

EXHIBIT 1

Message

From: Mandin, Alicia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F0942AAEBA3E446290068038BCEF51A1-ALICIA.MAND]
Sent: 5/4/2020 4:15:53 PM
To: Ford, Benjamin [benjamin.ford@gdc.ga.gov]; Barber, Sarah [sarah.barber@gdc.ga.gov]; Miller, Sanetra [sanetra.miller@gdc.ga.gov]; Mantle, Kenneth [kenneth.mantle@gdc.ga.gov]; Mccullough, Sonya [sonya.mccullough@gdc.ga.gov]
CC: Wilson, Bryan [bryan.wilson@gdc.ga.gov]; Ammons, Jennifer [jennifer.ammons@gdc.ga.gov]; Hendley, Crystal [crystal.hendley@gdc.ga.gov]
Subject: Ante Litem/Notice to Preserve - IM Ashley Diamond, 1000290565

Good afternoon, everyone.

Please see the Ante Litem Notice, attached. Please be sure all records for Ashley Diamond, 1000290565, are retained until further notice.

Let me know if you have any questions. Thank you.

Respectfully,

Alicia Mandin
Paralegal 2
Office of Legal Services
Georgia Department of Corrections
300 Patrol Road
Gibson Hall, 3rd Floor
Forsyth, GA 31029
478-992-5238
alicia.mandin@gdc.ga.gov

We set the exceptional standard for protecting the public through our people, processes, and infrastructure.

The Georgia Department of Corrections protects the public by operating safe and secure facilities through the development of professional staff and effective offender management.

EXHIBIT 2

FILED
UNDER SEAL

EXHIBIT 3

From: Hofer, Chester
Sent: Tuesday, July 7, 2020 5:34 AM
To: Benton, Brooks; Betterson, Carl
Subject: FW: PREA Letter DIAMOND, ASHLEY ALTON GDC ID: 1000290565
Attachments: prea.pdf

Hello,

The attached PREA allegation was received from the Office of Victim Services. Please forward to SART for investigation/disposition.

Thanks!

Chester Hofer
PREA Analyst
(478)960-2756

The Georgia Department of Corrections protects the public by operating safe and secure facilities through the development of professional staff and effective offender management.

From: Keir Chapple <keir.chapple@pap.ga.gov>
Sent: Monday, July 6, 2020 6:54 PM
To: Atchison, Grace <Grace.Atchison@gdc.ga.gov>; Hofer, Chester <Chester.Hofer@gdc.ga.gov>
Cc: Destiny Brown <Destiny.Brown@pap.ga.gov>
Subject: PREA Letter DIAMOND, ASHLEY ALTON GDC ID: 1000290565

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Hofer and Ms. Atchison,

Please find attached a third party PREA letter from the southern poverty center on behalf of Ashley Diamond. Please advise if you have any questions regarding this correspondence.

Keir D. Chapple, MBA

Deputy Director

Georgia Office of Victim Services

Office: 404-651-6994 **Mobile:** 404-295-0220

Fax: 404-465-3567

Address: 2 Martin Luther King Jr. Drive SE Suite 458 Atlanta, GA 30334

Work email: keir.chapple@pap.ga.gov

Office of Victim Services email: victimservices@pap.ga.gov

Website: www.pap.ga.gov





July 2, 2020

Commissioner Timothy Ward
Georgia Department of Corrections
7 MLK Jr Drive, Suite 543
Atlanta, GA 30334

Georgia Department of Corrections
Attn: Office of Professional Standards/ PREA Unit
300 Patrol Rd.
Forsyth, Ga. 31029
PREA.report@gdc.ga.gov
Ombudsman@gdc.ga.gov

State Board of Pardons and Paroles
Office of Victim Services
2 Martin Luther King, Jr. Drive, S.E.
Balcony Level, East Tower
Atlanta, Georgia 30334
VictimServices@pap.ga.gov

Re: Notice of Constitutional and PREA Violations on Behalf of Ashley Diamond (GDC ID: 1000290565)

Dear Commissioner Ward, PREA Coordinator, and State Board of Pardons and Paroles:

We write on behalf of our client, Ashley Diamond, to put the Georgia Department of Corrections on notice of another incident of sexual harassment involving Ms. Diamond, this one at her new facility, Coastal State Prison ("Coastal"). As such, this letter serves as a third-party Prison Rape Elimination Act (PREA) Notice filed pursuant to GDC Standard Operating Procedure (GDC SOP) 208.06.IV.E.2.

Ms. Diamond was transferred to Coastal on June 4, 2020 and was moved out of medical quarantine to a dormitory on June 18. Before Ms. Diamond even entered her dormitory, however, a GDC staff member called a dormitory-wide meeting during which he publicly shared Ms. Diamond's transgender status and made sexual comments of a derogatory and

offensive nature about her to the people with whom she now must live. He also made threatening statements after she attended a legal call. This staff member, identified below and who had already sexually harassed Ms. Diamond while she was in medical quarantine, should be subject to disciplinary action.

Further, Ms. Diamond has faced ongoing constitutional violations related to her medical and mental health care while in GDC custody, and as a result, has repeatedly self-harmed. Ms. Diamond continues to experience disruptions in her hormone medications, irregular appointments with medical professionals and counselors that are uninformed about gender dysphoria, and restrictions on her gender expression.

GDC must ensure that Ms. Diamond is protected from sexual harassment and assault, and that she receives medically necessary care for her gender dysphoria. We have repeatedly informed GDC of the medical, mental health, and safety concerns faced by Ms. Diamond while in GDC custody.¹ As our previous correspondence has made you aware, while Ms. Diamond was at the Georgia Diagnostic and Classification Prison (GDCP), she languished without proper healthcare and endured repeated sexual harassment and assault at the hands of other incarcerated people and GDC staff. This latest incident of GDC staff misconduct at Coastal puts Ms. Diamond's safety at risk yet again, and highlights the need for Ms. Diamond to be released or transferred to a female facility where she can receive a full complement of care necessary for her gender dysphoria.

I. Unit Manager Jackson Sexually Harassed Ms. Diamond and Later Made Derogatory and Demeaning Remarks of a Sexual Nature About Her in a Dormitory-Wide Meeting.

Unit Manager Jackson approached Ms. Diamond while she was in medical quarantine and harassed her about being transgender. Jackson called Ms. Diamond a man and proceeded to make inappropriate comments about her breasts and genitalia as well as her facial hair. Ms. Diamond told Jackson that those comments were harmful to her mental health, and Jackson walked away.

A few days later, on June 18, 2020, GDC officials informed Ms. Diamond that she would be moved out of medical quarantine to another dormitory. This dormitory houses more than 100 incarcerated people. When she entered the dormitory, Ms. Diamond noticed that several people were staring at her. Ms. Diamond eventually learned, through conversations with other incarcerated people in the dormitory, that Jackson had called a dormitory-wide meeting on June 17, the day before Ms. Diamond's move, during which Jackson told everyone gathered that "a freak is about to walk in" and that they would have to deal with it. Jackson disclosed Ms. Diamond's private medical information, made derogatory remarks about Ms. Diamond's breasts and genitalia, intentionally misgendered her, and said, "don't try touching him [Ms. Diamond] no matter how much of a woman he [Ms. Diamond] looks." Ms. Diamond was repeatedly referred to as "he" and "it" by Jackson during this meeting.

