

Docket No. 20-02554

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CHRISTOPHER “CHRISSY” SHORTER, *Plaintiff-Appellant*

v.

UNITED STATES OF AMERICA, et al., *Defendants-Appellees*

On Appeal from the United States District Court for the District of New Jersey,
Case No. 19-CV-16627, Honorable Renee Marie Bumb

**BRIEF OF NONPROFIT CIVIL RIGHTS, ADVOCACY and PUBLIC
INTEREST ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFF-APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 3d Cir. L.A.R. 26.1, the undersigned counsel certifies that none of the *Amici Curiae* are subsidiaries of another corporation and no publicly held corporation owns 10% or more of *Amici Curiae* organizations' stock.

Dated: November 23, 2020

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INTEREST OF *AMICI CURIAE*

The *Amici Curiae* filing this brief are Center for Constitutional Rights, GLBTQ Legal Advocates & Defenders, Just Detention International, Southern Poverty Law Center, Transgender Law Center, Transgender Legal Defense & Education Fund, and Why Not Prosper. None of the *Amici* represent or are employed by any party in this action. No party or party's counsel authored or assisted in authoring any part of this brief. No monetary contribution to the preparation or submission of the brief was made by any person other than the *Amici Curiae*.

Amici are various civil rights, public interest and advocacy organizations. *Amici* have extensive knowledge of the unique challenges faced by members of the Lesbian, Gay, Bisexual, Transgender, Intersex, Gender Non-Conforming, and Queer (“LGBTQ+”) community and transgender people specifically. *Amici* also have a unique understanding of the experiences of people who are incarcerated in the United States corrections system, their conditions of confinement, and the profound psychological harm that sexual abuse has on them. As such, *Amici* have an interest in ensuring that people who are incarcerated are provided humane living conditions, consistent with the constitutional right to be free from cruel and unusual punishment. *Amici* also have an interest in ensuring that, when adjudicating claims related to their wellbeing, the court benefits from the expertise

of *Amici* on the particular vulnerability of transgender people and people who have a history of sexual victimization when incarcerated.

The *Amicus Curiae* parties submit the accompanying brief to highlight the risks faced by incarcerated transgender individuals and incarcerated individuals with a history of sexual victimization. The brief will assist the Court in its ruling, as it demonstrates that prison officials must have known of the clear risks faced by Ms. Shorter. Further, the brief analyzes the legislative and judicial responses to this risk. The information presented is relevant to establishing the well-known risk that transgender people face when incarcerated, which is central to the deliberate indifference standard of the Eighth Amendment claim and informs both the Fifth Amendment Due Process and the Federal Tort Claims Act claims.

Each of the *Amicus Curiae* parties is described below.

1. The **Center for Constitutional Rights** (CCR) is a national, not-for-profit legal and advocacy organization dedicated to advancing the rights guaranteed by the United States Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated landmark civil and human rights cases challenging on arbitrary and discriminatory state policies, including policies that disproportionately impact LGBTQ+ people and incarcerated individuals.

2. Through strategic litigation, public policy advocacy, and education, **GLBTQ Legal Advocates & Defenders (“GLAD”)** works to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. GLAD has litigated widely in both state and federal courts in all areas of the law in order to protect and advance the rights of lesbians, gay men, bisexuals, transgender individuals and people living with HIV. GLAD has an enduring interest in ensuring that LGBTQ people are treated fairly and not subjected to discrimination, marginalization, or unfounded stereotypes.

3. **Just Detention International (“JDI”)**, founded in 1980, is the only organization in the world dedicated exclusively to ending sexual abuse behind bars. JDI was one of the key groups that worked to successfully pass the Prison Rape Elimination Act in 2003. JDI continues to work with government officials; policy makers; correctional agencies, facilities and staff; currently and formerly incarcerated people; and the public to promote the dignity and sexual safety of people in detention and to ensure that survivors of custodial sexual abuse get the help they need.

4. The **Southern Poverty Law Center (“SPLC”)** is a nonprofit civil rights organization working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. Since its founding in 1971, the SPLC has won numerous landmark legal

victories on behalf of society's most vulnerable members, including the LGBTQ community and transgender incarcerated people. SPLC was counsel in *Diamond v. Owens*, 5:15-cv-50-MTT (M.D. Ga. 2015) (ending the Georgia Department of Corrections' policy of denying hormone therapy to transgender incarcerated people on a blanket basis) and amicus curiae in several cases regarding transgender rights in prison.

