative detention and informed him the investigation was complete and plaintiff would be transferred to an appropriate medium security institution.⁸ (*Id.* ¶¶ 123-24). Defendant Willis also advised plaintiff that he would not be charged with a disciplinary offense based on the comments he made to defendants Ma'at and Hoskins. (*Id.* ¶ 125). Defendant Willis, however, refused to provide plaintiff with further details about the investigation, or explain specifically why he was being transferred. (*Id.* ¶ 126).

On September 16, 2016, while he remained housed in administrative detention at FCI-Butner, plaintiff became dizzy and lightheaded, and fainted in his cell. (*Id.* ¶ 128). Plaintiff also developed gastrointestinal problems while housed in administrative detention at FCI-Butner. (*Id.* ¶ 157). Prior to his administrative detention, plaintiff did not have gastrointestinal problems or issues with lightheadedness. (*Id.* 159).

On September 28, 2016, defendants Smith, Ma'at, Hoskins, Glass, Slaydon, Halfast, Willis, and others falsified plaintiff's transfer form (FBOP Form "EMS-409.051") by stating plaintiff "has maintained poor institutional adjustment at FCI-Butner." (*Id.* ¶ 138; Compl. Ex. 11 (DE 45-2) at 21). The transfer form also includes the following "rationale" for plaintiff's transfer:

⁸ Notably, plaintiff was housed in the medium security facility at FCI-Butner prior to his placement in administrative detention. (Am. Compl. (DE 45) ¶ 3).

On August 11, 2016, at approximately 11:40 a.m., [plaintiff] confronted staff at mainline regarding some concerns he had. During this confrontation, [plaintiff] became visibly agitated and made threatening comments towards staff. [Plaintiff] stated, "he would do what he had to do" and "he could cause problems in UNICOR." During this same time, there was information circulating throughout the Bureau of Prisons regarding a proposed work stoppage on September 9, 2016. [Plaintiff] was placed in Administrative Detention pending a[] [special investigative service, "SIS"] investigation. The investigation determined [plaintiff] has animosity towards certain staff, because he didn't get "his way" in certain situations and due to flyers circulating pertaining to a work stoppage slated for September 9, 2016. The investigation further revealed that [plaintiff] attempted to manipulate a lower functioning inmate, with violent tendencies, into believing that staff and inmates were making fun of him. During one conversation, [plaintiff] picked up a hammer, slammed it down and stated that a staff member was going to get the hammer. It is the recommendation of the SIS office that [plaintiff] be transferred to an institution outside of [FCI-Butner]. [Plaintiff] was recently re-classified as an 8-point HIGH security inmate with a MEDIUM security management level. Unit team is requesting a transfer to any appropriate MEDIUM security facility.

(Am. Compl. Ex. 11 (DE 45-2) at 21).⁹ Plaintiff is concerned that his petition for clemency will be denied as a result of the foregoing (allegedly false) findings and transfer order. (Am. Compl. (DE 45) ¶ 143).

Plaintiff was transferred to FCI-Gilmer on October 21, 2016. (*Id.* ¶ 152). While in transit to FCI-Gilmer, plaintiff's father died. (*Id.* ¶ 153). Plaintiff had not been able to speak to his father for approximately two months prior to his death because he was in administrative detention. (*Id.* ¶ 156). Plaintiff arrived at FCI-Gilmer, his final transfer destination, on November 1, 2016. (*Id.* ¶ 161).

DISCUSSION

A. Standard of Review

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the complaint but “does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Republican Party v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). A complaint states a claim if it contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Asking for plausible grounds . . . does not impose a probability requirement at the

⁹ As discussed above, plaintiff disputes this characterization of his behavior at FCI-Butner, including his statements during the incident with defendants Hoskins and Ma’at. The court adopts plaintiff version for purposes of ruling on the instant motion to dismiss but includes the transfer order here for appropriate context.

pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal “[the] evidence” required to prove the claim. *Twombly*, 550 U.S. at 556. In evaluating the complaint, “[the] court accepts all well-pled facts as true and construes these facts in the light most favorable to the plaintiff,” but does not consider “legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments.” *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009).

Defendants additionally rely on matters outside the pleadings in support of their argument that plaintiff failed to exhaust administrative remedies prior to filing this action. Accordingly, the court construes the filing in that part as a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. *See* Fed R. Civ. P. 12(d). Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The party seeking summary judgment “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the non-moving party must then “come forward with specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (internal quotation omitted).

Only disputes between the parties over facts that might affect the outcome of the case properly preclude entry of summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986) (holding that a factual dispute is “material” only if it might affect the outcome of the suit and “genuine” only if there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party). “[A]t the summary judgment stage the [court’s] function is not [itself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Id.* at 249. In determining whether there is a genuine issue for trial, “evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [non-movant’s] favor.” *Id.* at 255; *see United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962) (“On summary judgment the inferences to be drawn from the underlying facts contained in [affidavits, attached exhibits, and depositions] must be viewed in the light most favorable to the party opposing the motion.”).