Thereafter, on June 19, 2020 after Ms. Diamond attended a lawyer call, Unit Manager Jackson summoned Ms. Diamond and the other incarcerated people in her dormitory for

¹ See Letters dated May 1, May 20, and June 3, 2020, attached hereto.

another meeting during which he singled out Ms. Diamond, bemoaned the presence of transgender people in the dormitory, and proceeded to threaten Ms. Diamond in front of the crowd gathered by saying that he has “people” that can “get at [Ms. Diamond]” if further misconduct reports are made.

It is our understanding that there is video surveillance of this dormitory that captured Jackson’s dormitory-wide meetings and Ms. Diamond’s move to the dormitory. As stated in prior letters, GDC must preserve all evidence related to Ms. Diamond’s conditions of confinement in anticipation of litigation. *See* Fed. R. Civ. P. 37(e). This includes, but is not limited to, surveillance video, including any available corresponding audio, of the above incident.

II. Unit Manager Jackson’s Actions Put Ms. Diamond At An Unacceptable Risk of Sexual Assault, Retaliation, and Violence and Violate GDC’s Own Policies.

As you are aware from our prior correspondence, Ms. Diamond has repeatedly expressed safety concerns as a transgender woman housed in a male GDC facility. GDC has a duty to “take reasonable measures to guarantee the safety of” Ms. Diamond. *Diamond v. Owens (Diamond I)*, 131 F. Supp. 3d 1346, 1376 (M.D. Ga. 2015) (quoting *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1099 (11th Cir. 2014)). It is well established that transgender women housed at men’s facilities are at a high risk of sexual assault. *See* U.S. Dept. of Justice, *PREA Data Collection Activities, 2015* (confirming that 1 in 3 transgender people in prisons reported having been sexually victimized by facility staff or other incarcerated people). Ms. Diamond also has a documented history of being sexually assaulted, including being raped, while in GDC custody. *Diamond I*, 131 F. Supp. 3d 1355–56. By mocking Ms. Diamond to her entire dormitory and drawing attention to her transgender status, Jackson increased Ms. Diamond’s already substantial risk of sexual assault.

Jackson’s actions also violate established GDC policy and require disciplinary action. Under GDC’s PREA policy, Jackson’s derogatory comments to Ms. Diamond while she was in medical quarantine constitute sexual harassment by a staff member under GDC’s PREA guidelines. *See* GDC SOP 208.06.III.M.2 (defining “Sexual Harassment” by staff to include “[r]epeated verbal comments or gestures of a sexual nature ... including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures”). Further, Jackson’s dormitory-wide meeting about Ms. Diamond’s transgender status and his inappropriate commentary violate GDC’s policy for the “Classification and Management of Transgender and Intersex Offenders” (“Transgender SOP”). The Transgender SOP requires that staff keep sensitive information about transgender people confidential, recognizing that transgender people “are at a particularly high risk for physical or sexual abuse or harassment.” GDC SOP 220.09.IV.D.1. The policy also requires that staff behave professionally and responsibly around Ms. Diamond, refer to her by her preferred pronouns or by her legal last name, and refrain from “unwelcomed verbal comments, gestures, or actions of a derogatory or offensive nature” or “demeaning references to [her] gender or gender identity.” GDC SOP 220.09.IV.I.

Finally, we reiterate that GDC may not retaliate, threaten to retaliate, or place Ms. Diamond in fear of retaliation for her advocacy. *See Nyberg v. Davidson*, 776 F. App’x 578, 582 (11th Cir. 2019). Jackson’s actions in talking about “snitches” and threatening

Ms. Diamond right after a lawyer call is unacceptable, particularly in light of his PREA violations.

GDC must take steps to protect Ms. Diamond from future sexual harassment and assault, as well as retaliation, including by taking disciplinary action against Jackson.

III. Ms. Diamond Continues to Be Denied Adequate Care for Her Gender Dysphoria and Post-Traumatic Stress Disorder.

As you know, Ms. Diamond has experienced ongoing constitutional violations since entering GDC custody. As a consequence of her poorly-treated gender dysphoria, Ms. Diamond has attempted to castrate herself and has sustained serious injuries to her genitalia. Since her arrival at Coastal, Ms. Diamond has repeatedly notified GDC staff that her gender dysphoria treatment was inadequate and was leading her to attempt auto-castration.

GDC must provide Ms. Diamond with necessary medical and mental health care under the Eighth Amendment. *See McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999). Since entering GDC custody, GDC has failed to provide Ms. Diamond with adequate treatment for her gender dysphoria as well as her post-traumatic stress disorder, bipolar disorder, and depression. Her post-traumatic stress disorder, specifically, was caused by sexual assaults while in GDC custody during her prior period of incarceration. *See Diamond I*, 131 F. Supp. 3d 1355–56. Ms. Diamond’s mental health has been exacerbated by repeated sexual assaults, disruptions in her hormone medications, failure to monitor her blood levels, irregular appointments with counselors who are ill-equipped to address her gender dysphoria, and restrictions on her gender expression.

Appropriate treatment for Ms. Diamond includes: (1) regular bloodwork and monitoring of her hormone therapy regimen to ensure that Ms. Diamond is receiving proper doses, (2) appointments with counselors and medical providers specialized in gender dysphoria treatment, (3) evaluation with qualified experts to determine whether additional medical care, including gender-confirmation surgery, is necessary, and (4) accommodations for gender expression, including access to hair removal and female undergarments.

In light of Ms. Diamond’s deteriorating mental health and self-harm, GDC must take immediate action to ensure that she receives medically necessary care for her gender dysphoria, post-traumatic stress disorder, and other mental health conditions.

IV. Ms. Diamond Should Be Released from GDC Custody.

As you are aware from our prior correspondence, Ms. Diamond was not safe at GDCP due to ongoing constitutional violations related to her medical and mental healthcare as well as her constant fear of sexual assault. This latest PREA incident raises similar concerns about constitutional violations at Coastal. Further, Ms. Diamond’s chronic asthma puts her at heightened risk from COVID-19, particularly at Coastal. The state of Georgia has not been spared from the COVID-19 pandemic, with 1,874 new confirmed cases since Sunday.² Coastal

² Will Peebles, *Georgia COVID-19 Cases Top 80,000; Chatham Cases Up by 181 Since Monday*, Savannah Morning News (June 30, 2020),

has already had 42 confirmed cases of COVID-19, including 41 incarcerated people and 1 staff member.³ Ms. Diamond's chronic asthma puts her at a higher risk for serious illness from COVID-19, as does the stress she has experienced in GDC custody. **Accordingly, Ms. Diamond should immediately be released from custody, placed in a transitional center, or transferred to a female facility.**

Please contact us if you would like to discuss these matters.

Respectfully,



Beth Littrell
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cc: Ahmed Holt, Assistant Commissioner Facilities Division
Jack "Randy" Sauls, Assistant Commissioner Health Services Division
Robert Toole, Director of Field Operations
Cedric Taylor, North Regional Director
Stan Shepard, Southeast Regional Director
Jennifer Ammons, General Counsel
Elizabeth McCrary Crowder, Office of the Attorney General
Brooks Benton, Warden of Coastal State Prison

<https://www.savannahnow.com/news/20200630/georgia-covid-19-cases-top-80000-chatham-cases-up-by-181-since-monday>.