5. **Transgender Law Center (“TLC”)** is the largest national trans-led organization advocating self-determination for all people. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community driven strategies to keep transgender and gender nonconforming (“TGNC”) people alive, thriving, and fighting for liberation. TLC believes that TGNC people hold the resilience, brilliance, and power to transform society at its root, and that the people most impacted by the systems TLC fights must lead this work. TLC builds power within TGNC communities, particularly communities of color and those most marginalized, and lays the groundwork for a society in which all people can live safely, freely, and authentically regardless of gender identity or expression. TLC works to achieve this goal through leadership development and by connecting TGNC people to legal resources. It also pursues impact litigation and policy advocacy to defend and advance the rights of TGNC people, transform the legal

system, minimize immediate threats and harms, and educate the public about issues impacting our communities.

6. **Transgender Legal Defense & Education Fund (“TLDEF”)** is a transgender-led nonprofit organization whose mission is to end discrimination and achieve equality for transgender people throughout the nation, especially those in our most vulnerable communities. In service of that mission, TLDEF works to eliminate mistreatment of transgender people from the policies and practices of law enforcement agencies, jails, and prisons, through advocacy and litigation. Along with co-counsel, TLDEF recently reached a settlement with the Steuben County, New York, which included the adoption of the nation's strongest policies for safeguarding the rights of transgender people in a county jail. TLDEF believes that the United States has no reason for its policies not to achieve at least the same level as those in a county in Western New York.

7. **Why Not Prosper** is a nonprofit organization whose mission is to help women from prison systems discover their own strength by providing them with support and resources that will empower them to become responsible, economically self-sufficient and contributing members of the community

Amici Curiae file this brief pursuant to Fed. R. App. P. 29(a)(2). All parties consent to the filing of this brief.

INTRODUCTION

The Supreme Court has long held that corrections officers must protect people who are incarcerated from known risks of sexual abuse. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). In *Farmer*, the Court addressed whether the Eighth Amendment was violated when corrections officers failed to protect a transgender person from being raped while in custody. *Id.* at 829. The Court explained that “[b]eing violently assaulted in prison is simply not ‘part of the penalty that criminal offenders pay for their offenses against society.’” *Id.* at 834 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). “[H]aving stripped [prisoners] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.” *Id.* at 833. Instead, prison officials must protect incarcerated people from substantial risks to their safety of which they are aware—including risks that are so obvious that prison officials must have known about them. *See id.* at 842-43.

Amici submit this brief to confirm that the risks to Ms. Shorter’s safety were so obvious that officials must have known about them. Extensive data demonstrates that transgender people face extraordinarily high rates of sexual assault when incarcerated. Likewise, studies indicate that people who have previously been victimized are overwhelmingly likely to experience future abuse in prison. In addition, the particularized allegations in this case demonstrates that

FCI Fort Dix staff were aware of Ms. Shorter's transgender status and her history of victimization. The Complaint also alleges that staff were trained in compliance with the Prison Rape Elimination Act ("PREA") standards the year before Ms. Shorter's assault on the dynamics of sexual assault in prison and staff responsibilities to prevent sexual abuse or harassment. National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act, Prisons and Jails Standards, 28 C.F.R. § 115.31. Protecting Ms. Shorter from sexual assault was not discretionary; defendants' compliance with their own trainings and policies should have protected her from assault. Therefore, this court should reverse the district court's dismissal of Ms. Shorter's amended complaint.

ARGUMENT

I. Transgender People Who Are Incarcerated Face Extraordinarily High Rates of Sexual Assault

Numerous studies have found that transgender people are sexually assaulted in prison at a consistently and remarkably higher rate than their peers. The U.S. Department of Justice's own criminal data collection and analysis agency, the Bureau of Justice Statistics ("BJS"), has administered the National Inmate Survey three times since 2007. Each time the BJS has found transgender respondents more likely to have been sexually victimized while incarcerated within the prior 12-month period (or since admission to the facility if less than 12 months beforehand). BJS has reported that between 31.6% and 39.9% of transgender respondents have

been sexually victimized while incarcerated.¹ This is seven to almost ten times the reported rate of sexual victimization for respondents generally, which ranged from 4.0% to 4.5%.²

