

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NORMAN SHELTON,

Plaintiff,

v.

THOMAS R. KANE, JOSEPH  
NORWOOD, BRIAN A. BLEDSOE,  
CHUCK MAIORANA, DARRELL  
YOUNG, KRISTA REAR, J.  
DUNKELBERGER, JOHN ADAMI, J.  
FOSNOT, F. PERRIN, S.V. HEATH,  
NELSON DREESE, CORRECTIONS  
OFFICERS WHITAKER, RAUP,  
ZELDER, WELLS, KULAGO,  
FISHER, MOFFIT, COMBE, JOHN  
DOE CORRECTIONS OFFICERS,  
EMT POTTER, AND THE UNITED  
STATES OF AMERICA through its  
department, THE FEDERAL BUREAU  
OF PRISONS

Defendants.

CIVIL ACTION

Case No.:

**COMPLAINT**

Under the Eighth Amendment to the United States Constitution, the Federal Tort Claims Act, and Federal Rule of Civil Procedure Rule 23, Plaintiff Norman Shelton brings this action for damages as well as injunctive and class action relief against the Defendants, complaining and alleging as follows:

## Nature of the Case

1. This is an individual damage claim pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against Defendants Bledsoe, Maiorana, Young , Rear, Dunkelberger, Adami, Fosnot, Perrin, Heath, Dreese, Whitaker, Raup, Zelder, Wells, Potter, Kulago, Fisher, Moffit, Combe, and John Doe Corrections Officers in their individual capacity; an individual damage claim against the United States of America pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2761 *et seq.*; and a class action claim pursuant to Eighth Amendment to United States Constitution and Federal Rule of Civil Procedure 23 against the Federal Bureau of Prisons (BOP) and Defendants Kane, Norwood, Bledsoe, Young, and Rear in their official capacity. Plaintiff Norman Shelton brings the damages claims on his own behalf, and the claim for injunctive relief on behalf of all current and future prisoners at the Special Management Unit (SMU) of the United States Penitentiary at Lewisburg (USP Lewisburg) for the unconstitutional and unconscionable conditions of confinement that Plaintiff individually, and all inmates collectively, must endure on a day-to-day basis.

Defendants, acting under color of federal law, engaged and continue to engage in a pattern, practice or policy of placing hostile inmates together in cells and/or recreation cages despite the serious risk that the hostile inmates will cause substantial material harm to each other. As part of this placement pattern, practice or policy,

Defendants punish inmates who complain about placements by putting them in restraints for hours at a time, sometimes as long as twenty-four (24) hours or more. These restraints significantly restrict an inmate's arm and leg motion, and in some cases, inmates are strapped to a bed with their limbs tied down in a brutal procedure known as four pointing. Furthermore, Defendants, again acting under color of federal law, engaged and continue to engage in a pattern, practice or policy of failing to intervene to prevent substantial material harm to inmates resulting from dangerous placements. There have been at least two inmate deaths at USP Lewisburg attributable to this systemic failure. Defendants have deprived and continue to deprive the members of the class of their constitutional right to be free from cruel and unusual punishment, in violation of the Eighth Amendment to the United States Constitution. If appropriate injunctive relief is not granted, the harms suffered will be irreparable, may lead to death, and will continue for the foreseeable future.

Plaintiff personally endured all three categories of this conduct: (1) He has been beaten severely several times by cellmates with whom he had a documented hostile relationship; (2) he has suffered serious injury because officers failed to react timely to stop these assaults; and (3) he has been placed in restraints on multiple occasions as punishment for refusing dangerous cell assignments with hostile inmates. Plaintiff seeks compensatory and punitive damages on behalf of himself, as well as injunctive relief on behalf of all current and future USP Lewisburg inmates.

## **Jurisdiction and Venue**

2. Plaintiff brings this action under the Eighth Amendment to the United States Constitution, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.*
3. This Court has subject matter jurisdiction over the claims presented herein pursuant to 28 U.S.C. §§ 1331, 1343, and 1346(b)(1).
4. Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1391(b) and 1402 because this is the district in which Plaintiff's claims arose.
5. This Court has personal jurisdiction over each Defendant because it is believed that at all times relevant to this action all Defendants were employed in Lewisburg, Pennsylvania, and/or their acts and omissions caused the harm complained of by Plaintiff in the Commonwealth of Pennsylvania.

## **Parties**

6. Defendant Thomas R. Kane is the Acting Director of the BOP. Mr. Kane is being sued in his official capacity.
7. Defendant Joseph Norwood is the Regional Director of the Northeast Region for the BOP, which includes USP Lewisburg. Mr. Norwood is being sued in his official capacity.
8. Defendant Brian A. Bledsoe is the Warden of USP Lewisburg. He is responsible for overseeing and implementing inmate housing and recreation

placement decisions. Mr. Bledsoe is being sued in his individual capacity with respect to Plaintiff's damage claims and in his official capacity with respect to Plaintiff's injunctive relief claim.