³ Georgia Department of Corrections, *Confirmed COVID-19 Cases*, <http://dcor.state.ga.us/content/cases> (last updated June 30, 2020).

encl: Letter from SPLC to GDC (May 1, 2020)
Letter from SPLC and CCR to GDC (May 20, 2020)
Letter from SPLC and CCR to GDC (June 3, 2020)



Fighting Hate
Teaching Tolerance
Seeking Justice

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May 1, 2020

Commissioner Timothy Ward
Georgia Department of Corrections
7 MLK Jr Drive, Suite 543
Atlanta, GA 30334

**Re: Notice of Constitutional Violations on Behalf of Ashley Diamond
(GDC ID: 1000290565)**

Dear Commissioner Ward:

The Southern Poverty Law Center (SPLC) represents Ashley Diamond, a transgender woman who is at substantial risk for serious harm based on her conditions of confinement. Since entering the custody of Georgia Department of Corrections (GDC), Ms. Diamond has been repeatedly sexually assaulted by staff and other incarcerated people; is at an increased risk of sexual assault in her current housing; is at an increased risk of serious illness if exposed to COVID-19; and is not receiving constitutionally adequate treatment for gender dysphoria and other mental health conditions. SPLC writes to ensure that GDC immediately fulfills its obligation to protect Ms. Diamond from sexual violence and to provide her constitutionally mandated medical and mental health care.

As you will recall, SPLC represented Ms. Diamond in a lawsuit against GDC officials in 2015 because of similar failures.¹ Unfortunately, Ms. Diamond is once again facing repeated sexual assaults in GDC custody. Ms. Diamond is also experiencing an unconstitutional denial of gender dysphoria treatment and medical and mental health care.

To avert further litigation, GDC must take immediate steps to ensure Ms. Diamond's healthcare and safety. Specifically, GDC must (1) immediately release Ms. Diamond or transfer her to a facility that can ensure her safety, (2) provide Ms. Diamond consistent medical and mental health treatment until her release, and (3) preserve evidence related to Ms. Diamond's conditions of confinement, including evidence of her sexual assault by a GDC staff member.

¹ See, e.g., Deborah Sontag, *Georgia: State to Pay Transgender Inmate*, N.Y. Times (Feb. 12, 2016), <https://www.nytimes.com/2016/02/13/us/georgia-state-to-pay-transgender-inmate.html>; Deborah Sontag, *Transgender Woman Cites Attacks and Abuse in Men's Prison*, N.Y. Times (Apr. 5, 2015), <https://www.nytimes.com/2015/04/06/us/ashley-diamond-transgender-inmate-cites-attacks-and-abuse-in-mens-prison.html>; Matt Apuzzo, *Transgender Inmate's Hormone Treatment Lawsuit Gets Justice Dept. Backing*, N.Y. Times (Apr. 3, 2015), <https://www.nytimes.com/2015/04/04/us/ashley-diamond-transgender-hormone-lawsuit.html>.

I. GDC Continues to Deny Ms. Diamond Adequate Medical and Mental Health Care Treatment and Protection from Sexual Assault Despite Her Prior Lawsuit.

Ms. Diamond is a forty-two-year-old transgender woman. As established in earlier litigation against GDC for similar mistreatment, Ms. Diamond was diagnosed with gender dysphoria at the age of fifteen,² has received medically necessary hormone therapy since the age of seventeen—with the exception of forced interruptions by GDC—and has lived in accordance with her female gender identity for more than twenty years. *Diamond v. Owens* (*Diamond I*), 131 F. Supp. 3d 1346, 1355 (M.D. Ga. 2015). *Id.* She has female secondary sex characteristics, including “full breasts, a feminine shape, soft skin, and ... a reduction in male attributes.” *Id.* She also suffers from post-traumatic stress disorder, depression, bipolar disorder, and chronic asthma.

In 2012, Ms. Diamond entered GDC custody for a nonviolent offense. GDC’s subsequent failure to properly evaluate, treat, and protect her are well documented. *See id.* at 1354–70. Ms. Diamond’s 2015 lawsuit to address these systemic failures prompted GDC to change its policies with respect to how it evaluates and treats people that enter GDC custody who are, or might be, transgender or suffer with gender dysphoria.³ The policy changes instituted after the initiation of Ms. Diamond’s lawsuit, along with her release and award of financial compensation, led to the voluntary dismissal of the case pursuant to a settlement agreement.

Ms. Diamond re-entered GDC custody on October 29, 2019 for a parole violation and nonviolent offense. She was fast-tracked through GDC’s intake process, during which she had an initial psychiatric evaluation. She later met with several GDC officials and discussed her placement in a GDC facility, including her preference to be placed in a female facility for safety reasons. She also expressed a need to be housed in a smaller GDC facility better equipped to manage her medical and mental health needs and to mitigate her risk of sexual assault. Unfortunately, Ms. Diamond’s requests went unheeded, and her worst fears were quickly realized.

Ms. Diamond was placed at the Georgia Diagnostic and Classification Prison (“GDCP”), a close-security facility housing “some of the most aggressive and dangerous prisoners in the correctional system,”⁴ where she was promptly subjected to repeated sexual assaults. Due to the credible and constant fear of additional sexual assault and brutalization, Ms. Diamond is unable to regularly access medications and food and is experiencing elevated

² It is beyond dispute that Ms. Diamond suffers from gender dysphoria. GDC has admitted that Ms. Diamond’s gender dysphoria is a serious medical need requiring care. *See Diamond v. Owens*, 131 F. Supp. 3d 1346, 1372 (M.D. Ga. 2015).

³ *See* Deborah Sontag, *Georgia Says It Will Allow Hormones for Transgender Inmates*, N.Y. Times (Apr. 9, 2015), <http://www.nytimes.com/2015/04/10/us/georgia-says-it-will-allow-hormones-for-transgender-inmate.html>.

⁴ *GDC - Georgia Diagnostic & Classification State Prison*, InmateAID, <https://www.inmateaid.com/prisons/gdc-georgia-diagnostic-classification-state-prison> (last updated Apr. 4, 2020).

levels of anxiety and depression. Ms. Diamond has also been denied constitutionally adequate care for her gender dysphoria and mental health disorders—breaches made all the more egregious by *Diamond I*, which put GDC on notice of Ms. Diamond’s medical needs and heightened vulnerability to sexual assault.

II. GDC Has Failed to Protect Ms. Diamond from Sexual Assault.

A. GDC Has a Constitutional Obligation to Protect Ms. Diamond from Sexual Assault.

Under the Eighth Amendment, GDC has a duty to “take reasonable measures to guarantee the safety of” Ms. Diamond. *Diamond I*, 131 F. Supp. 3d at 1376 (quoting *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1099 (11th Cir. 2014)). This duty includes protection from violence at the hands of others. *Id.* When examining whether prison officials possess actual knowledge of substantial risk of harm, courts have considered “the obviousness of the risk to [the incarcerated person’s] safety, the defendant’s knowledge about the vulnerability of certain types of [incarcerated people] to risk of harm, prison policies pertaining to such [incarcerated people], and their housing placements.” *Id.* at 1377–78.

B. GDC Has Turned a Blind Eye to Ms. Diamond’s Safety Needs and Even Perpetuated Sexual Assault Against Her.

As established in *Diamond I*, and as recognized by GDC officials, Ms. Diamond’s “transgender status ma[k]e[s] her more vulnerable to sexual assaults at a close[-]security facility.” *Diamond I*, 131 F. Supp. 3d at 1356. Yet, GDC has placed Ms. Diamond at GDCP, a close-security facility, where she has remained for six months. This placement has created an intolerably dangerous exposure to sexual assault. From the beginning of her re-entry into GDC custody, Ms. Diamond has repeatedly shared with GDC officials that she reasonably fears for her safety as a transgender woman in a male facility. During the intake process, Ms. Diamond indicated her fears and history of sexual assault while in GDC custody and requested to be housed at a female facility.

