[ORAL ARGUMENT NOT YET SCHEDULED]

Nos. 13-5212 & 13-5213

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PATTI HAMMOND SHAW,

Plaintiff-Appellee,

v.

BENJAMIN E. KATES, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia (No. 12-cv-538 (ESH))

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND THE AMERICAN CIVIL LIBERTIES UNION OF THE NATION'S CAPITAL, *ET AL.*, AS *AMICI CURIAE*

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March 25, 2014

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), undersigned counsel certifies as follows:

A. Parties and *Amici*

Patti Hammond Shaw is the appellee here. Defendants Merrender Quicksey, Benjamin E. Kates, and Troy Musgrove are appellants here. The United States of America, Steve Conboy, and the District of Columbia are also defendants below. There are no other *amici*.

B. Rulings Under Review

Appellants appeal the denial of their motions to dismiss by the district court's memorandum opinion and order entered on May 13, 2013. The opinion is reported at 944 F. Supp. 2d 43 (D.C.C. 2013).

C. Related Cases

Counsel for *amici* are not aware of any related cases.

/s/ *Arthur B. Spitzer*
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CORPORATE DISCLOSURE STATEMENT

Pursuant to D.C. Circuit Rule 26.1 and Federal Rule of Appellate Procedure 26.1, *amici* American Civil Liberties Union, American Civil Liberties Union of the Nation's Capital, D.C. Trans Coalition, Human Rights Defense Center, Just Detention International, Lambda Legal Defense and Education Fund, National Center for Lesbian Rights, National Center for Transgender Equality, National Police Accountability Project, Streetwise and Safe, Sylvia Rivera Law Project, and Transgender Law Center state that they are nonprofit membership organizations, that they have no parent or subsidiary corporations, and that they do not issue stock.

/s/ *Arthur B. Spitzer*
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CERTIFICATE PURSUANT TO FED. R. APP. P. 29(c)(5)

Undersigned counsel for *amici curiae* hereby certifies:

(A) No counsel for a party authored this brief in whole or in part;

(B) No party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and

(C) No person other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief

/s/ *Arthur B. Spitzer*
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PATTI HAMMOND SHAW,
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INTEREST OF *AMICI*

Amici are civil and human rights groups, and public interest and legal service organizations, committed to ending discrimination and violence against transgender individuals, and police abuse and violence against all vulnerable populations in prison, jails, and lock-ups. *Amici* have a vital interest in ensuring that the Constitution's guarantees of due process and freedom from cruel and unusual punishment apply to all persons regardless of gender identity or incarceration and file this brief to address the particular vulnerability of transgender women in custody and the critical importance of the constitutional interests raised by this case.

Amici include the following organizations: the American Civil Liberties Union, the American Civil Liberties Union of the Nation's Capital, the D.C. Trans

Coalition, the Human Rights Defense Center, Just Detention International, Lambda Legal Defense and Education Fund, the National Center for Lesbian Rights, the National Center for Transgender Equality, the National Police Accountability Project, Streetwise and Safe, the Sylvia Rivera Law Project, and the Transgender Law Center. Descriptions of the *amici* are set forth in the Addendum to this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Twenty years ago, the Supreme Court held in *Farmer v. Brennan*, 511 U.S. 825 (1994), that an official's deliberate indifference to a substantial risk of serious harm to an individual in custody violates the Eighth Amendment to the Constitution. That case concerned the liability of prison officials who placed Dee Farmer, a young transgender woman, in the general population of a men's federal prison where she was sexually assaulted. In the twenty years since the Court issued its landmark ruling in her case, the opinion has been cited in more than 30,000 court decisions and thousands of other briefs and legal treatises. In addition to establishing the contemporary standard for Eighth Amendment "failure to protect" claims, *Farmer* highlighted the extreme vulnerability of women, transgender women in particular, in men's correctional settings.

Since *Farmer*, there has been a coordinated effort among political leaders, correctional officials and advocates to end sexual violence in custodial settings. In 2003, Congress passed and President Bush signed the Prison Rape Elimination Act

(PREA), calling for an end to sexual abuse, including sexual harassment, and convening the National Prison Rape Elimination Commission (NPREC) to study the problem. 42 U.S.C. §§ 15601 *et seq.* In 2009, the NPREC released a 250-page report detailing the epidemic of sexual violence in custody. Recommending an end to placement decisions based on assigned sex at birth, the report emphasized that "most male-to-female transgender individuals who are incarcerated are placed in men's prisons, even if they have undergone surgery or hormone therapies to develop overtly feminine traits[, and t]heir obvious gender nonconformity puts them at extremely high risk for abuse."[1]

Informed by the NPREC report and nine years of study and commentary by experts, in 2012 the Department of Justice (DOJ) released the final PREA regulations, which include comprehensive requirements for local, state and federal prisons, jails, and lock-up facilities. 77 Fed. Reg. 37105 (June 20, 2012). Consistent with the Court's reasoning in *Farmer* and the near-unanimous reports at each stage of study and implementation of PREA, the particular vulnerabilities of women and transgender individuals are prominently noted throughout the regulations. It is in this post-*Farmer*, PREA implementation context that the instant case comes before this Court.

[1] National Prison Rape Elimination Commission Report at 74, *available at* https://www.ncjrs.gov/pdffiles1/226680.pdf.

This case concerns the treatment of Ms. Patti Hammond Shaw on June 18, 2009, December 10, 2009, and June 26, 2012, while in the custody of the Metropolitan Police Department (MPD) and United States Marshals Service (USMS). Joint Appendix (JA) 19, 28, 37. At all times relevant to this case, Ms. Shaw identified as female, had valid, government-issued identification documents reflecting her female identity, and had breasts and a vagina.[2] JA 16, 20, 33-34. She also repeatedly told officers that she was female and requested to be moved from view of and physical proximity to male detainees. JA 24, 30, 37. Any one of these factors would have made her vulnerable; nonetheless, Appellants and currently unknown MPD and USMS officers under the supervision of Appellants Quicksey and Kates placed Ms. Shaw in the men's housing areas of the Central Cellblock and the cellblock at Superior Court. This placement led to her being forced to urinate in front of male detainees who masturbated and threw what appeared to be semen — a "thick liquid" — into her cell. Male officers, including Appellant Musgrove, also subjected Ms. Shaw to intrusive searches. JA 29-30, 33-34, 38.