BJS's statistics are in line with numerous other studies. For example, researchers at the University of California, Irvine Center for Evidence-Based Corrections conducted a study of people incarcerated in California state prisons, surveying 39 purposively-sampled transgender people and 322 randomly-selected "adult male[s]."³ The study found that 59% of transgender respondents reported being sexually assaulted during their time at a California facility (over 13 times the random sample's rate of around 4%).⁴ Similar prevalence was seen in Pennsylvania, where 61% of transgender and gender variant respondents reported having been physically assaulted and 52.5% reported having been sexually assaulted in prison.⁵ The 2015 U.S. Transgender Survey had 27,715 respondents,

¹ Allen J. Beck, Bureau of Justice Statistics (BJS), *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12, Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates*, 2 (2014), <https://perma.cc/9JVA-EVAN>.

² Allen J. Beck et al., BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, 10 (2013), <https://perma.cc/YW8E-HY75>.

³ *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, THE BULLETIN (UC Irvine Ctr. for Evidence-Based Corrs.), June 2007, at 1, <https://perma.cc/SHJ5-7GDJ>.

⁴ *Id.* at 2.

⁵ Pascal Emmer et al., *Hearts on a Wire Collective, This is a Prison, Glitter is not Allowed: Experiences of Trans and Gender Variant People in Pennsylvania's*

2% of whom were recently incarcerated.⁶ Thirty percent of recently-incarcerated respondents reported being sexually or physically assaulted while in custody.⁷

Other studies of the LGBTQ+ community generally have found that LGBTQ+ people are subject to sexual and physical assault in prisons at high rates too.⁸

Similar experiences have been reported by transgender people incarcerated in New York.⁹ One person expressed that, despite complaints to officials, “I’m raped on a daily basis, I’ve made complaint after complaint, but no response.”¹⁰

Legislation has responded to the well-documented risk of sexual victimization that transgender people face in prison settings, particularly PREA. PREA is binding on the Federal Bureau of Prisons. Prison Rape Elimination Act, 34 U.S.C. § 30307(b). PREA standards spell out the increased risk to transgender

Prison Systems, 9 (2011), <https://perma.cc/4P2A-7J7A> (“gender variant” is a term describing a variety of gender expressions, similar to “gender nonconforming”).

⁶ Sandy E. James et al., National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey*, 190 (2016), <https://perma.cc/P6LP-S3PD>.

⁷ *Id.* at 191.

⁸ E.g., Jason Lydon et al., Black & Pink, *Coming Out of Concrete Closets: A Report on Black & Pink’s National LGBTQ Prisoner Survey*, 42 (2015), <https://perma.cc/8ZDT-7BC2> (finding that 64% of respondents had been physically assaulted and 31% had been sexually assaulted by other people in custody); Allen J. Beck and Candace Johnson, BJS, *Sexual Victimization Reported by Former State Prisoners, 2008*, 16 (May 2012), <https://perma.cc/8EKT-TLGN>.

⁹ Sylvia Rivera Law Project, *It’s War in Here: A Report on the Treatment of Transgender and Intersex People in New York State Men’s Prisons*, 5-6 (2007), <https://perma.cc/JYA2-N2DZ>.

¹⁰ *Id.* at 17.

people by requiring officers to consider “[w]hether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming” when a person is screened for their risk status upon entering the facility.¹¹ PREA standards also require officials to undergo training on the zero-tolerance policy for sexual abuse or harassment, directing that “[t]he agency shall train all employees who may have contact with inmates on . . . [t]he dynamics of sexual abuse and sexual harassment in confinement.” 28 C.F.R. § 115.31. In support of this directive, the PREA Resource Center (developed initially through a cooperative agreement between the National Council on Crime and Delinquency and the Bureau of Justice Assistance) serves as a training hub for correctional facilities.¹² Among the resources developed to satisfy § 115.31 is a unit on preventing and detecting sexual assault that explicitly states that people who are perceived as transgender may be more vulnerable.¹³ An additional training reiterates that transgender and gender

¹¹ See National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act, Prisons and Jails Standards, 28 C.F.R. § 115.41.