GDC ignored her placement requests in circumstances that mirror *Diamond I*, wherein Ms. Diamond was placed in “close[-]security facilities which housed violent offenders and had a history of frequent assaults.” 131 F. Supp. 3d at 1376. Unfortunately, but unsurprisingly, the consequences have been the same: Since her reentry, Ms. Diamond has repeatedly been sexually assaulted—including by GDC staff—causing severe anguish and distress. She also lives in constant fear of brutalization and retaliation.

Since October 2019, Ms. Diamond has endured preventable sexual assault in GDC custody at the hands of other incarcerated people on multiple occasions. GDC staff have also subjected Ms. Diamond to sexual misconduct. On March 10, 2020, in an incident caught on GDC video surveillance, a GDC staff member grabbed Ms. Diamond’s breasts and asked, “Are they real?” These actions were a direct contravention of GDC’s PREA guidelines, which define sexual abuse to include “[a]ny ... intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties.” GDC Standard Operating Procedure (GDC SOP) 208.06.III.L.5 (defining “Sexual Abuse by A Staff Member, Contractor, or Volunteer”).

Even though a PREA complaint was filed on March 13 and multiple people witnessed the incident, to date no disciplinary action has been taken against the officer who engaged in this sexual misconduct.

Ms. Diamond has repeatedly asked when she will be transferred out of GDCP into a facility better equipped to keep her safe. She has specifically requested an assessment to determine whether she could be transferred to a female facility.

GDC is clearly on notice of the substantial risk of sexual assault that Ms. Diamond faces as a transgender woman housed in male facilities—especially close-security facilities. *See Diamond I*, 131 F. Supp. 3d at 1357–58 (outlining the series of sexual assaults against Ms. Diamond while in GDC custody). Given this awareness, GDC’s decision to give Ms. Diamond—a non-violent offender and transgender woman with a history of sexual assault—a long-term placement at a close-security facility like GDCP reflects deliberate indifference to her substantial risk of serious harm, as in *Diamond I*.

III. GDC Has Denied Ms. Diamond Constitutionally Mandated Medical and Mental Health Treatment.

A. GDC Has a Constitutional Obligation to Provide Ms. Diamond Adequate Medical and Mental Health Care.

It is now well-established that gender dysphoria⁵ is a serious medical need that GDC has a constitutional obligation to treat pursuant to the Eighth Amendment. *See id.* at 1374–75. Courts have consistently held that gender dysphoria is a serious medical need for which the Eighth Amendment requires constitutionally adequate care. *See, e.g., Kothmann v. Rosario*, 558 F. App’x 907, 910 & n.4 (11th Cir. 2014); *accord Edmo v. Corizon, Inc.*, 935 F.3d 757, 785 (9th Cir. 2019); *White v. Farrier*, 849 F.2d 322, 325 (8th Cir. 1988); *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987). Bipolar disorder, depression, and PTSD are also serious medical needs. *See, e.g., Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1190 (M.D. Ala. 2017).

The Eighth Amendment requires that GDC provide Ms. Diamond necessary medical and mental health care, including but not limited to access to medical personnel capable of evaluating Ms. Diamond’s needs and to consistent treatment without delay or interruption. *See McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999); *Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986); *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985). The relevant inquiry under the Eighth Amendment is not whether GDC has provided Ms. Diamond *any* care, but whether it has provided her “constitutionally adequate” care. *Estelle v. Gamble*, 429 U.S. 97, 103–06 (1976). GDC violates Ms. Diamond’s constitutional rights when it delays treatment for a serious medical need, even for a period of hours. *See McElligott*, 182 F.3d at 1255.

⁵ Gender dysphoria is “broadly defined as discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics.” World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* 2 (7th ed. 2011).

B. GDC Has Denied Ms. Diamond Adequate Medical and Mental Healthcare.

Although GDC policies commit to providing constitutionally appropriate medical and mental health treatment, consistent with “[c]urrent, accepted standards of care” to incarcerated people with gender dysphoria, GDC SOP 507.04.68, to date GDC has not provided Ms. Diamond with constitutionally appropriate treatment. Contrary to GDC’s Standard Operating Procedure, GDC has not provided Ms. Diamond “thorough medical and mental health evaluations from appropriately licensed and qualified medical and mental health professionals.” *Id.* Indeed, other than continuing to prescribe the hormone regimen she was taking upon entry, GDC has not developed any treatment plan to alleviate Ms. Diamond’s gender dysphoria, let alone one that “that promotes the physical and mental health of the patient,” “is regularly reviewed and updated” or that is based on “current, accepted standards of care.” *Id.*

GDC is well aware of the seriousness of Ms. Diamond’s need for adequate mental health services and of the severe consequences of not providing her those services. *See Diamond I*, 131 F. Supp. 3d at 1354–58 (describing Ms. Diamond’s previous suicide and self-harm attempts while in GDC custody); Dr. Randi Ettner Decl. ¶ 9, *Diamond v. Owens*, No. 5:15-cv-50 (M.D. Ga. 2015), ECF No. 49-2 (“When Ms. Diamond goes without medically necessary gender dysphoria care, she experiences suicide ideation, emotional dysregulation, and a propensity to self-harm.”).

Despite this knowledge, GDC has not provided Ms. Diamond consistent hormone therapy or treatment for her mental health needs during the six months she has been housed at GDCP. For instance, Ms. Diamond’s hormone treatment has been discontinued for weeks at a time. This has caused physical changes, like reduction of her breast size and changes to the color and texture of her skin, as well as mental anguish from these changes to her physique. Despite Ms. Diamond’s depression, bipolar disorder, PTSD, and gender dysphoria, GDC’s psychologists and psychiatrists have seen Ms. Diamond only twice since intake, once in January and one other time after filing a grievance. Mental health counseling has also been limited, sporadic and unhelpful.

Although GDCP has proven itself ill-equipped to treat Ms. Diamond’s gender dysphoria, GDC has repeatedly ignored Ms. Diamond’s requests to be transferred from GDCP to another facility. GDC is once again demonstrating deliberate indifference to Ms. Diamond’s “serious medical needs by their repeated refusal to provide, authorize, or refer her for treatment” that GDC knows is “medically necessary, thus causing and perpetuating psychological and physical harm.” *Diamond I*, 131 F. Supp. 3d at 1373–74.

IV. GDC Has a Duty to Allow Private Legal Communications and Not to Retaliate Against Ms. Diamond for Her Advocacy.

The SPLC expects that GDC will honor Ms. Diamond’s right of access to the courts, which includes private communications with her attorneys at the SPLC. *See Taylor v. Sterrett*, 532 F.2d 462, 473 (5th Cir. 1976) (“Restrictions may not be placed upon the attorney-client

relationship which effectively diminish a prisoner’s access to the courts.”)⁶ The attorney–client privilege is the “oldest of the privileges for confidential communications” and is critical to the effective assistance of counsel. *Gennusa v. Canova*, 748 F.3d 1103, 1110–11 (11th Cir. 2014) (citing *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)). Such confidential communications require, at a minimum, private legal visits, unmonitored legal calls, and no interference with legal mail. *See, e.g.* GDC SOP 227.05.IV.Z; GDC SOP 227.06.IV.E.2.