9. Defendant Chuck Maiorana was at all times relevant to this action an Associate Warden at USP Lewisburg. Mr. Maiorana was partially responsible for inmate housing and recreation placement. Mr. Maiorana is being sued in his individual capacity.

10. Defendant Darrell Young is an Associate Warden at USP Lewisburg, and is partially responsible for inmate housing and recreation placement. Mr. Young is being sued in his individual capacity with respect to Plaintiff's damage claims and in his official capacity with respect to Plaintiff's injunctive relief claim.

11. Defendant Krista Rear is an Associate Warden at USP Lewisburg, and is partially responsible for inmate housing and recreation placement. Ms. Rear is being sued in her individual capacity with respect to Plaintiff's damage claims and in her official capacity with respect to Plaintiff's injunctive relief claim.

12. Defendant J. Dunkelberger is a Case Manager Coordinator at USP Lewisburg, and is partially responsible for inmate housing and recreation placement. Mr. Dunkelberger is being sued in his individual capacity.

13. Defendant John Adami is a Unit Manager at USP Lewisburg, and partially responsible for ensuring inmate safety at USP Lewisburg. Mr. Adami is also involved

in inmate housing and recreation placement. Mr. Adami is being sued in his individual capacity.

14. Defendant J. Fosnot is the Acting Captain of Security at USP Lewisburg. Mr. Fosnot is responsible in part for ensuring inmate safety and also for supervising Corrections Officers tasked with ensuring inmate safety. Mr. Fosnot is being sued in his individual capacity.

15. Defendant F. Perrin is a Corrections Officer at USP Lewisburg with the ranks of Lieutenant and Special Investigation Agent. Lieutenant Perrin is, in part, responsible for inmate housing and recreation placement. Mr. Perrin is being sued in his individual capacity.

16. Defendant S.V. Heath is a Corrections Officer at USP Lewisburg with the ranks of Lieutenant and Special Investigation Supervisor. Lieutenant Heath is, in part, responsible for inmate housing and recreation placement. Ms. Heath is being sued in her individual capacity.

17. Defendant Nelson Dreese is a Corrections Officer at USP Lewisburg with the ranks of Lieutenant and Special Investigation Supervisor. Lieutenant Dreese is, in part, responsible for inmate housing and recreation placement. Mr. Dreese is being sued in his individual capacity.

18. Defendant Whitaker is a Corrections Officer at USP Lewisburg. Mr. Whitaker is being sued in his individual capacity.

19. Defendant Raup is a Corrections Officer at USP Lewisburg. Mr. Raup is being sued in his individual capacity.
20. Defendant Zelder is a Corrections Officer at USP Lewisburg. Mr. Zelder is being sued in his individual capacity.
21. Defendant Wells is a Corrections Officer at USP Lewisburg. Mr. Wells is being sued in his individual capacity.
22. Defendant Kulago is a Corrections Officer at USP Lewisburg. Mr. Kulago is being sued in his individual capacity.
23. Defendant Fisher is a Corrections Officer at USP Lewisburg. Mr. Fisher is being sued in his individual capacity.
24. Defendant Moffit is a Corrections Officer at USP Lewisburg. Mr. Moffit is being sued in his individual capacity.
25. Defendant Combe is a Corrections Officer at USP Lewisburg. Mr. Combe is being sued in his individual capacity.
26. Defendants John Doe Corrections Officers were at all times relevant to this action Corrections Officers at USP Lewisburg. On information and belief, they were present on August 30 outside of Plaintiff's cell, and failed to intervene when Plaintiff was attacked by his cellmates. John Doe Corrections Officers are being sued in their respective individual capacities.

27. Defendants John Doe Corrections Officers were at all times relevant to this action Corrections Officers at USP Lewisburg. On information and belief, they were present on November 26, 2009, and helped to force a hostile inmate into Plaintiff's cell. John Doe Corrections Officers are being sued in their respective individual capacities.

28. Defendant Potter is an Emergency Medical Technician at USP Lewisburg. Mr. Potter is being sued in his individual capacity.

29. Defendant the BOP is responsible for the safety of all inmates housed in any facility it operates.

30. Defendant the United States of America, pursuant to federal law, has mandated that its department, the BOP, have responsibility for the custody and care of federal inmates, including those at USP Lewisburg.

#### **General Background on the USP Lewisburg Special Management Unit**

31. In 2008, the BOP created a Special Management Unit ("SMU") at USP Lewisburg.

32. According to the SMU Program Statement, the SMU program is meant to serve inmates who present "unique security and management" concerns including inmates who "participated in or had a leadership role in geographical group/gang-related activity." U.S. Dept. of Justice, *Program Statement: Special Management Units* § 1.

33. Inmates within the federal correctional system are sent to the SMU because the SMU is designed to provide "greater management of their interaction to ensure the

safety, security, or orderly operation of the Bureau facilities, or protection of the public.” *Id.* § 1.

34. The conditions of confinement at USP Lewisburg’s SMU are to be “more restrictive than for the general population inmates . . . as necessary to ensure the safety of others.” *Id.* § 5.