¹² *About*, National PREA Resource Center, <https://perma.cc/4PV8-AKM7>.

¹³ National PREA Resource Center, *Unit 3, Part 1: Prevention and Detection of Sexual Abuse and Sexual Harassment*, 43 (2014), <https://perma.cc/6DRT-XCHC>. The unit also notes that 12.2% of incarcerated people “who reported their sexual orientation as gay, lesbian, bisexual, or other (LGBTI)” reported being victimized by another incarcerated person in the 12 months preceding the survey (about three times the general rate reported by BJS). *Id.* at 41.

non-conforming people experience very high rates of sexual victimization and that their view of their own safety needs to be taken into serious consideration.¹⁴

Courts have continued to acknowledge the heightened vulnerability that transgender people face in prison. *See, e.g., Zollicoffer v. Livingston*, 169 F. Supp. 3d 687, 691 (S.D. Tex. 2016); *Manning v. Griffin*, No. 15-CV-3 (KMK), 2016 WL 1274588, at *7 (S.D.N.Y. Mar. 31, 2016); *A.K. v. Annucci*, No. 17 CV 769 (VB), 2018 WL 4372673 at *5 (S.D.N.Y. Sep. 13, 2018). For instance, in *Zollicoffer*, a transgender person who was assaulted numerous times while in prison, including raped while threatened with a knife, sued Texas Department of Criminal Justice officials for failing to move her to safer housing. *Zollicoffer*, 169 F. Supp. 3d at 689. The court explicitly stated that “[t]he vulnerability of transgender prisoners to sexual abuse is no secret,” citing BJS’s statistics as evidence of the widespread knowledge that transgender people are at extreme risk. *Id.* at 691.

II. People Who Have Previously Been Victimized Are Overwhelmingly More Likely to Experience Future Abuse When Incarcerated

Studies illustrate that those who have previously been sexual victimized—like Ms. Shorter—are at greater risk of experiencing sexual victimization when incarcerated. For example, BJS’s 2011-12 survey found that people in prison who had a history of sexual victimization were twenty times more likely to report being

¹⁴ National PREA Resource Center, *Understanding LGBTI Inmates and Residents* <https://perma.cc/8TXH-5GP4>.

victimized by another incarcerated person in their current setting than people without a history (12% v. 0.6%). Beck et al., *supra* note 2, at 18.

Similarly, PREA trainings and screening standards highlight the increased risk for future abuse of people who have previously been sexually victimized. PREA screening standards require officers to consider “[w]hether the inmate has previously experienced sexual victimization” when evaluating their risk level. 28 C.F.R. § 115.41. The National PREA Resource Center also explicitly reinforces the importance of protecting those who have such a history by including the aforementioned BJS statistics in their training for employees who have contact with people in custody.¹⁵

III. Ms. Shorter’s Transgender Status and History of Victimization Are Relevant Factors in Establishing That Defendants Were Deliberately Indifferent to the Risk that She Would Experience Serious Harm

Plaintiffs must satisfy two requirements for a cognizable Eighth Amendment claim against officials who failed to protect them from harm while incarcerated. *Farmer*, 511 U.S. at 833-34. First, the deprivation must have been “sufficiently serious,” which includes deprivations of safety such as the rape Ms. Shorter experienced. *Id.* Second, prison officials must have acted with deliberate indifference to the person’s safety. *Id.* at 828, 834. An official is deliberately indifferent “if he knows that inmates face a substantial risk of serious harm and

¹⁵ National PREA Resource Center, *supra* note 14, at 41, 43.

disregards that risk by failing to take reasonable measures to abate it.” *Id.* at 847.

This standard requires actual knowledge of the substantial risk posed to a person, a determination of fact that can be demonstrated through circumstantial evidence, including by establishing that the risk was obvious. *See id.* at 842.

Courts have found certain factors instructive in assessing whether to presume awareness of an obvious risk to an incarcerated person’s safety, including whether the person warned officers of the risk,¹⁶ the officers acted in a way that contributed to exposing the person at risk,¹⁷ the facility followed its own rules and policies,¹⁸ the person had a characteristic or belonged to a group that is generally known to make them vulnerable to assault (such as an LGBTQ+ person or a person labeled a “snitch”),¹⁹ and the person had a history of being abused and/or the perpetrator had a history of committing abuse.²⁰ Not all of these factors need to be met for a court to find a risk obvious. Indeed, the presence of one or two factors

¹⁶ *Moore v. Mann*, No. 18-2295, 2020 U.S. App. LEXIS 25823, at *8 (3d Cir. Aug. 14, 2020); *Bistrrian v. Levi*, 696 F.3d 352, 369 (3d Cir. 2012).