Furthermore, GDC may not retaliate, threaten to retaliate, or place Ms. Diamond in fear of retaliation for her advocacy. *See Nyberg v. Davidson*, 776 F. App’x 578, 582 (11th Cir. 2019) (holding that incarcerated person plausibly alleged First Amendment retaliation claim where adverse action “would deter an [incarcerated person] of ordinary firmness from engaging in First Amendment protected conduct,” such as filing a lawsuit).

V. GDC Must Take the Following Actions to Avert Litigation.

In the six-month period since Ms. Diamond reentered GDC, she has been (1) repeatedly sexually assaulted by other incarcerated people after her safety-based housing requests were ignored; (2) sexually abused and harassed by a GDC staff member openly on video; (3) denied continuous access to the gender dysphoria treatment that formed the basis of her prior lawsuit; and (4) refused routine mental health treatment, despite her medical need.

GDC’s actions and omissions violate Ms. Diamond’s clearly established constitutional rights. *See Diamond I*, 131 F. Supp. 3d at 1374–75, 1379–80 (rejecting qualified immunity arguments for GDC officials after finding constitutional claims to be clearly established). Therefore, absent prompt remedial measures, GDC will be facing another significant damages action.

A. GDC Must Immediately Release Ms. Diamond from Custody or Transfer Her to a Female Facility to Ensure Her Safety.

GDC must either immediately release or transfer Ms. Diamond in order to ensure her safety. Release is the most appropriate action. GDC should immediately release Ms. Diamond given the ongoing threats to her health and safety and given the non-violent nature of her offense. In addition to her increased and demonstrated vulnerability to sexual assault and GDC’s inadequate treatment of her mental health conditions, Ms. Diamond’s chronic asthma is an underlying medical condition that puts her at a higher risk for severe illness from COVID-19.⁷ Ms. Diamond also is a nonviolent offender who is parole eligible.. The combination of these environmental, medical, and mental health conditions support Ms. Diamond’s immediate release.

Alternately, GDC should immediately transfer Ms. Diamond to a female facility that can meet her medical, mental health, and safety needs. GDC procedures prohibit transgender

⁶ The Eleventh Circuit has adopted the case law of the former Fifth Circuit as its governing body of precedent. *See Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc).

⁷ *See People Who Are at Higher Risk for Severe Illness*, Ctrs. Disease Control & Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited Apr. 15, 2020).

people in custody from being housed in “[a] gender-specific facilit[y] based solely on [her] external genital anatomy.” GDC SOP 220.09.IV.C.2. Instead, *serious consideration* must be given to Ms. Diamond’s “documented choice of whether a male or female facility is safest.” GDC SOP 220.09.IV.C.3.b.; *accord* Prison Rape Elimination Act National Standards (PREA Standards), 28 C.F.R. § 115.42. GDC must also consider whether a particular placement would ensure Ms. Diamond’s health and safety. GDC SOP 220.06.IV.D.6. Given Ms. Diamond’s history of brutal sexual assault at male GDC facilities—particularly close-security facilities—and her repeated requests to be housed in a female facility for safety reasons, all factors counsel in favor of placing Ms. Diamond in a female facility without delay.

Ms. Diamond’s transfer also qualifies as an “essential movement” under GDC’s newly instituted COVID-19 protocol because her existing placement at GDCP presents ongoing violations of her constitutional rights and should be considered necessary for her medical care and as an extenuating security concern.⁸

At a minimum, GDC must immediately transfer Ms. Diamond to a facility with a lower security level that is equipped to provide consistent and adequate medical and mental health care, while evaluating whether Ms. Diamond should be released or placed in a female facility. GDC should consider Central State Prison or Rutledge State Prison, which are smaller facilities where Ms. Diamond has not had to file a PREA complaint in the past.

Under no circumstances should Ms. Diamond be placed in segregation, which would violate PREA, increase her risk of mental health problems, and constitute deliberate indifference to known risks of serious harm. The use of involuntary segregated housing is not an appropriate response to Ms. Diamond’s increased risk of sexual assault. *See* GDC SOP 220.06.IV.D.9; Prison Rape Elimination Act National Standards (PREA Standards), 28 C.F.R. § 15.43. GDC procedures specifically prohibit the placement of someone in “involuntary segregation based solely on [the] determination” that she is “at high risk for sexual victimization,” if there are available alternatives. GDC SOP 220.06.IV.D.9.

Placing people with serious mental illnesses in segregation absent extraordinary circumstances places them at a substantial risk of harm. *Braggs*, 257 F. Supp. 3d at 1247. Numerous professional and healthcare organizations have warned of the detrimental effects of isolation, particularly for those with mental illnesses.⁹ As set out above, multiple alternative

⁸ *See generally* Press Release, Georgia Department of Corrections, Coronavirus (COVID-19) Response (Mar. 16, 2020), <http://www.dcor.state.ga.us/NewsRoom/PressReleases/georgia-department-corrections-coronavirus-covid-19-response> (announcing suspension of “non-essential offender movement across GDC facilities, effective March 3, 2020, until further notice”); *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Ctrs. Disease Control & Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last updated Apr. 18, 2020) (exceptions to suspending transfers include where “necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding”).

⁹ *See, e.g.*, Am. Psychiatric Ass’n, Position Statement on Segregation of Prisoners with Mental Illness (Dec. 2017), <https://www.psychiatry.org/file%20library/about-apa/organization-documents-policies/policies/position-2012-prisoners-segregation.pdf>; Nat’l Comm’n on Corr. Health Care, Solitary Confinement (Isolation) (Apr. 2016), <https://www.ncchc.org/solitary-confinement>; Am. Pub. Health Ass’n, Solitary Confinement as a Public Health Issue (Nov. 2013),

avenues exist to ensure Ms. Diamond’s safety including release and transfer to another facility. Given GDC’s knowledge of Ms. Diamond’s serious medical needs, mental health diagnoses, and history of suicide attempts, self-harm, and mental decompensation in self-confinement, as documented in *Diamond I* and this letter, to forgo those alternatives and place Ms. Diamond in segregation would demonstrate deliberate indifference in violation of the Eighth Amendment. See, e.g., *Conner v. Rubin-Asch*, 793 F. App’x 427, 430 (7th Cir. 2019) (“[A] defendant acts knowingly and unreasonably if that defendant ‘(1) subjectively knew the prisoner was at substantial risk of committing suicide and (2) intentionally disregarded the risk.’”); see also *G.H. by & through Henry v. Marsteller*, 424 F. Supp. 3d 1109, 1118 (N.D. Fla. 2019) (holding notification to Department of Juvenile Justice from counsel on behalf of youth about the suicide risk to children subject to solitary confinement was sufficient to put defendants on “actual notice of the substantial risk of serious harm”).”

B. GDC Must Provide Ms. Diamond Uninterrupted Medical and Mental Health Treatment Until Her Release from Custody.

In addition, GDC must take immediate steps to provide Ms. Diamond continuous medical and mental health treatment. This includes, but is not limited to, (1) regular appointments with the necessary medical and mental health professionals, (2) administration of hormone therapy and other medication without delay or interruption, (3) counseling sessions with a mental health provider qualified to address Ms. Diamond’s gender dysphoria, depression, PTSD, and bipolar disorder at an effective frequency, and (4) appropriate programming.