35. The SMU cells are smaller than the standard United States Penitentiary cell because of the age of the facility. The amount of space available is further limited by the pattern, practice or policy of forcing SMU members to take cellmates.

36. Inmates are placed together in cells throughout their time at the SMU, regardless of an inmate’s self-professed inability to get along with others.

37. In the first two levels of the program, SMU inmates are required to stay in their cells for 23 hours a day.

38. In the first two levels of the program, SMU inmates are usually offered one hour of “recreation” per day, five days per week, which consists of taking inmates from their cell and placing them in recreation “cages.”

39. Many inmates choose not to go out of their cells to the recreation cages due to their fear of attack by a hostile inmate, and thus remain in their cells 24 hours a day.

40. These conditions place inmates with histories of violence and gang membership in close quarters for every hour of every day, leading to an obvious and pervasive threat of violence.

41. It is the responsibility of the BOP, the Northeast Regional Office of the BOP, and all officials and corrections officers at USP Lewisburg to ensure that this threat of violence does not become a reality.

#### **A. Cell Assignment Procedure**

42. Because of this known potential for inmate on inmate violence, upon entering the SMU program at USP Lewisburg, inmates participate in an intake interview with USP Lewisburg officials, often referred to as the “Quay” hearing.

43. One of the purposes of this interview is to gather information about the inmate so that prison officials can make safe and appropriate placement decisions for the inmate and avoid placing hostile inmates together.

44. At this intake interview, inmates disclose their separation needs and known enemies, including specific geographic groups or gangs with whom an inmate has problems.

45. Following the intake interview, the new inmate is given a cell block assignment, cell assignment, and recreation cage assignments. These placement decisions are determined in part by the Cell Assignment Committee (the Committee), with assistance from the Corrections Officers on each cell block.

46. Upon information and belief, at all times relevant to this case the Committee consisted of Defendants Bledsoe, Young, Rear, Dunkelberger, Adami, Fosnot, Perrin,

Heath, and Dreese. Upon information and belief, Defendant Maiorana was also a member of the Committee until he left USP Lewisburg in 2011.

47. Defendants Young and Rear are specifically tasked by the BOP's SMU Program Statement with inmate placement decisions: "[t]he Associate Warden is responsible for determining which inmates may be housed or participate in activities together, as necessary to protect the safety, security, and good order of the institution." U.S. Dept. of Justice, *Program Statement 5217.01: Special Management Units* § 6.

48. In making decisions on inmate placement, the Committee is required to consider inmate safety.

49. Therefore, the Committee is required to account for an inmate's particular need to be separated from other individuals or groups inside the prison who are hostile towards him.

50. Once settled at Lewisburg, inmates also frequently inform Corrections Officers orally or in writing of new inmate enemies, or geographic groups or gangs which they believe pose a substantial risk of material harm to them.

51. The USP Lewisburg Defendants are aware, by virtue of their experience and training and the history of violent attacks at the SMU, that placing hostile inmates in a cell or recreation cage together creates a substantial risk that the inmates will engage in violent conduct that can lead to injury or death.

52. Inmates are rotated to new cells every twenty-one (21) days. During this rotation, inmates sometimes receive new cellmates. Thus, the cell rotation policy renews the possibility that an inmate will be placed with a hostile cellmate who poses a substantial risk of harm to the inmate.

53. Many inmates have suffered violent physical harm at the hands of other inmates in cells and/or recreation cages. From 2008 until July 2011, there have been 272 reported incidents of inmate on inmate violence.

54. Inmates frequently inform Corrections Officers that a placement assignment is inappropriate because the prospective cellmate is hostile to the inmate and poses a substantial risk of material harm to the inmate.

55. These warnings are either ignored by the Corrections Officer or directly acknowledged and not acted upon. It is thus a pattern, practice or policy of Corrections Officers to force inmates to accept placements that Officers understand pose a substantial risk of material harm to inmates, and to reserve reassignment until after inmate-on-inmate violence actually takes place.

56. Upon information and belief, the Supervisors at USP Lewisburg, including Defendants Bledsoe, Young and Rear, either directly know and approve of the Corrections Officers' patterns, practices or policies, or are deliberately indifferent to the dangers created by the Corrections Officers through these patterns, practices or policies.

## **B. Failure to Intervene to Prevent Inmate on Inmate Violence**

57. The danger created by assigning hostile inmates to the same cell or recreation cage is compounded by the fact that the USP Lewisburg Defendants have a pattern, practice or policy that Corrections Officers are not to enter cells or recreation cages to stop inmate on inmate attacks until the attack has concluded and the victim of the attack may have already sustained serious injury.

58. The risk that the victim inmate will suffer serious harm from the attack is readily apparent to the Corrections Officers in each and every one of these cases. In fact, two inmates have died at the hands of hostile cellmates in the last two years. The USP Lewisburg Defendants have nonetheless adopted a pattern, practice or policy of failing to intervene to prevent harm in these circumstances.