When Ms. Shaw was arrested for the first time, prior to 2009, and assigned a Police Department Identification Number (PDID), she was identified in the MPD system as male. JA 43. All individuals arrested in the District of Columbia are

[2] *Amici* highlight the fact that Ms. Shaw had a vagina to emphasize the obviousness of the risk of harm to her, but note that constitutional protections should not depend on the composition of a detainee's body.

assigned a unique six-digit permanent identification number at the time of their first arrest. An individual keeps the same PDID number throughout all subsequent involvement in the D.C. criminal justice system. Appellants used the male gender associated with the PDID when making subsequent housing and search decisions for Ms. Shaw and ignored Ms. Shaw's statements, legal documents and physical appearance affirming that she is female.

Although Appellants claim that the risk of harm from placing Ms. Shaw in the men's detention areas of Central Cellblock and Superior Court was not obvious or predictable,[3] in fact, a 2005 Amnesty International report highlights a strikingly similar assault against Ms. Shaw in 2003 when she was housed in the men's cellblock of the D.C. Superior Court. The report states that Ms. Shaw was placed in the male cellblock at Superior Court because authorities claimed they could not change her gender in the court's criminal record system. This placement was made despite the fact she had government-issued identification that reflected her correct gender of female. In the cellblock, male detainees harassed Ms. Shaw, exposed themselves, masturbated and sexually assaulted her.[4] There is clearly a pattern

[3] *See generally* Brief for Federal Appellants (hereafter "Fed. Br.") at 25-27; Brief for Appellant Merrender Quicksey (hereafter "Quicksey Br.") at 34-35.

[4] Amnesty International, Stonewalled: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the U.S. 91 (Sept. 2005), *available at* http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf.

whereby MPD and USMS officials place Ms. Shaw in jeopardy by housing her with men and claiming innocence because there is no procedure for changing the gender assigned to a person's PDID number.

The District Court rightly denied Appellants' claim of qualified immunity, finding that Ms. Shaw alleged violations of her clearly established constitutional rights. Though *amici* agree with Plaintiff and the District Court that these rights were clearly established, this brief focuses solely on the nature of those rights. This case presents critical constitutional questions about the obligations of supervisory and subordinate officers when housing and searching particularly vulnerable detainees. *Amici* therefore urge the court not only to find that Ms. Shaw has alleged violations of her Fifth and Fourth Amendment rights, but also to do so prior to considering whether these rights were clearly established.

ARGUMENT

I. The Court Should Hold That Plaintiff's Constitutional Rights Were Violated

Although the Supreme Court ruled in *Pearson v. Callahan*, 555 U.S. 223, 236 (2009), that judges have discretion to decide which prong of the qualified immunity analysis should be addressed first, deciding the constitutional question first ensures that officials who violate constitutional rights will not perpetually be shielded by qualified immunity should the court also find that the right was not clearly established. *See Saucier v. Katz*, 533 U.S. 194, 207-08 (2001). If courts

decline to decide the constitutional question every time it is presented, then officials will never receive notice of what conduct is unlawful, individuals will not be able to deter officials from violating their rights, and the advancement of constitutional rights will be hindered. *See, e.g., Elwell v. Byers*, 699 F.3d 1208, 1213 (10th Cir. 2012) (noting that failure to resolve the constitutional questions can result in officials repeating the challenged and perhaps unconstitutional practice over and over). Deciding first whether a constitutional right was violated, rather than whether the right was clearly established, "promotes clarity in the legal standards for official conduct, to the benefit of both the officers and the general public." *Wilson v. Layne,* 526 U.S. 603, 609 (1999). After *Pearson*, "it remains true that following the two-step sequence — defining constitutional rights and only then conferring immunity — is sometimes beneficial to clarify the legal standards governing public officials." *Camreta v. Greene*, 131 S. Ct. 2020, 2032 (2011). *See also Johnson v. Gov't of the District of Columbia*, 734 F.3d 1194, 1202 (D.C. Cir. 2013) ("The Supreme Court has made clear that courts may address the two stages of the qualified immunity analysis in either order."); *Bray v. Planned Parenthood Columbia-Willamette Inc*., No. 12–4476, 2014 WL 1099107 (6th Cir. Mar. 21, 2014) (following *Camreta* and addressing merits of Fourth Amendment claim before conferring immunity).

There are urgent concerns weighing in favor of deciding the constitutional questions first in this case. Physical and sexual abuse is a serious problem in our nation's prisons, jails, and lock-up facilities. For women, particularly transgender women in men's facilities, assault is common. According to the recent National Transgender Discrimination Survey, of the 6,450 transgender respondents who had been incarcerated, 37% reported being harassed by officers or staff, 16% reported physical assault by other inmates or staff, and 15% reported sexual assault by other inmates or staff.[5] A study of California prisons found that 59% of transgender respondents reported sexual assault as compared with 4.4% of non-transgender respondents.[6]

Courts are also increasingly confronted with constitutional claims by transgender people who have been assaulted in custody. *See, e.g.*, *Green v. Hooks*, No. 13-cv-17, 2013 WL 4647493 (S.D. Ga. Aug. 29, 2013) (claim brought by transgender woman in men's facility after assault by other inmates); *Lee v. Eller*, No. 13-cv-00087, 2013 WL 4052878 (S.D. Ohio, Aug. 12, 2013) (same); *Tate v.*

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[5] Jamie M. Grant, Ph.D., *et al*., Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 166-67 (2011), *available at* http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

[6] Valerie Jenness, Ph.D., The California Department of Corrections and Rehabilitation Wardens' Meeting at 34 (April 8, 2009), *available at* http://ucicorrections.seweb.uci.edu/files/2013/06/Transgender-Inmates-in-CAs-Prisons-An-Empirical-Study-of-a-Vulnerable-Population.pdf (last visited Feb. 27, 2014).

Lynch, No. 13-cv-3060, 2013 WL 2896885 (C.D. Ill., June 13, 2013) (same). Ms. Shaw herself has already experienced at least four incidents of violence while in MPD and USMS custody, the three detailed in the complaint and the one documented by Amnesty International in 2003.