Nevertheless, “permissible inferences must still be within the range of reasonable probability, . . . and it is the duty of the court to withdraw the case from the [factfinder] when the necessary inference is so tenuous that it rests merely upon speculation and conjecture.” *Lovelace v. Sherwin-Williams Co.*, 681 F.2d 230, 241 (4th Cir. 1982) (quotations omitted). Thus, judgment as a matter of law is warranted where “the verdict in favor of the non-moving party would necessarily be based on speculation and conjecture.” *Myrick v. Prime Ins. Syndicate, Inc.*, 395 F.3d 485, 489 (4th Cir. 2005). By contrast, when “the evidence as a whole is susceptible of more than one reasonable inference, a

[triable] issue is created,” and judgment as a matter of law should be denied. *Id.* at 489–90.

B. Analysis

1. Plaintiff’s Claims

Before turning to defendants’ arguments in support of dismissal, the court summarizes the remaining claims at issue in this action. As noted above, the court dismissed all but three claims in its October 29, 2019, frivolity order: 1) retaliation; 2) due process, and 3) equal protection. (DE 44 at 7).

Plaintiff’s first surviving claim alleges that defendants Ma’at and Hoskins retaliated against him for filing administrative grievances by fabricating allegations that he made threatening comments, firing him from his UNICOR position, placing him in administrative detention, and transferring him to a higher-security institution. (Am. Compl. (DE 45) ¶¶ 5-6, 171-72). Defendants Smith and Caraway,¹⁰ an FBOP administrator, also allegedly failed to intervene or otherwise protect plaintiff from the foregoing acts of retaliation. (*Id.* ¶¶ 4, 19, 174-75, 200-01).

Plaintiff’s second remaining claim alleges violations of the Fifth Amendment’s Due Process Clause. Plaintiff alleges numerous due process violations, based upon the factual allegations summarized below:

- 1) Defendants Smith, Ma’at, Hoskins, Glass, Slaydon, Christopher, Hendry, Willis, and Halfast fabricated disciplinary charges against plaintiff. (*Id.* ¶ 177).

¹⁰ Defendant Caraway is the regional director of the FBOP’s Mid-Atlantic Regional Office.

- 2) Defendants Christopher and Hendry allegedly failed to notify plaintiff of the reason he was placed in administrative detention. (*Id.* ¶ 179).
- 3) Defendants Smith, Ma'at, Hoskins, Willis, and Halfast allegedly fired plaintiff from his UNICOR position without giving plaintiff a reason for his termination. (*Id.* ¶ 180).
- 4) Defendants Smith, Ma'at, Hoskins, Willis, and Halfast allegedly fabricated allegations that plaintiff threatened staff members and circulated flyers promoting a labor strike at the FCI-Butner. (*Id.* ¶ 181).
- 5) Defendants Smith, Ma'at, Lassiter, Hoskins, Willis, Halfast, Martin, Glass, Slaydon, and the Doe defendants allegedly failed to allow plaintiff to attend hearings reviewing his placement in the special housing unit. (*Id.* ¶ 182).
- 6) Defendants Smith, Ma'at, Hoskins, Christopher, Hendry, Glass, Slaydon, Lassiter, Willis, Halfast, and Martin allegedly failed to inform plaintiff of the disciplinary charges against him and his reason for placement in administrative detention. (*See id.* ¶ 183).
- 7) Defendants Smith, Ma'at, Hoskins, Christopher, Hendry, Glass, Slaydon, Lassiter, Willis, Halfast, and Martin transferred plaintiff to a new correctional facility without a factual finding of guilt. (*Id.* ¶ 184).

- 8) Defendants Smith, Ma'at, Hoskins, Willis, and Halfast conspired together, on September 28, 2016, to provide false information on plaintiff's transfer order, which resulted in plaintiff's transfer to a new correctional facility. (*Id.* ¶ 185).
- 9) Defendant Glass allegedly rejected plaintiff's request to view a special investigation report related to his placement in administrative detention. (*Id.* ¶ 186).
- 10) Defendants Smith and Caraway allegedly failed to conduct an investigation into plaintiff's claims of retaliation and staff misconduct, and thus failed to prevent plaintiff's wrongful administrative detention and subsequent transfer. (*Id.* ¶ 187).
- 11) Defendants Smith, Ma'at, Hoskins, Slaydon, Glass, Christopher, Hendry, Willis, Halfast, Martin, and Lassiter allegedly kept plaintiff confined for 71 days in administrative detention without a factual finding of guilt, conducting disciplinary proceedings, or producing a report validating such placement. (*Id.* ¶ 188).
- 12) Defendants Willis, Halfast, Martin, Wilkins, Christopher, Glass, and Slaydon allegedly refused to correct the false allegations made by defendant Smith that plaintiff had poor institutional adjustment, which was used to place plaintiff in administrative detention and ultimately transfer him to FCI-Gilmer. (*Id.* ¶ 189).