C. GDC Must Fulfill Its Legal Duty to Preserve Evidence.

Finally, GDC must preserve all evidence related to Ms. Diamond’s conditions of confinement, in anticipation of further litigation. See Fed. R. Civ. P. 37(e). This includes, but is not limited to, Ms. Diamond’s medical and mental health records; copies of grievances; and evidence related to Ms. Diamond’s past sexual assaults, including her March 10, 2020 sexual assault by a GDC staff member, including but not limited to, PREA complaints, physical and DNA evidence, witness statements, surveillance video, and files or documents concerning any subsequent investigations.

* * *

GDC must ensure that Ms. Diamond receives the healthcare and protection from sexual assault to which she is constitutionally entitled. SPLC will continue to monitor our client’s conditions of confinement and expect a response to this letter in writing within 30 days setting forth the steps GDC has taken, or intends to take, to ensure that Ms. Diamond’s constitutional rights are respected. Please contact me if you would like to discuss these matters.

<https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>.

Respectfully,
/s/ Beth Littrell

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cc: Ahmed Holt, Assistant Commissioner Facilities Division
Jack "Randy" Sauls, Assistant Commissioner Health Services Division
Jennifer Ammons, General Counsel
Elizabeth McCrary Crowder, Office of the Attorney General



May 20, 2020

Commissioner Timothy Ward
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Office of Victim Services
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Atlanta, Georgia 30334

**Re: Notice of Ongoing Constitutional and PREA Violations on Behalf of
Ashley Diamond (GDC ID: 1000290565)**

Dear Commissioner Ward, PREA Coordinator, and State Board of Pardons and Paroles:

The Southern Poverty Law Center (SPLC) and the Center for Constitutional Rights (CCR) have been retained to represent Ashley Diamond, a transgender woman who has been in the custody of the Georgia Department of Corrections (GDC) for the past six months. This letter serves as a third-party Prison Rape Elimination Act (PREA) Notice filed pursuant to GDC Standard Operating Procedure (GDC SOP) 208.06.IV.E.2.

As we informed GDC by letter on May 1, 2020 ("May 1 Letter"), Ms. Diamond has endured repeated sexual harassment and assault at the Georgia Diagnostic and Classification Prison (GDGP) and remains at severe risk of assault. Equally worrisome, the perpetrators of this sexual violence have been other incarcerated people **as well as GDC staff**.

The May 1 letter detailed the constitutional and PREA violations Ms. Diamond is experiencing due to GDC's failure to protect her from sexual assault or to provide her adequate medical and mental health care. However, Ms. Diamond remains at GDCP despite her expressed safety concerns and substantial risk of sexual assault. No disciplinary action has been taken to date in response to the PREA complaint filed on March 13, 2020, regarding her sexual assault by a GDC staff member. And, on May 9 and 10, 2020, Ms. Diamond endured yet another instance of sexual abuse by a GDC officer. In addition to violating GDC's PREA guidelines, these actions constitute a violation of state and federal law.

GDC must ensure that Ms. Diamond is protected from sexual assault, including from GDC staff. Accordingly, we expect GDC's response to the May 1 letter—requested no later than May 31, 2020—to include information on the steps GDC has taken, or intends to take, to address the supplemental information detailed below.

Background on Ms. Diamond's Sexual Assaults by GDC Staff

I. Ms. Diamond was Sexually Assaulted and Harassed by a GDC Staff Member on March 10, 2020.

On March 10, 2020, a GDC staff member known to Ms. Diamond as "Nurse Lucas," sexually harassed and assaulted Ms. Diamond as she was on a special detail with a sanitation officer. While they put on hazmat gear, Lucas started mocking Ms. Diamond. Lucas then groped Ms. Diamond's breasts and asked, "Are they real?". We understand that this incident was caught on GDC video surveillance, and that a sergeant and several other people witnessed the assault. A PREA complaint was filed on March 13 and Ms. Diamond wrote a statement about the incident. As noted in the May 1 letter, the GDC staff member's actions were a direct contravention to GDC's PREA guidelines. *See* GDC SOP 208.06.III.L.5 (defining "Sexual Abuse by A Staff Member").

II. Ms. Diamond was Sexually Assaulted and Harassed by a GDC on May 9 and May 10, 2020.

Over a two-day period, Ms. Diamond was sexually assaulted and harassed by GDC Officer Arethiea Smith. This is yet another instance where a GDC officer has engaged in sexually inappropriate conduct towards Ms. Diamond. It constitutes a clear violation of the GDC PREA Guidelines and further underscores the need for GDC to take immediate action to address Ms. Diamond's safety concerns. *See* GDC SOP 208.06.

May 9th Incident

On May 9, 2020, Smith approached Ms. Diamond while she was working as a GDCP orderly, where she performs small tasks and errands for GDC officers. Ms. Diamond had encountered Smith in the past in her work as an orderly. Smith ordered her to enter a small windowless office behind a locked gate that is used by GDC officers and requires a key to enter and exit. Smith entered the office with Ms. Diamond and locked the door behind her, trapping Ms. Diamond in there with her. For the next two hours, Smith kept Ms. Diamond locked in the office and engaged in sexually inappropriate conduct. For example, Smith questioned Ms. Diamond about whom she found sexually attractive at GDCP and touched

Ms. Diamond's leg and back as they spoke. When Smith finally released Ms. Diamond from the office, she ordered her to keep quiet about the incident. Ms. Diamond complied out of fear.

May 10th Incident

The next day, on May 10, Smith ordered Ms. Diamond to go to the office again and kept Ms. Diamond locked in the office against her will for approximately four hours. Smith instructed Ms. Diamond to get a mattress from an adjacent closet and set up the office with a makeshift bed using the mattress, blankets, and pillows. After Ms. Diamond complied with Smith's demands, Smith sat down on the bed and asked Ms. Diamond to sit with her. Smith proceeded to ask Ms. Diamond a series of sexually-explicit and inappropriate questions about her genitalia, being transgender, and her sexual history, including, without limitation, questions such as, "what kind of dicks do you like?," "have you ever been with a woman?," and "do you fuck boys or girls?". While asking these questions, Smith sat on the bed very close to Ms. Diamond and repeatedly touched her legs, thighs, and buttocks. Smith also instructed Ms. Diamond to show her breasts and genitalia to Smith, and Ms. Diamond complied under coercion and duress because Smith was abusing her power and Ms. Diamond feared retaliation.

After approximately two hours, another GDC officer, Scott Ridley, approached the locked gate and knocked to be let into the room. Smith answered only after the Ridley knocked several times and insisted that Smith open the door to the office. When Smith opened the door, Ridley saw Ms. Diamond locked in the office with the makeshift bed. Ridley departed and Smith kept Ms. Diamond locked in the office with her for another two hours and continued engaging in sexually inappropriate questions and touching.

Rumors of what had happened have already spread throughout GDCP, and Ms. Diamond heard an officer say, "I want to know about the n****r who was in the closet fucking the officer."

Ms. Diamond is in shock and continues to fear for her safety.

III. Sexual Misconduct by GDC Staff Is Inexcusable under State and Federal Law and Requires Urgent Action.

Sexual abuse by GDC staff can violate the Eighth Amendment. *See Sconiers v. Lockhart*, 946 F.3d 1256, 1266–67 (11th Cir. 2020). As the Eleventh Circuit recently emphasized, "[s]ome things are never acceptable, no matter the circumstances. Sexual abuse is one." *Id.* at 1259. An Eighth Amendment violation occurs when the GDC staff member acts "with a sufficiently culpable state of mind" and the conduct is "objectively harmful enough to establish a constitutional violation." *Id.* at 1265 (quoting *Hudson v. McMillian*, 503 U.S. 1, 8 (1992)).