## **C. Punitive Use of Restraints to Enforce Cell Assignments**

59. Furthermore, to enforce the pattern, practice or policy of placing hostile inmates together, the USP Lewisburg staff engages in a pattern, practice or policy of coercing inmates who resist dangerous placements by placing them in punitive restraints.

60. The use of punitive restraints is in direct contravention to the BOP's policies on the use of restraints. According to the policy, restraints are only to be used to control an inmate who is a danger to government property, himself and/or others, and never as punishment. See U.S. Department of Justice, *Program Statement: 5566.06 Use of Force and Application of Restraints*.

61. USP Lewisburg officials regularly put in restraints inmates who resist accepting a placement with a hostile inmate. These restraints include “four point restraints” (four-pointing), “black boxes,” and/or “ambulatory restraints.”

62. When an inmate at the SMU in USP Lewisburg resists a cell assignment, the usual procedure is that he is immediately brought to the shower area by six (6) officers. There, he is placed in ambulatory restraints and brought to a cell in the SMU specifically designated to house inmates in ambulatory restraints. The inmate may also later be placed in four point restraints. The inmate remains in that cell, restrained, for as long as USP Lewisburg officials choose, without any prior due process, until the prisoner takes a cellmate.

63. “Four pointing” involves placing an inmate on a bed frame. The inmate’s hands are restrained separately overhead, attached by metal shackles to either the bed frame or to the wall behind the bed, while the inmate’s legs are also separated and restrained by metal shackles to the foot of the bed frame. While in four-point restraints, the inmate’s limbs are stretched out, and his ability to move is completely restricted.

64. A “black box” is another type of restraint. It is made of a plastic or rubber material that fuses the left and right handcuff together to make them more restrictive than traditional handcuffs.

65. “Ambulatory restraints” are “hard” restraints. They consist of metal handcuffs, shackles and a belly chain. A belly chain is usually put around an inmate’s waist. At USP Lewisburg, however, the practice is to put the belly chain farther up on the torso so that it is actually around the inmate’s chest. The handcuffs are attached to the chain. The chain can be tightened, as can the handcuffs and shackles. The handcuffs prevent the inmate from moving his wrists. In addition, the inmate cannot move his hands up or down because the handcuffs are attached to the chest-high chain. The shackles prevent an inmate from climbing up to the top bunk of a cell, and severely limit an inmate’s ability to walk.

66. Restraints are applied and maintained in an excessively tight manner, causing severe pain, swollen wrists and fingers, open wounds and possibly nerve damage.

67. Because an inmate’s hands are cuffed together and secured tightly to the chest chain while he is in ambulatory restraints, eating, drinking and using the toilet is difficult, if not impossible.

68. Plaintiff was unconstitutionally restrained on no less than four occasions for refusing to accept a cellmate whom Defendants knew presented a risk of substantial harm to Plaintiff’s safety.

69. On March 9, April 12, June 10, and September 22 of 2010, USP Lewisburg Officials escorted Plaintiff to a cell containing an inmate hostile to Plaintiff. On each occasion, Plaintiff refused to enter the cell, and informed the Officials that the cell

assignment posed a serious risk of substantial material harm because it was counter to Plaintiff's known and documented separation needs.

70. On March 9, April 12, and September 22, the Officials reacted by placing Plaintiff in ambulatory restraints.

71. Plaintiff remained in ambulatory restraints for 24 hours following the March 9 refusal.

72. Plaintiff remained in ambulatory restraints for five (5) consecutive days following the April 12 refusal.

73. Plaintiff remained in ambulatory restraints for three (3) consecutive days following the September 22 refusal.

74. On June 10, the Officials reacted to Plaintiff's refusal by placing Plaintiff in four-point restraints for two (2) consecutive days.

75. Due to these periods of restraint, Plaintiff has permanent nerve damage in his wrists and scars to the skin around his stomach and lower back.

#### **August 30, 2009 Cell Assignment**

76. In 2005 and 2006, Plaintiff was incarcerated at USP Lewisburg.

77. During Plaintiff's time at USP Lewisburg in 2005 and 2006, Plaintiff repeatedly informed prison officials, including Defendant Heath, that he needed to be kept separate from gang members, as well as inmates from the Washington, D.C. area.

78. Plaintiff returned to USP Lewisburg to join the SMU program on or around August 27, 2009.
79. Upon his return, Plaintiff spoke with Defendant Heath in an intake interview.
80. Defendant Heath acknowledged during Plaintiff's intake interview that she remembered Plaintiff and his separation needs, and would ensure that USP Lewisburg addressed Plaintiff's safety needs.
81. Plaintiff is a Muslim.
82. Many gangs in the federal prison system systematically engage in violence against Muslims. This is common knowledge amongst both officers and inmates in the BOP system.
83. At Defendant Heath's instruction, Plaintiff filled out paperwork at his intake interview listing hostile inmates, and returned this paperwork to Heath.
84. At the intake interview in August 2009, Plaintiff informed Defendant Heath specifically of the risk of violence between gang members, including the "Bloods" and the "Crips," and Muslim inmates.
85. On or around August 27, 2009, the Committee ordered that Plaintiff be moved into a cell with a known member of the "Bloods" gang named Graham.
86. Defendants Whitaker and Raup escorted Plaintiff to Graham's cell.
87. Both Plaintiff and Graham informed Whitaker and Raup that this cell pairing was dangerous, and would lead to violence. Specifically, Graham warned the Officers

that the gang member would attack Plaintiff. Plaintiff also informed the Officers that the assignment was counter to the separation needs he outlined at his intake interview.

