

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JOSHUA D. ZOLLICOFFER a/k/a  
PASSION STAR,  
Plaintiff,

*versus*

BRAD LIVINGSTON, personally and in his  
official capacity as Executive Director of the  
Texas Department of Criminal Justice (“TDCJ”);  
*et al.*,

Defendants.

**Case No. 4:14-cv-03037**

STATE OF CALIFORNIA                    )  
  ) §§  
COUNTY OF LOS ANGELES            )

**Affidavit of Valerie Jenness, Ph.D.**

I, Valerie Jenness, upon my oath, hereby certify as follows:

**Preliminary Statement**

1. I am Dean of the School of Social Ecology, and Professor in the Department of Criminology, Law and Society and in the Department of Sociology at the University of California, Irvine (“UCI”). The University of California, Irvine is a member of the prestigious Association of American Universities and is consistently ranked among the nation’s best universities, public and private. The Department of Criminology, Law and Society at UCI is a nationally ranked research department, often recognized as being in the top five criminology departments in the United States and recently ranked as the #1 criminology baccalaureate

program in the country by *U.S.A Today*.<sup>1</sup> I am a senior member of the professoriate in that highly regarded department. I have personal knowledge of each of the facts sets forth herein, and could and would competently testify thereto, if called upon to do so.

2. I have conducted substantial original research on prison violence, including sexual assault, and the structure and operation of the prison grievance system. A significant portion of my body of work has focused on the experience of transgender women in prisons for men.

3. I was the lead researcher on a multi-site study of sexual and non-sexual violence in California prisons funded by the California Department of Corrections and Rehabilitation (“CDCR”). I have presented findings from this research to dozens of non-academic audiences with a stake in prison violence in general and sexual assault in particular, including medical personnel, legislators, public safety officials, court officials, and members of the media. On each occasion, I emphasized that transgender women in prisons for men constitute a vulnerable population of inmates. A lengthy report that derives from this research has been the focus of the courts and the media, in large part because it reveals that transgender women are particularly vulnerable to sexual assault while locked up in prisons for men.<sup>2</sup>

4. I also completed a second study of prison violence funded by CDCR that focuses exclusively on transgender inmates in prisons for men in California.<sup>3</sup> To complete this research, I collected data on all the transgender inmates in California’s 33 CDCR-operated prisons that I,

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<sup>1</sup> See <http://college.usatoday.com/2014/10/19/the-best-u-s-colleges-for-a-major-in-criminology/>, last visited March 1, 2015.

<sup>2</sup> See Jenness, Valerie, Cheryl L. Maxson, Kristy N. Matsuda, and Jennifer Macy Sumner. 2007. “Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault.” Report to the California Department of Corrections and Rehabilitation. Sacramento, California. See also: Jenness, Valerie, Cheryl L. Maxson, Jennifer Macy Sumner, and Kristy N. Matsuda. 2010. “Accomplishing the Difficult, But Not Impossible: Collecting Self-Report Data on Inmate-on-Inmate Sexual Assault in Prison.” *Criminal Justice Policy Review* 21(1):3-30.

<sup>3</sup> See Jenness, Valerie, Lori Sexton, and Jennifer Macy Sumner. 2011. “Transgender Inmates in California’s Prisons: An Empirical Study of a Vulnerable Population.” Report submitted to the California Department of Corrections and Rehabilitation, State of California. Sacramento, California.

with the help of corrections officials, could identify (over 300) and focused empirical and analytic attention on transgender women in prisons for men in 27 prisons in California. This research resulted in numerous publications and sworn testimony before the California State Senate Committee on Public Safety, and it enabled me to serve as a conduit through which criminological research has gained footing in multiple non-academic settings, from health providers in corrections to the Los Angeles Police Department (LAPD) to the Immigration and Customs Enforcement (ICE), to inform public policy and practice. In the process of providing this public service, I routinely emphasize what a growing body of research reveals: transgender women in lock-up facilities for men constitute a vulnerable population of inmates; as a group, they experience an exceptionally high prevalence and incident rate of sexual assault.