¹⁷ *See Powell v. Schriver*, 175 F.3d 107, 115 (2d Cir. 1999).

¹⁸ *Valentine v. Collier*, 140 S. Ct. 1598, 1600 (2020) (Sotomayor, J., concurring); *Moore*, 2020 U.S. App. LEXIS 25823, at *8-9.

¹⁹ *Moore*, 2020 U.S. App. LEXIS 25823, at *7; *See e.g., Johnson v. California*, 543 U.S. 499, 546 (2005) (Stevens, J., dissenting) (“If California assigned inmates to double cells without regard to race, knowing full well that violence might result, that would seem the very definition of deliberate indifference.”).

²⁰ *Tay v. Dennison*, No. 19-cv-00501-NJR, 2020 U.S. Dist. LEXIS 76911, at *62 (S.D. Ill. May 1, 2020); *Zollicoffer*, 169 F. Supp. 3d at 697; *Lojan v. Crumbsie*, No. 12 cv. 0320, 2013 U.S. Dist. LEXIS 15590, at *13-14 (S.D.N.Y. Jan. 25, 2013).

alone can be sufficient to indicate an officer may have been aware of the risk. *See e.g., Greene v. Bowles*, 361 F.3d 290, 294 (6th Cir. 2004); *Stover v. Corr. Corp. of Am.*, No. 1:12-cv-00393-EJL, 2015 WL 874288 at *10 (D. Idaho Feb. 27, 2015) (finding an obvious risk may have existed by just looking at the fact that a transgender person was placed in a dorm with sex offenders); *see also Farmer*, 511 U.S. at 848 (noting that “failure to give advance notice [of risk] is not dispositive” as a “[p]etitioner may establish [officers’] awareness by reliance on any relevant evidence”).

The record demonstrates that Ms. Shorter’s circumstances meet each of these factors. First, Ms. Shorter alleges that she warned corrections officers she was at risk of assault on at least three occasions.²¹ Second, Counselor Hamel directly exposed her to a substantial risk of assault by placing her in an unlockable cell with a sex-offender that was farthest from the officers’ station.²² Third, Counselor Hamel disregarded PREA standards section 115.42 when he objected to Ms. Shorter’s requests to be moved on the grounds that she had not yet been at the

²¹ Ms. Shorter expressed her concerns multiple times. She told Counselor Hamel she would like to be placed in a two-person cell with a screened cellmate due to safety concerns. *Shorter v. United States*, No. 19-16627 (RMB-KMW), 2020 WL 4188455, at *1 (D.N.J. July 21, 2020). In a subsequent grievance, she wrote about her fear regarding her housing situation. *Id.* After about a month without action, she again expressed her anxiety in a “Notice of Filing for Preliminary Declaratory, Injunctive Relief and a Temporary Restraining Order.” *Id.*

²² *See id.* at *1, 9.

facility for long enough, without considering her “at-risk” screening status.²³

Furthermore, Ms. Shorter’s case also meets the fourth and fifth factors, because she belongs to a group—transgender people—generally known to be vulnerable to assault, and because she had a history of victimization.

Numerous courts have held that the abundant public information on the vulnerability of transgender people to sexual abuse while incarcerated is sufficient to infer that officials are subjectively aware of the substantial risk of sexual assault transgender people face in prison. For example, in *Manning v. Griffin*, a transgender woman sued correctional officers, alleging that the officers failed to protect her from sexual assault that occurred while she was incarcerated. *Manning*, 2016 WL 1274588 at *1. Even though the plaintiff had not alleged that defendants had read the studies on the increased risk of sexual abuse to transgender people while incarcerated, because of the widespread recognition of this heightened risk and the responsibility of defendants to ensure inmate safety, the court held it was “plausible” that defendants “were aware that the Plaintiff ‘belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates.’” *Id.* at *6 (quoting *Farmer*, 511 U.S. at 843). Similarly, in *Doe v. District of Columbia*, a transgender woman was transferred to a cell with another