- 13) Defendants Smith, Ma'at, and Hoskins allegedly fired plaintiff from his UNICOR position and directed plaintiff's transfer to FCI-Gilmer. (*Id.* ¶ 192).
- 14) Defendants Smith, Ma'at, and Hoskins allegedly violated plaintiff's due process rights by preventing plaintiff from remaining at FCI-Butner and participating in FBOP programming available at that institution. (*Id.* ¶ 193).
- 15) Defendant Ma'at allegedly failed to investigate an incident in which plaintiff was denied information necessary to complete his UNICOR employment duties. (*Id.* ¶ 194).

Plaintiff's final remaining claim alleges violations of his equal protection rights under the Fifth Amendment. With respect to this claim, plaintiff alleges defendants Smith, Ma'at, Hoskins, Willis, and Halfast discriminated against him by firing him from his UNICOR position, placing him in administrative detention, and transferring him to FCI-Gilmer solely on the basis of engaging in the "protected activity" of filing grievances while permitting inmates who did not engage in protected activity to remain employed and housed at FCI-Butner. (*Id.* ¶¶ 197, 199). Plaintiff further alleges defendants Ma'at and Hoskins treated white inmates who held similar UNICOR positions preferentially by not firing them for the same reasons that plaintiff was fired or allowing those inmates to withhold important information from plaintiff regarding his position. (*Id.* ¶¶ 200, 202, 204). Defendant Hoskins also provided important tools for

plaintiff's white co-worker while refusing to provide such tools to plaintiff. (*Id.* ¶ 201).

2. Exhaustion of Administrative Remedies

Defendants raise the affirmative defense that plaintiff failed to exhaust administrative remedies before filing this action. *See Jones v. Bock*, 549 U.S. 199, 216 (2007) ("failure to exhaust is an affirmative defense under [42 U.S.C. § 1997e]"); *Custis v. Davis*, 851 F.3d 358, 361 (4th Cir. 2017). The Prison Litigation Reform Act ("PLRA") states that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner . . . until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a); *see Woodford v. Ngo*, 548 U.S. 81, 84 (2006). Exhaustion is mandatory. *Woodford*, 548 U.S. at 84; *Porter v. Nussle*, 534 U.S. 516, 524 (2002) ("Once within the discretion of the district court, exhaustion in cases covered by § 1997e(a) is now mandatory."). A prisoner must exhaust his administrative remedies even if the relief requested is not available under the administrative process. *Booth v. Churner*, 532 U.S. 731, 741 (2001). "[U]n exhausted claims cannot be brought in court." *Jones*, 549 U.S. at 211.

Administrative exhaustion is "defined not by the PLRA, but by the prison grievance process itself." *Jones*, 549 U.S. at 218. And the PLRA mandates "proper exhaustion" meaning "untimely or otherwise procedurally defective administrative grievance[s] or appeal[s]," as determined by the correctional institution's procedural rules, do not satisfy the PLRA's exhaustion requirement. *Woodford*, 548 U.S.

at 83, 90. Thus, an inmate has not properly exhausted administrative remedies unless he receives a decision “on the merits” of his grievance and complies with all procedural requirements for appealing the result. *See id.* at 90.

The only exception to mandatory exhaustion occurs when the administrative remedy procedure is unavailable to the inmate. *See* 42 U.S.C. § 1997e(a); *Ross*, 136 S. Ct. at 1858-60. An administrative remedy process is unavailable if: 1) “it operates as a simple dead end – with officers unable or consistently unwilling to provide any relief to aggrieved inmates”; 2) when it is “so opaque that it becomes, practically speaking, incapable of use”; and 3) where “prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.” *Ross*, 136 S. Ct. at 1858-60.

The FBOP provides a four-step administrative remedy procedure. The first step in the process requires an inmate to present his issue to staff in an attempt at informal resolution. *See* 28 C.F.R. § 542.13. If informal resolution is unsuccessful, an inmate may submit a formal written administrative remedy request to the warden using a BP-9 form within 20 calendar days from the date on which the incident occurred. *See* 28 C.F.R. § 542.14. The inmate may attach to the BP-9 form “up to one” continuation page and supporting exhibits. *Id.* § 542.14(c)(3).