Though *amici* agree with Plaintiff that the law is clearly established, the important Fifth and Fourth Amendment questions raised here should be addressed first by the Court. Should the Court ultimately confer immunity, the avoidance of these recurring questions would "frustrate 'the development of constitutional precedent' and the promotion of law-abiding behavior." *Camreta*, 131 S. Ct. at 2030-31 (*quoting Pearson,* 555 U.S. at 237).

II. Appellants Quicksey And Kates Subjected Ms. Shaw To Unconstitutional Conditions Of Confinement

At all relevant times, Ms. Shaw was a pretrial detainee. As a pretrial detainee, her claim is analyzed under the Due Process Clause of the Fifth Amendment, *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), and she has a lower threshold to establish the violation of her rights than convicted detainees, who must assert conditions of confinement claims under the Eighth Amendment. *See Brogsdale v. Barry*, 926 F.2d 1184, 1187 n.4 (D.C. Cir. 1991) (citations omitted):

> [T]he threshold for establishing a constitutional violation is clearly lower for the pretrial detainees. For the latter group, not yet convicted of any crime, the question is whether prison conditions "amount to punishment of the detainee." . . . For convicted prisoners, the question is not whether prison conditions amount to punishment — for convicts

> plainly may be punished — but rather whether the conditions "deprive inmates of the minimal civilized measure of life's necessities."

See also Hardy v. District of Columbia, 601 F. Supp. 2d 182, 189 (D.D.C. 2009) (same); *see also Jones v. Horne*, 634 F.3d 588, 597 (D.C. Cir. 2011) (applying the *Bell v. Wolfish* test).

Nevertheless, *amici's* analysis below applies the Eighth Amendment deliberate indifference test introduced by the Supreme Court in *Farmer v. Brennan*, consistent with the District Court's opinion. *Amici* do not suggest that the Eighth Amendment and the Fifth Amendment standards are coextensive, but rather that because Ms. Shaw establishes a clear violation of the more stringent analysis for claims brought by convicted prisoners, she has *a fortiori* established a constitutional violation under the less stringent standard applied to pretrial detainees. Appellants have cited no case suggesting that a pretrial detainee who establishes a violation of the *Farmer* test has not met the *Bell* test.

A convicted prisoner's rights are violated if she is "incarcerated under conditions posing a substantial risk of serious harm" and the detaining official's "state of mind is one of 'deliberate indifference' to inmate health or safety." *Farmer*, 511 U.S. at 834. A prisoner must prove that (1) *objectively* the conditions of confinement posed a substantially serious risk of harm and (2) *subjectively*, officials acted with deliberate indifference in allowing or causing such risk to occur. *Id*.

A. Ms. Shaw was held in conditions posing a substantial risk of serious harm

Ms. Shaw satisfies the objective prong of the deliberate indifference test because she was "incarcerated under conditions posing a substantial risk of serious harm." *Farmer*, 511 U.S. at 834.

The Court must consider the totality of Ms. Shaw's circumstances. *See Caldwell v. District of Columbia*, 201 F. Supp. 2d 27, 34 (D.D.C. 2001) (affirming jury verdict where "Plaintiff testified to a variety of conditions that, *taken together*, resulted in an unconstitutional situation…") (emphasis added). Placing Ms. Shaw in the men's area of Central Cellblock and then in a holding cell at Superior Court with male detainees posed an objectively serious risk of harm. JA 23-25, 29-31, 33-36, 38-40, 41-42. MPD and USMS officers, supervised by Appellants Quicksey and Kates, placed her within sight, sound, and at times contact, of male detainees. She was subjected to sexual harassment, threats of physical and sexual violence, and psychological trauma. Ms. Shaw was forced to reveal her breasts to detainees, urinate in front of male detainees who masturbated when they saw her vagina, and undergo public strip searches by male officers. Some detainees groped her, and others threw what appeared to be semen at her. JA 29-30, 33-34, 38.

Courts are clear that a detainee held in unsafe conditions need not suffer an actual assault before her constitutional rights are violated. This Court has found incidents short of assault or rape to constitute serious harm. *See Chandler v.*

District of Columbia Dept. of Corr., 145 F.3d 1355, 1360 (D.C. Cir. 1998) (noting that "verbal threats, without more, may be sufficient to state a cause of action under the Eighth Amendment"). Threat or coercion is clearly sufficient to a state a claim. *See Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992); *see also Hostetler v. Green*, 323 F. Appx 653, 659 (10th Cir. 2009) ("an inmate has an Eighth Amendment right to be protected against prison guards taking actions that are deliberately indifferent to the substantial risk of sexual assault by fellow prisoners"); *Ramos v. Lamm*, 639 F.2d 559, 572 (10th Cir. 1980) ("[A]n inmate does have a right to be reasonably protected from constant threats of violence and sexual assaults from other inmates."); *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1157 (D. Haw. 2006) (facility was physically and psychologically unsafe for LGBT youth, who was teased and threatened with sexual assault). Courts have also held that forced exposure of one's genitals is not reasonable and is particularly problematic where a woman is forced to reveal her vagina and breasts to male prisoners and guards. *See, e.g.*, *Lee v. Downs*, 641 F.2d 1117, 1119 (4th Cir. 1981) ("Most people … have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating…. [T]hat sort of degradation is not to be visited upon those confined in our prisons."); *Fortner v. Thomas*, 983 F.2d. 1024, 1030 (11th Cir. 1993) (quoting *Lee v. Downs* and joining other circuits in recognizing a

prisoner's constitutional right to bodily privacy); *Boss v. Morgan County, Mo.*, No. 08-cv-04195, 2009 WL 3401715 at *5 (W.D. Mo., Oct. 20, 2009) (officers denied qualified immunity where "an inmate using the toilet" was exposed "to law enforcement personnel, jailers, cafeteria workers, and inmates of the opposite sex").

B. Quicksey and Kates were deliberately indifferent to the risk of serious harm to Ms. Shaw

With respect to the subjective component of the constitutional test, Ms. Shaw has credibly pleaded that Quicksey and Kates acted with deliberate indifference to the risk that she would be harmed.