88. Whitaker and Raup forced Plaintiff and Graham into the cell despite being informed of the danger, and despite the advanced warning given by Plaintiff.

89. From August 27 through August 30, Plaintiff repeatedly notified BOP staff of the danger posed by his cell assignment.

90. On August 30, 2009, Defendant Whitaker, Raup, Zelder, Wells, Potter and Heath came to the cell Plaintiff shared with Graham to initiate cell rotation.

91. To handcuff an inmate already in a cell, the officer instructs the inmate to place his hands through a small slot at the bottom of the cell door typically used to pass food trays. The slot is only big enough for one inmate to put his hands through at a time.

92. Defendants Whitaker, Raup, Zelder, Wells, Potter and Heath told both cellmates to "cuff up," and Plaintiff complied by bending down towards the slot first. Once Plaintiff was handcuffed, Graham attacked him by kicking and punching him in the face and the body.

93. Despite having sufficient time to intervene, Whitaker, Raup, Zelder, Wells, Potter, and Heath stood outside the cell and did nothing. Four John Doe Corrections Officers were also outside of Plaintiff's cell at this time, and also did nothing. During this time, Graham continued to punch and kick Plaintiff. Finally, one of the Defendants began shooting tear gas pellets into the cell.

94. Upon information and belief, it is an official policy of USP Lewisburg for Corrections Officers not to enter a cell unless both inmates are handcuffed, even when one of the cellmates is attacking another.

95. As a result of Graham's attack, Plaintiff sustained injuries to his eyes and mouth from the incident, including but not limited to: a split lip, injured nose, swollen eyes and several cuts on his face and arms. Plaintiff also suffered emotional and psychological injuries from the incident.

96. The officers refused to take Plaintiff for medical treatment after the attack.

97. Plaintiff was then brought to a cell that did not contain an inmate known to be hostile to Plaintiff.

98. Following the incident, Plaintiff filed grievances and again repeatedly informed the staff at USP Lewisburg of his need to be separated from gang members.

99. Plaintiff specifically provided Defendant Young with a list of his known enemies on no less than five (5) occasions between August 30, 2009 and November 25, 2009.

#### **The November 26, 2009 Cell Assignment**

100. On November 25, 2009, Plaintiff was housed in a cell by himself at USP Lewisburg.

101. That day, the Committee assigned a known gang member named Carr to be Plaintiff's cellmate.

102. Because of Plaintiff's prior warnings to USP Lewisburg officials, his intake interview, and the August 30 incident, the Committee and Corrections Officers knew that placing Carr in Plaintiff's cell created a substantial risk of material harm to Plaintiff, or acted with deliberate indifference to the substantial risk.

103. Defendant Raup escorted Carr to Plaintiff's cell.

104. Plaintiff protested by explaining his separation needs to Raup, also informing Raup of Plaintiff's multiple appeals to Committee and the Corrections Officers in the cell block, including filing grievances over the August 30 incident with Defendants Warden Bledsoe and Regional Director Norwood.

105. Carr also protested the cell assignment, warning Raup that he would attack Plaintiff.

106. Raup told Plaintiff that he would be placed in four point restraints if he did not consent to the cell pairing.

107. Raup also deliberately misled Plaintiff by insisting Mr. Carr was not a gang member, though Mr. Carr was known by both inmates and officers at the time to be a member of the "Crips" gang.

108. Raup placed Carr in Plaintiff's cell on November 25.

109. Defendant Zelder and two John Doe Corrections Officers helped Raup force Carr into Plaintiff's cell.

110. On the morning of November 26, Defendant Fisher approached Plaintiff's cell to collect food trays.

111. Besides Defendant Fisher, Defendants Raup, Kulago, Zelder, Moffit, and Combe were also present outside Plaintiff's cell at this time.

112. As Plaintiff bent down to give his tray to Fisher, Mr. Carr attacked Plaintiff from behind.

113. Mr. Carr repeatedly punched and kicked Plaintiff.

114. Defendants Fisher, Raup, Kulago, Zelder, Moffit, and Combe stood outside Plaintiff's cell and did nothing to stop the attack, despite their constitutional obligation to intervene to protect Plaintiff.

115. Plaintiff suffered injury from the attack, including cuts to his face, one of which left a visible scar above his eye, and a split lip. Plaintiff also suffered emotional and psychological injuries from the incident.