If an inmate is dissatisfied with the warden’s response, he then may appeal to an FBOP regional director within 20 calendar days of the date the warden signed the response, using a BP-10 form. 28

C.F.R. § 542.15(a). The final administrative appeal is made to the FBOP's general counsel, within 30 days of the date the regional director signed the response, using a BP-11 form. *See id.* The inmate also may attach only one continuation page to the BP-10 or BP-11 forms, and he must include full copies of the institution request and response with any appeal. *Id.* § 542.15(b).

The time limits for submitting the initial administrative remedy request and appeals to the regional director or FBOP general counsel may be extended if the inmate "demonstrates a valid reason for delay" which generally requires a showing that "a situation . . . prevented the inmate from submitting the request within the established time frame." *Id.* § 542.15(a); 28 C.F.R. § 542.14(b).

Additionally, the inmate may send the initial administrative remedy request directly to the regional director (bypassing the warden) if the inmate: "reasonably believes the issue is sensitive and the inmate's safety or well-being would be placed in danger if the Request became known at the institution." 28 C.F.R. § 542.14(d)(1). In that event,

[if] the Regional Administrative Remedy Coordinator agrees that the Request is sensitive, the Request shall be accepted. Otherwise, the Request will not be accepted, and the inmate shall be advised in writing of that determination, without a return of the Request. The inmate may pursue the matter by submitting an Administrative Remedy Request locally to the Warden.

Id.

Here, in response to the instant motion, plaintiff argues he exhausted administrative remedies or defendants thwarted his attempts at exhaustion with respect to the following administrative remedy requests: 1) Request #868290; 2) Request #868292; 3) Request #872015; 4) Request #879805; 5) Request #900930; and 6) Request #909380.

Request #868290: Plaintiff filed this request for administrative remedy with the FBOP's Mid-Atlantic Regional Office on June 25, 2016, complaining that defendant Hoskins and another FBOP staff member retaliated against him for filing grievances by accusing him of "malingering and [using] abusive and demeaning language." (Am. Compl. Ex. 1 (DE 42) at 5). Where this administrative remedy request does not place defendants on notice of the factual allegations or the specific legal claims alleged in the operative amended complaint,¹¹ plaintiff may not rely on it to establish exhaustion of administrative remedies. *See, e.g., Moore v. Bennette*, 517 F.3d 717, 728-29 (4th Cir. 2008) (noting grievance must give defendants a "fair opportunity to address" the alleged misconduct); *see also Jones*, 549 U.S. at 219.

Request #868292: Plaintiff filed this request for administrative remedy with the Mid-Atlantic Regional Office on June 20, 2016, complaining that defendant

¹¹ Plaintiff's amended complaint alleges repeatedly that he was subject to retaliation for filing grievances by his termination from his UNICOR position, placement in administrative detention, and transfer. (See Am. Compl. (DE 45) ¶¶ 170-204). Request #868290 does not address the specific instances of retaliation alleged in the complaint, all of which allegedly occurred after plaintiff filed this administrative remedy request on June 25, 2016.

Hoskins racially discriminated against him by giving preferential treatment to his co-workers. (Am. Compl. Ex. 1 (DE 45-2) at 4). This administrative remedy request adequately placed defendants on notice of plaintiff's equal protection claim. (*See id.*). Defendants argue plaintiff failed to exhaust the request because he submitted it directly to a regional office, it was returned to him for resubmission at the institution level, and plaintiff failed to resubmit it. Plaintiff, however, has submitted sufficient evidence to create a genuine issue of material fact as to whether defendants interfered with his ability to resubmit the grievance at the institution level. Plaintiff, for example, testifies by way of verified declaration that defendants Martin and Hoskins failed to return "BP-8" forms to him necessary to resubmit the request. (*See* Pl.'s Decl. (DE 62-1) ¶ 6; *see also* Pl.'s Resp. (DE 62 ¶¶ 1-17).¹² Accordingly, genuine issues of material fact preclude dismissal of plaintiff's equal protection claim on grounds of administrative exhaustion. *See Ross*, 136 S. Ct. at 1858-60 (discussing exceptions to mandatory exhaustion under PLRA, including where "prison administrators thwart inmates from taking advantage of a grievance process"); *see also* *Hill v. Haynes*, 380 F. App'x 268, 270 (4th Cir. 2010). Request

¹² Defendants argue this testimony should not be credited in light of plaintiff's record of submitting numerous requests for administrative remedies and his extensive knowledge of the regulations governing the FBOP's administrative remedy program. The court, however, must accept plaintiff's version of events for purposes of ruling on the instant motion unless his account is blatantly contradicted by the record such that no reasonable jury could believe it. *See Scott v. Harris*, 550 U.S. 372, 380 (2007). Plaintiff's version is not blatantly contradicted by the record in this instance.

#868292, however, did not place defendants on notice of plaintiff's remaining due process or retaliation claims. (See Am. Compl. Ex. 1 (DE 45-2) at 4).