A prison official can be found liable under the Eighth Amendment if the official "knows of and disregards an excessive risk to inmate health or safety…" *Farmer*, 511 U.S. at 837. Such knowledge may be inferred where the risk of harm is obvious. *Id* at 842 ("Whether a prison official had the requisite knowledge of a substantial risk is a question of fact … and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious."); *Hope v. Pelzer*, 536 U.S. 730, 738 (2002) ("We may infer the existence of this subjective state of mind from the fact that the risk of harm is obvious."); *Hardy*, 601 F. Supp.2d at 189-190 ("In appropriate situations, subjective knowledge can be inferred from the obviousness of the risk.") (internal citation omitted). A subjective approach to deliberate indifference does not require a prisoner seeking

"a remedy for unsafe conditions [to] await a tragic event [such as an] actual assault before obtaining relief." *Farmer,* 511 U.S. at 845 (alternations in original).

As discussed more fully in section IV below, supervisors, like Quicksey and Kates, "may be held liable in damages for constitutional wrongs engendered by [their] failure to supervise or train subordinates adequately." *Haynesworth v. Miller*, 820 F.2d 1245, 1259 (D.C. Cir. 1987), *abrogated on other grounds by Hartman v. Moore*, 547 U.S. 250 (2006). To be sure, "a showing of mere negligence is insufficient to state a claim of supervisory liability." *Int'l Action Ctr. v. United States*, 365 F.3d 20, 28 (D.C. Cir. 2004). However, liability will attach where supervisors have been deliberately indifferent, or "know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see." *Id.*

The risk of harm posed by placing Ms. Shaw in the men's area of a cell-block or directly in a bullpen with men, transporting her chained to men and having her searched by male guards, relying solely on the information from her PDID number is obvious. Where confronted with conflicting gender information about a detainee, there may be circumstances in which the question of where to safely house the individual is complicated. This is not such a case. In all three instances that form the basis of her complaint here, when Ms. Shaw entered MPD and USMS custody she was female: she expressed a female gender identity, she

presented government-issued identification that classified her as female, and she repeatedly informed officers that she was female and requested to be moved from view of and physical proximity to male detainees. JA 16, 19-20, 24, 30, 37. Additionally, she had breasts and a vagina[7] at all times relevant to this case. JA 16. On at least one occasion the arresting officer identified Ms. Shaw as female. JA 28.

The risk of harm of placing a woman, whether transgender or not, in the men's area of Central Cellblock and the men's bullpen at Superior Court is obvious. It is because of this obvious and significant risk of harm that custodial settings, including the Central Cellblock and the Superior Court holding area, are almost universally segregated by sex. *See, e.g.,* Metropolitan Police Department, Standard Operating Procedures for Holding Facilities § III.E.5, JA 111 (May 20, 2003) ("male and female prisoners shall be separate by 'sight and sound.'"). Supervisors Quicksey and Kates are responsible for failing to train their employees on how to protect detainees when the sex assigned to a person based on her PDID number conflicts with other available information. Here, it was patently unreasonably for Appellants' supervisees to use the gender marker on the PDID

[7] *Amici* note that there is no reason the officers should know what a detainee's genitals look like unless a strip or cavity search is otherwise legally authorized. In this case, however, because Ms. Shaw was forced to urinate in front of staff on multiple occasions, USMS officers knew she had a vagina as early as her June 2009 arrest. JA 24.

number to override all other evidence of a detainee's gender for purposes of making housing placements and conducting searches.

In this case, the officers were aware that Ms. Shaw was female but nevertheless housed her in the men's area of Central Cellblock and in the men's bullpen at Superior Court because the gender marker on her PDID was male. This policy or practice of deeming the PDID gender marker dispositive for both MPD and USMS placements is clearly unreasonable and would require a woman to be housed with men whether she was classified as male upon her first arrest due to a clerical error or because she was assigned male at birth.

Where the risk of harm to women, including transgender women, in men's holding areas is obvious, it is objectively unreasonable to allow one's employees to place a woman in a men's area simply because a PDID number classifies her as male when other reliable information indicates that she is female. Because Ms. Shaw has pleaded facts that show Quicksey and Kates were deliberately indifferent to the risk of serious harm to her, the Court should affirm that she has alleged a deprivation of her rights as a pretrial detainee under the Fifth Amendment.

III. Appellants Musgrove And Kates Violated Ms. Shaw's Fourth Amendment Rights

Also at issue in this case are Ms. Shaw's allegations that she was subjected to two unconstitutional cross-gender searches in 2009 by Appellant Musgrove and

an unknown male U.S. Marshal, both under the supervision of Appellant Kates.[8] During both searches, Ms. Shaw was subjected to degrading and harassing comments about her body and female gender. JA 21, 31. During the June 2009 search, the presently unknown male deputy excessively and repeatedly groped her breasts, buttocks and between her legs. JA 21. That search was conducted in the presence of other male deputies as well as in the presence of male detainees. JA 21. These searches violated Ms. Shaw's Fourth Amendment rights.

The "reasonableness" of a search under the Fourth Amendment "is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails." *Bell*, 441 U.S. at 559. The Supreme Court in *Bell* provided four factors to consider when engaging in this balancing: 1) the scope of the particular search; 2) the manner in which the search is conducted; 3) the justification for initiating the search; and 4) the place in which the search is conducted. *Id.*

The District Court correctly analyzed the searches of Ms. Shaw as cross-gender searches and properly applied the well-established standards for cross-gender searches. Ms. Shaw was searched by male officers solely because she was

[8] The unknown USMS deputies responsible for the 2012 search are not appellants before this Court and therefore that search will not be discussed.

classified as male during a previous arrest, and despite every other fact available to the officers establishing that she is female, including her statements, her presentation, her bodily appearance and her identification documents. JA 16, 21.