116. Despite multiple pleadings and requests, Defendants refused to take Plaintiff for medical treatment.

117. Plaintiff was then brought to a cell that did not contain an inmate known to be hostile to Plaintiff.

### **Class Action Allegations**

118. Pursuant to Rule 23(a), 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiff seeks relief on behalf of himself and a class of similarly situated individuals who are currently or will be imprisoned at the SMU at USP Lewisburg.

119. Plaintiff seeks to represent a class defined as follows:

All persons who are currently or will be imprisoned in the SMU program at USP Lewisburg. The class period commences from the time of this filing, and continues so long as USP Lewisburg Officials and Corrections Officers persist in the unconstitutional patterns, practices, or policies of (1) placing hostile inmates together in cells or recreation cages, and enforcing this placement through the use of punitive restraints, and (2) failing to take any reasonable measures to protect the inmates from inmate-on-inmate violence by hostile inmates.

120. Because cell assignments are rotated periodically, and decisions about who should be placed in recreation cages together frequently change, every participant in the SMU program has been or is subject to the threat that he will be placed with a hostile inmate. Such placement creates a substantial risk that an inmate will be harmed at the hands of another inmate which cannot be avoided.

121. Because all cell assignments are enforced via the threat of restraints should an inmate resist, every participant in the SMU program has been or is subject to the threat

that restraints will be used against them punitively by USP Lewisburg officials or officers.

122. Because USP Lewisburg officials and officers react to incidents inside a cell or recreation cage under the same pattern, practice or policy of non-intervention until the incident is over, every participant in the SMU program has been or is subject to the threat that officers will fail to intervene should a serious risk of substantial material harm arise while an inmate is being attacked by another inmate in a cell or recreation cage.

123. Defendant USA, through the BOP, is responsible for inmate safety at all USP institutions, including USP Lewisburg. As such, the BOP is responsible for ensuring that the conditions of confinement in its facilities do not violate the Constitution.

124. Defendants Kane, Norwood, and Bledsoe are responsible for creating and implementing policy at the BOP Institutions under their control, including USP Lewisburg. As such, each Defendant has a responsibility to ensure that the conditions of confinement at USP Lewisburg do not violate the Constitution.

125. Defendants Kane, Norwood, Bledsoe, Young, and Rear were, at all times relevant to this complaint, aware of the conditions of confinement at USP Lewisburg by virtue of both the requirements of their positions and the inmate grievance process.

126. The inmate grievance policy requires that grievances be reviewed first by Bledsoe, and if the grievance is denied, the inmate must then grieve to Norwood, and finally to Kane.

127. Upon information and belief, hundreds of grievances have been filed in the last three years complaining of the conditions of confinement at USP Lewisburg, including Plaintiff's own grievances.

128. Defendant Bledsoe, as Warden of USP Lewisburg, is informed as a matter of course of any inmate being placed in restraints or instances of inmate on inmate violence.

129. Defendant Norwood is sent notice of every occasion an inmate is restrained for longer than eight (8) hours or there is an instance of inmate on inmate violence.

130. Defendants Bledsoe, Young, and Rear are also aware of the day-to-day problems and incidents related to inmate placement at USP Lewisburg by virtue of their membership on the Committee. This membership requires Defendants Bledsoe, Young, and Rear to consider the past instances of inmate on inmate violence, placement refusals by inmates, and the resulting use of restraints when making placement decisions.

131. The members of this Class are so numerous that joinder of all members is impracticable. Upon information and belief, there are approximately 1,257 inmates at USP Lewisburg, and an estimated 1,050 to 1,100 in the SMU program. Additionally,

it is impossible to determine which inmates currently housed in other Federal institutions may be transferred to USP Lewisburg in the future.

132. Common questions of law and fact exist as to all members of the Class. A class action is superior to other available methods for fair and efficient adjudication of the controversy. A non-exclusive list of the questions of law and fact common to the Class include: (1) whether there exists a pattern, practice or policy of placing hostile inmates together in cells or recreation cages; (2) whether the use of restraints in enforcing inmate placement decisions constitutes further conduct in violation of the Eighth Amendment; and (3) whether USP Lewisburg officials' failure to protect inmates from frequent and predictable inmate violence after forcing hostile inmates together in a cell or recreation cage amounts to an Eighth Amendment violation.

133. Plaintiff's claims are typical of the class members, in that each member of the class has suffered, or will potentially suffer, harm as a result of the same acts or omission engaged in by Defendants.

134. Plaintiff will fairly and adequately protect the interests of the members of the Class, and has retained counsel competent and experienced in class action and prisoners' civil rights litigation. Plaintiff's counsel has the resources, expertise, and experience to prosecute this action against Defendants. Plaintiff has no interest hostile to or in conflict with those of the proposed class with respect to the claims raised in this complaint.

135. Certification is warranted under Rule 23(b)(1)(A) because prosecuting separate actions for members of the Class would, as a practical matter, create a risk of inconsistent and varying adjudications with respect to individual class members. Individual adjudications may also substantially impede or impair other class members' ability to protect their interests.