Lucas and Smith's conduct "has no legitimate penological purpose" and does not "comport with contemporary standards of decency." *Id.* at 1259. Their unwarranted actions also constitute sexual harassment and abuse under the GDC PREA guidelines. For purposes of PREA, sexual abuse by a staff member includes "[a]ny ... intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties." GDC SOP 208.06.III.L.5. Sexual harassment includes

instances where staff members make “[r]epeated verbal comments or gestures of a sexual nature ... including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.” GDC SOP 208.06.III.M.2. Given Ms. Diamond’s history of sexual assault in GDC custody as well as her resulting post-traumatic stress disorder, Lucas and Smith’s actions have caused Ms. Diamond increased mental anguish and continued fear for her safety within GDC custody.

Sexual misconduct by a correctional officer is also a criminal offense under Georgia law. *See* Ga. Code Ann. § 16–6–5.1 (West 2019) (defining criminal offense of “improper sexual contact” as “any contact involving the intimate parts of either person for the purpose of sexual gratification of either person” by a correctional officer with a person “[i]n the custody of a correctional facility ... of which he or she is an employee or agent.”); *see also* Ga. Code Ann. § 16–6–22.1 (West 2006) (defining criminal offense of “sexual battery” as when a person “intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person.”).

GDC has a duty to “take reasonable measures to guarantee the safety of” Ms. Diamond. *Diamond v. Owens (Diamond I)*, 131 F. Supp. 3d 1346, 1376 (M.D. Ga. 2015) (quoting *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1099 (11th Cir. 2014)). Lucas and Smith’s inappropriate touching, sexually explicit and obscene questioning, and unwarranted requests to see Ms. Diamond’s breasts (and genitalia, in the case of Smith) are clear violations of PREA and put GDC on notice of their risk to Ms. Diamond’s safety. GDC PREA guidelines require that Lucas and Smith, who have committed sexual abuse, “be banned from correctional institutions and subject to disciplinary action, with termination being the presumptive discipline, and may also be referred for criminal prosecution when appropriate.” GDC SOP 208.06.IV.H.1; *see also Boyd v. Nichols*, 616 F. Supp. 2d 1331, 1341 (M.D. Ga. 2009) (finding investigation and immediate termination of jailer who committed sexual assault to be a reasonable response).

Further, GDC must protect Ms. Diamond from retaliation for reporting this sexual abuse, including through “housing changes or transfers, removal of alleged staff members ... from contact with victims, and emotional support services for [those] who fear retaliation for reporting or for cooperating with investigations.” GDC SOP 208.06.IV.F.4.

IV. GDC Must Enforce and Investigate Sexual Misconduct Without Discrimination.

It is well-documented that transgender women in men’s facilities are at increased risk of sexual victimization.¹ GDC is on notice that Ms. Diamond’s “transgender status ma[k]e[s] her more vulnerable to sexual assaults at a close[]-security facility.” *Diamond I*, 131 F. Supp.

¹ *See, e.g.,* U.S. Dept. of Justice, *PREA Data Collection Activities, 2015* (confirming that 1 in 3 transgender women in men’s prisons reported having been sexually victimized); Valerie Jenness et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, UC Irvine: Center for Evidence-Based Corrections (2009) (statewide study in California finding that transgender women housed in male facilities were 13 times more likely to be sexually assaulted than male prisoners in the same facility).

3d at 1356. It is also well-documented that Ms. Diamond has been repeatedly sexually harassed, abused, assaulted, and victimized in GDC custody.²

GDC has an obligation to implement the PREA standards and ensure incarcerated people like Ms. Diamond are not sexually victimized in a preventable manner. Yet, in the past, the PREA Coordinator has not been helpful in addressing Ms. Diamond's concerns. To date, no disciplinary action has been taken against the GDC staff member who sexually assaulted Ms. Diamond on May 9 and May 10, despite other GDC staffers learning about the misconduct.

Likewise, no disciplinary action has been taken in response to Ms. Diamond's PREA complaint concerning the March 10 incident of staff sexual abuse, and Ms. Diamond continues to be around the GDC staff member who assaulted her. Indeed, rather than respond, GDCP's PREA Coordinator mocked her and made a disparaging comment about Ms. Diamond. The PREA Coordinator's response indicates a discriminatory and unacceptably dismissive attitude toward sexual victimization by the person whose job it is to respond to PREA complaints. To prevent further violations of the Eighth Amendment to the U.S. Constitution, Georgia Criminal Law, and PREA, GDC must ensure that Ms. Diamond's complaints are adequately addressed by competent staff and that she is protected from retaliation and abuse.

V. Given the Ongoing Threats to Her Safety, Releasing Ms. Diamond Is Appropriate at this Time.

As detailed in the May 1 letter, Ms. Diamond is not safe at GDCP where she faces ongoing sexual assault and abuse. Ms. Diamond has remained at a close-security facility for the past six months despite her nonviolent offenses and a federal court's recognition that doing so puts her at risk for victimization. GDCP is ill-equipped to provide her constitutionally adequate medical care, mental health treatment, and protection from sexual assault. Further, Ms. Diamond's chronic asthma puts her at higher risk for serious illness from COVID-19, as does the stress she is experiencing as a result of GDC's failures as set forth in the May 1 letter and this letter. **Accordingly, Ms. Diamond should immediately be released from custody or transferred to a female facility.**

It is our understanding that Ms. Diamond is parole-eligible. In addition, she has numerous advocates in the community who can support her compliance with conditions of parole and welfare. For example, Ms. Diamond is guaranteed a spot at Inspire Recovery,³ a treatment center that specializes in the needs of the LGBTQ+ community. Enclosed please find a letter from Paul Zilber, the clinical coordinator, confirming that Inspire Recovery can

² Ms. Diamond reported numerous violent sexual assaults that occurred in GDC facilities between 2012–2015 that were the subject of earlier litigation. *See Verified Compl., Diamond v. Owens, et. al*, Case 5:15-cv-00050. Ms. Diamond also self-reported the extensive sexual assault history and resulting PTSD from her previous GDC incarceration upon re-entry. *See Diamond I*, 131 F. Supp. 3d 1355–56; Enclosed Letter from SPLC to GDC dated May 1, 2020, at p. 3.

³ Inspire Recovery, <https://inspirerecovery.com/> (last visited May 14, 2020).

provide housing as well as “Partial Hospitalization, Intensive Outpatient Treatment, and Outpatient Treatment” for Ms. Diamond as needed. Safe housing and adequate treatment are essential to Ms. Diamond’s well-being.

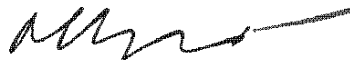
As explained in the May 1 letter and detailed above, Ms. Diamond remains at continuous risk for sexual assault from other incarcerated people as well as GDC staff. GDC must take steps to ensure that the March 10, May 9, and May 10, 2020 incidents are thoroughly investigated, and that Ms. Diamond is protected from future sexual assault. SPLC and CCR will continue to monitor our client’s conditions of confinement and await GDC’s written response to the May 1 letter.

Please contact us if you would like to discuss these matters.