Request #872015: Plaintiff filed this request for administrative remedy with the FCI-Butner Warden on August 2, 2016, complaining that his previous administrative remedy request was improperly denied because his exhibits were considered continuation pages. (Am. Compl. Exs. 6, 23 (DE 45-2) at 13, 39).¹³ Where this request does not address the factual allegations or legal claims at issue in this action, plaintiff may not rely on it to establish exhaustion of administrative remedies. *See Moore*, 517 F.3d at 728-29; *see also Jones*, 549 U.S. at 219.

Request #879805: Plaintiff filed this request for administrative remedy with the Mid-Atlantic Regional Office on September 29, 2016, complaining that defendants Ma'at and Hoskins retaliated against him for filing grievances by terminating him from his UNICOR position, placing him in administrative detention, and transferring him to FCI-Gilmer. (Am. Compl. Ex. 30 (DE 45-2) at 49). While this request sufficiently places defendants on notice of plaintiff's retaliation claim, plaintiff fails to address defendants' argument that the request was not properly exhausted. The regional office returned the request to plaintiff because it was not sensitive. (Am. Compl. Ex. 31 (DE 45-2) at 50). Plaintiff appealed the regional office's

¹³ Plaintiff did not include an exhibit number on the BP-8 form filed on page 13 of the amended complaint's supporting exhibits. The labeling on pages 12 and 14, however, makes clear that the document on page 13 was intended to be exhibit six. (See DE 45-2 at 12-14).

decision to the FBOP Office of General Counsel, which upheld the decision that the request should have been filed at the institution level. (Am. Compl. Ex. 37 (DE 45-2) at 60). At that point, plaintiff was required to resubmit the request at the institution level. *See* 28 C.F.R. § 542.14(d)(1). Plaintiff, however, does not point to any evidence in the record establishing he complied with this procedural requirement. Accordingly, plaintiff failed to “properly” exhaust Remedy #879805. *See Woodford*, 548 U.S. at 83, 90 (holding PLRA requires “proper exhaustion” and “untimely or otherwise procedurally defective administrative grievance[s] or appeal[s,]” as determined by the correctional institution’s procedural rules, do not satisfy the PLRA’s exhaustion requirement).

Request #900939: Plaintiff filed this request for administrative remedy with the FCI-Gilmer warden on May 5, 2017, complaining that that defendants Ma’at, Hoskins, and Smith terminated him from his UNICOR position, placed him in administration detention, and transferred him to FCI-Gilmer in retaliation for filing grievances. (Mallory Decl. (DE 55) ¶ 16; Pl.’s Resp. Ex. 73 (DE 62-2) at 52-61). The request was rejected at the institution level as untimely. (Mallory Decl. (DE 55) ¶ 16). Plaintiff appealed to the Mid-Atlantic Regional Office, which rejected the request as untimely and because plaintiff failed to provide a copy of the institution-level request. (*Id.*). Plaintiff then appealed to the Office of General Counsel, which instructed him to fix the errors described in the regional office response, and resubmit the request at that level. (*Id.*). Plaintiff, however,

failed to do so. (*Id.*).¹⁴ Accordingly, because plaintiff failed to follow the FBOP's procedural instructions for resubmitting this request, plaintiff did properly exhaust this request. *See Woodford*, 548 U.S. at 83, 90.

Request #909380: Plaintiff filed this request for administrative remedy with the FCI-Gilmer warden on June 7, 2017, complaining that defendants Smith, Hoskins, Ma'at, and others denied him "due process and falsified evidence" by using false justifications for placing plaintiff in administrative detention and ultimately transferring him to FCI-Gilmer. (Pl.'s Resp. Exs. 77-78 (DE 62-2) at 64-66). Plaintiff also alleged that defendants Smith, Hoskins, and Ma'at denied him due process by placing him in administrative detention and transferring him without providing notice of the "charges" of misconduct lodged against him. (Pl.'s Resp. Ex. 77 (DE 62-2) at 65). According to plaintiff, the FCI-Gilmer warden did not respond to the request, and he therefore appealed the effective denial of the request to the Mid-Atlantic Regional Office, and then to the Office of General Counsel. (Pl.'s Resp. Exs. 79-80 (DE 62-2) at 67-68); *see also* 28 C.F.R. § 542.18. Defendants' evidence suggests that plaintiff submitted this request directly to the Mid-Atlantic regional director, who denied the request because it should have been filed initially at the institution level. (Storus Decl. (DE 55) ¶ 17). The Office of General Counsel also rejected the request because it was not initially submitted at the institution level. (*Id.*). Because there are disputed issues of fact with respect

¹⁴ Plaintiff again offers no response to defendants' evidence establishing he failed to resubmit the request at the regional office level.

to whether plaintiff submitted this request at the institution level, a reasonable jury could conclude that FBOP administrators thwarted plaintiff's attempts to exhaust this grievance by ignoring the request submitted to the FCI-Gilmer warden.¹⁵ *See Ross*, 136 S. Ct. at 1858-60; (Pl.'s Resp. Ex. 78 (DE 62-2) at 66 (BP-9 form submitted to FCI-Gilmer warden)). Accordingly, the court will not dismiss on administrative exhaustion grounds plaintiff's due process claims alleging he was placed in administrative detention based on falsified evidence and without notice of the charges.