5. I earned a Ph.D. and a Masters in Sociology from the University of California, Santa Barbara and a Bachelor of Science degree in Sociology from Central Washington University.

6. My curriculum vitae, summarizing my experience, publications, and awards, is attached hereto as Exhibit 1. I am being compensated at the rate of \$175 an hour for my work in this case.

7. In preparing this affidavit, I have relied on my years of academic research and professional experience. I also reviewed Ms. Star's original and amended complaint and affidavit. A complete list of the material I have reviewed is attached to this report as Exhibit 2.

### **Transgender Identity**

8. Gender identity refers to a person's inner sense of being a boy, girl, man, woman, or other gender. It is a deeply felt, core component of a person's identity<sup>4</sup> and it is distinct from sexual orientation. The term cisgender refers to people whose gender identity is the same as the

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<sup>4</sup> See American Psychological Association, *Answers To Your Questions About Transgender People, Gender Identity, and Gender Expression*, available at <http://www.apa.org/topics/sexuality/transgender.pdf>

sex assigned to them at birth. Transgender is an umbrella term used to describe people who have a gender identity that differs from their assigned or presumed sex at birth.

9. Joshua Zollicoffer a/k/a Passion Star self-identifies as a transgender woman. By many accounts and evidenced in official documents, she has a gender identity as a woman and she was assigned the sex of male at birth.

10. By adopting a feminine name and using female pronouns to refer to herself, Ms. Star is taking social steps to live in conformity with her gender identity (i.e., as a woman).

**The Differential Vulnerability of Transgender Women who are Incarcerated**

11. Based on my review of the documents identified above, as well as on my training and research, it is my opinion that Passion Star's profile includes characteristics that render her differentially vulnerable to sexual assault in carceral environments. Specifically, her status as a transgender woman makes her differentially vulnerable to sexual assault.

12. In my research on sexual and non-sexual violence in California prisons, commissioned by the CDCR, I found that transgender women in prisons for men are considerably more vulnerable to sexual assault than other inmates. Specifically, sexual assault was 13 times more prevalent among transgender women in prisons for men. Fifty-nine percent of transgender inmates reported being sexually assaulted while incarcerated, while slightly more than 4% of 322 randomly selected inmates in California state prisons for men reported being sexually assaulted.<sup>5</sup> These findings were corroborated in a second study that found that the prevalence rate for sexual

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<sup>5</sup> Jenness, Valerie, Cheryl L. Maxson, Kristy N. Matsuda, and Jennifer Macy Sumner. 2007. "Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault." Report to the California Department of Corrections and Rehabilitation. Sacramento, California.

assault for transgender inmates was 58.5% during their incarceration history in California correctional facilities.<sup>6</sup>

13. The table below summarizes some of my findings. It reports statistics that reveal that transgender women in prisons for men are not only differentially vulnerable to sexual assault, but that sexual assault of transgender women by other inmates more often involves a weapon and less often results in needed medical attention:

	Random Sample	Transgender Sample
Prevalence of Sexual Assault	4.4%	59%
Prevalence of undesirable sexual acts	1.3%	48.3%
Weapon actually used if involved	20%	75%
Officer Aware of the Incident	60.6%	29.3%
Provision of Medical Attention (if needed)	70%	35.7%
Racial composition (% of incidents interracial)	17.2%	63.9%
Relational Distance	Evenly distributed	Skewed toward familiarity

14. A growing body of literature based on unofficial and official data, such as my research and research done by the Bureau of Justice Statistics (BJS),<sup>7</sup> respectively, confirms the differential vulnerability of transgender people on a national scale. Indeed, I am not aware of a single study that finds otherwise.