The Federal Appellants suggest that even if the Court agrees that the searches of Ms. Shaw were cross-gender searches, they were reasonable because cross-gender searches are not *per se* unconstitutional. Fed. Br. at 16. However, that abbreviated analysis fails to take into consideration all of the *Bell* balancing factors and disregards many of the additional allegations in the Complaint. All of the cases cited by Appellants, in which courts apply the *Bell* factors but uphold the constitutionality of the search, turn on critical facts not present in this case.[9] As

[9] In *Schmidt v. City of Bella Villa*, 557 F.3d 564, 574 (8th Cir. 2009), the Eighth Circuit determined that an officer's photographing of a tattoo below the plaintiff's waistband did not constitute an unreasonable search. However, the court noted that the scope of the intrusion was lessened because the officer conducted the search in a private location. *Id.* at 574. There was no evidence in the record that the male officer physically touched the female plaintiff. *See id.* at 567-68. In addition, the court stated that it was a "close[] question whether it was substantively reasonable for [the male officer] to photograph Schmidt's tattoo himself, rather than enlisting a female officer to do so." *Id.* at 573. The search at issue in *Farkarlun v. Hanning*, 855 F. Supp. 2d 906, 923 (D. Minn. 2012), was a search incident to arrest in which officers suspected the plaintiff was hiding drugs on her person. The court noted that "[s]earching of a suspect by an officer of the opposite sex that involves intimate touching has also been held unreasonable," but found the officer was entitled to qualified immunity given the particular circumstances of the search. *Id*. at 923. *Grummet v. Rushen* involved convicted prisoners, as opposed to a pre-trial detainee such as Ms. Shaw. *See* further discussion of this case *infra*.

discussed below, Ms. Shaw was searched in front of numerous male officers and detainees on a nonemergency basis, she was inappropriately touched during those searches, and she was verbally harassed by officers during the course of the searches. In short, Appellants' cited cases are inapposite.

A. The cross-gender searches of Ms. Shaw were unreasonable in scope

In *Byrd v. Maricopa County Sheriff's Dep't*, 629 F.3d 1135, 1143 n.8 (9th Cir. 2011), the court found cross-gender searches unreasonable when they went beyond a mere "pat down" because they involved intimate contact with the inmate's body. As the District Court here accurately observed, the scope of Ms. Shaw's cross-gender searches was significantly more invasive than a traditional pat-down search. JA 406-08. In June 2009, a male deputy under the supervision of Appellant Kates searched Ms. Shaw, excessively and repeatedly groping her breasts, buttocks and between her legs. JA 21.

The Federal Appellants appear to concede that a pat-down search is the appropriate search to be conducted when a detainee is transferred to USMS custody. Fed. Br. at 16 n.6. The excessive and intrusive touching that occurred during the searches of Ms. Shaw violate USMS policy regarding pat-down searches. *See* USMS Policy Directive No. 99-25, at 2 (1999), JA 92 (defining a pat-down search as a "procedure of patting or running of a deputy's hands over the person's clothed body as well as the opening of pockets or other areas where

weapons or contraband may be concealed."); s*ee also Jordan v. Gardner*, 986 F.2d 1521, 1522 n.1 (9th Cir. 1993) (noting that the euphemistically termed "pat down" search failed to describe more intrusive searches better described as "'rubbing,' 'squeezing,' and 'kneading'" and declining to refer to such searches as "pat downs"). Such invasive cross-gender searches of detainees by officers of the opposite sex are unreasonable under the Fourth Amendment. *See Byrd*, 629 F.3d at 1142 (finding search conducted by female corrections officer that involved touching male prisoner's genitals through boxer shorts unreasonable); *Amaechi v. West*, 237 F.3d 356, 362 (4th Cir. 2001) (holding search unreasonable, and therefore unconstitutional, where male officer searched female misdemeanant suspect over bathrobe in sexually invasive manner). *See also Jordan*, 986 F.2d at 1530-31 (enjoining random, nonemergency, suspicionless clothed body searches of female prisoners by male guards that involved touching on and around their breasts and genitals).

B. The cross-gender searches of Ms. Shaw were also unreasonable because they were accompanied by verbal abuse and harassment

The 2009 searches of Ms. Shaw were also unreasonable because of the verbal abuse that accompanied them. Appellants argue that Appellant Musgrove's December 2009 search of Ms. Shaw was merely a non-intrusive cross-gender search. However, Musgrove made harassing and demeaning statements about Ms.

Shaw's body, stating, "you need Jenny Craig, all those butt shots you got in your butt." JA 31. Musgrove also intentionally used the incorrect gender pronoun, and possibly racially charged language, in order to harass Ms. Shaw, saying, "here he goes again; what you done this time boy?" JA 31. Courts have found that cross-gender searches combined with this type of abusive, harassing or derogatory language violate the Fourth Amendment. *See Mays v. Springborn*, 575 F.3d 643, 650 (7th Cir. 2009) (holding that evidence of demeaning comments made during an otherwise valid strip search supported a constitutional claim). The Eighth Circuit upheld an injunction against otherwise proper body cavity searches that were made unconstitutional through verbal abuse and harassment. *Goff v. Nix*, 803 F.2d 358, 365 n.9 (8th Cir. 1986). *See also Calhoun v. DeTella*, 319 F.3d 936, 940 (7th Cir. 2003) (finding that strip searches "designed to demean and humiliate" supported an Eighth Amendment claim).

Appellants rely heavily on *Grummett v. Rushen*, 779 F.2d 491, 496 (9th Cir. 1985), to support their argument that Musgrove's December 2009 search of Ms. Shaw was reasonable. Although *Grummett* upheld the constitutionality of the cross-gender searches at issue, the reasonableness of those searches turned on the fact that they were "performed by the female guards in a professional manner and with respect for the inmates." *Id.* In contrast, the searches of Ms. Shaw were anything but professional and respectful. A reasonable factfinder could conclude

that Appellant Musgrove ridiculed Ms. Shaw's body, verbally harassed her about her return to custody, and intentionally used the wrong gender pronoun as well as racially charged language in order to demean her. JA 31.

Similarly, the June 2009 search, conducted by an unknown U.S. Marshal under the supervision of Appellant Kates, included comments such as, "those must be implants because hormones don't make breasts stand up so perky like that," and "he's the best I've ever seen." JA 21. That search also involved unlawful sexual touching. JA 21. Under these circumstances, a reasonable factfinder could determine that the searches were performed in a manner designed to harass and demean Ms. Shaw. *See Mays*, 575 F.3d at 650; *Goff*, 803 F.2d at 365 n.9.