In summary, with respect to defendants' motion for summary judgment based upon failure to exhaust administrative remedies, the court finds plaintiff's claim for retaliation was not properly exhausted. Genuine issues of material fact, however, preclude dismissal of plaintiff's equal protection and due process claims (to the extent based on falsified evidence or failure to provide notice) on administrative exhaustion grounds.

3. Merits

Even assuming plaintiff exhausted administrative remedies, his claims seeking monetary damages¹⁶ are not cognizable under *Bivens*. In *Bivens*, the Supreme Court recognized a damages remedy against federal officers for Fourth Amendment violations where the officers searched a residence and arrested the plaintiff

¹⁵ Defendants did not respond to plaintiff's arguments regarding Request #909380.

¹⁶ As noted above, plaintiff does not seek injunctive relief in this action.

without a warrant or probable cause, in violation of the Fourth Amendment. 403 U.S. at 398-98. Since *Bivens* was decided in 1971, the Supreme Court has authorized a damages remedy under *Bivens* in only two additional contexts: 1) a Fifth Amendment equal protection claim alleging gender discrimination in congressional employment, *see Davis v. Passman*, 442 U.S. 228 (1979); and 2) an Eighth Amendment claim by a federal prisoner alleging prison officials were deliberate indifferent to his serious medical needs by failing to treat his asthma, *see Carlson v. Green*, 446 U.S. 14 (1980). The court, however, “has declined to countenance *Bivens* actions in *any* additional context. *See Tun-Cos v. Perrotte*, 922 F.3d 514, 520-21 (4th Cir. 2019) (collecting cases).

Recently, the United States Supreme Court explained that Congress is better positioned to extend *Bivens* liability to new contexts not previously recognized by the Court, and thus instructed federal district and appellate courts to conduct a rigorous analysis before authorizing a *Bivens* remedy in any new context. *See Ziglar v. Abassi*, 137 S. Ct. 1843, 1856-57 (2017); *see also Correctional Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001); *Tun-Cos v. Perrotte*, 922 F.3d 514, 520-21 (4th Cir. 2019). The Court established the following framework governing judicial expansion of *Bivens* liability into new contexts. *Ziglar*, 137 S. Ct. at 1857-60; *Tun-Cos*, 922 F.3d at 522.

The first step requires determining whether the case involves a “new *Bivens* context” because it is “different in [any] meaningful way” from the three prior cases in which the Court has provided a *Bivens* remedy. *Ziglar*, 137 S. Ct. at 1859. “A radical difference is not required.” *See Tun-Cos*, 922 F.3d at

522. The Court, “without endeavoring to create an exhaustive list,” noted that a case might differ in a meaningful way based on:

the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence of potential special factors that previous *Bivens* cases did not consider.

Id. at 1859-60.

In the event the case involves a new context, the court analyzes whether “special factors counseling hesitation” in expanding *Bivens* are present. *Ziglar*, 137 S. Ct. at 1857 (quoting *Carlson*, 446 U.S. at 18); *Tun-Cos*, 922 F.3d at 523. This inquiry “must concentrate on whether the Judiciary is well suited, absent congressional action or instruction, to consider and weigh the costs and benefits of allowing a damages action to proceed.” *Ziglar*, 137 S. Ct. at 1857-58. A special factor counseling hesitation “must cause a court to hesitate before answering that question in the affirmative.” *Id.* at 1858. Extending *Bivens* to a new context is a “disfavored judicial activity” where Congress is generally better suited to determine whether a new damages remedy should be authorized. *Ziglar*, 137 S. Ct. at 1857.

The Supreme Court has emphasized two special factors that counsel hesitation in extending *Bivens* to a new context: 1) whether an “alternative remedial

structure is available” and 2) whether extending *Bivens* would violate separation-of-powers principles. *Id.* at 1857-58; *see also Tun-Cos*, 922 F.3d at 525-27. Additional relevant special factors include, *inter alia*, 1) “the burdens on Government employees who are sued personally, as well as the projected costs and consequences to the Government itself when the tort and monetary liability mechanisms of the legal system are used to bring about the proper formulation and implementation of public policies”; 2) whether Congress has previously enacted legislation in the area, “making it less likely that Congress would want the judiciary to interfere” 3) whether a damages remedy is necessary to deter future similar violations; 4) whether the claim addresses broader policy questions delegated to an administrative agency; and 5) whether national security interests are at issue. *Id.* at 1856-63 (citing *Wilkie v. Robbins*, 551 U.S. 537 (2007); *Malesko*, 534 U.S. at 73-74; *FDIC v. Meyer*, 510 U.S. 471 (1994); *United States v. Stanley*, 483 U.S. 669 (1987); *Chappell v. Wallace*, 462 U.S. 296 (1983); and *Bush v. Lucas*, 462 U.S. 367 (1983)).