136. The Defendants have acted, or refuse to act, on grounds generally applicable to the class. Final injunctive relief is appropriate with respect to all of the members of the class pursuant to Rule 23(b)(2).

### **Claims**

#### **Count I. Plaintiff Norman Shelton vs. Defendants Bledsoe, Maiorana, Young, Rear, Dunkelberger, Adami, Fosnot, Perrin, Heath, Dreese:**

##### **Eighth Amendment Violation Arising Out of Assault on August 30, 2009**

137. Plaintiff incorporates by reference the allegations in the preceding paragraphs of this Complaint.

138. Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution was clearly established as of August 30, 2009.

139. Defendants, acting under color of federal law, deprived Plaintiff of his constitutional right to be free from cruel and unusual punishment.

140. Defendants Bledsoe, Maiorana, Young, Rear, Dunkelberger, Adami, Fosnot, Perrin, Heath, and Dreese violated Plaintiff's Eighth Amendment rights on August 27 2009 by assigning Plaintiff to a cell with a gang member. In making this assignment, Defendants ignored or were deliberately indifferent to the known substantial risk of material harm the placement would create.

141. Due to Defendants' acts and omissions, Plaintiff suffered serious bodily injury, and is therefore entitled to relief.

**Count II. Plaintiff Norman Shelton vs. Defendants Whitaker, Raup, Zelder, Heath, and Five John Doe Corrections Officers:**

**Eighth Amendment Violation Arising out of Assault on August 30, 2009**

142. Plaintiff incorporates by reference the allegations in the preceding paragraphs of this Complaint.

143. Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution was clearly established as of August 30, 2009.

144. Defendants, acting under color of federal law, deprived Plaintiff of his constitutional right to be free from cruel and unusual punishment.

145. Defendants Whitaker, Raup, Zelder, Heath, and John Doe Corrections Officers violated Plaintiff's Eighth Amendment rights by failing to intervene, despite having the ability and constitutional duty to do so, while Plaintiff's cellmate brutally

assaulted Plaintiff. Additionally, Defendants Whitaker and Raup placed Plaintiff in the cell despite Plaintiff's and Graham's warnings of a likely attack.

146. Due to Defendants' acts and omissions, Plaintiff suffered serious bodily injury, and is therefore entitled to relief.

**Count III. Plaintiff Norman Shelton vs. Defendants Bledsoe, Maiorana, Young, Rear, Dunkelberger, Adami, Fosnot, Perrin, Heath, Dreese:**

**Eighth Amendment Violation Arising out of Assault on November 26, 2009**

147. Plaintiff incorporates by reference the allegations in the preceding paragraphs of this Complaint.

148. Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution was clearly established as of November 26, 2009.

149. Defendants, acting under color of federal law, deprived Plaintiff of his constitutional right to be free from cruel and unusual punishment.

150. Defendants Bledsoe, Maiorana, Young, Rear, Dunkelberger, Adami, Fosnot, Perrin, Heath, Dreese, violated Plaintiff's Eighth Amendment rights on November 26, 2009, by assigning Plaintiff to a cell with a gang member. In making this assignment, Defendants ignored or were deliberately indifferent to the known substantial risk of material harm the placement would create.

151. Due to Defendants' acts and omissions, Plaintiff suffered serious bodily injury, and is therefore entitled to relief.

**Count IV. Plaintiff Norman Shelton vs. Defendants Raup, Kulago, Fisher, Moffit, Combe and John Doe Corrections Officers:**

**Eighth Amendment Violation Arising out of Assault on November 26, 2009**

152. Plaintiff incorporates by reference the allegations in the preceding paragraphs of this Complaint.

153. Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution was clearly established on November 26, 2009.

154. Defendants, acting under color of federal law, deprived Plaintiff of his constitutional right to be free from cruel and unusual punishment.

155. Defendants Raup, Fisher, Kulago, Moffit, Zelder and Combe were present outside of Plaintiff's cell on November 26, 2009, and did nothing in response to the substantial risk of harm Plaintiff faced if his cellmate's attack was allowed to persist. Defendants Raup, Zelder, and John Doe Corrections Officers placed Carr into Plaintiff's cell through the coercive threat of restraining Plaintiff should he resist, and carried out the placement decision despite knowing Plaintiff could not be celled with gang members, despite the protestations of both Plaintiff and Carr, and despite the August 30 incident and Plaintiff's resulting grievances.

156. Due to Defendants' acts and omissions, Plaintiff suffered serious bodily injury, and is therefore entitled to relief.

**Count V. Plaintiff Norman Shelton vs. The United States of America:**

**Federal Torts Claims Act: Negligence on August 30, 2009**

157. Plaintiff incorporates by reference the allegations in the preceding paragraphs of this Complaint.

158. Defendant the United States of America is responsible for the oversight of its employees, which includes officers and staff at federal correctional facilities.

Pursuant to the Federal Tort Claims Act, the United States is liable for damages caused by the negligent or wrongful acts of its employees acting within the scope of their employment, under circumstances where the United States, if a private person, would be liable in accordance with the laws of the Commonwealth of Pennsylvania.