²³ See *id.* at *1; National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act, Prisons and Jails Standards, 28 C.F.R. § 115.42.

person despite her protests and was raped twice. *Doe v. District of Columbia*, 215 F. Supp. 3d 62, 64 (D.D.C. 2016). The court held that a jury could conclude that the officers were aware of the substantial risk of rape she faced by virtue of their training on the Department of Corrections' gender and housing policies alone. *Id.* at 77. And in *Lojan*, which likewise involved the assault of a transgender woman, the Southern District of New York characterized as "spurious" the argument "that more than mere knowledge of Plaintiff's transgender status was required to put Defendant on notice of Plaintiff's vulnerability." *Lojan*, 2013 U.S. Dist. LEXIS 15590, at *13. *See also Stover*, 2015 WL 874288, at *10 (noting that because Defendant officers "though perhaps not aware of a specific and immediate threat to Plaintiff's safety, were evidently aware that Plaintiff is a transgender prisoner" and housed with male sex offenders, "a jury could reasonably conclude" that Defendants disregarded a known substantial risk); *A.K.*, 2018 WL 4372673, at *5 ("[P]laintiff alleges the Supervisory defendants received investigative reports, advocacy letters, statistics, and training regarding the heightened risk of sexual violence faced by transgender inmates," and thus "has plausibly alleged the Supervisory defendants were aware plaintiff faced a substantial risk of serious harm").

In Ms. Shorter's case, facility staff were aware of the heightened vulnerability of transgender people and people who have been previously

victimized. Between April 29 and May 2, 2014, FCI Fort Dix underwent a PREA audit which concluded that it was in compliance with training standard section 115.31.²⁴ Thus, Fort Dix staff were trained in compliance with PREA standards on the dynamics of sexual assault in prison the year before Ms. Shorter's housing requests were denied and she was assaulted.

Fort Dix staff also knew that Ms. Shorter is transgender and was previously victimized at another facility. *See Shorter*, 2020 WL 4188455, at *1; Amended Complaint at 7, *Shorter v. United States*, No. 19-16627 (RMB-KMW), 2020 WL 4188455 (D.N.J. July 21, 2020). Upon arrival at Fort Dix, she was screened in accordance with the PREA standards and given an "at-risk" status designation. Amended Complaint at *1, *Shorter*, 2020 WL 4188455 (No. 19-16627). The fact that Fort Dix officers used this screening criteria illustrates that they were aware that a person's transgender identity puts them at heightened risk. *Id.*

In sum, there is overwhelming circumstantial evidence to conclude Fort Dix staff knew of the high risk to Ms. Shorter from 1) abundant public information on the prevalence of sexual assault against transgender people while incarcerated, 2) the fact that Fort Dix staff received training in compliance with PREA standards on the dynamics of sexual assault in prison, 3) the fact that Fort Dix staff considered

²⁴ *PREA Audit: Auditor's Summary Report, Federal Bureau of Prisons FCI Fort Dix*, 13 (May 31, 2014), <https://perma.cc/9BTN-TCWD>.

Ms. Shorter's transgender identity when screening her in compliance with PREA standards, and 4) the fact that Ms. Shorter received an "at-risk" designation.

CONCLUSION

Federal courts have repeatedly recognized that correctional officials have a constitutional duty to protect people who are incarcerated from known risks of sexual abuse. Extensive data shows that transgender people face extraordinarily high rates of sexual assault in prison and that people who have previously been victimized are overwhelmingly likely to experience future abuse. In addition, the particularized allegations of this case demonstrates that Fort Dix staff were aware of Ms. Shorter's transgender status and history of victimization and had been trained on the dynamics of sexual assault in prison the year before her assault. These facts warrant reversal of the district court's dismissal of Ms. Shorter's amended complaint.

Dated: November 23, 2020

Respectfully submitted,

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1. This brief complies with the type/volume limits of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because this brief contains 4,205 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).
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CERTIFICATE OF BAR ADMISSION

I certify that I, Kevin Costello, am a member of the bar of the United States Court of Appeals for the Third Circuit.

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I certify that on November 23, 2020, I electronically filed the foregoing with the United States Court of Appeals for the Third Circuit by using CM/ECF system.

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