Here, plaintiff’s claims present new *Bivens* contexts. Plaintiff’s First Amendment retaliation claim is a new context because it invokes a different constitutional provision than those at issue in *Bivens*, *Carlson*, and *Davis*. *See Doe v. Meron*, 929 F.3d 153, 69 (4th Cir. 2019) (“The Supreme Court has not recognized a *Bivens* remedy for an alleged violation of the First Amendment.”). Similarly, plaintiff’s due process claims present new contexts where the only Fifth Amendment claim recognized by the Court has been for gender discrimination. *See id.* (holding Fifth Amendment due process violations that do not involve

claims of gender discrimination present a new *Bivens* context); *see also Schweiker v. Chilicky*, 487 U.S. 412, 420 (1988) (denying, post-*Davis*, a *Bivens* remedy for Fifth Amendment procedural due process violations); *Cantu v. Moody*, 933 F.3d 414, 422 (5th Cir. 2019) (“No one thinks *Davis* – which permitted a congressional employee to sue for unlawful termination [based on gender discrimination] in violation of the Due Process Clause – means the entirety of the Fifth Amendment’s Due Process Clause is fair game in a *Bivens* action”).

Plaintiff’s claims for racial discrimination under the Fifth Amendment also present a new context. As set forth above, the claim in *Davis* involved gender discrimination alleged by a congressional employee. Here, plaintiff is a federal inmate alleging racial discrimination. His claim is based on different conduct by different federal officials, which presents a new context. *See Meron*, 929 F.3d at 169 (holding Fifth Amendment due process claim presented a new context from *Davis* where “there are meaningful differences between the rank of the officers involved and the legal mandate under which the officers were operating”); *see also Chappell*, 462 U.S. at 305 (declining to extend *Bivens* where the legal claim was similar to *Davis* but involved military servicemember instead of congressional employee).

The court thus turns to whether it should recognize a new *Bivens* action based on plaintiff’s claims. As discussed above, separation-of-powers principles and whether congress has previously enacted legislation in an area without creating a damages remedy both counsel hesitation in extending *Bivens* to a new context. *See Ziglar*, 137 S. Ct. at 1857-58, 1862. With respect to the latter special factor, Congress has “long

been on notice that the Supreme Court is disinclined to extend *Bivens* to new contexts.” *Cantu*, 933 F.3d at 423 (citing *Ziglar*, 137 S. Ct. at 1857). Congress also significantly restricted prisoner litigation by enacting the administrative exhaustion, three strikes, and filing fee provisions of the PLRA in 1995, but failed to include any authorization for damages remedies against federal correctional officials in the PLRA. *See* 28 U.S.C. § 1915(b), (g); 42 U.S.C. § 1997e(a). As *Ziglar* explains,

Legislative action suggesting that Congress does not want a damages remedy is itself a factor counseling hesitation. Some 15 years after *Carlson* was decided, Congress passed the [PLRA], which made comprehensive changes to the way prisoner abuse claims must be brought in federal court. So it seems clear that congress had specific occasion to consider the matter of prisoner abuse and to consider the proper way to remedy those wrongs. [Where] the [PLRA] itself does not provide for a standalone damages remedy against federal jailers, [i]t could be argued that this suggests Congress chose not to extend the *Carlson* damages remedy to cases involving other types of prisoner mistreatment.

Ziglar, 137 S. Ct. at 1865 (citation omitted).¹⁷

¹⁷ With respect to plaintiff’s equal protection/racial discrimination claim specifically, Congress created the UNICOR program by legislative enactment, and provided remedies for inmates who become ill or injured while working in the program, but did not provide a damages remedy for federal prisoners who are subject to discrimination within the program. *See* 18 U.S.C. § 4121-4129, 28 C.F.R. § 345.10.