Respectfully,



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cc: Ahmed Holt, Assistant Commissioner Facilities Division
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Jennifer Ammons, General Counsel
Elizabeth McCrary Crowder, Office of the Attorney General

encl: Letter from SPLC to GDC (May 1, 2020)
Letter from Paul Zilber (March 19, 2020)



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909 N. Dixie Highway, West Palm Beach, FL 33401

March 19, 2020

Georgia State Board of Pardons and Paroles
2 Martin Luther King, Jr. Drive SE
Suite 458, Balcony Level, East Tower
Atlanta, GA 30334

To Whom This May Concern:

This letter should serve to indicate that Ashley Diamond (Ashley A. Diamond, Inmate # 10002 90565) is eligible for admission to Inspire Recovery located in West Palm Beach, Florida. As Ashley Diamond is a respected community activist and leader we are requesting her to be considered for parole and given a chance to thrive among her peers with social support and resources specifically for the LGBTQIA+ community.

In light of COVID-19 and the risks it poses to the inmate population in Georgia we are eager to support Ashley Diamond with parole and re-entry. Due to the risks here in Palm Beach County FL as well, we have enacted our emergency protocol, which calls for stricter medical screenings and assessments prior to admission, to ensure the protection of Ashley Diamond and all of our residents.

Inspire Recovery provides Partial Hospitalization, Intensive Outpatient Treatment, and Outpatient Treatment for the LGBTQIA+ community. Inspire Recovery provides housing resources for the LGBTQIA+ community through Inspire Living (all gender housing) and a few other FARR certified residential houses in the area.

If you have any additional questions about Inspire Recovery please feel free to email p.zilber@inspirerecovery.com.

Thank You,
Paul Zilber
Clinical Coordinator



June 3, 2020

Commissioner Timothy Ward
Georgia Department of Corrections
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State Board of Pardons and Paroles
Office of Victim Services
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VictimServices@pap.ga.gov

**Re: Notice of Retaliation on Behalf of Ashley Diamond (GDC ID:
1000290565)**

Dear Commissioner Ward, PREA Coordinator, and State Board of Pardons and Paroles:

As you know, we represent Ashley Diamond, a transgender woman currently held in a men's close-security facility who has been subjected to repeated and ongoing abuse while in GDC custody.¹ Since receipt of our correspondence, prison officials have retaliated against Ms. Diamond for her constitutionally protected advocacy and for filing grievances to address constitutional deficiencies. In addition, Ms. Diamond has been confronted and intimidated by the corrections officer who is the subject of a May 20, 2020 PREA complaint we filed on Ms. Diamond's behalf. These incidents are unacceptable. This letter serves to ensure that you are on notice of these additional unlawful actions and constitutional violations. GDC must take

¹ See Letters dated May 1, 2020 and May 20, 2020, attached hereto.

action to protect Ms. Diamond not only from abuse, but from coercion and retaliation for her advocacy.

I. GDC Has A Duty Not to Retaliate Against Ms. Diamond For Her Advocacy.

As emphasized in counsel's May 1 letter, GDC may not retaliate, threaten to retaliate, or place Ms. Diamond in fear of retaliation for her advocacy. *See Nyberg v. Davidson*, 776 F. App'x 578, 582 (11th Cir. 2019). First Amendment retaliation occurs where adverse action "would deter an [incarcerated person] of ordinary firmness from engaging in First Amendment protected conduct," such as filing a grievance or a lawsuit. *Id.* It is well-established that Ms. Diamond exercises her First Amendment right of freedom of speech when [she] complains to the prison's administrators about the conditions of [her] confinement." *Smith v. Mosley*, 532 F.3d 1270, 1276 (11th Cir. 2008) (considering an incarcerated person's letter complaining to the assistant warden and United States Department of Justice about conditions of confinement to be an exercise of speech).

Since the May 1 and May 20 letters, Ms. Diamond has been retaliated against in at least two ways. First, she has been partially removed from her work assignment as an orderly. Second, the Security Warden and others ransacked Ms. Diamond's cell and confiscated essential items, such as food, soap, and property on May 29, 2020. In light of Ms. Diamond's recent letters, GDC's actions constitute retaliation for her constitutionally protected advocacy regarding her conditions of confinement.

II. Ms. Diamond Has Been Approached by Officer Smith Despite Her PREA Complaint

Our May 20 PREA Notice to GDC detailed the sexual harassment and abuse perpetrated against Ms. Diamond by Officer Arethiea Smith. Yet, GDC has failed to respond to our PREA notice, and has also failed to protect Ms. Diamond from retaliation or further abuse by permitting Smith to continue working at GDCP where she has access to Ms. Diamond's dorm. On or around May 26, 2020, Smith approached Ms. Diamond and demanded that Ms. Diamond write a false statement exonerating her. Under duress and as a result of coercion, Ms. Diamond signed a statement saying that she did not tell anyone at GDCP about the incident.

GDC's failure to discipline Smith and to allow her to continue interact with and coerce Ms. Diamond is a shocking and dangerous violation of GDC's own guidelines. GDC PREA guidelines require that Smith "be banned from correctional institutions and subject to disciplinary action, with termination being the presumptive discipline, and may also be referred for criminal prosecution when appropriate." GDC SOP 208.06.IV.H.1. Further, GDC must protect Ms. Diamond from retaliation for reporting this sexual abuse through "housing changes or transfers, removal of alleged staff members ... from contact with victims, and emotional support services for [those] who fear retaliation for reporting or for cooperating with investigations." GDC SOP 208.06.IV.F.4.

GDC's failure to adhere to its own policies and procedures regarding officer discipline shows wanton and deliberate indifference to Ms. Diamond's safety needs.

* * *

As previously stated, no one has responded to counsel regarding notices of PREA violations in the letters submitted on behalf of Ms. Diamond. However, on May 31, 2020, Ms. Diamond received word that Internal Affairs officers will be visiting her this week.

GDC is well aware that Ms. Diamond has retained counsel in anticipation of litigation in light regarding Ms. Diamond's conditions of confinement, including protection from sexual violence from GDC staff and other incarcerated people. **Therefore, Ms. Diamond's interview with Internal Affairs, and any other future interviews, should only be conducted with her attorneys present.** Cf. *Jacoby v. PREA Coordinator*, No. 517CV00053MHHTMP, 2017 WL 2962858, at *10 (N.D. Ala. Apr. 4, 2017), *report and recommendation adopted*, No. 517CV00053MHHTMP, 2017 WL 2957825 (N.D. Ala. July 11, 2017) (noting that incarcerated person was informed of "the right to have counsel present during [a] PREA interview"). These interviews should also be recorded, and all audio/video should be preserved pursuant to a litigation hold.

The urgency for you to show leadership has never been clearer. This country is in the midst of chaos, crisis and a national reckoning resulting from centuries of cruelty and violence against Black people at the hands of law enforcement. Our demands are simple: Ensure Ms. Diamond's safety and access to adequate medical care, starting with providing us a comprehensive plan for how GDC intends to meet Ms. Diamond's health and safety needs going forward.

Please contact us if you would like to discuss these matters.

Respectfully,



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Elizabeth McCrary Crowder, Office of the Attorney General
Benjamin Ford, Warden of Georgia Diagnostic and Classification Prison

encl: Letter from SPLC to GDC (May 1, 2020)
Letter from SPLC and CCR to GDC (May 20, 2020)

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State Board of Pardons and Paroles
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