C. The lack of exigent circumstances justifying the invasive cross-gender searches made the searches unreasonable

The June 2009 cross-gender search of Ms. Shaw involved excessive touching of her breasts, her buttocks, and between her legs, JA 21, making it significantly more invasive than a traditional pat-down search. The search was conducted by an unknown male deputy under the supervision of Appellant Kates, even though a female deputy was available and prepared to conduct the search herself. JA 21. Courts have held that absent exigent circumstances, invasive cross-gender searches are unconstitutional. This also accords with U.S. Marshals' policy. United States Marshals Service Policy Directive No. 99-25, at 5 (1999), JA 95. *See also Byrd*, 629 F.3d at 1142 (holding invasive search of a male pre-trial

detainee by a female guard — when there was no emergency and when a male guard was available to perform the search instead — was unreasonable and violated the Fourth Amendment); *Amaechi*, 237 F.3d at 361 (holding search of female misdemeanant arrestee by male officer that involved searching between her legs unreasonable because the search was "highly intrusive without any apparent justification"); *Canedy v. Boardman*, 16 F.3d 183, 188 (7th Cir. 1994) (finding allegations that two female corrections officers strip searched male detainee although ten male officers were nearby and available to conduct the search stated a constitutional claim).

Indeed, courts have found that, absent exigent circumstances, invasive searches merely conducted in the presence of opposite-sex individuals are unreasonable. *See Hutchins v. McDaniels*, 512 F.3d 193, 196 (5th Cir. 2007) (citing presence of other prisoners and an opposite-sex guard during a strip search supported a Fourth Amendment claim); *Hayes v. Marriott*, 70 F.3d 1144, 1147 (10th Cir. 1995) (holding summary judgment was inappropriate due to allegations of a strip search conducted in the presence of opposite-sex corrections officers and staff without adequate justification); *Cornwell v. Dahlberg*, 963 F.2d 912, 916 (6th Cir. 1992) (male prisoner raised valid privacy claim under Fourth Amendment for strip search outdoors in view of several female corrections officers); *Bonitz v. Fair*, 804 F.2d 164, 173 (1st Cir. 1986) (finding body cavity searches of female

prisoners conducted in the presence of male officers violated the prisoners' clearly established Fourth Amendment rights).[10]

D. The public location of the cross-gender searches made them unreasonable.

Finally, the location of the searches also supports Ms. Shaw's claim that they were unreasonable. "Courts across the country are 'uniform in their condemnation of intrusive searches performed in public.'" *Brown v. Short*, 729 F. Supp. 2d 125, 139 (D.D.C. 2010) (*quoting Campbell v. Miller,* 499 F.3d 711, 719 (7th Cir. 2007)). In June 2009, presently-unknown male deputies under the supervision of Appellant Kates conducted an invasive search of Ms. Shaw in the presence of male detainees who were also being processed. JA 21. The deputies unreasonably took no precautions to shield Ms. Shaw from the other detainees during the invasive search. *See Hutchins v. McDaniels*, 512 F.3d 193, 196 (5th Cir. 2007) (citing presence of other prisoners and an opposite-sex guard during a strip search supported a Fourth Amendment claim); *Farmer v. Perrill*, 288 F.3d

[10] Some of these cases involved strip searches that included the removal of clothing, but that does not limit their applicability to the searches at hand. This Court has recognized that the balancing inquiry set forth in *Bell* "remains the same regardless of how one characterizes the search." *BNSF Ry. Co. v. Dep't of Transp.*, 566 F.3d 200, 208 (D.C. Cir. 2009). "*Bell v. Wolfish* and subsequent cases involving strip searches express a more general concern with the Fourth Amendment implications underlying the violation of personal privacy inherent in sexually invasive searches." *Amaechi*, 237 F.3d at 364 n.14 (internal citation omitted).

1254, 1260-61 (10th Cir. 2002) (affirming denial of summary judgment as to allegations of visual strip searches conducted in view of other prisoners); *Vaughan v. Ricketts*, 859 F.2d 736, 741-42 (9th Cir. 1988) (finding mass searches conducted in public supported a Fourth Amendment claim); *Mays*, 575 F.3d at 649-50 (finding evidence of searches conducted publicly and against prison rules supported a constitutional claim). *See also Meriwether v. Faulkner*, 821 F.2d 408 (7th Cir. 1987) (finding allegations that a transgender woman was forced to strip repeatedly in front of inmates and other officers were sufficient to state an Eighth Amendment claim).[11]

The scope, manner, justification, and location of the searches of Ms. Shaw were unreasonable under *Bell*, and therefore Ms. Shaw properly stated a Fourth Amendment claim against both federal Appellants.

IV. Appellants Quicksey And Kates Violated Ms. Shaw's Fourth And Fifth Amendment Rights By Failing To Train Subordinate Officers Under Their Supervision

Though Appellant Musgrove and unknown MPD and USMS officers are responsible for actually placing Ms. Shaw in the men's holding areas and conducting the intrusive cross-gender searches of Ms. Shaw, Appellants Quicksey

[11] *See* footnote 10, *supra*.

and Kates are liable for failing to train and supervise the officers who made those placements and conducted those searches.[12]

Appellants argue that Ms. Shaw must establish a pattern of unconstitutional conduct to allege supervisory liability. As the District Court properly held, a plaintiff need not show a pattern of past transgressions if it is clear that without training, a violation is inevitable.[13] Supervisory liability can be triggered when the training provided is "so clearly deficient that some deprivation of rights will *inevitably* result absent additional instruction." *Int'l Action Ctr. v. United States*,

[12] Appellant Kates' suggestion that *Ashcroft v. Iqbal,* 129 S. Ct. 1937, 1948–49 (2009), eliminated or abrogated supervisory liability, Fed. Br. at 23, misreads the Court's holding in that case. *Iqbal* neither did away with supervisory liability nor offered a new standard requiring supervisors' direct participation in the unconstitutional conduct of their subordinates. The term "supervisory liability" was a misnomer, the Court reasoned, only insofar as it suggested that a supervisor's status as a supervisor could itself establish liability based on a subordinate's unconstitutional acts. *Id*. at 1949. The Court reaffirmed that an official may be held liable for "his or her own misconduct," including "violations arising from his or her superintendent responsibilities." *Id*. Courts that have considered the question have held, after *Iqbal*, that a supervisor may be held liable for violations arising from his or her personal responsibilities. *See, e.g*, *Johnson v. Gov't of the District of Columbia*, 734 F.3d 1194, 1204-05 (D.C. Cir. 2013) (supervisor may be held liable in a *Bivens* action where her state of mind met the standard imposed by the particular constitutional violation); *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1073 n. 15 (9th Cir. 2012) ("*Iqbal* does not stand for the absurd proposition that government officials are never liable under § 1983 and *Bivens* for actions that they take as supervisors. . . . *Iqbal* holds simply that a supervisor's liability, like any government official's liability, depends first on whether he or she breached the duty imposed by the relevant constitutional provision").

