

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Scott Warrington

(b) County of Residence of First Listed Plaintiff Somerset

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DeFino Law Associates, P.C., 2541 South Broad Street, Philadelphia, PA 19148, (215) 551-9099

**DEFENDANTS**Pensylvania Department of Corrections and  
John Doe Correctional Officers #1 - 10County of Residence of First Listed Defendant Cumberland

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. 1983

Brief description of cause:

State-Created Danger - Fourteenth Amendment Violation**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$  
750,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/11/2019

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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

SCOTT WARRINGTON  
c/o 2541 South Broad Street  
Philadelphia, PA 19148  
Plaintiff,  
v.  
PENNSYLVANIA DEPARTMENT  
OF CORRECTIONS  
1920 Technology Parkway  
Mechanicsburg, PA 17050  
and  
JOHN DOE CORRECTIONAL  
OFFICERS #1 - 10  
301 Institution Drive  
Bellefonte, PA 16823  
Defendants.

# **PLAINTIFF'S COMPLAINT IN CIVIL ACTION**

## PRELIMINARY STATEMENT

1. This action is brought under 42 U.S.C. §1983 for deprivation of Plaintiff's substantive due process rights under the Fourteenth Amendment to the U.S. Constitution.

## JURISDICTION

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331.

## PARTIES

3. Plaintiff Scott Warrington is an adult individual with an address for service as captioned above.

4. Defendant Pennsylvania Department of Corrections ("DOC") is an executive agency of the Commonwealth of Pennsylvania, with an address for service as captioned above, and at all times relevant to the events giving rise to this action was the owner and/or operator of the State Correctional Institution at Benner Township, ("SCI Benner"), and was responsible for the promulgation, enactment, and enforcement of policies and

procedures to ensure the safety of the inmates housed therein, and/or to ensure that the conduct of the correctional officers at SCI Benner did not create or enhance the dangers within SCI Benner to which an inmate might otherwise be subjected.

5. Defendants John Doe Correctional Officers #1 - 10 were, at all times relevant to this action, employees of Defendant DOC, and were responsible for supervising and directing the inmates at SCI Benner in such a way as not to create or enhance the dangers within SCI Benner to which an inmate might otherwise be subjected.

### **FACTUAL ALLEGATIONS**

6. On April 3, 2017, Plaintiff was an inmate at SCI Benner, within the physical custody of Defendant DOC.

7. Sometime prior to April 3, 2017, an inmate named David Anthony Fry ("Fry") - not a party to this action - was, on information and belief, transferred from solitary confinement to Plaintiff's cell block.

8. During and in the period after Fry's transfer to Plaintiff's cell block, Fry was allowed to carry and/or bring with him various personal belongings, among which he was able to conceal a metal bar, pipe, or other such object (the "Weapon") which could readily be converted into use as a weapon.

9. In the period prior to April 3, 2017, Fry made vocal and repeated threats within the presence and earshot of one or more of Defendants John Doe Correctional Officers #1 - 10 that he intended to commit acts of violence upon his release from solitary confinement.

10. Fry was being confined at SCI Benner, on information and belief, for multiple first-degree robberies, and had a prior criminal record consisting of many violent

offenses, information of which Defendants knew or should have been aware on and prior to April 3, 2017.

11. On April 3, 2017, Fry assaulted Plaintiff with the Weapon, causing severe injuries to the Plaintiff including, without limitation, skull and facial fractures, lacerations, and various other injuries about the head, face, and body.

12. One or more of Defendants John Doe Correctional Officers #1 - 10 witnessed the assault of Plaintiff by Fry, and did not take action to prevent the assault or intervene in the assault to prevent Plaintiff from sustaining such severe injuries.

13. Plaintiff's conduct was in no way contributory to the injuries he sustained, and all such injury was incurred due to the actions of non-party Fry and actions and/or omissions of the Defendants.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Scott Warrington v. Pennsylvania Department of Corrections Federal Constitutional Violations**

14. Plaintiff hereby incorporates all preceding paragraphs as though same were set forth at length hereafter.

15. Plaintiff was at all times relevant to this action a prisoner within the custody of Defendant DOC, and was a reasonably foreseeable victim of the assault by Fry.

16. Defendant DOC failed to enact and/or enforce adequate policies and/or procedures to prevent Fry from having access to a clear and obvious weapon within SCI Benner, despite being on actual and/or constructive notice of the obvious risk of harm posed by Fry.

17. The risk of harm to which Plaintiff was subjected thereby constitutes a State-Created Danger and a violation of Plaintiff's substantive due process rights under the Fourteenth Amendment to the United States Constitution to be free from unjustified intrusions on personal security created or enhanced by the actions of a state actor.

18. As a direct and proximate result of Defendant's actions, Plaintiff was assaulted and severely injured as previously set forth.

19. As a result of Plaintiff's injuries, he has required extensive medical treatment and sustained extreme pain, suffering, discomfort, emotional distress, and cognitive impairment, all to his great and continuing loss.

**COUNT II**  
**Scott Warrington v. Individual Defendants**  
**Federal Constitutional Violations**

20. Plaintiff hereby incorporates all preceding paragraphs as though same were set forth at length hereafter.

21. Defendants John Doe Correctional Officers #1 - 10 were, at all times relevant to this action, employees of Defendant DOC, and were responsible for supervising and directing the inmates at SCI Benner in such a way as not to create or enhance the dangers within SCI Benner to which an inmate might otherwise be subjected.

22. Specifically, Defendants were responsible for overseeing Fry's transfer from solitary confinement to Plaintiff's cell block, and decided to allow him access to the Weapon, which could readily be used to commit violence, and which in fact was used to commit the assault against the Plaintiff.

23. Defendants knew or should have known that Fry had a history and propensity for violence, and were entirely capable of removing from Fry's possession any object that could have been converted for use as a weapon prior to the assault on Plaintiff.

24. Moreover, Defendants chose not to intervene in the assault on the Plaintiff, thereby worsening the injuries inflicted upon the Plaintiff.

25. The risk of harm to which Plaintiff was subjected thereby constitutes a State-Created Danger and a violation of Plaintiff's substantive due process rights under the Fourteenth Amendment to the United States Constitution to be free from unjustified intrusions on personal security created or enhanced by the actions of a state actor.

26. As a direct and proximate result of Defendants' actions, Plaintiff was assaulted and severely injured as previously set forth.

27. As a result of Plaintiff's injuries, he has required extensive medical treatment and sustained extreme pain, suffering, discomfort, emotional distress, and cognitive impairment, all to his great and continuing loss.

#### **PRAYER FOR RELIEF**

**Wherefore,** Plaintiff respectfully requests:

- A. Compensatory damages; and,
- B. Such other relief as this Court may deem appropriate.

#### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Scott Warrington hereby demands a trial by jury in this action of all issues so triable.

Respectfully Submitted,

By: \_\_\_\_\_

Benjamin J. Simmons, Esq.

I.D. No. 314855

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