159. Corrections Officers and staff have a duty to protect inmates from harm caused by other inmates. The staff at USP Lewisburg owed this duty to Plaintiff.

160. On August 30, 2009, Prison officials knew or should have known that Plaintiff faced an excessive risk to his health and safety when the officials placed Plaintiff with a hostile cellmate, and also when officials subsequently allowed Plaintiff's cellmate to beat Plaintiff without intervening on Plaintiff's behalf.

161. Prison officials breached their duty to protect Plaintiff from harm by failing to take any actions to protect him in the face of known risks to his safety.

162. Plaintiff exhausted his administrative remedies for the August 30, 2009 placement and attack.

163. As a result of the prison staff's negligent acts and omissions, Plaintiff suffered serious personal injuries, pain and suffering, and emotional and psychological distress.

**Court VI. Plaintiff Norman Shelton vs. The United States of America:**

**Federal Torts Claims Act: Negligence on November 26, 2009**

164. Plaintiff incorporates by reference the allegations in the preceding paragraphs of this Complaint.

165. Defendant the United States of America is responsible for the oversight of its employees, which includes officers and staff at federal correctional facilities.

Pursuant to the Federal Tort Claims Act, the United States is liable for damages caused by the negligent or wrongful acts of its employees acting within the scope of their employment, under circumstances where the United States, if a private person, would be liable in accordance with the laws of the Commonwealth of Pennsylvania.

166. Corrections Officers and staff have a duty to protect inmates from harm caused by other inmates. The staff at USP Lewisburg owed this duty to Plaintiff.

167. On or around November 26, 2009, Prison officials knew or should have known that Plaintiff faced an excessive risk to his health and safety when the officials placed Plaintiff with a hostile cellmate, and also when officials subsequently allowed Plaintiff's cellmate to beat Plaintiff without intervening on Plaintiff's behalf.

168. Prison officials breached their duty to protect Plaintiff from harm by failing to take any actions to protect him in the face of known risks to his safety.

169. Plaintiff exhausted his administrative remedies for the November 26, 2009 placement and attack.

170. As a result of the prison staff's negligent acts and omissions, Plaintiff suffered serious personal injuries, pain and suffering, and emotional and psychological distress.

**Count VII. Class v. The United States of America through its department, the BOP and Defendants Kane, Norwood, Bledsoe, Young, and Rear:**

**Eighth Amendment Violation**

171. Plaintiff asserts this claim on behalf of himself and a class of all similarly situated inmates at USP Lewisburg, as described in Paragraph 119.

172. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in this Complaint.

173. Plaintiff and the class members have a right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution. This means that prison officials must protect prisoners from excessive risks of substantial material harm.

174. Defendants, acting under color of federal law, engaged in a pattern, practice or policy of placing hostile inmates together in cells and/or recreational cages despite the substantial risk that the hostile inmates would cause significant harm to each other, and enforcing this pattern, practice or policy through the threat and use of punitive restraints. Furthermore, Defendants, again acting under the color of federal law, engaged in a pattern, practice or policy of failing to intervene to protect inmates from

predictable harm at the hands of hostile inmates, with whom the inmates were placed by Defendants. Thus, Defendants have deprived the members of the class of their constitutional rights to be free from cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and will continue to do so unless their patterns, practices and policies are changed. If appropriate declaratory and injunction relief is not granted, the harms suffered will be irreparable, may lead to death, and will continue for the foreseeable future.

175. Defendants' acts and omissions have caused and will continue to cause serious bodily injury to Plaintiff and every other inmate housed at USP Lewisburg, currently or in the future, and therefore the class is entitled to injunctive relief.

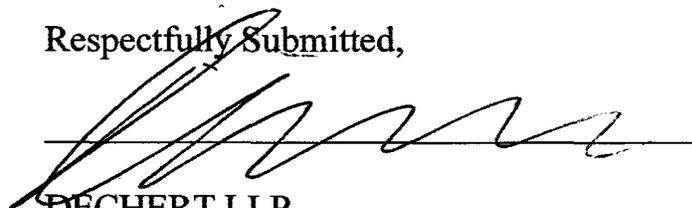
### **Prayer for Relief**

WHEREFORE, Plaintiff prays as follows:

1. That Defendants be adjudged to have violated Plaintiff's right under the Eighth Amendment to the United State Constitution to be free from cruel and unusual punishment.
2. That judgment is entered for Plaintiff against Defendants for compensatory and punitive damages, together with the costs of litigation, including reasonable attorney's fees, and any other equitable or legal relief that the case may require and that the Court may deem proper.

3. That Defendants be adjudged to have violated the class members' rights under the Eighth Amendment to the United States Constitution to be free from cruel and unusual punishment.
4. That the Court issue an injunction preventing Defendants from continuing their unconstitutional housing, recreation, and restraint patterns, practices and policies.

Respectfully Submitted,



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Dated: August 29, 2011