15. My research reveals that a number of factors predict vulnerability to sexual assault for transgender women prisoners in prisons for men. Relevant to this case, the probability of sexual assault for transgender women in prisons for men increases when: 1) transgender women inmates

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<sup>6</sup> Jenness, Valerie, Lori Sexton, and Jennifer Macy Sumner. 2011. "Transgender Inmates in California's Prisons: An Empirical Study of a Vulnerable Population." Report submitted to the California Department of Corrections and Rehabilitation.

<sup>7</sup> See, for example, the Bureau of Justice Statistics recent report on "Sexual Victimization in Prisons and Jails Reported by Inmates," including "Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates." Washington, DC., 2015.

are involved in a sexual relationship or “marriage like” relationship with another inmate (be it consensual, coercive or protective); and 2) when transgender women inmates are Black.<sup>8</sup>

16. Given Ms. Star’s transgender identity, as well as her history of being sexually assaulted and her race, it is not surprising to read documents that reveal the alleged victimization she has endured while in the custody of the Texas Department of Criminal Justice (TDCJ). Key elements of the alleged fact pattern in the case, as described in the complaint, are commensurate with social science findings on sexual assault in prison.

17. The alleged fact pattern described in the documents I have reviewed also provide evidence that raises serious concerns about future victimization of Ms. Star, especially if her housing/custody situation is not changed immediately in some fundamental way.

18. Research and professional knowledge of differential vulnerability of lesbian, gay, bisexual and particularly transgender people is now widespread among researchers like myself and corrections officials alike; it has been “common knowledge” for decades, at least. The landmark Prison Rape Elimination Act, passed in 2003 with bipartisan support, memorialized this understanding of inmate vulnerability well over a decade ago (and thus well prior to 2012). Therefore, it is reasonable to infer that officials at TDCJ were aware that Ms. Star was differentially vulnerable for sexual assault. Given the fact that Ms. Star has been previously assaulted in their custody and persistently reported that she perceived herself to be vulnerable to future sexual assault, TDCJ should have screened Ms. Star, separated her from likely abusers (gang members in this case), and avoided placing her in a housing unit known to have a high prevalence of inmate sexual assault. Doing so constitutes “best practices.”

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<sup>8</sup> Jenness, Valerie. 2008. "Transgender Inmates in California Prisons: Comments from the Point of View of Research." Report submitted to the State Senate Committee on Public Safety for the State of California. Sacramento, California.

19. Evidence in the documents related to this case that I reviewed suggest that Ms. Star tried, on multiple occasions and seemingly dutifully, to secure the assistance of correctional personnel to ensure her safety. Her efforts included filing numerous grievances in which she reported threats made my other inmates, harm inflicted upon her by other inmates, and fear for her safety. In these grievances, she requested “safekeeping.”

20. Despite Ms. Star’s best efforts to secure the assistance of corrections officials, including filing numerous grievances, evidence reveals that numerous correctional officials did not take proactive steps to ensure her safety and, instead, engaged in actions that may very well have compromised her physical safety and attendant mental health.

21. In their survey of mission statements of state departments of corrections in the U.S., the Federal Bureau of Prisons, and the Correctional Service of Canada, Gaes and his colleagues identify prominent themes in mission statements across departments and found that “Guaranteeing the safety of the public, staff, and inmates” emerges as *the* central organizational value of prisons,<sup>9</sup> quite apart from the perceived punitive correctional climate of the past three plus decades and/or debates about the role of offender management through risk probability. In other words, keeping prisoners safe from harm is a primary goal for any prison. To the degree that Ms. Star was harmed while in the custody of TDCJ in ways that could have been—and should have been—prevented, the prison failed to meet its obligations.

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<sup>9</sup> Gaes, Gerald G., Scott D. Camp, Julianne B. Nelson, and William G. Saylor. 2004. *Measuring Prison Performance: Government Privatization and Accountability*. Walnut Creek, CA: Altamira Press.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct to the best of my knowledge. Executed this 2nd day of March 2015 in Costa Mesa, California.

Signed,

A handwritten signature in black ink, appearing to read "Valerie Jenness". The signature is written in a cursive, flowing style.

VALERIE JENNESS, Ph.D.