Furthermore, as separation-of-powers concerns, “courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government.” *Turner v. Safley*, 482 U.S. 78, 84-85 (1987). In the context of new constitutional claims filed by federal prisoners challenging prison policies, the Judiciary is ill suited, “absent congressional action or instruction, to consider and weigh the costs and benefits of allowing a damages action to proceed.” *Ziglar*, 137 S. Ct. at 1857-58. Separation-of-powers principles thus counsel strongly against recognizing a new *Bivens* remedy in the context of plaintiff’s claims challenging his termination from UNICOR, placement in administrative detention, and transfer to FCI-Gilmer. *Id.* at 1857 (“When a party seeks to assert an implied cause of action under the Constitution itself . . . separation-of-powers principles are or should be central to the analysis.”); *Wetzel v. Edwards*, 635 F.2d 283, 288 (4th Cir. 1980) (“It is a rule grounded in necessity and common sense, as well as authority, that the maintenance of discipline in a prison is an executive function with which the judicial branch ordinarily will not interfere.”); *see also Bistrian v. Levi*, 912 F.3d 79, 94-96 (3d Cir. 2018) (providing similar special factors analysis in context of challenge to administrative detention and retaliation claims and noting that decisions “to place an inmate in more restrictive detention involve[] real-time and often difficult judgment calls about disciplining inmates,

maintaining order, and promoting prisons officials' safety and security" which "strongly counsels restraint" in recognizing a new *Bivens* remedy for such claims).

Finally, extension of *Bivens* to provide new damages claims for federal prisoners would cause an increase in prisoner suits accompanied by increased administrative burden and costs to the federal government, and numerous personal burdens on the officers subject to suit. *See Ziglar*, 137 S. Ct. at 1858 (noting special factor counseling hesitation is the "the burdens on [g]overnmental employees who are sued personally [and] projected costs and consequences to the Government itself when the tort and monetary liability mechanisms of the legal system are used to bring about the proper formulation and implementation of public policies"); *Jones*, 549 U.S. at 203 (discussing volume of prisoner suits); *Bistrian*, 912 F.3d at 95 (noting extending *Bivens* to new prisoner claims "would likely cause an increase of suits by inmates, increased litigation costs to the government, and burdens on individual prison employees to defend such claims").

In sum, plaintiff's claims "involve[] executive policies, implicate[] separation-of-power[s] concerns, and threaten[] a large burden to both the judiciary and prison officials." *Bistrian*, 912 F.3d at 96. Accordingly, the court declines to extend *Bivens* liability to the constitutional claims alleged in the operative amended complaint.¹⁸

¹⁸ Plaintiff argues that he was not fully compensated or "made whole" by the administrative grievance procedures available in the FBOP, and thus a *Bivens* remedy should be extended in the instant case. Contrary to plaintiff's argument,

C. Defendants' Motion to Strike

As noted, defendants move to strike plaintiff's unauthorized sur-reply brief submitted in further opposition to the instant motion to dismiss. Where the arguments and factual allegations set forth in the sur-reply therein would not change the court's analysis of plaintiff's claims, the motion is denied as moot.

CONCLUSION

Based on the foregoing, defendants' motion to dismiss (DE 53) is GRANTED. Plaintiff's claims are dismissed for failure to state a claim, and this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Alternatively, plaintiff's retaliation claim is dismissed without prejudice for failure to exhaust administrative remedies. Defendants' motion to strike (DE 66) is DENIED AS MOOT.

SO ORDERED, this the 30th day of September, 2020.

/s/ Louise W. Flanagan
LOUISE W. FLANAGAN
United States District Judge

the absence of a damages remedy standing alone is insufficient to extend *Bivens* liability. *See Tun-Cos*, 922 F.3d at 526-27.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH
CAROLINA WESTERN DIVISION

JOSEPH RANDOLPH MAYS,
Plaintiff,

v.

T. B. SMITH, S. MA'AT, JAMIE
HOSKINS, V. WILLIS, J. **Judgment in a Civil Case**
HALFAST, R. MARTIN, LT.
CHRISTOPHER, LT. K.
HENDRY, CPT. T. LESLIE,
OFFICER V. WILKINS,
OFFICER GLASS, OFFICER
SLAYDON, SUSAN
DICKERSON, OFFICER
LASSITER, H. WILLIAMS, J.
CARAWAY, IAN CONNORS,
and JOHN/JANE DOES,

Defendants.

Case Number: 5:18-CT-3186-FL

Decision by Court.

With defendants Cpt. T. Leslie, Susan Dickerson, H. Williams, and Ian Connors having been dismissed earlier, this action came before the Honorable Louise W. Flanagan, United States District Judge, for consideration of motion to dismiss filed by defendants J. Caraway, Lt. Christopher, Officer Glass, J. Halfast, K. Hendry, Jamie Hoskins, Officer Lassiter, S. Ma'at, R. Martin, Officer Slaydon, T.B. Smith, V. Wilkins, and V. Willis.

IT IS ORDERED AND ADJUDGED, in accordance with the court's order entered this date, that said defendants' motion to dismiss is granted and this action is hereby dismissed.

This Judgment Filed and Entered on September 30, 2020, with service on the following.

Joseph Randolph Mays 43487-007 (via U.S. Mail)
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September 30, 2020 PETER A. MOORE, JR.,
CLERK
By /s/ McCatnin
Deputy Clerk