[13] In addition, given Ms. Shaw's previous assaults in custody and reports of violence against other women, the complaint properly alleges past violations.

365 F.3d 20, 27 (D.C. Cir. 2004); *see also Elkins v. D.C.*, 690 F.3d 554, 566 (D.C. Cir. 2012). *Cf. Johnson v. City of Cincinnati*, 39 F. Supp. 2d 1013, 1019–20 (S.D. Ohio 1999) (finding that information existed in the law enforcement community that put officers on notice of the dangers of positional asphyxiation; situation should have been known to be one officers encountered regularly and thus required special training).

The District Court correctly noted that Ms. Shaw alleged nearly a dozen different areas in which Appellants Kates and Quicksey failed to provide adequate training or supervision. JA 415-16, 418-20. Both Kates and Quicksey must have known that absent any training in this area, harm would inevitably occur. The Complaint references a report from the D.C. Office of the Inspector General, MPD General Orders and Standard Operating Procedures, the report from the Prison Rape Elimination Act Commission, and complaints or reports from previous detainees, which were adequate to put Kates and Quicksey on notice that without training, harm was inevitable. JA 20.

In addition, the obviousness of the harm, as discussed in detail in Section IIB, *supra*, was sufficient to put Kates and Quicksey on notice that harm was inevitable absent proper training. The risk of harm of placing Ms. Shaw with male detainees was substantial. Training that permits a supervisee to elevate the gender marker associated with an individual's PDID above all other information is "so

clearly deficient" as to rise to the level of a constitutional violation. *Int'l Action Ctr.*, 365 F.3d at 27.

By the time Ms. Shaw was arrested in June 2009, the MPD had had a policy in effect for two years that required staff to flag conflicting gender information and write "AT RISK" in red letters on the detainee's file for USMS staff at Superior Court. MPD General Order: Handling Interactions with Transgender Individuals (October 16, 2007), *available at* https://go.mpdconline.com/GO/3925000.pdf. It is not known whether Ms. Shaw's paperwork was marked "AT RISK" as is required under MPD policy. Even if the paperwork was not marked in this way (supporting Ms. Shaw's allegations that MPD officers were not properly trained), the policy's existence also makes clear that both MPD and USMS officials were well aware of the risk of harm to detainees with conflicting gender information, such as Ms. Shaw. Additionally, the USMS was a part of the PREA Commission working group convened by the Attorney General to finalize recommendations to the DOJ. The June 2, 2009 report of the PREA Commission focused extensively on the risk of violence, including sexual violence, to transgender detainees. NPREC Report, JA 203 ("Male-to-female transgender individuals are at special risk.").

If the twenty years of case law stemming from *Farmer*, the clear findings of the NPREC and recommendations of the PREA working group, and common sense

were not sufficient to put Appellants Quicksey and Kates on notice of the need for training to protect vulnerable individuals like Ms. Shaw from harm, then it seems there is no set of conditions that would. A reasonable factfinder could find that Appellants' lack of training, including their policy or practice of placing women with conflicting gender information in men's units, was directly responsible for Ms. Shaw's abuse, including her forced exposure of her breasts and vagina to male detainees, allowing male detainees to masturbate in front of her and throw a "thick liquid" at her, and the overall harassment and abusive searches she suffered. The Constitution does not tolerate such inaction by supervisors responsible for ensuring that individuals in custody are free from harassment and abuse.

CONCLUSION

Because Ms. Shaw has alleged sufficient facts establishing that Defendants violated her clearly established Fourth and Fifth Amendment Rights, *amici* respectfully urge this Court to affirm the District Court's denial of Defendants' Motions to Dismiss based on qualified immunity.

Respectfully submitted,

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March 25, 2014

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because it contains 6,930 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32(a)(1).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 14-point Times New Roman font.

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2014, I filed the foregoing brief with the Clerk of the United States Court of Appeals for the District of Columbia Circuit via the appellate CM/ECF system. Participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ *Arthur B. Spitzer*

Arthur B. Spitzer

ADDENDUM

DESCRIPTIONS OF *AMICI*

The American Civil Liberties Union (ACLU) is the oldest organization dedicated to promoting and defending civil liberties in the United States. Two of the ACLU's areas of particular expertise are the rights of lesbian, gay, bisexual, and transgender individuals, and the rights of prisoners. The American Civil Liberties Union of the Nation's Capital is an affiliate of the ACLU dedicated to promoting civil liberties in the District of Columbia. Both the ACLU and the ACLU of the Nation's Capital have appeared frequently before this and other federal courts, as direct counsel and as *amici*.

The D.C. Trans Coalition (DCTC) is an unincorporated nonprofit association dedicated to fighting for human rights, dignity, and liberation for transgender, transsexual, and gender-diverse (hereinafter "trans") people in the District of Columbia area. DCTC organizes in the D.C., Maryland and Virginia areas to spread awareness, increase trans people's access to resources and information, and ensure that trans people are treated with respect and dignity. DCTC works toward changing laws, policies and services to improve the lives of trans people and realize gender self-determination for the local trans communities. DCTC also provides workshops and trainings designed to educate trans communities on the law so that they are prepared to defend their rights and live without fear. DCTC

has a strong interest in the outcome of any lawsuit that affects the rights of trans detainees in the D.C., Maryland or Virginia area.

The Human Rights Defense Center (HRDC) is a nonprofit charitable corporation headquartered in Florida that advocates on behalf of the human rights of people held in state and federal prisons, local jails, immigration detention centers, civil commitment facilities, Bureau of Indian Affairs jails, juvenile facilities, and military prisons. HRDC's advocacy efforts include publishing *Prison Legal News*, a monthly publication that covers criminal justice-related news and litigation nationwide, publishing and distributing self-help reference books for prisoners, and engaging in litigation in state and federal courts on issues concerning detainees. HRDC submitted comments to the U.S. Department of Justice regarding the proposed Prison Rape Elimination Act standards in 2010 and 2011 to support the greatest possible protections for prisoners against being sexually assaulted and raped while in custody.

Just Detention International (JDI) is a human rights organization dedicated to putting an end to sexual violence in all forms of detention. JDI has three core goals for its work: (1) to ensure government accountability for prisoner rape; (2) to transform public attitudes about sexual violence in detention; and (3) to promote access to resources for those who have survived this form of abuse. The organization provides expertise to lawmakers, officials, counselors, advocates, and

reporters on issues pertaining to inmate safety and the obligations of corrections officials to prevent and respond to sexual abuse.

Lambda Legal Defense and Education Fund, Inc. (Lambda Legal) is a national organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender (LGBT) people and those living with HIV through impact litigation, education and public policy work. Lambda Legal has worked to address the particular vulnerability of transgender people in custody through comments to the PREA Commission, the Department of Justice, the Department of Homeland Security, and testimony to the U.S. Senate and has appeared as counsel or amicus curiae in numerous cases in federal and state court involving the rights of transgender people. *See*, *e.g.*, *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011), (holding that Wisconsin law preventing transgender prisoners from accessing transition-related care violated prohibition against cruel and unusual punishment) *cert. denied*, 132 S. Ct. 1810 (2012); *Rosati v. Igbinosa*, No. 12-cv-01213, 2013 U.S. Dist. LEXIS 60247 (E.D. Cal. Apr. 26, 2013), appeal docketed, No. 13-15984 (9th Cir. May 16, 2013) (appealing district court decision dismissing deliberate indifference claim of transgender prisoner denied sex reassignment surgery); *Brandon v. County of Richardson*, 264 Neb. 1020 (Neb. 2002) (holding that a sheriff could not avoid liability for failure to protect a transgender man who had been raped and, days after reporting that crime, was murdered by the same

perpetrators in early landmark case involving highly publicized hate crime). Because protecting the rights of transgender people when they are at their most vulnerable, including when they are entirely within governmental control due to incarceration, is integral to Lambda Legal's mission, Lambda Legal has a strong interest in the decision of this motion.

The National Police Accountability Project (NPAP) is a nonprofit organization founded by members of the National Lawyers Guild. NPAP has more than five hundred attorney members throughout the United States who represent plaintiffs in law enforcement misconduct cases. NPAP often presents the views of victims of civil rights violations through amicus filings in cases raising issues that transcend the interests of the parties. One of the central missions of NPAP is to promote the accountability of police officers and prison personnel and their employers for violations of the Constitution or laws of the United States.

The National Center for Lesbian Rights (NCLR) is a national organization committed to protecting and advancing the rights of lesbian, gay, bisexual, and transgender (LGBT) people, including LGBT individuals in prison, through impact litigation, public policy advocacy, public education, direct legal services, and collaboration with other social justice organizations and activists. NCLR is particularly interested in ensuring that transgender prisoners are safely housed, provided with appropriate medical treatment, and are free from sexual and physical

harassment and abuse. Each year, NCLR serves more than 500 people in California, and more than 5,000 people in all fifty states.

The National Center for Transgender Equality (NCTE) is a national social justice organization devoted to advancing justice, opportunity and well-being for transgender people through education and advocacy on national issues. Since 2003, NCTE has been engaged in educating legislators, policymakers and the public, and advocating for laws and policies that promote the health, safety and equality of transgender people. NCTE provides informational referrals and other resources to thousands of transgender people every year, including many individuals in prisons, jails and civil detention settings, and has been extensively involved in efforts to implement the Prison Rape Elimination Act (PREA) and other efforts to address the vulnerability of transgender people in confinement settings.

Streetwise and Safe (SAS) is an organization dedicated to ending profiling and discriminatory policing of lesbian, gay, bisexual, transgender and queer (LGBTQ) youth of color in New York City and nationally, with a particular focus on the experiences of the disproportionate number of homeless youth who identify as LGBTQ. SAS comes into contact with hundreds of LGBTQ youth every year through workshops and outreach aimed at providing LGBTQ youth of color with

information that will reduce the harm of contact with law enforcement and is tailored to their unique experiences of policing.

SAS played a leadership role in securing comprehensive changes to the New York City Police Department's Patrol Guide (NYPD Patrol Guide) promulgated in 2012 to address violations of the rights of transgender New Yorkers, and serves on the LGBT Advisory Panel to the New York City Police Commissioner. We also offer legal representation to LGBTQ youth of color who experience profiling and discriminatory policing practices.

In the course of drafting and negotiating the changes to the NYPD Patrol Guide, SAS conducted extensive research and engaged in first hand documentation of the harms of inappropriate searches and placement of transgender and gender nonconforming individuals in police custody. We also looked to the policy of the Metropolitan Police Department as a model for protecting the rights of transgender people in police custody. We are deeply concerned with the MPD's failure to effectively implement the policy in Ms. Shaw's case, and with reports we have received indicating that the policy is systemically not being followed by the U.S. Marshals and the MPD. Because the policy changes we successfully negotiated in New York City and are now promoting across the country were based in part on the policies of the Metropolitan Police Department, we have an interest in ensuring

that these policies are being effectively implemented to prevent precisely the types of violations at issue in this case.

The Sylvia Rivera Law Project (SRLP) is a non-profit organization that provides free civil legal services to low-income people and people of color who are transgender, intersex, or gender non-conforming in New York State. SRLP has served over 300 transgender, gender non-conforming and intersex clients in New York State correctional facilities and has been in contact with over a thousand transgender individuals in confinement settings across the country. SRLP has heard from people again and again who have experienced the type of violence that Ms. Shaw endured and has an interest in the constitutional issues presented in this case.

Transgender Law Center (TLC) is the nation's largest organization dedicated to advancing the rights of transgender and gender nonconforming people. TLC works to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression. TLC works to fight the systems that disproportionately funnel transgender people into prison and also seeks to improve conditions for transgender people who are incarcerated, to ensure that they are free from violence, with the opportunity to live as their authentic selves.